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Taxation and Investment in Germany 2016

Reach, relevance and reliability



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1.0 Investment climate

1.1 Business environment

Germany is a democratic and social federal republic consisting of 16 states (*Länder*), each with its own constitution, government and independent court. The federal president is the formal head of the state. The head of the federal government is the federal chancellor, who is elected by a majority vote of the lower house of parliament (*Bundestag*). The federal parliament is responsible for major legislation on economic policy and other matters. It comprises the directly elected *Bundestag* and an upper house (*Bundesrat*) formed by delegates of the *Länder* governments.

The judicial system is comprised of three types of court: ordinary courts at local, regional, higher regional and national level dealing with criminal and most civil law cases; specialized courts for labor law, social law, administrative law, tax law and patent law and some other legal matters, mostly organized at local, higher regional and national level; and the federal constitutional court and the state constitutional courts, ruling on issues with regard to the federal or state constitution. The federal constitutional court is the highest court in Germany and its decisions are binding on federal and state constitutional organs, as well as on all courts and public authorities. Where a federal or state law statute is incompatible with the constitution, a decision by the federal constitutional court has the force of law. Decisions issued by other courts are binding only in respect of the relevant case; however, such decisions may function as guidance to other lower courts.

The German economy is the largest in Europe and the fourth-largest in the world. Leading industries include automotive, machinery, metallic products, chemicals, and electronic equipment and products. Services account for more than two-thirds of the gross domestic product (GDP), the most important being distributive trade, healthcare, information and communication, finance, transportation and business services. Germany is one of the world's premier trading nations, with a powerful export sector and significant imports. Its main trading partners are the European Union (EU), the US and China.

For foreign investors, Germany is an attractive place to invest owing to its location in the center of Europe, with access to the entire EU market and the markets of Central and Eastern Europe, and also to its political stability, reliable legal system, excellent infrastructure, highly qualified workforce and participation in major international organizations.

Germany is a member of the EU, the European Economic Area (EEA, which comprises the EU member states, Iceland, Liechtenstein and Norway), the World Trade Organization (WTO) and the Organization for Economic Co-operation and Development (OECD).

As an EU member state, Germany is required to comply with all EU directives and regulations and it follows EU regulations on trade treaties, import regulations, customs duties, agricultural agreements, import quotas, rules of origin and other trade regulations. The EU has a single external tariff and a single market within its external borders. Restrictions on imports and exports apply in areas such as dual-use technology, protected species and some sensitive products from emerging economies. Companies operating in Germany have access to a tariff-free market of consumers through the country's membership of the EU and free trade with Iceland, Liechtenstein, Norway and Switzerland through other agreements. Trade also is governed by the rules of the WTO.

EU member states		
Austria	Germany	Netherlands
Belgium	Greece	Poland
Bulgaria	Hungary	Portugal
Croatia	Ireland	Romania
Cyprus	Italy	Slovakia

Czech Republic	Latvia	Slovenia
Denmark	Lithuania	Spain
Estonia	Luxembourg	Sweden
Finland	Malta	United Kingdom*
France		
EU candidate countries		
Albania	Montenegro	Turkey
Macedonia	Serbia	
EEA member states		
EU member states	Liechtenstein	Norway
Iceland		

* In a referendum on 23 June 2016, the UK electorate voted for the country to leave the EU, but the country will remain an EU member state until a secession agreement is concluded with the EU.

OECD member countries		
Australia	Hungary	Norway
Austria	Iceland	Poland
Belgium	Ireland	Portugal
Canada	Israel	Slovakia
Chile	Italy	Slovenia
Czech Republic	Japan	Spain
Denmark	Korea (ROK)	Sweden
Estonia	Latvia*	Switzerland
Finland	Luxembourg	Turkey
France	Mexico	United Kingdom
Germany	Netherlands	United States
Greece	New Zealand	
Enhanced engagement countries		
Brazil	India	South Africa
China	Indonesia	
OECD accession candidate countries		
Colombia	Costa Rica	Lithuania

* Accession date 1 July 2016

Price controls

Germany is a liberal market economy in which prices are determined by supply and demand. There are, however, some sectors where prices are regulated, such as pharmaceuticals and taxi fares, or areas with no or little competition (e.g. electricity and gas supply networks, local public transport, certain postal services). In addition, the Federal Cartel Office may take action against enterprises that abuse their dominant market position through “excessive” pricing or their superior market power by offering products or services at below-cost prices more than occasionally, without justification.

Intellectual property

Intellectual property laws in Germany provide protection for patents, utility models, trademarks, protected designations of origin and geographical indications, registered or unregistered designs, plant varieties, circuit layouts and copyrighted works (including computer programs). Further, acquiring or revealing industrial or trade secrets (know-how) without authorization is illegal. Intellectual property protection may be obtained by persons or corporate bodies of any nationality.

Germany is a signatory to several bilateral, European and international conventions on intellectual property rights, such as the European Patent Convention, the Patent Cooperation Treaty, the World Intellectual Property Organization (WIPO) Copyright Treaty, the WIPO Performances and Phonograms Treaty, the Agreement on Trade Related Aspects of Intellectual Property Rights, the Paris Convention (protection of industrial property), the Berne Convention (protection of literary and artistic works), the Rome Convention (protection of performers, producers of phonograms and broadcasting organizations), the Madrid Protocol (concerning the international registration of marks) and the Hague Agreement (concerning the registration of industrial designs). Additional EU regulations apply (e.g. the Community Trademark Regulation and the Community Design Regulation).

The term of protection is 20 years from the date of filing for patents, 10 years for utility models and 25 years for nationally registered designs. Maintenance fees must be paid to keep the protection. Protection of registered community designs is valid for five years and may be renewed for one or more five-year periods up to a total term of 25 years from the date of filing. Trademark protection is granted for 10 years and may be extended indefinitely by successive 10-year renewals. Copyright is protected during the author's lifetime and for 70 years after his/her death.

Registration of patents, utility models, trademarks and designs is handled by the German Patent and Trademark Office. For protection in EU member states, European patents can be registered with the European Patent Office. Community trademark and design registrations are issued by the EU's Office for Harmonization in the Internal Market. No registration is required for the protection of copyrights.

Remedies for infringements include injunction (permanent or preliminary), damages (including loss of profits, reasonable royalties or surrender of the profit generated by the infringer), destruction of the infringing item(s) and, in certain cases, criminal prosecution. Disputes involving intellectual property are litigated in the civil law courts. Holders of rights or persons authorized to use the intellectual property rights also may petition customs authorities to suspend the release of, or detain, infringing goods at the border.

1.2 Currency

Germany is part of the Eurozone and uses the Euro (EUR) as its currency.

Countries participating in the Economic and Monetary Union		
Austria	Greece	Malta
Belgium	Ireland	Netherlands
Cyprus	Italy	Portugal
Estonia	Latvia	Slovakia
Finland	Lithuania	Slovenia
France	Luxembourg	Spain
Germany		

1.3 Banking and financing

The major domestic commercial banks are the primary source of capital for foreign companies. Every kind of financing is available from German and foreign commercial and investment banks, mortgage institutions and insurance companies. All the major international commercial and investment banks have operations in Germany, most with offices in Frankfurt. Banks and other

financial institutions, insurance companies, investment funds, etc. are supervised by the Federal Financial Supervisory Authority.

Frankfurt is the financial center. It is home to the European Central Bank, the *Bundesbank* (the national central bank) and leading commercial banks, as well as the government's holding company for state assets.

1.4 Foreign investment

The German government welcomes foreign investment that provides new jobs. There are no significant limitations on new projects, except for a law requiring prior government approval for the sale of defense companies to foreign investors. Under the foreign trade law, the government can prohibit or apply restrictions to the acquisition (directly or indirectly) by a non-EU party of a domestic entity if this measure is required to maintain public law and order. No permanent currency or administrative controls apply on foreign investments. Foreign investors are subject to the same conditions as their German counterparts in obtaining operating licenses, securing building permits and obtaining approval for investment incentives.

1.5 Tax incentives

Most types of investment or operational incentive in Germany are provided in the form of direct subsidies, grants, reduced-interest loans, public guarantees or silent participations. Various federal and regional programs exist. Incentives mainly focus on the promotion of business expansion and new investments, renewable energy (e.g. solar and wind energy), energy efficiency, electromobility and environmental protection, social housing, health care, infrastructure and agriculture, research and development (R&D) and recruitment, particularly of the long-term unemployed.

Current tax incentives include pre-investment and investment allowances for certain start-ups and for small and medium-sized businesses. Businesses in the manufacturing sector may apply for a partial relief from energy taxes. Purely electric vehicles are exempt from motor vehicle tax for five years after initial registration (10 years if the vehicle was initially registered before 1 January 2016); subsequently the tax is reduced by 50%.

1.6 Exchange controls

Germany's policies on capital flows are liberal. There are no exchange controls on ordinary commercial transactions and companies have unrestricted access to both borrowing and lending abroad and the repatriation of profits abroad. External funding is facilitated by the full convertibility of the Euro, and the foreign exchange market is freely accessible. However, the regional branch of the *Bundesbank* must be notified for statistical purposes of both inbound and outbound transactions.

2.0 Setting up a business

2.1 Principal forms of business entity

A person wishing to conduct business in Germany has several options. The principal forms of doing business in Germany are:

- The sole proprietorship or branch (*Zweigniederlassung*) of a domestic or foreign business entity.
- Incorporated entities, such as the joint stock corporation (*Aktiengesellschaft* or *AG*), the limited liability company (*Gesellschaft mit beschränkter Haftung* or *GmbH*), or, less common, the commercial partnership limited by shares (*Kommanditgesellschaft auf Aktien* or *KGaA*) and, as a European form of company, the *Societas Europaea* or *SE*. *AG*, *KGaA* and *SE* may be public companies that are listed at the stock exchange.
- Unincorporated entities, such as the general commercial partnership (*Offene Handelsgesellschaft* or *OHG*), the limited commercial partnership (*Kommanditgesellschaft* or *KG*), in which at least one partner is subject to unlimited liability (general partner), whilst the other partners have limited liability (limited partner(s)), and as a subform, the *GmbH & Co. KG* in which the general partner is an incorporated company like the limited liability company.

The *SE* is designed to enable companies to operate across the EU with a single legal structure, to facilitate mergers and create flexibility for companies wanting to move their head office from one EU state to another. Companies from two or more EU member states are permitted to merge to form an *SE* or create an *SE* holding company or branch. A company may convert an existing firm to *SE* status without liquidating. One advantage of an *SE* is that it is possible to move headquarters to another EU member state with minimal formalities.

Businesses also can establish as a European Economic Interest Grouping (*EEIG*). Companies (even non-EU companies, if the vehicle is a subsidiary in an EU country) that want to start working with a German company but do not want to commit to a formal joint venture, may set up an *EEIG*. The grouping functions much like a partnership in that the income is taxed in the hands of the member companies. At least two of the companies involved must be from different EU member states. The *EEIG* is very rare in Germany.

Although all of these forms are available, most foreign investors choose to set up a branch or an incorporated entity in the form of a *GmbH*. It also is possible to establish an informal presence through a liaison or representative office.

