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投资德国

中国企业指南

中文 | English

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前言

尊敬的读者：

敬请启阅2021版《投资德国——中国企业指南》。

2015至2020年间，德国成为吸引外商直接投资最多的三个国家之一，仅次于美国和英国，中国居第四位。与此同时，中国成为继美国、英国和瑞士之后对德投资第四大国，由此可见中国的投资对德国的重要性。

中国也是全球范围内最大的对外投资国之一。近年来，中国企业对外国制造型企业进行了大量投资。中国企业是电子商务领域的领导者，尤其在平台直销商品方面。更重要的是，中国是2020年增长最强劲的经济体之一，尽管受到疫情影响，其GDP仍实现了2.3%的增长，在2021年预计还将增长6%。在全球疫情肆虐期间，中国经济恢复增长的速度远高于其他主要经济体。2020年，中国企业跨境并购活动大幅放缓，但国内的并购活动仍十分强劲，预计2021年中国对外并购活动将再次增多。虽然中国投资者在做出选择时会比以往更加谨慎，但无论是欧洲的制药行业还是北美的能源行业，乃至更广泛的其他行业和地区仍吸引着中国投资者的关注。德国一直是中国企业的主要投资目的国，在2021年1月1日英国脱欧生效后，中国企业对德投资力度将进一步加大。

德勤全球中国服务组成立于2003年，旨在为寻求海外扩张机遇的中国企业提供咨询服务。服务组由精通中文、了解中国以及中国企业的专业人士构成，服务网络分布在多个国家和地区，能为中国企业投资海外提供专业建议和全面解决方案。

在德勤中国服务组（德国和中国团队）的共同努力下，我们特此为您呈上《投资德国——中国企业指南》，助您了解德国的投资环境和商业准则。鉴于我们发现中国投资者对德国汽车行业、生命科学和医疗保健行业等重点行业有极大兴趣，因此本修订版投资指南不仅涉及相关监管条例的变更，还对上述行业的现状和前景进行了更深入的探讨。希望本刊对您有所帮助，如您需要有关投资德国的专业建议和全面解决方案，请随时与我们联系。

洪廷安
德勤全球中国服务组主席

Dirk Hällmayr
中国服务组领导人 | 德国

1. 经济环境

1.1 中德经济关系

1.1.1 双边关系和贸易额概览

过去的30年里（1990年至2020年），中德经济关系不断发展，双方已成为稳固的贸易投资伙伴。中国将德国视为其“通往欧洲的门户”，并与德国达成多项双边合作协议，进一步促成这一段佳话。当然，《中欧双边投资协定》在未来或许会为中国企业在欧盟及德国带来更多投资机遇。而至于英国脱欧是否会使更多投资目标从英国转移至德国和其他欧盟国家，英国（特别是其房地产行业）是否会对中国投资者更具吸引力，仍有待观察。

1991年，德国对华出口贸易额仅为21.5亿欧元。据德国联邦统计局统计，在新冠疫情对全球贸易冲击下，2020年德国对华出口贸易额为955亿欧元，与2019年基本持平（–0.1%）。2020年，德国从中国的进口额为1,162亿欧元。

中国是德国的第二大出口市场，仅次于美国，而德国是中国目前在欧洲最大的贸易伙伴，在中国全球贸易伙伴中位居第六。

中国还是德国最大的进口来源国，中国出口德国的产品主要有电脑、电子产品和光学产品。与过去相比，中国现在提供的商品价值更高。

1.1.2 中国对德直接投资

多年来，中国企业一直通过绿地投资或并购在德国寻求扩张机会。

按区域来看，目前德国最受中国投资者青睐的三个州是：

- 北莱茵-威斯特法伦州（1,530家公司，26,000名员工，以杜塞尔多夫为核心）
- 巴伐利亚州（640家公司，25,000名员工，以慕尼黑为核心）
- 黑森州（860家公司，8,000名员工，以法兰克福为核心）

德国产业极为分散，因此德国的其他地区同样也吸引着中国投资者的注意力和投资，尤其是物流业发达的汉堡地区和电子商务活跃的柏林。无论何种情况，选择合适的投资目的地需要深思熟虑。

德国产业较为分散，除上述三州之外德国的其他地区同样也吸引着中国投资者，尤其是物流业发达的汉堡和电子商务活跃的柏林。无论何种情况，投资者需要深思熟虑选择合适的投资目的地。

2010年以后，中国投资者在德并购活动明显增多。而且，近来这类投资的质量和规模也得到提升。显然，中国投资者的重点已从收购问题资产转向对拥有领先技术的跨国公司进行战略投资。2016年，美的以45亿欧元的价格收购了机器人制造商库卡，是截至当时中国投资者在德国进行过的最大规模收购。其后的大规模并购则是吉利以约90亿欧元的价格收购了戴姆勒9%的股份。自2018年交易量创纪录以来，中国投资者在德并购活动在2019年出现大幅回落，且受新冠疫情影响在2020年进一步萎缩。

近年来较为突出的投资案例如下表所示：

声明日期	德国标的企业	中国投资者
2019年11月4日	德意志酒店集团 (Deutsche Hospitality, 包括其旗下豪华酒店品牌"施柏阁 (Steigenberger) ")	华住集团有限公司
2018年2月24日	戴姆勒股份公司 (Daimler AG)	浙江吉利控股集团有限公司
2017年4月7日	Biotest	科瑞天诚投资控股有限公司
2017年3月3日	朗德万斯 (Ledvance, 欧司朗剥离资产)	IDG资本、木林森股份有限公司、义乌市国有资本运营中心
2016年5月18日	库卡 (Kuka)	美的集团
2016年3月22日	曼兹 (MANZ)	上海电气集团
2016年2月6日	比尔芬格水处理公司 (Bilfinger Water Technologies)	成都天翔环境股份有限公司
2016年2月4日	EEW Energy from Waste	北京控股集团
2016年1月11日	商克劳斯玛菲集团 (KraussMaffeiGruppe)	中国化工集团公司
2015年7月8日	Hauck & Aufhaeuser	复兴国际
2014年5月29日	海力达 (Hilite)	中航工业集团公司
2014年1月28日	CYBEX	好孩子 (香港)
2013年9月30日	Flex电动工具公司 (Flex Power Tools)	泉峰控股有限公司
2013年5月4日	Sphairon Technologies	合勤科技 (ZyXEL)
2013年5月3日	Kugel- und Rollenlagerwerk Leipzig	瓦房店轴承集团

中国投资者在世界各地不断地收购公司并取得了许多的先进技术的所有权。中国未来经济发展的最新五年规划确定的关键行业中，德国的中型企业（德语又称“Mittelstand”）通常是的业内的全球市场领导者，我们希望未来在德国能涌现更多此类交易。

如上表所示，过去十年，中国投资者在德国进行了大量投资。虽然其中大部分都已达到投资者的战略预期，但有些却并不尽如人意。在这种情况下，已经或将有越来越多中国投资者选择再次出售其投资的德国业务，比如上工申贝集团已于2019年将其持有的H. Stoll AG & Co KG 26%股权转让给Stoll家族。

1.1.3 合作协议

基于两国间的人文交流、文化关联和相似的历史，以及紧密的合作关系和专家互动，中德两国的省、市、联邦州和地区间在科技、政治以及经济层面都开展了广泛的合作。

战略合作关系旨在加深文化、政治、投资和优惠待遇等方面的相互理解，使双方能受益于彼此的商业/投资机遇。部分中德两国地区和大城市间的主要合作关系如下表所示：

德国城市、联邦州、地区	中国城市、省
汉堡	**上海**
柏林	**北京**
德国联邦州 – 萨尔州	**天津、湖北省、湖南省**
德国联邦州 –下萨克森州	**安徽省**
沃尔夫斯堡（下萨克森州）	长春
德国联邦州 – 黑森州	**江西省**
美茵河畔法兰克福（黑森州）	广州
美因河畔奥芬巴赫（黑森州）	扬州
德国联邦州 – 北莱茵–威斯特法伦州	**四川省、江苏省**
科隆（北莱茵–威斯特法伦州）	北京
杜塞尔多夫（北莱茵–威斯特法伦州）	重庆、沈阳
波恩（北莱茵–威斯特法伦州）	成都
多特蒙德（北莱茵–威斯特法伦州）	西安
杜伊斯堡（北莱茵–威斯特法伦州）	武汉
波鸿（北莱茵–威斯特法伦州）	徐州
德国联邦州 – 巴伐利亚州	**山东省**
奥格斯堡（巴伐利亚州）	济南
弗赖辛（巴伐利亚州）	潍坊
康斯坦茨（巴伐利亚州）	苏州
纽伦堡（巴伐利亚州）	深圳
德国联邦州 – 不来梅州	**广东省、大连**
德国联邦州 – 巴登–符腾堡州	**江苏省、辽宁省**
曼海姆（巴登–符腾堡州）	镇江、青岛
德国联邦州 –石勒苏益格–荷尔斯泰因	**浙江省**
德国联邦州 –莱茵兰–普法尔茨州	**福建省**
德国联邦州 – 图灵根州	**陕西省**
德国联邦州 – 萨克森–安哈尔特州	**黑龙江省**
埃尔福特（图灵根州）	延安
罗斯托克（梅克伦堡–前波美拉尼亚州）	大连
莱比锡（萨克森州）	南京

1.2 德国简介

1.2.1 商业环境

德国是一个由16个州（Länder）组成的联邦制国家，每个州有各自的宪法、政府和独立的法院。联邦政府和议会负责关于经济政策的重要立法工作。联邦议会由直接选举产生的联邦议院（Bundestag）和联邦参议院（Bundesrat）构成，两院均由州政府代表组成。

德国经济的心脏是制造业及其配套服务。支柱产业是汽车和化工（了解更多汽车行业信息，参见2.1章节）。但生物技术、通信和数字行业同样非常重要。重工业领域，包括鲁尔地区的炼钢产业，已经陷入衰退，农业的重要性亦是今非昔比。但这些行业中得以生存的企业仍旧以其高品质和先进的生产技术而闻名。近来，能源市场展露新的发展趋势，煤、天然气和核能的传统能源生产开始向可再生能源转变，即"绿色能源"转型。当地和联邦政府通过一些倡议和补助促进绿色能源的发展，使德国几家能源行业的公司在绿色科技领域形成技术优势。此外，传统能源生产面临着更加严格的监管，比如，2022年以前逐渐弃用核能的规定导致该行业的一些公司陷入财务混乱。除绿色能源以外，德国在环保技术领域也有一些拥有多年行业经验的领先企业。近年来，由于利率较低，房地产行业呈现出积极发展态势。新的房地产项目获得投资，尤其是大城市的住宅建筑，同时，一些地段好且已建成的房产价值也出现上涨。德国是全世界最重要的贸易国家之一，进出口实力强大。它的主要贸易伙伴包括其他欧盟成员国（尤其是法国）、美国和中国。德国政府向来倡导自由贸易。欧盟设置了各种共同关税和进口限制细则，德国作为欧盟成员国自然也适用这些规则。

为保证国内市场的正常运转，联邦卡尔特局将对企业采取措施，防止滥用其市场主导地位来"过度"涨价。除此以外，《反限制竞争法》也禁止那些意在排挤竞争对手的价格政策（如使成交价长期低于成本价格的做法）。

德国的专利、工业设计和模型、商标和版权均受法律认可。执行专利和商标法会非常及时且有效，一旦发生侵权，即可要求赔偿损失。德国的知识产权法律与其他欧盟成员国的相关法律不冲突。商标一经正式注册便生效。一般情况下，商标申请历时10到12个月，若加付费用可将申请过程缩短到6个月。

自核准之日起，商标有效期为10年，每次可续展10年，期满后续展商标仍受法律保护。然而，若商标名称为日常使用词汇，或有证据表明他人更早拥有该名称的使用权，抑或该商标未使用满五年，则商标权人（或第三方）可以申请注销商标。尽管专利商标局并未对商标"使用"做任何规定，但通常商标的使用须与商品有关（如用于商品或其包装上）。

声称比商标申请人更早拥有商标使用权的第三方可随时对该商标注册提出质疑。在确定谁是优先权的商标权人的问题上，向专利商标局提交申请的日期非常关键。专利局并不会对先前其他人对商标注册提起的申诉进行调查，而是让当前的商标权人维护自己的优先权。若有异议，商标局会对比已有遭到质疑的商标和申请人的商标。很多商标纠纷最终都通过签署"划界协议"得以解决，协议规定遭受质疑的一方同意在有限的情况下使用其商标（比如，仅适用于某些商品，或更改新商标的某些具体部分部分，使其与已有商标区分开）。这类协议同样适用于让注册在前的商标权人撤回其对商标注册提出的异议。

1.2.2 货币、银行和金融

德国所用货币为欧元，且其他18个欧盟成员国（奥地利、比利时、塞浦路斯、爱沙尼亚、芬兰、法国、希腊、爱尔兰、意大利、拉脱维亚、立陶宛、卢森堡、马耳他、荷兰、葡萄牙、斯洛伐克、斯洛维尼亚和西班牙）的货币也是欧元。国内的主要商业银行是外资公司的主要资金来源。德国和外资商业银行、投资银行、储蓄银行、合作银行、抵押贷款机构和保险公司均可提供各类融资。所有主要的国际商业和投资银行均在德开展业务，它们的办事处多设于法兰克福。

法兰克福是德国的金融中心。这里有欧洲中央银行、Bundesbank（德国中央银行）、主要商业银行、政府国有资产控股公司以及德国最大的证券交易所。德国股票市场分为两类：受管制市场，进入该市场通常须获得批准；公开市场，该板块规定较少，且可根据要求给出股票报价。法兰克福证券交易所的三大板块市场（主板市场、普通市场和新兴企业市场）需要与上述两类市场区分开。在任何一个市场上市，公司都必须满足附加要求，公布财务和其他企业信息。

德国有自由的资本流动政策。普通商业交易不受外汇管制，企业也可自由在境外借贷。欧元的自由兑换使境外融资更加便利，且外汇市场无进出限制。但为了统计数据，企业须向德国中央银行的地区分行通报境内外交易。

1.2.3 外商投资

德国政府欢迎能提供新就业机会的外商投资，除法律要求向外国投资者出售防务公司须提前获得政府批准以外，对新的投资项目没有严格限制。按照对外贸易法，若有必要采取措施维护公共法律和秩序，则政府有权禁止或申请限制非欧盟成员国投资方对国内公司的（直接或间接的）收购。外商投资申请无永久货币或行政限制。

1.2.4 税收激励和补贴

德国有各种不同税收优惠激励计划，如对于东德地区购买或生产动产和组建新公司。此外，德国还有很多计划针对现代能源生产改进和效率提升（指绿色能源），比如太阳能和风能，以及住宅楼改造、环境保护、研发、医疗保健、基础设施和农业。地区和联邦政府会有不同的激励计划，欧盟也会提供补贴。对取得进展的企业可准予税收优惠、补贴、担保、贷款或参与贷款。

2. 行业聚焦

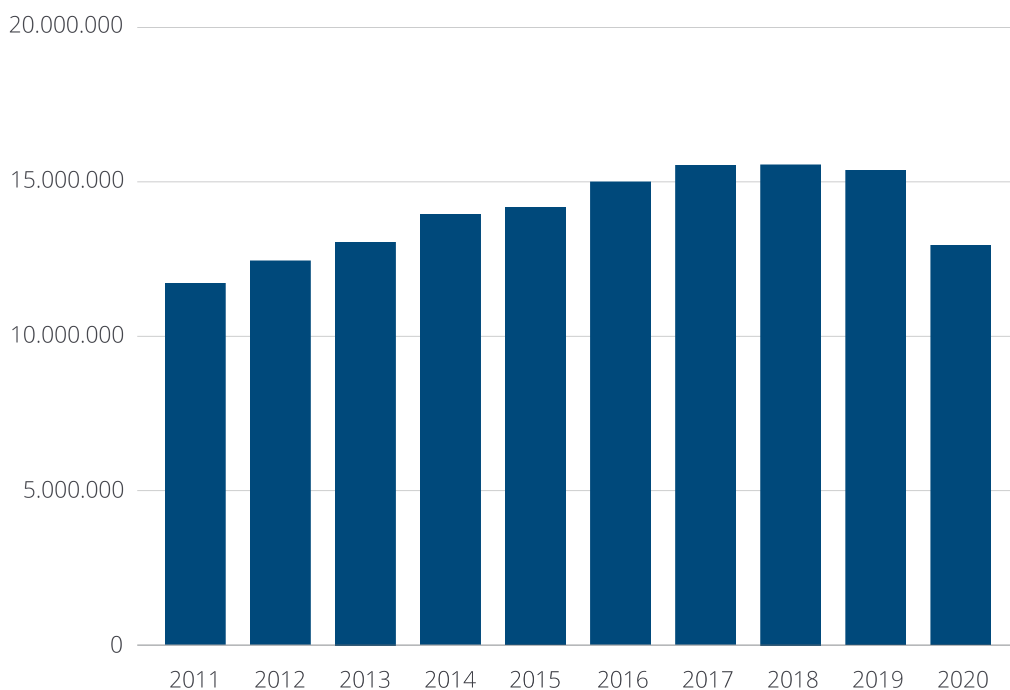
2.1 德国汽车行业

2.1.1 整车制造商

与全球经济一样，2020年全球汽车行业受新冠疫情影响显著，全球几乎所有国家的汽车销量都出现同比下降。德国汽车行业也不例外，IHS的数据显示，宝马、戴姆勒和大众的全球轻型车产量预计将同比下降16%。虽然近几个月销量出现了复苏迹象，德国汽车协会也预计2021年将逐步好转，但要恢复到疫前的销量水平，所花费的时间可能不止未来一年。

虽然销量下滑加大了财务压力，但德国整车制造商仍在大力采取措施，在战略上与行业技术发展趋势及当局大幅减排的目标（比如欧盟提出要求到2030年减少50%的二氧化碳排放量）保持一致。大众公布了一项价值220亿欧元的投资计划，拟在2025年之前推出80款纯电动车型，而宝马则与德国能源供应商意昂集团（E.ON）合作，在德国各地开发和部署4,100个电动汽车充电站。此外，特斯拉位于德国勃兰登堡州的Gigafactory已于2020年7月开工，预计将于2021年7月投入运营。这些发展动态，连同行业出现的数字化、自动驾驶和共享出行等趋势，凸显了德国汽车行业在经历了几十年相对稳定的发展后，目前正在经历的转型。

图1:宝马、戴姆勒和大众全球轻型汽车产量（单位：辆）

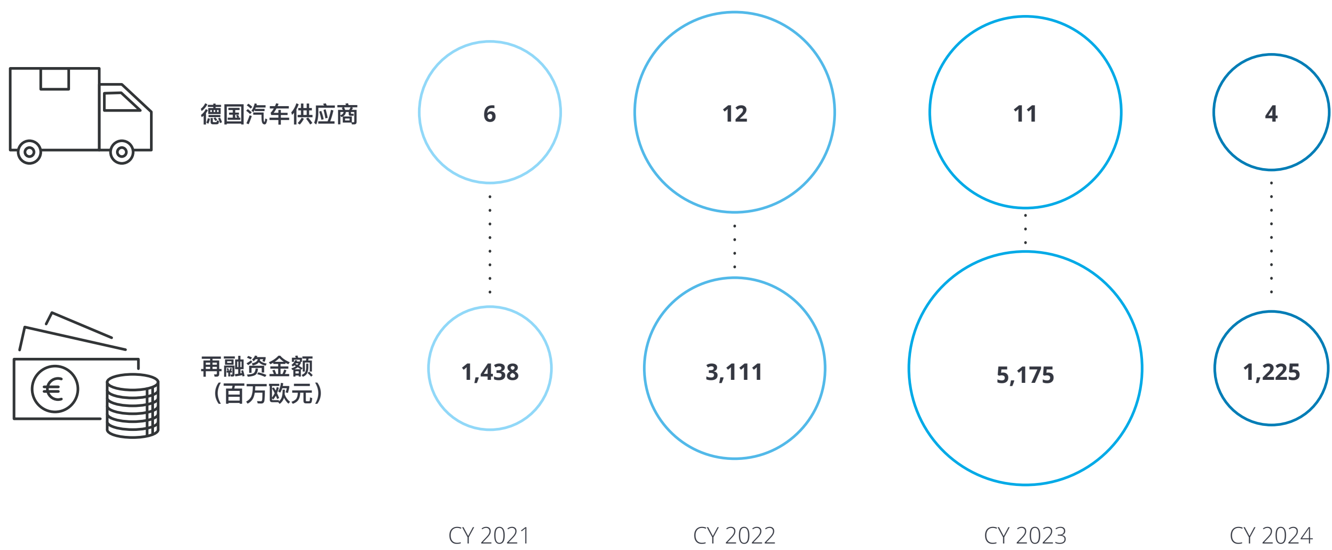


注：包括合资企业的产量，2020年数据为预测值
资料来源：IHS Markit Inc.

2.1.2 汽车供应商

与整车厂类似，新冠疫情也导致2020年德国汽车供应商的销量下降，多数情况下造成该等供应商息税折旧及摊销前利润出现更为显著的萎缩、杠杆率出现显著的上升。此外，汽车供应商行业预计将迎来新一轮再融资浪潮，2021年至2024年期间，将有超过30家供应商、总计109亿欧元的银团贷款量需要进行再融资。然而，由于行业处在巨大的技术变革当中，汽车供应商也面临着巨大的技术改造和投资压力——根据当前预测，有40%的汽车供应商需要加快动力系统技术转型，以保持生存能力。融资银行旨在将供应商的杠杆水平（负债净额/息税折旧及摊销前利润）保持在3.5倍以内，因此销售额较低和缺乏额外资金往往会限制供应商对重点业务的投资。因此，财务压力加大情况下的投资需求对供应商构成了重大挑战，很可能会使行业内重新洗牌。

图2：德国汽车供应商银团贷款情况（贷款到期期限与贷款额）



资料来源：德勤——《汽车供应商转型策略》，第15页

图3：预期发展

资料来源：德勤——《汽车供应商转型策略》，第5页

2.1.3 德国汽车行业当前热点

就主要热点而言，电气化和数字化在近期对整车制造商和供应商的影响最大。根据预测，至2025年，出售的汽车中将有超过15%的汽车采用替代动力系统。为缓解新冠疫情影响而提高的补贴也将进一步促使汽车安装替代动力系统，预计2020年至2030年，内燃机汽车的新注册登记量将比疫情前减少300万辆。尽管整车厂商和供应商会据此调整产品组合，但电动汽车大体上预计要到2023年才会实现盈利。因此，整车厂商和供应商仍需依靠内燃机技术为进一步投资新技术提供资金。由此可以预测，在未来几年内，内燃机仍将广泛应用于乘用车，在商用车和非公路用车领域更是如此。向新动力汽车的逐步转型亦显见于新注册登记车辆的预测份额分布情况，即到2030年，新注册登记车辆中内燃机汽车将占62%，替代动力车辆占32%。

在数字化方面，近年来其商业模式对整车制造商的重要性显著增加，且将持续增加，预计到2025年，整车厂商将有20%的收入来自资讯娱乐和移动服务。互联汽车的概念为整车制造商提供了众多接口，用于客户交互、售后、嵌入式软件、车载支付及其他数据化的服务（如音乐流媒体）。因此，德国所有主要整车制造商都保留着自身品牌的互联汽车服务，如BMW ConnectedDrive、Mercedes me connect、Audi connect和VW Car-Net。虽然互联汽车服务可能会使整车厂商和客户获益，但加快采用速度和扩大应用规模同样面临挑战：德国消费者中只有36%的人认为提高车辆互联大有脾益，只有28%的人愿意让整车厂商对互联汽车生成的数据进行管理。

因依赖于汽车与周围环境的互联能力，另一技术热点——自动驾驶同样也遭到了质疑。2020年，德国消费者中有45%的人认为自动驾驶汽车并不安全。然而，成熟的高端整车厂商却享有良好的声誉，德国消费者认为，最有可能将自动驾驶技术成功推向市场的将会是传统汽车制造商，而非科技公司或专注于自动驾驶的新设企业。为了提高人们对自动驾驶的接受度，整车制造商需要通过试驾或政府认证等措施，找到消除安全顾虑的方法。

共享出行作为第四大热点，有可能在未来使新车销量降低。因此，整车制造商在寻求扩大其出行服务的机会，甚至与竞争对手建立伙伴关系，例如，宝马和戴姆勒在2019年决定将双方的出行服务业务合并为一家合资企业。尽管共享出行有一定的潜在影响，但近来却丧失了一些活力，尤其是在疫情期间。根据德国一家知名的汽车在线市场最近的调查，疫情期间有超过80%的德国人选择乘坐自己的汽车出行。

德勤企业金融服务部门的汽车领域专家在并购过程的每个阶段都能为您提供帮助。凭借精深的行业专业知识，他们能够提供一系列支持，包括战略目标搜寻、目标估值、全面的买方流程管理和谈判支持。
联系人：

Philipp Gebhard
企业金融服务咨询
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2.1.4 德国汽车行业的并购机遇
德国汽车市场的转型以及新冠疫情的影响有望进一步推动并购活动。一方面，技术热点与德国优质的技术和工程教育相结合，在电动汽车、自动驾驶和共享出行等领域建立起一批初创企业和规模企业，成为颇具吸引力的投资目标，特别是在该等企业的估值普遍低于美国类似企业估值的情况下。

另一方面，由于许多汽车供应商需要外部资本投资新技术，德国实力强劲的汽车供应商市场可能会出现大量并购机会。对于中国投资者而言，德国汽车供应商不仅提供一流的"德国制造"工程技术，还能提供与德国整车厂建立联系的绝佳渠道。此外，整车厂本身也需要大量资金投资新技术。因此，整车厂为了专注于核心领域并为新的投资项目提供资金，可能会对非核心业务进行更多分拆和剥离，这对外部投资者而言可能极具吸引力，因为为了腾挪管理重心和资金，整车厂商甚至可能考虑以较低的估值出售盈利的非核心业务。疫情期间在供应方面出现的问题和近期的贸易摩擦也促使整车厂商重新考虑供应策略，放弃单一货源，特别是当供应商位于海外时。这可能会导致未来对关键零部件的国内采购数量增加。在此种背景下，对德国的并购投资可以使海外供应商建立本地能力，保持对整车制造商的吸引力。最后，随着新冠疫情的影响和行业的整体转型，不良资产并购机会可能会增多，特别是在破产申请义务（当前作为德国政府救助计划的一部分，被部分暂停）得到恢复后。陷入困境中的公司也可能成为不良资产并购的目标，它们有的虽财务状况不佳，但产品基本状况良好，其估值颇具吸引力，能够为投资者提供巨大的上涨空间。这对海外投资者，尤其是对处于汽车产业危机期间或之后积累了德国汽车业务收购和重组经验的中国投资者来说可能是一个诱人的机会。

2.2 德国生命科学与医疗保健产业

德国的医疗市场在市场容量、患者数量、医疗技术制造商数量和医疗服务供应商数量方面均为欧洲第一。2019年，德国的医疗支出超过4000亿欧元，不包括用于保健和健身的支出。过去10年间，德国医疗市场增速为4.1%。德国医疗保健领域从业人员超过750万名，出口额超过1260亿欧元，是德国的一大经济产业。

凭借着强创新力和高就业密集度，德国的生命科学与医疗保健产业推动着经济发展，创造了大量就业机会。该产业的发展比整体经济发展更稳定，因此出现一般经济活动的波动的机率也有所降低。此外，德国平均预期寿命迅速提高，2020年男性平均寿命达到78.9岁，女性平均寿命达到83.6岁。虽然作为欧洲经济中心的德国也遭到了疫情的冲击，但其生命科学与医疗保健产业并未受到很大程度的负面影响，德国的经济预计将迅速得到复苏。

2.2.1 生命科学产业

生命科学产业涵盖制药、生物技术和医疗技术三大行业。这三大行业的主要热点和发展动态如下。

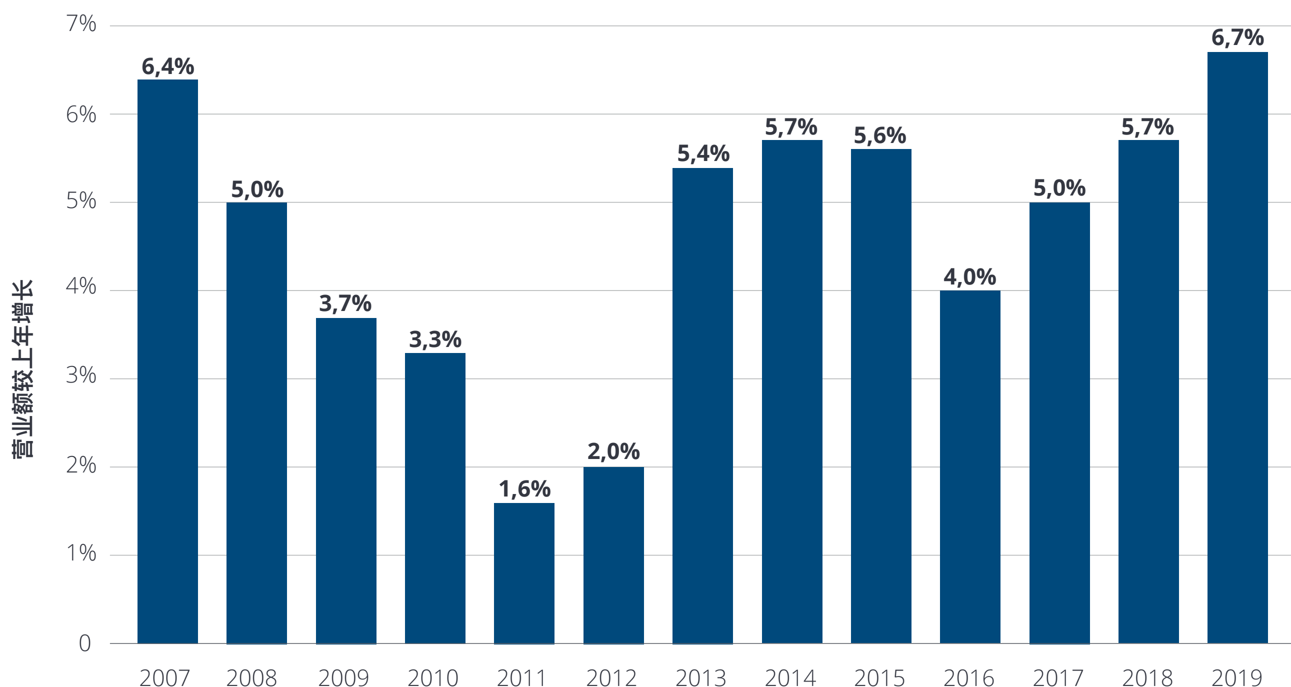
2.2.1.1 制药行业

根据欧洲制药工业协会联合会的数据，德国是欧盟最大的制药生产基地，在欧洲排名第二，仅次于瑞士（2018年产值：361亿欧元）。德国拥有500多家制药企业，产业基础坚实，基础设施效能高，地方化工实力雄厚。此外，德国还拥有400多所大学和众多专门研究机构（如弗劳恩霍夫协会、马克斯·普朗克学会、亥姆霍兹联合会、莱布尼茨协会）。

2018年，德国药品出口增长10.3%（832亿欧元），使德国成为欧洲第一大药品供应国和第二大药品进口国。

在德国所有主要行业中，制药行业的研究强度最高（2018年，研发投入占比高达12.5%）。2019年，德国有499项临床试验由研究型制药公司资助，数量排名全球第五。

图4：2007年至2019年德国整体制药市场营业额增长情况

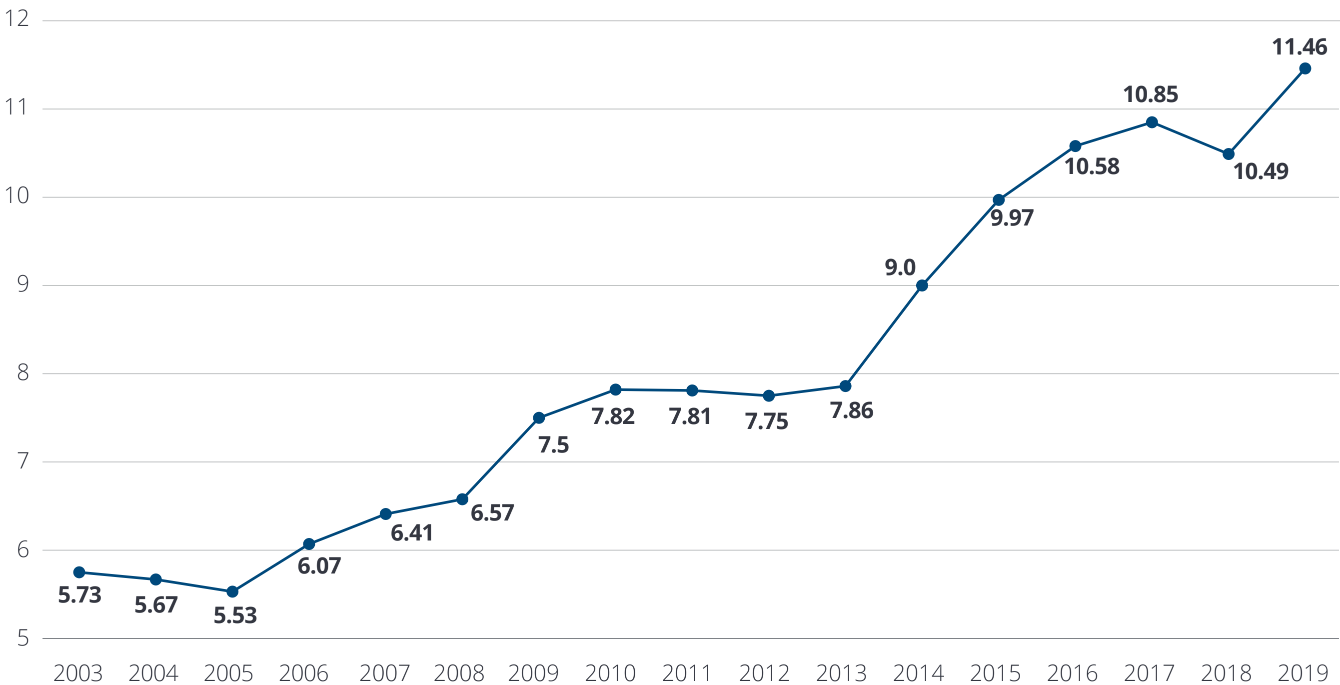


资料来源：IMS Health © Statista 2020
更多信息：Deutschland, IMS Health

2.2.1.2 生物技术行业
生物技术产品的销售业绩预计将保持稳定，到2024年将占前百名产品销量的52%。到2024年，罕用药销售预计将翻一番，占处方药销售的20%。特别是基因和细胞疗法，正在得到快速发展。在2018–2030年期间，嵌合抗原受体T细胞免疫疗法市场的年增长率预计将超过51%。2019年，德国生物技术行业的营业额从2018年的44亿欧元增至48亿欧元。

2.2.1.3 医疗技术行业
2017至2024年，德国医疗技术行业的复合年增长率预计将达到5.6%。全球医疗技术行业销售额到2019年增至4,750亿美元，预计到2024年增至5,950亿美元。按复合年增长率计算，医疗设备细分市场增速最快的预计为神经病学（9.1%）、糖尿病护理（7.8%）以及普通和整形外科/牙科（并列6.5%）细分领域。到2024年，体外诊断有望成为医疗技术行业市场规模最大的细分领域，年销售额将达到796亿美元，其次是心脏病学和影像诊断细分领域。到2024年，医疗技术行业研发支出预计将达到390亿美元。医疗器械软件是一个快速发展的创新领域，全球各地的监管机构都在努力降低医疗器械软件的风险、提高软件灵敏性。德国的医疗技术行业取得了重大进展，2003年营业额仅为57亿欧元，但2019年高达114亿欧元。

图5：2003–2019 年德国医疗技术行业营业额（单位：十亿欧元）



资料来源：Statistisches Bundesamt © Statista 2020
更多信息：Deutschland, Statistisches Bundesamt

2.2.1.4 欧洲生命科学领域并购活动

在市场领先药物新一代产品研发需要持续投入而自行研发带来的回报不断下降的情况下，外部交易，包括许可、并购和/或合资交易，成为生物制药公司极具吸引力的创新渠道。此外，受政府监管、专利权丧失以及仿制药和生物类似药不断推广的影响，制药行业预计将持续面临定价压力。为应对这些压力，一些制药公司正在通过收购竞争对手精简营销人员，或采购不存在低成本替代品的独特疗法。

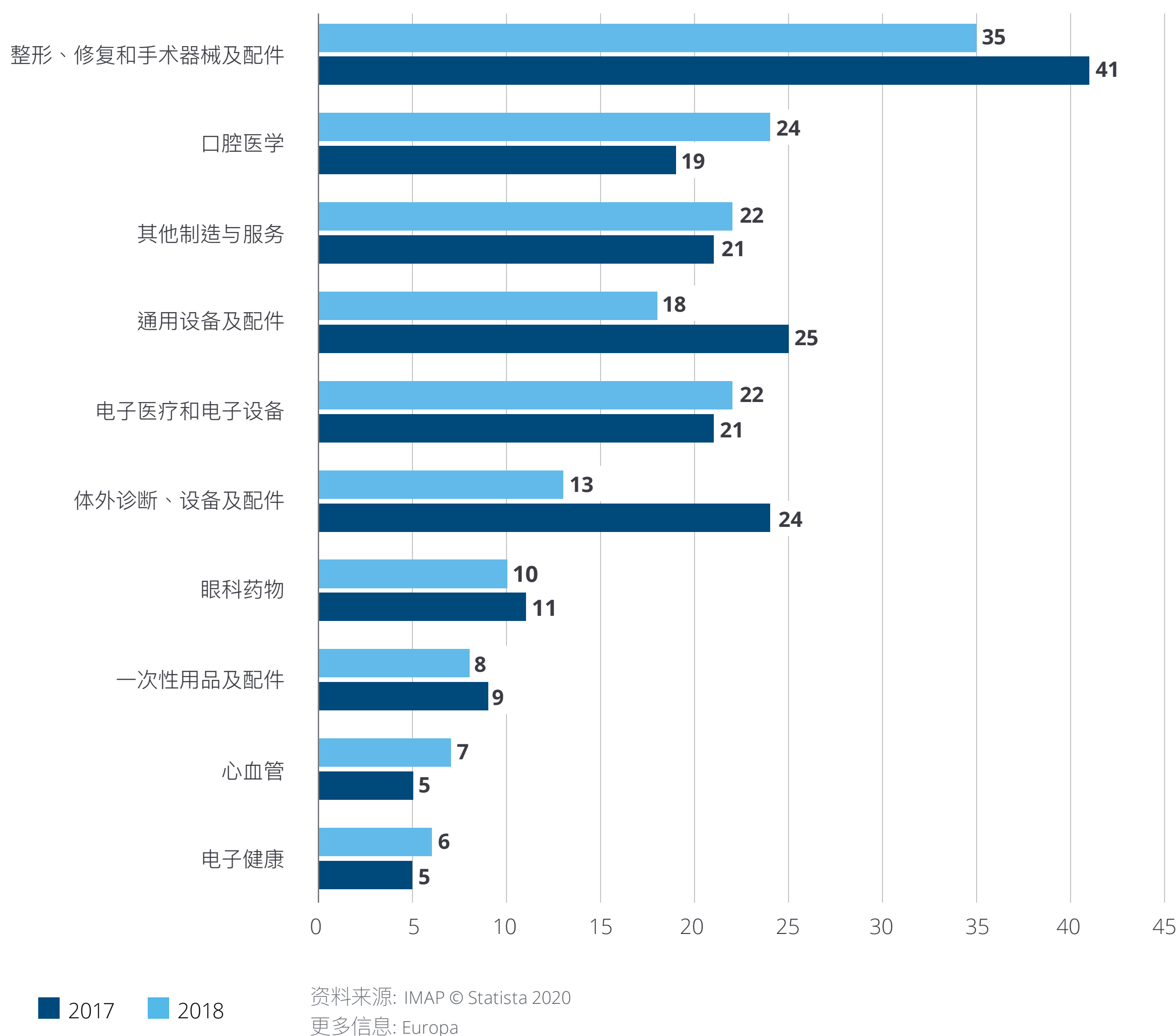
进行下一代疗法开发的公司中只有少数几家为大型制药公司，而专注研究基因类疗法的初创公司有250多家。未来，此类初创公司更有可能发生合并，并由此形成一种新型公司，该类公司拥有截然不同的文化，以创新和生命科学为核心。

2.2.2 医疗保健行业

随着德国人口的老龄化程度不断加深，医院和护理设施的重要性也不断上升。德国是欧洲最大的医疗保健市场，其医疗保健支出不断提高（2018年创3,906亿欧元新高）。2018年，德国医疗保健支出约占其GDP的12%。2019年，德国年度医疗保健支出超过4,000亿欧元，随着人口结构变化、慢性病患病率不断上升和新冠疫情爆发，预计这一支出将进一步增加。

在住院治疗方面，德国有1,900多家医院，拥有近50万张病床（不包括康复或老年人护理设施）。由于规模较小的综合医院关闭或与其他医院合并以提高效率，医院总数不断下降，但其中的私营医院占比却在不断上升。

图6：2017–2018年欧洲医疗技术行业并购交易数量（按细分领域划分）



资料来源：IMAP © Statista 2020
更多信息：Europa

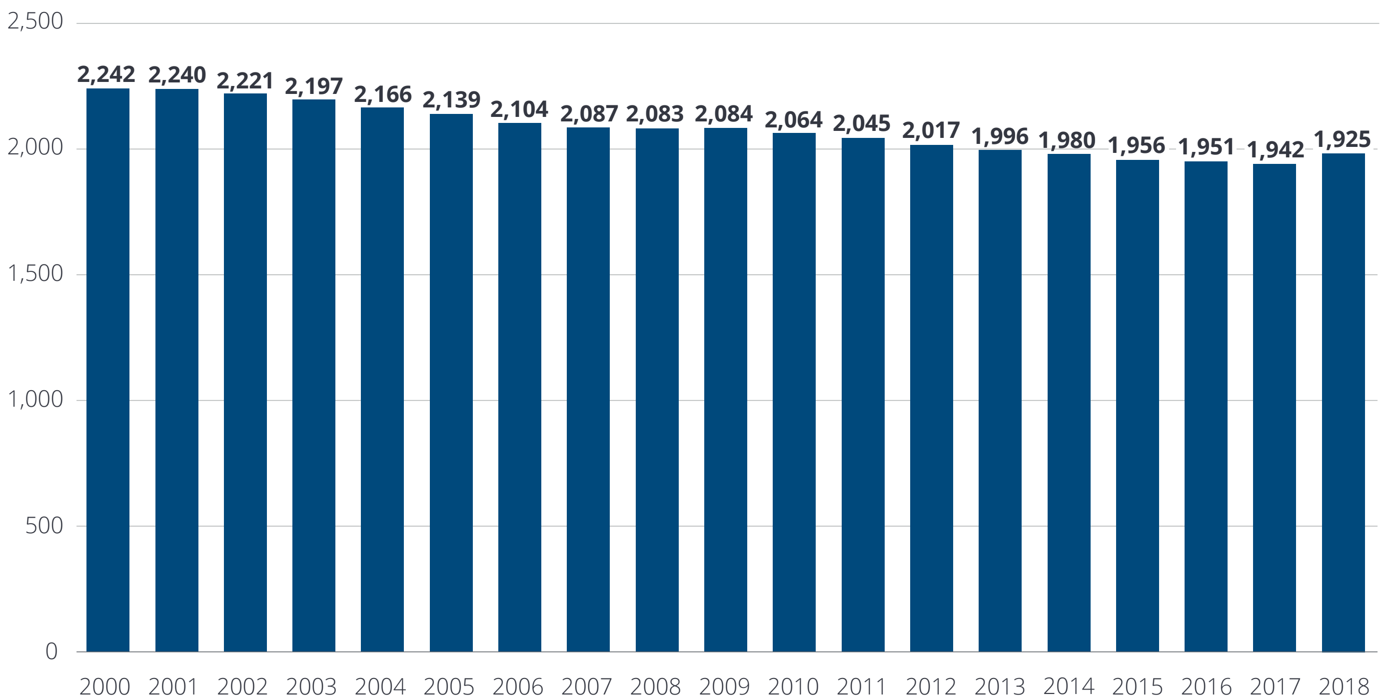
2.2.2.1 德国医疗保险
德国几乎实现了全民医疗保险；医疗保险在德国是法定的,保险费由雇主和雇员共同承担。德国绝大多数人都参加了公共医疗保险计划。约有10%的人选择私营医疗保险机构。无论是公立还是私营保险，人们可以自行选择医疗保险提供机构。目前德国有105家公共医疗保险公司和42家私营医疗保险公司（2020年）。政府于2017年批准了《德国药品法》，旨在确保社会医疗保险财务稳定，并将针对所有无专利药品的限价令延长至2022年。

2.2.2.2 最新动态
由于医疗资源供给与需求之间的差距不断扩大，绝大多数国家希望通过数字化转型来弥合这一差距。

德国联邦卫生部推出新的投资计划，帮助德国医院推动医疗领域数字化转型。共计43亿欧元的资金可供医院投资于现代化应急能力、数字化和IT安全建设。医院未来计划将通过实施《医院未来法案》（“Krankenhauszukunfts-gesetz”）和建立医院未来基金（“Kranken-hauszukunftsfonds”）来加以执行。

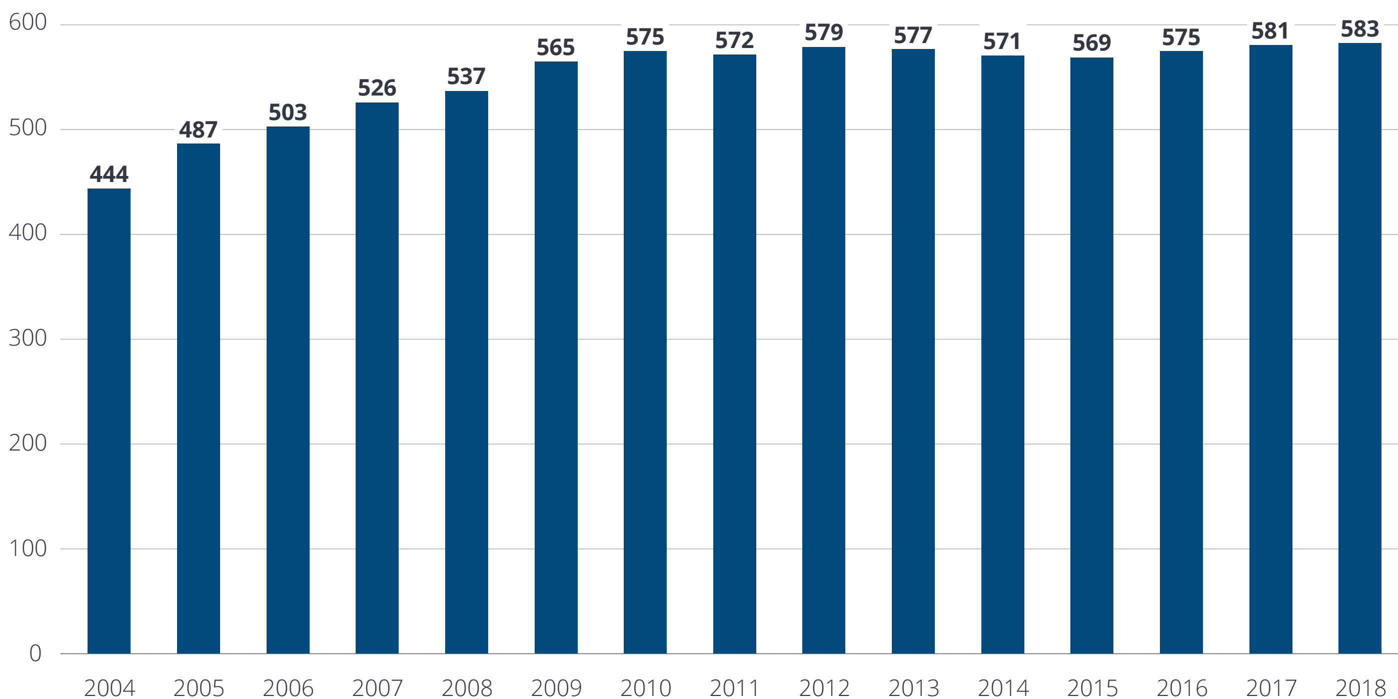
医院未来计划旨在促进医院的长期转型发展，为实现该目标，该计划尤其聚焦数字化和IT基础设施相关措施。

