



# Investing in Germany 2010.

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## Introduction

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## Investing in Germany 2010

This publication provides an overview of the tax system in Germany. The general tax information contained in this brochure is based on the tax legislation and practice as of 2010 and subject to change. The information given here is greatly simplified and is not substitute for professional advice.

The German tax experts Guenter Wagner (AWT Horwath, Munich), Wolfgang Kirschning (RWT Horwath, Stuttgart) and Michael Schmitz (HSA Horwath, Frankfurt) look forward to answering any questions you may have. They can be reached by phone as follows:

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## Types of organisation

	Name in local language
<b>Private limited company</b>	Gesellschaft mit beschränkter Haftung (GmbH)
<b>Public limited company</b>	Aktiengesellschaft (AG)
<b>Business company with limited liability</b>	Unternehmergesellschaft (haftungsbeschränkt) (UG haftungsbeschränkt)
<b>Registered cooperative</b>	eingetragene Genossenschaft (eG)
<b>Unlimited partnership</b>	Offene Handelsgesellschaft (OHG)
<b>Limited partnership</b>	Kommanditgesellschaft (KG) (sub-category: GmbH & Co KG)
<b>Partnership limited by shares</b>	Kommanditgesellschaft auf Aktien (KGaA)
<b>Registered branch office</b>	–
<b>Taxable establishment</b>	–

	Written form / notarisation	Tax transparency
<b>Private limited company (GmbH)</b>	yes / yes	no
<b>Public limited company (AG)</b>	yes / yes	no
<b>Business company with limited liability (UG)</b>	yes / yes	no
<b>Registered cooperative (eG)</b>	yes / no	no
<b>Unlimited partnership (OHG)</b>	recommended / no	yes
<b>Limited partnership (KG and GmbH &amp; Co. KG)</b>	recommended / no	yes
<b>Partnership limited by shares (KGaA)</b>	yes / yes	no
<b>Registered branch office</b>	–	–
<b>Taxable establishment</b>	–	–

	Registrable in commercial register / legal personality	Minimum capital	Single person corporation
	yes / yes	EUR 25,000 EUR 100 per shareholder; higher amounts must be divisible by 50	yes
	yes / yes	EUR 50,000	yes
	yes / yes	EUR 1	yes
	yes (register of cooperatives) / yes	no	no
	yes / no – can however acquire rights in its name and incur liabilities	no	no
	yes / as with OHG	no	no
	yes / yes	EUR 50,000	only subsequently to formation
	yes / no	no	–
	no / no	no	–

	Registration with tax authorities	Statutory audit			
		Thresholds:	Total assets EUR 4.840m	Revenues EUR 9.680m	Employees 50
	yes	if thresholds are exceeded in two points in two successive years			
	yes	same as GmbH or if shares are traded on a stock exchange			
	yes	same as GmbH			
	yes	annually if total assets in excess of EUR 2m, otherwise every two years			
	yes	same as GmbH if no unlimited liability shareholder is a natural person (e.g. GmbH & Co KG); for all other partnerships only if spec. thresholds are exceeded: Total assets > EUR 65 m, Revenue > EUR 130m, Employees > 5000)			
	yes	same as OHG			
	yes	same as AG			
	yes	as part of any audit of the parent company			
	yes	as part of any audit of the parent company			

## Business taxes, in particular corporate income tax (KSt)

Tax rate	15% as of tax year 2008 (as of tax year 2004 up to 2007, 25%)
Total tax burden on corporations	Corporate income tax 15% Solidarity surcharge 5.5% of KSt Trade tax depending on trade income and municipality Average total tax burden in 2010: 29,825%
Tax liability	<u>Unlimited</u> Legal persons in private law with management or residence in Germany (GmbH, AG, eG, KGaA) Associations without legal personality and assets in administration Commercial operations of public sector legal persons <u>Limited</u> Foreign corporations neither resident nor managed in Germany, on their German income Public sector legal persons not engaged in commercial activities on German income fully or partially liable to tax.
Financial year	Calendar year, though non-calendar financial year is possible; after the first financial year, a change is only possible with the permission of the tax office
Accounting	Generally, double-entry bookkeeping in accordance with German Commercial Code (HGB)
Loss set-offs / carry forwards	Losses up to the amount of EUR 1m deductible without restriction from future income, thereafter restricted to 60% of total income in excess of EUR 1m (applies also to trade tax). Loss carrybacks: restricted to EUR 511,500 and only 1 year (KSt only)
Associated parties	Following the OECD Model Tax Convention, if: an enterprise participates directly or indirectly in the management, control or capital of another enterprise (subsidiary), or the same persons participate directly or indirectly in the management, control or capital of both enterprises (sister company) Definition of connected parties in section 1 Foreign Tax Act (ASTG)
Operating expenses	Expenses of the business
Transfer prices	Arm's length principle (reasonableness check on transfer prices); extensive documentation requirements; rules for relocation of functions (exit taxation); further strengthening of Sec 1 Foreign Transaction Act (Außensteuergesetz)