Formalities for setting up a company

To set up an incorporated company, a formation deed and articles of association must be notarized and signed by the founders. The managing directors and, if relevant, the members of the supervisory board have to be appointed. After formation, the founders must pay up the share capital to the extent required by law. In the case of an *AG*, the founders have to prepare a formation report and, under certain circumstances, the formation must be examined by an external auditor. To become a legal entity, the company must be registered in the Commercial Register at the local court. Registration takes a few days in non-complex cases of formation of a *GmbH*. If business activities are started before registration, the shareholders are liable for any pre-registration losses unless activities were undertaken without their consent.

Normally, no additional permits or licenses are necessary, although exceptions may apply to certain types of business (such as banking or insurance). Newly established enterprises must report their commercial or industrial business on a form to the local administrative authority and register with the competent local tax authorities.

Forms of entity

Requirements of an *AG*

Capital. The minimum capital is EUR 50,000. Before registration, all capital must be subscribed and at least 25% of the nominal value (par shares) or of the proportionate amount of the share

capital (non-par shares) and the premium must be paid up in cash capital contributions; non-cash capital contributions (contributions in kind) must be paid up in full and substantiated with regard to their value. In the following periods, an amount equal to 5% of after-tax annual profits must be placed in a legal reserve account until the reserve reaches 10% of the equity capital. If shares are issued at a price exceeding the nominal value, the amount of the premium must be transferred to the reserve account.

Founders, shareholders. There are no restrictions on the number of founders or shareholders, their nationality or residence. An AG may be established by one founder and may have a single shareholder. Founders and shareholders may be individuals, companies and/or partnerships.

Board of directors. A two-tier board system applies, consisting of the management board and the supervisory board. Members of the management board may not also be members of the supervisory board. The task of the supervisory board is to advise and supervise the management board and appoint its members.

The supervisory board must have at least three members or a multiple thereof, up to a maximum of nine to 21, depending on the amount of share capital; different numbers apply where employees have elected representatives to the supervisory board in accordance with the "codetermination" principle. Individuals may not be members of more than 10 boards (being a chairman of a supervisory board is the equivalent of being a member of two boards). Representatives of parent companies may hold up to five additional board seats in affiliates, giving a maximum of 15. There are no restrictions on the nationality or residence of directors. The shareholders' meeting elects the shareholders' representatives on the board for a maximum period of approximately five years and, where there is employee participation or codetermination, the employees or their delegates elect staff representatives for the same period. Labor has 50% representation on the supervisory board of companies with a workforce of more than 2,000 employees; in companies with a payroll of more than 500, but not more than 2,000, labor representatives must hold one-third of the seats. Re-election is possible.

Management. The members of the management board are appointed for up to five years. Each member may be re-appointed for additional terms. Managers need not be shareholders and there are no restrictions on their nationality or residence. Although the minimum number of board members is one, AGs with capital exceeding EUR 3 million must have at least two members on their management boards (unless otherwise provided in the articles of association).

Taxes and fees. There are no taxes on incorporation or capital increases. Costs of entering a company in the trade register and of notarizing the articles of association depend on the company's capital stock and on whether a lawyer is used to draft the articles. Where shares are issued at a premium, the premium is not considered taxable income.

Types of share. Shares may be bearer or registered shares. They may be par or non-par shares. The minimum par value of par shares or minimum proportionate amount of the share capital of non-par shares is EUR 1. In addition to common (ordinary) shares, an AG may issue preferred shares (which have preferential rights to dividend payments but usually carry no entitlement to vote) up to the full amount of common shares. Multiple vote shares are not permitted.

Control. Ordinary resolutions require a simple majority of more than 50% of the votes cast (unless the articles of association provide for a larger majority). For certain resolutions of major importance (e.g. amendment of the articles of association, capital increase, capital reduction, conclusion of control or profit transfer agreement, merger, split, change of legal form or liquidation) a qualified majority, of at least 75% of the share capital (ordinary shares) owned by shareholders present at the passing of the resolution is needed. The articles of association may require a larger majority for changing the purpose of the enterprise, merger, split, change of legal form or liquidation. Certain minority rights exist with thresholds of: 1% (or, if lower, a share capital of EUR 100,000); 5% (or, in some cases, if lower, a share capital or quoted market value of EUR 500,000); 10% (or, in some cases, if lower, a share capital of EUR 1 million); and 25%.

Requirements of a GmbH

Capital. The minimum capital of a GmbH is EUR 25,000. At least 25% of the cash contributions and 100% of the noncash contributions, but no less than EUR 12,500 in total, must be paid up before registration. The registry court may verify the value of contributions in kind.

The minimum capital of a mini-GmbH is EUR 1. Such a company must have the legal form addendum *Unternehmergeellschaft (haftungsbeschränkt)* (entrepreneurial company with limited liability) or *UG (haftungsbeschränkt)*, instead of GmbH (*Gesellschaft mit beschränkter Haftung*) in its company name. Cash contributions must be fully paid up before registration, noncash contributions are not allowed. A mini-GmbH must allocate 25% of its annual profits to a statutory reserve until the share capital is increased to at least EUR 25,000.

Founders, shareholders. There are no restrictions on the number of founders or shareholders, their nationality or residence. A GmbH or mini-GmbH may be established by one founder and may have a single shareholder. Founders and shareholders may be individuals, companies and/or partnerships.

Board of directors. A supervisory board is mandatory only if there are more than 500 employees, in which case, the same rules apply as for an AG. Otherwise, the shareholders are free to set up a supervisory board and specify in the articles of association the functions, number and qualifications of the members, the term of office etc.

Management. A GmbH or mini-GmbH may have one or several managers. Managers need not be shareholders. Managers are appointed by resolution of the shareholders unless the articles of association or the law (in the case of a mandatory supervisory board) provide otherwise. The rules governing the representation of labor on the management board are the same as for an AG.

Branch of a foreign corporation

A foreign company may conduct its business through a branch in Germany and no permit is required to establish a branch. Branches are categorized either as dependent, i.e. lacking its own business profile (like a representative office) or independent, i.e. having some autonomy in trading. Only independent branches must be registered in the commercial register. The tax treatment of both types of branch is the same.

Branches of foreign companies in Germany are taxed at the same rates as domestic companies.

2.2 Regulation of business

Mergers and acquisitions

A planned merger must be notified to and, in principle, cleared by, the Federal Cartel Office before the transaction is completed if, in the financial year preceding the merger:

- All participating undertakings had a combined aggregate worldwide turnover exceeding EUR 500 million;
- At least one of the participating undertakings had a turnover in Germany exceeding EUR 25 million; and
- At least one other undertaking had a turnover in Germany exceeding EUR 5 million.

In assessing whether the turnover thresholds are met, the turnover of affiliated undertakings must be taken into account.

No notification is necessary where: (i) the merger has no effect on the German market; or (ii) the de minimis clause applies (i.e. an independent company with a worldwide turnover of less than EUR 10 million in the last financial year is merging with another company).

Transactions considered a “merger” under the German merger control rules are:

- The acquisition of the assets of another undertaking, in whole or in substantial part;
- The acquisition of direct or indirect control by one or several undertakings over one or more undertakings or portions thereof;
- The acquisition of shares or interests in another undertaking, if such shares or interests, alone or together with other shares or interests already held by the acquirer, reach or exceed the threshold of 25% or 50% of the capital or voting rights of the other undertaking; and
- Any other affiliation between undertakings by which one or more undertakings may directly or indirectly exercise a significant competitive influence over another undertaking.

Where competition in Germany is affected by the transaction, the merger control rules apply regardless of whether domestic or foreign undertakings are involved or whether the merger is transacted in Germany or abroad. The Federal Cartel Office prohibits a merger if it would significantly impede effective competition, in particular, through the creation or strengthening of a dominant position, unless: (i) the merger also will lead to improvements of the conditions of competition that outweigh the disadvantages of dominance; or (ii) the market concerned has existed for at least five years and had an aggregate transaction volume in the last calendar year of less than EUR 15 million. Exceptions apply to newspaper and magazine publishers whose existence would be jeopardized without the merger. The Federal Minister of Economics and Energy may authorize a merger that has been prohibited by the Federal Cartel Office if the restraint of competition is outweighed by advantages to the economy or if the concentration is justified by an overriding public interest.

Mergers with an EU-wide dimension fall within the competence of the European Commission and need to be reported under Council Regulation (EC) No. 139/2004. The EU has jurisdiction over mergers where, in the preceding financial year, either:

1. The combined aggregate worldwide turnover of all the undertakings concerned is more than EUR 5 billion and the aggregate EU-wide turnover of each of at least two of the undertakings is more than EUR 250 million (unless each of the undertakings achieves more than two-thirds of its aggregate EU-wide turnover within one and the same member state); or
2. The combined aggregate worldwide turnover of all the undertakings concerned is more than EUR 2.5 billion; in each of at least three member states the combined aggregate national turnover of all undertakings is more than EUR 100 million; in each of at least three member states the aggregate national turnover of each of at least two undertakings is more than EUR 25 million; and the aggregate EU-wide turnover of each of at least two of the undertakings is more than EUR 100 million (unless each of the undertakings achieves more than two-thirds of its aggregate EU-wide turnover within one and the same member state).

When the Commission concludes that the merger would significantly impede effective competition in the common market or in a substantial part of that market, it declares the merger incompatible with the common market.

The European Commission also has the authority to refer the entire or part of the case to a member state for consideration if the transaction significantly affects the competition in a distinct market within that state. Companies involved in a merger that does not have an EU-wide dimension may ask the Commission to assume jurisdiction if they otherwise would be obliged to notify three or more member states. Member states concerned may object within 15 business days.

Monopolies and restraint of trade

Market dominance in itself is not illegal in Germany but the abuse of a dominant position is illegal. The existence of market dominance depends on whether an enterprise, as a seller or a buyer of goods or services, has no (effective) competitors or holds an overwhelming position against its rivals. This may be evidenced by the company's market share, financial power, access to sales and procurement markets, interlocking arrangements with other companies or other obstacles that prevent firms from entering the market. Market dominance may be presumed when a company holds a market share of at least 40%.

A group of companies may be regarded as dominating the market when it consists of three or fewer companies that together control one-half of the market or when it consists of five or fewer companies that together control two-thirds of the market. Exceptions apply when the companies that together hold a dominant market share can prove that the competition between them is such that no domination is likely or that the group is not dominant compared with the other competitors. A dominant market position is abused if it is used to actually or potentially impede other market participants, or to demand excessively high or low prices.

2.3 Accounting, filing and auditing requirements

The annual accounts of a German company must be drafted in accordance with German GAAP (Generally Accepted Accounting Principles). International Financial Reporting Standards (IFRS) are mandatory for the consolidated accounts of listed companies and optional for the consolidated accounts of others but may not be used for the annual accounts.

Large and medium-sized entities (corporations and certain partnerships) must prepare their annual financial statements, together with a management report, within three months from the end of the financial year. For small entities, the period is extended to up to six months and a management report need not be prepared. Small entities are entities that do not exceed two of the following three criteria for at least two consecutive financial years on their balance sheet dates: net turnover of EUR 12 million, total assets of EUR 6 million and an annual average of 50 employees.

The financial statements and the management report of large and medium-sized entities must be audited by a statutory auditor before they can be adopted by the board or the shareholders.