图7：2000–2018年德国医院数量



资料来源：Statistisches Bundesamt © Statista 2020
更多信息：Deutschland

图8：2004–2018年德国私立综合医院数量



资料来源：Statistisches Bundesamt © Statista 2020
更多信息：Deutschland

德勤对德国的医疗保健生态系统有着全面而深入的了解，拥有众多创新参与者，致力于塑造健康的未来。
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Michael Dohrmann
德勤管理咨询
mdohrmann@deloitte.de

2.2.3 生命科学与医疗保健行业展望

越来越多的制药公司可能会采取外购的方式，获取人工智能、机器人、认知自动化和云计算等先进技术相关的专门知识，以提高效率、降低成本、缩短临床时间。在医疗物联网中，大小型公司都需要通过合作将医疗设备网络安全方面的生态系统风险降至最低。除医疗物联网外，推动生命科学数字化转型的其他领先技术还包括AI、机器人自动化、医疗器械软件、区块链、DIY诊断、虚拟护理、药物递送和临床试验相关的移动技术、基因组学、下一代疗法、云计算、实际循证和以数据为导向的精准医学。

3. 监管环境

德勤为设立公司提供相关服务，并帮助确定合适的公司形式。
联系人：

Michael Fischer
博士，德勤法律
mifischer@deloitte.de

3.1 公司法和设立公司

3.1.1 设立公司的手续

两类最常见的公司是

- 股份公司，适用于《股份法》，和
- 有限责任公司，适用于《有限责任公司法》。

为避免引起误解：有限责任公司以其全部净资产为限对债务承担责任，股东对公司承担有限责任。公司可接受法定最低资本资助，但公司股东无义务为公司继续出资，除非另有规定。一些公司结成股份有限的商业合伙关系（股份两合公司）。

最常见的非公司经济实体有：

- 有限商业合伙关系（两合公司），至少由一位承担无限责任的合伙人（普通合伙人）和承担有限责任的合伙人（有限合伙人）组成，和
- 普通商业合伙关系（无限责任公司），合伙人承担无限责任。

普通合伙人可来自有限责任公司，有时有限责任公司的成立仅仅为了在无限责任公司任普通合伙人（则公司名称必须含有"有限责任两合公司"字样）。有限责任两合公司综合了有限公司和两合公司的优势。由于合伙制和企业等多种公司形式存在，具体的法律法规仅在某些方面适用于有限责任两合公司。

在德公司必须在当地法院商业注册处登记。外国企业在德设立子公司，股份公司或有限责任公司的注册非常关键，因为根据德国法律，母公司应为子公司的初始股东，且在某些特定情况下，新成立股份公司或有限责任公司的法人代表应承担法律责任。

股份公司的组建程序很复杂。尽管股份公司发行股票不需要获得任何许可，但公司创始人必须起草公司的章程，内容应包括：公司的名称、在德国注册的办公地址、经营对象、股本总额、公司股票面额和类型、管理层委员会成员数量或委员会成员选拔程序。须有一名公证人将公司的章程记录在案。公司创始人任命第一监事

会, 其成员则任命管理委员会成员。监事会和管理委员会成员负责监督公司的组建过程。某些情况下需要法庭指派稽核员作额外的审查。公司须向其办公地所属辖区的商业、省级或地区法院提交申请。同时, 还须提交公司章程的记录凭证以及认缴和受捐协议、公司组建成本、所有管理委员会的任命文件、创始人的公司组建报告、以及创始人的股票支付凭证。在公司章程得到公证, 且公司的所有股本得到认购 (仅需支付25%) 之后, 一旦完成登记注册, 股份公司即宣告成立。

组建有限责任公司的程序与此相似, 但更简单。有限责任公司的公司章程对公司主要业务目标的详细要求更少, 最低资本金要求更低, 手续更简便, 且法律监管和商业交易也更灵活。但有限责任公司的股票不得在证券交易所交易。

与股份公司相似, 有限责任公司在工商登记处注册后即成立。注册前, 有限责任公司的法人代表个人对公司承担责任。公司创办人须对公司章程内容达成一致, 包括公司名称、公司所在地 (须在德国) 、业务对象和资本额 (包括每一位股东的认缴额) , 最低注册资本要求为2.5万欧元。上述信息须得到公证, 并在商业登记处备案。

公司的官方名称必须出现缩写"GmbH"的字样。认缴25%的股本之后, 公司的登记注册方有效, 注册时最低认缴额度须达到1.25万欧元。认购股本少于2.5万欧元也可组建有限责任公司 (称为"迷你有限责任公司") 。在这种情况下, 法定准备金积累和公司名称须遵守附加规定。

外籍人士也可任股东, 只要他们有在母国的户籍, 便不需要居住或工作许可。主管合伙人也可以是外籍人士, 但必须持有居住许可 (对此默认非德裔欧洲公民符合要求) 。如果该主管合伙人并非正式员工, 则不需要工作许可。某些国家已就此签订了一些特殊协定。

有限责任公司是比较受外国投资者欢迎的公司类型。他们希望将投资活动风险限制在他们在德国的投资总额内, 且并不打算在资本市场进行融资 (要求采用股份公司的法律形式) 。

欧洲的股份公司, 亦称欧洲公司, 必须在其总部所在地注册, 并遵守该国国家机构的监管。欧洲公司的股票不需要在任何证券交易所上市, 但如果其股票已在交易所上市, 则应与股份公司适用于同样的法律。

3.1.2 主要企业实体类型的特征

对股份公司的规定

资本。最低注册资本要求为5万欧元。组建公司时现金摊缴（总额不得低于最低注册资本）须达到至少25%的注册资本，且所有资本均须得到认购。如果股份公司不仅仅为了名义价值而发行股票，则最低25%的摊缴资本应包括股票溢价（常称为贴水）在内。资本也可以工厂、机械、专利和专业知识等形式摊缴。现金摊缴必须100%支付，且应接受法院指派稽核员严格的估值。一笔等同于税后年利润5%的款额须存入法定准备金账户，直至准备金积累至股本的10%。如果股票的发行价超过票面价值，则股份公司资产收益表中记录的票面价值应记为"认缴资本"项下，而溢价部分须转移至并计入股份公司的准备金账户。

创始人和股东。一个人也可以组建一家股份公司，且没有任何国籍或户籍限制。

董事会/监事会。监事会须至少有三位以上成员且不超过21位。董事会成员不超过10位。母公司代表可在附属公司15个董事会席位中，获得最多五个额外的席位。对董事的国籍和户籍无限制。股东大会选举股东代表列席董事会，任满一届（任期一般不超过5年，具体任职期限取决于并与年度大会上是否决定在代表任期第四财年时解除任命有关。各项条款均适用于第一监事会监管。）如果适用，员工或其委托人将选举员工代表，任期也为5年。当然也有可能重新选举。在员工超过2,000人的公司，员工在公司监事会占50%的席位。而在规模为500至2,000的公司，员工代表须占监事会三分之一的席位。

管理。监事会负责任命管理委员会成员，任期不超过5年。每一位成员均有机会连任。股东一般不担任经理，且该职位没有国籍和户籍限制。尽管管理委员会成员最少可为一位，但注册资本超过300万欧元的股份公司必须至少有两位管理委员会成员（除非公司章程另有规定）。

假定股份公司有超过5名正式员工（股份公司应至少雇佣3名员工），则员工有权成立职工委员会，在一些社会和人事决策中发声。

税收和费用。德国不对公司或增加的资本征税。在商业登记处注册和公证公司章程的成本取决于公司的股本以及公司的律师是否能够起草公司章程。若股票溢价发行，则溢价视作应税收入。

股票类型。股票的最小面值为1欧元。股份公司必须发行普通股，但也可以发行优先股（通常为无表决权股票），发行量不超过普通股。各类有表决权股票通常不允许自由流通，而无表决权股票可以。尽管记名股票可自由流通，但不记名股票也很常用。记名股票与传统的无记名股票具有同样的法律效力，尤其是在计算机交易中。

控制。在股东会议中仅依据少数服从多数的原则即可批准大多数的活动，重要决策需要超过75%的股东表决通过。如果持有至少5%或50万欧元的股本（视情况而定），则可以：召集临时股东大会（持有至少5%的股本），或为大会议程提供选题（持有至少5%或50万欧元的股本）；如果决策显示为"经济上不切实际"时，可对股东大会关于准备金的决定提出异议（持有至少5%或50万欧元的股本）。如果持有至少1%或10万欧元股本，当商业报告不完整或存在错误或资产估值过低时，则可要求开展专项审计。如果持有至少10%或100万欧元股本，股东可对委员会成员强制发起投票表决。

对有限责任公司的规定

资本。最低注册资本要求为2.5万欧元，但仅用缴付1.25万欧元，包括实物存款。公司注册登记的法院须对组建该有限责任公司的团体或个人缴付的实物资产进行估值。承担有限责任的创业型企业（"迷你有限责任公司"）的最低注册资本为1欧元。当注册资本增加到2.5万欧元或以上时，则承担有限责任的创业型企业所需的法定准备金应为年收益的25%。

创始人和股东。公司最少应有一位初始成员，初始成员可以是公司或民营合伙制企业。公司的官方名称必须出现缩写"GmbH"的字样。承担有限责任的创业型公司的官方名称须含有"Unternehmergesellschaft (haftungsbeschränkt)"或"UG (haftungs-beschränkt)"字样。

董事会/监事会。若公司员工超过500人，则须成立监事会。监事会负责管理公司，且一人不能同时兼任董事和经理两个职务。监事会必须有至少3名成员。对员工在监事会席位比例的规定与股份公司一致（参见上文）。

管理委员会。允许公司有一位或几位经理。委员会成员可依据公司法规制定管理流程。股东无须为经理。

外资企业的分公司

外资企业在德设立分公司无须得到许可。分公司（不同于子公司）并非独立的法人实体，无总公司授予职权之外的权利和义务。分公司被归类为没有自身企业背景（比如代表处）的附属企业或充当独立的贸易实体。仅独立的分公司须在商务注册处登记。两类分公司享有同等的税收待遇。

分公司与子公司的披露要求不一样。在公司创业阶段，分公司的优势是依据本国的税收制度，利用本国的应纳税收入抵消外国投资者在德国的创业损失。但在分公司转变为德国企业后，公司通常会获得认可，尤其是对其商誉的认可。欧盟地区公司适用于不同的法规。境外总公司需对分公司的债务负责；但原则上，母公司无须承担子公司可能产生的债务。

外资公司可能会在当地商业注册处登记，以设立独立的分公司。必须在分公司所在地区的法院完成注册登记。分公司经理无须有德国国籍，且不受户籍限制。在申请注册登记时，外资公司必须提交经核证的公司章程（包含德语版本）副本，以及详细的总公司和分公司信息，如业务对象、股本额以及董事会组成信息。

境外投资计划中需要考虑的关键因素包括公司法律及税务问题。德勤拥有各个相关领域的专业团队，能针对这些问题提供全面咨询服务。
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3.1.3 税务结构考量
中国企业在德国投资需要考虑一些特殊的税务因素。中国投资者往往将香港作为境外投资枢纽，这样做的原因有很多，包括外汇、国际化环境和英语能力，流动性强且监管得当的资本市场，资金来源、未来企业上市以及税务方面的考虑：香港可免交股息红利税，而中国大陆则要征收25%的税率。

但从税收角度来看，香港似乎并不是借用控股公司在德国等国家开展投资的理想地。香港和德国并未达成任何税务协定，开展直接投资需要承担高额的预扣税和总税收负担。因此，我们需要考虑如何减轻税负。

降低德国预扣税的普遍做法是通过控股公司转移。通常可以选择一个欧盟国家，利用《欧盟母子公司指令》将股息预扣税降至为零。但这需要满足两个条件：该控股公司拥有一些经营实体，以达到德国法律规定的前提条件。另外，该控股公司的所在地不对股息流征税。过去的首选地是卢森堡与荷兰。

假如不能在另一个理想地成立经营实体，可以通过合伙企业形式（有限及两合公司）进行直接投资。这是德国中型市场（中小型企业）普遍采用的公司形式。在德国，一家合伙企业通常需要承担与经营公司（有限公司）相当的税负。但是，将资金汇回本国不算作股息，因此不用缴纳股息预扣税。汇返本国资金在香港通常无需缴税。

然而，要将资金汇回中国大陆，则需要考虑其境外税额抵免政策。

另一个降低实际税率的方法是通过债务融资进行德国投资。为此，需注意德国的利息限制规定。支付利息通常无需缴纳预扣税，且德国与香港（而非中国大陆）之间存在巨大的税收套利，因此应当利用债务融资能力。

在收购（或成立）多个法律实体时，应考虑采用合并纳税，以整合所有实体的税务结果。

3.1.4 许可协议法律体制

签订许可协议或向国外支付特许权使用费并不需要政府批准，也不需要与德国专利商标局签订许可协议和技术援助协议。一般情况下，许可协议根据销量（通常是单位销量）计算费用。许多协议规定了每年必须支付的最小特许权使用费金额，该金额不受实际销量影响。

反垄断法是在德国获得专利使用许可的主要限制因素。虽然根据欧盟《技术转让集体豁免条例》，许可方可以对被许可方加以限制，比如在满足特定条件的情况下，被许可方只能在某一地区生产授权产品，《欧共体条约》仍禁止签订任何限制竞争的合同。同时，《技术转让集体豁免条例》只有满足以下条件才适用：双方市场份额总和在有竞争对手的情况下不超过20%，无竞争实体的情况下不超过30%。
根据德国和欧洲反垄断法规定，针对非销往欧盟国家的产品，许可方有权向被许可方执行欧盟境内出口禁令，该出口禁令不会对竞争环境和内部市场结构造成明显影响。虽然许可方不会规定具体的产品出口目的地国家，但许可方会将产品出口目的地国家限定在欧盟国家范围内（除非将产品出口到非欧盟国家的（潜在）禁令对竞争环境和内部市场结构不会造成明显影响）。

在能够保持授权产品技术标准的情况下，可以开展搭售活动。许可方不会限制拳头产品的经营和定价，因为此类限制超过了专利权保护范围或其他保护权限，且会对被许可方的商业活动造成限制。根据《技术转让集体豁免条例》，如果是独家特许权，相关方会签订条款，禁止被许可方直接或间接对一项或多项特许产权的有效性提出异议。

若特许权包括更长期的技术经验和技术支持条款，则许可协议有效期将超过该协议所授权的专利使用期限。许可协议的有效期取决于这些额外条款的有效期。技术经验被视作一种可授权的产权。德国未对初始专利衍生出的其他产权的授权做出限制。

德勤能够为客户提供企业重组相关服务，帮助客户理解和达到税务中立重组的要求。

3.1.5 并购
根据《反限制竞争法》内容，以下情形构成合并：

- 取得另一企业的全部财产或者财产中的主要部分；
- 一个或多个企业取得对另一个或多个企业的全部或部分的直接控制或间接控制的。这种控制建立在权利、合同或其他手段的基础上，如果考虑所有事实上或者法律上的情况，这些权利、合同或其他手段，单独或者共同保证了对企业活动产生特定影响的可能；
- 取得另一企业的股份，使所购股份本身或者与企业已经取得的股份共同达到或超过另一企业资本或表决权的50%或者25%（间接或直接）；
- 使一个或者多个企业能够直接或者间接地对另一企业施加竞争上的重大影响的其他任何形式的企业联合。

参与合并的企业先前已经进行了合并的，仍然要认定合并，除非合并不会从实质上加强已存在的企业联合。

信贷机构、金融机构或者保险企业为了事后转让而获得另一企业的股份，只要没有行使股份中的表决权并且在一年之内转让成功的，不视为企业合并（"银行条款"）。如果可以证明，在一年之内转让股份是不可合理期待的，可以向联邦卡特尔局申请延长这一期限。

根据最近颁布的条例，在德国，收并购满足以下情形时，须通知联邦卡特尔局：

- 参与合并的企业在全世界的总销售额超过5亿欧元，并且
- 至少有一家参与合并的企业在德国国内的销售额超过5,000万欧元，并且
- 另一家参与合并的企业在德国国内的销售额超过1,750万欧元。

或

- 所有参与合并的企业在全世界的总销售额超过5亿欧元，并且
- 有一家参与合并的企业在德国国内的销售额超过5,000万欧元，并且
- 目标企业或任何其他有关企业在德国国内的销售额均未超过1,750万欧元，
- 收购对价超过4亿欧元，并且
- 目标企业在德国有大量业务。

此外，如果某些特定行业曾接受过行业调查（在《反限制竞争法》第10次修正案生效后进行），联邦卡特尔局可以颁布法令，责令特定行业内的企业公布三年内的合并情况。对于采购企业，如其在全世界的销售额达到5亿欧元，并在德国国内供应（或买方需求）中占有15%及以上份额，且有迹象表明其未来发生合并将严重阻碍行业内的有效竞争，则需向联邦卡特尔局通知合并情况。通知义务只适用于目标企业销售额超过200万欧元，且其中有三分之二以上是来源于德国的合并项目。

计算是否达到最低销售额时，须考虑参与合并企业的从属企业的销售额。满足下列情形的，均视为参与合并企业的从属企业：

- 《股份法》意义上的从属企业或支配企业以及 《股份法》意义上的企业集团；
- 由参与合并的企业完全控制或联合控制的企业。反之，能够对参与合并的企业产生决定性影响的企业。

如企业发生的合并对德国市场不构成影响或相关企业的销售额未满足最低销售额标准，则企业无需就所发生的合并向联邦卡特尔局发出通知。

根据第139/2004号理事会（EC）条例规定，具有共同体意义的合并受欧盟委员会管辖，且需上报。欧盟对符合以下两个条件的企业合并案件行使管辖权：

1. 参与合并的企业在世界范围内的年销售额共同达到50亿欧元以上；并且参与合并的企业中至少有两个企业在欧盟的年销售额达到2.5亿欧元；同时，参与合并的各企业在共同体市场年销售额的三分之二以上不是来自一个成员国；

2. 参与合并的企业的所有业务在全球的年销售总额超过25亿欧元；参与合并的企业中至少在欧盟3个成员国的共同市场年销售额超过1亿欧元；参与合并的企业中至少有2个企业各自在欧盟上述3个成员国的市场年销售额超过2,500万欧元；参与合并的企业中至少有2个企业各自在欧盟市场的年销售额超过了1亿欧元；参与合并的各个企业在欧盟市场年销售额的三分之二以上不是来自一个和同一个成员国。

不在委员会管辖范围内的，但至少可以按照3个或3个以上成员国竞争法进行审查的合并，相关企业可以移送给委员会处理。在15日内无相关成员国提出反对的情况下，委员会才会开展"一站式审查"。

《重组税收法案》对企业重组的税收影响做出了相关规定。在满足一定条件的情况下，可在税务中立的原则下开展企业重组——合并、分拆及出资，且不可影响德国向收购主体或转移的资产征税的权利。德国联邦财政部针对企业重组的税收影响出台了一项全面法案。

3.1.6 卡塔尔禁令

卡特尔禁令禁止企业间签订以限制竞争为目的或造成此类影响的合约。反垄断法将竞争对手之间签订的协议和非竞争企业之间签订的协议区别开，以界定反竞争行为。以下是一些反竞争协议的示例。

竞争对手间签订以下类型的协议属违反卡特尔禁令的行为：定价、划分顾客或市场、限制销售和生产以及串通投标等。另外，竞争企业间交换敏感信息（如与价格相关的信息、顾客信息、成本信息、产量信息）也属于违反卡特尔禁令的行为。

诸如维持转售价格以及顾客和地域限制类型的纵向关系协议——即活跃于经济圈内不同层面的市场参与者（如生产商、经销商或代理商）间签订的协议——属违反卡特尔禁令的行为。欧盟针对纵向限制竞争的行为所制定的法规——卖方在卖出合同货物的市场所占的份额不超过30%，同时买方在购买合同货物的市场所占的份额不超过30%的情况下适用——允许制定某些特定的限制性规则，如非竞争条例、最惠条款以及排他性条款。

3.1.7 垄断与竞争限制

在德国，市场支配地位本身不违法，但滥用市场支配地位则是违法行为。如果一家企业（作为货品或服务的卖方或买方）没有（有效的）竞争对手或者相对于竞争对手拥有绝对优势，那么这家企业就拥有市场支配地位。市场支配地位可能体现在企业的市场份额、财力、获取销售及采购市场的渠道、与其他企业联合采取市场封锁或通过其他阻碍措施阻止其他公司进入市场。若一家企业的市场份额达到40%以上，则该企业占据市场支配地位。

德国联邦卡特尔局也有权宣告一家企业“在多个市场占据绝对竞争优势”。此举旨在限制大型数字化企业的市场支配力。除一般反滥用规则外，德国联邦卡特尔局在发布单独的决议后，还可运用其他专为保持各市场开放而设计的措施。

三个或三个以内企业组成的企业集团联合控制市场一半的份额，或者五个或五个以内企业组成的企业集团联合控制市场三分之二的份额，这样的企业集团则被视为占据市场支配地位。若联合市场份额占主导地位的企业能够证明他们之间的竞争不会产生支配市场的作用，或者相比其他竞争对手，该企业集团不具备控制市场的能力，这样的企业集团则不被视为占据市场支配地位。企业利用市场支配地位对其他市场参与者造成实际或潜在的阻碍，或者价格设定过高或过低，均被视为滥用市场支配地位的行为。

德勤能够通过组建由法律专家以及风险管理和内部控制系统专家所组成的团队，为投资者提供有效建议，让投资者了解哪些流程和信息是必要且可通过合法渠道获取的。

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3.1.8 投资者获取信息的权利
投资者希望定期了解公司的某些信息。个别情况下，有限公司的股东会要求拥有法定的（少数）信息及审查权。除此之外，投资者通常希望获得管理委员会或监事会所提供的更制度化和稳定的报告。有限公司通常将保护股东隐私视为最重要的原则，而股份公司则普遍将权限严格分配到股东或管理委员会或监事会。股份公司由管理委员会负责指挥公司，而有限公司则由股东通过股东决议向管理层下达指令（根据情况，可以基于一位投资者/股东及其利益下达指令）。因此，股份公司主要通过财年期间以及年度股东大会上正式报告的形式与股东分享信息；相反，在有限公司，若股东基于股东决议提出要求，则公司必须按规定执行股东要求（如获取信息的要求）。

虽然股份公司和有限公司存在以上差异，但两类公司的管理层以及监管委员会和成员通常会在各自的公司职责，有时是股东相关职责方面存在冲突。按法律规定，管理委员会成员及监管委员会成员均有严格保密义务。对于某些信息是否应当视为必须严格保密、不可泄露的机密信息或者商业机密，学术文献和司法界均存在大量争论。若某类信息被界定为机密信息或商业机密，违反相关义务则被视为刑事犯罪。鉴于德国法律存在以上含混情况，投资者最好在企业章程或股东协议中明文规定自身在法律允许范围内可享受的权利，如获取信息和报告的权利、相关审查与稽核的权利、将信息提供给母公司和第三方（如监管机构）的权利。

3.2 劳动法

3.2.1 雇员权利与薪酬

德国未针对雇佣的某一个或多个方面设立单独的法律。劳资关系主要受工会与雇主协会间集体谈判协议的影响。

德国《民法典》监管劳动合同。《商法典》有涉及劳资关系的部分，同时也包含商业性机构相关的规章制度。此外，还有几部成文法对劳资关系的某些方面（例如病假或休假期间继续支付工资）做出了规定。

德国劳动法依照欧盟指导方针，管理集体谈判协议。雇员进公司一个月内，雇主必须将劳动合同条款形成文件。若劳动合同中没有法律选择条款，雇员的主要活动位于德国境内时，法院须采用德国法律，即使雇主是外国公司也一样。假如雇员在国外工作，没有法律选择条款，则采用分公司所在国的法律。

任何公司只要员工人数达5人以上，员工则可以成立劳资委员会，帮助解决员工问题（如工时、休假安排、薪酬结构、计件工资和奖金）。许多影响工作环境的改变都必须与劳资委员会商议（如改变生产方式与设施）。另外，劳资委员会还在员工招聘、调动或解雇方面有重要发言权。

员工参加企业管理法从监事会层面对劳资委员会和员工代表做出了规定。一般而言，企业员工超过100人，劳资委员会可推举产生经济委员会，负责与管理层探讨公司决策，并传达给劳资委员会。一般而言，员工人数超过500人少于2,000人的企业，员工代表须占监事会三分之一席位。公司员工人数超过2,000人的企业，监事会一半成员必须从员工代表中产生（煤炭和钢铁行业，其规定与之类似，但均为单独规定）。

德国对工作时间有法律规定。受集体法管辖的协议（如劳资委员会协议）对工作时间做出了详细规定。正常工作日的工作时间为8个小时，如6个月内平均每个工作日的工作时间不超过8个小时，则一天的工作时间可延长至10个小时。原则上，星期天和公共假期禁止工作。医疗、餐饮、运输和农业行业存在例外情况。允许轮班工作，两班之间通常须保证基本11个小时的休息时间。集体谈判协议和劳资委员会协议对轮班工作有具体的规定。员工如果加班，雇主通常提供额外加班费或额外休假时间。有行政职能的员工通常不能享受加班费。

全职员工每年最少休假时间为20个工作日（一周5天工作制）。集体劳动合同规定员工每年平均休假30天。

3.2.2 工资与福利

(最低) 工资

德国《最低工资法》于2015年1月1日正式生效。此后，德国员工有权享受最低工资标准。自2021年1月1日起，德国的最低工资标准为每小时9.50欧元（2021年7月1日将调整为每小时9.60欧元）。该法律适用于所有在德国提供服务的人员，不论服务时间长短。因此，最低工资也适用于派遣到德国的外国员工。不在最低工资保护范围内的情况较少，如某些实习类工作。除最低工资规定外，《最低工资法》还包括雇主可能承担的提供文件和汇报义务相关内容。
此外，许多行业的最低工资由集体谈判协议规定。外资公司的工资与德国国内公司的工资基本一致。
在未遵守最低工资标准的情况下，雇主可能面临被当局罚款的风险，后续雇员也可能要求其补足最低工资差额。
虽然有最低工资限制，员工的工资仍受地区、工龄和技术的影响。大城市的工资通常高于农村地区。

养老金

现收现付养老金制度增加了现收现付筹款形式。国家养老金体系根据付款方式提供相应的纳税优惠条件。私营企业员工享有法定社会退休福利(国家养老金)，《个人养老金计划法案》鼓励私营企业员工制定以个人资产为保证的养老金计划。个人养老金缴费不征税，免税额度限于养老金计划法定的免税范围。《养老金法》逐渐将免税范围扩大到国家养老金缴费，但养老金支出须纳税。

德国全面实施国家养老金制度，强制性扣除养老金（参考以下内容及第3.5.6.6章节内容）。

大多数大型德国企业推出自愿性企业养老金计划，作为国家退休金计划的补充。

男女法定退休年龄均为67岁。在特定情况下，也可能提前退休。

社会保险

薪资只是劳工成本的一部分。雇主和雇员共同缴纳的法定社会保险金平均约占毛收入的40%，低于每年的保费上限。雇主和雇员通常各承担一半保费。

非薪资劳工成本包括：

- 法定医疗保险
  法定医疗保险适用于雇员及其家属。通常缴纳的保费为税前月收入的14.6%，最高可达4,837.50欧元。雇主和雇员各自承担一半保费。此外，保险机构通常还会收取附加保费，2021年的平均费率为1.3%。同样地，雇主和雇员各自承担一半附加保费。所有正常年收入低于64,350.00欧元的员工必须购买法定医疗保险。

- 私人医疗保险
  工资收入超过法定医疗保险责任界限的员工可以选择在法定医疗保险之外购买私人医疗保险。购买私人保险的员工可以获得雇主支付的与法定医疗保险金额相等的保费补贴。

- 长期护理/伤残保险
  该计划是强制性的。保险缴费比例为税前月收入的3.05%，最高可达4,837.50欧元，由雇主和雇员各支付一半。此外，自2005年1月1日起，无子女的员工还需缴纳额外费用，缴费比例为保险缴费基数的0.25%。特别地，这项规定不适用于23岁以下人群，或1940年1月1日前出生的人群，或当前服兵役的人员。凡参加私人医疗保险的人员自动视为参加长期护理保险，但该账户将由私营承保单位管理。

- 事故保险
  事故保险适用于工伤事故和职业病，保费由雇主单独支付。保险范围包括职业事故、通勤事故和工伤事故。年终基于实际工资基数和职业风险类别计算保费。

- 失业保险
  强制性失业保险需缴纳的保费为税前月收入的2.4%，最高可达7,100欧元（前欧盟东部国家为6,700欧元），由雇主和员工各支付一半。

- 养老保险
  法定养老保险需缴纳的保费为税前月收入的18.6%，最高可达7,100欧元（前欧盟东部国家为6,700欧元），由雇主和员工各支付一半。

按规定，被外派到德国工作的员工也需要缴纳社会保险金。但大多数情况下，德国与员工的所属国之间都有签订社会保险协定，允许员工在特定情况下，于有限年限内，继续参与所属国的社会保险。德国与许多国家签署了此类协定，其中包括中国。员工所属国的雇主须申请获得保险单（欧洲Form A1）以免缴德国社保。但并非所有协定都包括全部的社会保险，所以有可能无法免缴所有社保。德国与中国所签的协定包括养老保险和失业保险。

3.2.3 解雇

根据解雇相关法律规定，没有特殊理由的情况下，员工人数超过10人的公司不可解雇所聘用的员工（对于2003年12月31日之前所聘用的员工而言，仍然适用5名员工的门槛标准）。解雇通知期因在公司服务年限的长短而存在差异。试用期内（最长不超过6个月），可以提前2周下发解雇通知，无需提供任何理由。除这一情况外，最短通知期为4个周（自然月的15号或月末）。工作年限达5年，通知期延长至2个月，工作年限超过20年，通知期延长至7个月。特定员工群体可享受解雇保护制度。例如劳资委员会成员因正当理由才可被解雇。禁止解雇怀孕期间以及分娩后4个月内的妇女。

雇主须告知劳资委员会计划裁员人数。工会严格执行相关规定。计划裁员的企业通常须与劳资委员会或个人签订裁员协议。离职金通常为每年工作任期税前月收入的50%，也可能大大高于这一金额。

可在集体谈判协议规定的范围内修改法定通知期。此外，也可以通过个人协议延长通知期。但仅在特定情况下，才可通过个人协议在规定范围内缩短通知期。

3.2.4 劳资关系

各行业有各行业的工会，大多数受德国工会联合会保护。部分白领阶层组建了自己的职业团体，通过传统工会以外的形式开展薪资谈判。

工会领导人与雇主协会开展区域层面的谈判。一个地区率先拟定一个协议后，全国其他地区可能会在稍作修改后，实施这一协议。薪资及其他问题（如轮班和休假）均有单独的合约。集体谈判协议一旦签订，通常会在全国整个行业内施行。

在一定条件下，可能通过罢工的方式在德国实施集体谈判协议。德国法律规定，只有在谈判失败的情况下才可实施罢工。但德国联邦劳工法庭支持谈判期间开展"警告性罢工"（停工、示威），保护见习生参加罢工和停工的权利。根据《社会保障法》规定，因本国其他地区的罢工而导致开工时间不足或被解雇的员工，将无法获得联邦政府的补偿。在特定情形下，该规定同样适用于未参与罢工的员工。根据法律规定，由"中立调解委员会"处理的争端有权向联邦劳工法庭上诉。

3.2.5 聘用外籍人士

3.2.5.1 移民管理总条例

移民局通常在劳动局的适当参与下（一站式政府），实施以下审查：

- 外籍员工的行为是否会对当地劳动市场造成不利影响；
- 当地劳动市场是否有德国公民或欧盟公民可以担任同一职位（又叫做“劳动市场优先检查”）；以及
- 外籍员工是否享受德国员工同等的薪酬、工作时间及休假等雇佣条件。

3.2.5.2 入境签证规定

欧盟/欧洲经济区以及享有签证特权国家（如美国、加拿大、日本、澳大利亚、新西兰、以色列、韩国）的公民均可免签入境德国。其他国家的公民在到德国从事有偿工作前，须在居住国的德国大使馆或领事馆申请入境签证。员工从申请签证到入境德国开始工作，整个流程需要8–12周。入境工作签有效期通常为90天，在某些情况下最长可达6个月。工作签到期后则须办理短期或长期居留证。

3.2.5.3 非欧盟公民办理居留证和工作许可证

非欧盟公民想要在德国从事有偿工作，需要办理居留证和工作许可证，获得在德国工作的权利。居留证以电子居留证的形式发放。发放机构为申请人即将居住的地区/城市的地方移民局，而非雇主所在地区的移民局。

工作居留证通常只允许申请人在特定的工作地点从事具体某个公司所提供的特定工作。若更换工作或更换工作地点后，居留证受到限制且和特定工作相绑定，则可能需要更换现有的德国居留证。

欧盟蓝卡是面向受过良好教育的高技能工作人员发放的简化版临时工作许可证。申请蓝卡的条件包括被认可的高校学位以及德国当地公司出具的劳动合同，且合同规定的税前年薪不低于56,800欧元（2021年）。对于人才紧缺的岗位（医生、IT专家、数学人才、工程师等），税前年薪达44,304欧元即可（2021年）。符合蓝卡条件的工作人员不用接受长时间的优先审查。满足一定条件即可申请，例如缴纳公共养老金，以及证明融合成果（如融合班）。

拥有A1语言等级的蓝卡持有人可在33个月后申请长期居留。拥有B1以上语言等级的人员可以在21个月后申请长期居留。

德国境内的欧盟公民无需办理居留证或工作许可证。

3.2.5.4 企业内部人员调动
在特定情况下，拥有大学学位的跨国企业高技能员工，如果被调派到该企业的德国下属公司，可获得居留许可和工作许可。符合以下情形，跨国企业可以实施人员调动计划：

- 企业已制定全球人员调动计划，且已在德国中央劳动局登记；
- 德国分公司或子公司曾调派员工到其他国家；
- 申请人拥有大学学位。

这种形式简化了申请流程，且耗时较短。还可考虑另一种调派形式——派遣工作签证（ICT Card），其申请条件和前一种类似，但不要求调换员工。

3.2.5.5 随行人员
符合条件的外籍人士可在申请自己的居留许可的同时为随行家属办理居留许可，且随行配偶自动获得工作许可。由于随行人员许可证办理涉及到所申请居留城市的地方移民局，因此耗时较长。

3.2.5.6 市政部门登记
所有人员，不论国籍，入境14天内都必须到所居住地的市政厅登记。登记确认是申请居留许可的前提要求，且登记注册后才可获得纳税识别号。向德国税务局提交个人所得税纳税申报表时需提供纳税识别号（参见第3.5.3章节，了解更多个人税务信息）。提交纳税申报表时，税务局会确定一个纳税识别号，因此不用专门在税务局注册。2015年11月起，外籍人士登记时除提供有效的租赁合同外，还需出具房东证明。

离开德国时也需到市政厅注销。

德勤提供员工调派相关的各类服务，其中包括例如帮助企业员工遵守德国个人所得税法的易操作的解决方案。联系人：

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需要注意的是，德国大部分公司并非必须将每年的12月31日设定为结账日期。虽然大部分公司的确将这一天设为结账日期，但公司章程也可将其他日期设定为结账日期。

3.3 会计与审计

3.3.1 编制法定账簿的义务及相关豁免

单独的财务报表

《商法典》的基本准则适用于所有公司。但也会因为企业责任限制、企业规模及企业股票是否公开交易的不同而产生其他要求。

基本准则规定，所有注册商人（包括所有从事经营活动的公司及合伙企业）须编制年度财务报表，包括资产负债表和损益表。只有小部分独资企业不用遵循这一规定。财务报表的编制须在结账日期后的合理期限内（通常为结账日期后一年内）完成。

财务报表须遵照德国公认会计准则规定，采用德语，以欧元为单位。商人或所有的公司法人代表将在财务报表上签字，以申明其对财务报表的编制负责。

附加法规适用于有限责任公司（如股份公司、有限公司、股份两合公司），也适用于部分合伙企业。此类合伙企业由于普通合伙人本身就是有限责任公司，因此该企业的合伙人实际承担有限责任。最普遍的合伙企业形式是两合公司和有限公司的合并，也叫做有限两合公司。此类公司须遵守更多严格法规，这些法规基于欧盟指令，用于规范公司报告和会计。另外，这些公司还需要在财务报表中提供适当的附注，且财务报表必须真实体现公司的净资产、财务状况和经营成果。此外，公司还须编制管理报告，且须在结账日期后3个月内完成管理报告和财务报表的编制。由于（有限责任）公司的规模不同，这一期限可以有适当调整。鉴于此，需要区别4种规模的公司：

- 三个标准中至少达到两个标准才可归为某一类别。
- 如果连续两年达到标准（不必相同），满足标准的效果才能得以应用

类别	资产负债表总额（欧元）	收入（欧元）	员工人数 （平均人数）
微型企业	≤ 350,000.00	≤ 700,00.00	≤ 10
小型企业	≤ 6,000,000.00	≤ 12,000,000.00	≤ 50
中型企业	≤ 20,000,000.00	≤ 40,000,000.00	≤ 250
大型企业	> 20,000,000.00	> 40,000,000.00	> 250

- 微型企业的财务报表可以不包括附注。此外，微型企业还可以提供简化的资产负债表和损益表。需要注意的是，虽然控股公司通常收入较低，员工人数较少，但不可将其界定为微型公司。
- 小型企业的资产负债表和损益表可以只包括部分特定项目。小型企业不用编制管理报告，并且通常可以在结账日期后6个月内完成财务报表的编制。
- 另外，中小型企业可以不用在财务报表的附注中披露某些信息，例如中小型企业可以不用在收入明细中提供业务种类或开展业务地区的信息。小型企业比中型企业获得更多此类豁免。

若企业包含在合并财务报表，则该企业可获得财务报表适用规则的另一项重要豁免。按规定，若一家有限责任公司包含在合并财务报表中（该合并财务报表符合欧洲标准，且已按照欧洲标准审计），则该有限责任公司可以不遵照其通常需执行的严格规定。除此之外，该有限责任公司还需满足其他要求，例如母公司同意承担子公司债务。按照中华人民共和国公认会计准则编制合并财务报表，子公司通常无法在德国获得豁免。但是，若德国或欧洲有中间公司控股德国公司，且该控股公司编制自身与子公司合并财务报表，则德国公司或可享受上述豁免。

按照德国公认会计准则编制的专账（法定账簿）会限制企业股东的利润分配。此外，专账也是根据德国税法编制账目以及计算应支付德国所得税的基础。

合并账目

有限责任公司及其德国注册办事处，若控制至少一家其他公司（子公司），则必须编制合并财务报表。若注册办事处在欧盟国家，也应遵守类似的规定。但德国有小部分公司可不用执行这一规定：若连续两年超过以下阈值中两个阈值，则必须编制合并财务报表——可以是汇总账目相关阈值也可以是合并账目相关阈值。

	汇总账目（欧元）	合并账目（欧元）
资产负债表总额	24,000,000.00	20,000,000.00
收入	48,000,000.00	40,000,000.00
员工	250	250

若控股公司不是最终母公司，且公司已包括在上一级合并财务报表中，符合具体条件（免于编制合并财务报表），则公司不必编制财务报表。免于编制合并财务报表须符合欧盟规章、国际财务报告准则或相当的公认会计准则，且必须根据欧盟标准和相当的标准对其进行审计；相关财务报表须以德语或英语披露。需注意的是，中国最终母公司的合并财务报表也可能符合德国或其他欧洲母公司免于编制合并财务报表的要求。

在德国，合并财务报表由合并资产负债表、合并损益表、合并现金流量表、合并权益变动表以及合并财务报表附注组成；此外还需编制集团管理报告。采用何种会计原则编制合并财务报表取决于母公司是否为上市公司。

- 若母公司不是上市公司，则按照德国公认会计准则编制合并账目，或者也可根据国际财务报告准则编制合并财务报表。
- 若母公司是上市公司，则必须按照国际财务报告准则编制合并财务报表。须注意，"上市公司"是指公司股票在股票市场交易或债务工具在欧洲上市，或者公司正在申请此类上市。

根据国际财务报告准则规定，非上市公司不必编制也通常没有合并财务报表，但按照德国公认会计准则要求，非上市公司也必须编制合并财务报表。若需要根据国际财务报告准则编制会计信息，则通常需要对账。参见第3.3.4章节，了解中华人民共和国公认会计准则、国际财务报告准则及德国公认会计准则间的重大差异。

编制合并财务报表所采用的国际财务报告准则通常与国际会计准则理事会发布的国际财务报告准则是一致的，但由于新标准需获得欧盟专门机构的批准，因此欧盟公司正式执行新标准的日期可能会延后。

若一家德国大型公司非有限责任公司且不控制其他公司，则该公司只需编制合并账目。最低合并资产总额为6,500万欧元，最低合并收入为1.3亿欧元，平均最少员工人数为5,000人。

3.3.2 财务信息公布要求

根据欧盟法规条款，德国在公布公司财务及其他信息方面实施健全的规章制度，旨在缓解公司管理层与股东信息分配不均等的情况，以保护股东的个人利益，保证并推动资本市场发挥其综合功能。所有公司的一般法定账目的公布要求（法定信息公布要求）和仅适用于上市公司的要求（资本市场信息公布要求）大体上存在一定的差异。由于中国企业集团投资德国私营企业主要依照法定信息公布要求，因此该手册将仅对法定信息公布要求进行介绍。第3.1.1与第3.1.2章节主要介绍商业注册时公布公司其他信息的要求（如股东、总经理或监事会成员信息）。

法定信息公布要求的核心内容是要求有限责任公司定期（每年）在《联邦公报》公布法定财务报表。该要求规定，基本所有的有限责任公司均须在营业年度结束的12个月内（上市公司为4个月）通过电子《联邦公报》公布：

- 财务报表，
- 管理报告，
- 一名独立审计师提出的审计意见，
- 如果财务报表只包含利润分配/亏损分担提案，提供利润分配/亏损分担决议，
- 在有监事会的情况下，提供监事会报告，
- 上市股份公司须公布一份德国《公司治理法典》合规申明。

中小型企业可获一定豁免，其主要指免于信息披露的权利。此类豁免比财务报表豁免更全面（参见第3.3.1章节），同时也需要将两类豁免区分开。下表对信息公布要求及相关豁免进行了概述：

公司规模决定是否需要遵循规定（关于公司规模标准的界定，请参见第3.3.1章节表格）

公布项目	微型公司	小型公司	中型公司	大型公司
资产负债表	向《联邦公报》提交汇总资产负债表，但不用公布	进一步汇总资产负债表，用于信息公布	进一步汇总资产负债表，用于信息公布	不可免除
损益表	不用提交或公布	免于提交或公布	进一步汇总损益表，用于信息公布	不可免除
财务报表附注	不适用	对应资产负债表进行汇总	对应资产负债表及损益表进行汇总	不可免除
管理报告	不适用	不适用	不可免除	不可免除
独立外部审计师的审计意见	不适用	不适用	不可免除	不可免除
监事会报告	免于提交或公布	免于公布	在有监事会的情况下：不可免除	在有监事会的情况下：不可免除
利润分配决议（如不包含在附注内）	如适用：向《联邦公报》提交，但不用公布	如适用：不可免除	如适用：不可免除	如适用：不可免除
德国《公司治理法典》合规申明	不适用（上市公司均被视为大型企业）	不适用（上市公司均被视为大型企业）	不适用（上市公司均被视为大型企业）	上市公司：不可免除

根据德国公认会计准则公布单一实体财务报表时，须依照上述法定信息公布要求。但是，如果仅以公布为目的，则可以根据国际财务报告准则提交单一实体财务报表。若一家企业选择根据国际财务报告准则公布单独财务报表，则其还须根据德国公认会计准则编制法定财务报表——法定财务报表是纳税与利润分配的基础。另外，还须将根据德国公认会计准则编制的财务报表送交至《联邦公报》，但无需刊登。

若有限责任公司免于编制合并财务报表（参见第3.3.1章节相关规定），且免于公布财务报表，则该有限责任公司不必遵循本类别公司应执行的严格会计规定。此类公司或母公司必须公布：

- 股东对使用豁免规则的同意书，
- 母公司对子公司的债务担保协议，
- 自身被纳入合并范围的合并财务报表和合并管理报告（德语或英语），
- 一名独立审计师对合并财务报表和合并管理报告的审计意见。

德国母公司法人代表必须依照大型企业公布合并财务报表类似要求编制合并财务报表。法律上不承担有限责任，但由于其普通合伙人是有限责任公司（如有限两合公司的形式），而实际上承担有限责任的公司，通常遵循有限责任公司的信息公布标准，仅有少许修改。财务报表须以电子版的形式提交到《联邦公报》，且须在相关结账日期结束后的12个月内提交。上市公司的截止期限缩短到4个月。若不符合信息公布要求，企业及企业法人代表均将受到罚款处理。

德勤根据各项规章制度，针对财务报表、风险管理系统和内部控制系统提供了大量法定及自愿审计服务，积累了丰富经验，涉及各个业务领域。

3.3.3 财务信息审计

大中型企业（参见第3.3.1章节关于大中型企业的解释）的股东每年须挑选一位独立注册会计师对企业财务报表和相关管理报告进行审计。合并财务报表也必须由一名注册会计师进行审计。监事会或股东必须批准财务报表，且假如已根据规定对财务报表进行了审计，监事会或股东也只能采取这一措施。独立注册会计师将根据德国审计准则开展审计，该审计准则以国际审计准则为基准。在德国，审计师会针对即将公布的财务报表发表审计见解（参见第3.3.2章节），并会向其主管（监事会或管理层）提交一份更详尽的审计报告。

如果是上市的股份公司，年度财务报表审计师除对财务报表和管理报告进行审计外，还须在提交给监事会的审计报告中就风险预警系统是否适当发表见解。股份公司的管理层必须实施风险预警系统，且风险预警系统应包括适当的措施，尤其是检测措施，以尽早发现影响企业持续发展的风险。在德国，管理层对重大风险所采取的应对措施以及对风险相关规则合规的监督构成风险预警系统，因此风险预警系统被视作风险管理系统的一部分。虽然普遍认为应当由股份公司（因为法律溢出效应）以及有限公司的管理层负责实施风险预警系统（该系统也包括一个内部控制系统），但德国法律并未像《萨班斯法案》一样对该系统的制定做出规定。

除注册会计师作为外部审计师外，监事会为履行职责有权对企业账簿和记录以及企业资产进行调查和检测。此外，管理层必须在业务过程中定期向监事会提供特定信息，管理层也必须及时向监事会报告重大交易。监事会也可主动要求管理层提供企业状况相关的信息（关于投资者获取信息的权利，请参见第3.1.8章节）。

德勤能够帮助确定需要调整的会计领域或提供会计信息相关的审计服务，包括公认会计准则相关的对账服务。

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3.3.4 德国公认会计准则、国际会计准则以及中华人民共和国公认会计准则（中国企业会计准则）