Interest on financing	<p>Interest balance (interest rates less interest yields) up to 30% of EBITDA is generally deductible; if the interest balance is less than EUR 3m it is deductible without restriction; there are further exceptions for non-consolidated group members or consolidated group members which equity ratio is above or corresponding to the group equity ratio; additional restrictions are applicable if shareholder loans are granted; non-deductible interest balances are carried forward</p> <p>Provided investment forms part of business of investment acquisition assets; flat-rate 5% restriction on deduction</p>
Debt / equity	No additional thin capitalization rules (see explanations to point "Interest on financing")
Loss deduction (purchase of a corporate shell)	<p>Loss deduction after share deals can be restricted: if more than 25% of the shares in a corporation are transferred to one person or a group of person with equal directional interest within a period of five years loss deduction is partially limited; if more than 50% of the shares are transferred loss deduction is lost completely. But there are exemptions. There is a restructuring clause that stipulates loss utilisations in the event of share transfers. The deduction of losses in the context of restructuring measures within affiliated companies is permitted ("Group Clause"), and it is possible to transfer losses in the amount of hidden reserves.</p>
Tax depreciation	<p>Straight-line depreciation</p> <p>Declining balance depreciation can be used for assets purchased after January, 1st 2009 and before December 31st 2010. When the declining balance method is used, a limit of 250% of the straight line rate or 25% of the depreciable base must be observed. It is possible to switch from the declining balance method to the straight line method (but not vice versa).</p> <p>Unit-of-production depreciation: moveable assets, where the rate of wear and tear varies significantly</p> <p>Depletion allowance: extractive industries (natural resources)</p> <p>Additional depreciation: recognition of permanent loss in value due to unusual circumstances, e.g., theft; impairment loss (permanent loss of value in use)</p> <p>Special allowances as investment incentives for particular industries</p> <p>Income tax will provide for an option to either write down minor assets up to a net cost of EUR 410 immediately or apply straight-line pool depreciation of all economic assets with values between EUR 150 and EUR 1,000 (the tax law prescribes that the depreciation period is five years)</p>
Provisions	<p>Employee benefits: long-service and other bonuses, pension obligations, social insurance, vacation indemnity</p> <p>Third party benefits: claims under guarantees, necessary maintenance</p> <p>Liabilities to third parties: accounting, annual financial statements, warranties, taxes</p> <p>Third party damages: product liability, court costs, damages, environmental protection</p> <p>No provisions for tax purposes for impending losses on open transactions</p> <p>Discounting of long-term provisions</p>

Motor vehicle expenses	Acquisition costs, operating costs and extraordinary expenses (e.g., accidents) are deductible Private use to be treated as income (drawings): 1% of gross list price per month, or log book showing actual private use
Non-deductible expenses	Disguised distributions: reductions in assets resulting from shareholder relationship treated as taxable income of the company (e.g., excessive management salaries) Expenses in connection with the company's articles of incorporation which are not business expenses Taxes on income and persons (e.g., corporate income tax, solidarity surcharge, investment withholding tax, inheritance tax, trade tax) 30% of expenditure for entertainment of persons for business reasons Gifts/Advertising items per year and recipient of more than EUR 35 Fines, 50% of supervisory board remuneration, bribes and inducements, certain donations, etc. Expenses relating to non-taxable income
Withholding tax	There is a withholding tax (solidarity surcharge included) for all kind of payments from income of capital investment, such as:
Over-the-counter transactions	26,375%
Interest	26,375% or applicable DTA
Royalties	15,825% or applicable DTA
Dividends	26,375% or applicable DTA
Direct collection	Estimated assessments in case of failure to file tax returns, implementation of EU Interest Directive, direct debit by tax authorities, reverse charge VAT, tax office notifications
Profits on disposal	Disposal of shares generally 95% tax exempt; 7-year qualifying period for exemption for shares acquired as the result of tax-neutral business merger or acquisition
Investment income (dividends)	Dividend payments between corporations and associations are generally 95% tax exempt
International parent-subsidiary exemption	No qualifying period of ownership Minimum holding: generally 25%, sometimes 10% Of the distributed income, 95% is exempt tax; as a consequence of the exemption, foreign withholding tax can neither be deducted nor credited
Goodwill amortisation	Amortisation of goodwill over 15 years; writedown to value in use if there is reason to believe that there is permanent loss of value to the business
Pooling	For corporate income tax: financial integration (interest in excess of 50%), transfer of profits agreement For trade tax: financial integration (interest in excess of 50%), transfer of profits agreement For VAT: financial, management and business integration Outcome: treated as a single tax entity

## Income tax

Tax rate 2010	Up to EUR 8,004	EUR 8,005 – EUR 52,881	Above EUR 52,882	Above EUR 250,731	<u>Solidarity surcharge:</u> 5.5% of taxes on income  <u>Church tax:</u> 8% or 9% of taxes on income
	0%	Marginal relief bands with increas- ing tax rates: 14.00% – 42.00%	42,00%	45,00%	