All companies, except certain partnerships, must publish their financial statements and their management report without delay after presenting them to the shareholders, but not later than 12 months from the end of the financial year, by submitting them electronically to the electronic federal gazette. For listed companies, the time limit for publication is four months from the end of the financial year. Fines are imposed if the deadlines are not met.

Certain exceptions from the special accounting, filing and auditing rules for companies apply to subsidiaries that are included in the consolidated financial statements of an EU or EEA parent company. For subsidiaries that are corporations, the exceptions require, amongst other conditions, that the parent company has declared that it guarantees the commitments entered into by the subsidiary and that the declaration is published in the electronic federal gazette.

German branches of EU or EEA entities have to submit electronically each year to the electronic federal gazette the published financial statements and consolidated financial statements of the head office in German. If German is not the official language of the country in which the head office is domiciled, the statements must be submitted in English or in the form of a copy certified by the commercial register in the country of residence of the head office. In the absence of such a register, the statements may be certified by a statutory auditor. Additional requirements apply to branches of banks and insurance companies.

3.0 Business taxation

3.1 Overview

The principal taxes applicable to companies in Germany are income and corporate income tax, municipal trade tax and value added tax (VAT). In addition to the normal corporate income tax, a surcharge of corporate income tax is levied to finance Germany's reunification. Other taxes include the municipal real estate tax, real estate transfer tax, and customs and excise duties. Employers have to bear a portion of the social security contributions.

Germany has implemented EU directives including the parent-subsidiary, interest and royalties, and merger directives. Germany also had implemented the EU savings directive, which required the exchange of information between tax administrations when interest payments were made in one EU member state to an individual resident in another member state. The directive was repealed from 1 January 2016 to coincide with the introduction of the common reporting standard (CRS) within the EU through the implementation of a new directive on the mandatory exchange of information.

Tax laws are enacted by the lower house of the German parliament. Federal laws relating to taxes require the consent of the upper house if the revenue accrues wholly or in part to the states or municipalities (in particular income and corporate income tax, trade tax, value added tax, and inheritance and gift tax). The states have power to legislate with regard to local taxes on consumption and expenditure to the extent such taxes are not substantially similar to taxes regulated by federal law. They are empowered to determine the rate of the tax on the acquisition of real estate.

The tax authorities may be authorized by law to issue legislative decrees. The Federal Ministry of Finance and the local upper tax authorities can issue administrative decrees for guidance on certain aspects of the tax laws.

The tax authorities at the federal and state levels are in general responsible for collecting tax and enforcing the tax law.

Germany Quick Tax Facts for Companies	
Corporate income tax rate	15%
Branch tax rate	15%
Capital gains tax rate	15%
Solidarity surcharge	5.5% of corporate income tax
Trade tax	14%-19% (typical rate in main cities)
Basis	Worldwide basis
Participation exemption	Yes
Loss relief	
- Carryforward	Indefinite
- Carryback	1 year
Double taxation relief	Yes
Tax consolidation	Yes
Transfer pricing rules	Yes
Thin capitalization rules	No, but there are interest deduction limits
Controlled foreign company rules	Yes
Tax year	Financial year or calendar year
Advance payment of tax	Yes

Return due date	31 May
Withholding tax	
– Dividends	25% (26.375%, including the solidarity surcharge)
– Interest	0%/25% (26.375%, including the solidarity surcharge)
– Royalties	15% (15.825%, including the solidarity surcharge)
– Branch remittance tax	No
Capital tax	No
Real estate transfer tax (RETT)	3.5%-6.5%
Municipal real estate tax	1.5%-3% of assessed value (effective tax rate in major cities, depending on municipality)
VAT	19% (standard rate)/7% (reduced rate)

3.2 Residence

A corporation is considered tax resident in Germany if its registered office or place of management is in Germany. The location of the registered office is determined by the statutes or similar provisions of the company. The place of incorporation is irrelevant.

3.3 Taxable income and rates

The corporate tax rate is 15%, plus a 5.5% solidarity surcharge, which results in a combined rate of 15.825%. Trade tax, typically at rates between 14% and 19%, also is imposed (see 3.4 below).

Resident corporations are taxed on their worldwide income. However, tax treaties may exclude foreign-source income from German taxation. Nonresident companies are taxed on certain German-source income, such as income from a German permanent establishment.

Taxable income defined

All income of a corporation generally is considered business income. There is no distinction between capital gains and ordinary income.

Taxable income of a corporation is computed on the basis of the annual accounts prepared in accordance with German GAAP, subject to certain adjustments for book-tax differences, tax-exempt and nondeductible items, and other corrections (e.g. constructive distributions). Corporations and other taxpayers keeping accounts must submit a standardized electronic version of their annual accounts including a reconciliation of the book-tax differences or an electronic tax balance sheet and profit and loss account (e-balance sheet) with their (electronic) income tax return.

Dividends received by German corporations or branches of nonresident corporations generally are exempt from corporate income tax regardless of how long the participation in the subsidiary has been held. However, 5% of the gross dividend is added back to taxable income as a nondeductible expense, resulting in an effective tax exemption of 95%. The exemption requires a minimum shareholding of at least 10% of the share capital at the beginning of the calendar year (acquisitions of 10% or more during the calendar year are deemed to have taken place as at the beginning of that year). The exemption is not granted to banks, financial service institutions and financial enterprises including holding companies (in respect of shares acquired with the intention of realizing a short-term profit from trading, “held for trading exception”), life and health insurance companies and pension funds, unless the EU parent-subsidiary directive or a tax treaty provide otherwise. The exemption generally is granted only insofar as the dividend has not been treated as a deductible expense at the level of the distributing company, irrespective of tax treaties providing otherwise (“anti-hybrid rule”).

The 95% exemption also applies to trade tax with the restriction that a minimum shareholding of 15% of the share capital (10% for dividends from companies resident in other EU member states) is necessary at the beginning of the calendar year. For dividends from non-EU resident

companies, a minimum 15% shareholding must have been held since the beginning of the calendar year in which the distribution takes place, and the subsidiary must meet certain activity requirements. Tax treaty provisions prevail.

Deductions

In general, all expenses are deductible if they have been incurred as a result of the company's business operations. Certain expenses may be disallowed (e.g. expenses related to exempt income, income taxes and interest paid to the government on late income tax payments) or may be deductible only up to a limited amount.

Interest

Generally, the deduction of interest expense exceeding interest income (net interest expense) is limited to 30% of the taxable earnings before net interest expense, tax, regular depreciation and amortization (tax EBITDA). The limitation applies to all interest regardless of whether the debt is owed to a shareholder, related party or third party. Excess interest may be carried forward indefinitely. An EBITDA carryforward is generated if the taxpayer has net interest expense that is lower than 30% of the tax EBITDA. The excess EBITDA may be carried forward and used in the following five years when the net interest expense exceeds 30% of the current EBITDA. The 30% limit does not apply (with some related-party exceptions) where: (i) the annual net interest expense is less than EUR 3 million ("exemption threshold"); (ii) the taxpayer is not part of a group of companies ("group clause"); or (iii) the taxpayer demonstrates that the equity ratio of the German borrower does not fall short of the equity ratio of the worldwide group by more than two percentage points ("escape clause"). The equity ratio is determined based on the financial statements for the German business at the end of the previous financial year. A uniform accounting standard must be used for the German business and the group financial statements (primarily IFRS or, if no IFRS accounts are available, EU local country GAAP or US GAAP as a last resort).

The EBITDA threshold is calculated on the basis of the current year EBITDA of the German business (i.e. the year for which interest deductions should be claimed). A tax group for German tax purposes is treated as one business.

Interest expense exceeding the 30% limitation is nondeductible for German corporate income tax and trade tax purposes in the year of accrual (unless one of the exceptions applies) but may be carried forward. The interest carryforward is subject to change-in-ownership rules (a direct or indirect ownership change of more than 25%/50% to one shareholder or a group of shareholders with similar objectives), which could result in a partial or complete forfeiture of all interest carryforwards.

Interest expense disallowed under the interest deduction limitation will not trigger withholding taxes but may lead to double taxation, even within Germany.

The Federal Tax Court recently raised doubts as to whether the interest deduction limitation rule is in line with the German constitution and the case is currently pending before the Federal Constitutional Court.

Depreciation

Depreciable or amortizable assets comprise fixed assets (tangible and intangible) with a useful life exceeding one year and diminishing in value over time through wear and tear. Land is not depreciable. The principal method of depreciation and amortization is the straight-line method. The declining-balance method is applicable only to movable fixed assets acquired or produced after 31 December 2008 and before 1 January 2011. Where economically justified, movable fixed assets may be depreciated according to the unit-of-production method. In the first year, the annual depreciation or amortization is reduced by one twelfth for each month that precedes the month of the acquisition or production.

Accelerated depreciation for exceptional wear and tear resulting from technical or economic causes is permitted only when the straight-line method is used. Acquisition or production cost of movable fixed assets of up to EUR 150 (exclusive of VAT) may be deducted immediately. Where the acquisition or production cost exceeds EUR 150, instead of capitalizing each asset, the taxpayer has the option to record them either:

- Individually and write them off immediately if the cost does not exceed EUR 410 (exclusive of VAT); or

- As a collective item and write them off over a period of five years if the cost of each asset does not exceed EUR 1,000 (exclusive of VAT).

The Ministry of Finance publishes guidelines on tax depreciation rates for a number of assets, based on their estimated useful lives. For buildings and purchased goodwill the rates are fixed by law. Industrial buildings are depreciated at a straight-line rate of 3% per annum. Goodwill is amortized over 15 years using the straight-line method.

Certain additional types of depreciation are available for small and medium-sized companies as a tax incentive.

Inventory may be valued at cost or, if lower and impairment is expected to be permanent, at market value. Last-in, first-out (LIFO) is generally acceptable for tax purposes; other cost flow assumptions, such as first-in, first-out (FIFO), are not allowed.

Write downs due to impairment are allowed only if the value of the asset is expected to be permanently lower. Write downs of shares in corporations by corporate shareholders and on certain shareholder loans are not tax deductible.

Provisions

The creation of provisions generally is tax deductible. For certain types of provision, restrictions apply, e.g. for pension liabilities, provisions for anniversary bonuses and onerous contracts, and for acquired provisions. For tax purposes, measurement of provisions may not take into account future increases of prices or costs. Provisions must be discounted by 5.5% unless their duration is less than 12 months at the balance sheet date. For pension liabilities, a discount rate of 6% must be applied. The tax basis of a provision may not exceed its amount under German GAAP.

Losses

Losses of up to EUR 1 million may be carried back one year for corporate income tax purposes. No carryback is available for trade tax purposes. Losses not carried back can be carried forward indefinitely. However, the utilization of loss carryforwards is restricted for annual profits exceeding EUR 1 million. Only 60% of the excess over EUR 1 million may be offset by the carried forward losses; the remaining 40% is taxed at the regular rates ("minimum taxation"). The minimum taxation rule applies for both corporate income tax and trade tax purposes.