如上所述（参见第3.3.1章节），非上市企业编制（合并）财务报表不必且通常没有遵照国际会计准则，而是遵照德国公认会计准则。若国际会计准则或中华人民共和国公认会计准则要求提供会计信息，则通常需要对账。下表通过对比特定会计领域的会计规则，对德国公认会计准则的内容进行了概述，同时初步介绍了德国公认会计准则、中华人民共和国公认会计准则以及国际会计准则之间的差别。表格未能列出所有会计领域，但基本涉及到了大部分相关领域。

关注领域	《企业会计准则》 – 中国公认会计准则	国际财务报告准则	《德国商法典》 – 德国公认会计准则
无形资产 一般会计处理	如满足确认条件（由企业拥有或者控制，与该无形资产有关的经济利益很可能流入企业，且该无形资产的成本能够可靠地计量，《企业会计准则第6号》第三、四条），则可确认为无形资产。 仅在符合一定条件的情况下，才能将内部研发项目的研发阶段支出确认为无形资产（《企业会计准则第6号》第九条）。 以下情况不应确认为无形资产： • 企业自创商誉以及内部产生的品牌、报刊名等（《企业会计准则第6号》第十一条） • 内部研究支出（《企业会计准则第6号》第八条）	如满足确认条件（由企业拥有或者控制，与该无形资产有关的经济利益很可能流入企业，且该无形资产的成本能够可靠地计量，《国际会计准则第38号》第十三、二十一和二十二条），则可确认为无形资产。 仅在符合一定条件的情况下，才能对开发形成的无形资产予以确认（《国际会计准则第38号》第五十七条）。 以下情况不应确认为无形资产： • 企业自创商誉（《国际会计准则第38号》第四十八条） • 内部产生的品牌、刊头、报刊名、客户名单和本质上类似的项目（《国际会计准则第38号》第六十三条） • 内部研究支出（《国际会计准则第38号》第五十四条）	如满足确认条件，且无形资产通过第三方获得，则可确认为无形资产（参见上文）。 可以选择性地将内部产生的无形资产（开发支出）资本化（《德国商法典》第二百四十八条第二节）。 以下情况不应确认为无形资产： • 企业自创商誉 • 内部产生的客户名单、品牌和报刊名（《德国商法典》第二百四十八条第二节） • 研究支出(《德国商法典》第二百五十五条第二节第四项)
无形资产 开发支出	同时满足下列条件的，确认为无形资产（《企业会计准则第6号》第九条）： • 完成该无形资产在技术上具有可行性 • 具有完成该无形资产并使用或出售的意图 • 证明无形资产产生的经济利益流入企业 • 有足够的技术、财务资源和其他资源支持，以完成该无形资产的开发，并有能力使用或出售该无形资产 • 归属于该无形资产开发阶段的支出能够可靠地计量	同时满足下列条件的，确认为无形资产（《国际会计准则第38号》第五十七条）： • 完成该无形资产在技术上具有可行性 • 具有完成该无形资产并使用或出售的意图 • 证明无形资产产生的经济利益流入企业 • 有足够的技术、财务资源和其他资源支持，以完成该无形资产的开发，并有能力使用或出售该无形资产 • 归属于该无形资产开发阶段的支出能够可靠地计量	如果满足一般确认标准的以下条件，可将开发支出（根据《德国商法典》第二百四十八条第二节、《德国商法典》第二百五十五条第二节a中的定义）作为非流动资产计入费用，或选择将其资本化： • 很有可能产生可单独销售的资产 • 开发支出能够可靠地计量
无形资产 后续计量	对于使用寿命有限的无形资产，在其使用寿命内合理摊销，摊销方法应当反映与该项无形资产有关的经济利益的预期实现方式——无法可靠确定预期实现方式的，应当采用直线法摊销（《企业会计准则第6号》第十七条）。 对于使用寿命不确定的无形资产，仅进行减值测试（《企业会计准则第6号》第十九条和《企业会计准则第8号》第四条）。 资产减值损失一经确认，在以后会计期间不得转回（《企业会计准则第8号》第十七条）。	如果资产在活跃市场交易，使用成本模型或选用重估模型（《国际会计准则第38号》第七十二、七十五条）。 对于使用寿命有限的无形资产，在其使用寿命内合理摊销，摊销方法应当反映与该项无形资产有关的经济利益的预期实现方式——无法可靠确定预期实现方式的，应当采用直线法摊销《国际会计准则第38号》第九十七条。 对于使用寿命不确定的无形资产，仅进行减值测试（每年审核）（《国际会计准则第38号》第一百零七、一百零八条）。 如果确认资产减值损失的条件不再存在，减值损失必须在以后会计期间转回（商誉除外）（《国际会计准则第36号》第一百一十四条）。	对于使用寿命有限的无形资产，在使用寿命内合理摊销（通常采用直线法摊销）。 仅在极少数情况下认为无形资产的使用寿命不确定。针对此类情况，对所获资产进行减值测试，并对内部产生的资产（开发支出）进行摊销，摊销年限不得低于十年。 如果确认资产减值损失的条件不再存在，减值损失必须在以后会计期间转回（商誉除外，《德国商法典》第二百五十三条第五节）。

关注领域	《企业会计准则》 – 中国公认会计准则	国际财务报告准则	《德国商法典》 – 德国公认会计准则
无形资产 所获商誉	有义务予以资本化（《企业会计准则第20号》第十三条"非同一控制下的企业合并"相关内容），且对后续计量进行减值测试，并每年审核（《企业会计准则第8号》第二十三至二十五条）。 商誉的减值损失不能转回（《企业会计准则第8号》第十七条）。	有义务予以资本化（《国际财务报告准则第3号》第三十二条），且对后续计量进行减值测试，并每年审核。 商誉的减值损失不能转回（《国际会计准则第36号》第一百一十四条》）。	有义务予以资本化（《德国商法典》第二百四十六条第一节第四项），并在其使用寿命内进行摊销；在使用寿命无法可靠计量的情况下，摊销年限不得低于十年（《德国商法典》第二百五十三条第二节第三、四项） 如果商誉的可收回金额预计始终低于其账面价值，其账面价值必须减少为可收回金额，且减值损失必须予以确认（《德国商法典》第二百五十三条第三节第五项）。但与之形成对比的是，不动产、厂房和设备的减值损失（参见下文）不能转回（《德国商法典》第二百五十三条第五节第二项）。
	经复核后的负商誉，计入当期损益（《企业会计准则第20号》第十三条"企业合并"相关内容）。	经复核后的负商誉，计入当期损益（《国际财务报告准则第3号》第三十四条）。	在资产负债表中，负商誉必须确认为权益与负债中的负债项（《德国商法典》第三百零一条第一节第三项），并可根据一般条款计入损益表（《德国商法典》第三百零九条第二节）。
不动产、厂房和设备 一般定义	不动产、厂房和设备指同时具有下列特征的有形资产：为生产商品、提供劳务、出租或经营管理而持有的，且使用寿命超过一个会计年度（《企业会计准则第4号》第三条）。	不动产、厂房和设备指同时具有下列特征的有形资产：为生产商品、提供劳务、出租或经营管理而持有的，且预期能在不止一个会计期间内使用（《国际会计准则第16号》第六条）。	不动产、厂房和设备指企业计划持续用于业务经营的资产项目（《德国商法典》第二百四十七条第二节）。
不动产、厂房和设备 初始计量	按照采购或生产成本（含杂项费用与后续采购费用）计量，包括： • 购买价款、相关税费、使固定资产达到预定可使用状态前所发生的可直接归属于该项资产的费用，如运输费、装卸费、安装费和专业人员服务费等 • 预计固定资产报废时的弃置费用（《企业会计准则第4号》第八、十三条）以及 • 符合某些标准的借款费用（《企业会计准则第17号》"符合资本化条件的资产"相关内容）	按照采购或生产成本（含杂项费用与后续采购费用）计量，包括（《国际会计准则第16号》第十六条）： • 购买价格，包括进口税和不能退回的购买税，应减去任何有关的商业折扣和回扣 • 任何使资产达到预期工作状态所必要场所与条件的直接可归属成本 • 预计资产报废时的弃置费用与用于修复所在地的费用 • 符合某些标准的借款费用（《国际会计准则第23号》"符合资本化条件的资产"相关内容）	按照采购或生产成本（含杂项费用与后续采购费用）计量，且符合《德国商法典》第二百五十五条第一、二节的一般定义，包括： • 材料成本（包括间接费用） • 制造成本（包括间接费用） • 制造过程中所用固定资产的折旧 可选择性列入的成本包括： • 适当的行政管理费 • 适当的社会设施、社会福利和养老金费用 • 德国商法典》第二百五十五条第三节：用于生产（而非采购）资产的融资利息 固定资产报废时的弃置费用不应予以资本化。相反，上述费用应在资产负债表的负债项确认为预计负债，并在资产的预计使用期间进行分配。

关注领域	《企业会计准则》 – 中国公认会计准则	国际财务报告准则	《德国商法典》 – 德国公认会计准则
不动产、厂房和设备后续计量	按使用寿命计提折旧，并应根据与固定资产有关的经济利益的预期实现方式，合理选择固定资产折旧方法（《企业会计准则第4号》第十七条）。	如果资产的公允价值能够可靠地计量，使用成本模型或选用重估模型（《国际会计准则第16号》第二十九条）。 按使用寿命计提折旧，并应根据与固定资产有关的经济利益的预期实现方式，合理选择固定资产折旧方法。（《国际会计准则第16号》第五十、六十条）。	按使用寿命计提折旧（《德国商法典》第二百五十三条第三节）；可使用不同的折旧方法。
	如果资产的可收回金额低于其账面价值，其账面价值应减少为可收回金额。减少的金额即为减值损失（《企业会计准则第4号》第二十条，参考《企业会计准则第8号》）。	如果资产的可收回金额低于其账面价值，其账面价值应减少为可收回金额。减少的金额即为减值损失（《国际会计准则第36号》第五十九条）。	如果资产的可回收金额预计始终低于其账面价值，其账面价值必须减少为可回收金额，且减值损失必须予以确认。（《德国商法典》第二百五十三条第三节第五项）。
	资产减值损失一经确认，在以后会计期间不得转回（《企业会计准则第8号》第十七条）。	如果确认资产减值损失的条件不再存在，减值损失必须在以后会计期间转回（《国际会计准则第36号》第一百一十四条）。	如果确认资产减值损失的条件不再存在，减值损失必须在以后会计期间转回（《德国商法典》第二百五十三条第五节第一项）。 根据德国会计准则，在某些情况下，非实质性资产项目可按固定价值计算（《德国商法典》第二百四十条第三节）。
租赁分类	如果合同中出租人让渡了在一定期间内控制一项已识别资产的使用权以换取对价，则该合同为租赁或包含租赁。（《企业会计准则第21号》第四条）。此定义的关键点在于： • 承租人有权取得已识别资产使用期间产生的几乎全部经济利益。 • 承租人有权主导已识别资产的使用《企业会计准则第21号》第五条）。 租赁期应按不可撤销的租赁期间确定，如果承租人合理确定将行使续租选择权或终止租赁选择权，租赁期应包含不可撤销租赁期间、续租选择权涵盖期间或终止租赁选择权涵盖期间（《企业会计准则第21号》第十五条）。	如果合同中出租人让渡了在一定期间内控制一项已识别资产的使用权以换取对价，则该合同为租赁或包含租赁。（《国际财务报告准则第16号》第九条）。此定义的关键点在于： • 承租人有权取得已识别资产使用期间产生的几乎全部经济利益。 • 承租人有权主导已识别资产的使用《国际财务报告准则第16号》B部分第九条）。 租赁期应按不可撤销的租赁期间确定，如果承租人合理确定将行使续租选择权或终止租赁选择权，租赁期应包含不可撤销租赁期间、续租选择权涵盖期间或终止租赁选择权涵盖期间（《国际财务报告准则第16号》第十八条）。	德国会计法并未对租赁单独立法。对租赁的会计处理应以一般条款为准，即资产是否列入所有者的资产负债表，取决于所有者是否获得经济所有权而非法定所有权（《德国商法典》第二百四十六条第一节第二款）。 根据德国税务会计法，租赁的分类在会计处理上区分为完全补偿型租赁（租赁期内双方不得解约，且租金应至少能补偿出租人全部的支出）和不完全补偿型租赁。 以下情况应将租赁认定为融资租赁： 1) 完全补偿型租赁： • 如为土地，该土地上的建筑满足融资租赁的标准 • 如为不动产与建筑，固定租赁期占租赁资产的正常使用年限在40%至90%之间，并且租赁协议中包括购买选择权或续租选择权 • 如为不动产、厂房、设备与建筑，固定租赁期占租赁资产的正常使用年限少于40%或大于90% • 租特殊性质的租赁资产，如果不作较大修改只有承租人才能使用 2) 不完全补偿型租赁： • 缔约方同意对租赁资产销售收入进行分摊，且承租人获得75%以上的收益 • 租赁协议中包括购买选择权或续租选择权。

关注领域	《企业会计准则》 – 中国公认会计准则	国际财务报告准则	《德国商法典》 — 德国公认会计准则
承租人的会计处理	除低价值资产租赁外，承租人应对租期超过12个月的所有租赁资产和负债进行确认，即所有租赁实际上等同于融资租赁：在租赁开始日，承租人应当按照成本确认使用权资产，并按照租赁付款额的现值确认租赁负债（《企业会计准则第21号》第十四条）。 可选择不确认资产和负债的情形（企业会计准则第21号》第三十、三十一条，租赁付款额将计入成本）： • 从租赁开始日起计的短期租赁（租赁期不超过12个月） • 低价值资产租赁（"低价值"没有明确的定义，但财政部（MOF）规定，低价值资产租赁是指单项租赁资产为全新资产时，价值为人民币40,000元或在40,000元以下的租赁 租赁开始日初始计量： • 租赁负债应当按照租赁开始日尚未支付的租赁付款额的现值进行初始计量。在计算租赁付款额的现值时，承租人应当采用租赁内含利率作为折现率；无法确定租赁内含利率的，应当采用承租人增量借款利率作为折现率（《企业会计准则第21号》第十七条）。 • 使用权资产应按照成本进行初始计量。该成本包括租赁负债的初始计量金额、在租赁开始日或之前支付的租赁付款额（扣除已享受的租赁激励相关金额）、承租人发生的初始直接费用、以及承租人为拆卸及移除租赁资产、复原租赁资产所在场地或将租赁资产恢复至租赁条款约定状态预计将发生的成本（《企业会计准则第21号》第十六条）。	融资租赁只有一种会计模型，即所有租赁实际上等同于融资租赁：在租赁开始日，承租人应当按照成本确认使用权资产，并按照租赁付款额的现值确认租赁负债（《国际财务报告准则第16号》第二十二至二十八条）。 可选择不确认资产和负债的情形（《国际财务报告准则第16号》第五条，租赁付款额将计入成本）： • 从租赁开始日起计的短期租赁（租赁期不超过12个月） • 低价值资产租赁（"低价值"没有明确的定义，但国际会计准则理事会规定，低价值资产租赁是指单项租赁资产为全新资产时，价值为5,000美元或在5,000美元以下的租赁 租赁开始日初始计量： • 租赁负债应当按照租赁期开始日尚未支付的租赁付款额的现值进行初始计量（参见上文）。在计算租赁付款额的现值时，承租人应当采用租赁内含利率作为折现率；无法确定租赁内含利率的，应当采用承租人增量借款利率作为折现率（《国际财务报告准则第16号》第二十六条）。 • 使用权资产应按照成本进行初始计量。该成本包括租赁负债的初始计量金额、在租赁开始日或之前支付的租赁付款额（扣除已享受的租赁激励相关金额）、承租人发生的初始直接费用、以及承租人为拆卸及移除租赁资产、复原租赁资产所在场地或将租赁资产恢复至租赁条款约定状态预计将发生的成本（《国际财务报告准则第16号》第二十三条、《国际财务报告准则第16号》第二十四条）。	融资租赁： 承租人应将出租人在租赁谈判中计算的购置或生产成本作为租入资产和负债的入帐价值，并计提折旧。 租赁付款额应作为计入损益表的融资费用和未清偿债务的减少进行分摊。 经营租赁： 对于经营租赁的租金，承租人应当在租赁期内各个期间按照直线法计入相关成本。

关注领域	《企业会计准则》 – 中国公认会计准则	国际财务报告准则	《德国商法典》 – 德国公认会计准则
	后续计量： • 承租人应采用成本模型对使用权资产进行后续计量，即根据《企业会计准则第4号——固定资产》扣减累计折旧并参照（《企业会计准则第8号——资产减值》）扣除减值损失以计量使用权资产。承租人按照租赁准则有关规定重新计量租赁负债的，应当相应调整使用权资产的账面价值（《企业会计准则第21号》第二十条）。 • 在租赁开始日后，承租人应在确认利息时增加租赁负债的账面价值，在支付租赁付款额时减少租赁负债的账面价值，并在重估/租赁变更或实质固定付款额变动时重新计量租赁负债的账面价值（《企业会计准则第21号》第二十三、二十五、二十六条。	后续计量： • 在大多数情况下，承租人应采用成本模型对使用权资产进行后续计量，即根据《国际会计准则第16号——不动产、厂房和设备》扣减累计折旧并参照（《国际会计准则第36号——资产减值》）扣除减值损失以计量使用权资产。承租人按照租赁准则有关规定重新计量租赁负债的，应当相应调整使用权资产的账面价值。（《国际财务报告准则第16号》第二十九至三十三条）。 • 在租赁开始日后，承租人应在确认利息时增加租赁负债的账面价值，在支付租赁付款额时减少租赁负债的账面价值，并在重估/租赁变更或实质固定付款额变动时重新计量租赁负债的账面价值（《国际财务报告准则第16号》第三十六条）。	
	承租人的列报（《企业会计准则第21号》第五十三至五十五条）： 在财务报表中披露或者作为附注披露： • 在资产负债表中单独列示使用权资产和其他资产。 • 单独列示租赁负债和其他负债。 • 在损益表内，分别列示租赁负债的利息费用（单独列示于财务费用项目）和使用权资产的折旧费用。 • 在现金流量表中，偿还租赁负债本金和利息所支付的现金应当计入筹资活动现金流出；支付的短期租赁付款额和低价值资产租赁付款额以及未纳入租赁负债计量的可变租赁付款额应当计入经营活动现金流出。	承租人的列报（《国际财务报告准则第16号》第四十七至五十条）： 在财务报表中披露或者作为附注披露： • 在资产负债表中单独列示使用权资产和其他资产或将使用权资产作为附注单独披露（符合“投资资产”定义的使用权资产除外，这类资产在财务状况表中作为“投资资产”单独披露）。 • 单独列示租赁负债和其他负债。 • 在损益表及其他综合收益表内，分别列示租赁负债的利息费用（单独列示于财务费用项目，可参考《国际会计准则第1号》第82条第b项）和使用权资产的折旧费用。 • 在现金流量表中，偿还租赁负债本金以及符合《国际会计准则第7号》要求的利息所支付的现金应当计入筹资活动现金流出；短期租赁付款额和低价值资产租赁付款额以及未纳入租赁负债计量的可变租赁付款额应当计入经营活动现金流出。	

关注领域	《企业会计准则》 – 中国公认会计准则	国际财务报告准则	《德国商法典》 – 德国公认会计准则
出租人的会计处理	出租人必须在租赁开始日对租赁分类进行评估。如果一项租赁实质上转移了与租赁资产所有权有关的几乎全部风险和报酬，出租人应当将该项租赁分类为融资租赁，将除此之外的其他租赁分类为经营租赁（《企业会计准则第21号》第三十五条）。 但存在下列一种或多种情形的，分类为融资租赁（《企业会计准则第21号》第三十六条）： • 租赁资产的所有权发生转让。 • 承租人有购买租赁资产的选择权，其可以合理确定行使该选择权。 • 租赁期占租赁资产剩余使用寿命的大部分。 • 租赁付款额的现值几乎相当于租赁资产的公允价值。 • 租赁资产性质特殊且出租人不可使用。 融资租赁初始计量（《企业会计准则第21号》第三十八条）： 在租赁开始日，出租人应当在财务状况表内确认融资租赁资产，并以租赁投资净额作为应收融资租赁款的入账价值，在不是人为调低的情况下，使用租赁内含利率计量租赁投资净额。 在租赁开始日： • 出租人应当按照租赁资产公允价值与按市场利率折现的租赁付款额现值中较低的金额确认收入。 • 销售成本等于租赁资产的账面价值扣除未担保余值的现值加上出租人在租赁开始日为取得融资租赁所发生的成本（《企业会计准则第21号》第四十二条）。 • 销售损益由制造商或经销商出租人确认。	出租人必须在租赁开始日对租赁分类进行评估。如果一项租赁实质上转移了与租赁资产所有权有关的几乎全部风险和报酬，出租人应当将该项租赁分类为融资租赁，将除此之外的其他租赁分类为经营租赁（《国际财务报告准则第16号》第六十一条）。 但存在下列一种或多种情形的，分类为融资租赁（《国际财务报告准则第16号》第六十三条）： • 租赁资产的所有权发生转让。 • 承租人有购买租赁资产的选择权，其可以合理确定行使该选择权。 • 租赁期占租赁资产剩余使用寿命的大部分。 • 租赁付款额的现值几乎相当于租赁资产的公允价值。 • 租赁资产性质特殊且出租人不可使用。 融资租赁初始计量（《国际财务报告准则第16号》第六十七至六十九条）： 在租赁开始日，出租人应当在财务状况表内确认融资租赁资产，并以租赁投资净额作为应收融资租赁款的入账价值，在不是人为调低的情况下，使用租赁内含利率计量租赁投资净额（《国际财务报告准则第16号》第七十三条）。 在租赁开始日： • 承租人应当按照租赁资产公允价值与按市场利率折现的赁付款额现值中较低的金额确认收入。 • 销售成本等于成本或租赁资产的账面价值扣除未担保余值的现值加上出租人在租赁开始日为取得融资租赁所发生的成本（《国际财务报告准则第16号》第七十三条）。 • 销售损益由制造商或经销商出租人确认。	融资租赁： 出租人应按照其在租赁谈判中计算的购置或生产成本确认应收融资租赁额。租赁收款额分为应收融资租赁额减少值的分期摊销和融资收入。 经营租赁： 出租人应当将用作经营租赁的资产包括在资产负债表中的相关项目内——参见上文的“不动产、厂房和设备”相关内容。对于经营租赁的租金，应当在租赁期内各个期间按照直线法确认为当期损益。

关注领域	《企业会计准则》 – 中国公认会计准则	国际财务报告准则	《德国商法典》 – 德国公认会计准则
	后续计量（《企业会计准则第21号》第三十九条）： • 出租人应当按照固定的周期性利率确认租赁期内各个期间的利息收入。 • 出租人应当按照《企业会计准则第22号——金融工具确认和计量》和《企业会计准则第23号——金融资产转移》的规定，对应收融资租赁款的终止确认和减值进行会计处理。 经营租赁计量（《企业会计准则第21号》第四十五至四十八条）： • 出租人应当将取得经营租赁发生的初始直接费用计入租赁资产的账面价值。 • 对于经营租赁资产中的固定资产，出租人应当采用类似资产的折旧政策计提折旧并按照《企业会计准则第8号》的规定进行减值计量。 • 出租人应当采用直线法或其他系统合理的方法，将经营租赁的租赁收款额确认为租金收入。若其他系统合理的方法能够更好地反映因使用租赁资产所产生经济利益的消耗模式的，出租人应当采用该方法。 • 相关成本包括减值损失。 出租人的列报（《企业会计准则第21号》第五十六条）： 出租人应根据资产的性质，在资产负债表中列示经营租赁资产。	后续计量（《国际财务报告准则第16号》第七十五至七十八条）： • 出租人应当按照固定的周期性利率确认租赁期内各个期间的利息收入。 • 出租人应当按照《国际财务报告准则第9号——金融工具》的规定，对应收租赁融资款的终止确认和减值进行会计处理。 经营租赁计量（《国际财务报告准则第16号》第八十一至八十六条）： • 出租人应当将取得经营租赁发生的初始直接费用计入租赁资产的账面价值。 • 对于经营租赁资产中的固定资产，出租人应当采用类似资产的折旧政策（《国际会计准则第16号》、《国际会计准则第38号》）计提折旧并按照《国际会计准则第36号》的规定进行减值计量。 • 出租人应当采用直线法或其他系统合理的方法，将经营租赁的租赁收款额确认为租金收入。若其他系统合理的方法能够更好地反映因使用租赁资产所产生经济利益的消耗模式的，出租人应当采用该方法。 • 相关成本包括减值损失。 出租人的列报（《国际财务报告准则第16号》第八十八条）： 出租人应根据资产的性质，在资产负债表中列示经营租赁资产。	

关注领域	《企业会计准则》 – 中国公认会计准则	国际财务报告准则	《德国商法典》 – 德国公认会计准则
金融资产/金融工具 一般会计处理	金融工具，是指形成一个企业的金融资产，并形成其他单位的金融负债或权益工具的合同（《企业会计准则第22号》第二条）。 金融资产包括现金、持有的其他单位的权益工具、从其他单位收取现金或其他金融资产的合同权利、将来须用或可用企业自身权益工具进行结算的非衍生工具的合同权利（《企业会计准则第22号》第三条）。 初始确认： 企业成为金融工具合同的一方时，应当确认一项金融资产或金融负债（《企业会计准则第22号》第九条）。 初始计量： 除贸易应收账款（不包含重大融资成分的，按其交易价格计量）外，企业应以其公允价值对金融资产或金融负债进行初始计量，对于不是以公允价值计量且其变动计入损益的金融资产或金融负债，则还应加上或减去可直接归属于获得/发行该金融资产或金融负债的交易费用。（《企业会计准则第22号》第三十三条）。 金融资产的后续计量：金融资产的分类（《企业会计准则第22号》第十六条） 金融资产在初始确认时划分为以下三类： • 以摊余成本计量的金融资产， • 以公允价值计量且其变动计入其他综合收益的金融资产（FVTOCI）或 • 以公允价值计量且其变动计入当期损益的金融资产（FVTPL）。	金融工具，是指形成一个企业的金融资产，并形成其他单位的金融负债或权益工具的合同。 金融资产包括现金、持有的其他单位的权益工具、从其他单位收取现金或其他金融资产的合同权利、将来须用或可用企业自身权益工具进行结算的非衍生工具的合同权利（《国际会计准则第32号》第十一条）。 初始确认： 企业成为金融工具合同的一方时，应在其资产负债表中确认一项金融资产或金融负债（《国际财务报告准则第9号》第3.1.1节）。 初始计量： 除贸易应收账款（不包含重大融资成分的，按其交易价格计量）外，企业应以其公允价值对金融资产或金融负债进行初始计量，对于不是以公允价值计量且其变动计入损益的金融资产或金融负债，则还应加上或减去可直接归属于获得/发行该金融资产或金融负债的交易费用（《国际财务报告准则第9号》第5.1.1节）。 金融资产的后续计量： 金融资产的分类（《国际财务报告准则第9号》第4.1节）： 金融资产在初始确认时划分为以下三类： • 以摊余成本计量的金融资产， • 以公允价值计量且其变动计入其他综合收益的金融资产（FVTOCI）或 • 以公允价值计量且其变动计入当期损益的金融资产（FVTPL）。	尚无针对金融工具的法定定义。如果金融工具持续用于企业的业务经营，则归类为固定资产（《德国商法典》第二百四十七条第二节）。 金融资产通常按购置成本计量，含杂项费用以及后续收购费用。 如果金融资产的可回收金额预计始终低于其账面价值，其账面价值必须减少为可收回金额，且减值损失必须予以确认。如果减值损失并非始终存在，可以选择性地进行确认（《德国商法典》第二百五十三条第三节第五、六项）。 不符合固定资产条件的金融资产，其可回收金额低于其账面价值时，应确认减值损失，即不取决于减值是否永久存在。 如果确认资产减值损失的条件不再存在，减值损失必须在以后会计期间转回（《德国商法典》第二百五十三条第五节第一项）。 禁止出现公允价值计量高于购置成本的情况（仅有银行的某些金融工具或特定的设定受益计划例外）。

关注领域	《企业会计准则》 – 中国公认会计准则	国际财务报告准则	《德国商法典》 – 德国公认会计准则
	摊余成本： 除在公允价值选择（见下文）中被指定为以公允价值计量且其变动计入当期损益的债务工具外，金融资产同时符合下列条件的，应当分类为以摊余成本计量的金融资产（扣除任何减值准备）： • 企业管理金融资产的业务模式：实体业务模式的目标是持有金融资产以收取合同现金流量（而不是在合同到期之前出售），以及 • 金融资产的合同现金流量特征：该金融资产的合同条款规定，在特定日期产生的现金流量，仅为对本金和以未偿付本金金额为基础的利息的支付（《企业会计准则第22号》第十七条）。 FVTOCI： 除在公允价值选择（见下文）中被指定为以公允价值计量且其变动计入当期损益的债务工具外，金融资产同时符合下列条件的，应当分类为以公允价值计量且其变动计入其他综合收益的金融资产： • 企业管理金融资产的业务模式：该金融资产的业务模式既以收取合同现金流量为目标又以出售该金融资产为目标。 • 金融资产的合同现金流量特征：该金融资产的合同条款规定，在特定日期产生的现金流量，仅为对本金和以未偿付本金金额为基础的利息的支付。（《企业会计准则第22号》第十八条） FVTPL： 除上述分类外的其他金融资产，均为以公允价值计量且其变动计入当期损益的金融资产。（《企业会计准则第22号》第十九条） 公允价值选择： 即便可以摊余成本计量或被指定为FVTOCI（参见上文），《企业会计准则第22号》还提供另一种选择，即在初始确认时指定一项金融资产以公允价值计量且其变动计入当期损益计量。该选择旨在帮助企业消除或显著减少因在不同基础上计量资产或负债或确认其收益和损失而产生的计量或确认不一致（即"会计错配"）（《企业会计准则第22号》第二十条）。	摊余成本： 除在公允价值选择（见下文）中被指定为以公允价值计量且其变动计入当期损益的债务工具外，金融资产同时符合下列条件的，应当分类为以摊余成本计量的金融资产（扣除任何减值准备）： • 企业管理金融资产的业务模式：实体业务模式的目标是持有金融资产以收取合同现金流量（而不是在合同到期之前出售），以及 • 金融资产的合同现金流量特征：该金融资产的合同条款规定，在特定日期产生的现金流量，仅为对本金和以未偿付本金金额为基础的利息的支付。 FVTOCI： 除在公允价值选择（见下文）中被指定为以公允价值计量且其变动计入当期损益的债务工具外，金融资产同时符合下列条件的，应当分类为以公允价值计量且其变动计入其他综合收益的金融资产： • 企业管理金融资产的业务模式：该金融资产的业务模式既以收取合同现金流量为目标又以出售该金融资产为目标。 • 金融资产的合同现金流量特征：该金融资产的合同条款规定，在特定日期产生的现金流量，仅为对本金和以未偿付本金金额为基础的利息的支付。 FVTPL： 除上述分类外的其他金融资产，均为以公允价值计量且其变动计入当期损益的金融资产。 公允价值选择： 即便可以摊余成本计量或被指定为FVTOCI（参见上文），《企业会计准则第22号》还提供另一种选择，即在初始确认时指定一项金融资产以公允价值计量且其变动计入当期损益计量。该选择旨在帮助企业消除或显著减少因在不同基础上计量资产或负债或确认其收益和损失而产生的计量或确认不一致（即"会计错配"）。	

关注领域	《企业会计准则》 – 中国公认会计准则	国际财务报告准则	《德国商法典》 – 德国公认会计准则
存货 初始计量	存货应按照采购或生产成本（含杂项费用与后续采购费用）以及其他成本进行计量。根据《企业会计准则第1号》第五至10条，生产成本包括： • 采购成本，包括相关税费和运输费、装卸费、保险费等。 • 加工成本，包括直接人工成本和分配的制造间接费用； • 企业应当根据制造间接费用的性质，合理选择制造间接费用的分配方法； • 存货的其他成本，是指除采购成本、加工成本以外的，使存货达到目前场所和状态所发生的其他支出； • 符合某些标准的借款费用（《企业会计准则第17号》"符合资本化条件的资产"相关内容）	存货应按照采购或生产成本（含杂项费用与后续采购费用）进行计量。根据《国际会计准则第2号》第十一至十七条，生产成本包括： • 采购成本，包括相关税费和运输费、装卸费及其他直接可归属成本。 • 加工成本，包括直接人工成本和分配的制造间接费用； • 根据生产设施的正常产能计算的制造间接费用； • 存货的其他成本，是指除采购成本、加工成本以外的，使存货达到目前场所和状态所发生的其他支出； • 符合某些标准的借款费用（《国际会计准则第23号》第一节"符合资本化条件的资产"相关内容）	存货应按照采购或生产成本（含杂项费用与后续采购费用）进行计量，且符合《德国商法典》第二百五十五条第一、二节的一般定义，包括： • 材料成本（包括间接费用） • 制造成本（包括间接费用） • 制造过程中所用固定资产的折旧 以下几项可选择性列入存货成本： • 适当的行政管理费 • 适当的社会设施、社会福利和养老金费用 • 用于生产（而非采购）存货的融资利息（《德国商法典》第二百五十五条第一节）
存货 计算方法	运用以下方法计算存货成本（《企业会计准则第1号》第十四条）： • 个别计价法 • 先进先出法 • 加权平均法 准则中虽未明确提及标准成本法与零售法，但同样允许使用上述方法。	原则上允许采用以下方法（《国际会计准则第2号》第二十五条）： • 先进先出法 • 加权平均法 明确提及标准成本法与零售法，并将其作为计算存货成本的方法（《国际会计准则第2号》第二十一条）。 通常不能互换的存货的成本或为特定项目生产和分离的货物或服务的成本应按每个项目的单独成本分配（《国际会计准则第2号》第二十三条）。	通常计算每个项目的个别成本（《德国商法典》第二百五十二条第一节第三则），在符合财产会计原则的情况下，允许采用下列其他计算方法： • 先进先出法（《德国商法典》第二百五十六条） • 后进先出法（《德国商法典》第二百五十六条） • 加权平均法分组计算（《德国商法典》第二百四十条第四节） 原材料和用品：使用固定价值计算（《德国商法典》第二百四十条第三节）；
存货 后续计量	存货应按成本与可变现净值中的低者来加以计量。适用市场为销售市场（《企业会计准则第1号》第十五条）。 当以前使存货减记到其成本以下的条件不再存在时，被减记的金额必须在以后会计期间予以转回（《企业会计准则第1号》第十九条）。	存货应按成本与可变现净值中的低者来加以计量。适用市场为销售市场（《国际会计准则第2号》第九条）。 当以前使存货减记到其成本以下的条件不再存在时，被减记的金额必须在以后会计期间予以转回（《国际会计准则第2号》第三十三条）。	存货应按成本与可变现净值中的低者来加以计量。适用市场既包括采购市场，也包括销售市场。因此，原材料、在制品以及商品的估值需在采购市场进行比较（更低的重购/再生产成本），商品与完成品的估值需在销售市场进行比较。 当以前使存货减记到其成本以下的条件不再存在时，被减记的金额必须在以后会计期间予以转回（《德国商法典》第二百五十三条第五节第一项）。

关注领域	《企业会计准则》 – 中国公认会计准则	国际财务报告准则	《德国商法典》 – 德国公认会计准则
收入	核心原则：企业应根据以下“五步法”模型确认收入，以反映向客户转让所承诺货物或提供劳务的模式，确认的金额应反映企业预期因交换这些货物或服务而有权获得的对价： 1. 识别与客户订立的合同 2. 识别合同规定的履约义务 3. 确定交易价格 4. 将交易价格分摊至合同规定的各单项履约义务 5. 当企业履行规定义务时确认收入 1. 识别与客户订立的合同 当企业与客户之间的合同同时满足下列条件时，可按照《企业会计准则第14号》进行核算（《企业会计准则第14号》第五条）： • 合同各方已批准该合同并承诺将履行各自义务； • 该合同明确了合同各方与所转让商品或提供劳务相关的权利； • 该合同有明确的与所转让商品相关的支付条款； • 该合同具有商业实质；以及 • 企业很可能收回因向客户转让商品而有权取得的对价 2. 识别合同规定的履约义务 在合同开始时，企业应当对合同进行评估，识别该合同中所包含的向客户转让商品或提供劳务的承诺，并将该等承诺确定为各单项履约义务（《企业会计准则第14号》第九条）： • 转让可明确区分商品或劳务（或一揽子商品或服务）的承诺； • 实质相同且按相同模式向客户转让的一系列可明确区分的商品或劳务； 3. 确定交易价格 交易价格是指企业在转让货物/服务时预期有权收取的对价金额，不包括 代表第三方收取的金额，如销售税（《企业会计准则第14号》第十四条） 4. 将交易价格分摊至合同规定的各单项履约义务 交易价格分摊至各项履约义务，以反映企业因向客户转让所承诺商品或劳务而预期有权取得的对价金额（《企业会计准则第14号》第十四、二十条）。	核心原则：企业应根据以下“五步法”模型确认收入，以反映向客户转让所承诺的货物或提供劳务的模式，确认的金额应反映企业预期因交换这些货物或服务而有权获得的对价： 1. 识别与客户订立的合同 2. 识别合同规定的履约义务 3. 确定交易价格 4. 将交易价格分摊至合同规定的各单项履约义务 5. 当企业履行规定义务时确认收入 1. 识别与客户订立的合同 当企业与客户之间的合同同时满足下列条件时，可按照《国际财务报告准则第15号》进行核算（《国际财务报告准则第15号》第九条）： • 合同各方已批准该合同并承诺将履行各自义务； • 该合同明确了合同各方与所转让商品或提供劳务相关的权利； • 该合同有明确的与所转让商品相关的支付条款； • 该合同具有商业实质；以及 • 企业很可能收回因向客户转让商品而有权取得的对价 2. 识别合同规定的履约义务 在合同开始时，企业应当对合同进行评估，识别该合同中所包含的向客户转让商品或提供劳务的承诺，并将该等承诺确定为各单项履约义务（《国际财务报告准则第15号》第二十二条）： • 转让可明确区分商品或劳务（或一揽子商品或服务）的承诺； • 实质相同且按相同模式向客户转让的一系列可明确区分的商品或劳务； 3. 确定交易价格 交易价格是指企业在转让货物/服务时预期有权收取的对价金额，不包括代表第三方收取的金额，如销售税（《国际财务报告准则第15号》第四十七条） 4. 将交易价格分摊至合同规定的各单项履约义务 分摊交易价格旨在使企业能够按反映企业因向客户转让承诺的商品或服务而预计有权获得之对价金额的金额，将交易价格分摊至各单项履约义务（或可明确区分的商品或劳务）（《国际财务报告准则第15号》第七十三条）：	核心原则：企业出售和出租商品以及提供劳务所产生的收入在扣除收入减除项目、增值税和其他营业税后，应作为销售收入列示（《德国商法典》第二百七十七条第一节）。商品以外的其他项目的租赁收入通常被视为提供劳务的收入，因此，该等收入也应作为销售收入。 德国会计法未提及“五步法”模型。但一般会计法规适用于存货、应收账款、已收付款以及收入确认。 原则上，禁止在完成所有合同履约义务和客户验收之前确认收入与收益。因此，考虑到可能出现的偏差，通常根据完成合同法确认收入。 这也适用于生产周期超过一个营业年的订单生产合同（建造合同）；其中可确认部分收入的条件包括： • 生产期超过一个营业年； • 建造合同是公司业务的重要组成部分； • 合同完成后的利润确认严重损害了真实和公允价值原则； • 预计利润能够安全确定，不存在明显可对该预期利润产生负面影响的风险； • 对于不可预见的保修和整改，应仔细确定金额大小； • 建造合同的履行可以分为若干部分单独进行，且只针对相应部分确认对应利润； • 在相应部分的履约成本明显高于事先计算的情况下，不予确认部分收益（除非未来收益足以覆盖未来成本）；以及 • 没有会对整体结果产生负面影响的客户异议。

关注领域	《企业会计准则》 – 中国公认会计准则	国际财务报告准则	《德国商法典》 – 德国公认会计准则
	5. 当企业履行各单项履约义务时确认收入 企业应在履行单项履约义务（即转让所承诺商品或提供所承诺劳务）时确认收入——无论是在某一时段内履行还是在某一时点履行。当客户获得资产的控制权时，即表示资产已转让（《企业会计准则第14号》第九条）。	5. 当企业履行各单项履约义务时确认收入 企业应在履行单项履约义务（即转让所承诺商品或提供了所承诺劳务）时确认收入——无论是在某一时段内履行还是在某一时点履行。当客户获得资产的控制权时，即表示资产已转让（《国际财务报告准则第15号》第31条）。	
	满足下列条件之一的，属于在某一时段内履行履约义务；否则，属于在某一时点履行履约义务（《企业会计准则第14号》第十一条）：	满足下列条件之一的，属于在某一时段内履行履约义务；否则，属于在某一时点履行履约义务：	
	• 客户在企业履约的同时即取得并消耗企业履约所带来的经济利益；	• 客户企业履约的同时即取得并消耗企业履约所带来的经济利益；	
	• 企业履约过程中创造或改良了客户在资产的创造和改良时即控制的资产；或	• 企业履约过程中创造或改良了客户在资产的创造和改良时即控制的资产；或	
	• 企业履约过程中所产出的商品具有不可替代用途（因合同限制或实际可行性限制；企业应在合同开始时评估资产是否具备替代用途），且企业在整个合同期间内有权就累计至今已完成的履约部分收取款项。	• 企业履约过程中所产出的商品具有不可替代用途（因受到合同限制或实际可行性限制，企业应在合同开始时评估资产是否具备替代用途，参见《国际财务报告准则第15号》第三十六条、B部分第六至八条）且企业在整个合同期间内有权就累计至今已完成的履约部分收取款项（《国际财务报告准则第15号》第三十七条、B部分第九至十三条）。	
	对于在某一时段内履行的各项履约义务，企业应当在该段时间内按照履约进度确认收入。	对于在某一时段内履行的各项履约义务，企业应当按照其在该段时间内的履约进度确认收入（《国际财务报告准则第15号》第三十九条）。	
	企业应采取单一的方法来计量各项履约义务的履行进度，对于类似情况下的类似履约义务，企业应当采用相同的方法确定履约进度。（《企业会计准则第14号》第十二条）	企业应采取单一的方法来计量各项履约义务的履行进度，对于类似情况下的类似履约义务，企业应当采用相同的方法确定履约进度。	
		在每一报告期结束时，企业应重新计量其在一段时间内履行的履约义务的进度（《国际财务报告准则第15号》第四十条）。	
	采用产出法或投入法确定恰当的履约进度（《企业会计准则第14号》第十二条）：	采用产出法或投入法确定恰当的履约进度（《国际财务报告准则第15号》第四十一条，参考B部分第十四至十九条）。	
	• 产出法（如调查迄今为止已完成的业绩、达到的阶段性目标、已过去的时间）是根据直接计量迄今已转移给客户的商品/提供的劳务（相对于合同承诺的剩余商品/劳务）对于客户的价值确认收入。企业应考虑所选产出法能否忠实地描述该企业完全履行履约义务的成本。缺点：产出法可能无法直接计量不合理成本）	• 产出法（如调查迄今为止已完成的业绩、达到的阶段性目标、已过去的时间）是根据直接计量迄今为止已转移给客户的商品/提供的劳务（相对于合同承诺的剩余商品/劳务）对于客户的价值确认收入。企业应考虑所选产出法能否忠实地描述该企业完全履行履约义务的成本。缺点：产出法可能无法直接计量不合理成本）	
	• 投入法根据企业为履行履约义务所做的努力或投入（如花费的工时、发生的费用）确认收入。	• 投入法根据企业为履行履约义务所做的努力或投入（如花费的工时、发生的费用）确认收入。	

关注领域	《企业会计准则》 – 中国公认会计准则	国际财务报告准则	《德国商法典》 – 德国公认会计准则
	在每一报告期结束时，企业应重新计量其在一段时间内的履行的履约义务的进度。若相关情况随着时间的推移而发生变化，企业应更新其对履约进度的计量，以反映履约义务结果的任何变更（《企业会计准则第14号》应用指南）。 合同成本： 若企业预期将收回取得合同所发生的增量成本，则必须将该等成本确认为一项资产。企业为履行合同发生的成本，不属于其他企业会计准则规范范围且同时满足下列条件的，应当作为合同履约成本确认为一项资产（《企业会计准则第14号》第二十六条）： • 该成本与合同直接相关； • 该成本产生/增加了企业未来用于履行履约义务的资源；以及 • 该成本预期能够收回。 与已履行的履约义务有关的成本，以及为履行合同而消耗的材料、人工或其他资源而发生的、但未反映在合同中的成本，应在发生时确认为支出（《企业会计准则第14号》第二十七条）。	若相关情况随着时间的推移而发生变化，企业应更新其对履约进度的计量，以反映履约义务结果的任何变更。 合同成本： 若企业预期将收回取得合同所发生的增量成本，则必须将该等成本确认为一项资产（《国际财务报告准则第15号》第九十一条）。企业为履行合同发生的成本，不属于其他企业会计准则规范范围（如《国际会计准则第2号——存货》、《国际会计准则第16号——不动产、厂房和设备》、《国际会计准则第38号——无形资产》）且同时满足下列条件的，应当作为合同履约成本确认为一项资产（《国际财务报告准则第15号》第九十五条）。 • 该成本与合同直接相关； • 该成本产生/增加了企业未来用于履行履约义务的资源；以及 • 该成本预期能够收回。 与已履行的履约义务有关的成本，以及为履行合同而消耗的材料、人工或其他资源而发生的、但未反映在合同价款中的成本，应在发生时确认为费用（《国际财务报告准则第15号》第九十八条）。	