Special business tax rate	Natural persons holding partnership interests can opt to a special tax rate of 29,83% for retained earnings on income from trade or business (interest advantage due to reduced taxation of retained earnings; this enables an nearly equal taxation of corporations and partnerships prior to distribution). Additional taxes of 25% must be paid in case of private withdrawals former retained earnings.
Tax-free allowance	Basic rate table EUR 8,004 Split rate table EUR 16,008
Tax liability	<u>Unlimited tax liability on worldwide income</u> Natural persons with their residence or habitual abode in Germany  <u>Limited liability on certain income in Germany</u> Natural persons with neither residence nor habitual abode in Germany  <u>Extended limited tax liability on so called non-foreign income</u> Taxation of natural persons (German citizens) who used to be unlimited liable to tax in Germany and who have moved to low tax countries while retaining significant business interests in Germany
Tax assessment period	Calendar year
Income categories	Income from 1. Agriculture and forestry 2. Trade 3. Self employment 4. Employment 5. Capital 6. Rent 7. Other
Accounting	In general: double-entry bookkeeping  Small businesses and the self employed: receipts and payments accounting  Obligation to maintain accounting records under German Tax Law Provisions (AO), HGB or specific legislation

Loss set-offs	<p>“Horizontal” set-off (within individual income categories): generally possible</p> <p>“Vertical” set-off (between different individual income categories): possible, except where prohibited</p> <ul style="list-style-type: none"> <li>– Losses in certain categories of foreign income can only be set off against profits in the same category</li> <li>– Losses from loss-making companies can not be offset against other profits (loss deferral models)</li> <li>– Losses of a limited partner which result in the partner’s capital account becoming negative can only be set off against partnership profits of subsequent years</li> <li>– Losses on disposals can only be set off against profits on disposals</li> </ul>
Loss carry forward / carry back	<p>Loss carry back: automatic carry back of losses of up to EUR 511,500 (for joint returns with spouse: EUR 1,023,000); right to carry back can be resigned on application</p> <p>Loss carry forward: losses not carried back can be set off up to EUR 1,000,000 (for joint returns with spouse: EUR 2,000,000) in full, and up to 60% in excess of EUR 1,000,000 (for joint returns with spouse: EUR 2,000,000) against profits of subsequent years</p>
Operating expenses	Expenses of the business
Business expenses	Expenses incurred to procure, secure or maintain business income
Flat-rate option	<p>Employee flat-rate deduction: EUR 920 per year for employees’ business expenses automatically deductible; higher expenses must be supported by documentary evidence</p> <p>Flat-rate deduction for expenses in connection with income from capital of EUR 801, for joint returns with spouse EUR 1.602 and in connection with recurring income (e.g., maintenance) of EUR 102</p> <p>Pensioners are entitled to a flat-rate deduction of EUR 102 for expenses and to a pension allowance of EUR 792</p> <p>Employee deduction for traveling long distances between home and place of work of EUR 0.30 per kilometer distance, with a maximum of EUR 4,500 in the case of using public transport systems, beginning with kilometer 21 (since 2007)</p>
Motor vehicles	<p>If the car is business property expenses (e.g. acquisition costs, operating costs and extraordinary expenses like accidents) are deductible</p> <p>Private use of company car to be treated as income: 1% of gross list price per month, or log book showing actual private use; use for commuting to be treated as income: 0.03% of gross list price per month for each kilometer of distance between home and work; on the other hand EUR 0.30 for each kilometer of distance between home and work are deductible as income-related expenses</p> <p>Use of private car for business purposes deductible as a business expense: EUR 0.30 per kilometer or actual expenses incurred</p>
Withholding tax	As of tax year 2009 there is a 26,375% withholding tax (solidarity surcharge included) for all kind of payments from income of capital investment, except royalties.

Over-the-counter transactions	26,375%
Interest	26,375% or applicable DTA
Royalties	15,825% or applicable DTA
Dividends	26,375% or applicable DTA or EC parent subsidiary directive
Direct collection	Estimated assessments in case of failure to file tax returns, implementation of EU Interest Directive, direct debit by tax authorities, reverse charge VAT, tax office notifications

## Filing dates and deadlines

Annual tax returns	<p>Income tax, corporate income tax, trade tax and VAT return</p> <p>Returns to be filed by 31 May of the following year latest; application for extension possible – if represented by a professional tax adviser, until 31 December, exceptionally until 28 February of the next following year</p>
Interim returns	<p>VAT interim returns: always on the 10th following the end of an assessment period (an electronic data transmission is required):</p> <ul style="list-style-type: none"> <li>– New businesses: month (for two tax year periods)</li> <li>– Previous year's tax liability not more than EUR 1,000: exemption possible</li> <li>– Previous year's tax liability between EUR 1,001 and EUR 7,500: quarterly returns possible</li> <li>– Previous year's tax liability more than EUR 7,500: monthly returns</li> </ul> <p>Employer wage tax reportings and payments by 10th day after end of each reporting period: monthly, except wage tax in previous year was not more than EUR 800 (annual), and if wage tax was more than EUR 800 but not more than EUR 3,000 (quarterly)</p>