All corporate income tax and trade tax losses, and loss carryforwards, are forfeited if more than 50% of the shares in the loss corporation are transferred directly or indirectly to one acquirer (or to related parties of an acquirer) within a period of five years. In the case of transfers of more than 25% but less than 50% of the shares to one acquirer (or to related parties of an acquirer) within a five-year period, losses and loss carryforwards are forfeited on a pro-rata basis. Acquirers acting together are treated as one acquirer in applying the rule. Transfers within a group do not trigger loss forfeiture if: (i) the acquirer directly or indirectly owns 100% of the shares in the transferor and the acquirer is an individual, a legal entity or a commercial partnership; (ii) the seller directly or indirectly owns 100% of the shares in the transferee and the seller is an individual, a legal entity or a commercial partnership; or (iii) the same individual, legal entity or commercial partnership directly or indirectly owns 100% of the shares in the transferor and the transferee company. Losses and loss carryforwards also continue to be usable to the extent the loss corporation has built-in gains which are taxable in Germany.

Losses of a controlling entity or a controlled entity in a German tax group (*Organschaft*) cannot be deducted to the extent such losses are taken into account for foreign tax purposes at the level of the controlling entity, the controlled entity or any other person.

Group relief

An *Organschaft* may be formed for corporate income tax and trade tax purposes by a parent entity and one or more of its subsidiaries. Under the *Organschaft* regime, taxable profits and tax losses of the group companies are combined at the level of the parent entity. This allows losses of group companies or loss carryforwards of the parent entity to be offset against profits of other group companies; loss carryforwards of group companies other than the parent company cannot be utilized during the *Organschaft*. The following conditions must be fulfilled to establish an *Organschaft*.

- The subsidiary company must be a corporation with its place of management in Germany and its registered office within the EU or EEA;
- The parent entity (either a German company, a German partnership maintaining a trade or business, a German individual or the German-registered branch of a foreign company) must hold shares in the subsidiary sufficient to give it a majority of voting rights, and the shares must be held in a German permanent establishment continuously from the beginning of the subsidiary's tax year; indirect shareholdings are taken into account if the shareholding provides the majority of voting rights in each intermediary;
- A profit and loss pooling agreement (PLPA) with a minimum term of five years must be concluded between the parent entity and the subsidiary and must become effective before the end of the tax year of the subsidiary for which the *Organschaft* rules will apply for the first time. A PLPA requires the subsidiary to transfer all profits made during the term of the agreement to the parent and the parent to cover all losses incurred by the subsidiary during that term; and
- The PLPA must be applied consistently during the entire term of the agreement, with any profit transferred to the parent and any loss used by the parent.

The requirements are the same for both corporation income tax and trade tax.

3.4 Trade tax

Municipal trade tax is levied by the local authorities on business profits. The tax rate varies from community to community, but in major cities averages between 14% and 19% of trade tax income. All entrepreneurs with commercial activities carried out through a subsidiary or a nonresident's commercial permanent establishment in Germany are liable for trade tax. Corporations resident in Germany always are deemed to carry on commercial enterprises (trade or business), regardless of actual activities. Individuals, alone or in partnership, are not liable for trade tax on income from professional or other independent services, unless the activities are deemed to be commercial under the income tax law.

Trade tax is based on taxable income as calculated for corporate income tax purposes with some modifications (e.g. a 25% add-back of interest expense, a 6.25% add-back of royalty payments, a 5% add-back of rental payments for movables and a 12.5% add-back of rental payments for immovables; to the extent these add-backs in total exceed EUR 100,000). Group relief also is granted for trade tax purposes.

The municipal trade tax is not deductible as a business expense.

3.5 Capital gains taxation

There is no separate capital gains tax in Germany; capital gains are included in taxable income unless exempt under the participation exemption. Capital gains realized by an enterprise from the disposal of business assets generally are treated as ordinary business income. However, gains from the sale of certain fixed assets (e.g. real property and buildings) may be rolled over if the proceeds are used for reinvestment purposes.

Capital gains arising from the sale of shares by a corporation generally are 95% exempt (a 100% exemption with a 5% add-back as a nondeductible business expense), regardless of how long the participation in the subsidiary has been held and the extent of the participation. The 95% exemption is not granted to banks, financial institutions, finance companies including holding companies (in respect of shares acquired with the intention of realizing a short-term profit from trading, "held for trading exception"), life or health insurance companies and pension funds.

3.6 Double taxation relief

Unilateral relief

In non-treaty situations or in treaty situations where the treaty provides for the tax credit method, German taxpayers with foreign-source income may credit foreign taxes paid to the extent they relate to income that is subject to tax under domestic law. Alternatively, the taxpayer may deduct

foreign tax paid as a business expense. If the income is exempt from German tax, no tax credit or deduction is possible.

Tax treaties

Germany has a broad income tax treaty network, with most treaties following the OECD model treaty. Treaties generally provide for relief from double taxation on all types of income, limit the taxation by one country of companies resident in the other and protect companies resident in one country from discriminatory taxation in the other. Germany's treaties generally contain OECD-compliant exchange of information provisions.

A reduced rate of withholding tax under a treaty may be applied directly at the time the payment is made if the income recipient presents to the payer a certificate issued by the Federal Central Tax Office before the payment is made.

Germany Tax Treaty Network			
Albania	Georgia	Lithuania	Slovenia
Algeria	Ghana	Luxembourg	South Africa
Argentina	Greece	Macedonia	Spain
Armenia ⁽¹⁾	Hungary	Malaysia	Sri Lanka
Australia	Iceland	Malta	Sweden
Austria	India	Mauritius	Switzerland
Azerbaijan	Indonesia	Mexico	Syria
Bangladesh	Iran	Moldova ⁽¹⁾	Taiwan
Belarus	Ireland	Mongolia	Tajikistan
Belgium	Israel	Montenegro ⁽²⁾	Thailand
Bolivia	Italy	Morocco	Trinidad & Tobago
Bosnia-Herzegovina ⁽²⁾	Ivory Coast	Namibia	Tunisia
Bulgaria	Jamaica	Netherlands	Turkey
Canada	Japan	New Zealand	Turkmenistan ⁽¹⁾
China	Jersey	Norway	Ukraine
Croatia	Kazakhstan	Pakistan	United Arab Emirates
Cyprus	Kenya	Philippines	United Kingdom
Czech Republic ⁽³⁾	Korea (ROK)	Poland	United States
Denmark	Kosovo ⁽²⁾	Portugal	Uruguay
Ecuador	Kuwait	Romania	Uzbekistan
Egypt	Kyrgyzstan	Russia	Venezuela
Estonia	Latvia	Serbia ⁽²⁾	Vietnam
Finland	Liberia	Singapore	Zambia
France	Liechtenstein	Slovakia	Zimbabwe
(1) The treaty with the former Soviet Union continues to apply. (2) The treaty with the former Yugoslavia continues to apply. (3) The treaty with the former Czechoslovakia continues to apply.			

3.7 Anti-avoidance rules

Transfer pricing

Related parties must apply the arm's length principle when engaging in cross-border transactions. German legislation and administrative regulations contain detailed rules on how transfer prices should be determined. Standard transfer pricing methods to be applied when comparables are available comprise the comparable uncontrolled price, the resale price and the cost plus method. Where comparables are not available, the transactional net margin method may be used for companies that are engaged in routine functions. The profit split method may be applied if the standard methods do not lead to reliable results. The German tax authorities generally do not accept the comparable profits method. Special transfer pricing rules exist for the transfer of business functions abroad.

Transfer pricing documentation is obligatory. If documentation is not submitted or if the documentation is inadequate, penalties of 5% to 10% of the income adjustment (at least EUR 5,000) apply. The penalty for late submission of requested documents is at least EUR 100 per day up to a maximum of EUR 1 million.

Advance pricing agreements (APAs) may be obtained, typically for a term of three to five years.

Country-by-country (CbC) reporting

Germany is one of the signatories to a multilateral competent authority agreement for the automatic exchange of CbC reports. Further, the 2016 EU directive amending the 2011 directive as regards mandatory automatic exchange of information in the field of taxation (Mutual Assistance Directive) requires all EU member states to introduce, by 4 June 2017, a CbC reporting obligation for the ultimate parent entity and, as a surrogate and a secondary obligation, for other members of a multinational group that are resident in their territory if the group's consolidated revenue during the immediately preceding fiscal year is at least EUR 750 million.

The report must include: (i) aggregate information relating to the amount of revenue (subdivided into related and nonrelated party revenue), profit (loss) before income tax, income tax paid, income tax accrued, stated capital, accumulated earnings, number of employees, and tangible assets other than cash or cash equivalents with regard to each jurisdiction in which the group operates, and (ii) an identification of each member of the group setting out the jurisdiction of tax residence and, where different, the jurisdiction under the laws of which that entity is organized, and the nature of the main business activity or activities of the entity. It has to be filed within 12 months after the fiscal year end of the group. The first filing will take place for the fiscal year commencing on or after 1 January 2016. If the reporting entity is not the ultimate parent of the group, EU member states may decide that the reporting obligation applies to the fiscal years commencing on or after 1 January 2017. According to the directive, transfer pricing adjustments by the receiving member state shall not be based on the CbC reporting information exchanged. The information may, however, be used for making further enquiries into the group's transfer pricing arrangements or into other tax matters in the course of a tax audit.

The German government has presented draft legislation that would transpose the EU directive into German law. The new rules are proposed to apply to ultimate parent entities of a multinational group for fiscal years commencing after 31 December 2015 and to other members of the group for fiscal years commencing after 31 December 2016. Noncompliance with the rules would be treated as an administrative offence that may be punished with a monetary fine of up to EUR 5,000. The bill currently is pending consideration by parliament.

Thin capitalization

The thin capitalization rules were replaced from 2008 by the new interest deduction limitation (see "Deductions" under 3.3 above).

Controlled foreign companies

The controlled foreign company (CFC) regime targets foreign companies in low-tax jurisdictions that are controlled by German shareholders and earn passive income. A CFC is defined as a foreign corporation (corporate entity, association or independent property fund) in which German taxpayers, in total, directly or indirectly own more than 50% of the shares or voting rights at the end of the CFC's financial year. The control element is not required in cases where the CFC earns

certain types of passive investment income. Low-taxed passive income is assumed when the effective tax burden is less than 25% of the net income determined under German tax law. In calculating the tax burden, credits and refunds in respect of dividend distributions by the CFC need to be taken into account.

If the CFC rules apply, the passive income of the CFC is attributed proportionally to the German shareholders and taxed in Germany as though the income was directly earned by these shareholders. The income is not subject to German trade tax according to a recent Federal Tax Court decision. The government intends to overrule the decision by an amendment to the law.

Active income comprises income derived from:

- Agriculture and forestry;
- Exploitation of natural resources, energy generation, manufacturing and processing of goods;
- Banking or insurance business (unless captive);
- Trading (unless captive);
- Services (unless captive);
- Leasing of movable and immovable assets and licensing (of self-developed intangibles);
- The taking on of debt and on-lending to a German business or to a foreign active business;
- Profit distributions of corporations;
- The sale of shares in corporations, as well as the dissolution or reduction of capital, except to the extent that the capital gain is allocable to assets used to generate certain types of passive investment income or to certain immovable assets of a real estate investment trust; and
- Certain reorganizations if they could take place at book value under German tax law (irrespective of requirements for residency or legal form of the entity).

In certain cases, active income may be recharacterized as passive income if the activities are carried out with the assistance of or support from a German related company and if the foreign intermediary company does not have sufficient economic substance to operate the business.

The CFC rules do not apply to EU/EEA-resident CFCs when the taxpayer can demonstrate that the foreign company carries out genuine commercial activities. Additionally, the mutual assistance directive (or a comparable exchange of information agreement) must apply.