关注领域	《企业会计准则》 – 中国公认会计准则	国际财务报告准则	《德国商法典》 – 德国公认会计准则
或有事项与预计负债确认	根据《企业会计准则第13号》第四条，与或有事项有关的义务同时满足以下条件时，确认为预计负债： • 因过去事项而承担的现时义务（法定或推定） • 履行该义务很可能导致经济利益流出企业 • 该义务的金额能够可靠地计量 如果不符合上述条件，则不能予以确认。根据中国《企业会计准则》，如果不具备法定或推定义务，递延维修费与递延土地复垦费（德国公认会计准则要求提供）不应予以确认。	根据《国际会计准则第37号》第十四条，与或有事项有关的义务同时满足以下条件时，确认为预计负债： • 因过去事项而承担的现时义务（法定或推定） • 履行该义务很可能导致经济利益流出企业 • 该义务的金额能够可靠地计量 如果不符合上述条件，则不能予以确认。根据《国际财务报告准则》，如果不具备法定或推定义务，递延维修费与递延土地复垦费（德国公认会计准则要求提供）不应予以确认。	根据德国公认会计准则，与或有事项有关的义务同时满足以下条件时，确认为预计负债： • 针对第三方的现时义务（法定或推定） • 履行该义务会造成经济上的负担 • 金额能够计量（至少一定范围内） 此外，《德国商法典》第二百四十九条第一节要求确认以下商业事项的预计负债： • 或有债务 • 效力未定有偿合同的预期损失 • 当前财年未使用但预计下一财年前三个月内使用的递延维修费 • 当前财年未使用但预计下一财年内使用的递延废物清除费用 • 没有法律义务的保证条款 除递延维修费与废物清除费的预计负债以外，其他预计负债均符合一般条款的要求，且仅对预计负债的类别作出了说明。
或有事项与预计负债计量	预计负债应当按照履行相关现时义务所需支出的最佳估计数进行初始计量（《企业会计准则第13号》第五条）。 《企业会计准则第13号》与《企业会计准则第13号》应用指南针对不同情形下的预计负债计量作出了详尽说明。指南虽不及《国际会计准则第37号》详细，但大体类似。因此以下内容仅限于会计准则之间存在的重大不同。 如果予以计量的预计负债涉及大量的项目，并存在一个可能结果的连续范围，且该范围内各种结果发生的可能性相同，应按照该范围的中间值确定（《企业会计准则第13号》第五条）。 货币时间价值影响重大的，应当通过对相关未来现金流出进行折现后确定最佳估计数。折现率以市场行情为准（《企业会计准则第13号》第六条）。	预计负债应当按照履行相关现时义务所需支出的最佳估计数进行初始计量（《国际会计准则第37号》第三十六条）。 《国际会计准则第37号》针对不同情形下的预计负债计量作出了详尽说明（如：运用预计价值或最佳估计数，以及所含成本对有偿合同的预计负债进行计量）。以下内容仅用于说明与德国公认会计准则及中国公认会计准则存在重大不同的地方。 如果予以计量的预计负债涉及大量的项目，并存在一个可能结果的连续范围，且该范围内各种结果发生的可能性相同，应按照该范围的中间值确定（《国际会计准则第37号》第三十九条）。 货币时间价值影响重大的，应当通过对相关未来现金流出进行折现后确定最佳估计数。折现率以市场行情为准(《国际会计准则第37号》第四十五至四十七条）。	预计负债应当根据审慎的商业判断按照履行义务所必需金额进行计量（《德国民法典》第二百五十三条第一节第二项）。 与《国际会计准则第37号》和《企业会计准则第13号》不同，德国会计法未就预计负债的计量作详细规定。 如果予以计量的预计负债涉及大量的项目，并存在一个可能结果的连续范围，且该范围内各种结果发生的可能性相同，依据德国公认会计准则编制财务报表时，应确定为该范围的中间值以上，很多情况下甚至是该范围的最大值。 这是因为德国公认会计准则普遍审慎严谨。由此表明，如果予以计量的预计负债存在一个可能结果的连续范围，依照德国公认会计准则，往往倾向于以更高金额值进行确定，相反，根据《国际财务报告准则》与中国《企业会计准则》，予以计量的预计负债按照最佳估计数确定。 对于为期一年以上的预计负债，按前七财年平均市场利率（如果是离职后福利的预计负债则为前十财年平均市场利率），对相应剩余期限的预计负债进行折现（《德国商法典》第二百五十三条第二节）。根据法定法规（RueckAbzinsV），德国联邦银行每月都会公布折现率。

关注领域	《企业会计准则》 – 中国公认会计准则	国际财务报告准则	《德国商法典》 – 德国公认会计准则
或有事项与预计负债 重组	同时存在下列情况时，表明企业承担了重组义务：(1) 企业有详细、正式的重组计划，包括重组涉及的地点、职工、计划实施时间和预计重组支出；(2) 该重组计划已对外公告（《企业会计准则第13号》第十条）。	同时存在下列情况时，表明企业承担了重组义务：(1) 企业有详细、正式的重组计划，包括重组涉及的地点、职工、计划实施时间和预计重组支出；(2) 通过开始实施该计划，或向那些受其影响的方面通告该计划的主要方面，已使那些受影响的方面建立了个有效预期，即企业将实施该重组（《国际会计准则第37号》第七十二条）。	德国会计法并未就企业承担重组义务的条件作出详细说明。根据会计文献对会计法的解释，如果企业管理层决定制定详细的重组计划，或该决定已经不可避免，且在资产负债表日之前或资产负债表日与财务报表编制日期间告知职工委员会。
或有事项与预计负债 离职后福利	《企业会计准则第9号》将离职后福利计划分类为设定提存计划和设定受益计划。 根据设定提存计划，企业的法定或推定义务仅限于向单独的基金缴存固定金额。因此，职工获得的离职后福利金额取决于企业（或许包括职工）向离职后福利计划或保险公司缴存的金额，以及由其缴存金额产生的投资回报；该计划的所有风险由职工承担。 向设定提存计划缴存的款项为当期费用。缴存不足或缴存过多的款项除外，此类缴存款项不予以列入资产负债表项目。	《国际会计准则第19号》将离职后福利计划分类为设定提存计划和设定受益计划。 根据设定提存计划，企业的法定或推定义务仅限于向单独的基金缴存固定金额。因此，职工获得的离职后福利金额取决于企业（或许包括职工）向离职后福利计划或保险公司缴存的金额，以及由其缴存金额产生的投资回报；该计划的所有风险由职工承担（《国际会计准则第19号》第二十八条）。 向设定提存计划缴存的款项为当期费用，除非另有《国际财务报告准则》要求或允许将缴存款项归为资产的成本（《国际会计准则第19号》第五十一条）。缴存不足或缴存过多的款项除外，此类缴存款项不予以列入资产负债表项目。	向设定提存计划缴存的款项为当期费用。缴存不足或缴存过多的款项除外，此类缴存款项不予以列入资产负债表项目。
	根据设定受益计划，企业应当将设定受益计划义务现值减去设定受益计划资产公允价值所形成的赤字或盈余确认为一项设定受益计划负债（或资产）。《企业会计准则第9号》第十三条对负债（或资产）的计量作出了详细的规定。 计量原则如下: • 预期累计福利单位法（《企业会计准则第9号》第十三条） • 折现率根据市场收益率确定（《企业会计准则第9号》第十五条） 精算利得或损失，以及时间价值以外因素引起的设定受益计划资产公允价值的变动应立即计入其他综合收益（《企业会计准则第9号》第十六条）	根据设定受益计划，企业应当将设定受益计划义务现值减去设定受益计划资产公允价值所形成的赤字或盈余确认为一项设定受益计划负债（或资产）。《国际会计准则第19号》第五十七条各项对负债（或资产）的计量作出了详细的规定。 计量原则如下: • 预期累计福利单位法（《国际会计准则第19号》第六十七条） • 折现率根据市场收益率确定（《国际会计准则第19号》第八十三条各项） 精算利得或损失，以及时间价值以外因素引起的设定受益计划资产公允价值的变动应立即计入其他综合收益（《国际会计准则第19号》第一百二十条）	根据设定受益计划，企业应当用设定受益计划义务现值减去设定受益计划资产公允价值，以确认离职后福利计划负债。精算利得与损失必须计入当期损益表。 法律并未规定计量方法。因此，既可使用预期累计福利单位法，也可使用投保年龄法（德国税务会计常用方法）。 如上所述，折现率为前十财年平均利率。根据《德国商法典》第二百五十三条第二节第二项，对于设定受益计划，所有个人义务可按给定的15年剩余期限计。使用的贴现率由德国联邦银行（Deutsche Bundesbank）每月公布。

关注领域	《企业会计准则》 – 中国公认会计准则	国际财务报告准则	《德国商法典》 – 德国公认会计准则
负债 计量	对于不以公允价值计量且其变动计入当期损益的金融负债，初始确认应按公允价值计量，通常为购买成本加上可直接归属于购买的交易费用（《企业会计准则第22号》第三十三条）。 应当采用实际利率法，按摊余成本对金融负债进行后续计量（《企业会计准则第22号》第三十六条）。 外币货币性项目，采用资产负债表日即期汇率折算（《企业会计准则第19号》第十一条第（1）项）。	对于不以公允价值计量且其变动计入当期损益的金融负债，初始确认应按公允价值计量，通常为购买成本加上可直接归属于购买的交易费用（《国际会计准则第39号》第四十三条）。 应当采用实际利率法，按摊余成本对金融负债进行后续计量（《国际会计准则第39号》第四十七条）。 外币货币性项目，采用资产负债表日即期汇率折算（《国际会计准则第21号》第二十三条第（a）项）。	负债以结算金额计量（《德国商法典》第二百五十三条第一节第二项）。金融负债的溢价或折现通常确认为预付费用，并采用直线法计入相关成本。 外币货币性性目，采用平均即期汇率折算，前提是其价值不得低于购置成本。剩余期限达一年的负债，采用平均即期汇率折算，且无需以购置成本为限（《德国商法典》第二百五十六条a）。
递延所得税	递延所得税的确认以暂时性为基础。 比较资产负债表上列示的资产、负债按照《企业会计准则》确定的账面价值与其计税基础，根据两者之间的所有暂时性差异，确认递延所得税资产与递延所得税负债，以下三项除外（《企业会计准则第18号》第十一、十三条）： • 商誉的初始确认 • 不是企业合并、且发生时既不影响会计利润也不影响应纳税所得额的交易所产生的资产/负债的初始确认 • 企业对与子公司、联营企业及合营企业投资相关的可抵扣暂时性差异，并满足以下条件：投资企业能够控制暂时性差异转回的时间，且该暂时性差异在可预见的未来很可能不会转回。	递延所得税的确认以暂时性为基础。 比较资产负债表上列示的资产、负债按照《国际财务报告准则》确定的账面价值与其计税基础，根据两者之间的所有暂时性差异，确认递延所得税资产与递延所得税负债，以下三项除外（《国际会计准则第12号》第十五、二十四条）： • 商誉的初始确认 • 不是企业合并、且发生时既不影响会计利润也不影响应纳税所得额的交易所产生的资产/负债的初始确认 • 企业对与子公司、联营企业及合营企业投资相关的可抵扣暂时性差异，并满足以下条件：投资企业能够控制暂时性差异转回的时间，且该暂时性差异在可预见的未来很可能不会转回（《国际会计准则第12号》第三十九条）。	递延所得税的确认以暂时性为基础。 比较资产负债表上列示的资产、负债按照德国公认会计准则确定的账面价值与其计税基础，根据两者之间的所有应纳税暂时性差异，确认递延所得税资产和负债（《德国商法典》第二百七十四条第一节第一项）。德国会计法并未就《国际会计准则第12号》和《企业会计准则第18号》中提到的预期要求单独立法，但上述要求适用于德国公认会计准则。 当递延所得税资产总额超过递延所得税负债总额时，根据德国公认会计准则，可以选择性地将超过部分金额确认为递延所得税资产（《德国商法典》第二百七十四条第一节第二项）。

关注领域	《企业会计准则》 – 中国公认会计准则	国际财务报告准则	《德国商法典》 – 德国公认会计准则
	企业对于能够结转以后年度的可抵扣亏损和税款抵减，应当以很可能获得用来抵扣可抵扣亏损和税款抵减的未来应纳税所得额为限，确认相应的递延所得税资产（《企业会计准则第18号》第十五条）。以很可能取得用来抵扣可抵扣暂时性差异的应纳税所得额为限，确认由可抵扣暂时性差异产生的递延所得税资产（《企业会计准则第18号》第十三条）。但是，企业若近期存在亏损记录，只有在存在应纳税暂时性差异或有令人信服的证据表明将来可获得足够的应纳税所得额的情况下，才能确认一项由可结转以后年度的可抵扣亏损或税款抵减产生的递延所得税资产（商务部解释指南（2010年版））。 会计期末，对于递延所得税资产和递延所得税负债，应当按照预期收回该资产或清偿该负债期间的适用税率计量（《企业会计准则第18号》第十七条）。 递延所得税资产和递延所得税负债不应进行折现（《企业会计准则第18号》第十九条），且应当分别作为非流动项目在财务报表中列示（《企业会计准则第18号》第二十三条）。根据中国商务部2010年颁发的解释指南，如果企业拥有结算当期所得税资产及当期所得税负债的法定权利，且递延所得税资产及递延所得税负债由同一税收部门征收，企业应当将递延所得税资产与递延所得税负债以抵销后的净额列示。	企业对于能够结转以后年度的可抵扣亏损和税款抵减，应当以很可能获得用来抵扣可抵扣亏损和税款抵减的未来应纳税所得额为限，确认相应的递延所得税资产（《国际会计准则第12号》第三十四条）。以很可能取得用来抵扣可抵扣暂时性差异的应纳税所得额为限，确认由可抵扣暂时性差异产生的递延所得税资产（《国际会计准则第12号》第二十四条）。但是，企业若近期存在亏损记录，只有在存在应纳税暂时性差异或有令人信服的证据表明将来可获得足够的应纳税所得额的情况下，才能确认一项由可转以后年度的可抵扣亏损或税款抵减产生的递延所得税资产（《国际会计准则第12号》第三十五条）。 会计期末，对于递延所得税资产和递延所得税负债，应当按照预期收回该资产或清偿该负债期间的适用税率计量（《国际会计准则第12号》第四十六条）。 递延所得税资产和递延所得税负债不应进行折现（《国际会计准则第12号》第五十三条），且应当分别作为非流动项目在财务报表中列示。如果企业拥有结算当期所得税资产及当期所得税负债的法定权利，且递延所得税资产及递延所得税负债由同一税收部门征收，企业应当将递延所得税资产与递延所得税负债以抵销后的净额列示（《国际会计准则第12号》第七十四条）。	企业对于能够结转以后年度的可抵扣亏损和税款抵减，应当以未来五年很可能获得用来抵扣可抵扣亏损和税款抵减的未来应纳税所得额为限，确认相应的递延所得税资产。（《德国商法典》第二百七十四条第一节第四项）。《国际会计准则》和《企业会计准则》规定应当以很可能获得用来抵扣可抵扣亏损和税款抵减的未来应纳税所得额为限，这一点同样适用于根据德国公认会计准则编制的财务报表。 对于递延所得税资产和递延所得税负债，应当按照预期收回该资产或清偿该负债期间的适用税率计量（《德国商法典》第二百七十四条第二节第一款）。 递延所得税资产和递延所得税负债不应进行折现（《德国商法典》第二百七十四条第二节第一项）。 递延所得税资产与递延所得税负债予以单独列示。可选择性地以将递延所得税资产与递延所得税负债以抵销后的净额列示（《德国商法典》第二百七十四条第一节第三项）。

及时、恰当的建立健全符合中国和德国标准的内部控制体系对于中国投资者成功整合新收购的德国子公司至关重要 。
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3.4 公司治理及合规风险管理

在投资德国公司时，考虑整个投资过程（包括执行尽职调查的并购前阶段及整合德国标的公司的并购后阶段）中出现的各种复杂的公司治理要求至关重要。

公司治理制度: 德国公司的董事会或管理层负责建立适当、有效的公司治理制度，而监事会负责对这些制度进行监督。最重要的公司治理制度包括合规管理制度（CMS）、风险管理制度（RMS）、内部控制制度（ICS）和内部审计（IA）。在2009年生效的《会计法现代化法案》中（亦可参见《德国股份公司法》第107（3）条），立法者对这一此前未有法规予以提及的义务进行了明确规定。这一义务的适用范围不仅局限于上市公司，因此必须结合每个公司的具体需求予以审查。德国正在进行的其他立法项目，如《加强金融市场诚信法》（FISG）提出拓宽建立有效治理制度之义务，特别是内部控制制度和风险管理制度方面的义务的适用范围。

对公司治理制度的审计: 在进行适当的设计和有效实施合规管理制度、风险管理制度、内部控制制度和内部审计时，建议遵循德国法定审计师协会PS 980（合规管理制度）、PS 981（风险管理制度）、PS 982（内部控制制度）和PS 983（内部审计）中的审计标准。在实践过程中，这些标准是审查公司治理制度是否充分和有效的依据，因此，在公司治理制度设计和实施阶段对这些标准进行考虑通常是一种"安全港"方法。未建立适当、有效的公司治理制度的行为将被视为违反董事会成员的注意义务和责任（定义参见《德国股份公司法》第93条），并对其他法律实体的管理委员会产生影响。

合规管理: 就合规管理制度而言，今后须依据德国法律规定，遵守《单位犯罪惩戒法》（Ver-SanG）（目前仍处于草案阶段）。根据《单位犯罪惩戒法》，以经济业务运营为目的的单位如有相关犯罪行为，均可按该法予以处罚（《单位犯罪惩戒法》第1条）。这是指，私法和公法规定的法人和以企业家身份开展经营、具有法律行为能力的合伙企业，即所有常见形式的企业，不论规模大小，都适用《单位犯罪惩戒法》。一方面，《单位犯罪惩戒法》规定，如果公司内部有刑事犯罪行为，将对公司施以严厉处罚。另一方面，该法首次提出，如果公司采取了预防措施防止不当行为发生，或至少使不当行为发生几率大幅减低，则可获减轻处罚。因此，《单位犯罪惩戒法》为实施适当、有效的合规措施提供了重要的激励。

风险管理: 作为风险管理制度的重要组成部分，德国的法规对早期风险检测系统的设计提出了明确的要求。对于公共有限公司，《德国股份公司法》第91条第2段落（《公司控制和透明度准则》）提供了相关的法律依据，对于其他法律形式公司（特别是有限责任公司），则可参见《公司稳定与重组法》（StaRUG）第1条第1段落相关规定。

内部控制: 德国公司是否适用中国财务报告内部控制相关规定（企业内部控制基本规范），取决于德国公司的规模和对中国母公司的重要性。因此，根据公司的具体情况，如何以风险为导向将德国公司妥善地纳入集团内部控制制度的整体框架中，是一个重要的问题。但不管怎样，均应考虑德国公司对年度财务报表的报告义务。为编制符合《德国商法典》的财务报表，有必要根据公司规模合理调整内部控制制度，并使该制度正常运作。

关于德国外商投资的税务问题，德勤可提供全面的支持，服务内容涵盖各类税种的税务分析和规划、税务尽职调查、持续的税务合规及其他服务。
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3.5 税务

3.5.1 德国税务概览

相较中国税务，德国税务体系有一点特别值得注意，即德国税法高度严谨，且对不合规行为予以处罚。因此对于投资者而言，在投资初期详尽评估其（税务）法律义务至关重要。否则，日后（如税务审计期间）可能产生不必要的行政开销，税务成本或处罚。

在德国，各种税务构成了一个复杂的系统，其适用性一方面取决于纳税人，另一方面取决于所获收入的类型。

通常来说，根据不同的收入类型，可将税务分为以下几类：

- 收入税
- 资本税
- 交易或消费税

在德国拥有注册办公室或管理场所的企业，其全球所得均须缴纳企业所得税和贸易税。然而在实践中，避免双重征税协议从总体上规定了企业在不同国家拥有业务时的纳税权利分配。中国与德国已签署此类协议（关于中德避免双重征税协议见第3.5.4.1章节）。

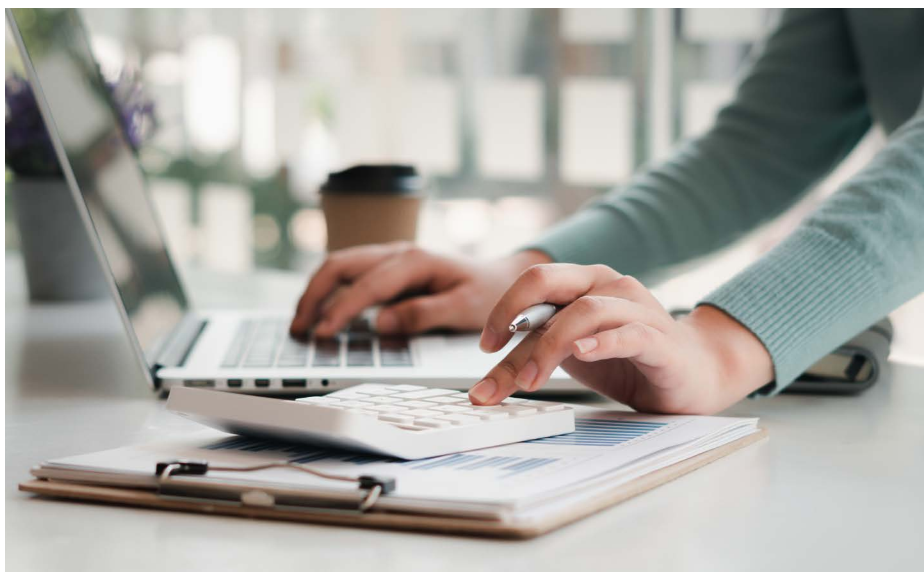
未在德国拥有注册办公室或管理场所的外资企业视为非居民企业。非居民企业仅须为其德国国内所得缴纳企业所得税。

由于德国是欧盟27个成员国之一（英国脱欧后），因此部分欧盟法律原则，如资本自由流动，一般而言也适用于德国。欧盟税收政策可分为两大类：直接税收，由成员国自行负责；和间接税收，影响商品的自由流动和在欧盟提供服务的自由。欧盟成员国所采取的直接税收措施主要为了协调各自政策以防止避税和双重征税，以及为成员国提供一个公平的欧盟内税收框架（目前仍在努力推动建立共同统一公司税基（CCCTB），但迄今尚未成功）。间接税收方面，欧盟实行通用增值税规则，统一了增值税。此外，类似于经合组织，欧盟也拥有自己的反避税计划，有望促进欧盟内部部分间接税收的改革。

综上所述，欧盟的税收政策惠及欧洲居民，旨在保障欧洲内部市场并确保成员国之间的竞争不因税率和税收体制不同而扭曲。欧盟还实行措施防止因企业在欧盟成员国之间转移应税基数而产生的税收竞争不良后果。

德国适用于税收居民企业的税种主要有企业所得税、地方贸易税和增值税。其他税种包括地方不动产税、不动产转移税、关税和消费税等。

对个人而言，主要税种为个人所得税。社会保险费也适用于个人。此外，在特定情况下还可适用地方不动产转让税和贸易税。



3.5.2 企业税制

3.5.2.1 企业所得税

3.5.2.1.1 企业所得税应纳税所得额

企业为德国纳税居民的，其全球所得均应缴纳税费。属于营业收入的全部所得均须缴纳企业所得税和贸易税。应纳税所得额根据《所得税法》的相关条款予以确定。《所得税法》条款基本以依据德国公认会计原则的法定账户为基础，由《企业所得税法》和《贸易税法》中的特别条款予以补充（簿记要求见第3.3.1章节和第3.5.6.1章节）。

根据目前的准则，居民企业股息所得一般免收企业所得税。但自2013年3月起，于该年年初在子公司中的参与股权低于10%的，不再适用此项免税。适用此项免税的，将总股息5%作为不可抵扣营业开支列入应纳税所得额，按约1.5%有效税率（含贸易税）征税。95%股息免税不适用于部分银行、金融机构、金融企业以通过交易活动而获取短期利润为目的而持有的股份（"交易性股份例外"）、人寿或医疗保险公司或养老金。自2006年末起，该项免税仅在股息未被在分配企业层面处理为可抵扣营业开支的情况下才能适用。95%股息免税仅在符合某些最低持有和最低所有权要求的情况下适用于贸易税。此外，部分股权活跃度的要求也适用于欧盟之外的居民企业。

类似的规定也适用于出售企业股权所获得的资本收益。企业出售股份获得的资本收益，除5%加回计入不可抵扣营业开支外，其余100%免税。出售股份无最低持股比例的要求。此项免税不适用于部分银行、金融机构、金融企业以通过交易活动而获取短期利润为目的而持有的股份（"交易性股份例外"）、人寿或医疗保险公司或养老金等不从95%股息免税中获益的机构。

一般而言，因企业的业务运营而产生的费用均为可抵扣费用。部分费用可能不允许抵扣（如免税收入相关的费用）或存在最高可抵扣额度限制。

利息费用方面，德国自2008财年起实行被称为"利润剥离"的规定，该规定可能对利息费用的抵扣进行限制。根据这些规定，纳税人计税时可直接抵扣（净）利息费用，但扣除上限为息税折旧及摊销前利润（即扣除净利息费用、税项、正常折旧及摊销之前的应税利润）的30%。若纳税人的净利息费用低于息税折旧及摊销前利润的30%，则产生息税折旧及摊销前利润结转，不适用30%限额的情况（见下文）除外。当净利息费用超过当前息税折旧摊销前利润的30%时，超出部分（超额利息）可结转并在随后的五年内使用。不适用于30%限额的情况有：（1）年（净）利息负担低于300万欧元；（2）纳税人不属于某个企业集团；或（3）纳税人证明德国借贷人的产权比率低于全球集团的产权比率不超过两个百分点。超额利息可无限期结转（尽管所有权变更规定适用）。不允许抵扣的利息费用不触发预扣税。

3.5.2.1.2 亏损
如果本年利润无法抵减同年亏损，则未抵消亏损可无限期向后结转或向前结转一年。未抵减的亏损可向上一计税期间结转最高金额100万欧元，计征企业所得税。亏损抵前不得用于贸易税。亏损抵后并无最高100万欧元的限额限制，但超过100万欧元的亏损抵后金额最高不得超过收入的60%。因此，余下40%的收入将按一般税率计税（“最低税收”）。最低税收原则同样适用于贸易税。

德国自2008年1月1日起实行所有权变更规定。如果亏损企业五年内直接或间接向一个买方（或一个关联买方集团）转移股份超过50%，则取消其企业所得税和贸易税的全部亏损抵免。自2010年1月1日起，如果单个个人或实体直接或间接拥有股份转移企业和接收企业100%的股权的，不会取消其亏损抵后。只要亏损企业内在增益于德国纳税，亏损企业便可继续享有亏损抵后待遇。自2016年起，若亏损公司的历史业务不变，在某些情况下，仍可继续享有亏损抵后待遇。

德国合并纳税集团中某一控权实体或受控实体收入为负的，如果控权实体、受控实体或任何他人层面考虑将此亏损在国外纳税，则视该负收入为不可抵扣亏损，须在德国纳税。

3.5.2.2 贸易税
贸易税基于计算企业所得税的应税所得计算，但须进行几项所得调整。

不同地区的税率各不相同，但通常均介于所得的14%–17%之间（最低税率为7%）。

贸易税基数有所提高，提高部分为以下费用总和的25%（意味着下列费用仅为贸易税可抵扣税金的75%，而非100%），其中包括：

- 所有利息费用；
- 流动资产租金的1/5；
- 非流动资产租金的1/2；以及
- 许可费用的1/4；
- 减去免税额200,000欧元。

此外，还可能适用其他一些补充或抵扣规则。对金融机构和金融服务提供商利息费用的加回，德国有特殊规定：特定条件下，金融机构和金融服务提供商不必加回其利息所得。

3.5.2.3 申报要求
税收评定期间一般按日历年度划分，但居民企业可选择存在时间偏差的财务年度作为纳税年度。企业变更其财务年度（及其纳税年度）须获得税务当局同意，但将其偏差的财务年度变更回日历年度则无需税务当局的同意。财务年度不得超过12个月，但可少于12个月。

根据德国税收法律，纳税申报单必须每年提交以申报所得税。纳税申报单须以税务当局提供的特定表格填写，并以电子档的形式进行申报（另见第3.5.6.2章节“电子税收资产负债表法规”）。

一般须在下一年的7月31日前进行最终纳税申报的电子申报。若纳税申报单由注册税务师填写，则截止日期延长至纳税年度次年2月的最后一日。

此外，须注意的是税务当局会评定企业税和团结附加税的预付款项。经评定的预付款项一般由税务当局基于往年应纳税所得额计算，由企业每季度预先向税务当局支付。

除已提及的企业所得税，税务当局还征收团结附加税。团结附加税是按经评定的企业所得税计征的附加税，适用税率为5.5%。

3.5.2.4 德国纳税集团（“税收经济单位”）

德国税法允许企业集团组成纳税集团（“税收经济单位”）缴纳德国企业所得税和贸易税，并在纳税集团母公司的纳税申报单中申报合并所得。此种情况下，属于该集团的企业可首先以合并纳税集团的利润抵销其当前亏损（并将利润从纳税集团其他子公司转入母公司）。

要组成纳税集团，母公司（可以是德国公司、经营贸易或业务的德国合伙企业、德国个人或外资企业在德分支机构）必须于德国企业的财务年度开始之时持有该子公司多数股份或投票权。此外，纳税集团的成员必须签订一份最低期限五年的利润及亏损联合经营协议，并在该纳税集团生效的财务年度结束前于该子公司的财务年度内登记。

3.5.2.5 非居民企业和常设机构

未在德国拥有注册办公室或管理场所的外资企业属于非居民企业，须在德国纳税。非居民企业仅须为其德国国内所得缴纳德国企业所得税。非居民企业从德国分支机构和常设机构或德国合伙企业的合伙权益所得或其他某些所得，属于德国国内所得，按15%的一般税率计征企业所得税，外加5.5%的团结附加税，以及可能的贸易税。

例如，非德国居民企业的（固定）利息所得，若该资金是通过德国国内不动产、通过民法关于土地的规定的国内权利直接或间接取得的，也属于德国国内所得。

非居民企业的其他收入来源（如特许权使用费所得）以预扣税的方式征税，而此种税费可通过适当的税收协定降低。对中国而言，适用的预提税根据避免双重征税协议降至了10%。德国税法含有“常设机构”一词的一般定义，用于计征德国税收。相比德国税收协定中对“常设机构”一词的定义，德国税法的定义较为宽泛，因而外资企业经营活动的纳税范围很广。不同于德国税收协定，德国国内法并未列明不得设立常设机构的情况。因此，如果在香港等未签署避免双重征税协议的辖区从事经营活动，建议进行审慎的规划，避免设立常设机构或确保遵守德国税务报告要求。

根据德国税法，常设机构一般指“企业进行活动固定经营场所或商业设施”。特别是符合以下所列条件之一的，在德国税法上认定为常设机构：

- 管理场所；
- 分支机构；
- 办事处；
- 仓库；
- 采购或销售点；
- 矿场、采石场或其他为开采自然资源而不断变换地点的一个或多个固定或移动工地；
- 建筑工地或设施，以及不断变换地点或移动的工地或设施，若建设：
  - a) 单个建筑工地或设施，或
  - b) 同时存在的多个建筑工地或设施中的一个，或
  - c) 相继不间断建设的多个建筑工地或设施所需时间超过六个月。

因此，累积符合以下四个主要条件的，则被认定为在德常设机构，须缴纳德国税费：

- 存在固定经营场所或商业设施；
- 可持续性，即该固定经营场所的时间因素；
- 纳税人有权管理并处置该固定经营场所；以及
- 该固定场所内的常设机构持续开展活动。

境外企业在德国商业登记处注册分支机构的，基本认定该分支机构为在德国常设机构，须缴纳德国税费。此种认定具有法律实践基础。

德国对常设机构的全国性定义较为宽泛。因此，若存在税收协定，德国的常设机构定义以各税收协定的定义为准。

根据中德税收协定第5条第2段的规定，“常设机构”指公司开展全部或部分业务的固定经营场所。常设机构尤其包括：

- 管理场所；
- 分支机构；
- 办事处；
- 工厂；
- 作业场所；
- 矿场、采石场或其他开采自然资源的场所。

此外，根据第5条第3段的规定，以下也属于常设机构：

- 建筑工地，建筑、装配或安装工程，但这种工地、工程或活动以连续六个月以上的为限（根据尚待正式批准的新避免双重征税协议，6个月的期限将更改为12个月）；
- 缔约国一方企业通过雇员或者其他人员，在缔约国另一方为同一个项目或相关联的项目提供的劳务，包括咨询服务，以连续或累计超过六个月的为限（根据新的避免双重征税协议，六个月的期限将更改为183天）。

与德国国内税法相反，税收协定则列出了一份“反面清单”，即除其他事项外，排除以下服务，不构成纳税常设机构：

- 专为储存、陈列或者交付本企业货物或者商品的目的而使用的设施；
- 专为本企业采购货物或者商品，或者搜集信息的目的所设的固定营业场所；
- 专为本企业进行广告、搜集信息、科学研究或类似准备性或辅助性活动的目的所设的固定营业场所。

BUDGET PLANNER

3.5.3 个人税制

3.5.3.1 概览

所得税率	累进税率，最高税率45%（加上团结附加税为47.475%）
资本利得税率	累进税率，最高税率45%（加上团结附加税为47.475%），某些情况下纳税人可获部分或全部免税
计税基础	全球所得
双重征税减免	有
纳税年度	日历年
申报截止日期	7月31日

预提税	
股息	25%（加上团结附加税为 26.375%）
利息	25%（加上团结附加税为26.375%）/0%
特许权使用费	15%（加上团结附加税为15.825%）
教会税	所得税/薪资税/预提税的8%或9%，适用于某些被官方认可的德国教会的常驻教员
净财富税	无
社会保险	有
遗产税	7%–50%
房产税	1.5%-2.3%（主要城市的有效税率，以市政当局规定为准）
增值税	19%（标准税率）/7%（缩减税率）

3.5.3.2 税收居民
符合以下条件的个人，视为税收居民：

- 其在德国维持一个住宅或住所供个人所用，同时有意保留并定期使用；或

- 其在德国拥有经常居住地，即其在德国实际连续居住超过六个月，或有意连续居留超过六个月。周末外出、度假或出差等短时间中断并不妨碍经常居住地的构成。

国籍并不是确定税收居民的标准。根据适用税收协定，具有某个国籍的个人可能会被判定为其他国家的税收居民。

实际应用中，未通过税收居民测试的个人，如果其德国国内的应税所得占其全球应税所得的90%或以上，则税收居民身份范围可扩大到此类个人。

3.5.3.3 应税所得及税率
税收居民的全球所得均计征所得税，而非税收居民一般只有部分德国国内所得须计税。税收协定可作出规定免于双重征税。

应税所得
基本所得来源包括：农林业所得、工商经营所得、独立劳动所得、非独立劳动所得、储蓄和资本投资所得、租赁所得、部分资本所得以及其他个人所得。多数情况下，个人储蓄和资本投资所得以及相关资本所得通过源泉扣缴的方式单独计税。

非独立劳动所得包括工资、薪酬、奖金、额外福利以及其他形式的补贴。用以补偿周日、银行公假日或夜班工作的款项，或购买雇主产品或服务给予的员工折扣等适用于部分免税政策。除非纳税人证明其产生了更高的可抵扣费用，否则其应税所得每年可获一次性扣除1,000欧元。实物形式的福利（如优惠券），其价值（减去员工支付的额外款项）在单个日历月份不超过44欧元的，不在考虑范围内。

出售非经营性资产（除部分类型的储蓄和资本投资）的资本收益，只在持有该资产的期限未达到最低持有期限（如不动产10年，其余大部分为一年）时才须纳税。每个日历年度资本所得低于600欧元的，免征所得税。纳税人出售私人住宅，如果纳税人已在购买住宅后和出售住宅前的期间、或出售当年以及前两年居住于该住宅的，免征所得税。出售私人持有的1%或以上企业股权的，无论是否达到最低持有期限，均征收所得税，但只以该资本所得的60%计税。

法定养老保险计划的养老金按一定的比例计税，该比例视养老金起始年度而定；例如，养老金于2020年开始的，则应税百分比为80%，而于2021年开始的，该比例则为81%。

应税所得按下列所得计算：

- 农林业所得、工商经营所得或独立劳动所得——以权责发生制（若依据商法存在记账义务，则为强制性）或收付实现制为基础确定的利润；包括已变现的资本收益或亏损；或

- 其他个人所得——以收付实现制为基础，从总收益扣除收入相关的支出；除法律规定的特殊情况外，一般不包括已变现的资本收益或亏损。

还有部分所得免征所得税，如雇主支付的法定医疗保险、护理保险、失业保险和养老保险计划供款、以及部分社会分配、养老金一次总付款和医疗、事故和伤残保险的赔偿款。

税款抵扣和减免

从2021年起，居民纳税人享有每人9,744欧元（共同申报的已婚夫妇为19,488欧元）的基础免税额。

除营业或收入相关的支出外，对于某些“必须”款项，个人纳税人可进行特别抵扣，如：

- 法定养老保险计划一定比例的供款，包括雇主份额（2021年为92%），2020年最高为每年23,724欧元（25,787欧元的92%），减去雇主份额；
- 法定医疗保险计划的保险费或供款，或同等金额的基本医疗保险额度（不包括雇主的医疗保险费份额）；
- 独立劳动个人的私人人寿险、事故险、失业险或伤残险、或私人医疗保险超过最高2,800欧元、或公务员和雇员超过1,900欧元基本保额的保险费或供款，前提是上限未被基本保额完全消耗；
- 为未来职业进行的专业培训支出，每年超过6,000欧元；
- 向离异伴侣支付的赡养费达13,805欧元的（若离异伴侣同意）；
- 向注册慈善机构、文化或体育组织的捐款，达个人总净收入的20%（特别抵扣前），或达到企业营业额加已付工资和薪酬之和的4%；或
- 向官方认可的德国教会支付的教会税。

儿童也享受抵扣政策。符合条件的纳税人，其前两个子女每人将自动获得每月219欧元的儿童津贴，第三个子女为225欧元，第四个及之后的子女为250欧元。税务当局于年底计算用于一个儿童生活、护理和教育的儿童津贴或税收补贴（共8,388欧元，如为离异的父（母）亲，则为该数额的一半）是否能让纳税人获益，并自动调整最终的税费。非居民纳税人按德国居民计税的，可索取儿童津贴。

税率

居民个人纳税人的税率范围从最低税率为收入超过9,744欧元（共同申报的已婚夫妇为19,488欧元）部分的14%到最高税率为收入超过274,613欧元（共同申报的已婚夫妇为549,226欧元）部分的45%。已评定的所得税之上还额外加征5.5%的团结附加税。按经营所得计征的贸易税将有限抵扣此等所得应分摊的所得税额。

无论持有期限长短，私人资本投资所得均须缴纳25%的预提税（加上团结附加税为26.375%）（如股息收入所得或处置债券或低于1%的少量股份所得）。每位纳税人每年可获得801欧元的补贴（共同申报的已婚夫妇为1,602欧元）。若个人正常（累进）税率低于25%（加上团结附加税为26.375%），纳税人可在其纳税申报单中申请更为优惠的税收处理。

非居民以下所得按15%的统一税率（加上团结附加税为15.825%）计税：

- 在德国国内进行或利用文艺、体育、娱乐或类似表演的所得（从事非独立劳动须缴纳工资税的除外）；以及
- 专利权、版权或专有技术等权利使用或使用权所支付的授权费。

统一税采用源泉代缴的形式征收。确定应税所得时不得抵扣任何支出。欧盟或欧洲经济区国家的非居民个人可选择抵扣收入相关的支出。此种情况则征收30%（加上团结附加税为31.65%）的预提税。德国企业监事会的非居民成员须缴纳30%（加上团结附加税为31.65%）的预提税。欧盟或欧洲经济区国家的非居民则允许从其计税基础中抵扣收入相关的支出。税费可通过适当的税收协定免除或减少。

3.5.3.4 社会保险费

非独立劳动个人须缴纳法定医疗保险、护理保险、失业保险和养老保险等社会保险费。雇主一般承担总保费的50%。其他额外社会保险费包括破产基金保险（总薪资的0.15%），“U2”生育保险（用于在生产保障期间补偿员工工资；约为工资的0.3%，以员工公共医疗保险所在地规定为准）以及雇佣30名或以下员工的雇主须缴纳的“U1”疾病保险（部分补偿员工生病期间的工资；约为1.3%至最高3.9%，以员工参保的公共医疗保险计划及所选择的补偿比例为准）。

3.5.4 国际税制

大部分业务活动是在跨境进行的：可以是跨境商品或服务的供应或跨境投资活动等形式。在此特别重要的是中国的对德投资，以及中国投资者以德国作为居间股权公司所在地而进行的德国对外投资。有鉴于目前税基侵蚀和利润转移（BEPS）的发展情况，此种现象可能因大多数德国公司都具有实质性经济活动而变得愈发普遍。

德国规定了避免双重征税的不同措施，这些措施可分为国家单边措施和税收协定管制的双边措施。

3.5.4.1 避免双重征税单边措施

非税收协定情况（如香港特区）或税收协定情况（如中国大陆）下税收协定规定税收抵免的，拥有境外所得的德国纳税人，如果其支付外国税款的相关收入按德国国内法律须纳税的，则可以用所支付的外国税款抵扣（须认可分国限额法）。

或者，纳税人可选择抵扣外国税款，这在德国实体处于亏损境况而不具有任何税收成本以抵扣外国税款时尤其相关。

3.5.4.2 税收协定

全面的避免双重征税协议是避免双重征税双边措施的基础。

德国与大约100个辖区签署了税收协定，具有广泛的税收协定网络，另外还拥有六个遗产税和赠予税税收协定。目前，德国与香港并未签署全面的双重征税协定。

此外，德国与不同国家签署了多个税务信息交换协议（TIEA）。最后，德国还有部分税收协定，规定了航运及航空收入的处理。

如果国内税率低于税收协定的税率，则以国内税率（D）为准。另外，《欧共体母公司与子公司指令》或《利息和特许权使用费指令》中的规定也可适用，以降低税率。

3.5.4.2.1 中德税收协定
中德税收协定自1985年6月10日起执行生效，基本遵循经合组织的税收协定范本。中德税收协定（修订本）自2017年1月1日起生效。

然而，该协定与经合组织税收协定范本存在某些差异，主要差异概述如下：

第五条 常设机构
常设机构也包括：

- 建筑工地，建筑、装配或安装工程，或者与其有关的监督管理活动，但这种工地、工程或活动以连续十二个月以上的为限；
- 缔约国一方企业通过雇员或者其他人员，在缔约国另一方为同一个项目或相关联的项目提供的劳务，包括咨询服务，仅以在任何十二个月中连续或累计超过183天的为限。

第七条 营业利润
确定常设机构的利润时，应当允许扣除其进行营业发生的各项费用，包括行政和一般管理费用，不论其发生于该常设机构所在国或者其它任何地方。

不应仅由于常设机构为企业采购货物或商品就将利润归属于该常设机构。

此外，税收协定规定，除有充分的理由需要变动外，每年应采用相同的方法确定属于常设机构的利润。

第十条 股息
股息可在支付股息企业所在的缔约国征税，但如果收款人为股息的受益人且直接持有支付股息企业不少于25%的股份，最高税率不超过股息的5%。

第十一条 利息
避免双重征税协议规定了利息预提税的几种免税情况。

例如，发生在德意志联邦共和国的利息，应在德方免税，当该利息是支付给：

(i) 中华人民共和国政府；

(ii) 中国人民银行；

(iii) 中国国家开发银行；

(iv) 中国农业发展银行；

(v) 中国进出口银行；

(vi) 全国社会保障基金理事会；

(vii) 中国投资有限责任公司；

(viii) 隶属于中华人民共和国政府的并为缔约国双方主管当局所承认的国家金融机构。

发生在中华人民共和国的利息，应在中方免税，当该利息是支付给：

(i) 德意志联邦共和国政府；

(ii) 德意志联邦银行；

(iii) 德国复兴信贷银行；

(iv) 德国投资与开发有限公司；

(v) 隶属于德意志联邦共和国政府的并为缔约国双方主管当局所承认的国家金融机构。

关于该税收协定可能存在的缺陷和具有吸引力的替代选择，例如关于新税收协定中有益的预提税条款，德勤拥有经验丰富的跨境税务专家，能够就该协定如何影响您的企业为您提供建议。
联系人：

Claus Schuermann
税务与商务咨询服务协同领导合伙人
clschuermann@deloitte.com.hk

第十二条 特许权使用费
特许权使用费可在税收居民所在国征税。然而，这些特许权使用费也可以在其发生的国家按照该国的法律征税，但如果收款人是该特许权使用费的受益人，则最高税率不超过特许权使用费总额的10%。如相关特许权使用费是关于工业、商业或科研设备使用或使用权的，则前述税率减低至6%。

第二十三条 消除双重征税方法

对中国居民：
应缴德方所得税数额可在对该居民征收的中国税收中抵免。但是，抵免额不应超过该项所得相应的中国税收数额。

此外，所得如果是德国居民企业支付给中国居民企业的股息，该中国居民企业拥有支付股息企业股份不少于百分之二十的，应缴税收可获得抵免。

对德国居民：
一般而言，对来自中华人民共和国的所得以及位于中华人民共和国的财产，凡按照本协定可在中国征税的，免除德方税收。但德国在确定税率时，保留对免税的所得或财产予以考虑的权利。

有关股息，上述规定仅适用于中华人民共和国居民企业支付给直接拥有该企业至少25%资本的德国居民企业（不包括合伙企业）的股息。

除其他外，按照德国税法关于抵免外国税收的规定，对德国居民按照中国税法和该协定的规定缴纳的中方税收，应对下述来自中华人民共和国的所得给予德方所得税抵免：

(i) 股息；

(ii) 利息；

(iii) 特许权使用费。

3.5.4.2.2 香港——德国税收协定
目前，香港与德国并未签署全面的双重征税协定，但双方已就相关事宜进入了协商阶段。根据德国本地税法，在德投资目前承担着相当重的预提税率，比如因香港方面没有税收抵免可用，从德国向香港支付的股息税率高达26.375%，但中国大陆方面则视情况可获得潜在的税收抵免。因此，利用香港作为中转地的中国投资者以及投资德国的香港投资者对此尤为关注。

而香港与德国之间目前并不存在183天的保护性规定，因此避免双重征税协定也将简化人员借调的工作，此后去往德国出差的员工即使是短暂停留可能也需要在德国纳税。

3.5.4.3 德国转让定价规则
转让价格是关联方之间提供服务或商品时收取的价格。多年来，德国在转让定价方面的监管措施相当完善，这自然也反映在对跨国企业的税务审计方面，审计过程通常必须讨论转让定价问题。其主要法律基础是《外国税法典》第一节。德国转让定价规则基本与经合组织的指导原则相一致，甚至更为具体。

关联方之间进行跨境交易时须采用"公平交易原则"，即须达成与非关联方之间的定价具有可比性的定价。德国立法和行政法规对如何确定转让价格作了详细规定。标准转让定价方法包括可比的未受控价格法、转售价格法以及成本加入方法，在能够确定可比价格时使用。如果可比价格不能确定，则企业履行日常职能时可使用交易净利润法。如果通过标准方法无法获得可靠的结果，则可采用利润分割法。德国税务当局一般不接受可比利润法。企业职能转移至国外的，采用特殊转让定价规则。

转让定价凭证文件是强制性要求。如果未提交凭证文件或提交凭证文件不全，将被处于5%至10%所得调整的罚款（最低5,000欧元）。逾期提交所要求的凭证文件的，将处于最低每天500欧元、最高100万欧元的罚款。

企业可寻求签署预约定价协议，期限通常为三年至五年。

对许多企业而言，转让定价凭证文件是转让定价最为重要的部分。考虑到德国税务审计师要求交易的内容必须以相应合同和适当的旁证文件为佐证，因此在德国，转让定价凭证文件的重要性不可忽视。

纳税人须提供其与关联方业务关系的开展方式和内容相关的凭证文件。这不仅包括与《经济合作与发展组织税收协定范本》第九条所述之关联法律实体进行的交易，还包括企业总部与常设机构之间的收入分配。德国法律还辅以详细的文件要求指南，分别在"GAufzV"和行政原则程序中予以描述。在自2016年12月31日后开始的会计年度生效并执行的"GAufzV（修订本）"中，德国修订了有关转让定价凭证文件的规定，从而与经合组织BEPS第13项行动计划中有关主体文档/本地文档的规定保持一致。其中，主体文档提供企业集团的整体情况，主要包括以下内容：

- 以图表形式说明企业集团的组织架构（法律结构和股权结构），以及企业集团成员实体及常设机构的地理分布；
- 集团业务利润的重要驱动因素；
- 企业集团营业收入前五位的产品或者劳务的供应链情况；
- 集团主要市场地域分布情况；

- 简要职能分析；
- 企业集团会计年度内发生的重要业务重组；
- 企业集团有关无形资产的整体战略；
- 企业集团的融资安排；
- 企业集团有关转让定价方法之单边预约定价协议的清单及简要说明。

本地文档提供有关企业的详细信息，主要包括以下内容：

- 所有权结构、业务运营及组织结构方面的概况信息，内容涵盖：
  - 以图表说明纳税人与关联方间的所有权结构；
  - 以图表说明集团的组织和运营结构；
  - 管理架构描述；
  - 纳税人业务范围和经营策略描述；