## Trade tax (Gewerbesteuer, GewSt)

Tax liability	Trades and businesses in Germany, irrespective of their legal form: permanent establishments and partnerships in Germany with business income in Germany, limited liability companies in all cases
Tax exemptions	A variety of enterprises are exempted from trade tax, including retirement homes, pension funds, banks, schools, public casinos, charitable organisations, hospitals, etc.
Basis of assessment	<p><b>Basis of assessment</b> Starting point for calculating the basis of assessment for trade tax is the income taxable according to income tax law respectively corporate tax law</p> <p><b>Non-deductible business expenses (additions)</b> 25% of interests on debts (i.e. participating loan, profit participation of a dormant partner) 5% of rental expenses for movable assets 12.5% of rental expenses for immovable assets 6.25% of payments for the cession of rights and licenses (except of distribution licenses) allowance of EUR 100,000</p> <p><b>Deductions</b> 1,2% of the assessed value of real property included in business assets As of tax year 2008 trade income of subsidiaries for a minimum 15% holding (for a maximum 15% holding the trade income of subsidiaries is taxable) The trade tax charge is no longer (as of 2008) a deductible business expense</p>
Base amount of trade tax	The basis of assessment multiplied by 3.5% is the so called base amount of trade tax
Tax	The tax is calculated by multiplying the base amount of trade tax by the applicable municipal rate, which varies from 200 to 490%
Interrelation with taxes on income	A certain proportion of trade tax can be offset against income tax (only natural persons and partnerships)

## Other taxes

Wealth tax	No
Inheritance and gift tax	<p>With effect from January 1st, 2009 the Inheritance and Gift Tax was reformed in major parts. Basically, all assets are to be stated at market value. This leads to significantly higher valuation compared to the previous valuation provisions. There are various comprehensive methods for the fair value measurement of different assets. In particular there are regulated methods for land and real estate, business assets and relief provisions for business assets.</p> <p>As a result of the new valuation provisions, undisclosed reserves are included in the valuation. The potential double taxation with inheritance tax and income tax is compensated by a percentagebased income tax reduction. The following chart shows the different tax scales applicable from 2010 on.</p>

Value of taxable acquisition up to the amount of EUR	Tax class I	Tax class II	Tax class III
75,000	7%	15%	30%
300,000	11%	20%	30%
600,000	15%	25%	30%
6m	19%	30%	30%
13m	23%	35%	50%
26m	27%	40%	50%
Over 26m	30%	43%	50%

Furthermore there are tax-free amounts as from January 1st, 2009 onwards:

Tax class / Group of persons	tax free amount
Tax class I / Spouses	EUR 500,000
Tax class I / Children, children of deceased children	EUR 400,000
Tax class I / Other grandchildren	EUR 200,000
Tax class I / Parents and grandparents in the case of inheritance	EUR 100,000
Tax class II / Parents and grandparents, siblings, nephews, nieces, stepparents, in-laws, divorcees	EUR 20,000
Tax class III All other	EUR 20,000
Tax class III (registered cohabitee)	EUR 500,000

Consumption tax	On fuel, electricity, tobacco, beer, spirits, sparkling wine, coffee
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## Tax regulations

Advance rulings (binding)	Ruling with respect to unsettled legal issues in connection with proposed structuring (charged by authorities)
Penalties for late payment	<p>Estimated assessments in the absence of returns</p> <p>Discretionary penalty surcharges for late filing of returns, maximum of 10% of the assessed tax, maximum amount EUR 25,000</p> <p>Interest on supplementary assessments</p> <p>Threat and imposition of penalty payment, maximum EUR 25,000</p> <p>Default penalty from due date of final tax liability of 1% for every month or part of month, three days grace</p>
Criminal law	<p>Deliberate tax evasion is a criminal offence: fine or imprisonment for up to 5 years, in especially serious cases, 6 months to 10 years</p> <p>Negligent underpayment of tax is an administrative infringement: penalty, up to EUR 50,000</p> <p>No penalties in the case of a voluntary declaration of tax evaded: correction or amendment of incorrect or incomplete information. Exceptions: appearance of an official, institution of proceedings, discovery of the offence</p>

## Tax concessions

Direct	<p>Employee savings premium (Mini-Job): up to EUR 400</p> <p>Investment premium in East Germany: varying, basic premium 10%</p> <p>Child benefit: EUR 184 per child, for third child EUR 190, for fourth and subsequent child EUR 215</p>
Indirect	<p><u>Tax reliefs</u></p> <p>Set off of foreign tax credits against German income and corporate income tax</p> <p>50% relief up to a maximum of EUR 825 for contributions to political parties (for joint returns with spouse EUR 1.650).</p> <p>Deduction from income tax on income from trade or business which is additional liable to trade tax of approximately 13.3% of the taxable income from trade or business (maximum: trade tax actually paid)</p> <p>Deduction for housekeeping and similar employment or services</p> <p><u>Tax exemptions</u></p> <p>Personal income tax: entitlements from health, long-term care and accident insurance, certain part-time jobs, subsidies for travel to and from work, occasional employment</p> <p>Corporate income tax: e.g., for charitable bodies</p> <p><u>Allowances include</u></p> <p>Child allowance: EUR 2,2444 per child annually, double for married couples</p> <p>Child care allowance: EUR 1,260 per child annually, double for married couples</p> <p>Employee discount allowance for employee benefits in kind: EUR 1,260</p> <p>Education allowance for children over the age of majority: EUR 924 per child annually</p> <p>Allowance for selling a business: profits up to EUR 45,000 if the taxpayer is over 55</p>
Grants	<p>Housing construction grant</p> <p>Grant programs for environmental measures (CO<sub>2</sub> reduction, solar energy)</p> <p>State subsidies for starting businesses</p> <p>State support for Mittelstand (SMEs)</p>