In the case of low-taxed foreign partnerships or permanent establishments that earn passive income as described above, Germany will switch unilaterally from the exemption method to the credit method despite a treaty exemption.

Treaty/directive-shopping

The anti-treaty/directive-shopping rule provides that the relief from withholding tax according to a treaty or the EU parent-subsidiary directive is not available to a foreign company if, and to the extent that: (i) the shareholders of the foreign company would not be entitled to the relief had they received the dividend directly ("personal entitlement test"); (ii) the earnings of the foreign company do not arise from its own business activities in the relevant fiscal year ("active earnings test"); and (iii) (a) with reference to these earnings, there are no economic or other bona fide reasons for interposing the foreign company ("business purpose test"); or (b) the foreign company does not participate in general commerce through a business establishment that is adequately equipped ("substance test"). The burden of proof for meeting the business purpose test and the substance test lies with the foreign company. The anti-treaty/directive-shopping rule does not apply to foreign companies that are listed on a stock exchange and whose shares are regularly traded or qualify as investment funds.

General anti-avoidance rule

In general, taxpayers are entitled to order their affairs through legal means in a way that allows them to pay the minimum tax imposed by the appropriate law. Under the general anti-avoidance rule (GAAR), however, legal forms and options may not be abused. An abuse is assumed where an inappropriate legal option is selected which, in comparison with an appropriate option, leads to tax advantages for the taxpayer or a third party unintended by the law. The anti-avoidance provision will not apply where the taxpayer provides evidence of nontax reasons for the selected option and those are relevant when viewed from an overall perspective. The application of the GAAR depends on all relevant facts and circumstances. A general indication of the existence of an abuse is that an option is used for the dominant purpose of obtaining a tax benefit and there are no justifiable business reasons for the scheme.

BEPS

The Federal Ministry of Finance has contributed to the development of the OECD action plan under the base erosion and profit shifting (BEPS) project and has actively participated in the detailed work streams. It considers a uniform and internationally coordinated approach to be most effective in preventing BEPS.

On 19 July 2016, Council Directive (EU) 2016/1164 (Anti-Tax Avoidance Directive) was published which prescribes minimum standards, amongst others, for an interest limitation rule (OECD Action 4), a controlled foreign company rule (OECD Action 3) and a hybrid mismatch rule (OECD Action 2). All member states are required to adapt their national law to the rules by 31 December 2018.

The following table summarizes the steps Germany has taken to date to implement the BEPS recommendations:

Action	Implementation
VAT on business to customers digital services (Action 1)	The EU VAT directive applies and already has been implemented into domestic law.
Hybrids (Action 2)	Certain anti-arbitrage rules for hybrids already exist (in relation to hybrid dividends and the double deduction of negative income in tax groups). A working group has been established to analyze the outcome of the BEPS project, especially with regard to hybrid structures, but no information has been made public.
CFCs (Action 3)	Germany has a comprehensive CFC regime. It is not yet known whether, and to what extent, changes will be made to the regime.
Interest deductions (Action 4)	An EBITDA-related interest deduction limitation rule already exists (although the constitutionality of the rule has been challenged and a case is pending before the Federal Constitutional Court).
Harmful tax practices (Action 5)	There currently are no plans to introduce a patent box regime in Germany.
Prevent treaty abuse (Action 6)	Some German tax treaties contain principal purpose test clauses or clauses that allow the application of domestic anti-abuse rules in cases of treaty abuse. Other domestic legislation prevents certain forms of treaty abuse and double non-taxation by way of a tax treaty override.
Permanent establishment status (Action 7)	Not yet known.
Transfer pricing (Actions 8-10)	Not yet known. These actions are likely to be adopted as they work via the arm's length principle, which already is established in German tax law.

Disclosure of aggressive tax planning (Action 12)	The upper house of parliament requested the introduction of disclosure rules in 2014, but no action has been taken. The government has not announced any plans to introduce disclosure rules.
Transfer pricing documentation and CbC reporting (Action 13)	The government published draft legislation on new transfer pricing documentation requirements including CbC reporting in July 2016; rules are expected to become law in 2016.
Dispute resolution (Action 14)	Germany is one of the countries committed to binding arbitration. Some of Germany's treaties already have binding arbitration clauses.

3.8 Administration

Tax year

The tax assessment period is the calendar year. The tax year (the period in which the taxable income has been earned) usually corresponds to the financial year of the company but need not be the calendar year. Income of a tax year is taxed in the tax assessment period in which the tax year ends. If a company wishes to change its tax year to a non-calendar year, it must obtain the consent of the tax authority. Tax years may not be longer than 12 months but may, under certain circumstances, be shorter.

Filing and payment

In Germany, corporate taxes are assessed on an annual basis but advance payment is required in quarterly installments (on 10 March, 10 June, 10 September and 10 December). Municipal taxes are due on 15 February, 15 May, 15 August and 15 November.

A final tax return generally must be filed by 31 May of the following year. If a professional tax advisor prepares the return, the due date is automatically extended to 31 December of the following year; however, the tax authorities may request that a taxpayer file the tax return before 31 December. In case of no or late filing, the tax authorities may impose a fine of up to 10% of the tax assessed, subject to a maximum fine of EUR 25,000.

For unauthorized late payments, a fine of 1% of the amount overdue is imposed for each month of the delay that has commenced. A three-day grace period is granted for wire payments.

Corporate income tax returns and municipal trade tax returns must be filed electronically. German taxpayers with book/tax differences that compute their taxable income using double-entry accounting must submit an e-balance sheet as an appendix to their electronic corporate income tax return.

Employers are responsible for wage tax on remuneration paid to their employees. The wage tax return must be filed on a monthly basis for all employees if the wage tax total exceeded EUR 4,000 in the previous year, and on a quarterly basis if it exceeded EUR 1,080 but was not more than EUR 4,000. Annual filing is sufficient if the wage tax total did not exceed EUR 1,080 in the prior year.

Statute of limitations

The statute of limitations for tax assessments normally is four years, extended to five years in cases of negligence or fraud and 10 years in cases of tax evasion. The period begins to run at the end of the calendar year in which the tax becomes chargeable (usually the end of the tax assessment period). Where a tax return is to be submitted, the start of the limitation period is deferred until the end of the calendar year in which the return has been filed or, at the latest, until the end of the third calendar year following the year in which the tax became chargeable. For the tax due on undeclared investment income which is: (i) from countries that are neither members of the EU nor of the European Free Trade Association (EFTA) and (ii) not automatically reported in accordance with international agreements or arrangements based on such agreements, the limitation period begins no earlier than the end of the calendar year in which the investment income was disclosed to the tax authorities either by a declaration by the taxpayer or other means, but no later than 10 years from the end of the calendar year in which the tax became chargeable.

Under certain conditions (e.g. appeals, commencement of a tax audit), the expiration of the limitation period is suspended.

The limitation period for the collection of tax is five years from the end of the calendar year in which the tax payment became due. The period may be renewed by certain actions (e.g. deferment, suspension of enforcement).

Tax authorities

The German tax authorities carry out the public administration of all fiscal affairs in the country. There are several levels within the tax authorities: (i) as the highest authorities, the Federal Ministry of Finance and the finance ministries of the *Länder* – called senat administrations in the city-states of Berlin, Bremen and Hamburg; (ii) as a higher federal authority, the Federal Central Tax Office; (iii) as intermediate authorities, the federal finance offices, regional finance offices and the Customs Criminological Office; and (iv) as local authorities, the main customs offices including their agencies, the customs investigation offices, the tax offices and the special revenue of the *Länder*. The subject matter and the jurisdiction of each authority are determined by law and depend on residence, habitual abode, place of management, legal seat of a corporation and location of the business, agriculture or real estate.

At the federal level, the Federal Central Tax Office is competent for the administration of various aspects of tax cases with international reference, e.g. credit of or exemption from withholding taxes, the collection of information and international administrative assistance. In particular, the local authorities are competent for the collection of taxes based on the residence of a taxpayer or the legal seat of an entity.

Rulings

The tax offices and the Federal Central Tax Office may, upon an application by the taxpayer, issue an advance ruling on the tax treatment of specific circumstances where this is of special interest in light of significant tax implications. A fee is charged for processing an application which is generally calculated on the basis of the value of the advance ruling for the applicant (i.e. on the amount of tax at stake) and may be up to EUR 109,736. Rulings are binding on the tax office but not on the taxpayer, provided the circumstances are the same as envisaged in the application. The binding effect of the ruling ceases when the underlying tax law provisions change or, in the case of an incorrect ruling, when the ruling is withdrawn. Withdrawals do not have retroactive effect. As noted above, APAs may be obtained, typically for a term of three to five years.

3.9 Other taxes on business

None

4.0 Withholding taxes

4.1 Dividends

The dividend withholding tax rate is 25% (26.375%, including the solidarity surcharge). A 40% refund is granted to nonresident corporations (subject to anti-abuse rules) upon application to the Federal Central Tax Office, which should result in an effective withholding tax rate of 15.825% on dividends for nonresident corporations in non-treaty/non-EU directive situations. The tax rate may be reduced under a tax treaty.

Under the EU parent-subsidiary directive, domestic withholding tax is reduced to zero if the dividend is distributed to a qualifying EU shareholder that has held at least 10% of the capital of the subsidiary at the date of payment of the dividend or the date of the resolution to make the profit distribution. In addition the shareholder must hold the shareholding for a continuous period of at least 12 months. For the reduction to apply, the dividend payment must be nondeductible for the subsidiary. The distributing company may apply the zero withholding tax rate only if the parent company presents an exemption certificate from the Federal Tax Office before the payment is made. Otherwise, the withholding tax is refunded by the Federal Tax Office upon application. Anti-abuse rules apply.

4.2 Interest

Germany generally does not levy withholding tax on interest, except for interest derived from certain securitized or registered loans or bonds (mainly publicly traded bonds), interest received from German banks and German financial services institutions, convertible bonds and certain profit participating loans where a German resident company is the debtor. In these cases, withholding tax is levied at a rate of 25% (26.375% including the solidarity surcharge). Withholding is not applied to nonresidents unless the debt is secured by domestic real estate or ships (except for certain, mainly publicly traded, bonds) or the interest payment on the bond is made in an over-the-counter transaction and the bonds are not held for safekeeping by the debtor or a domestic bank.

If withholding is applied, the withholding tax rate may be reduced by an applicable tax treaty or under the provisions of the EU interest and royalties directive.

4.3 Royalties

The statutory withholding tax rate on royalties paid to nonresidents is 15% (15.825%, including the solidarity surcharge). Withholding tax on royalties may be reduced under a tax treaty or the EU interest and royalties directive (IRD). The following requirements must be met to qualify for an exemption under the IRD:

- The company making the payment is an associated company of a company located in another EU/EEA member state/Switzerland that is the recipient of the payment. A company is an “associated company” of another company for these purposes if (1) the payer company holds directly at least 25% of the capital of the recipient company; (2) the recipient company holds directly at least 25% of the capital of the payer company; or (3) a third company holds directly at least 25% of the capital of both the payer company and the recipient company, and all companies are located within the EU/EEA/Switzerland; and
- Both the payer and the recipient company are tax resident in (and, where applicable, their permanent establishments are located in) an EU/EEA member state/Switzerland; and are in the form of a company listed in the annex to the IRD.