- 纳税人业务关系相关记录，内容涵盖：
  - 以图表说明纳税人的业务关系，这些业务关系的类型和范围，例如商品购买、劳务、贷款安排及其他使用权转让；
  - 纳税人拥有以及纳税人使用的主要无形资产清单；

- 职能风险分析，内容涵盖：
  - 企业执行的功能，承担的风险；
  - 企业使用的主要资产；
  - 约定的合同条款；
  - 选定的经营策略及纳税人在价值链中的贡献；

- 转让定价分析，内容涵盖：
  - 确定转让价格的时间；
  - 转让定价方法描述；
  - 转让定价方法选用的理由。

一般情况下，纳税人须在税务当局提出要求后60天内提交凭证文件。税务当局并未要求纳税人在申报纳税申报单时提交转让定价凭证文件。但是，属于特殊交易的，纳税人必须及时（即交易发生的营业年年底前6个月内）准备好相关凭证文件，并在税务当局提出要求之后30天内提交。特殊交易指：

- 签署或修改的重大长期合同，对关联方业务收入具有重大影响的；
- 重组期间进行的资产转移；
- 因集团职能和风险变更而进行的资产或优势的转移或捐赠；
- 因集团业务战略变更而进行的业务交易，对转让价格的设定具有重大影响的；
- 签署的成本分担协议。

如果没有凭证文件或凭证文件不全，则举证责任转移到纳税人，税务当局可在公平交易价格区间内做出对纳税人而言最为不利的调整。此外，纳税人还将被处于转让定价调整5%至10%的罚款（最低5,000欧元）。逾期提交凭证文件的，罚款最高达100万欧元，最低每逾期一天罚款100欧元。

3.5.4.4 税基侵蚀和利润转移 (“BEPS”)
德国政府强烈支持“税基侵蚀和利润转移”的相关讨论。因此，多年来经合组织的大量措施被纳入德国税法也就不足为奇。反税基侵蚀立法在德国稳步发展，比如2009年引入的退出税法规。

对此，值得关注的有以下几个要点：

德国将外国实体位于德国的服务器视为常设机构。这在某些情况下会对数字经济造成影响。对于混合错配，德国已制定反错配规则，且早在数十年前便已实行经合组织建议的受控外国企业规则。经合组织的利益限制规则基本上以德国利益限制规则为基础。税收协定的反滥用规则也已实行了一段时间。这在另一方面意味着经合组织税基侵蚀和利润转移行动计划对德国税收环境的影响并不如对其他国家（如中国） 的税收环境的影响这般严重。

除经合组织的税基侵蚀和利润转移行动计划外，针对恶意税收筹划，欧盟本身也制定了行动计划。行动项目基本与经合组织的行动项目协同，但某些项目更为具体，如创建共同统一公司税税基（CCCTB）的计划。

对中国投资者来说，建议的做法是密切关注相关法规在经合组织层面和欧盟层面上的进展，并评估对投资德国的影响。

3.5.4.5 欧盟反避税指令 (“ATAD”)
2016年6月20日，欧盟理事会通过了反避税指令（ATAD），订明了对欧盟内部市场运作产生直接影响的反避税规则，具体涉及下述五大具有法律约束力的反避税措施，适用于所有欧盟成员国并由欧盟成员国自2019年1月1日起贯彻落实到本地法律之中：

- 受控外国企业规则；
- 转换规则；
- 退出税规则；
- 利息扣除限制规则；
- 一般反避税规则。

此外，欧盟理事会还通过了另一项指令，规定了反错配措施。

德国尚未全面执行反避税指令规定的所有措施，但是在某些方面（如利息扣除限制）已达到最低标准。

3.5.4.6 强制披露规则 (“DAC 6”)
2018年5月25日，欧盟理事会通过了有关BEPS第12项行动计划“强制披露计划”的指令，要求中介机构或纳税人就其某些跨境税收安排进行报告。自2020年7月起，在德国，相关报告人须在税收安排制定完成/可供执行或已执行第一步措施后的30日内向税务机关进行报告。2018年6月25日至2020年7月1日期间的需报告跨境税收安排须于2020年8月31日前完成报告。

该指令旨在向税务机关提供更多有关纳税人纳税结构及所使用纳税筹划的信息，目的是打击有害的税收实践。

未（正确）提交DAC 6报告的，将构成行政犯罪，最高可处以25,000欧元的罚款。而未按时提交DAC 6报告的，亦将面临相同的处罚。

3.5.5 间接税

3.5.5.1 增值税

增值税是间接税种，在商品和服务的生产、分销或供应的每个阶段征收。增值税对生产和销售过程中每个阶段增加的价值征税，达到终端消费征税的目的。因此，增值税一般不会增加公司的成本。

卖方向顾客收取的增值税称为"销项增值税"。购买商品或服务而支付的增值税称为"进项增值税"。增值税付款方一般可扣除进项增值税，因此增值税负担最终（只）发生于终端消费者层面。

增值税付款方定期供应须缴纳增值税的商品或服务，或增值税是因国际贸易相关交易或德国之外进行的可抵扣交易而支付的，增值税付款方一般可抵扣进项增值税。

部分交易免缴增值税，尤其是面向国外的商品供应、保险和金融活动、医疗、教育、文化相关的商品和服务提供、以及住宅物业转让和租赁。因此，特别是从事金融领域（银行等）业务的实体须审慎分析提高进项增值税回收率的可能性（见第3.5.3章节）。

德国增值税法不适用于布辛根地区、赫尔戈兰岛以及特定的自由贸易区。

德国增值税标准税率为19%。根据德国增值税法，增值税只有一个7%的增值税减税税率。部分商品的供应，如食品、书籍、医疗设备和艺术品，以及部分活动的提供（如文化活动）适用于增值税减税税率。

纳税人在德国从事须缴纳增值税的交易的，须在德国进行增值税登记，并获得纳税登记号。这也适用于在德国从事业务的非德国企业。因此，企业需要审慎规划分销或采购业务模式，以避免在德国（或欧盟）进行纳税登记，或以确保合规。

除此之外，纳税人在欧盟从事交易的，还需要一个特殊的增值税号（"增值税识别码"），特别是在欧盟内提供商品和服务。德国增值税法严格规定的增值税登记义务也适用于免税交易，无论所从事交易数额的大小。

如果前一日历年的增值税纳税金额超过7,500欧元，则须每月进行增值税申报；否则仅需每季度进行申报。

多个实体可组成增值税集团进行纳税。此种情况下，这些实体仅需申报一份合并增值税申报单，集团内交易免缴增值税。

2020年2月12日，欧盟通过了修订跨境电子商务相关增值税的一揽子计划，旨在促进跨境交易，打击增值税骗税行为，进而为欧盟境内的企业提供一个公平的竞争环境。具体修订包括在某些情况下，运营电子界面（如电子交易市场或平台）的企业在增值税层面将被认定为通过该等市场或平台向欧盟境内的客户提供商品，因此相关销售额将受计征增值税。此外，相关修订还废除了对价值不超过22欧元的托运商品免征增值税的规定。新规将自2021年7月1日起生效实施。

3.5.5.2 不动产转让税
对于在德国进行的不动产转让，征收不动产转让税。缴纳转让税时，仅需更改实际所有人。

征收不动产转让税的常见交易是拥有不动产的企业的股份转让。此种情况下，如果转让的企业股份不低于95%，则不动产税按企业的不动产计征。合伙企业变更95%以上合伙人份额的，可在五年内完成转让。

不动产转让税税率在3.5%至5.5%之间，以进行转让的不动产所在地（即位于德国的哪个州）为准。

某些情况下不动产转让税也可免税，比如以生前赠予或继承的方式进行的不动产转让。

2019年7月31日，德国联邦政府审议了一项修订不动产转让税的法律草案，以便通过限制期权交易来增加税收收入。具体的措施包括将现有95%的持股比例门槛降低至90%及将当前要求的五年持股期限延长至十年。德国联邦政府同意，有必要对该草案进行进一步讨论，并延迟落实至国家法律之中。目前，尚不明确该政府何时将对草案作进一步审议。

3.5.5.3 印花税
德国没有印花税。

3.5.5.4 不动产税
土地所有者须向当地税务当局缴纳不动产税。不动产税以相关不动产应纳税价值计算。此外，各地不动产税率由当地税务当局确定，因此同一类不动产的不动产税纳税金额在德国不同地区将有所不同。计算不动产税的程序比较复杂，尤其是应纳税价值的计算。

在2018年4月10日发布的裁决中，联邦宪法法院宣布据以计征不动产税的不动产应纳税价值的计量方法违宪，原因在于该方法以相关不动产在1964年甚至1935年（取决于不动产的位置）的过时市值为基础进行计算。根据新法，不动产税的计征结构基本保持不变，预计新法不会导致税收总额发生改变。

3.5.5.5 关税和消费税
欧盟《共同体海关法典》规定了所有欧盟成员国的基本规则和程序。作为欧盟成员国，德国也采用欧盟《共同体海关法典》。根据欧盟《共同体海关法典》，所有成员国按统一标准和程序征收关税，因为加入欧盟就必须遵循自由流动的原则。这项原则指货物在欧盟关税领土内自由流动，无需支付关税或没有任何商业限制或海关要求。因此，必须改变国家法规以适应共同体指令的规定。

德国海关当局以及其他欧盟成员国海关当局与非欧盟国家的海关当局存在直接关系，特别是欧盟候选国、拉丁美洲以及北非。这种关系涉及各领域信息交换和打击欺诈走私方面的相互协助、以及海关“环境”发展和现代化方面的技术协助。为此，德国已签署多项双边和多边协定。

进口货物到德国一般须缴纳进口税，即关税、进口增值税、以及适用的消费税。但某些情况下也可免税。

部分产品的消费须缴纳消费税，一般在目的地国家征收，即该部分产品实际消费或使用的国家。除须消费税外，消费该部分产品还须缴纳增值税。

咖啡、酒类产品、烟、燃油、天然气以及电等产品的消费，属于在德国境内使用的，征收消费税。消费税由生产商、进口商或商人支付。此外，在德国，部分产品的销售也须缴纳增值税。

各类产品的相关消费税按特定计量单位的固定额度计算。

3.5.5.6 其他税种

机动车税

机动车税的征收对象为车辆的注册所有人。纳税金额按车辆容积以及汽车二氧化碳排放量计算。

部分情况下可免缴机动车税。

保费税

保险公司通常须缴纳保费税，一般为总保费的19%。

德国保险税的一个特殊税种是消防保护税，此种税也通常按19%的标准税率计征。

其他

德国征收的其他税种还包括赌金、乐透和赌场税，分别适用不同税率。

由于适用于前述其他间接税，在德国此类交易一般免收增值税。

3.5.6 其他税务问题

3.5.6.1 纳税人一般簿记义务

根据德国税法，按任何法律规定须保存与税务相关的账目和记录的，也须履行此等其他法律规定的责任，以利于税务工作的进行。德国簿记原则受《德国商法典》的法规制约，相关规定适用于所有商人（小型企业个体业主除外）。因此，依据《德国商法典》的簿记原则（德国公认会计原则）是税务会计以及确定应税利润的基础。

根据《德国商法典》，簿记必须以有能力的第三方在充分时间内能够理解的方式进行。此外，账目和要求的其他所有记录须保存完整、准确、及时和有序。如果利用信息技术处理和记录簿记，须确保所有数据可随时调取阅读。此外，税法要求上述文件保留并存放于德国国内。但是，符合某些条件的，经申请，财政当局可允许电子簿记全部或部分于德国国外处理和存放。无论何种情况，簿记均须以德语保存，否则须提供翻译版本。

根据德国税法，税务当局有权审计纳税人的会计记录。如果记录是通过数据处理系统创建的，税务当局将在外部审计过程中要求获得数据访问权。应注意的是，一般情况下，税务当局执行数据访问权限的，纳税人须予以支持。德国联邦税务当局制定了电子簿记和数据访问的总体原则。在设计簿记系统和为税务审计进行准备时，须考虑这些原则。

作为代表德国XBRL的联盟（XBRL Deutschland e.V.）及其客户于2011年自愿参与由德国联邦财政部开展的电子税务资产负债表试点成员，德勤拥有丰富的XBRL技术经验。因此，德勤德国有能力就各类电子税务资产负债表问题提供建议。德勤电子税务资产负债表准备评估提供实践检验的结构化项目方法。

3.5.6.2 电子税收资产负债表法规

德国企业使用复式会计法计算应税所得的，需准备一份标准电子账目/税率表（电子税收资产负债表），以附件形式随电子所得税申报单一同提交。

德国联邦财政部将《可扩展商业报告语言》（XBRL）定为强制性技术格式（分类标准），作为税务当局电子税收资产负债表相关的所有电子数据传输的标准方式。XBRL是交换企业信息的开放式全球技术标准，已被众多机构广泛使用，如美国证券交易委员会以及用于公开披露德国公认会议准则财务报表的德国电子版联邦公报。

电子税收资产负债表的XBRL分类标准是分层式结构的数据架构，相当于一个账目表模版，由资产负债表和损益表账目科目组成。一份XBRL文件的每一个值均可清楚地归为XBRL分类标准中的元素，因此文件可完全由机器读取。德国税收资产负债表分类标准电子版可从网上获取（http://www. esteuer.de）。

分类标准要求的税务信息，往往无法通过标准的会计科目表或多数企业用于财务会计的企业资源规划（ERP）系统获得。为避免更改会计科目表，分类标准提供了一些次选方案。税务当局已表示在不久的将来取消这些次选方案。因此，税务当局的要求是所有企业的会计科目表均直接包含分类标准所要求的税务信息，从而使税务当局可通过所要求的电子税收资产负债表获得这些税务信息。

部分企业并不采用德国公认会计准则，而是依据中国公认会议准则或国际财务报告准则处理财务会计，并每年按德国公认会计准则进行一次性调整；或并未完全以电子形式在一个ERP或财务会计系统中处理财务会计（例如依据中国公认会议准则或国际财务报告准则处理财务会计，并于年底在ERP或财务会计系统之外按德国公认会计准则进行一次性调整），此类公司可能出现电子税收资产负债表方面的特殊问题。

3.5.6.3 事先裁定

如有已明确界定但至今仍未发生且产生重大税务影响及特殊利益关系的情况，经申请后税务局和中央联邦税务总局可对税务处理进行事先裁定。

根据申请人事先裁定的价值计算申请处理费用（即以问题税额为基础）。该价值至少应达5,000欧元，最高为3,000万欧元。因此，最低费用为241欧元，最高为109,736欧元。无法通过估算确定价值时，按时间计算，即每半小时将收取50欧元，最低费用为100欧元。

若适用包含类似于经合组织协定范本第25条的双方协定和协商程序的双重税收协定（收取一定费用），可采用预约定价协议。双边预约定价协议特别明确两国交易的转让定价。

3.5.6.4 税收登记要求

完成相关城市的一般营业登记后，公司必须向主管税务机关登记。本次登记必须在完成一般营业登记起一个月内生效。

完成税务机关提供给纳税人的特定税务调查问卷后，税务登记将开始生效。税务机关利用税务调查问卷收集特定税务信息，例如登记号、地址和公司业务形式。此外，该调查问卷中的信息涉及初始注册年度以及未来几年计划登记的当年的预付企业所得税和交易税的应税收入，为未来几年的税收申报奠定初步基础。

3.5.6.5 税务审计

法定时效通常为填报纳税申报单后的四年。通常每个纳税年度将对大型企业进行税务审计。

税务机关定期进行税务审计，全面审查应税事项。税务审计通常包括过去三至五年曾被保留评估过的税务状况以便核查。税务审计最终确认后将出具税务审计报告，鉴于税务审计期间有所变动，将重新进行评估受审税务。此后则最终评估纳税年度，一般情况下不得再次更改。

3.5.6.6 为德国员工代扣和支付工资税和社会缴费义务

若公司计划在德国雇佣员工，必须向以下机关登记：

- 税务局（主管工资税税务局不同于主管企业所得税税务局），
- 政府就业局，
- 员工参保法定医疗保险，
- 法定工伤事故险。

主管税务局出具的税号必须用于申报月度预提税，即工资税、教会税和团结税。

政府就业局提供的雇主编号用于向德国社保承保单位申报月度缴费，即养老保险、失业保险、医疗保险和养老护理保险。

医疗保险是公司为员工投保的保险，而向德国社保承保单位全额缴纳的每月社会缴费应支付给员工。

德国法律规定，如果适用，雇主必须预提工资税、团结税和教会税。雇主必须每月向主管税务机关申报并缴纳其预提税额。

截至2012年，员工必须从税务机关处取得税卡。税卡包含的员工婚姻状况详情对雇主的工资税代扣义务意义重大。员工必须将税卡交至雇主处。自2013年开始采用名为电子化工资税扣缴程序的电子程序。员工的义务完全转至雇主，现由雇主负责收集电子数据。此外，雇主必须向员工提供他们的电子化工资税扣缴程序数据，并应根据要求提供获取这些数据的机会。

关于适应财政部特定要求，德勤行业专家可提供有价值的洞察和支持。
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3.6 德国银行业的特殊监管考虑事项

3.6.1 进入德国银行市场

3.6.1.1 概述

尽管德国银行市场受到一定的金融危机影响，但比欧洲其他银行市场更为健康。这主要源于其发达的储蓄银行和信贷联盟行业。

外资银行在德国运用多种策略开展银行业务。外资银行：

- 提供直接跨境服务；
- 建立子公司；
- 设立分行；
- 设立办事处；
- "护照通行"金融服务，即在欧洲经济区根据自由服务制度跨境开展业务。

此外，众多外资银行还在德国建立独立信贷机构或者购入现有信贷机构的股份。

外资银行受监管程度取决于他们提供的服务。以下章节简要概述了适用于上述策略的监管制度。

3.6.1.2 在德国设立银行的管理手续
据《德国银行法》第32条，在德国开展银行业务必须首先获得德国联邦金融监管局（BaFin）的行政授权。

必须满足特定要求后才能获得所需监管授权。这些要求包括该机构的全部重要事项，例如所需最低资金、股东控制、董事会的"适当性和适合性"以及包含经营策略、行政架构和控制程序的经营计划。

3.6.1.3 直接跨境服务
直接跨境服务包括任何面向德国市场开展的银行业务活动。如果德国公司发出服务邀请，无需特别授权或许可就可获取来自中国的服务，这就是跨境服务。即所谓的逆向邀请或被动的自由服务。然而，逆向邀请须有记录和证明，不得以系统的方式来规避相关执照要求。

尽管《德国银行法》第2条第5款有豁免程序，但中资银行仍不符合要求。鉴于中国银行业近期通过一些方式获得一定成功，未来这一局面有望改变。因英国"脱欧"，这一豁免程序将被重新评估。

3.6.1.4 在德国设立分行
在德国设立子公司有两种方式。外资银行可以购入银行股份或是建立新的子公司。

从公司角度看，购入现有银行股份相对简单。已经聘请员工开展业务并拥有潜在客户的子公司无需授权程序即可开始运营。其不利因素在于《德国银行法》第2c条项下规定的无异议程序。寻求满足并购方银行全部需求的子公司可能需要一定时间，还必须注意隐性成本，如尽职调查以及改变组织架构，或剥离某些不符合并购方经营策略的业务或资产。

设立子公司能够减少这些问题。一方面，可以建立本着特定目标设计的个性化银行。另一方面，不涉及尽职调查，亦无需担忧历史遗留的法律或税务风险。建立子公司的弊端在于必须通过要求的授权程序及寻求新客户。

护照通行：在德国设立欧洲经济区银行的分行
护照通行是指在欧洲经济区的某国使用另一国的许可。换言之，首先在卢森堡等其他欧洲国家创建合法机构，该机构一经成立即可利用更快更简化的程序成立驻德子公司。新的子公司仍需遵守德国法规，但此类法规为数不多（即所谓的"剩余监管"），例如，必须遵守反洗钱法规、流动性和资本申报要求。

护照通行系统具有一定优势。首先，减少德国当局的监督管理，无需遵守德国审计准则，亦无特别的资本要求。可以采用特定转让定价，而且通常不要求参与存款或投资保护基金。

但仍有弊端：仍需说明资本配置情况，且驻德银行只能从事其原欧洲母国许可的活动。另外，需要提供反洗钱文件以及公布总行的年度财报。

在德国设立非欧洲经济区分行
非欧洲经济区实体有权在德国设立提供银行服务的分行。由于该分行被视为信贷机构，因此其申请及监管要求与设立驻德信贷机构的要求相同。

这表明需要寻找合适地址和开发新客户，并与各类监管机构建立新的关系以获得所需授权和许可。不过其优势在于总行获得更多控制权，可按总行的方式成立分行。

3.6.1.5 办事处
通过设立办事处进入德国银行市场的方式极为有限。办事处必须告知德国当局他们设立办事处的目的，而且只能做市场调研和宣传，在获得所需的授权之前，不得进行金融服务的主动式市场营销。

3.6.1.6 自由服务制度下的企业
根据《德国银行法》第53b条第1款，在欧洲经济区成员国内提供存款、贷款、经纪业务或承销业务的信贷机构有权在欧洲经济区（欧洲护照）内根据自由服务制度在德国提供他们的服务，无需设立驻德办事处，且仅受母国监管机关监管。

3.6.1.7 金融服务机构、支付机构、电子货币机构
外资银行、金融服务机构或实体在德国经营金融服务机构的方案与上文概述的信贷机构基本一致。但例外的是根据欧洲护照制度提供的服务。《德国银行法》第53b条第1款仅将提供投资经纪、投资建议、就业业务、合同经纪、投资组合管理、自营交易服务或采用多边交易体系的金融服务机构纳入规定范围。

为在德国经营支付机构或电子货币机构，上述方案通常还分别适用于外资支付机构、电子货币机构或实体。然而他们各有不同，原因在于相关适用法律是《支付服务监督法令》而非《德国银行法》。《支付服务监督法令》未纳入设立驻德办事处事项。

3.6.2 企业所得税
3.6.2.1 利润归属
中资银行驻德分行通常被德国税务视为中资银行的常设机构。如上文所述，这意味着中资银行在德国有限所得税制下，该净应税所得被视为驻德分行应占部分。其综合适用税率约为32%（企业所得税和交易税）（参见3.5.2章节）。

引入德国法律的《分行利润归属条例》提供了较为详细的驻德经授权经合组织方法适用指南。经授权经合组织方法的基本理念是将常设机构视为（几乎）完全独立的税务实体。这表明，公平交易原则同样适用于常设机构及其总公司间以及同一公司内不同常设机构间的内部交易，该原则以各自的功能和风险分析为基础。《分行利润归属条例》尤其适用于资产归属、分行资本配置和内部交易识别等原则。

确定公平交易转让价通常应考虑履行的职能、假设风险以及公司间业务往来涉及的关联方所用资产。常设机构情况下，首先应根据当地雇员的活动确定常设机构人员的主要职责。其次，与这些人员职责相关的所用资产和假设风险必须由该企业的不同部分负责。最后，分行资本必须归于所属职责和风险相关的常设机构。以此归属为基础，总公司及其常设机构间、同公司各常设机构间的内部交易必须进行确认，同时还需确定公平薪酬。经授权经合组织方法的通用两步法适用利润归属。

根据中德税收协定第7条第2段，如果某不同的独立企业在相同或相似条件下开展相同或相似活动，且与另一企业常设机构进行完全独立交易，该常设机构有望取得的利润归其所有。该方法符合“公平交易”原则的适用性。

3.6.2.2 德国税务“股权”最低额

根据德国法律要求，从事银行业且在德国以外注册的公司必须保证驻德分行拥有充足资本（“可配置资本”）。确定驻德分行的最低可配置资本时必须遵守联邦财政部通知。相较于上述有关行政管理原则，银行分行资本配置规则基本未变。

确定外资银行国内常设机构应占收益的首选方法是资本配置法。依此方法，银行股权（“自由资本”）必须归属驻德分行，而配置关键在于根据该行所在母国监管法规确定的加权风险额。据本条例，“加权风险额”这一术语直指欧盟一第575/2013号法规（资本要求条例）。依据《资本要求条例》的严格条款，加权风险额仅与特定交易类型的信贷和稀释风险及对手风险有关。至于经营和市场风险，该条例措辞并未使用“加权风险额”，因此这些风险似乎无需纳入分行资本配置考虑。驻德分行必须获得部分股权，这部分股权是整个银行的加权风险额除以归属在德分支机构的加权风险额再乘以按照德国税务审计条例确定的该行总股权所得。这样计算的目的是因为内部交易的加权风险额不应纳入考虑。如果可以证明该权益金额与根据德国税法确定的股权没有显著差异，纳税人出于简便可以把股权额用作实收资本加上储备金和留存收益再减去累计亏损，而所有这些均来自外国资产负债表。

纳税人可以采用不同方法进行资本配置，如果驻德银行能证明较少资本归其所有产生的结果更能体现公平交易原则，这部分资本则可为其所有。如果纳税人适用这一例外条款，至少由采用监管最低资本额办法产生的资本额必须归驻德银行所有。这表明有意成为德国市场合法的独立经营实体，常设机构必须获得的核心资本至少是德国法律要求分行必须持有的额度。此外，德国立法者认为，分行还必须持有0.5%的加权风险额作为缓冲，以便随时拓展业务。

适用小型银行的简化条例已将外资银行的国内常设机构纳入规定范围，要求其辅助计算的资产负债表总额低于10亿欧元（之前的门槛仅为5亿欧元），这一举措颇受好评。如果常设机构分配所得金额至少是其总资产的3%，符合安全港条例的常设机构则无需按照上述任何方法确定他们分行的资本。据该条例，分配至驻德银行的最低资本额为500万欧元。纳税人可以自主选择不采用此简化条例而使用标准方法，例如，资本配置法计算得出的资本少于分行总资产的3%，或者低于500万欧元的最低额。

《分支机构利润归属条例》不准采用上述任何方法，以此避免归于驻德常设机构的自由资本少于计入驻德分行的法定账目资本——如果已准备此类法定账目。

确定辅助计算中资产和分行资本后，必须将相关负债归于驻德分行，以均衡资产负债表。如果可行，必须执行归责及其相关债务掉期费用。如果直接归属不可行或导致过多负担，则必须采取间接负债归属法，且间接归属负债的平均债务掉期费用必须由驻德分行承担。相较于分行资本配置的实际公共条例，为自由资本相关的不可抵扣债务掉期费用的任何修正申请平均12个月的欧元银行间拆放款利率的简化条例并未纳入新规。

3.6.2.3 中资银行分行特定税款计算考虑事项

分行的会计账簿真实公允地反映履行的关键职能、所用资产和分行所承担的风险均与资产和负债保持一致，因此按德国税务收益分配应归入分行，通常基于这一假设，分行税基将根据德国公认会计原则计算的会计利润或亏损进行确定，该税基必须根据德国税法规定加以调整（参见3.5.6.1章节）。

通常出现银行分行会计亏损和德国税基间偏差的领域特别包含备抵坏帐。

可以通过一次性折让或特定坏账提备将应收款项记为较低值。

一般违约风险对采用一次性折让至关重要。因此，此类折让应体现可能出现的违约风险。然而并无公司层面的特定说明表明现有应收款项可疑。对金融机构而言，德国财政部颁布了具体的一次性折让法令（德国联邦财政部于1994年1月10日颁布的IV B 2–S 2174–45/93通知）。该法令规定，金融机构可为客户应收款项内于资产负债表日存在但并未确认的一般违约风险认可一次性折让，因此并无特定坏账准备。

倘若公司确认的环境能让其得出结论认定有关应收款项属于与一般违约风险重叠的特定风险，该公司必须通过特定坏账提备确认特定风险。

3.6.3 增值税

3.6.3.1 销项增值税：金融服务免增值税

金融服务业中银行和其他实体开展的大部分交易在德国免征增值税。

下列交易免征德国增值税，例如：

- 提供及办理信贷，
- 发放资金及办理货币业务，
- 提供股份、股票、长期债券、债券和本票业务，
- 经营普通活期存款、储蓄和存款账户。

如果适用特定金融服务免征增值税，在德国作增值税登记（如外资银行原则上为驻德分行）的银行和其他金融实体通常不会向其客户收取德国销项增值税。

3.6.3.2 进项增值税

如果纳税人的交易需缴纳德国增值税，其购买商品或服务缴纳的增值税通常可被抵扣。

由于银行和其他金融实体的大部分普通交易免征德国增值税，因此银行和其他金融实体不能全部抵扣已交进项增值税。此外，根据德国增值税法，纳税人可在特定情况下选择增值税，但这项规定通常不适用于金融业的大部分商业活动。其结果是进项增值税通常为金融服务业增加成本。

如果银行和其他金融实体额外开展需缴纳德国增值税的交易或其他符合进项增值税抵扣条件的免征增值税交易，则只能抵扣有限的进项增值税额。

鉴于进项增值税退还限制，银行集团内的内部服务可能增加集团的纳税额。因此，在德国创建增值税集团或选择在集团内设立委员会等其他方式有助于减少集团内交易造成的增值税成本。

依据欧盟跨境服务逆向收费机制的应用，进项增值税抵扣限制同样适用于这些交易。此外，还需要核查增值税登记义务。最后，从事融资业的纳税人同样有义务提交欧洲销售详单。

3.6.4 预提税

3.6.4.1 股息

根据国内法律，股息预提税为25%外加5.5%的团结税。但德国国内税法规定，如果股息分配受益人为外国公司，则可享受申请后的单方税额减免五分之二的已征收预提税，即26.375%的预提税可减少至15.825%。根据适用的双重征税协定或欧盟子母指令可进一步降低德国预提税。

获得股息的欧盟股东符合欧盟子母指令，即至少持有该子公司10%的股权达12个月以上，国内预提税可减至零。倘若母公司在缴税前获得德国联邦税务总局颁发的免税证明，分配公司则只需适用协定或指令的最低预提税率。

但任何情况下都必须遵守《德国反滥用税收协定条例》。

3.6.4.2 利息

出于无担保贷款考虑，德国通常不会向任何已支付给非居民企业的利息征收预提税。但德国居民企业作为债务人的可转换债券和利润参与型贷款等除外。这类情况下的预提税按25%的税率外加5.5%的团结税征收。根据适用税收协定或符合《欧盟利息和特许权使用费指令》规定，则可降低预提税率。

任何情况下都必须遵守《德国反滥用税收协定条例》。

3.6.4.3 特许权使用费

支付给非居民企业的特许权使用费和租金需支付15%的法定预提税。支付给个人而非公司（如个体）且个人计算预提税基时选择抵扣营业开支，其预提税率为30%。根据税收协定或《欧盟利息和特许权使用费指令》，可降低特许权使用费预提税。其行政程序与股息程序（即支付特许权使用费前必须获得免税证明）相似。

任何情况下都必须遵守《德国反滥用税收协定条例》。

如公司被认定为《德国银行法》第53b条所定义的银行机构，则其有义务在就国内客户存放的存款支付利息时代扣预提税。

根据德国税法的规定，公司须自其向客户支付的利息款项中扣减出预提税，按月代客户在相关月份结束后的十日内将扣减的款项代缴至税务机关。某些例外情况下，公司可豁免于该义务。

支付给:	利率	股息	特许权使用费率
居民企业	26.375%	26.375%	0%
非居民企业	0% - 26.375%	0% - 26.375%	15.825%*

*假设税务不由德国债务人承担 。

3.6.5 资本利得税

德国没有单独的资本利得税，除非根据参与免税法免除，否则资本利得税纳入应税收入。企业处理经营性资产所获全部资本利得税通常被视为普通营业收入。但公司间股份买卖产生的收入通常享有特权。

但银行和其他金融机构仍适用特定条例。根据《德国银行法》第1a条，纳入银行和金融服务提供商交易账户的股份不适用100%免税。该条规定同样适用于《德国银行法》所指金融业务获得的股份，以期获得短期自营交易收入。

我们的服务

我们的业务模式以及全面的审计、税务、企业咨询和财务咨询服务能力，帮助德勤交付卓越价值和协助客户变革管理。各成员所帮助公司遵守新的监管要求以期能成功参与公共资本市场。德勤融合客户的技术、流程和人力资本协助他们更有效的参与竞争。下述为境外投资相关主要服务的概述。

审计及鉴证服务

由于熟悉本地及国际法律法规，我们能够协助您履行达到适用报告要求的首要义务。我们的审计专家将审核您的财务报表和会计记录，就提交给股东、董事、受托人及其他方的报告提出独立意见。我们有长期提供审计服务的经验，因此能够清晰了解您的业务，帮助您确定战略与活动中的重大风险和机遇。另外，我们还提供财务报表复核、财务信息实地调查报告、验资鉴证、业务运作评估以及外汇与专项报告服务。

作为申报会计师，我们将帮助您根据上市要求编制和提交经审计的财务报表和会计账目。在上市前的阶段，我们将发挥关键作用，大力协助您与保荐人和承销商进行接洽，在您与各方的谈判中提供咨询和顾问服务。我们的专业人员将利用目前最新技术为您提供高效且具有成本效益的审计解决方案。

企业管理咨询服务

我们是全球最大的企业管理咨询事务所，通过提供构建新未来的洞察并竭力提高绩效以协助机构创造价值。创造此类价值需要提供人力资本、战略与运营、创新与科技的综合服务能力，更重要的是，能够满足特定行业、企业与机构的特殊需求。

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Investing in Germany

A guide for Chinese Businesses

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Foreword

Dear Reader,
Welcome to the 2021 edition of our publication "Investing in Germany – A Guide for Chinese Businesses".

Germany has been among the top three destinations of inbound investments during the years 2015-2020, with only the USA and the UK attracting more foreign direct investment projects. Germany is followed by China in the 4th place. Over the same period, China has been the 4th biggest investor in Germany, following the USA, UK and Switzerland. This shows the enormous importance of Chinese investments in Germany.

China is also one of the largest global outbound investors. In past years, Chinese enterprises have made considerable investments in foreign manufacturing businesses. They are also among the leading players in eCommerce and particularly in the direct sales of goods via platforms. More importantly, China was one of the strongest performing economies in 2020, with a GDP growth of 2.3% despite the COVID crisis and a forecast growth of 6% in 2021. During the global pandemic, China has come back to a growth path faster than any other major economy. While cross-border M&A activity slowed drastically in 2020, domestic M&A activity remained strong and outbound M&A activity is expected to increase again in 2021. Investors will be more selective than in the past, but a wide range of industries and regions will see interest from Chinese outbound investors, be it pharmaceutical businesses in Europe or energy in North America. While Germany has always been a major recipient of Chinese investments, this may be even more the case following Brexit coming into effect on 1 January 2021.

Established in 2003, Deloitte's Global Chinese Services Group (GCSG) advises Chinese companies that are expanding their global presence. This network is deployed in various countries and geographic regions, with professionals that possess Chinese speaking capabilities and knowledge about China and Chinese companies, in order to provide professional advice and comprehensive solutions to Chinese companies investing overseas.

Through the joint efforts of our CSG teams in Germany and China, we hereby present you the updated version of "Investing in Germany – A Guide for Chinese Businesses", to help you obtain an overview of the investment environment and business guidelines in Germany. Apart from regulatory updates the revised edition of our investment guide provides a closer look into the status and outlook of the automotive industry and the life science and health care industry in Germany as we are observing a special interest of Chinese investors in these German key industries. We hope you find this publication useful and encourage you to reach out to us for professional advice and comprehensive solutions for your investments in Germany.

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1. Economic environment

1.1 China-German economic relationship

1.1.1 General relationship and trade volume

Over the past 30 years (1990-2020), Sino-German economic relations have evolved into a strong trade and investment partnership.

It therefore comes as no surprise that China views Germany as its "Gateway to Europe" and that numerous bilateral cooperation agreements have been concluded to further accelerate this economic success story. Certainly, the EU-China Investment Agreement has the potential to help create further investment opportunities with the EU and its largest economy, Germany. And it will have to be seen whether BREXIT shifts further investments away from the UK towards Germany and the EU or whether Britain can become even more attractive for Chinese investments, particularly in the real estate sector.

In 1991, German companies exported goods worth just EUR 2.15 billion to China. According to Federal Statistical Office figures, in 2020 German exports to China were worth EUR 95.5 billion. This is nearly the same level as 2019 (-0.1%), where due to the COVID-19 crisis trade has been hit globally. German imports from China in 2020 were worth EUR 116.2 billion.

China is Germany's second biggest export market after the USA. Germany is China's largest European trading partner by far, ranking sixth overall among China's trading partners.

China is also the largest supplier of German imports, its exports to Germany consisting mainly of Computers, electronic and optical products. It shows that compared to the past, China is now supplying higher value goods.

1.1.2 Direct Chinese investment in Germany

For many years, Chinese companies have been establishing a presence in Germany, either through greenfield investments or through mergers & acquisitions.

From a regional perspective, the following three states in Germany attracted most Chinese investment until now:

- Northrine Westphalia (1,530 companies, 26,000 employees, with Duesseldorf as the main hub)
- Bavaria (640 companies, 25,000 employees, with Munich as main hub)
- Hessen (860 companies, 8,000 employees, with Frankfurt as the main hub)

As Germany is very decentralised, there are other regions, particularly Hamburg attracting investments in the logistics sector and Berlin, which is particularly interesting for eCommerce. In any case the choice of the right location for an investment requires careful consideration.

The M&A activities of Chinese investors in Germany have increased significantly since 2010. Moreover, the quality of such investments and accordingly the money spent on such deals has increased recently, too. Obviously, the focus of Chinese investors has shifted from the acquisition of troubled assets to strategic investment into multinational companies with ownership of leading technology.

The acquisition of the robotics manufacturer Kuka by Midea in 2016 at a price of 4.5bn EUR was the biggest takeover in Germany by a Chinese investor. This was followed by a 9% buy in to Daimler by Geely at an amount of around EUR 9bn. Since the record year of 2018, dealflow has considerably declined through 2019 and even further in 2020 due to COVID-19.

The following table lists some prominent investments over the past years:

Announcement	German Target	Chinese Investor
4 November 2019	Deutsche Hospitality (incl. Steigenberger)	Huazhu Group Limited
24 February 2018	Daimler AG	Zhejiang Geely Holding Group Co.
7 April 2017	Biotest	Creat Group Corp.
3 March 2017	Ledvance (spin-off of Osram)	IDG Capital, MLS Co., Ltd.
18 May 2016	Kuka	Midea Group
22 March 2016	MANZ	Shanghai Electric Group
6 February 2016	Bilfinger Water Technologies	Chengdu Techcent Environment Group
4 February 2016	EEW Energy from Waste	Beijing Enterprises
11 January 2016	KraussMaffeiGruppe	ChemChina
8 July 2015	Hauck & Aufhaeuser	Fosun
29 May 2014	Hilite	AVIC/AVICEM
28 January 2014	CYBEX	Goodbaby (HK)
30 September 2013	Flex Power Tools	Chervon Holdings
4 May 2013	Sphairon Technologies	ZyXEL Communications Corporation
3 May 2013	Kugel- und Rollenlagerwerk Leipzig	Wafangdian Bearing Group

As Chinese investors continue to acquire companies around the globe with ownership in advanced technology, we expect to see more such transactions in Germany in the future, in particular since German medium-sized companies (a.k.a. the German "Mittelstand") are often global market leaders in industries that have been identified as pivotal industries in China's recent 5-Year-Plans for China's future economic development.

As the table above underlines, Chinese Investors have invested significantly over the last decade in Germany. Although the majority of these investments have achieved the strategic expectations of the new owners, some turned out to be not as successful or as fitting as planned. In these situations, we have already seen and do expect that Chinese owners will increasingly make the decision to sell their German operations again as Shang Gong Group did sell its 26% stake in H. Stoll AG & Co KG back to the Stoll Family in 2019.

1.1.3 Cooperation agreements

There is a wide variety of cooperation on the scientific, political and economic levels between cities, provinces, federal states and regions in China and Germany. The cooperation is based on personal contacts, similar names and history, on intensive development partnerships or on expert exchanges.

Strategic partnerships serve to intensify mutual understanding in the areas of culture, politics and investment, preferential treatment etc., so that both parties benefit from the business/investment opportunities on the other side. The following list comprises a selection of major partnerships between regions and bigger cities in China and Germany:

German City/Federal State/Region	Chinese City/Province
Hamburg	**Shanghai**
Berlin	**Beijing**
German Federal State – Saarland	**Tianjin, Province-Hubei, Province-Hunan**
German Federal State – Lower Saxony	**Province-Anhui**
Wolfsburg (LS)	Changchun
German Federal State – Hesse	**Province-Jiangxi**
Frankfurt am Main (Hesse)	Guangzhou
Offenbach am Main (Hesse)	Yangzhou
German Federal State – North Rhine-Westphalia (NRW)	**Province-Sichuan, Province-Jiangsu**
Cologne (NRW)	Beijing
Duesseldorf (NRW)	Chongqing, Shenyang
Bonn (NRW)	Chengdu
Dortmund (NRW)	Xi'an
Duisburg (NRW)	Wuhan
Bochum (NRW)	Xuzhou
German Federal State – Bavaria	**Province-Shangdong**
Augsburg (Bavaria)	Jinan
Freising (Bavaria)	Weifang
Konstanz (Bavaria)	Suzhou
Nuremberg (Bavaria)	Shenzhen
German Federal State – Bremen	**Province-Guangdong, Dalian**
German Federal State – Baden Wuerttemberg (BW)	**Province-Jiangsu, Province-Liaoning**
Mannheim (BW)	Zhenjiang, Qingdao
German Federal State – Schleswig-Holstein	**Province-Zhejiang**
German Federal State – Rhineland-Palatinate	**Province-Fujian**
German Federal State – Thuringia	**Province-Shaanxi**
German Federal State – Saxony-Anhalt	**Province-Heilongjiang**
Erfurt (Thuringia)	Yan'an
Rostock (Mecklenburg-Vorpommern)	Dalian
Leipzig (Saxony)	Nanjing

1.2 General introduction to Germany

1.2.1 Business environment

Germany is a Federation of 16 states (Länder), each with its own constitution, government and independent courts. The Federal Government and Parliament are responsible for major legislation on economic policy. The Federal Parliament comprises a directly elected lower house (Bundestag) and an upper house (Bundesrat), which consists of representatives of the Länder governments.

Manufacturing and related services are at the heart of the German economy. The main industries are automotive and chemical (for more information about the Automotive Industry, see Chapter 2.1). However, biotechnology, telecommunications and digital industry have also become very important. The heavy industry sector, including the steelmaking sector in the Ruhr region, has declined, as has the significance of agriculture. But the remainders of these industries are still noted for their high quality and sophisticated production techniques. Recent development in the energy market is characterised by a shift from traditional energy production using coal, gas and nuclear power towards renewable energy, referred to as "green energy". On the one hand green energy has been promoted by several initiatives and subsidies at the local and federal levels, which led to a technical edge in green technology for several German companies in this sector. On the other hand, traditional energy production is facing stricter regulation, for example the gradual exit from nuclear power by 2022, which brought some companies in this sector into financial turmoil. In addition to green energy, there are leading companies in the area of environmental technology with many years of experience in their industry. In recent years, the real estate industry was positively affected by the relatively low level of interest rates. Investment was made in new real estate projects, especially in residential building in big cities, and at the same time the value of existing properties in good locations increased.

Germany is one of the world's premier trading nations, with a powerful export sector and significant imports. Its main trading partners are the other member states of the EU (especially France), the U.S. and China. The German government has traditionally advocated free trade. The EU sets the levels of common tariffs and detailed rules on other import restrictions, which also apply to Germany.

To protect the functioning of the domestic market, the Federal Cartel Office will take action against companies that abuse their dominant market position through "excessive" price increases. Furthermore, the Law against Restraint of Competition prohibits price policies meant to force competitors out of the market (e.g. constant offers below cost price).

Patents, industrial designs and models, trademarks and copyrights are legally recognised in Germany. Enforcement of patent and trademark laws is rapid and satisfactory, and damages can be claimed in cases of infringement. German legislation regarding intellectual property is aligned with that of other EU member states. A trademark becomes valid as soon as it is entered into the official registry. The usual processing time is 10-12 months, although the process can be reduced to six months for an additional fee.

A registered trademark is valid for 10 years and can be protected indefinitely in 10-year increments. However, the trademark owner (or a third party) may apply to have the trademark deleted if the trademark name is a term of everyday use or if a person has proof of an older right to the name, or if the trademark has not been used for more

than five years. Although the Patent and Trademark Office does not specify what constitutes trademark "use," it generally must be used in connection with the goods (e.g. on the item or on its packaging).

A third party that claims to have older rights than the applicant may challenge the registration of a trademark at any time. The date of application to the Patent and Trademark Office is crucial in determining the party with priority. The Patent Office itself does not investigate prior claims of others in the trademark register but leaves it to the owners of existing rights to assert their priority. If an objection is raised, the office compares the older (objecting) trademark with that of the applicant.

Many trademark disputes are settled by "delimitation agreements," whereby the challenged party agrees to use his/her trademark in a restricted manner (e.g. only for certain goods or in connection with specific alterations to the new mark to differentiate it from the existing mark). Such agreements are also used to make the prior holder of a mark withdraw his/her objection against the registration of the trademark.

1.2.2 Currency, banking and finance

The currency in Germany is the euro. Furthermore, the euro is the currency in other 18 EU member states (Austria, Belgium, Cyprus, Estonia, Finland, France, Greece, Ireland, Italy, Latvia, Lithuania, Luxemburg, Malta, the Netherlands, Portugal, Slovakia, Slovenia and Spain).

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 banks, investment banks, savings banks, cooperative banks, mortgage institutions and insurance companies. All the major international commercial and investment banks have operations in Germany, most of them with offices in Frankfurt.

Frankfurt is the financial centre. It is home to the European Central Bank, the Bundesbank (the national central bank), leading commercial banks, the government's holding company for state assets, as well as the largest stock-exchange in Germany. The German stock market has two categories or segments: the regulated market segment, to which access is generally restricted by approval, and the open market segment, which is characterised by fewer requirements and on which stocks can be quoted by request. The three segments that are established at the Frankfurt Stock Exchange (Prime Standard, General Standard and Entry Standard) must be distinguished from those two broad categories. In order to be listed in one of these segments, companies have to fulfil additional requirements, mainly regarding the publication of financial and other corporate information.

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. 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.

1.2.3 Foreign investment

The German government generally welcomes foreign investment that provides new jobs. There are no serious limitations on new projects, except for a law requiring prior government permission for the sale of defence 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 on foreign investments apply. Foreign investors are subject to the same conditions as their German counterparts in obtaining operating licences, securing building permits and obtaining approval for investment incentives.

1.2.4 Tax incentives and subsidies

Various incentive programmes are available, e.g. for the purchase or production of movable assets in Eastern Germany and for the founders of new businesses. Furthermore, various programmes exist for the promotion of modern energy generation and efficiency (referred to as green energy), e.g. solar and wind energy, as well as programmes for the promotion of domestic buildings, environment protection, R&D, healthcare, infrastructure and agriculture. Regional and federal programmes are available as well as subsidies from the European Union. Promotion can be granted either as a tax benefit, allowance, guarantee, loan or participation.