## Immovable property

Tax depreciation	<p><u>Depreciation</u> straight-line or reducing balance over the useful business life, depletion allowance for, e.g., natural resources</p> <p><u>Additional depreciation</u> write-down to current value in use or depreciation for extraordinary wear and tear</p>
Depreciation categories	<p><u>Land</u>: no depreciation</p> <p><u>Buildings</u>: from 2006 only straight-line depreciation</p> <ul style="list-style-type: none"> <li>– Completed before 1 January 1925: 2.5% per year over 40 years</li> <li>– Completed after 31 December 1924: 2% per year over 50 years</li> <li>– Application for building permission after 31 March 1985 and the building is non-residential (business purposes): 3% per year</li> </ul> <p><u>Tax base for buildings</u> Acquisition cost: expenses incurred in acquiring the asset and bringing it to operational readiness</p> <ul style="list-style-type: none"> <li>– Construction costs: typically, costs of materials and assembly, overheads, wear and tear of plant and machinery used in construction</li> </ul>
Special depreciation	<p><u>In addition to ongoing depreciation</u> Expenses of modernisation and repair of buildings in urban renewal and development areas</p> <p>Costs of maintaining historic monument or putting them to sensible use</p>
Write-ups	Where the justification for additional depreciation disappears
Property transfer tax	<p><u>Objects of taxation</u> Transfer of ownership of property (including reorganisation of a business, development land readjustment, compulsory sale, cession of acquisition rights, procurement of rights of use)</p> <p>Change in shares in a partnership: acquisition of an at least 95% interest by one or more partners within 5 years</p> <p>Concentration in single hands of an at least 95% interest in a partnership or limited company</p> <p><u>Basis of assessment</u> Value of arm's length consideration</p> <p><u>Tax rate</u> 3.5% of value for tax purposes (Berlin, Hamburg and Saxony-Anhalt 4,5%)</p> <p><u>Tax exemptions include</u> Minimum threshold (basis of assessment): EUR 2,500 Inheritance and donations (double taxation provisions) Acquisition of property by family members</p>

Property tax	<p><u>Objects of taxation</u> Agricultural and forestry businesses and land</p> <p><u>Basis of assessment</u> Assessed value, as established by tax office assessment</p> <p><u>Tax factor</u> 6‰ for agricultural and forestry businesses 2.6‰ for single family homes (on the first EUR 38,346.89, and 3.5‰ on the balance) 3.1‰ for two-family homes 3.5‰ for all others</p> <p><u>Taxable value</u> Assessable value multiplied by the tax factor</p> <p><u>Rate</u> Application of the applicable municipal rate to the taxable value, assessment and collection by the municipality</p>
Open-ended property funds	<p><u>Owner of the fund assets</u> the fund company, so that for the investor there is no entry in the Property Register and no property transfer tax.</p> <p><u>Diversification of risk</u> value of any individual property not to exceed 15% of total fund assets; properties exceeding 10% of total fund assets in value may not exceed 50% of the fund assets in aggregate</p> <p><u>Maximum of 49% of the fund assets</u> bank balances, money market instruments, investment holdings; 5% of the fund assets must be available at call</p> <p><u>Tax liability</u> the individual investor, on the proportionate share of the equity, no income from rental or leasing 25% withholding tax plus 1.375% solidarity surcharge</p>

## Social insurance

Social insurance	Statutory health, nursing care, pension, accident and unemployment insurance
Contribution rates and contribution ceilings	<p>Health insurance: fixed contribution rate of 15.5% (14.9% from 1 July 2009 on), basis of income ceiling: EUR 3,750 per month (generally, half each from employer and employee, from 1 July 2005 additional contribution by employee of 0.9%)</p> <p>Nursing care insurance: 1.95%, basis of income ceiling: EUR 3,750 per month (generally, half each from employer and employee, from 1 January 2005 additional contribution by childless taxpayers of 0.25% from age 22)</p> <p>Pension insurance: 19.9%, basis of income ceiling: EUR 5,500 per month (new Federal States: EUR 4,650) – generally, half each from employer and employee</p> <p>Accident insurance borne by employer alone, contribution levied in arrears based on coverage required</p> <p>Unemployment insurance: 2.8%, basis of income ceiling: EUR 5,500 per month (new Federal States: EUR 4,650) – generally, half each from employer and employee</p>