The administrative procedure is similar to the procedure for dividends (i.e. an exemption certificate must be presented before payment of the royalties).

4.4 Branch remittance tax

Germany does not levy a branch remittance tax.

4.5 Wage tax/social security contributions

Tax on employment income (wage tax) is withheld by the employer from the employee's gross income and remitted to the tax authorities.

While wage tax is withheld on behalf of the employee, social security contributions are partially borne by the employer, as they are divided between the employer and the employee, (see also 7.2 below).

5.0 Indirect taxes

5.1 Value added tax

Value added tax (VAT) is a sales tax levied at each stage of the production and distribution chain. In general, VAT is charged on most supplies of goods and services by an entrepreneur in the course of a business activity carried out in Germany, on intra-EU acquisitions and certain other receipts of supplies in Germany by an entrepreneur or by certain other recipients, and on imports of goods from outside the EU. It normally is collected from the entrepreneur making the supply but passed on to the customer by adding it to the purchase price. In some cases, the receiving entrepreneur or legal entity is liable to tax (under the reverse-charge mechanism). In the chain of entrepreneurs, VAT generally should be tax neutral at each stage until the goods or services reach the final customer (or are used for tax-exempt supplies). The tax is largely harmonized within the EU.

The standard rate of VAT in Germany is 19%, with a reduced rate of 7% applying to certain consumer goods and basic services (such as food, books, magazines and newspapers, entertainment, local public transport and hotel accommodation). Some supplies are zero-rated or tax-exempt. Zero-rating (exemption with input tax recovery) mainly applies to intra-EU supplies, exports to non-EU countries and cross-border transports of goods to and from non-EU countries. Exempt activities (no input tax recovery) include most financial, insurance and universal postal services; transfers and letting or leasing of immovable property; services linked to health and social welfare work; and certain educational and cultural services. In some cases, the entrepreneur may opt for taxation of exempt supplies. Small entrepreneurs resident in Germany are exempt from VAT if their total turnover (excluding certain exempt supplies) has not exceeded EUR 17,500 in the previous year and is expected not to exceed EUR 50,000 in the current year. They may opt to be taxed under the normal rules.

The VAT liability of a taxable entrepreneur is computed by deducting recoverable input VAT from total output VAT. An excess of input over output VAT is refunded. Certain formal requirements need to be met for the deduction of input VAT, e.g. concerning the content of the invoice.

The tax assessment period for VAT is the calendar year. However, entrepreneurs usually must file preliminary returns on a monthly basis. Quarterly returns are made where the VAT payable in the preceding calendar year did not exceed EUR 7,500. No preliminary returns are necessary when the VAT payable did not exceed EUR 1,000 in the preceding calendar year. Preliminary returns must be submitted electronically, and the VAT due must be paid, within 10 days after the end of the filing period. A one month filing and remittance extension is granted if, in the case of a monthly filing obligation, a prepayment of 1/11th of last year's VAT prepayments is made. The annual return must be filed by 31 May of the following year (a filing extension may be obtained). When a professional tax advisor prepares the return, the due date is automatically extended to 31 December of the following year; however, the tax authorities may request that the taxpayer file the tax return earlier. Generally, the tax is self-assessed. Payment of the VAT liability from the annual return, if any, is due one month after submission of the return. Additional reporting obligations may exist in respect of intra-EU supplies of goods or services (filing of a European Sales List and Intrastat declaration).

Nonresident entrepreneurs, i.e. entrepreneurs who do not have a registered office, place of management or fixed establishment in Germany, must register for VAT purposes and file VAT returns if they make supplies in Germany which do not fall under the reverse charge regime. The reverse charge regime is applicable, among others, to work supplies and services of nonresident entrepreneurs to (resident or nonresident) entrepreneurs or legal entities (including those under public law). Under the regime, the person who receives the supply is obliged to pay the VAT to the tax authorities. The reverse-charge mechanism does not apply where the supplies or services are made to private persons.

Nonresident entrepreneurs who are not and need not be registered for VAT purposes and therefore do not file VAT returns, may apply for a refund of input VAT via a special refund procedure. For nonresident EU entrepreneurs, the application must be submitted electronically in the EU country of residence no later than 30 September following the calendar year to which the refund claim relates. Nonresident entrepreneurs from outside the EU must submit their application

to the Federal Tax Office by 30 June following the relevant calendar year; as from 1 July 2016, the application must be submitted electronically. Refunds to nonresident entrepreneurs from countries outside the EU are conditional on reciprocity, i.e. the other jurisdiction must operate similar refund procedures for German entrepreneurs or not levy VAT or a similar tax. The refund claim must be at least EUR 50 (EUR 500 for nonresident entrepreneurs located outside the EU) if the period for which the refund is claimed is the calendar year or the last period of the calendar year; otherwise, a minimum of EUR 400 is required (EUR 1,000 for nonresident entrepreneurs located outside the EU).

VAT grouping (*Organschaft*) allows a parent company and its subsidiary to be treated as a single entrepreneur for VAT purposes. The VAT return must be filed by the parent company for the whole group. Intragroup transactions between the members of the group are disregarded. VAT grouping requires that the subsidiary is financially, economically and organizationally integrated into the business of the parent company. The parent company generally must hold more than 50% of the shares of the subsidiary. In addition, certain organizational arrangements are necessary which ensure that the parent company controls the day-to-day management of the subsidiary.

5.2 Capital tax

Germany does not levy capital tax.

5.3 Real estate tax

Municipal real estate tax

The municipal authorities levy an annual real estate tax on all immovable property regardless of whether the property is held as a business asset or for private use. Tax is levied by the municipality in which the real estate is located. The rate generally is 0.35% of the assessed value of the property (a historic value), multiplied by a municipal factor. The effective tax rate in major cities is usually between 1.5% and 2.3% of that historic value. Special rules apply in the federal states of former East Germany. In a recent decision, the Federal Tax Court has raised doubts whether the historic values used for assessment of the real estate tax are compatible with the German constitution. The case is currently pending before the Federal Constitutional Court.

5.4 Transfer tax

A real estate transfer tax (RETT) is imposed on the transfer of real estate located in Germany and on certain transactions that are deemed to constitute such a transfer, in particular the direct or indirect transfer to, or accumulation by, one person or a group of related persons, of 95% or more of the shares or interests in a company owning real estate in Germany. The tax also applies to any transaction that results in an entity directly and/or indirectly owning a 95% economic share or interest in a company owning real estate. The economic share or interest approach requires looking through intermediary companies and adding the direct and indirect participations.

The tax rate depends on the federal state in which the real estate is located and ranges between 3.5% and 6.5% of the consideration (or alternative tax base, i.e. the assessed value).

Exceptions to RETT apply for certain intragroup restructurings.

5.5 Stamp duty

None

5.6 Customs and excise duties

As a member of the EU, no customs duties are imposed on goods from other member states. However, goods imported from outside the EU generally are subject to customs duties.

Germany levies excise duties on various items, including tobacco, alcohol (except wine), beer, coffee, mineral oil, gas, coal, nuclear fuel and electricity.

5.7 Environmental taxes

Various environmental taxes are levied in Germany, among others on mineral oil, gas, coal and electricity. The motor vehicle tax also has an environmental component (emissions).

5.8 Other taxes

The standard tax on general insurance premiums is 19%.

Motor vehicle tax is imposed on the ownership of motor vehicles, with the amount depending, among other factors, on the type of vehicle (car, motorcycle, commercial truck etc.), weight and emissions, for private cars on the type of engine (gasoline or diesel), engine size (displacement) and CO₂ emission. For purely electric vehicles, see 1.5 above.

6.0 Taxes on individuals

Germany Quick Tax Facts for Individuals	
Income tax rates	Progressive up to 45% (47.475%, including the solidarity surcharge)
Capital gains tax rates	Progressive up to 45% (47.475%, including the solidarity surcharge), 25% (26.375% including the solidarity surcharge) on certain shares and other capital assets, nontaxable in certain cases
Basis	Worldwide income
Double taxation relief	Yes
Tax year	Calendar year
Return due date	31 May
Withholding tax	
– Dividends	25% (26.375% including the solidarity surcharge)
– Interest	25% (26.375% including the solidarity surcharge)/0%
– Royalties	15% (15.825% including the solidarity surcharge)
Church tax	8% or 9% of income tax/wage tax/withholding tax, applicable to resident members of certain officially recognized German churches
Net wealth tax	No
Social security	Yes
Inheritance tax	7%-50%
Municipal real estate tax	1.5%-3% of assessed value (effective tax rate in major cities, depending on municipality)
VAT	19% (standard rate)/7% (reduced rate)

6.1 Residence

An individual is considered tax resident if he/she:

- Maintains a home or dwelling in Germany for personal use with the intention to keep it and to use it on a regular basis; or
- Has his/her habitual place of abode in Germany, i.e. he/she is physically present in Germany for a consecutive period of more than six months or with the intention to stay for that period. Short interruptions, such as weekend trips away, vacation or business travel, do not preclude a habitual place of abode.

Nationality is not a criterion for determining residence. The residence status of an individual may be overruled by a tax treaty.

On application, resident status is extended to individuals who do not otherwise meet the residence test if their German-source income subject to German taxation comprises 90% or more of their worldwide taxable income or the income not subject to German taxation does not exceed the

personal allowance for the relevant calendar year (EUR 8,652 for 2016) or a reduced amount taking account of the circumstances in the taxpayer's state of residence.

6.2 Taxable income and rates

Residents are liable to income tax on their worldwide income, while nonresidents generally are taxed only on certain German-source income. Relief from double taxation may be provided by tax treaties.

Taxable income

Basic sources of income are: agricultural and forestry income, business income, income from employment and self-employment, savings and capital investment income, rental income and certain types of capital gains and other income. In most cases, income from private savings and capital investments and connected capital gains exceeding the saver's allowance of EUR 801 (EUR 1,602 for married couples filing a joint return) are taxed separately at a flat rate of 25% (26.375%, including the solidarity surcharge), mostly via withholding at source.

Employment income includes salaries, wages, bonuses, fringe benefits and other forms of compensation. Certain exemptions apply, e.g. for supplementary payments to compensate for working on Sundays, bank holidays or on night shifts, or for employee discounts granted for products or services of the employer up to EUR 1,080 per year. Benefits in kind (e.g. vouchers) are not taken into account if their value (less any extra payment made by the employee) does not exceed EUR 44 in a calendar month.

Capital gains derived from the sale of nonbusiness assets (other than certain types of savings and capital investments) are taxable only if the assets have not been held for a minimum holding period (e.g. 10 years for real property, one year in most other cases). Capital gains of less than EUR 600 per calendar year are tax-exempt. No tax is due on the sale of a private home in which the taxpayer has lived throughout the period between acquisition and sale, or at least during the current and two preceding years. Gains on the sale of shares in corporations held as private shareholdings generally are taxable irrespective of a minimum holding period at a flat rate of 25% (26.375%, including the solidarity surcharge). Shares acquired before 1 January 2009 may be sold without any tax being payable. Where a shareholding of at least 1% has been held at any time during the five years prior to a sale, 60% of the capital gain is taxed at the regular (progressive) rate.