2. Industry and sector focus

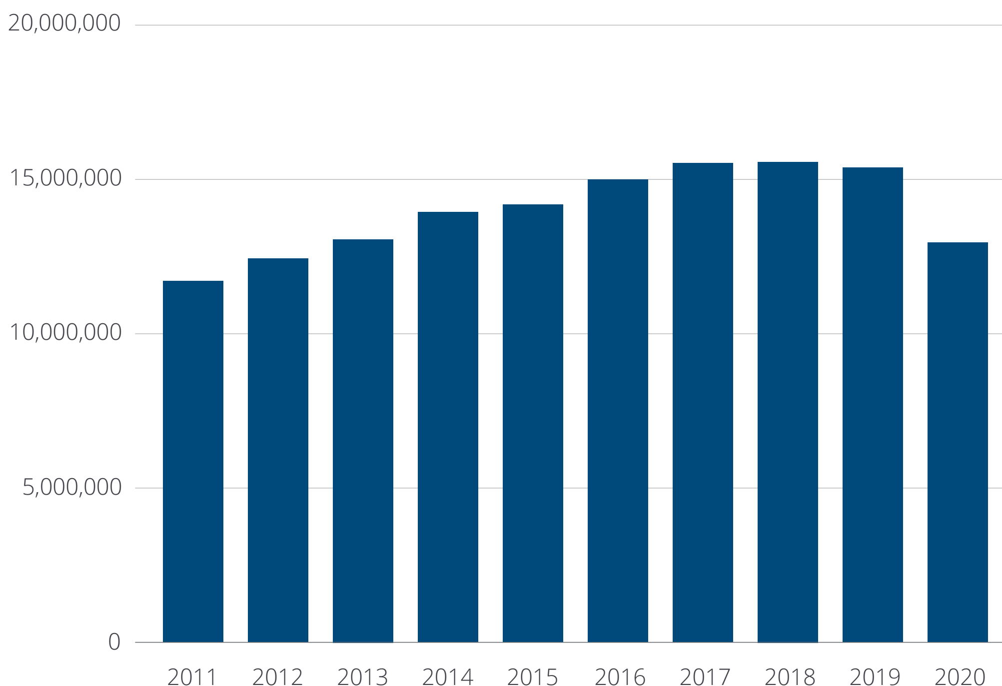
2.1 The German automotive industry

2.1.1 OEMs

In line with the global economy, COVID-19 has had a significant impact on the global automotive industry in 2020 with sales declining on a year-to-year basis in virtually all countries around the world. The German automotive industry was no exception, with global light vehicle production of BMW, Daimler and VW expected to decline by 16% on a year-to-year basis, according to IHS data. While sales in recent months have shown some signs of recovery and the German Automotive Association (VDA) forecasts gradual improvement in 2021, a return to pre-corona sales levels will most likely take longer than the next twelve months.

Although the decline in sales has increased financial pressure, German OEMs are still taking major steps to align themselves strategically with technological trends and ambitions to reduce emissions significantly, such as EU proposals that call for a 50% reduction of CO_2 emissions by 2030. While VW unveiled a EUR 22bn investment program with the goal of 80 BEV models by 2025, BMW has partnered with Germany's energy provider E.ON to develop and deploy 4,100 EV charging points across Germany. Elsewhere, construction of Tesla's Gigafactory in the German State of Brandenburg commenced in July 2020 with operations expected to begin in July 2021. These developments in combination with other trends such as digitalization, autonomous driving and shared mobility highlight the dimension of the transformation which the German automotive industry is currently undergoing following decades of relatively stable development.

Fig.1 – Global light vehicle production of BMW, Daimler and VW (in units)

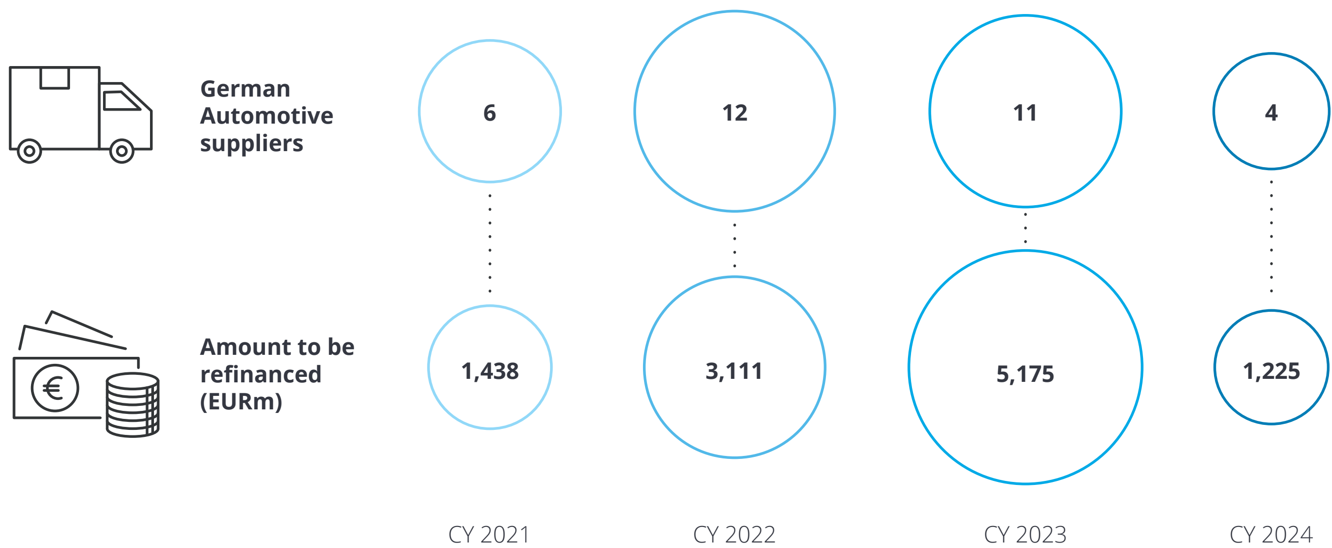


Note: Includes production of JVs, CY20 figure is forecast; Source: IHS Markit Inc.

2.1.2 Automotive suppliers

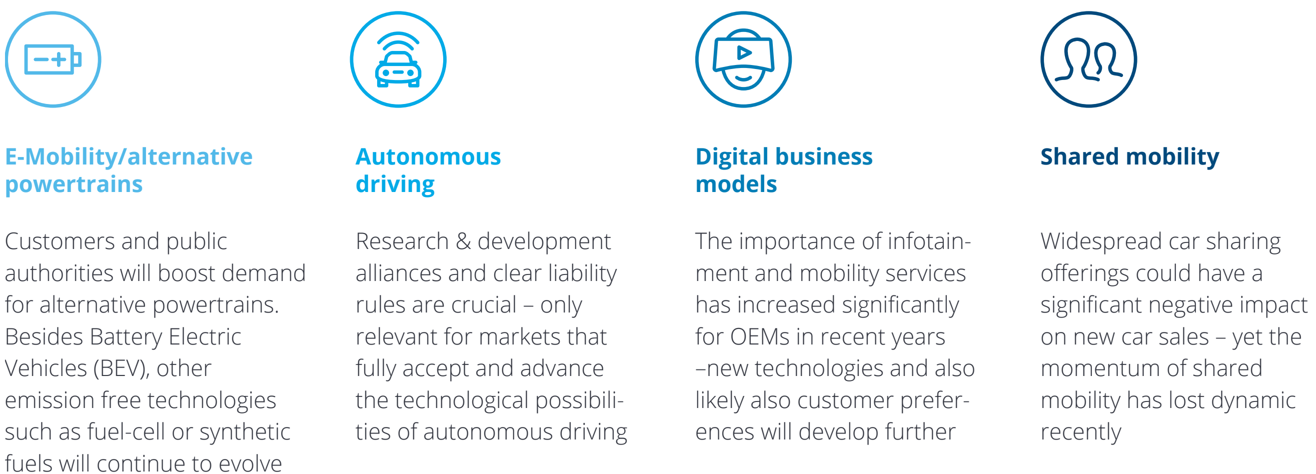
Similar to OEMs, the impact of COVID-19 has also led to a decline in sales of German automotive suppliers in 2020, in most cases leading to an even greater drop in EBITDA and significantly higher leverage ratios. In addition, the supplier industry is expected to see a new refinancing wave with more than 30 suppliers and an aggregate syndicated loan volume of EUR 10.9bn requiring refinancing from 2021 to 2024. Given the vast technological changes in the industry, suppliers, however, face significant pressure to adapt and invest - according to current projections, 40 percent of suppliers need to fast-track their transformation to drivetrain technology to remain viable. As financing banks aim to keep leverage levels (Net Debt/EBITDA) of suppliers below 3.5x, lower sales and a lack of additional funding often limit suppliers from investing into focus areas of the business. This need to invest despite increased financial pressure poses a significant challenge for suppliers, and will likely reshuffle the cards within the industry.

Fig.2 – German Automotive suppliers with syndicated loans (maturities and volumes)



Source: Deloitte - Automotive Supplier Transformation Strategy, p. 15

Fig.3 – Expected development



Source: Deloitte - Automotive Supplier Transformation Strategy, p. 5

2.1.3 Current trends in the German automotive industry

In terms of key trends, electrification and digitalization have the biggest near-term impact on both OEMs and suppliers. According to forecasts, more than 15 percent of cars sold until 2025 will feature alternative powertrains. Increased subsidies as part of COVID-19 relief measures have further accelerated the switch to vehicles with alternative drivetrains, with expected new registrations of ICE vehicles to decrease by 3m between 2020 and 2030 compared to pre-pandemic levels. While OEMs and suppliers thus need to adjust their product portfolios, EVs on average are only forecasted to achieve positive contribution margins by 2023. OEMs and suppliers will therefore need to rely on ICE technology to finance further investment into new technologies. As a result, ICE will be prevalent for years to come in passenger cars and even more so in the commercial vehicle and off-highway market segments. This gradual transformation is also evident in forecasted shares of new registrations, with ICE vehicles holding a share of 62% and alternative drive vehicles 32% in 2030.

With regard to digitalization, the importance of digital business models has increased significantly for OEMs in recent years and is expected to continue to do so with c. 20% of OEM revenue forecasted to be generated by infotainment and mobility services by 2025. The concept of the connected car offers OEMs numerous interfaces for customer interaction, after-sales as well as embedded software, in-car-payment and other services based on data (e.g. music streaming). As a result, all major German OEMs maintain their own branded Connected Car services such as BMW ConnectedDrive, Mercedes me connect, Audi connect or VW Car-Net. Despite the potential benefits connected car services hold for OEMs and customers, challenges to more rapid adoption and wider use cases exist with only 36% of German consumers convinced that increased vehicle connectivity will be beneficial and only 28 percent willing to let OEMs manage the data generated by a connected car.

As another technological trend that is reliant on the ability of vehicles to communicate with their surroundings, autonomous driving is also encountering skepticism with 45 percent of German consumers in 2020 agreeing that autonomous vehicles will not be safe. Nevertheless, especially established premium OEMs enjoy an excellent reputation and German consumers see traditional automakers as most likely to successfully bring autonomous driving technology to market rather than tech companies or new companies specializing in autonomous driving. In order to increase acceptance of autonomous driving, OEMs will need to find ways to address safety concerns through measures such as test drives or government certifications.

Shared mobility as the fourth major trend has the potential to lower new car sales in the future. OEMs are thus looking to expand their mobility services and even setting up joint partnerships with competitors, as the case with BMW's and Daimler's decision to merge their mobility service businesses into a joint venture in 2019. Despite its potential impact, shared mobility has lost some of its dynamic recently, particularly in the midst of the COVID-19 pandemic with more than 80% of Germans unwilling to give up their own car, according to a recent poll by a leading German online marketplace for cars.

The automotive specialists at Deloitte Corporate Finance can help at every stage of the M&A process. With their thorough industry-specific knowledge, they provide support among other things in strategic target search, target valuation, comprehensive buy-side process management and negotiation support.

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2.1.4 M&A opportunities in the German automotive industry

The transformation of the German automotive market as well as the impact of COVID-19 can be expected to further drive M&A activity going forward. On the one hand, technological trends paired with Germany's excellent technical and engineering education have created a cluster of start- and scale-ups in the fields of electric vehicles, autonomous driving and shared mobility, which make attractive targets for investment, particularly at valuations generally lower than in the US.

In addition, Germany's strong automotive supplier landscape will likely see ample M&A opportunities, as many suppliers will require outside capital for investment into new technologies. For Chinese investors, German automotive suppliers not only offer excellent "made in Germany" engineering expertise but also an unparalleled access to German OEMs. Moreover, OEMs themselves also require significant capital for investment in new technologies. As a result, separation and divestments of non-core activities are likely to increase in order for OEMs to focus on core areas and finance new investment. For outside investors, such scenarios could be highly attractive, as OEMs may even consider selling profitable non-core activities at lower valuations in order to free up management focus and capital. Supply issues in the midst of COVID-19 and recent trade frictions have also prompted OEMs to reconsider supply strategies and move away from single source concepts, particularly where such suppliers are located overseas. Going forward, this may lead to increased domestic sourcing of key components. In this context, M&A investment in Germany can enable overseas suppliers to establish local capacities to remain attractive for OEMs.

Lastly, the impact of COVID-19 and the overall transformation of the industry will likely lead to an increase in distressed M&A opportunities, particularly once the obligation to file for insolvency, currently partially suspended as part of the German government's relief package, resumes. Among distressed companies may also be targets that, while in a distressed financial position, possess fundamentally sound products and thus offer investors significant upside at attractive valuations. This may prove an attractive opportunity for overseas investors, especially Chinese investors who have gained experience with the takeover and restructuring of German automotive businesses during or after the automotive crisis years.

2.2 The German Life Sciences and Health Care industry

Germany's healthcare market is No. 1 in Europe by market volume, number of patients, medical technology manufacturers, and healthcare providers. Healthcare spending in Germany exceeds €400 billion (2019), not including expenditure for wellness and fitness. The market has grown at a rate of 4.1% over the past 10 years. With more than 7.5 million employees and exports in excess of €126 billion, healthcare is one of the largest economic sectors in Germany.

Thanks to its innovational strength and employment intensity, it generates growth and creates jobs. Its development is more constant than the development of the overall economy; fluctuations of general economic activity are therefore reduced. In addition, average life expectancy is rising rapidly and reached an average of 78.9 years for males and 83.6 years for females in 2020. Although also Germany as Europe's economic hub has been affected by COVID-19, the Life Sciences and Health Care industry has not been negatively affected to a large extent and a swift recovery of the German economy is expected.

2.2.1 The Life Sciences industry

The Life Sciences industry consists of three major sectors, namely pharmaceuticals, biotechnology and medical technology. In the following, major trends and developments in these sectors are described.

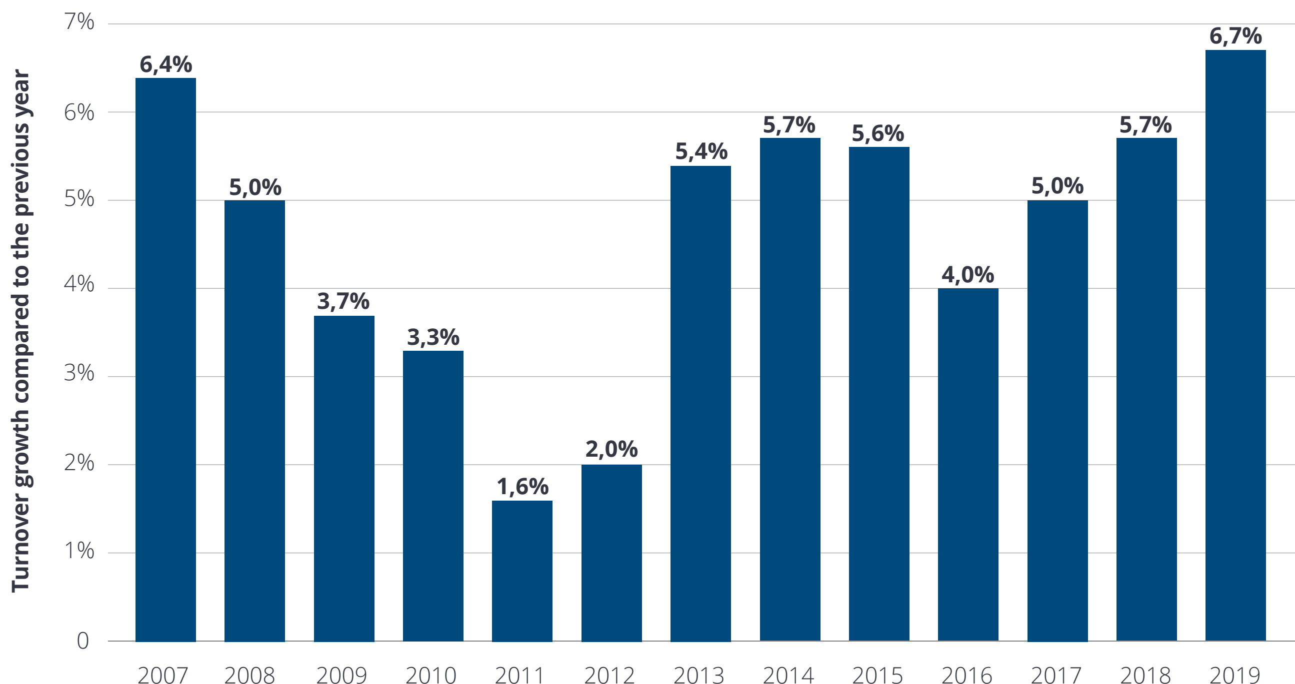
2.2.1.1 Pharmaceuticals

According to European Federation of Pharmaceutical Industries and Associations (EFPIA), Germany is the biggest pharmaceutical manufacturing location within the European Union and ranks second in Europe after Switzerland (production value: EUR 36.1 billion in 2018).

With more than 500 pharmaceutical companies located in Germany, the country has a strong industry base and offers a high-performing industrial infrastructure and long-standing strength of the local chemical industry. Further, there are over 400 universities in Germany and numerous specialized research institutes (e.g. Fraunhofer Society, Max-Planck Society, Helmholtz Centres, Leibniz Association).

In 2018, exports of pharmaceuticals grew by 10.3 percent (EUR 83.2 billion) making Germany Europe's leading supplier of medications and the second largest importer. The German pharmaceutical sector shows the highest research intensity across all major German industries (12.5% of revenues were reinvested in R&D in 2018). With 499 clinical trials financed by research-based pharmaceutical companies in 2019, Germany ranks fifth worldwide.

Fig. 4 – Turnover growth of the overall pharmaceuticals market in Germany from 2007 to 2019



Source: IMS Health © Statista 2020
Further information: Deutschland, IMS Health

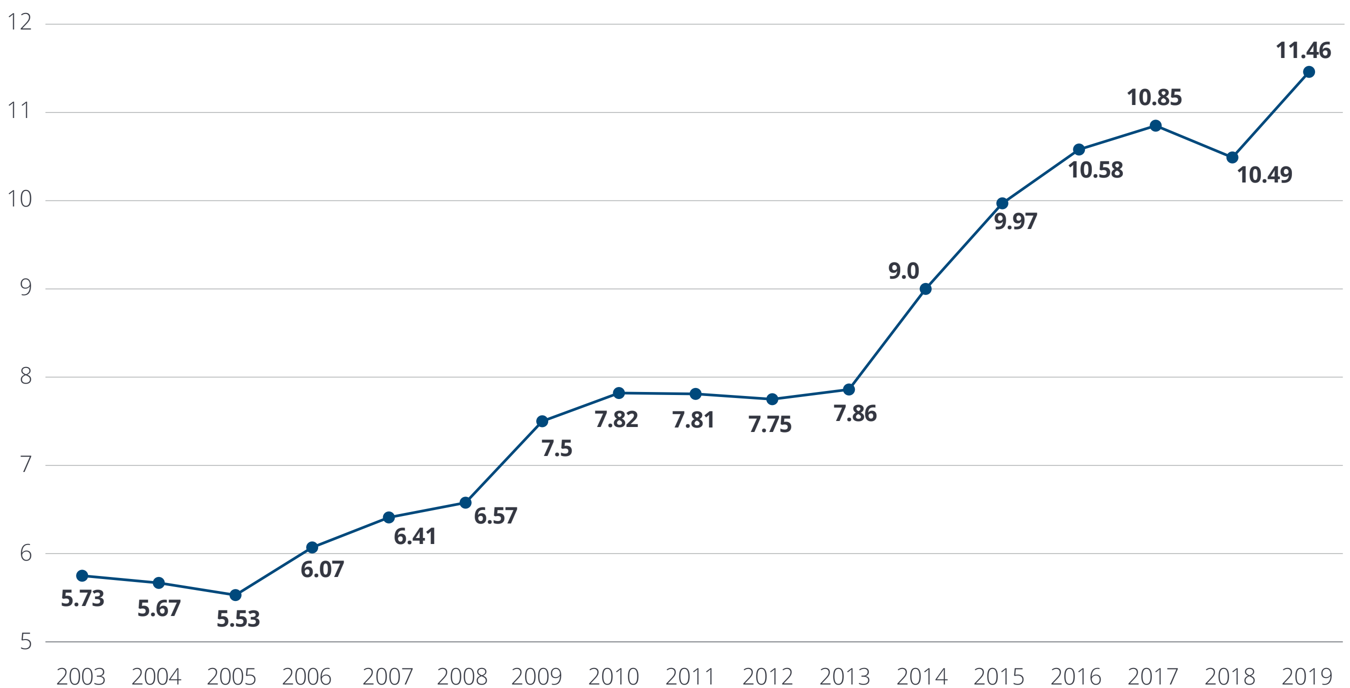
2.2.1.2 Biotechnology

Biotechnology products are expected to contribute steadily to sales and are expected to make up 52 percent of the top 100 product sales by 2024. By 2024, the orphan drugs sector is expected to almost double and account for 20 percent of prescription sales. In particular, gene and cell therapies are accelerating growth. The CAR-T therapy market is projected to increase at an annualized rate of over 51 percent during the time period, 2018–2030. In 2019, the biotech industry in Germany increased its turnover to EUR 4.8 b compared to EUR 4.4 b in 2018.

2.2.1.3 Medical technology

Medtech is projected to grow at a 5.6 percent CAGR over the forecast period 2017–2024. In 2019, worldwide medtech sales are predicted to be US$475 billion, growing to US$595 billion by 2024. The fastest-growing device areas by CAGR are predicted to be Neurology (9.1 percent), Diabetic Care (7.8 percent), and General and Plastic Surgery/Dental (tied at 6.5 percent). By 2024, In Vitro Diagnostics is expected to be the largest medtech segment with annual sales of US$79.6 billion, followed by Cardiology and Diagnostic Imaging. Medtech R&D spend is estimated at US$39 billion by 2024. Software-as-a-Medical Device (SaMD) is a rapidly growing area of innovation that regulators across the globe are working to de-risk and make more agile. In Germany, the medtech industry made significant progress; while turnover was still at EUR 5.7 billion in 2003, the 2019 value was as high as EUR 11.4 billion.

Fig. 5 – Turnover of the German domestic industry for medical technology from 2003 to 2019 (in billion euros)



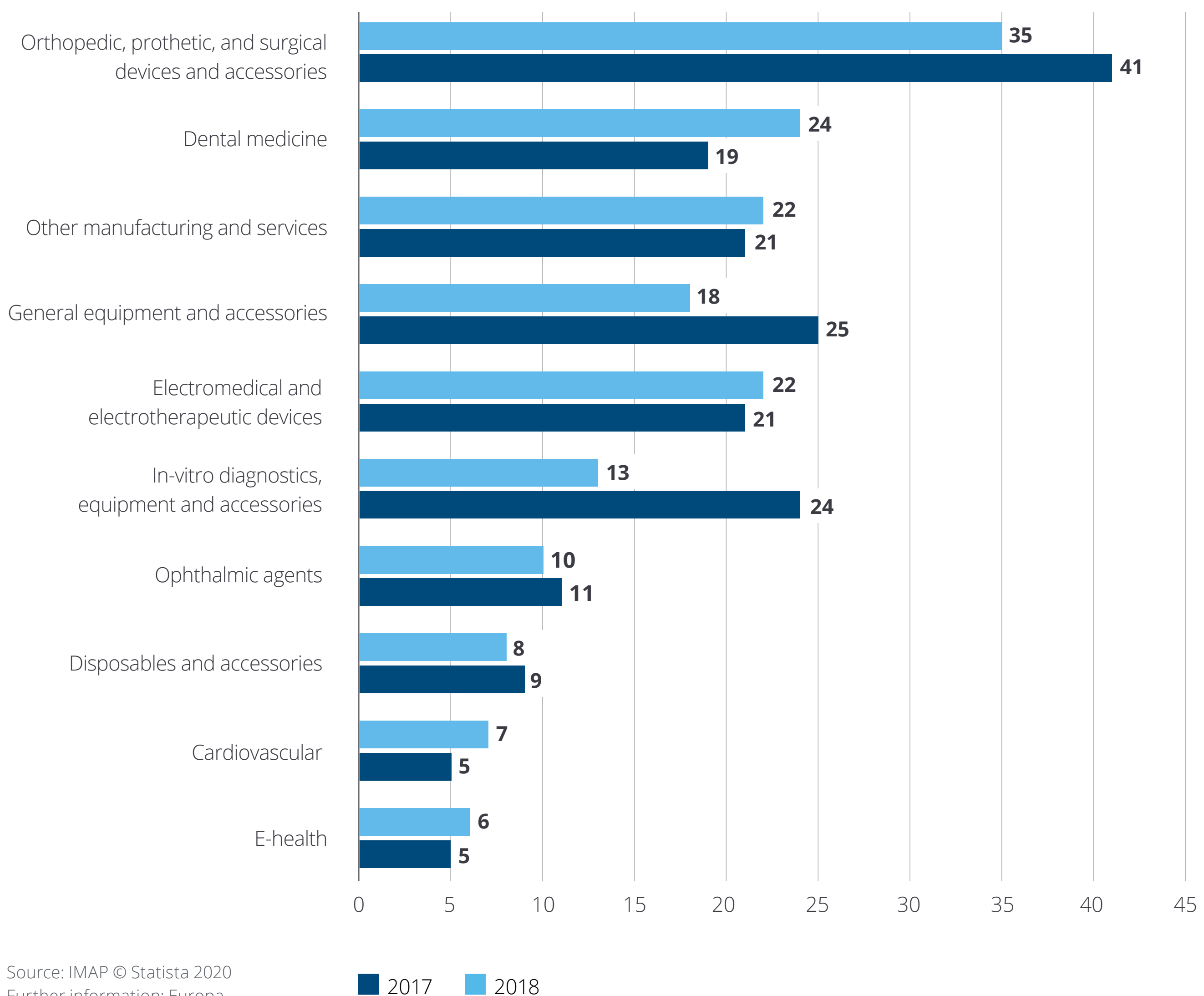
Source: Statistisches Bundesamt © Statista 2020
Further information: Deutschland, Statistisches Bundesamt

2.2.1.4 M&A activities in the European Life Sciences industry

The continuous search for the next generation of market-leading medicines and decreasing returns in R&D make external deals attractive sources of innovation for biopharma companies, either through licensing, mergers and acquisitions (M&A), and/or joint ventures. In addition, pricing pressures on the pharmaceutical segment are predicted to continue, driven by governments, patent losses, and increased promotion of generics and biosimilars. To deal with these pressures, some pharmaceutical companies are buying rivals to streamline marketing staff or buying unique treatments that do not have lower-cost alternatives.

While only a few big pharma companies are developing next-generation therapies, more than 250 startups are focused on gene-based therapeutic solutions. In the future, next-generation therapy startups are more likely to mesh into their own mergers and could form a new breed of company with a very different culture around innovation and life sciences.

Fig.6 – Number of European mergers and takeovers in the medtech industry according to sector in 2017 and 2018



Source: IMAP © Statista 2020
Further information: Europa

2.2.2. The Health Care Industry
As the population in Germany grow older and older, the importance of hospitals and care facilities is constantly rising. Germany is the biggest healthcare market in Europe and its health care expenses are continuously rising (in 2018, a new high of EUR 390.6 billion was reached). The health care sector currently accounts for almost 12 percent of German GDP. In 2019, the EUR 400 billion mark regarding annual German health care expenditure was exceeded and is expected to increase further driven by demographic change, the growing prevalence of chronic diseases, and the COVID-19 outbreak.

Inpatient care in Germany comprises more than 1,900 hospitals with nearly 500,000 beds (not including rehabilitation or elderly care facilities). The overall number of medical hospitals is declining as smaller general hospitals close or merge with other hospitals to increase efficiency. On the contrary, the share of privately operated hospitals continues to rise.

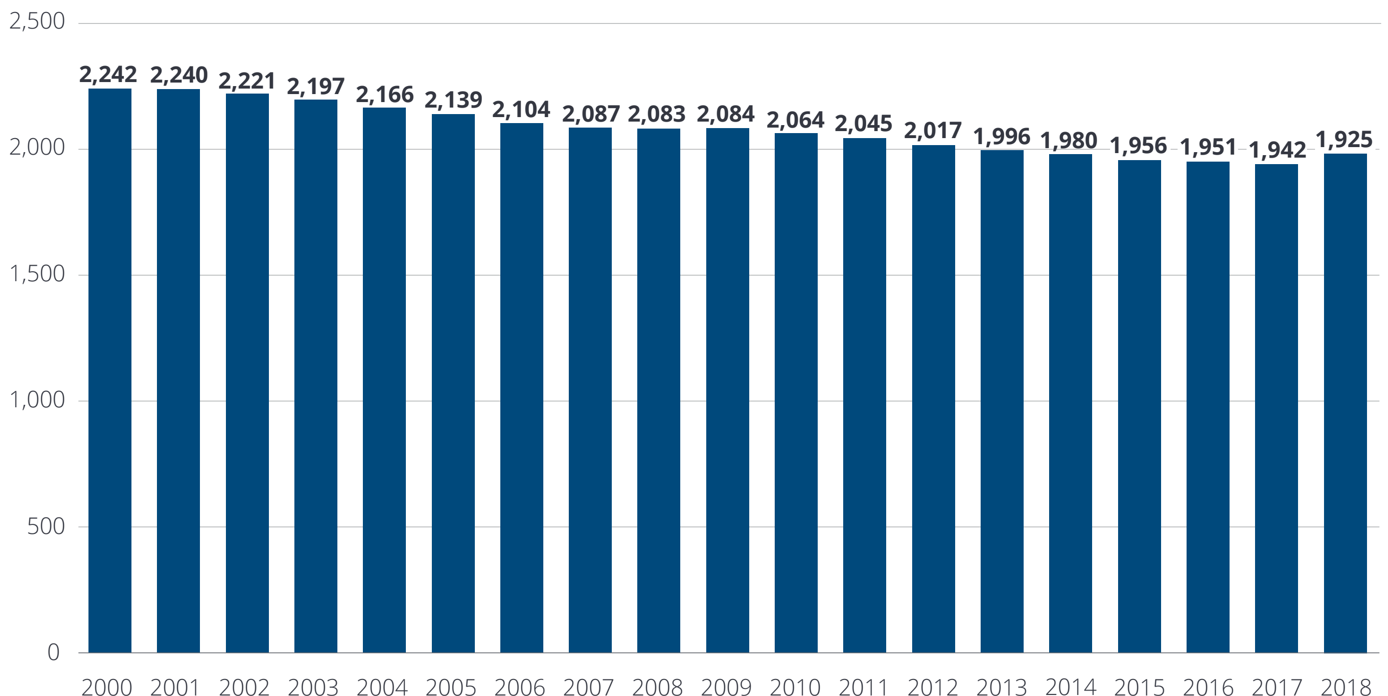
2.2.2.1 Health insurance in Germany
Germany achieves almost universal health insurance coverage; health insurance coverage is mandatory in Germany. Insurance premiums are shared by employers and employees. The vast majority of the population is enrolled in public health insurance plans. About 10% choose private providers. Both publicly and privately insured can choose their provider. Currently, there are 105 public and 42 private health insurance companies operating in Germany (2020). The government approved the German Drug Law (AM-VSG) in 2017, aimed at ensuring Social Health Insurance financial stability and extending the price moratorium for all patent-free drugs until 2022.

2.2.2.2 Recent Developments
Since the gap between the supply of resources and the demand for healthcare is widening, most countries are looking to digital transformation to close this gap.

The newly introduced investment program by the Federal Ministry of Health is helping German hospitals to drive digitization in the health sector. A total of EUR 4.3 billion in funding is available to enable hospitals to invest in modern emergency capacities, digitization and IT security. The Hospital Future Program is to be implemented through the Hospital Future Act "Krankenhauszukunftsgesetz" (KHZG) and the establishment of a Hospital Future Fund "Krankenhauszukunftsfonds" (KHZF).

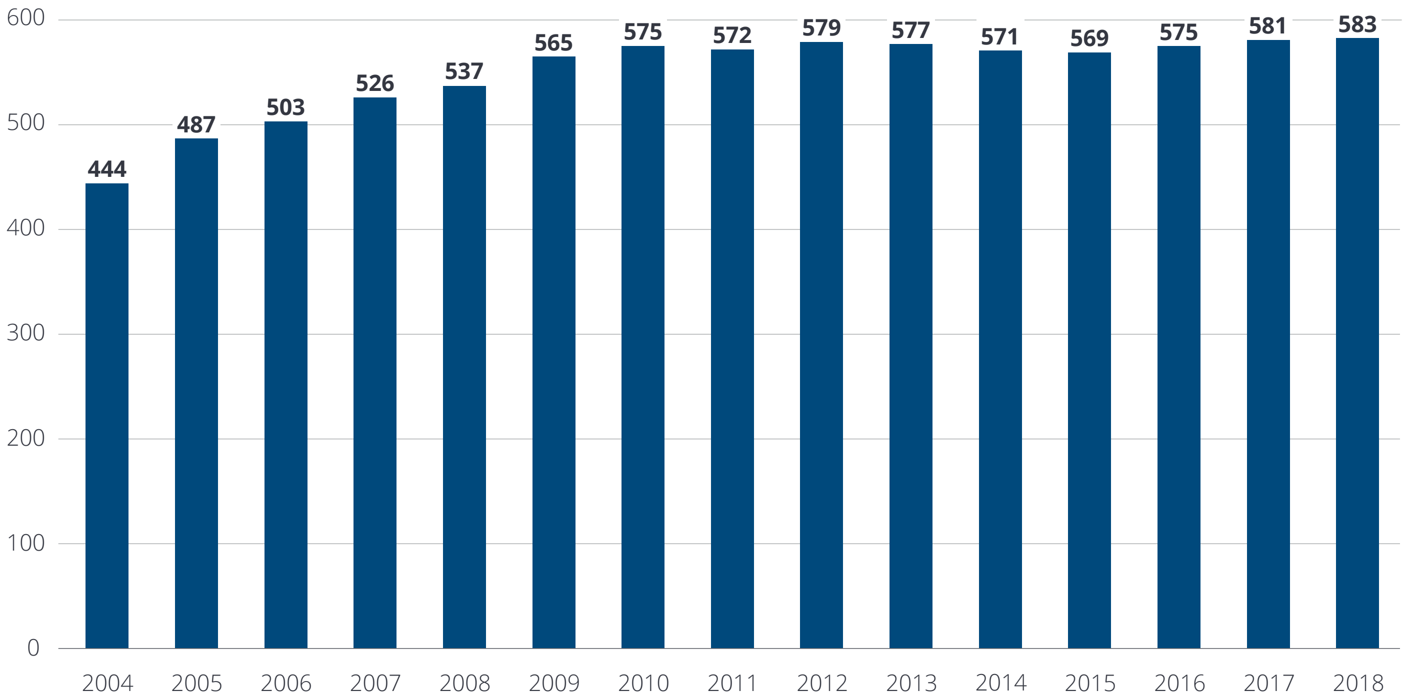
The Hospitals Future Program promotes the long-term transformation of hospitals. In particular, the program focuses primarily on digitalization and IT Infrastructure-related measures.

Fig. 7 – Number of hospitals in Germany from 2000 to 2018



Source: Statistisches Bundesamt © Statista 2020
Further information: Deutschland

Fig. 8 – Number of private hospitals



Source: Statistisches Bundesamt © Statista 2020
Further information: Deutschland

Deloitte has a comprehensive and deep understanding of the health care ecosystem in Germany with its many innovative players, striving to shape the future of health.

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2.2.3 Outlook for the Life Sciences and Health Care industry

More pharmaceutical companies will likely be outsourcing expertise in advanced technologies, such as AI, robotic and cognitive automation, and cloud computing to increase efficiencies, reduce costs, and decrease clinical timelines. In the IoMT (Internet of Medical Things), large and small companies will need to work together to minimize risks in the ecosystem in terms of medical device cybersecurity. Apart from the IoMT, other leading technologies advancing digital transformation in life sciences include AI, robotic automation, SaMD (Software-as-a-Medical Device), blockchain, DIY diagnostics, virtual care, mobility in drug delivery and clinical trials, genomics, next-generation therapies, cloud computing, Real-World Evidence (RWE), and data-driven precision medicine.

3. Regulatory environment

Deloitte offers services regarding the setting up of a company and can help to identify the company form with the most appropriate features

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3.1 Company law and setting up a business

3.1.1 Formalities for setting up a company

The two most common forms of incorporation are

- the joint stock corporation (Aktiengesellschaft or AG), which is regulated by the Joint Stock Corporation Act, and
- the limited liability company (Gesellschaft mit beschrankter Haftung or GmbH), which is governed by the Limited Liability Company Act.

To avoid misunderstandings: the liability of a limited liability company is limited only by its total net assets, it is the liability of its shareholders that is limited. However, it may be funded with the statutory minimum capital and the shareholder(s) of the company have no obligation to make further capital contributions, unless otherwise provided for. Some companies are incorporated as a commercial partnership limited by shares (Kommanditgesellschaft auf Aktien or KGaA).

The most common forms of unincorporated businesses are:

- the limited commercial partnership (Kommanditgesellschaft or KG), in which the liability of at least one partner is unlimited (general partner) and limited for the other partner(s) (limited partner(s)); and
- the general commercial partnership (Offene Handelsgesellschaft or OHG), in which the liability of the partners is unlimited.

The role of general partner can be assumed by a limited liability company and sometimes limited liability companies are founded for the mere purpose of being the sole general partner in a KG (then the company must carry the designation “GmbH & Co KG” in its name). A GmbH & Co KG combines the advantages of a GmbH with those of a KG. In the light of the (desired) effects of such a hybrid combination of the elements of a partnership and a corporation, specific statutory rules apply in some respects to a business run as a GmbH & Co KG.

Companies operating in Germany must be entered in a Commercial Register at the local court. The registration of a joint stock corporation (AG) or limited liability company (GmbH) is critical for foreign enterprises establishing a subsidiary in Germany, because, under German law, a parent company acting as a founding shareholder and also any individuals acting on behalf of the newly founded AG or GmbH might be held liable under certain circumstances.

The procedures for forming an AG are complicated. Although no permit is needed to form an AG or to issue shares, the founders must draw up Articles of Association. These must at least state the following: the name of the company, the location of its registered office in Germany, its objectives, the amount of share capital, the denominations and types of its shares, and the number of members of the Board of Management or the procedure by which this number is established. A notary public must record the Articles. The founders appoint the first Supervisory Board, whose members in turn appoint the Board of Management. The members of both Boards supervise the company's formation. An additional examination by court-appointed auditors may be required in certain circumstances.

The company must file its registration application with the commercial, provincial or district court in whose jurisdiction it is based. At the same time, it must file a deed on the recording of the Articles of Association, as well as any agreements concerning contributions and acceptances in kind, a calculation of the costs to be borne by the company for formation, all documents on the appointment of the Boards, the founders' report on the formation of the company and proof of payment of the founders' shares. The AG comes into existence when it is entered in the Commercial Register after the Articles of Association have been notarised as part of the foundation process and the total share capital has been subscribed (only 25% has to be paid in).

Procedures for forming a GmbH are similar, but simpler. The GmbH has less detailed requirements for stating the firm's major business purpose in the Articles of Association, lower minimum capital requirements, simpler formalities and more flexibility in legal and business transactions. However, the shares of a GmbH may not be traded on a stock exchange.

Like the AG, the GmbH comes into existence after an application is recorded in the Commercial Register. Before registration, persons who act on behalf of a GmbH can be personally liable. Incorporators must agree on Articles of Association containing the firm's name, place of incorporation (which must be in Germany), intended purpose and amount of capital (including the amounts contributed by each shareholder), whereby the minimum capital is EUR 25,000. This information must be notarised and entered in the Commercial Register.

The acronym "GmbH" must appear in the company's official name. The registration can be effected only after 25 percent of the capital has been paid in; the minimum that must be paid in at registration is EUR 12,500. It is possible to form a GmbH with subscribed capital of less than EUR 25,000 (known as a "mini GmbH"). In this case, additional rules regarding the accumulation of a statutory reserve and the name of the company apply.

Shareholders may be foreign nationals, and they need not have a residence or work permit as long as they retain their residence in their home country. The managing director may be a foreign national but should have a residence permit (for which non-German EU nationals are automatically eligible); a work permit is not necessary if the managing director is not regarded as a regular employee. There are special agreements with some countries.

The GmbH is the preferred corporate form for foreign investors who want to limit the risk of their activities to the amount of capital they invest in Germany and who do not anticipate raising funds in the capital market (which requires the AG legal form).

The European joint stock corporation, known as Societas Europapaea (SE), must be registered in the state where it is headquartered and remains under the supervision of the national authorities of that state. It is not necessary for SE shares to be traded on any stock exchange, but if its shares are listed on a stock exchange, the company is subject to the same laws as an AG.

3.1.2 Characteristics of the principal forms of business entities

Requirements for an AG

Capital

Minimum capital is EUR 50,000. At least 25 percent of the nominal capital cash contributions (which in total must not fall below the minimum capital) must be paid in when the company is formed, and all capital must be subscribed. If the AG's shares are not issued for their nominal amounts only, the 25 percent minimum of paid-in capital also encompasses the premium (which also often called agio). Other capital contributions may be in the form of factories, machinery, patents, know-how, etc. Capital contributions in kind must be 100% paid in and are subject to rigid valuations by court-appointed auditors. An amount equal to 5 percent of annual profits after taxes must go into a legal reserve account until the reserve has reached 10 percent of equity capital. If shares are issued above the nominal value, the nominal value is reported in the AG's balance sheet as "subscribed capital", the amount of the premium must be transferred to and reported as the AG's reserve account.

Founders, shareholders

It is possible for one person alone to establish an AG. There are no nationality or residence restrictions.

Board of Directors/Supervisory Board

The Supervisory Board must have at least three members or a multiple thereof, up to a maximum of 21. Individuals may not be members of more than 10 Boards. Representatives of parent companies may hold up to five additional board seats in affiliates, for a total of 15. There are no limits on the nationality or residence of directors. The shareholders' meeting elects the shareholders' representatives on the Board for a maximum period (roughly 5 years, as the exact period depends on and is tied to the Annual General Meeting resolving upon whether discharge is granted for the fourth fiscal year of the representative's tenure; different provisions apply to the first Supervisory Board) and, if applicable, the employees or their delegates elect staff representatives for the same period. Re-election is possible. Labour has 50% representation on the Supervisory Board of companies with a workforce of more than 2,000; in companies with a payroll of 500-2,000, labour representatives must hold one-third of the seats.

Management

The Supervisory Board appoints the Management Board 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 for in the Articles of Association).

Provided the AG permanently employs more than 5 employees (of whom at least 3 are eligible), employees are entitled to establish a Works Council, which has a voice in certain social and personnel decisions.

Taxes and fees

There are no taxes on incorporation or capital increases. The costs of entering a company in the Commercial Register and of notarising 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 shares

The minimum par value of shares is EUR 1. An AG must issue common (ordinary) shares but may issue preferred shares (which usually carry no vote) up to the full amount of common shares. Multiple vote shares are generally not permitted, although non-voting shares are permitted. Bearer shares are often used, although registered shares are permitted. Registered shares have the same legal rights, specifically in computer trading, as the traditionally-used bearer shares.

Control

In the shareholder meeting, a simple majority is sufficient to approve most actions; a majority of more than 75% is required for major decisions. A minority of 5% of equity capital or, as the case may be, EUR 500,000 in shares may do the following: call an extraordinary shareholders' meeting (minority of 5%) or put topics on the agenda of the shareholders' meeting (minority of 5% or EUR 500,000 in shares); object to a decision of the shareholders' meeting for the formation of reserves (meeting (minority of 5% or EUR 500,000 in shares), if this decision is shown to be "economically unreasonable". A minority of 1% of equity capital or EUR 100,000 in shares) can request a special audit if the business report seems incomplete or incorrect or assets are believed to be undervalued. A minority of 10% or EUR 1 million may force a vote on a nominated board member.

Requirements for a GmbH

Capital

The minimum capital is EUR 25,000, but only EUR 12,500, including deposits in kind, must be paid in. The registry court must value assets in kind paid in by the group or person establishing the GmbH. Minimum capital for entrepreneurial companies with limited liability ("miniGmbH") is EUR 1. A legal reserve equal to 25% of the annual profits is required for entrepreneurial companies with limited liability until the registered capital is increased to EUR 25,000 or above.

Founders, shareholders

There is a minimum of one founding member. Founders may also be companies or private partnerships. The acronym GmbH must appear in the firm's official name. The official name of entrepreneurial companies with limited liability must have the wording "Unternehmergesellschaft (haftungsbeschränkt)" or "UG (haftungsbeschränkt)."

Board of Directors/Supervisory Board

A Supervisory Board is required if there are more than 500 employees. The Supervisory Board then controls management and no person may serve as director and manager simultaneously. The Supervisory Board must comprise at least three members. The rules governing representation of labour are the same as for an AG (see above).

Management

One or several managers are permitted. Members may specify management procedures in the company's bylaws. Managers need not be shareholders.

Branch of a foreign corporation

A foreign company does not need a permit to establish a branch in Germany. A branch (unlike a subsidiary) is not a separate legal entity and has no rights or obligations other than those of the head office. A branch is categorised either as a dependent entity lacking its own business profile (like a representative office) or as an independent trading entity. Only independent branches must be entered in the commercial register. The tax treatment is the same for both types of branches.

A branch is not subject to the same disclosure requirements as a subsidiary. In a start-up situation, a branch has the advantage of letting the foreign investor offset German-source start-up losses against home-country taxable income, depending on the home country's tax system. However, a subsequent conversion of the branch into a German corporation typically results in gain recognition, particularly for goodwill; different rules apply to EU companies. The liability of a branch extends to the foreign head office; a subsidiary in principle does not expose the foreign parent to potential liabilities.

A foreign company may set up an independent branch by registering it in the local Commercial Register. The certified registration must be made at the local court where the branch will be located. Branch managers may be foreign nationals and are not subject to residence limitations. Foreign corporations must include a certified copy of the Articles of Incorporation (including a German translation) with the application. They must also include detailed information about both the head office company and the branch, e.g. business objectives, amount of equity and composition of the board.

When planning your outbound investment, crucial aspects that need to be considered refer to the company law and tax consequences. To cover these relevant aspects, Deloitte offers advisory services delivered by interdisciplinary teams.

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3.1.3 Considerations for tax structures
For Chinese investments to Germany some special tax considerations are relevant. Often, Chinese investors use Hong Kong as their hub for foreign investment. The reasons may be diverse, including foreign exchange, international environment and English language capabilities, a highly liquid and well-regulated capital market and access to funding, considerations of a future IPO and from a tax perspective: the exemption of dividends received in comparison to a 25% taxation in Mainland China.

However, from a tax perspective, Hong Kong does not appear to be a very efficient location for use as a holding company for investment in countries such as Germany, as there is no tax treaty between the two jurisdictions, leading to a high withholding tax and total tax burden for a straightforward investment. Thus, some thought needs to be given how to reduce the tax burden.

A common way to reduce the German withholding tax would be the interposing of a holding company. A typical location would be somewhere in the EU in order to utilise the EU Parent-Subsidiary Directive and reduce the dividend withholding tax to zero. However, this requires two things: the interposed holding company has some operational substance in order to meet the preconditions under German law. Additionally, the interposed location should not add tax cost to the dividend flow. Typical locations in the past have been Luxembourg and The Netherlands.