## General managers

Civil law	Generally, appointment contract in the form of a contract of employment or service, not with employee status for the purpose of labour law
Social insurance	Non-owner manager (appointment contract, acting on instructions) as employee (chief executive) generally fully liable to social insurance Owner-manager generally not liable to social insurance, case by case decision, based on control over company (size of holding, details of appointment contract, articles of incorporation)
Income tax	Appointment contract: income from employment Owner-manager: distribution of profits taxable as income from capital
VAT	Employee: no VAT, because not an entrepreneur As an exception, entrepreneurial independence is possible
Residence permit	Foreigners require an official residence permit for temporary residence. A residence permit for the purpose of employment in general requires the approval of the Federal Ministry of Labour. This does not apply to executive managers, and hence not for general managers
Liability	Civil and criminal liability for culpable negligence with respect to company and third parties
Minimum remuneration	No minimum remuneration prescribed

## VAT

Tax rates	<p>Standard rate 19% as of 1 January 2007</p> <p>Reduced rate of 7%, e.g., for:</p> <ul style="list-style-type: none"> <li>– Hotel accommodation services (new in 2010)</li> <li>– services of charitable bodies</li> <li>– certain foods</li> <li>– Other selected services</li> </ul>
Supply	Supply, private use (self-supply) and other supplies without consideration by businesses as part of their activities in Germany are taxable
Place of supply or services	<p><u>Place of supply</u></p> <p>In principle, wherever the object is situated at the time the power to dispose of the goods is acquired (static supply)</p> <p>In the case of transport or dispatch by purchaser or supplier, where transport or dispatch begins (mobile supply)</p> <p>Import from third countries: where the supplier or the supplier's agent is liable for import VAT, the place of supply is in the importing country</p> <p>Delivery by water, air or rail inside the EU: point of departure</p> <p>Self-supply and supply without consideration: place of business</p> <p>Special provisions for chain and triangular transactions</p>
Other supplies	Other supplies and use for private purposes and other supplies without consideration (self-supply) are taxable
Place of supply for special services	<p><u>Where the land is situated</u></p> <p>Other services in connection with land (real estate agents and experts, planning and coordination of construction services)</p> <p><u>Where the activity takes place</u></p> <p>Cultural, artistic, scientific, educational, sporting and entertainment activities and exposition services</p> <p>Work on movable tangible property</p> <p>Short-term rental services regarding transportation vehicles</p>
VAT	<p><u>Place of supply of other services (general rule)</u></p> <p>If customer is a business, service for business purposes: customer's place of business</p> <p>If customer is not a business: supplier's place of business or establishment</p> <p>If the other services are supplied electronically by businesses in third countries to customers other than businesses: in the customer's country of residence</p> <p><u>Intermediary services</u></p> <p>If customer is not a business: place where the mediated service/supply is supplied</p> <p>If customer is a business: customer's place of business</p> <p><u>Transport services</u></p> <p>Where the transport takes place; for cross-border transport, tax liability on the German part (except short distance transports)</p>

VAT	<p>If customer is not a business and has neither a residence nor a habitual abode in the EU and the supplier is resident in a third country: customer's place of residence or registration in third country for the following services:</p> <p>Grant, transfer and exercise of rights arising out of (for purposes of above) copyright</p> <p>Advertising and public relations</p> <p>Legal, technical and business consultancy services (lawyers, tax advisers, auditors, etc.)</p> <p>Data processing</p> <p>Provision of information</p> <p>Finance and insurance services</p> <p>Provision of personnel</p> <p>Waiver of patent rights and copyrights, and rights to practise a trade or profession</p> <p>Intermediation of above services</p> <p>Lease or rental of movable assets</p> <p>Telecommunications services</p> <p>Radio and television services</p> <p>Services supplied electronically</p> <p>Granting access to natural gas and electricity distribution networks</p> <p><u>In all other cases</u> Supplier's place of business</p>
Reverse charge	<p>Complementary to new standard place of service for b2b-cases – customer's place of business – the customer is liable for the VAT</p> <p>Invoice without VAT, indication that tax liability is transferred to the customer, both parties' VAT-Id numbers</p> <p>Applicable supplies</p> <ul style="list-style-type: none"> <li>– Taxable supply of goods to be manufactured or produced and Other services effected by a foreign business</li> <li>– Supply, outside a judicial liquidation procedure, of goods provided as security by the giver of the security to the receiver of the security</li> <li>– Supplies subject to property transfer tax</li> <li>– Taxable supplies and other services connected with the construction, repair, maintenance, alteration or demolition of buildings</li> <li>– Supplies of gas and electricity by a foreign supplier</li> </ul>
Tax reliefs	Crucial differences in the deductibility of input VAT
Zero rated	<p><u>Input VAT deductible even though no VAT chargeable on supply of goods/services</u></p> <p>Exports</p> <p>Processing under contract</p> <p>Cross-border transport of goods</p> <p>Shipping and air transport services</p> <p>Intermediation of certain tax free supplies</p>