Taxable income is computed:

- For income derived from agriculture and forestry, business or self-employment – from the profit determined on an accruals basis (compulsory where an obligation to keep accounts exists under commercial law) or on a cash basis; realized capital gains or losses always are included; or
- For other income – on a cash basis, by deducting income-related expenditure from gross receipts; realized capital gains or losses generally are not included unless otherwise stipulated by law in specific cases.

Some income is exempt from tax, such as the employer share of contributions to the statutory health, nursing care, unemployment and pension insurance scheme and certain social distributions, lump sum payments under a pension scheme and payments from health, accident and disability insurances.

Deductions and reliefs

A resident taxpayer is entitled to a personal allowance of EUR 8,652 (EUR 17,304 for married couples filing a joint return).

In addition to business or income-related expenses, individual taxpayers may take a special deduction for certain "necessary" payments such as:

- A percentage of contributions to a statutory pension insurance scheme including the employer share (82% for 2016) up to EUR 18,669 in 2016 (82% of EUR 22,766.40, rounded up to the nearest whole EUR) per year, less the employer share;

- Premiums or contributions to a statutory health insurance scheme or equivalent basic health insurance cover (excluding the employer's share of the health insurance premiums);
- Premiums or contributions to private life, accident, unemployment or disability insurance or for private health insurance coverage exceeding basic coverage up to a total of EUR 2,800 for self-employed individuals and EUR 1,900 for public servants and employees, to the extent the ceiling has not been exhausted by the basic coverage;
- Costs of professional training for a future profession, up to EUR 6,000 per year;
- Alimony up to EUR 13,805 paid to a divorced partner (if the divorced partner agrees);
- Donations to registered charities, cultural or sports organizations up to 20% of total net income (before special deductions) or, in case of businesses, 0.4% of the sum of turnover and paid salaries and wages; and
- Church tax paid to an officially recognized German church.

There also are deductions for children. Eligible taxpayers automatically receive a monthly child benefit payment of EUR 190 for each of the first two children, EUR 196 for the third child and EUR 221 for the fourth and each additional child. At the end of the year, the tax authorities calculate whether the child benefit payment or a tax allowance for the costs of a child's living, care and education (in total EUR 3,624) is more advantageous for the taxpayer and automatically adjust the final tax. A nonresident taxpayer may claim the child allowances if he/she is taxed as a resident in Germany.

Rates

The tax rates for resident individual taxpayers range from a minimum of 14% on income exceeding EUR 8,652 (EUR 17,304 for married couples filing a joint return) to a top rate of 45% for income exceeding EUR 254,447 (EUR 508,894 for married couples filing a joint return). An additional 5.5% solidarity surcharge is levied on the income tax assessed. Trade tax levied on business income is, with some limitations, credited against the income tax allocable to that income.

A 25% (26.375%, including the solidarity surcharge) withholding tax applies to income from private capital investments (e.g. from the receipt of dividends, or the disposal of bonds or of shares from a minor shareholding, i. e. a shareholding of less than 1% at any time during the past five years), regardless of the holding period. A saver's allowance of EUR 801 per year (EUR 1,602 for married couples filing a joint return) is granted. If the regular (progressive) tax rate of the individual is below 25% (26.375%, including the solidarity surcharge), the taxpayer may apply for a more favorable tax treatment in his/her return.

Nonresidents are taxed at a flat rate of 15% (15.825%, including the solidarity surcharge) on income from:

- Artistic, sporting, entertainment or similar performances exercised or exploited in Germany (unless derived from dependent employment subject to wage tax); and
- Licenses paid for the use of, or the right to use, rights such as patents, copyrights or know-how.

The flat tax is withheld at source. No expenses may be deducted in determining taxable income. Nonresident individuals from EU or EEA countries may opt for the deduction of income-related expenses. In this case, a 30% (31.65%, including the solidarity surcharge) withholding tax applies. Nonresident members of the supervisory boards of German corporations are subject to a 30% (31.65%, including the solidarity surcharge) withholding tax. Those from EU/EEA countries are allowed a deduction of income-related expenses from their tax base. Taxation may be excluded or limited by an applicable tax treaty.

6.3 Inheritance and gift tax

Inheritance and gift tax applies to transfers of property at death or by gift (or the lapse of time, i. e. 30 years, in the case of family foundations or associations). Transfers of worldwide net property are taxable in Germany if the deceased/donor or the heir/donee is a resident at the time of the deceased's death or at the time when the gift is made, i. e. if one of them is

- An individual with a home or habitual abode in Germany;
- A German citizen who has been staying abroad for no longer than five years;
- A German citizen who lives abroad and is paid by the German government; or
- A corporation, association or estate with its place of management or registered office in Germany.

If neither the deceased/donor nor the heir/donee is a resident, only German situs property is subject to inheritance or gift tax.

The tax rates depend on the degree of the relationship between the deceased/donor and the beneficiary and the value of the taxable property transferred and range from 7% to 50%, with various exemptions available. Business property/assets are valued at fair market value. Under certain conditions, the gift or inheritance of business property can be 85% or 100% tax free. In December 2014, the Federal Constitutional Court ruled that the extensive exemptions for business property are not in line with the German constitution. The legislator had been requested to revise the law by 30 June 2016 but the legislation had not been finalized as at that date. It is, however, the intention that a new law will be implemented during 2016 and applied with effect from 1 July 2016.

The liability for inheritance tax arises at the time of death and that for gift tax at the time the gift is made.

In cross-border cases, foreign inheritance or gift tax is credited against the German tax to the extent the foreign property is taxed in Germany. Inheritance and gift tax treaties apply with Denmark, France, Greece, Sweden, Switzerland and the US.

6.4 Net wealth tax

None

6.5 Real property tax

A real property tax is levied annually at the local level on immovable property. Tax is levied by the municipality in which the real estate is located. The rate generally is 0.35% of the assessed value of the property (a historic value), multiplied by a municipal factor. The effective tax rate in major cities usually is between 1.5% and 3% of that historic value. Special rules apply in the federal states of former East Germany.

6.6 Social security contributions

Employed individuals are required to pay contributions to the statutory health, nursing care, unemployment and pension insurance schemes. The employer generally bears 50% of the total contribution (see 7.2 below). Additional social security contributions comprise the insolvency fund levy (0.12% of total salaries), the levy "U2" for maternity (compensating the employer for salary payments during maternity protection; from 0.38% to 0.51% of the salary depending on the public health insurance where the employee is insured) and, for employers with 30 or fewer employees, the levy "U1" for sickness (partly compensating the employer for salary payments during sickness of the employee; about 1.1% up to 3.95% of the salary depending on the public health insurance scheme under which the employee is insured and the percentage of compensation chosen).

6.7 Other taxes

Resident individuals who are members of the Roman Catholic church, the Protestant church or certain other officially recognized German churches are subject to church tax. The tax is levied as a supplement to income tax, wage tax and withholding tax. Generally, the tax rate is 8% or 9% of that tax depending on the federal state in which the individual lives. Church tax is a deductible expense in determining taxable income.

Some cities and local communities levy taxes such as a tax on second homes.

6.8 Compliance

The tax assessment period for income tax purposes is the calendar year. The tax year (i.e. the period in which the income has been earned) usually corresponds to the tax assessment period. However, for business income the tax year may be different from the calendar year if the firm is registered with the commercial register. In this case, the tax year is the period for which the firm prepares its annual accounts.

Married couples may elect to be taxed separately or jointly. In general, joint income taxation is favorable in terms of the overall tax burden. The election to file a joint return is restricted to couples where either both spouses are resident in Germany or where one spouse of EU/EEA nationality is resident, or treated as resident, in Germany and the other is resident in another EU/EEA country.

The income tax return is due by 31 May following the tax assessment year. Extensions may be granted. The period is automatically extended until 31 December if a tax advisor assists in preparing the return.

Individuals with income from agriculture and forestry, business or self-employment must file their income tax returns and, if any, municipal trade tax returns as well as their balance sheet or income calculation, electronically. For VAT returns, e-filing is also mandatory. Exceptions may be granted where the taxpayer does not have the knowledge and skills or technical means to submit the data via remote data transmission, or where he/she would need to incur considerable expense to create the necessary technical means to do so.

The final tax is assessed after filing of the tax return. Any balance due must be paid within one month after receipt of the tax assessment notice. If withholding is not sufficient to cover the income tax expected to become due, quarterly prepayments may be assessed.

7.0 Labor environment

7.1 Employees' rights and remuneration

The terms and conditions of the employment follow from the employment contract, from works agreements and collective agreements, if applicable, and from statutory law.

Written employment contracts are not mandatory by law, except in certain cases (e. g. contracts for a fixed term, contracts of apprenticeship). However, many collective agreements require written contracts and in practice, it is common for employment contracts to be made in writing. As a minimum, employers are required by law to provide the employee with a written document containing information on the essential elements of his/her contract or employment relationship within one month after commencement of the employment. Contracts usually are concluded for an indefinite period of time, but fixed-term contracts are allowed subject to certain restrictions.

Works agreements are written agreements between the employer and the works council on such matters as the formation, content and termination of employment contracts or works-related issues (e.g. working hours, number of days holiday, pension schemes). They are binding on both the employer and the employees (excluding employees in leading managerial positions). Terms and conditions in an individual employment contract that are more favourable to the employee prevail. Works agreements may not deal with remuneration and with other employment conditions which are regulated, or usually regulated, by collective agreement unless they are more favourable to the employee or explicitly allowed in the collective agreement.

Generally, collective agreements apply to all employers who are members of the employers' association and in favour of all members of the trade union. Where the employer is bound, the agreements usually also are applied to non-union employees. Application of non-binding collective agreements may be agreed in individual employment contracts. Further, the government may declare a collective agreement as generally binding. Employees in leading managerial positions usually are not covered by collective agreements.

Statutory labor law is not codified in a single comprehensive labor code. The main aspects of employment contracts are regulated in the German civil code. Additional labor laws address minimum wages, working hours, holiday entitlement, sick pay, maternity, parental leave, part-time work, partial retirement, temporary hiring of employees, non-compete obligations, protection against dismissal, minimum age and protection of young people at work, data protection, safety at work, workplaces, employee representation, equal treatment and nondiscrimination. The distinction between white-collar and blue-collar employees has almost disappeared in individual labor law.

Many areas of German labor law are strongly influenced by case law. In addition, EU legislation is of growing importance.

Working hours

Working hours in Germany are governed by law. Collective agreements and/or works council agreements usually regulate the details. The normal work day is eight hours and can be extended to 10 hours when the six-month or 24 weeks' average does not exceed eight hours per day. Exceptions apply to senior executives and certain sectors such as healthcare, restaurants, transport and agriculture. Shift work is permitted and there usually must be an 11-hour break between shifts.

Collective agreements and/or works agreements may be specific on shift work. Overtime pay often starts at a 25% premium but may be higher. Employers may choose to pay higher overtime pay or to give employees additional time off instead. Employees with executive functions are not covered by the law on working hours and usually do not receive overtime pay.

The minimum annual vacation period is 24 work days for full-time employees (based on a six-day week). On average, the workforce is entitled to an annual vacation of 30 days, by individual or collective agreement.

7.2 Wages and benefits

German wages often are set by collective agreements. Wages in foreign-owned companies are similar to those in domestic firms.