If no operational substance can be set up in another favourable location, a straightforward investment might be considered in the legal form of a partnership (GmbH & Co KG). This is a very common legal form in the German middle market sector ("Mittelstand"). A partnership is generally subject to a comparable tax burden in Germany to an operating corporation (GmbH). However, the repatriation of funds is not a dividend and is thus not subject to dividend withholding tax. The repatriated funds are generally not taxable in Hong Kong.

However, once a repatriation to China takes place, consideration needs to be given to the availability of foreign tax credits in China.

Another means of reducing the effective tax rate would be to finance the German investment with debt. In this regard, the German interest limitation rules have to be observed. Since generally no withholding tax applies to interest payments and the tax arbitrage is considerable between Germany and Hong Kong (but not with China), the debt-financing capacity should be utilised.

When acquiring (or setting up) more than one legal entity, the creation of a tax group (Organschaft) to permit the consolidation of the tax result across all entities should be considered.

3.1.4 Legal framework for licence agreements

Government approval is not required to enter into licensing agreements or to pay royalties to foreigners. Licensing and technical assistance agreements need not be registered with the German Patent and Trademark Office. As a rule, compensation under licensing agreements is based on sales, often on a per-unit basis. Many agreements fix annual minimum royalties that must be paid regardless of actual sales.

The main limitations on licensing in Germany arise under antitrust law. The EC Treaty prohibits contracts that limit competition, although the EU technology transfer block exemption regulation (TTBER) allows the licensor to impose certain restrictions on the licensee, such as limiting production of the licensed product to a geographic region, if certain conditions are fulfilled. However, the TTBER only applies where the joint market share of the parties on the relevant market does not – in case of competitors – exceed 20 percent and – in case of non-competing entities – 30 percent.

Under German and European antitrust law it is permissible for licensors to impose EU territory export prohibitions on their licensees if the relevant product is not designated for EU countries, unless such an export prohibition has an appreciable impact on competitive conditions and the structure of the internal market. Licensors may also stipulate that the product be exported only to other countries within the EU, although they may not stipulate which countries (unless the (implicit) prohibition on export to non-EU countries has an appreciable impact on competitive conditions and the structure of the internal market).

Tie-ins are allowed only to the extent they are necessary to maintain the technical standard of the licensed product. A licensor may not restrict the handling or pricing of competitive products, because such restrictions exceed the scope of a patent or other protected right and would restrict the licensee's business activities. Under the TTBER the parties may agree, in case of an exclusive licence, on clauses that prohibit the licensee from directly or indirectly contesting the validity of one or more licensed property rights.

A licensing agreement may outlast the patent right for which it is granted if the licence also includes longer term provisions for technical know-how and assistance. The duration of the licensing agreement then depends on the duration of these other provisions. Know-how is recognised as a licensable property right. Germany does not limit the licensing of further developments of the initial patent.

3.1.5 Mergers and Acquisitions
Under the Law against the Restraint of Competition, the following transactions are deemed to be a merger:

- acquisition of all or of a substantial part of the assets of another undertaking;
- acquisition of direct or indirect control by one or several undertakings of the whole or parts of one or more undertakings; control is constituted by rights, contracts or any other means that, either separately or in combination with and having regard to the considerations of fact or law involved, confer the possibility of exercising decisive influence on an undertaking;
- acquisition of shares in another undertaking if the shares, either separately or together with other shares already held by the undertaking, reach or exceed 50% or 25% (indirect or direct) of the capital or the voting rights of the other undertaking;
- any other combination of undertakings enabling one or several undertakings to directly or indirectly exert a competitively significant influence on another undertaking.

A concentration also arises if the participating undertakings had already merged previously, unless the concentration does not result in a substantial strengthening of the existing affiliation between the undertakings.

If credit institutions, financial institutions or insurance undertakings acquire shares in another undertaking for the purpose of reselling them, a concentration is not deemed to arise as long as they do not exercise the voting rights attached to the shares and provided the resale occurs within one year ("banking clause"). This time limit may, upon application, be extended by the Federal Cartel Office if the undertakings can show that the resale was not reasonably possible within this period.

The Federal Cartel Office must be notified according to recently enacted regulation, in German, of mergers and acquisitions (M&A) that meet the following criteria:

- combined worldwide turnover of the participating companies exceeded EUR 500 million or more in the business year preceding the merger; and
- domestic turnover of at least one participating company was more than EUR 50 million; and
- domestic turnover of another participating company was more than EUR 17.5 million or
- the combined aggregated worldwide turnover of all participating undertakings is more than EUR 500 million, and
- the domestic turnover of one participating undertaking is more than EUR 50 million, and neither
- the target undertaking nor any other undertaking concerned achieved a domestic turnover of more than EUR 17.5 million,
- the consideration for the acquisition exceeds EUR 400 million and
- the target undertaking has substantial operations in Germany.

Further, the Federal Cartel Office can issue a decree ordering companies to notify certain concentrations in specific industries for a period of three years if these industries were previously the subject of a sector inquiry (carried out after the 10th Amendment of the Act Against Restriction on Competition came into force). The purchasing company must have a worldwide turnover of EUR 500 million and a 15% share or more of domestic supply (or demand on the buyer side) and there must also be indications that competition will be significantly impeded by future concentrations. The notification obligation will only apply to concentrations where the target company has turnover of more than EUR 2 million and generates more than two-thirds of this in Germany.

The turnover of affiliated undertakings of the participating companies must be taken into account when calculating whether the turnover thresholds are met. The following are deemed to be undertakings affiliated to a participating undertaking:

- controlled or controlling companies (in terms of the regulations on Joint Stock Corporations) and group companies (in terms of the regulation on Joint Stock Corporations);
- undertakings which are controlled solely or jointly by the participating undertaking, and – vice versa – undertakings which are able to exert decisive influence on the participating undertaking.

The Federal Cartel Office does not have to be notified of M&As where the merger has no effect on the German market or the turnover thresholds are not reached.

Mergers with a Community dimension fall within the competence of the EU Commission and need to be notified under Council Regulation (EC) No. 139/2004. The EU has jurisdiction over mergers in two situations:

1. where the combined aggregate worldwide turnover of all of 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 concerned generates more than two-thirds of its aggregate EU-wide turnover in a single member state; and
2. where the aggregate global turnover of the companies concerned exceeds EUR 2.5 billion for all businesses involved, aggregate global turnover in each of at least three member states is more than

EUR 100 million, aggregate turnover in each of these three member states of at least two undertakings is more than EUR 25 million and aggregate EU-wide turnover of each of at least two of the undertakings is more than EUR 100 million, unless each generates more than two-thirds of its aggregate EU-wide turnover within one and the same state.

If a merger would not normally fall within the European Commission's purview, the affected companies may ask the Commission to review it if they would otherwise be obliged to notify three or more member states. The Commission proceeds as a "one-stop shop" only if none of the relevant member states objects within 15 days.

The tax implications of reorganisations are regulated in the Reorganisation Tax Act. If certain requirements are met, reorganisations – mergers, spin-offs and contributions – can be carried out in a tax-neutral manner. In particular, it is required that Germany`s right to tax the takeover entity or the transferred assets is not affected. The Federal Ministry of Finance has issued a comprehensive decree on the tax implications of reorganisations.

Deloitte can support clients in reorganisation cases to help them understand and meet the requirements for tax-neutral reorganisations

3.1.6 Cartel ban

Under the cartel ban, agreements between undertakings which have as their object or effect the restraint on competition are prohibited. In order to qualify a certain behaviour as anti-competitive, antitrust law differentiates between agreements concluded between competitors and agreements concluded between non-competing undertakings. In the following some examples of anti-competitive agreements are described.

With regard to agreements between competitors the cartel ban is generally violated in case of e.g. a price fixing, allocation of customers or markets, limitations on sales and production as well as collusive tendering. Also the exchange of sensitive information (e.g. concerning prices, customers, cost, capacity) between competing undertakings may also infringe the cartel ban.

With regard to agreements within a vertical relationship – meaning agreements between market participants that are active on different levels of the economic circuit, such as producer and distributor or reseller – the cartel ban is generally violated in case of e.g. resale price maintenance as well as customer and territory restrictions. Under the EU regulation on vertical restraints – which is applicable if the market share held by the seller does not exceed 30% of the relevant market on which it sells the contract goods and the market share held by the buyer does not exceed 30% of the relevant market on which it purchases the contract goods – certain restrictions such as non-competing obligations, most-favoured clauses and exclusivity clauses are permitted.

3.1.7 Monopolies and restraint of competition

Market dominance in itself is not illegal in Germany, but the abuse of a dominant position is. 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 preventing firms from entering the market. Market dominance may be presumed when a company holds a market share of at least 40%.

The Federal Cartel Office is also empowered to declare that a company has an "overwhelming importance for competition across multiple markets". This aims at restricting the market power of large digital companies. Upon issuance of a respective decision, the Federal Cartel Office may, in addition to the general anti-abuse rules, apply additional measures specifically designed for keeping open respective markets.

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 e.g. used to impede other market participants, actual or potential, or to demand excessively high or low prices.

By assembling teams that comprise legal experts as well as experts in Risk Management and Internal Control Systems, Deloitte can effectively advise which processes and information would be necessary and legally accessible for investors.

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3.1.8 Investor rights to information

Investors have an interest in being provided with certain company information on a regular basis. Single cases and specific requests can be addressed by asserting e.g. the shareholder's statutory (minority) information and inspection right in a GmbH. However, beyond that, investors will often be interested in a more institutionalised and steady reporting from the Management Board or the Supervisory Board. While in a GmbH, as a rule, shareholder primacy is the leading principle, in a AG a strict allocation of competences to either the shareholders, the Management Board or the Supervisory Board prevails. Therefore, as opposed to an AG, in which the Management Board shall direct the company on its own responsibility, only in a GmbH the shareholder(s) has/have the authority to give directives to the management by way of shareholder resolutions (which, as the case may be, can be adopted based on just one investor/shareholder and his interest). Hence, in contrast to an AG with its formal reporting during the financial year and the Annual General Meeting being the main platform to share information with the shareholders, shareholder requests in a GmbH (e.g. for information) must in principle be obeyed (provided such requests can be based on shareholder resolutions).

However, irrespective of this difference between AGs and GmbHs, the management of either legal form as well as the Supervisory Board and its members are always in a conflict between their duties towards the company and, as the case may be, vis-à-vis "their" shareholder(s). According to statutory law, members of the Management Board as well as members of the Supervisory Board are subject to strict confidentiality obligations. There is a heated discussion in the academic literature and in jurisdiction about whether certain information must be considered confidential and as a business secret which, therefore, must be kept confidential and as a secret and must not be disclosed.

In the event that certain information has been categorised as confidential or as a business secret, a violation of related obligations can be even a criminal offence. In the light of the described ambiguities under German law, investors are well-advised to stipulate their rights in the Articles of Association or in shareholder agreements to the extent legally permissible, e.g. with respect to information and reports to be provided, related inspection and audit rights, and rights to pass on information to their parent companies and third parties such as regulatory agencies.

3.2 Labour law

3.2.1 Employee rights and remuneration

There is no single law governing the individual and collective aspects of employment in Germany. Labour-management relations are primarily the result of collective bargaining agreements between trade unions and employers' associations.
The German Civil Code regulates employment contracts. The Commercial Code partly covers the employer-employee relationship and contains regulations on commercial agents. Moreover, there are several statutory laws regulating certain aspects of the employment relationship (e.g. continued payment of wages during sickness or vacation).

German labour law is aligned with EU guidelines governing collective bargaining agreements. Within one month of hiring an employee, employers must put into writing the terms of the employment contract. In the absence of a choice-of-law clause in an employment contract, courts must apply German law whenever an employee's main activity is located in Germany, even if the employer is a foreign corporation. If the employee works abroad, the law of the country that governs the branch applies to the employee in the absence of a choice-of-law provision.

In any enterprise with at least five regularly employed workers, these 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 on many changes that affect working conditions (e.g. changes in production methods and facilities). It also has an important voice in hiring, transferring or dismissing employees.

Workers' participation laws govern Works Councils and employees representation on the Supervisory Board level. In a company with regularly more than 100 employees, the Works Council may elect an Economic Committee, which discusses company decisions with management and then passes the information on to the Works Council. In a company with generally more than 500 but not more than 2,000 employees, one-third of the seats on the Supervisory Board must be reserved for employee representatives. For companies with usually more than 2,000 employees, one-half of the Supervisory Board must comprise employee representatives (coal and steel industries have a similar but separate scheme).

Working hours in Germany are governed by law. Agreements under collective law, such as Works Council agreements usually regulate the details. The normal working day is eight hours and can be extended to ten hours if the six-month average does not exceed eight hours per day. In principle, work is prohibited on Sundays and public holidays. Certain exceptions apply in particular to healthcare, restaurants, transport and agriculture. Shift work is permitted, and there must usually be an eleven-hour rest period between shifts. Collective bargaining and Works Council agreements are specific on shift work. In terms of overtime work, employers often pay overtime surcharges or give workers additional time off instead. Employees with executive functions do not usually receive overtime pay.

The minimum annual leave is 20 working days for full-time employees (five-day working week). On average, the workforce is entitled to an annual leave of 30 days by collective labour agreement.

3.2.2 Wages and benefits

(Minimum) Wages

The German Minimum Wage Act has been in effect since January 1, 2015. Since then, employees in Germany are entitled to receive the minimum wage. Currently, the minimum wage amounts to EUR 9.50 per hour as of January 1, 2021 (to be increased to EUR 9.60 per hour as per July 01, 2021). This applies to all employees who render their services on German territory no matter how long these services are rendered. Therefore, the minimum wage also applies for example to foreign employees who are assigned to Germany. There are only very few exceptions to the minimum wage, e.g. as regards certain kinds of internships. In addition to defining a minimum wage, the Minimum Wage Act also contains certain documentation and reporting obligations that might need to be considered by employers.

Furthermore, many industries are subject to minimum wages regulated under collective bargaining agreements. Wages in foreign-owned firms are basically similar to those in domestic companies.

In the event of non-compliance with the minimum wage, there is a particular risk of the imposition of fines by the authorities and the assertion of subsequent payments by employees.

Notwithstanding the minimum wage, wages and salaries vary by location, seniority and skills of the employee. They are often lower in rural districts than in major cities.

Pensions

A privately-funded and managed element has been added to the pay-as-you-go pension scheme and tax advantages are granted to payments into the state pension system. The Personal Pension Plan Act encourages private-sector employees, who are entitled to compulsory social retirement benefits (state pension), to build up individual-asset-backed pension plans. Personal pension plan contributions are tax exempt, within the limits specified under the pension plan legislation. The Pension Law gradually exempts payments into the state pension fund from tax, but it taxes pension pay-outs.

Germany's comprehensive state pension scheme requires compulsory deductions (see below and Chapter 3.5.6.6).

Most large German companies offer voluntary company pension plans that supplement the state retirement pension scheme.

The legal retirement age is 67 for men and women. Under certain conditions early retirement is possible.

Social insurance

Wages and salaries constitute only a part of the cost of labour. Mandatory social insurance contributions for employers and employees combined reach an average of approximately 40 % of gross income below annually defined ceilings. Typically, employers and employees each pay half of the charges.

Non-wage employment costs include the following:

- **Compulsory health insurance**
  The insurance covers employees and their families. The general contribution percentage amounts to 14.6 % of the monthly gross salary up to EUR 4,837.50. The contribution is borne in equal parts by the employer and the employee. Moreover, an additional contribution is generally levied by the health insurance institutions, which averages 1.3 % in 2021. This contribution is also borne equally by the parties. All employees with regular annual salaries lower than EUR 64,350.00 must be enrolled in the compulsory scheme.

- **Private health insurance**
  Employees whose wages exceed the ceiling may opt out of the compulsory scheme and choose private health insurance. Privately insured persons receive a contribution subsidy from their employer in the amount of the contribution required for the compulsory health insurance.

- **Long-term nursing care/disability insurance**
  This scheme is compulsory. Contributions are 3.05 % of the monthly gross salary up to EUR 4,837.50, payable half by employer and employee each. Additionally, since January 1, 2005, employees without children have to pay a supplement of 0.25 % of their contribution base. This does not apply in particular to persons under 23 years of age, born before January 1, 1940 or currently drafted in military service. If the employee has opted for private health insurance, he/she must still enrol in the compulsory long term insurance, but the account will be administered by the private carrier.

- **Accident insurance**
  The insurance covers work-related accidents and occupational diseases and is financed entirely by employer contributions. Insurance coverage extends to occupational and commuting accidents as well as work-related diseases. The contributions are calculated at year-end based on the actual wage base and occupational risk categories.

- **Unemployment insurance**
  The compulsory unemployment insurance scheme is financed by contributions of 2.4 % of the gross monthly salary up to EUR 7,100.00 (EUR 6,700.00 in the former Eastern states), payable half by employer and employee each.

- **Pension insurance**
  The statutory pension scheme calls for contributions of 18.6 % of gross monthly salary up to EUR 7,100.00 (EUR 6,700.00 in the former Eastern states), payable half by employer and employee each.

Employees coming from outside Germany are normally subject to social security contributions. Very often, however, a social security agreement exists between Germany and the employee's home country, which allows the employee to remain in his/her home scheme for a limited number of years under certain conditions. Germany has such agreements with many countries including the People's Republic of China. The home country employer must file an application for a certificate of coverage (form A1 in Europe) to request exemption from German social taxes. Not all agreements cover all areas of social coverage, however, so it may not be possible to obtain complete exemption. The agreement between Germany and P.R. China covers pension insurance and unemployment insurance.

3.2.3 Termination of employment

The Dismissal Protection Act, which is intended to protect employees against unjustified dismissals, applies to companies in which more than ten employees are generally employed (for employees hired before December 31, 2003, the threshold of five employees still applies). The notice periods vary according to the length of service with the company. 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 calendar month. This notice period is extended to two months after five years of employment and to seven months for contracts of longer than 20 years' duration. Certain groups of employees enjoy special protection against dismissal. For example, a works council member may only be dismissed extraordinarily for good cause and women may not be dismissed during their pregnancy and within four months of giving birth.

Employers must inform the Works Council of planned dismissals. Trade unions enforce these rules rigorously. In practice, companies wishing to dismiss employees are usually forced to make generous redundancy agreements with the Works Council or the individual. The common severance pay starts at 50% of a monthly gross salary for every year of job tenure, but can be substantially higher.

The statutory notice periods may be modified, within limits, in collective bargaining agreements. In addition, there is the possibility to extend the period by individual contract. However, the individual contractual reduction of the notice period is only possible within limits in certain circumstances.

3.2.4 Labour-management relations

Trade unions are organised according to industry. Most come under the umbrella of the German Trade Union Federation (DGB). Some white collar workers form their own professional organisations and negotiate their salaries outside the traditional trade union structure.

Union officials and employers' associations negotiate on a regional level. One region drafts a pilot agreement, which is then adopted nationwide, perhaps with minor changes. There are separate contracts for pay and other conditions (e.g. shifts and vacations). Once agreed, collective bargaining agreements traditionally apply to an entire industry nationwide.

In Germany, it is possible to enforce collective bargaining requirements by strikes under certain conditions. Under German law, strikes may not be called until negotiations break down. Nevertheless, the Federal Labour Court has upheld "warning strikes" (work stoppages and demonstrations) during negotiations and the right of apprentices to join strikes and work stoppages. The Social Security Law blocks federal compensation for employees on short time or laid off because of a strike. The same applies under specific circumstances to employees who were not involved in the strike. The legislation provides for disputes in this regard to be settled by a "neutrality committee".

3.2.5 Employment of foreigners

3.2.5.1 General immigration regulations

In general, the immigration authority examines, where appropriate with the involvement of the labour authority (One-Stop Government), whether

- the activity of the foreign employee has disadvantageous impacts on the local labour market,
- there are German or EU nationals available on the local labour market who can fill the same position (so called “priority check of the labour market”), and
- that the same conditions of employment regarding compensation, working time and vacation granted to comparable German employees are also offered to the foreign employees.

3.2.5.2 Entry visa requirements

EU-/EEA-nationals and citizens of privileged countries, such as the USA, Canada, Japan, Australia, New Zealand, Israel, the Republic of (South) Korea, may enter Germany without a visa. Nationals of other countries must apply for an entry visa at the German embassy or consulate in their country of residence before travelling to Germany to take up gainful employment. The process can take up to 8 – 12 weeks before the employee will be in a position to travel to Germany and commence his/her assignment. Entry visas permitting work are generally valid for 90 days in some cases up to 6 months. After arrival this visa will have to be converted into a short or long term residence permit.

3.2.5.3 Residence and work permits for non EU-citizens

Non EU-citizens who wish to take up a gainful employment in Germany are required to be in possession of a residence and work permit allowing them to work in Germany. Such a permit will be issued in the form of an electronic residence card. The issuing authority is the local immigration office of the district/city where the applicant will reside and not the one of the district where the employer is located.

Residence permits allowing a person to work are generally issued for a particular job with a specific employer at a determined location and a particular place of work, not for employment in general. If the job as such or the location changes, it may be necessary to ask for an amendment of the existing German residence permit if the permit is still limited and attached to a specific employment.

The Blue Card EU is a simplified temporary work permit for highly educated skilled employees. The requirements to be met in order to have a Blue Card issued are a recognised university degree and a proof of a specific offer of a local German employment contract with an annual gross salary threshold of at least EUR 56.800 (in 2021). For occupations in which there is a shortage (doctors, IT professionals, mathematicians, engineers, etc.) according to the Federal Ministry of Labour the annual salary threshold amounts to EUR 44.304 (in 2021). In those cases the employees are exempted from the time-consuming priority review. Certain requirements can apply, e.g. contribution to public pension fund and prove of integration efforts like integration course.

Blue Card holders can receive a permanent residence permit (“Niederlassungserlaubnis”) with level A1 after 33 months. If German language skills according to level B1 can be proven, this period is shortened to 21 months.

In contrast to the above, EU nationals do not require a residence or work permit for Germany.

3.2.5.4 Intra-company transferees
Under certain circumstances, skilled employees with a university degree working for a multi-national company can obtain a residence and work permit if they are seconded to an affiliated German company, provided the assignment occurs within the scope of an intra-company staff exchange programme. However, the intra-company staff exchange programme is only applicable, if

- the company has established a global staff exchange programme and is registered with the central labour authority,
- the German branch or subsidiary has in the past seconded employees abroad,
- the applicant holds a university degree.

This procedure generally simplifies the application proceedings and is less time-consuming. As a further assignment category, the ICT Card with similar requirements can be considered which does not require an exchange of staff.

3.2.5.5 Dependents
The application for residence permits for accompanying family members, if eligible, can be made at the same time as the main one, and a work permit is granted automatically for the accompanying spouse. Applications for accompanying dependents could last longer, as the local immigration office of the intended city of residence could be involved in the process as well.

3.2.5.6 Registration with municipal authorities
All individuals regardless of their nationality are required to register with the town hall of their place of residence within 14 days after taking residence. The confirmation of registration is a pre-requirement for the residence permit application. The registration will also trigger the issuance of a Tax Identification Number (TID). This TID must be indicated when filing the personal income tax return with the German tax authorities (for the taxation of individual, see Chapter 3.5.3). The tax office will assign a tax number when the tax return is filed, thus no special registration with the tax authorities is necessary. Since November 2015 not only a valid lease agreement but also a landlord's confirmation is required for the registration.

De-registration at the town hall is also necessary upon departure.

Various services are offered by Deloitte to support the process of relocating employees. They comprise, for example, easy-to-handle solutions for the employees to comply with German individual income tax regulations.

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Note that for most companies in Germany it is not compulsory for the closing date to be on 31 December each year. Even though most companies do choose this closing date, another date can be agreed in the articles of the company.

3.3 Accounting and auditing

3.3.1 Obligation to prepare statutory accounts and the respective exemptions

Separate financial statements

The basic rules, codified in the Commercial Code, affect all companies. However, the requirements increase depending on the company's limitation of liability, the size of the company and whether the company's shares are publicly traded.

According to the basic rules, all registered merchants, which includes all corporations and partnerships with business activities, have to prepare annual financial statements consisting of a balance sheet and an income statement. An exemption to this only applies to very small sole proprietorships. The financial statements have to be prepared within a reasonable period after the closing date. That is normally assumed to be within one year after the closing date.

The financial statements have to comply with German Generally Accepted Accounting Principles (German GAAP), have to be in the German language and in euro. The merchant or all representatives of the corporation is/are expected to sign the financial statements to express their responsibility for the preparation.

Additional rules apply to companies with limited liability (such as AG, GmbH and KGaA) but also for partnerships where the liability is limited de facto, as the general partner itself is a corporation with limited liability; most common is the combination of a KG and a GmbH, known as the GmbH & Co. KG. For those companies more strict rules based on EU directives to harmonise company reporting and accounting apply. The main additional burden is that the financial statements have to be accompanied by appropriate notes and this documentation must represent a true and fair view of the net assets, financial position and result of operations of the company. Furthermore, a Management Report must be prepared and the financial statements and the management report have to be prepared within three months after the closing date. However, subject to the size of the (limited liability) company, certain relief is granted. In this respect, four different sizes of company are distinguished:

- Two out of the three criteria must be met for assignment to a category.
- The consequences of meeting the criteria of another category only apply if the criteria (not necessarily the same) are met in two years in a row

Category	Balance sheet total (EUR)	Revenues (EUR)	Employees (average headcount)
Very small corporations ("Kleinstkapitalgesellschaften")	≤ 350,000.00	≤ 700,00.00	≤ 10
Small corporations	≤ 6,000,000.00	≤ 12,000,000.00	≤ 50
Medium-sized corporations	≤ 20,000,000.00	≤ 40,000,000.00	≤ 250
Large corporations	> 20,000,000.00	> 40,000,000.00	> 250

- Very small corporations can avoid to prepare notes to the financial statements. Furthermore they are permitted to abbreviate their balance sheet and income statement. It is important to note that holding companies cannot be qualified as very small entities, even though they often have very small amounts of revenue and numbers of employees.

- Small corporations are also allowed to aggregate certain items in their balance sheet and income statement. Small corporations do not need to prepare a management report and they usually can take time to prepare their financial statements within six months after the closing date.

- Furthermore, Small and Medium-sized corporations are exempted from the disclosure of certain information in the notes to the financial statements, e.g. they do not need to show a breakdown of their revenues regarding business lines or regions. For Small corporations more such exemptions are in place than for Medium-sized corporations.

Another important exemption regarding the applicable rules for the financial statements relate to the inclusion of a corporation in certain consolidated financial statements. According to this, a corporation with limited liability does not need to follow the stricter rules that usually apply to them if they are included in consolidated financial statements that comply with European standards and have been audited according to European standards. Apart from that, certain other requirements have to be met, e.g. that the parent company of the group has agreed to guarantee the liabilities of the subsidiary. Consolidated financial statements according to PRC GAAP generally do not meet the criteria for applying for the exemption of subsidiaries in Germany. However, if there is an intermediate company in Germany or Europe holding the shares of the German companies, the German companies might enjoy the exemption mentioned if this holding company prepares consolidated financial statements for itself and its subsidiaries.

The separate accounts according to German GAAP (statutory accounts) limit the distribution of profits to the company's shareholders. In addition they are the basis for the accounts according to German tax law and the relevant calculation of German income taxes to be.

Consolidated accounts

Corporations with limited liability and their registered office in Germany have to prepare consolidated financial statements if they control at least one other company (subsidiary). Similar rules apply if the registered office is in another EU member state. However, for German companies there is an exemption for small groups: consolidated financial statements have to be prepared only if two of the following thresholds are exceeded in two subsequent years – either in respect of summarised accounts or consolidated accounts.

Furthermore, no consolidated financial statements have to be prepared if the holding company is not the ultimate parent and the companies are included in consolidated financial statements on a higher level, that meet specified criteria (exempting consolidated financial statements). The exempting consolidated financial statements must comply with the EU-regulation, International Financial Reporting Standards (IFRS) or a comparable GAAP, and must be audited according to EU-standards or comparable; they have to be disclosed in German or English language. Note that the consolidated financial statements of a Chinese ultimate parent company as well can fulfil the requirements for exempting consolidated financial statements for German or other European parent companies.

Consolidated financial statements in Germany comprise the consolidated balance sheet, the consolidated income statement, the consolidated cash flow statement, the consolidated statement of changes in equity and the notes to the consolidated financial statements; furthermore, a group management report must be prepared. Which accounting principles have to be applied to the consolidated financial statements depends on whether the parent company is a listed company or not.

- If the parent company is not a listed company the consolidated accounts may be prepared according to German GAAP.

Category	Summarised accounts (EUR)	Consolidated accounts (EUR)
Balance sheet total	24,000,000.00	20,000,000.00
Revenues	48,000,000.00	40,000,000.00
Employees	250	250

  Alternatively, it is permitted to apply IFRS to the consolidated financial statements.

- If the parent company is a listed company, it is mandatory to apply IFRS to the consolidated financial statements. It must be noted that 'listed company' means that either the shares are traded on the stock market or debt instruments are publicly listed in Europe, or that the company is in the process of applying for such listing.

Accordingly, especially unlisted companies are not obliged to and often do not have consolidated financial statements according to IFRS, but to German GAAP. If accounting information according to IFRS is needed, reconciliations are usually necessary. For significant deviations between PRC-GAAP, IFRS and German GAAP, see Chapter 3.3.4.

The IFRS applicable to consolidated financial statements are generally the same as the IFRS that are published by the International Accountings Standards Board (IASB), but as new standards need to pass an approval process by special bodies of the EU, the effective dates of new standards might be postponed for application in companies in the EU.

German companies which are not limited liability companies and do not control other companies only need to prepare consolidated accounts if they are of a significant size. The thresholds are 65 million euro for total consolidated assets, 130 million euro consolidated revenues and an average of 5,000 employees.

3.3.2 Requirements to publish financial information

Following the provisions of EU legislation, there are comprehensive rules in place in Germany regarding the publication of financial and other information about companies. The rules are aimed at attenuating the asymmetric allocation of information between the Management and the stakeholders in a company. By this means it is intended to protect the individual interests of the stakeholders and ensure and enhance the overall function of the capital markets. It is possible to distinguish roughly between publication requirements that refer to the statutory accounts of all companies in general (statutory publication requirements) and requirements that are only applicable to listed companies (capital market publication requirements). This brochure will only deal with the statutory publication requirements as those are mainly the ones deemed applicable to Chinese Groups investing in German private companies. Requirements to publish other information about the company (e.g. the shareholders, General Managers or members of the Supervisory Board) in the commercial register are dealt with in Chapters 3.1.1 and 3.1.2.

The core element of the statutory publication requirements is the publication of the statutory financial statements on a regular (i.e. yearly) basis by limited liability corporations in the Federal Gazette (Bundesanzeiger). According to this requirement, generally all companies with limited liability have to publish within 12 months (for listed companies: 4 months) of the end of the business year, in the electronic Federal Gazette

- their financial statements,
- the management report,
- the audit opinion of an independent auditor,
- the decision on the allocation of profits/losses (in case the financial statements only contain the proposal on the allocation of profits/losses),
- in case a supervisory board exists: report of the supervisory board
- and, in the case of listed corporations, a statement of compliance with the German Corporate Governance Codex.

Certain exemptions apply to small and medium-sized companies. These exemptions refer to disclosure and are more comprehensive than the exemptions which apply to the preparation of the financial statements (see Chapter 3.3.1) and accordingly need to be distinguished from those exemptions. An overview of the publication requirements and the respective exemptions is presented in the following table:

	Applicability to corporations depending on their size (for the definition of the size criteria, please refer to the table in Chapter 3.3.1)			
Item to be published	**Very small corporations**	**Small corporations**	**Medium corporations**	**Large corporations**
Balance sheet	Submission of an aggregated balance sheet to the Federal Gazette, but no publication	Balance sheet may be further aggregated for publication	Balance sheet may be further aggregated for publication	No exemption
Income statement	No submission or publication	No submission or publication due to exemption	Income statement may be further aggregated for publication	No exemption
Notes to the financial statements	Not applicable	Aggregation corresponding to balance sheet	Aggregation corresponding to balance sheet and income statement	No exemption
Management report	Not applicable	Not applicable	Aggregation corresponding to balance sheet and income statement	No exemption
Audit opinion of independent external auditor	Not applicable	Not applicable	No exemption	No exemption
Report of the Supervisory Board	No submission or publication due to exemption	No publication due to exemption	If Supervisory Board exists: no exemption	If Supervisory Board exists: no exemption
Decision for the allocation of profits (in case not included in the notes)	If applicable: submission to Federal Gazette but no publication	If applicable: no exemption	If applicable: no exemption	If applicable: no exemption
Statement of compliance with the German Corporate Governance Codex	Not applicable (as listed companies are treated as large companies)	Not applicable (as listed companies are treated as large companies)	Not applicable (as listed companies are treated as large companies)	If listed company: no exemption

The statutory publication requirements mentioned generally apply to single-entity financial statements according to German GAAP. However, for publication purposes only, it is possible to file single-entity financial statements according to IFRS. If a company chooses to publish separate financial statements according to IFRS, it still has to prepare statutory financial statements according to German GAAP, as those are the basis for taxation and distribution of profits. The financial statements according to German GAAP even have to be transmitted to the Federal Gazette, but will not be published.

Corporations with limited liability that do not have to follow the stricter accounting rules for that kind of corporation since they are included in exempting consolidated financial statements (see Chapter 3.3.1 for the requirements), are also exempted from the publication of their financial statements. Those companies or, alternatively, the parent company, have to publish:

- the shareholder's approval to make use of the exemption rule
- the agreement of the parent company to guarantee the liabilities of the subsidiary
- the consolidated financial statements and the consolidated management report they are included in (in German or English language),
- the audit opinion of an independent auditor to the consolidated financial statements and the consolidated management report.

The legal representatives of a German parent company which is required to prepare consolidated financial statements must fulfil the publication requirements for the consolidated financial statements analogously to large corporations.

Companies that do not have a limited liability de jure but de facto since their general partner is a limited liability company (e.g. the legal form of a GmbH & Co. KG) are basically treated like limited liability companies regarding the publication requirements, with only minor variations.

The financial statements need to be transmitted electronically to the Federal Gazette (Bundesanzeiger). The financial statements need to be submitted within 12 months of the end of the relevant closing date. This deadline is reduced to four months for listed companies. In the case of non-compliance with the publication requirements, the company itself and its legal representatives can be fined.

3.3.3 Audit of financial information

The shareholders of large and medium-sized firms (see explanation of large and medium-sized companies in Chapter 3.3.1) must elect an independent certified accountant every year to audit the company's financial statements and the relevant management report. Consolidated financial statements must be audited by a certified accountant as well. The Supervisory Board or the shareholders must approve the financial statements and can only do so if the financial statements have been audited as stipulated. The audit by an independent certified accountant will be conducted according to German Standards of Auditing, which are based on the International Standards on Auditing. In Germany, the auditors will issue an opinion on the audit of the financial statements that will be published (see Chapter 3.3.2) and they will issue a more detailed report on the audit to their principal (i.e. the Supervisory Board or the Management).

In addition to the audit of the financial statements and the management report, in the case of a listed AG it is required that the auditor of the annual financial statements also gives an opinion in the audit report to the Supervisory Board as to whether the Risk Early Warning System is adequate. The Risk Early Warning System must be implemented by the Management of an AG and shall include suitable measures, in particular surveillance measures, to ensure that developments which threaten the continued existence of the company are detected at an early stage. It is understood in Germany that the Risk Early Warning System is part of the risk management system, as it comprises management's reactions to significant risks and measures to supervise compliance with rules that relate to risks. Even though it is the prevailing view that it is the duty of the management of an AG and – due to legal spillover effects – a GmbH to operate a risk management system that also includes a system of internal controls, the specific design of such a system is not stipulated by law in Germany as it is by rules such as SOX.

In addition to the certified accountant, as an external auditor, the Supervisory Board (mandatory for an AG and certain GmbHs) in order to fulfil its duties, has the right to inspect and examine the books and records of the company as well as the assets of the company. Furthermore, management is obliged to give certain information on the course of business to the Supervisory Board on a regular basis and management must also inform the Board of significant transactions promptly. The Supervisory Board also can actively ask the Management for information that is relevant to the condition of the company (for the information rights of investors see Chapter 3.1.8).

Deloitte has vast experience with statutory and voluntary audits of financial statements, risk management systems and systems of internal controls according to several regulations. This experience is on hand for all kinds of industry sectors.

Deloitte can help to identify accounting areas that need adjustments or provide audit services regarding accounting information including GAAP-reconciliations.

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3.3.4 Accounting rules according to German GAAP, IFRS and PRC-GAAP (CAS)

As mentioned above (See Chapter 3.3.1), non-listed companies are not obliged to and often do not have (consolidated) financial statements according to IFRS, but to German GAAP. If accounting information according to IFRS – or even PRC-GAAP – is needed, reconciliations are usually necessary. To give an overview of the substance of German GAAP and an impression of major variances between German GAAP, PRC-GAAP and IFRS, the accounting rules for certain accounting areas are compared in the following table. The listing of accounting areas is certainly not comprehensive, but tries to cover the most relevant areas.

Area	CAS – PRC GAAP	IFRS	HGB – German GAAP
Intangible assets General treatment	Generally recognised as an asset if recognition criteria (owned or con-trolled by the enterprise, probability of economic benefit flows and reliable measurement of cost, CAS 6.3 & 6.4) are fulfilled.	Generally recognised as an asset if recognition criteria (owned or con-trolled by the enterprise, probability of economic benefit flows and reliable measurement of cost, IAS 38.13, IAS 38.21 & IAS 38.22) are fulfilled.	Recognised if general recognition criteria for assets are fulfilled (see above) and intangible asset is acquired from a third party.
	Expenditure on the development phase of an internal research and development project shall be recognised as an intangible asset only when certain conditions are satisfied (CAS 6.9).	An intangible asset arising from development shall be recognised if, and only if certain conditions are satisfied (IAS 38.57).	Capitalisation of internally generated intangible assets (development costs) optional (§ 248 II HGB).
	Non-recognition of: • internally generated goodwill, brands and publishing titles, etc. (CAS 6.11) • internal research cost (CAS 6.8)	Non-recognition of: • internally generated goodwill (IAS 38.48) • internally generated brands, mastheads, publishing titles, customer lists and items similar in substance (IAS 38.63) • internal research cost (IAS 38.54)	Non-recognition of: • internally generated goodwill • internally generated customer lists, brands and publishing titles (§ 248 II HGB) • research costs (§ 255 II S. 4 HGB)
Intangible assets Development cost	Recognised as an asset if the following conditions are met (CAS 6.9): • technical feasibility of completion • intention of completion for sale or internal use • demonstration of generating future economic benefits flowing to the entity • availability of adequate technical, financial and other resources for completion of development and ability to use or sell • ability of reliable measurement of expenditures during development phase	Recognised as an asset if the following conditions are met (IAS 38.57): • technical feasibility of completion • intention of completion for sale or internal use • demonstration of generating future economic benefits flowing to the entity • availability of adequate technical, financial and other resources for completion of development and ability to use or sell • ability of reliable measurement of expenditures during development phase	Expensed or option to capitalise development costs (§ 248 II HGB, definition in § 255 IIa HGB) as a non-current asset if the general recognition criteria including all of the following conditions are met: • high probability of generating an individually marketable asset • development costs can be reliably attributed.
Intangible assets Subsequent measurement	For intangible assets with a finite useful life: amortisation over useful life using a method which reflects the pattern of the economic benefits flow – if not determinable: straight- line (CAS 6.17).	Cost model or option of revaluation model if the assets are traded on an active market (IAS 38.72, IAS 38.75).	For intangible assets with a finite useful life: amortisation over useful life (usually straight-line).
	For intangible assets with an indefinite useful life: impairment-only approach (CAS 6.19 & CAS 8.4).	For intangible assets with a finite useful life: amortisation over useful life using a method which reflects the pattern of the economic benefits flow – if not determinable: straight-line (IAS 38.97). For intangible assets with an indefinite useful life: impairment only approach (review annually) (IAS 38.107, IAS 38.108).	Intangible assets are deemed only in very rare cases to have an indefinite useful life. In those cases: impairment-only approach for acquired assets and scheduled amortisation over 10 years for internally generated assets (devel-opment costs).
	Reversals of impairment losses in subsequent periods are prohibited (CAS 8.17).	Impairment losses must be reversed in subsequent periods if the reasons for the recognition do not exist anymore (exception: goodwill) (IAS 36.114).	Impairment losses must be reversed in subsequent periods if the reasons for the recognition do not exist anymore (exception: goodwill, § 253 V HGB).

Area	CAS – PRC GAAP	IFRS	HGB – German GAAP
Intangible assets Acquired goodwill	Obligation to capitalise (CAS 20.13 for business combinations not under common control) and impairment-only approach for subsequent measurement with an annual review (CAS 8.23 – 25). The impairment of goodwill shall not be reversed (CAS 8.17).	Obligation to capitalise (IFRS 3.32) and impairment-only approach for subsequent measurement with an annual review. The impairment of goodwill shall not be reversed (IAS 36.114.)	Obligation to capitalise and amortise over useful life (§ 246 I S. 4 HGB); in case the useful life cannot be calculated reliably: amortisation over 10 years (§ 253 II S. 3 HGB, S 4 HGB for goodwill) If the recoverable amount of the goodwill is expected to be permanently less than its carrying amount, the carrying amount of the goodwill must be reduced to its recoverable amount and the impairment loss must be recognised (§ 253 III S. 5 HGB), however, in contrast to property, plant and equipment (see in the following), no reversal possible (§ 253 5 S. 2 HGB).
	Negative goodwill recognised as income in the current period after thorough reassessment (CAS 20.13 for business combinations).	Negative goodwill recognised as income in the current period after thor-ough reassessment (IFRS 3.34.)	Negative goodwill must be recognised on the liability side of the balance sheet between equity and liabilities (§ 301 I S. 3 HGB) and may be released to the income statement according to the general principles (§ 309 II HGB)
Property, plant and equipment General definition	Property, plant and equipment are tangible items that are held for use in the production or supply of goods or services, for rental to others, or for administrative purposes and have useful lives of more than one accounting year (CAS 4.3).	Property, plant and equipment are tangible items that are held for use in the production or supply of goods or services, for rental to others, or for administrative purposes; and are expected to be used during more than one period (IAS 16.6).	Property, plant and equipment include items which are intended to be used on a continuous basis in the business operations of the entity (§ 247. II HGB).
Property, plant and equipment Initial measurement	Measured at acquisition or production cost including incidental and subsequent acquisition expenses which include: • the purchase price, related taxes, and any directly attributable expenditures for bringing the asset to working condition for its intended use, such as delivery and handling cost, installation costs and professional fees • expected costs of dismantling and abandoning the asset at the end of its use (CAS 4.8 and 13) and • borrowing cost if certain criteria are met (CAS 17 qualifying asset)	Measured at acquisition or production cost including incidental and subsequent acquisition expenses which include (IAS 16.16): • its purchase price, including import duties and non-refundable purchase taxes, after deducting trade discounts and rebates • any costs directly attributable to bringing the asset to the location and condition necessary for it to be capable of operating in the manner intended by management. • the initial estimate of costs of dis-mantling and removing the item and restoring the site on which it is located and • borrowing cost if certain criteria are met (IAS 23 qualifying asset).	Measured at acquisition or production cost including incidental and subsequent acquisition expenses which include in line with the general definition of § 255 I and II HGB: • material cost including overhead • manufacturing cost including overhead • depreciation of fixed assets used in the manufacturing process Cost which may be included optionally comprise: • appropriate cost of general administration • appropriate expenses for voluntary social facilities as well as social and pension benefits • § 255 III HGB: interest for financing the production (but not for the acquisition) of the asset. Costs of dismantling and removing the asset at the end of its use are not capitalised. Instead, a provision on the liability side of the balance sheet must be recognised for these costs and allocated over the period of the intended use of the asset.

Area	CAS – PRC GAAP	IFRS	HGB – German GAAP
Property, plant and equipment Subsequent measurement	Depreciation over useful life using a method which reflects the pattern of the realisation of the economic benefits (CAS 4.17).	Cost model or option of revaluation model if the fair value of the asset can be measured reliably (IAS 16.29) Depreciation over useful life using a method which reflects the pattern of the consumption of the economic benefits (IAS 16.50, IAS 16.60).	Depreciation over useful life (§ 253 III HGB); different depreciation methods are allowed.
	If the recoverable amount of an asset is less than its carrying amount, the carrying amount of the asset shall be reduced to its recoverable amount. That reduction is an impairment loss (CAS 4.20 with reference to CAS 8).	If the recoverable amount of an asset is less than its carrying amount, the carrying amount of the asset shall be reduced to its recoverable amount. That reduction is an impairment loss (IAS 36.59).	If the recoverable amount of an asset is expected to be permanently less than its carrying amount, the carrying amount of the asset must be reduced to its recoverable amount and the impairment loss must be recognised (§ 253 III S. 5 HGB).
	Reversals of impairment losses in subsequent periods are prohibited (CAS 8.17).	Impairment losses must be reversed in subsequent periods if the reasons for the recognition do not exist anymore (IAS 36.114).	Impairment losses must be reversed in subsequent periods if the reasons for the recognition do not exist anymore (§ 253 V S 1 HGB).
			German accounting standards also accept the usage of a fixed value for immaterial items under certain circumstances (§ 240 III HGB).
Leasing Classification	A contract is/contains a lease if the contract conveys the right to control the use of an identified asset for a period of time in exchange for consideration (CAS 21.4). Key aspects of this definition are: • the right to obtain substantially all of the economic benefits from use of the identified asset. • the right to direct the use of the identified asset (CAS 21.5). The lease term shall be determined as the non-cancellable period of a lease, together with periods covered by an option to extend (terminate) the lease if the lessee is reasonably certain (not) to exercise that option (CAS 21.15).	A contract is/contains a lease if the contract conveys the right to control the use of an identified asset for a period of time in exchange for consideration (IFRS 16.9). Key aspects of this definition are: • the right to obtain substantially all of the economic benefits from use of the identified asset. • the right to direct the use of the identified asset. (IFRS 16.B9). The lease term shall be determined as the non-cancellable period of a lease, together with periods covered by an option to extend (terminate) the lease if the lessee is reasonably certain (not) to exercise that option. (IFRS 16.18).	German accounting law does not in-clude any specific rules on leasing. The accounting treatment is based on the general rule that assets are included in the balance sheet of the owner from an economic point of view and not on the basis of a legal title (§ 246 I clause 2 HGB). Accounting practice for the classifi-cation of leases is based on German tax accounting rules which differentiate between full amortisation contracts (i.e. minimum lease payments during the non-cancellation contract period fully cover all costs of the lessor) and partial amortisation contracts. The lease is a finance lease for: 1) full amortisation contracts, if • for land, the buildings on the land meet the criteria for finance leases • for property and buildings, the fixed lease term is between 40 and 90 % of useful life and the contract includes a bargain purchase option or a bargain renewal option • for property, plant, equipment and buildings, the fixed lease term is below 40 % or exceeds 90 % of useful life • the leased assets are of such a specialised nature that only the lessee can use them without major modifications 2) partial amortisation contracts, if • the contract parties agreed on a split of the income for the sale of the leased assets and the lessee receives more than 75 % of the income • the contract includes a bargain purchase option or a bargain renewal option.