Exempt	<p><u>Input VAT not deductible</u></p> <p>Lending and loan broking</p> <p>Supplies subject to property transfer tax</p> <p>Tax free rental and leasing of property</p> <p>Services of doctors, dentists, lay practitioners, midwives, etc.</p> <p>Honorary activities</p> <p>(Special provisions governing the option for taxation)</p>
Deductible input VAT	<p><u>VAT invoiced to the business for the supply of goods and services (and import VAT)</u></p> <p>Generally no deduction of input VAT in respect of</p> <ul style="list-style-type: none"> <li>– Expenses not deductible for the purposes of income tax</li> <li>– Foreign Supplies that would be free of tax in Germany</li> <li>– Exempt income</li> </ul>
Real estate Rental	<p>Rental and leasing of real property is free of tax, lessor can opt to the VAT liability if the lessee uses the property exclusively for sales that do not exclude input tax</p> <p>Exception: rental of living and sleeping accommodation for short-term use and rental of business facilities</p>
Sales	<p>Income from sale of land is exempt, vendor can opt to the VAT liability</p>
Leasing	<p>If the leased asset is treated as an asset of the lessee for the purposes of income tax, there is a supply of goods by the lessor</p> <p>Otherwise, it is a supply of other services for consideration</p>
Foreign businesses	<p>Businesses with no place of business or establishment in Germany</p>
Registration	<p>Registration required if there are taxable sales in Germany (no fiscal representative required)</p>
Refund of input VAT paid in Germany	<p>If there were no taxable supplies in Germany or the customer is liable for the tax, a claim for refund of input VAT must be made by 30 September of the following year latest.</p> <p>If threshold of 1.000 EUR (250 EUR in case of fuel) is exceeded proof by records and documentary must be provided electronically</p> <p>Minimum input VAT payable: EUR 400 for an application for a 3-months-period</p> <p>Responsible office: German Federal Tax Office, Schwedt office</p>

## Double taxation agreements

The following table contains the withholding rates from bilateral income tax treaties that generally apply to German source payments of dividends, interest and royalties to recipients in selected countries. Various conditions and exceptions, including local laws, may affect these rates. The specific provisions of each treaty must be analysed carefully when the application of withholding taxes is at issue. The German rates quoted below where there is no treaty include the solidarity surcharge.

Country	Divi- dends to parent <sup>1</sup> %	Other dividends %	Interest %	Royalties %	Real estate clause <sup>2</sup>
No treaty:	26.375 <sup>3</sup>	26.375 <sup>3</sup>	26.375 <sup>3</sup>	15.825	
Treaty:					
Algeria	5 <sup>6</sup>	15	10	10	no
Argentina	15	15	15	15	no
Armenia <sup>4</sup>	15	15	5	0	no
Australia	15	15	10	10	–
Austria	0 <sup>5</sup> /5 <sup>6</sup>	15	0	0	yes
Azerbaijan	5	15	10	5	no
Bangladesh	15	15	10	10	yes
Belgium	0 <sup>5</sup>	15	0 <sup>7</sup> /15	0	no
Belarus	5 <sup>8</sup>	15	5	3	no
Bolivia	10	10	15	15	no
Bosnia and Herzegovina <sup>9</sup>	15	15	0	10	no
Bulgaria	0 <sup>5</sup>	15	0	0 <sup>10</sup> /5	no
Canada	5 <sup>6</sup>	15	10	0	yes
China	10	10	10	10	no
Croatia	5 <sup>6</sup>	15	0	0	no
Cyprus	0 <sup>5</sup>	15	10 <sup>10</sup>	0	no
Czech Republic <sup>11</sup>	0 <sup>5</sup>	15	0	0 <sup>10</sup> /5	no
Denmark	0 <sup>5</sup> /5 <sup>6</sup>	15	0	0	yes
Ecuador	15	15	15	15	no
Egypt	15	15	15	15	no
Estonia	0 <sup>5</sup>	15	0 <sup>10</sup> /10	0 <sup>10</sup> /10	yes
Finland	0 <sup>5</sup>	15	0	0 <sup>10</sup> /5	yes
France	0 <sup>5</sup> /5 <sup>6</sup>	15	0	0	no
Georgia	0 <sup>12</sup> /5 <sup>6</sup>	10	0	0	no
Ghana	5 <sup>5</sup>	15	10	8	no
Greece	0 <sup>5</sup>	25	0 <sup>10</sup> /10	0	no
Hungary	0 <sup>5</sup>	15	0	0	no
Iceland	5	15	0	0	no
India	10	10	10	10	no