For certain sectors (e.g. construction, cleaning, postal services, security, mining, nursing, large-scale laundry and waste management), the government (Ministry of Labor and Social Affairs) has set minimum wages by legislative decree or by declaring collective agreements as generally binding. Since 1 January 2015, a general statutory minimum wage of EUR 8.50 gross per hour has applied for all employees working in Germany, irrespective of whether their employer is based in or outside Germany. The sector-related minimum wages remain valid unless fixed below the statutory amount. The statutory minimum wage does not apply to apprentices and, for the first six months of employment, to persons who previously had been long-term unemployed. Further exceptions are granted for a transitional period until 31 December 2017. From 1 January 2017, the statutory minimum wage may be adjusted every two years by legislative decree based on the recommendation of a commission. In June 2016, the commission recommended an increase in the statutory minimum wage to EUR 8.84 from 1 January 2017.

Employers in certain sectors (e.g. building and construction, hotel and catering, industrial cleaning, freight haulage, transport and related logistics) have to record the start, end and duration of the daily working hours for employees whose average regular monthly gross salary does not exceed EUR 2,958. Foreign employers who employ individuals in these sectors in Germany must notify the competent customs authority and report certain data before starting the work or service to be performed. Entrepreneurs who engage employees when providing services or work are liable if their contractor or a subcontractor or lender fails to pay the minimum wage.

Pensions

The mandatory pay-as-you-go pension scheme is part of the social security system (see below). As a second pillar of the pension system, many large and medium-sized German companies offer voluntary occupational pension plans that supplement the state retirement pension scheme. It also is possible to participate in pension insurances and individual-asset-backed pension plans (as a third pillar). Private sector employees, who are covered by the statutory pension scheme on a compulsory basis, may deduct from their taxable income contributions to additional private pension plans, up to certain ceilings. In addition, government subsidies are granted.

The legal retirement age for men and women gradually is increasing from 65 to 67 (depending on the year of birth). Early retirement is possible in certain cases. The minimum age for early retirement is 63.

Social insurance

German social insurance is a statutory system that comprises:

- *Health insurance:* All individuals resident in Germany generally are obliged to take out health insurance. Employees with annual gross salaries of up to EUR 56,250 (2016) must be enrolled in the public sector health insurance scheme. The monthly contributions of 14.6% of gross monthly salaries (up to a salary ceiling of EUR 4,237.50) are divided equally between the employer and employee who each contribute 7.3%. Public health insurance providers can charge additional monthly contributions that must be borne by the employee (currently between 0% and 1.7% of gross monthly salaries). Employees whose gross salary exceeds the EUR 56,250 ceiling for compulsory public sector health insurance may choose between the public sector and a private health insurance scheme. These employees may claim from their employer an allowance for their health insurance that corresponds to the 7.3% share (public sector health insurance) or amounts to half of the contributions to a private health insurance scheme up to a maximum of EUR 309.33 per month.
- *Nursing care insurance:* For employees with children who are insured under the public sector health insurance scheme, the monthly contributions are 2.35% of gross monthly salary (up to a salary ceiling of EUR 4,237.50). Employers and employees each pay one-half of the contributions (except in Saxony where employees are required to pay 1.675% and employers 0.675%). Employees without children who are insured under the public sector health insurance scheme pay an additional contribution of 0.25 percentage points,

which is not shared by the employer. This extra contribution does not apply to persons under age 23, persons born before 1 January 1940 or persons currently in military or civil service. If the employee has opted for private health insurance, he/she also must take out private nursing care insurance. Employees may claim from their employer an allowance for their private nursing care insurance that amounts to half of the contributions, up to a maximum of EUR 49.79 per month (EUR 28.60 in Saxony).

- *Accident insurance:* The statutory accident insurance covers employees for work-related accidents and diseases. It is financed entirely by employer contributions, based on gross salaries. The average contribution amounts to about 2% of gross salaries but varies according to the economic sector and the category in which a company is classified based on the risk/danger of its activities.
- *Unemployment insurance:* All wage and salary earners pay 3% of gross salary up to a monthly earnings maximum of EUR 6,200 (EUR 5,400 in former East Germany) in respect of unemployment insurance. Contributions are shared equally between the employer and the employee.
- *Pension insurance:* The statutory pension scheme calls for contributions of 18.7% of gross monthly salary, up to a salary ceiling of EUR 6,200 (EUR 5,400 in former East Germany). Employers and employees each pay half.

Employees who are temporarily posted to Germany to work for their foreign employer may not be subject to German statutory social security if, and to the extent the EU social security regulations or bilateral social security agreements apply.

7.3 Termination of employment

Employees of companies with a workforce of more than 10 (excluding apprentices), or more than five (excluding apprentices) if hired before 1 January 2004, may not ordinarily be dismissed without a specific justification. Dismissal notice periods vary according to the length of the employment. Within the probation period of up to six months, dismissal is possible with two weeks' notice and for no specific reason; otherwise, the minimum notice period is four weeks to the 15th or to the end of a month. This notice period is extended for the employer in relation to the duration of the employment (up to seven months for employees with at least 20 years of service). The employment contracts of members of works councils may be terminated only in specified instances and women may not have their employment contracts terminated during pregnancy or within four months of giving birth.

Employers must inform the works council of planned layoffs. Trade unions enforce these rules rigorously. In practice, companies wishing to lay off staff usually are required to make generous redundancy agreements with the works council or the individual. Severance pay typically starts at 50% of monthly gross salary for every year of job tenure and can range as high as 12 months' salary or beyond.

Notice periods may be modified, within limits, in collective agreements. The rules for firms with 10 or fewer employees are considerably less stringent.

7.4 Labor-management relations

In plants or workplaces with five or more employees of a particular enterprise, employees may set up a works council to help resolve personnel issues (e.g. working hours, vacation schedules, salary and wage structures, payments for piece-work and incentive premiums). The works council must be consulted about any change that affects working conditions (e.g. changes in production methods and facilities), and it has an important voice in hiring, transferring or dismissing employees and may conclude works agreements with the employer. When a workplace of an enterprise has more than 100 employees, the works council must elect a finance committee, which discusses company decisions with management and then passes the information on to the works council. At company and at group level, additional joint and group works councils may exist.

Employees in leading managerial positions are not represented by the works council. They may elect a spokesman committee when the plant or workplace of an enterprise employs 10 or more such employees. The primary task of the spokesman committee is to take account of the interest of the leading managerial staff vis-à-vis the employer.

Corporations and cooperatives with more than 500 but not more than 2,000 employees must reserve one-third of the seats on the supervisory board for employee representatives. In large corporations or cooperatives with more than 2,000 employees, the supervisory board must comprise an equal number (10 in companies with more than 20,000 employees) of shareholder and labor representatives (coal and steel industries have a similar but separate scheme). The chairman of the supervisory board, who is elected by the shareholders in the event of a tie in the first election for the chairman, has a second vote if there is a tie.

About 20% of German employees are organized in trade unions. Trade unions play an important role in bargaining pay and working conditions of unionized and non-unionized employees. Most trade unions are industry-based. The largest unions come under the umbrella of the German Trade Union Federation (*Deutscher Gewerkschaftsbund* or DGB). Some white-collar employees form their own professional organizations and negotiate their salaries outside the traditional trade union structure. Bargaining may take place at the company or industry sector level on a local, regional or national basis. There may be separate agreements with different terms for pay and for other conditions (e. g. working hours, shifts and vacations).

The right to take industrial action is not codified in German legislation but follows from constitutional law. The main rules have been developed by case law. According to these rules, strikes may be called by trade unions to achieve goals that can be regulated in collective agreements. Strikes are not allowed for changing or improving matters that have been settled in a collective agreement still in force, and any strike or other industrial action must observe the principle of proportionality and be called as a last resort when all other options to reach an agreement have been exhausted. Short “warning strikes” (work stoppages and demonstrations), however, are permitted during negotiations.

Labor disputes between employers and employees or employers and trade unions are settled by special labor courts.

7.5 Employment of foreigners

Foreign nationals of EEA countries and of Switzerland do not need a residence title or work permit to live and work in Germany. All other foreigners must have a residence title, which includes both a sojourn permit and a work permit. Australian, Canadian, Israeli, Japanese, New Zealand, South Korean and US citizens may obtain such title from the foreigners’ authority after they have arrived in Germany (an application must be made no later than three months after entering the German territory). In any case, employment may not commence before the title has been issued. Citizens from other countries must apply for a work visa at the German mission (embassy, consulate general) in their country before they come to Germany.

Access to the German labor market generally is limited for foreigners who are not EEA or Swiss nationals, especially for those who are unskilled or low-skilled. Easier access is granted to academics, highly qualified professionals, executives, senior employees and specialists. Under the EU Blue Card system, foreign university graduates may obtain a work visa or work permit for a job that is in line with their qualification if they have an employment contract or a binding job offer that provides for a salary in 2016 of no less than EUR 49,600 a year. The minimum salary is reduced to EUR 38,688 a year for certain professions where shortages exist. The EU Blue Card is issued for a maximum period of four years, but no longer than the duration of the employment contract plus three months; it may be extended.

A work visa or work permit issued with a residence title usually requires the internal approval of the Employment Agency. The approval depends on the qualification and intended type of work. In addition, no preferential worker must be available for the employment in question (priority check) and the working conditions must not be worse than those of comparable national employees. In some cases, a priority check is unnecessary. In general, the approval is given for a maximum period of three years. Employers who wish to employ a non-EEA and non-Swiss employee may apply for an advance assessment from the Employment Agency of whether the labor-market requirements for a specified job are met. Approval from the Employment Agency is not required for directors of the management board and for executives with a general power of attorney (power of procuration).

8.0 Deloitte International Tax Source

The Deloitte International Tax Source (DITS) is a free online database that places up-to-date worldwide tax rates and other crucial tax information within easy reach. DITS is accessible through mobile devices (phones and tablets), as well as through a computer.

Connect to the source and discover:

A database that allows users to view and compare tax information for 65 jurisdictions that includes –

- Corporate income tax rates;
- Historical corporate rates;
- Domestic withholding tax rates;
- In-force and pending tax treaty withholding rates on dividends, interest and royalties;
- Indirect tax rates (VAT/GST/sales tax); and
- Information on holding company and transfer pricing regimes.

Guides and Highlights – Deloitte's Taxation and Investment Guides analyze the investment climate, operating conditions and tax systems of most major trading jurisdictions, while the companion Highlights series concisely summarizes the tax regimes of over 130 jurisdictions.

Jurisdiction-specific pages – These pages link to relevant DITS content for a particular jurisdiction (including domestic rates, tax treaty rates, holding company and transfer pricing information, Taxation and Investment Guides and Highlights).

Tax publications – Global tax alerts and newsletters provide regular and timely updates and analysis on significant cross-border tax legislative, regulatory and judicial issues.

Tax resources – Our suite of tax resources includes annotated, ready-to-print versions of holding company and transfer pricing matrices; a summary of controlled foreign company regimes for the DITS countries; an R&D incentive matrix; monthly treaty updates; and expanded coverage of VAT/GST/sales tax rates.

Webcasts – Live interactive webcasts and Dbriefs by Deloitte professionals provide valuable insights into important tax developments affecting your business.

Recent additions and updates – Links from the DITS home page to new and updated content.

DITS is free, easy to use and readily available!

<http://www.dits.deloitte.com>

9.0 Contact us

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