Country	Dividends to parent <sup>1</sup> %	Other dividends %	Interest %	Royalties %	Real estate clause <sup>2</sup>
Indonesia	10	15	10	15	no
Iran	15	20	15	10	no
Ireland	0 <sup>5</sup>	10	0	0	no
Israel	25	25	15	5	no
Italy	0 <sup>5</sup>	15	0 <sup>10</sup> /10	0 <sup>10</sup> /5	no
Ivory Coast	15	15	15	10	no
Jamaica	10	15	12.5	10	no
Japan	15	15	10	10	no
Jersey <sup>20</sup>	–	–	–	–	–
Kazakhstan	5	15	10	10	yes
Kenya	15	15	15	15	no
Kuwait	5 <sup>6</sup>	15	0	10	no
Kyrgyzstan	5	15	5	10	yes
Latvia	0 <sup>5</sup>	15	0 <sup>10</sup> /10	0 <sup>10</sup> /10	yes
Liberia	10	15	20	10	no
Lithuania	0 <sup>5</sup>	15	0 <sup>10</sup> /10	0 <sup>10</sup> /10	yes
Luxembourg	0 <sup>5</sup>	15	0	0 <sup>10</sup> /5	no
Macedonia <sup>9</sup>	15	15	0	10	no
Malaysia	5	15	15	10	no
Malta	0 <sup>5</sup> /5 <sup>6</sup>	15	0	0	yes
Mauritius	5	15	– <sup>13</sup>	15	no
Mexico	5 <sup>6</sup>	15	10	10	no
Moldova <sup>4</sup>	15	15	5	0	no
Mongolia	5 <sup>6</sup>	10	10	10	no
Morocco	5	15	10	10	no
Namibia	10 <sup>6</sup>	15	0	10	no
Netherlands	0 <sup>5</sup>	15	0	0	no
New Zealand	15	15	10	10	yes
Norway	0	15	0	0	yes
Pakistan	10 <sup>8</sup>	15	20	10	yes
Philippines	10	15	10	10	no
Poland	0 <sup>5</sup> /5 <sup>6</sup>	15	0 <sup>10</sup> /5	0 <sup>10</sup> /5	yes
Portugal	0 <sup>5</sup>	15	0 <sup>10</sup> /15	0 <sup>10</sup> /10	no
Romania	0 <sup>5</sup> /5 <sup>6</sup>	15	0 <sup>10</sup> /3	0 <sup>10</sup> /3	yes
Russian Federation	5 <sup>6</sup>	15	0	0	no
Serbia <sup>9</sup>	15	15	0	10	no
Singapore	5 <sup>6</sup>	15	8	8	yes

Country	Dividends to parent <sup>1</sup> %	Other dividends %	Interest %	Royalties %	Real estate clause <sup>2</sup>
Slovak Republic <sup>11</sup>	0 <sup>5</sup>	15	0	0 <sup>10</sup> /3	yes
Slovenia	0 <sup>5</sup>	15	0	0 <sup>10</sup> /5	no
South Africa	7.5	15	10	0	no
South Korea	5	15	10	10	yes
Spain	0 <sup>5</sup>	15	0 <sup>10</sup> /10	0 <sup>10</sup> /5	no
Sri Lanka	15	15	10	10	no
Sweden	0 <sup>5</sup>	15	0	0	yes
Switzerland	0 <sup>8</sup>	15	0 <sup>14</sup>	0 <sup>14</sup>	no
Tajikistan	5 <sup>6</sup>	15	0	5	yes
Thailand	15	20	25	15	no
Trinidad and Tobago	10	20	15	10	no
Tunisia	10	15	10	15	no
Turkey <sup>19</sup>	15 <sup>5</sup>	20	15	10	no
Turkmenistan <sup>4</sup>	15	15	5	0	no
Ukraine	5 <sup>8</sup>	10	5	5	yes
United Kingdom	0 <sup>5</sup>	15	0	0	no
United States	0 <sup>16</sup> /5 <sup>5</sup>	15	0	0	yes
Uruguay	15	15	15	15	no
Uzbekistan	5	15	5	3	yes
Venezuela	5 <sup>17</sup>	15	5	5	no
Vietnam	5 <sup>18</sup> /10	15	10	10	yes
Zambia	5	15	10	10	no
Zimbabwe	10	20	10	7.5	no

**Footnotes:**

1. These rates apply to shareholdings of 25% or more, unless otherwise stated.
2. The treaty contains a regulation that capital gains of real estate companies are treated like capital gains of real estate.
3. This rate applies from 2009 onwards. The rate was previously 21.1%.
4. The treaty with the former USSR will continue until a new treaty comes into force.
5. The zero rate is mandated by the EU parent/subsidiary directive.
6. The rate applies to shareholdings of 10% or more.
7. The zero rate applies, if interest is paid to a shareholder holding less than 25%.
8. The rate applies to shareholdings of 20% or more.
9. The treaty with the former Republic of Yugoslavia will continue until a new treaty comes into force.
10. The zero rate applies upon request for payments to an affiliated company for reason of the EU interest and royalty directive (Ref: EStG § 50g).
11. The treaty with the former Czechoslovakia will continue until a new treaty comes into force.
12. The rate applies to shareholdings of 50% or greater if more than EUR 3m is invested in the subsidiary.
13. No limitation.
14. The treaty reduction or withholding tax on interest and royalties and for tax on capital gains is not allowed, if broadly speaking the respective Swiss company is substantially foreign owned and does not meet the conditions of the Swiss 1962 decree against treaty abuse. The reduction also does not apply if the foreign owned Swiss company is a domiciliary or auxiliary holding company benefiting from reduced cantonal taxes.
16. The zero rate applies to shareholdings of more than 80%.
17. The rate applies to shareholdings of 15% or more.
18. The rate applies to shareholdings of 70% or more.
19. The treaty with Turkey is cancelled effective from 1 January 2011.
20. Limited treaty effective especially for retired and student income

Please note that the above represents a selected overview of current German business and tax law. The information provided can in no sense replace professional advice tailored to the customer's particular circumstances.



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**Imprint:**

Information as of February 2010 and subject to change. Without liability.

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