Area	CAS – PRC GAAP	IFRS	HGB – German GAAP
Lessee accounting	A lessee is required to recognise assets and liabilities for all leases with a term of more than 12 months, unless the underlying asset is of low value. i.e., all leases are effectively equivalent to finance leases: at the commencement date, a lessee shall recognize a right-of-use asset (ROU) at cost and a lease liability at the present value of the lease payments (CAS 21.14). Exemptions (optional, CAS 21.30 and CAS 21.31, lease payments are to be expensed): • short term leases (lease term not exceeding 12 months) at the commencement date • lease of low-value assets ("low value" is not specifically defined, however MOF indicated a value, when new, of about CNY 40,000 or less) Initial measurement at the commencement date: • the lease liability shall be measured at the present value of the lease payments not paid at that date over the lease term, discounted using the interest rate implicit in the lease, if that can be readily determined, otherwise the lessee shall use its incremental borrowing rate (CAS 21.17). • the ROU shall be measured at cost comprising the initial measurement of the lease liability, any lease payments (net of lease incentives received) made at or before the commencement date, initial direct costs incurred by the lessee and an estimate of costs to be incurred in dismantling/removing the site or the underlying asset to the condition required by the lease conditions (CAS 21.16).	There is only a single accounting model for leases, i.e., all leases are effectively equivalent to finance leases: at the commencement date, a lessee shall recognize a right-of-use asset (ROU) at cost and a lease liability at the present value of the lease payments (IFRS 16.22-28). Exemptions (optional, IFRS 16.5, lease payments are to be expensed): • short term leases (lease term not exceeding 12 months) at the commencement date • lease of low-value assets ("low value" is not specifically defined, however IASB indicated a value, when new, of about USD 5,000 or less) Initial measurement at the commencement date: • the lease liability shall be measured at the present value of the lease payments not paid at that date over the lease term (see above), discounted using the interest rate implicit in the lease, if that can be readily determined, otherwise the lessee shall use its incremental borrowing rate (IFRS 16.26). • the ROU shall be measured at cost comprising the initial measurement of the lease liability, any lease payments (net of lease incentives received) made at or before the commencement date, initial direct costs incurred by the lessee and an estimate of costs to be incurred in dismantling/removing the site or the underlying asset to the condition required by the lease conditions (IFRS 16.23, IFRS 16.24).	Finance Lease Lessees record and depreciate leased assets as well as lease liabilities at purchase or production cost of the lessor as mentioned in the calculation for the lease contract negotiations. The lease payments are apportioned between finance charges posted to the income statement and a reduction of the outstanding liability. Operating Lease: Lessees recognise lease payments as an expense over the lease term, usually on a straight-line basis.

Area	CAS – PRC GAAP	IFRS	HGB – German GAAP
	Subsequent measurement: • ROU will be measured applying a cost model, i.e. less any accumulated depreciation (CAS 4 Fixed Assets) and impairment losses (CAS 8 Impairment of Assets), adjusted for remeasurement of the lease liability (CAS 21.20). • After commencement date, the carrying amount of the lease liability shall be increased to reflect the interest, reduced to reflect the lease payments made and remeasured to reflect reassessments/lease modifications or revised in-substance fixed lease payments (CAS 21.23, CAS 21.25, 26). Presentation (CAS 21.53-55) In the statements of financial position or as a notes disclosure: • ROU shall be presented separately from other assets in the balance sheet. • Lease liability separately from other liabilities. • within the statement of profit of loss, interest expenses on the lease liability (within finance cost separately) shall be presented separately from depreciation of ROU. • Within the statements of cash flows cash payments both for the principal portion and the interest portion of the lease liability within financing activities; short-term lease payments, payments for leases of low-value assets and variable lease payments not included in the measurement of the lease liability within operating activities.	Subsequent measurement: • In most cases, ROU will be measured applying a cost model, i.e. less any accumulated depreciation (IAS 16 Property, Plant and Equipment) and impairment losses (IAS 36 Impairment of Assets), adjusted for remeasurement of the lease liability (IFRS 16.29-33). • After commencement date, the carrying amount of the lease liability shall be increased to reflect the interest, reduced to reflect the lease payments made and remeasured to reflect reassessments/lease modifications or revised in-substance fixed lease payments (IFRS 16.36). Presentation (IFRS 16.47-50) In the statements of financial position or as a notes disclosure: • ROU shall be presented separately from other assets in the statement of financial position or as a notes disclosure (except ROU meeting the definition of investment property, which should be presented as such in the statement of financial position) • Lease liability separately from other liabilities. • within the statement of profit of loss and other comprehensive income, interest expenses on the lease liability (within finance cost separately, IAS 1.82(b)) shall be presented separately from depreciation of ROU. • Within the statements of cash flows cash payments for the principal portion of the lease liability within financing activities, for the interest portion applying the requirements of IAS 7; short-term lease payments, payments for leases of low-value assets and variable lease payments not included in the measurement of the lease liability within operating activities.	

Area	CAS – PRC GAAP	IFRS	HGB – German GAAP
Lessor Accounting	A lessor must perform a lease classification assessment as of the inception date. A lease is classified as a finance lease if it transfers substantially all the risks and rewards incidental to ownership; otherwise, it is classified as an operating lease (CAS 21.35). However, examples of situations that individually or in combination would indicate a finance lease include (CAS 21.36): • The lease transfers ownership of the underlying asset. • The lease grants an option to purchase the underlying asset that the lessee is reasonably certain to exercise. • The lease term is for the major part of the remaining economic life of the underlying asset. • The present value of the lease payments amounts to at least substantially all of the fair value of the underlying asset. • The underlying asset is of a specialized nature and has no alternative use to the lessor. Finance Lease Initial measurement (CAS 21.38) At the commencement assets held under a finance lease shall be recognized within the statement of financial position and presented as a receivable at an amount equal to the net investment in the lease, measured using the interest rate implicit to the lease (if not artificially low). Also at the commencement date • revenue being the fair value of the underlying asset/lower present value of the lease payments discounted at market rate or interest • cost of sale: carrying amount of the underlying asset less present value of the unguaranteed residual value plus costs incurred in connection with obtaining a finance lease at the commencement date (CAS 21.42) • selling profit/loss is recognised by a manufacturer or dealer lessor.	A lessor must perform a lease classification assessment as of the inception date. A lease is classified as a finance lease if it transfers substantially all the risks and rewards incidental to ownership; otherwise, it is classified as an operating lease (IFRS 16.61). However, examples of situations that individually or in combination would indicate a finance lease include (IFRS 16.63): • The lease transfers ownership of the underlying asset. • The lease grants an option to purchase the underlying asset that the lessee is reasonably certain to exercise. • The lease term is for the major part of the remaining economic life of the underlying asset. • The present value of the lease payments amounts to at least substantially all of the fair value of the underlying asset. • The underlying asset is of a specialized nature and has no alternative use to the lessor. Finance Lease Initial measurement (IFRS 16.67 – 69) At the commencement assets held under a finance lease shall be recognized within the statement of financial position and presented as a receivable at an amount equal to the net investment in the lease, measured using the interest rate implicit to the lease (if not artificially low – IFRS 16:73). Also at the commencement date • revenue being the fair value of the underlying asset/lower present value of the lease payments discounted at market rate or interest • cost of sale: cost or different carrying amount of the underlying asset less present value of the unguaranteed residual value plus costs incurred in connection with obtaining a finance lease at the commencement date (IFRS 16.73) • selling profit/loss is recognised by a manufacturer or dealer lessor.	Finance Lease: Lessors recognise a lease receivable in the amount of the purchase or production cost of the lessor as mentioned in the calculation for the lease contract negotiations. Lease payments are apportioned in an amortisation part as a reduction from the receivable and in a finance income part. Operating Lease: Lessors present assets in their balance sheet – see property, plant and equipment above. Lease income is recognised in income over the lease term, usually on a straight-line basis

Area	CAS – PRC GAAP	IFRS	HGB – German GAAP
	Subsequent measurement (CAS 21.39): • recognize finance income over the lease term reflecting a constant periodic rate of return on the lessor's net investment in the lease. • apply derecognition and impairment requirements in CAS 22 Recognition and Measurement of Financial Instrument and CAS 23 Transfer of Financial Assets. Operating Lease Measurement (CAS 21.45 – 48): • add initial direct cost incurred in obtaining an operating lease to the currying amount of the underlying asset. • apply a depreciation policy for the underlying assets consistent with the normal depreciation policy for similar assets and apply CAS 8 for impairment measurement. • recognition of lease payments as income on either a straight-line basis or, if more representative, another systematic basis. • related costs incl. depreciation as an expense Presentation: (CAS 21.56) Presentation of the underlying asset in its balance sheet according to the nature of the underlying asset.	Subsequent measurement (IFRS 16.75 - 78): • recognize finance income over the lease term reflecting a constant periodic rate of return on the lessor's net investment in the lease. • apply derecognition and impairment requirements in IFRS 9 Financial Instruments. Operating Lease Measurement (IFRS 16.81 – 86): • add initial direct cost incurred in obtaining an operating lease to the currying amount of the underlying asset. • apply a depreciation policy for the underlying assets consistent with the normal depreciation policy for similar assets (IAS 16, IAS 38) and apply IAS 36 for impairment measurement. • recognition of lease payments as income on either a straight-line basis or, if more representative, another systematic basis, however no recognition of a selling profit by a manufacturer or dealer lessor on entering into an operating lease. • related costs incl. depreciation as an expense Presentation: (IFRS 16.88) Presentation of the underlying asset in its statement of financial position according to the nature of the underlying asset.	

Area	CAS – PRC GAAP	IFRS	HGB – German GAAP
Financial assets/ financial instruments General treatment	A financial instrument is any contract that gives rise to a financial asset of one entity and a financial liability or equity instrument of another entity (CAS 22.2). Financial assets include cash, equity instruments of another entity, contractual rights to receive cash or another financial asset from another entity and contracts that will or may be settled in the entity's own equity instruments and is a non-derivative (CAS 22.3). Initial recognition: An entity shall recognise a financial asset/liability in its balance sheet when the entity becomes party of the contractual provisions of the instrument (CAS 22.9). Initial Measurement Except trade receivables (measured at their transaction price in case they do not have a significant financing component) a financial asset or liability shall initially be measured at fair value plus or minus, in the case of a financial asset or financial liability not at fair value through profit or loss, transactions costs directly attributable to the acquisition/issue of the financial asset/liability (CAS 22.33). Subsequent Measurement of financial assets Classification of a financial asset (CAS 22.16): Classification of a financial asset is made at the time of its initial recognition. • at amortised cost, • at fair value through other comprehensive income (FVTOCI) or • fair value through profit or loss (FVTPL) Amortised cost: A debt instrument is to be measured at amortised cost (net of any write down for impairment) unless it is designated at FVTPL under the fair value option (see below) if the following two conditions apply:	A financial instrument is any contract that gives rise to a financial asset of one entity and a financial liability or equity instrument of another entity. Financial assets include cash, equity instruments of another entity, contractual rights to receive cash or another financial asset from another entity and contracts that will or may be settled in the entity's own equity instruments and is a non-derivative (IAS 32.11). Initial recognition: An entity shall recognise a financial asset/liability in its statement of financial position only when the entity becomes party of the contractual provisions of the instrument (IFRS 9, para 3.1.1). Initial Measurement Except trade receivables (measured at their transaction price in case they do not have a significant financing component) a financial asset or liability shall initially be measured at fair value plus or minus, in the case of a financial asset or financial liability not at fair value through profit or loss, transactions costs directly attributable to the acquisition/ issue of the financial asset/liability (IFRS 9, para 5.1.1). Subsequent Measurement of financial assets Classification of a financial asset (IFRS 9 para 4.1): Classification of a financial asset is made at the time of its initial recognition. • at amortised cost, • at fair value through other comprehensive income (FVTOCI) or • fair value through profit or loss (FVTPL) Amortised cost: A debt instrument is to be measured at amortised cost (net of any write down for impairment) unless it is designated at FVTPL under the fair value option (see below) if the following two conditions apply:	No legal definition of financial instruments. Financial instruments are classified as fixed assets if they are intended to be used on a continuous basis in the business operations of the entity (§ 247 II HGB). Financial assets are generally measured at acquisition cost including incidental and subsequent acquisition expenses. If the recoverable amount of a financial fixed asset is expected to be permanently less than its carrying amount, the carrying amount of the asset must be reduced to its recoverable amount and the impair-ment loss must be recognised. If the impairment loss of a financial fixed asset is expected to be not per-manent there is an option to recognise it (§ 253 III S. 5 and 6 HGB). In case the recoverable amount of a financial asset that doesn't qualify fixed asset is less than its carrying amount, the impairment loss has to be recognized, i.e. not depending on whether the impairment is permanent or not, Impairment losses must be reversed in subsequent periods if the reasons for the recognition do not exist anymore (§ 253 V S. 1 HGB). Accounting for fair values above acquisition cost is generally not allowed (an exception applies only to certain financial instruments held by banks or to specific defined benefit plans).

Area	CAS – PRC GAAP	IFRS	HGB – German GAAP
	• Business model test: the objective of the entity's business model is to hold the financial asset to collect the contractual cash flows (rather than to sell it prior to its contractual maturity) and. • Cash flow characteristics test: the contractual terms of the financial asset give rise on specified dates to cash flows that are solely payments of principal and interest on the principal amount outstanding (CAS 22.17). FVTOCI: A debt instrument is to be measured at FVTOCI unless it is designated at FVTPL under the fair value option (see below) if the following two conditions apply: • Business model test: the financial asset is held within a business model whose objective is achieved by both collecting contractual cash flows and selling financial assets and • Cash flow characteristics test: the contractual terms of the financial asset give rise on specified dates to cash flows that are solely payments of principal and interest on the principal amount outstanding (CAS 22.18). FVTPL: All other debt instruments must be measured at FVTPL (CAS 22.19). Fair Value Option: Even in case the amortised cost approach or the FVTOCI approach (see above) can be applied, CAS 22 contains an option to designate – at initial recognition – a financial asset as measured at FVTPL. This option enables the entity to eliminate or significantly reduce a measurement or recognition inconsistency ("accounting mismatch") that would arise from measuring assets or liabilities or recognise gains and losses on them on different basis (CAS 22.20).	• Business model test: the objective of the entity's business model is to hold the financial asset to collect the contractual cash flows (rather than to sell it prior to its contractual maturity) and • Cash flow characteristics test: the contractual terms of the financial asset give rise on specified dates to cash flows that are solely payments of principal and interest on the principal amount outstanding. FVTOCI: A debt instrument is to be measured at FVTOCI unless it is designated at FVTPL under the fair value option (see below) if the following two conditions apply: • Business model test: the financial asset is held within a business model whose objective is achieved by both collecting contractual cash flows and selling financial assets and • Cash flow characteristics test: the contractual terms of the financial asset give rise on specified dates to cash flows that are solely payments of principal and interest on the principal amount outstanding. FVTPL: All other debt instruments must be measured at FVTPL. Fair Value Option: Even in case the amortised cost approach or the FVTOCI approach (see above) can be applied, IFRS 9 contains an option to designate – at initial recognition – a financial asset as measured at FVTPL. This option enables the entity to eliminate or significantly reduce a measurement or recognition inconsistency ("accounting mismatch") that would arise from measuring assets or liabilities or recognise gains and losses on them on different basis	

Area	CAS – PRC GAAP	IFRS	HGB – German GAAP
Inventories Initial measurement	Measured at acquisition or production cost including incidental and subsequent acquisition expenses and other costs. According to CAS 1.5 – 10 production costs include: • cost of purchase including related taxes and transport, handling, insurance • cost of conversion including direct labor costs and allocation of production overheads; • production overheads based on a reasonable allocation according to the nature of the overheads • other costs of inventories are other expenditures incurred in bringing the inventories to their present location and condition other than costs of purchase and costs of conversion. • borrowing cost if certain criteria are met (CAS 17 qualifying asset)	Measured at acquisition or production cost including incidental and subsequent acquisition expenses. According to IAS 2.11 – 2.17 production costs include: • cost of purchase including related taxes and transport, handling and other direct attributable costs • cost of conversion including direct labor costs and allocation of production overheads • production overheads based on the normal capacity of the production facility • other costs of inventories are other expenditures incurred in bringing the inventories to their present location and condition other than costs of purchase and costs of conversion. • borrowing cost if certain criteria are met (IAS 23.1 qualifying asset)	Measured at acquisition or production cost including incidental and subsequent acquisition expenses which include - in line with the general definition of § 255 I and II HGB: • material cost including overhead • manufacturing cost including over-head • depreciation of fixed assets used in the manufacturing process Costs which may be included optionally comprise: • appropriate cost of general administration • appropriate expenses for voluntary social facilities as well as social and pension benefits • interest for financing the production (but not for the acquisition!) of the inventories (§ 255 I HGB)
Inventories Valuation methods	Valuation methods to be used (CAS 1.14): • specific identification method • first in, first out • weighted average cost The standard cost method and the retail method are not explicitly mentioned by the standard but are deemed to be acceptable as well.	In principle the following methods are allowed (IAS 2.25): • first in, first out • weighted average cost The standard cost method and the retail method are explicitly mentioned as techniques for the measurement of cost (IAS 2.21). Costs for inventories that are not ordinarily interchangeable and goods or services produced and segregated for specific projects shall be assigned at their individual cost per item (IAS 2.23).	Generally individual cost per item (§ 252 I No. 3 HGB). To the extent it is in accordance with principles of proper accounting, the following other valuation methods are allowed: • first in, first out (§ 256 HGB) • last in, first out (§ 256 HGB) • group valuation with weighted average cost (§ 240 IV HGB) • raw materials and supplies: valuation using a fixed value (§ 240 III HGB).

Area	CAS – PRC GAAP	IFRS	HGB – German GAAP
Inventories Subsequent measurement	The lower of cost or market principle must be applied. The applicable market is the sales market (CAS 1.15). Write-downs must be reversed in subsequent periods if the reasons for the write-downs do not exist anymore (CAS 1.19).	The lower of cost or market principle must be applied. The applicable market is the sales market (IAS 2.9). Write-downs must be reversed in subsequent periods if the reasons for the write-downs do not exist anymore (IAS 2.33).	The lower of cost or market principle must be applied. The market principle is interpreted to cover both the purchase and the sales market. Therefore, e.g. the valuation of raw materials, work in progress and merchandise requires a comparison with the purchase market (lower re-purchase/re-production cost) and the valuation of merchandise and finished goods requires a comparison with the sales market. Write-downs must be reversed in subsequent periods if the reasons for the write-downs do not exist anymore (§ 253 V S. 1 HGB).
Revenue	Core principle: an entity shall recognise revenue to depict the transfer of promised goods or services to customers in an amount that reflects the consideration to which the entity expects to be entitled in exchange for those goods or services, based on a five-step model: 1. Identify the contract with a customer 2. Identify the performance obligations in the contract 3. Determine the transaction price 4. Allocate the transaction price to the contractual performance obligations 5. Recognise revenue when/as the entity satisfies a performance obligation.	Core principle: an entity shall recognise revenue to depict the transfer of promised goods or services to customers in an amount that reflects the consideration to which the entity expects to be entitled in exchange for those goods or services, based on a five-step model: 1. Identify the contract with a customer 2. Identify the performance obligations in the contract 3. Determine the transaction price 4. Allocate the transaction price to the contractual performance obligations 5. Recognise revenue when/as the entity satisfies a performance obligation.	Core principle: Income from sale, rent and lease of products as well as from rendering of services of the company are to be shown as revenue net of sales deductions, value added tax and other sales-related direct taxes (§ 277 I HGB). Income from rent and lease of other items than products usually is treated as rendering of services and, therefore, revenue. German accounting law does not refer to the five-step model. Instead, the general accounting rules for inventory, accounts receivable, payments received and revenue recognition apply. In principle, it is not permitted to realise revenues and profits before completion of all major contractual duties and customer acceptance. Deviations are possible. Therefore, the completed contract method is usually to be applied.

Area	CAS – PRC GAAP	IFRS	HGB – German GAAP
	1. Identify the contract with the customer A contract with a customer will be within the scope of CAS 14 if all of the following conditions are met (CAS 14.5): • the contract has been approved by the parties to the contract, • each party's rights in relation to the goods/services to be transferred can be identified, • the payment terms for the goods or services to be transferred can be identified, • the contract has commercial substance and • it is probable that the consideration to which the entity is entitled to in exchange for the goods/services will be collected. 2. Identify the performance obligations in the contract At contract inception, an entity shall assess goods/services promised in a contract with a customer and shall identify as a performance obligation each promise to transfer to the customer (CAS 14.9): • a (bundle of) good(s) or service(s) that is distinct or • a series of distinct goods or services that are substantially the same and that have the same pattern or transfer to the customer	1. Identify the contract with the customer A contract with a customer will be within the scope of IFRS 15 if all of the following conditions are met (IFRS 15.9): • the contract has been approved by the parties to the contract, • each party's rights in relation to the goods/services to be transferred can be identified, • the payment terms for the goods or services to be transferred can be identified, • the contract has commercial substance and • it is probable that the consideration to which the entity is entitled to in exchange for the goods/services will be collected. 2. Identify the performance obligations in the contract At contract inception, an entity shall assess goods/services promised in a contract with a customer and shall identify as a performance obligation each promise to transfer to the customer (IFRS 15.22): • a (bundle of) good(s) or service(s) that is distinct or • a series of distinct goods or services that are substantially the same and that have the same pattern or transfer to the customer	This also applies to contracts for a made-to-order production whose production time exceeds one business year (construction contract); among the conditions that might enable a partial realisation of revenue are all of the following: • production period exceeds one business year, • construction contracts represent a substantial part of the company's business, • profit realisation upon completion significantly impairs the true and fair view principle, • the expected profit can be determined safely and no risks are evident that could negatively influence this expected profit, • for unforeseeable warranty and rectification, carefully sized amounts are taken into account, • the total performance of the construction contract allows for identification of separate parts and only partial profit realisation is carried out for these parts, • no partial realisation of gains in case the costs to produce separate parts are significantly higher than calculated in advance (except: future gains adequately cover future costs) and • there are no indications of customer objections which will have a negative impact on the overall result.

Area	CAS – PRC GAAP	IFRS	HGB – German GAAP
	3. Determine the transaction price The transaction price is the amount to which an entity expects to be entitled in exchange for the transfer of goods/ services excluding amounts collected on behalf of third parties, e.g. sales taxes (CAS 14.14). 4. Allocate the transaction price to the contractual performance obligations Allocate the transaction price to each performance obligation in an amount that depicts the amount of consideration to which the entity expects to be entitled in exchange for transferring the promised goods or services to the customer (CAS 14.14, CAS 14.20) 5. Recognise revenue when/as the entity satisfies a performance obligation Revenue shall be recognised when/ as the entity satisfies a performance obligation by transferring a promised good/service to a customer. An asset is transferred when/as the customer obtains control of that asset – either over time or at a point of time (CAS 14.9). Performance obligations are satisfied over time if one of the following criteria is met (CAS 14.11): • the customer simultaneously receives and consumes the benefits provided by the entity's performance as the entity performs, • the entity's performance creates or enhances an asset that the customer controls as the asset is created or enhanced or • the entity's performance does not create an asset with an alternative use (either contractually restricted or limited practically, decision to be made at contract inception) to the entity and the entity has an enforceable right to payment for performance completed to date.	3. Determine the transaction price The transaction price is the amount to which an entity expects to be entitled in exchange for the transfer of goods/ services excluding amounts collected on behalf of third parties, e.g. sales taxes (IFRS 15.47). 4. Allocate the transaction price to the contractual performance obligations Allocate the transaction price to each performance obligation (or distinct good/service) in an amount that depicts the amount of consideration to which the entity expects to be entitled in exchange for transferring the promised goods or services to the customer (IFRS 15.73) 5. Recognise revenue when/as the entity satisfies a performance obligation Revenue shall be recognised when/ as the entity satisfies a performance obligation by transferring a promised good/service to a customer. An asset is transferred when/as the customer obtains control of that asset – either over time or at a point of time (IFRS 15.31). Performance obligations are satisfied over time if one of the following criteria is met: • the customer simultaneously receives and consumes the benefits provided by the entity's performance as the entity performs, • the entity's performance creates or enhances an asset that the customer controls as the asset is created or enhanced or • the entity's performance does not create an asset with an alternative use (either contractually restricted or limited practically, decision to be made at contract inception, see IFRS 15.36, IFRS 15.B6-B8) to the entity and the entity has an enforceable right to payment for performance completed to date (IFRS 15.37, IFRS 15.B9-B13).	

Area	CAS – PRC GAAP	IFRS	HGB – German GAAP
	For each performance obligation satisfied over time, an entity shall recognise revenue over time by measuring the progress towards complete satisfaction of that performance obligation. A single method of measuring progress for each performance obligation satisfied over time shall be applied consistently to similar performance obligations and in similar circumstances (CAS 14.12). Appropriate methods of measuring progress include output and input methods (CAS 14.12): • output methods (e.g. surveys of performance completed to date, milestones reached, time elapsed) recognise revenue on the basis of direct measurements of the value to the customer of the goods/services transferred to date relative to the remaining goods/services promised under the contract. The entity shall consider whether the output selected would faithfully depict the entity's performance towards complete satisfaction of the performance obligation. Disadvantage: outputs might not be directly observable without undue cost. • input methods recognise revenue on the basis of the entity's efforts or inputs to the satisfaction of a performance obligation (e.g. labour hours expended, costs incurred). At the end of each reporting period, an entity shall remeasure its progress towards complete satisfaction. As circumstances change over time, an entity shall update its measure of progress to reflect any changes in the outcome (IG CAS 14).	For each performance obligation satisfied over time, an entity shall recognise revenue over time by measuring the progress towards complete satisfaction of that performance obligation (IFRS 15.39). A single method of measuring progress for each performance obligation satisfied over time shall be applied consistently to similar performance obligations and in similar circumstances. At the end of each reporting period, an entity shall remeasure its progress towards complete satisfaction (IFRS 15.40). Appropriate methods of measuring progress include output and input methods (IFRS 15.41 with reference to IFRS 15.B14-B19): • output methods (e.g. surveys of performance completed to date, milestones reached, time elapsed) recognise revenue on the basis of direct measurements of the value to the customer of the goods/services transferred to date relative to the remaining goods/services promised under the contract. The entity shall consider whether the output selected would faithfully depict the entity's performance towards complete satisfaction of the performance obligation. Disadvantage: outputs might not be directly observable without undue cost. • input methods recognise revenue on the basis of the entity's efforts or inputs to the satisfaction of a performance obligation (e.g. labour hours expended, costs incurred). As circumstances change over time, an entity shall update its measure of progress to reflect any changes in the outcome.	

Area	CAS – PRC GAAP	IFRS	HGB – German GAAP
	Contract Costs The incremental costs of obtaining a contract must be recognised as an asset if the entity expects to recover those costs. In case the costs incurred in fulfilling a contract are not within the scope of another contract, are recognised as an asset if all of the following conditions are met (CAS 14.26): • relate directly to a contract, • generate/enhance resources of the entity that will be used in satisfying performance obligations in the future and • the costs are expected to be recovered. Costs relating to satisfied performance obligations as well as costs of wasted materials, labour or other resources to fulfil the contract but were not reflected in the contract shall be recognised as expenses when occurred (CAS 14.27)	Contract Costs The incremental costs of obtaining a contract must be recognised as an asset if the entity expects to recover those costs (IFRS 15.91). In case the costs incurred in fulfilling a contract are not within the scope of another contract (e.g. IAS 2 Inventories, IAS 16 Property, Plant and Equipment, IAS 38 Intangible Assets), are recognised as an asset if all of the following conditions are met (IFRS 15.95): • relate directly to a contract, • generate/enhance resources of the entity that will be used in satisfying performance obligations in the future and • the costs are expected to be recovered. Costs relating to satisfied performance obligations as well as costs of wasted materials, labour or other resources to fulfil the contract but were not reflected in the contract shall be recognised as expenses when occurred (IFRS 15.98).	

Area	CAS – PRC GAAP	IFRS	HGB – German GAAP
Provisions and accrued liabilities Recognition	According to CAS 13.4 the recognition of a provision requires: • a present obligation (legal or constructive) as a result of a past event, • probability of an outflow of resources embodying economic benefits to settle the obligation, and • a reliable estimate of the amount of the obligation. If these conditions are not met, provisions are not allowed to be recognised. Deferred maintenance and land reclamation expenses (which have to be provided for under German GAAP) are not allowed to be recognised under CAS if there is no legal or constructive obligation to carry out the measures.	According to IAS 37.14 the recognition of a provision requires: • a present obligation (legal or constructive) as a result of a past event, • probability of an outflow of resources embodying economic benefits to settle the obligation, and • a reliable estimate of the amount of the obligation. If these conditions are not met, provisions are not allowed to be recognised. Deferred maintenance and land reclamation expenses (which have to be provided for under German GAAP) are not allowed to be recognised under IFRS if there is no legal or constructive obligation to carry out the measures.	Under German GAAP the recognition of a provision generally requires • a present obligation (legal or constructive) against a third party • the entity is economically burdened by the obligation • the amount can be estimated (at least a range) Furthermore, § 249 I HGB precises that provisions and accrued liabilities have to be recognised for the following business matters: • contingent liabilities • anticipated losses on pending onerous contracts • deferred maintenance expenses for maintenance not carried out in the current business year, which will be carried out within the first three months of the following business year • deferred expenses for disposal omitted in the current business, which are made up in the following business year • warranties given with no legal obligation. The provision for deferred main-tenance and disposal omitted is in addition to the provisions required by general principles, whereas the other provisions are in line with the general principles and merely describe categories of provisions.
Provisions and accrued liabilities Measurement	Provisions are recognised at the best estimate of the expenditure required to settle the present obligation (CAS 13.5). CAS 13 and IG CAS 13 include detailed guidance on setting up provisions under different circumstances. The guidance is less detailed but similar to IAS 37. Therefore the following details are limited to areas with major differences between the accounting standards.	Provisions are recognised at the best estimate of the expenditure required to settle the present obligation (IAS 37.36). IAS 37 includes very detailed guidance on setting up provisions under different circumstances (e.g. use of expected values or best estimates, costs to include for setting up provisions for onerous contracts). The following details only deal with guidance for which major differences to German and PRC GAAP have been identified.	Provisions are recognised at the amount of the fulfilment necessary based on prudent business judgment (§ 253 I S. 2 HGB). German accounting law includes far less details on the valuation of provisions than IAS 37 and CAS 13.
	Where the provision being measured involves a large population of items with a continuous range of possible outcomes, and each point in that range is as likely as any other, the mid-point of the range is used (CAS 13.5).	Where the provision being measured involves a large population of items with a continuous range of possible outcomes, and each point in that range is as likely as any other, the mid-point of the range is used (IAS 37.39).	Where the provision being measured involves a large population of items with a continuous range of possible outcomes, and each point in that range is as likely as any other, German GAAP financial statement preparers would recognise a provision which is definitely larger than the mid-point of the range, in many cases even the largest amount of the range. This is due to the prevailing prudence principle in German GAAP.

Area	CAS – PRC GAAP	IFRS	HGB – German GAAP
			This example shows that in situations with a range of outcomes there is a tendency to select a provision with a larger amount as opposed to the best estimate resp. expected value in IFRS resp. CAS.
	Provisions are recognised at the present value of the expected expenditures required to settle the obligation if the effect is material. The discount rate to be used is market-based (CAS 13.6).	Provisions are recognised at the present value of the expected expenditures required to settle the obligation if the effect is material. The discount rate to be used is market-based (IAS 37.45 to 47).	Provisions with a term of more than one year are to be discounted at the average market interest rate of the previous seven fiscal years (ten years in case of provisions for post-employment benefits) corresponding to their residual term (§ 253 II HGB). The discount rates to be used are published monthly by the German Federal Bank (Deutsche Bundesbank) in accordance with a statutory regulation (RueckAbzinsV).
Provisions and accrued liabilities Restructuring	A restructuring provision must be recognised if the enterprise has a detailed and formal plan identifying the main features with respect to locations, employees, timing and expenditures and a public announcement of the plan has been made (CAS 13.10).	A restructuring provision must be recognised if the entity has a detailed formal restructuring plan identifying the main features with respect to locations, employees, timing and expenditures and if it has raised a valid expectation in those affected that it will carry out the restructuring by starting to implement that plan or announcing its main features to those affected by it (IAS 37.72).	The German accounting law does not include any detailed guidance on restructuring provision. Accounting literature has interpreted the accounting law in a way that a provision must be recognised if the entity's management has decided on a detailed restructuring plan or such decision is inevitable and if such plan was announced to the workers' council before the balance sheet date or between the balance sheet date and the date of preparation of the financial statements.
Provisions and accrued liabilities Employee post-employment benefits	CAS 9 differentiates between defined benefit plans and defined contribution plans. Under defined contribution plans the entity's legal or constructive obligation is limited to the amount that it agrees to contribute to the fund. Thus, the amount of the post-employment benefits received by the employee is determined by the amount of contributions paid by an entity (and perhaps also the employee) to a post-employment benefit plan or to an insurance company, together with investment returns arising from the contributions; all risks of the plan performance fall on the employee. The contributions to the plan are expenses of the current period. Except for provisions for under- or overpayments of contributions there are no balance sheet items for these plans.	IAS 19 differentiates between defined benefit plans and defined contribution plans. Under defined contribution plans the entity's legal or constructive obligation is limited to the amount that it agrees to contribute to the fund. Thus, the amount of the post-employment benefits received by the employee is determined by the amount of contributions paid by an entity (and perhaps also the employee) to a post-employment benefit plan or to an insurance company, together with investment returns arising from the contributions; all risks of the plan performance fall on the employee (IAS 19.28). The contributions to the plan are expenses of the current period unless another IFRS requires or permits the inclusion of the contribution in the cost of an asset (IAS 19.51). Except for provisions for under- or overpayments of contributions there are no balance sheet items for these plans.	Contributions to defined contribution plans are expenses of the current period. Except for provisions for under- or overpayments of contributions there are no balance sheet items for these plans.

Area	CAS – PRC GAAP	IFRS	HGB – German GAAP
	For defined benefit plans, a liability (or asset) must be recognised equal to the net of the present value of the defined benefit obligation and the fair value of the plan assets. Further details about the measurement of the liability (or asset) are included in CAS 9.13. The following measurement principles are applied: • use of projected unit credit method (CAS 9.13) • discount rate based on market yield (CAS 9.15) • actuarial gains and losses as well as changes in fair value of plan assets arising from factors other than time value are recognised immediately in other comprehensive income (CAS 9.16)	For defined benefit plans, a liability (or asset) must be recognised equal to the net of the present value of the defined benefit obligation and the fair value of the plan assets. Further details about the measurement of the liability (or asset) are included in IAS 19.57ff. The following measurement principles are applied: • use of projected unit credit method (IAS 19.67) • discount rate based on market yield (IAS 19.83ff.) • actuarial gains and losses as well as changes in fair value of plan assets arising from factors other than time value are recognised immediately in other comprehensive income (IAS 19.120)	A provision for post-employment benefits of defined benefit plans must be recognised based on the present value of the defined benefit obligation minus the fair value of plan assets. Actuarial gains and losses have to be recognised in the income statement of the period incurred. The valuation method is not defined by law. Therefore both, the projected unit credit method as well as the entry age method (common method in German tax accounting), are acceptable. The discount rate is determined as described above as an average interest rate of the last ten fiscal years. For defined benefit liabilities § 253 II S. 2 HGB allows the use of an assumed residual term of 15 years for all individual obligations. The discount rates to be used are published monthly by the German Federal Bank (Deutsche Bundesbank) as well.
Liabilities Measurement	Initial measurement of liabilities is at fair value which usually equals acquisition cost plus transaction costs that are directly attributable to the acquisition if the financial liability is not at fair value through profit or loss (CAS 22.33). Subsequent measurement is at amortised cost using the effective interest method (CAS 22.36). Foreign currency liabilities are translated using the spot rate at the balance sheet date (CAS 19.11 (1)).	Initial measurement of liabilities is at fair value which usually equals acquisition cost plus transaction costs that are directly attributable to the acquisition if the financial liability is not at fair value through profit or loss (IAS 39.43). Subsequent measurement is at amortised cost using the effective interest method (IAS 39.47). Foreign currency liabilities are translated using the closing rate at the balance sheet date (IAS 21.23 (a)).	Liabilities are recognised at the amount of the fulfilment (§ 253 I S. 2 HGB). Premiums or discounts for financial liabilities are usually recognised as prepaid expenses and released using the straight line method. Foreign currency liabilities are generally translated at the average closing spot rate provided that this does not lead to a value below acquisition cost. Liabilities with a remaining term of up to one year are translated at the average closing spot rate without the floor with respect to the acquisition cost (§ 256a HGB).

Area	CAS – PRC GAAP	IFRS	HGB – German GAAP
Deferred taxes	The recognition of deferred taxes is based on the temporary concept. Deferred tax assets and liabilities are recognised for all temporary differences between the assets and liabilities in the CAS balance sheet and their tax base with the following three exceptions (CAS 18.11 & 13): • initial recognition of goodwill • initial recognition of an asset/liability other than in a business combination which, at the time of the transaction, does not affect either the accounting or taxable profit • differences arising from investments in subsidiaries, branches and associates and interests in joint ventures where the entity is able to control the timing of the reversal of the difference and it is probable that the reversal will not occur in the foreseeable future. A deferred tax asset is also recognised for unused tax losses and unused tax credits, to the extent that it is probable that taxable profits will be available against which the deductions can be utilised (CAS 18.15). The limitation with respect to the probability of taxable profits also applies to deferred tax assets for deductible temporary differences (CAS 18.13). However, when there is a history of recent losses, a deferred tax asset from unused tax losses is only to be calculated in case of existing taxable deferred differences or in case of convincing evidence that sufficient taxable profit will be available (Explanation Guidance issued by MOFCOM (Version 2010)).	The recognition of deferred taxes is based on the temporary concept. Deferred tax assets and liabilities are recognised for all temporary differences between the assets and liabilities in the IFRS balance sheet and their tax base with the following three exceptions (IAS 12.15 & 24): • initial recognition of goodwill • initial recognition of an asset/liability other than in a business combination which, at the time of the transaction, affect neither accounting nor taxable profit • differences arising from investments in subsidiaries, branches and associates and interest in joint ventures where the entity is able to control the timing of the reversal of the difference and it is probable that the reversal will not occur in the foreseeable future (IAS 12.39). A deferred tax asset is also recognised for unused tax losses and unused tax credits, to the extent that it is probable that taxable profits will be available against which the deductions can be utilised (IAS 12.34). The limitation with respect to the probability of taxable profits also applies to deferred tax assets for deductible temporary differences (IAS 12.24). However, when there is a history of recent losses, a deferred tax asset from unused tax losses is only to be calculated in case of existing taxable deferred differences or in case of convincing evidence that sufficient taxable profit will be available (IAS 12.35).	The recognition of deferred taxes is based on the temporary concept. Deferred tax assets and liabilities are recognised for all taxable temporary differences between the assets/ liabilities in the German GAAP balance sheet and their tax base (§ 274 I S. 1 HGB). The exceptions mentioned in IAS 12 and CAS 18 are not specifically mentioned in the accounting law but are also considered applicable for German GAAP. In case the total amount of deferred tax assets exceeds the total amount of deferred tax liabilities, German GAAP grant an option to account for the exceeding amount of deferred tax assets (§ 274 I S. 2 HGB). Tax loss carryforwards must be taken into account when calculating deferred tax assets in the amount of the loss offsetting expected within the next five years (§ 274 I S. 4 HGB). The IAS/CAS-limitation of recognition to the extent that it is probable that taxable profits will be available against which the deductions can be utilised also applies to German GAAP financial statements.
	Measurement of deferred taxes is at tax rates expected at period end to apply when the liability is settled or the asset is realised (CAS 18.17).	Measurement of deferred taxes is at enacted or substantially enacted tax rates at period end expected to apply when the liability is settled or the asset is realised (IAS 12.46).	Measurement of deferred taxes is at tax rates which are expected to apply when the liability is settled or the asset is realised (§ 274 II clause 1 HGB).
	Deferred tax assets and liabilities are not discounted (CAS 18.19) and are presented as non-current items in the statement of financial position (CAS 18.23). According to additional Explanation Guidance issued by MOFCOM (Version 2010) netting is required if the entity has a legally enforceable right to set off current tax assets against current tax liabilities and if the assets and liabilities relate to taxes levied by the same taxation authority.	Deferred tax assets and liabilities are not discounted (IAS 12.53) and are presented as non-current items in the statement of financial position. Netting is required if the entity has a legally enforceable right to set off current tax assets against current tax liabilities and if the assets and liabilities relate to taxes levied by the same taxation authority (IAS 12.74).	Deferred tax assets and liabilities are not discounted (§ 274 II S. 1 HGB). Deferred tax assets and liabilities are presented under a separate line item. Netting of deferred tax assets and liabilities is optional (§ 274 I S. 3 HGB).

A timely and proper implementation of an Internal Control System that complies with Chinese and German standards is often crucial for the Chinese investor in a successful post-merger-integration of the newly acquired German subsidiary.

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3.4 Corporate Governance and risk management

When investing in German companies, it is important to consider the varied and complex corporate governance requirements that arise throughout the process; both pre-M&A in the context of due diligence and post-M&A when integrating the German company into the buying group.

Corporate Governance Systems: The Board of Directors or Management of German companies is responsible for setting up appropriate and effective corporate governance systems, whilst the Supervisory Board is responsible for monitoring them. The most important corporate governance systems include the Compliance Management System (CMS), the Risk Management System (RMS), the Internal Control System (ICS) and the Internal Audit (IA). Since the 2009 Accounting Law Modernisation Act (also section 107 (3) of the German Stock Corporation Act), the legislator has explicitly included this obligation which had not previously been mentioned in statute. The implication of this obligation extends beyond listed companies, and therefore must be reviewed in the context of the individual requirements of each company. Further legislative projects underway in Germany, such as the Act to Strengthen Financial Market Integrity (FISG), propose to extend the obligation with regard to the establishment of effective governance systems, in particular with regard to the internal control system and the risk management system.

Audit of the corporate governance systems: In setting up the appropriate design and effective implementation of CMS, RMS, ICS and IA, it is recommended to follow the auditing standards of the Institute of Public Auditors in Germany (IDW) PS 980 (CMS), IDW PS 981 (RMS), IDW PS 982 (ICS) and IDW PS 983 (IA). In practice, these standards serve as the basis for auditing the adequacy and effectiveness of corporate governance systems, and their consideration in the design and implementation phase is therefore generally considered a "safe harbour" approach. Violations of the establishment of adequate and effective corporate governance systems are regarded as breaches of the duty of care and responsibility of the members of the Board of Directors pursuant to section 93 of the German Stock Corporation Act (AktG), with an impact on management boards of other legal entities.

Compliance management: In the context of CMS, the Association Sanctions Act (VerSanG) must be observed in future under German law (currently still in draft form). According to the VerSanG-E, associations whose purpose is directed towards economic business operations can be sanctioned (§ 1 VerSanG-E). This means that in particular legal persons under private and public law as well as partnerships with legal capacity that operate as entrepreneurs are covered by the scope of application, i.e. all common forms of enterprises regardless of their size. On the one hand, the VerSanG-E provides for severe penalties against the company itself if criminal offences are committed from within the company. On the other hand, for the first time, the law offers the prospect of reduced penalties if precautions are taken to prevent misconduct or at least to make it considerably more difficult. The VerSanG-E thus creates a significant incentive to implement appropriate and effective compliance measures.

Risk Management: As an important component of the RMS, German legislation places explicit requirements on the design of early risk detection systems (RFS). For public limited companies, section 91 paragraph 2 AktG (KonTraG) provides the legal basis, and for other legal forms (especially limited liability companies) section 1 paragraph 1 Company Stabilisation and Restructuring Act (StaRUG).

Internal Controls: Depending on its size and significance for the Chinese parent company, the German company falls within the scope of the Chinese regulations on internal controls with regard to financial reporting (C-SOX). Therefore, a proper and risk-oriented integration of the German company into the overall picture of the group ICS, taking into account the more company-specific aspects, is an important issue. However, the reporting obligations for the German companies with regard to the annual financial statements should also be taken into account. In order to prepare financial statements that comply with the German Commercial Code (HGB), an internal control system that is reasonably tailored to the size of the company and functions properly is necessary.

With regard to the tax consequences of foreign investments in Germany, Deloitte's potential support is comprehensive and covers among other things: tax analysis and planning, tax Due Diligence and ongoing tax compliance on all types of taxes.

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3.5 Taxation

3.5.1 Overview of German taxation

A key point to consider - particularly in comparison to China - is that German tax law is very formalistic and penalties apply upon non-compliance. It is crucial for investors to assess in detail their (tax) legal obligations from the beginning of an investment. Otherwise, unnecessary administrative expenses, tax cost or penalties may occur later on, usually during tax audits.

There is a complex system of various taxes in Germany, where the applicability on the one hand depends on the person liable to pay the tax and one the other hand on type of income received.

Generally, the following distinction can be made as regards different types of income potentially leading to various types of taxes:

- Taxes on income
- Taxes on capital
- Taxes on transactions or consumption

Corporations with a registered office or place of management in Germany are subject to Corporate Income Tax (CIT) and Trade Tax (TT) on their worldwide income. In practice, however, Agreements on the avoidance of Double Taxation (DTA) generally provide for an allocation of taxing rights to the different countries where the company is doing business. Such a DTA is in place between China and Germany (regarding the DTA between P.R. China and Germany, see Chapter 3.5.4.1).

Foreign companies that have neither their registered office nor their place of management in Germany are deemed to be non-resident. Non-resident companies are subject to German corporate income tax only on German-sourced income.

As Germany is one of the 27 EU Member States (post BREXIT), there are several EU legal principles such as the free movement of capital, which are in general applicable in Germany. The tax policy in the European Union (EU) can be classified into two main categories: direct taxation, which remains the sole responsibility of the Member States; and indirect taxation, which affects the free movement of goods and the freedom to provide services within the EU. The measures undertaken by the Member States with regard to direct taxation consist mainly of the coordination of their policies in order to prevent tax avoidance and double taxation as well as to provide Member States with a fair tax framework within (however there are efforts to come up with a Common Consolidated Corporate Tax Base (CCCTB) – however so far unsuccessful). From an indirect tax perspective, Value Added Tax (VAT) has been harmonised as common VAT rules have been implemented. Furthermore, similarly to the OECD, the EU has its own initiatives of fighting tax evasion which lead to some changes in direct taxation within the EU.

Summarising the above, EU tax policy benefits European residents, with its intention to ensure an internal European market and to guarantee that competition between Member States is not distorted by differences in tax rates and systems. Measures have also been implemented to prevent the adverse effect of tax competition if companies transfer taxable bases between EU Member States.

The main taxes applicable to tax resident companies in Germany are Corporate Income Tax (CIT), municipal Trade Tax (TT) and Value Added Tax (VAT). Other taxes include municipal real estate tax, real estate transfer tax, and customs and excise duties.

For individuals, the main tax is Personal Income Tax. Social Insurance contributions apply to individuals as well. Furthermore, municipal real estate transfer tax and trade tax might also apply in specific circumstances.

3.5.2 Taxation of companies

3.5.2.1 Corporate income tax

3.5.2.1.1 Taxable income for corporate income tax purposes

Companies which are tax resident in Germany are subject to tax on their worldwide income. All income qualifies as business income and is subject to both Corporate Income Tax (CIT) and Trade Tax (TT). Taxable income is determined in accordance with the relevant regulations of the Income Tax Act (ITA), that are broadly based on the statutory accounts according to German Generally Accepted Accounting Principles, but supplemented by special regulations in the Corporate Income Tax Act (CIT) and Trade Tax Act (TT) (for bookkeeping requirements, see Chapter 3.3.1 and Chapter 3.5.6.1).

Under current rules, dividends received by a resident company are generally exempt from corporate income tax. However, since March 2013 the exemption is not applicable if the participation in the subsidiary at the beginning of the year is less than 10%. If the exemption is applicable, 5% of the gross dividend is added back to taxable income as imputed non-deductible business expenses, resulting in an effective tax rate of approximately 1.5% (including Trade Tax). The 95% exemption for dividends does not apply to certain banks, financial institutions, shares held by finance companies for the purpose of realising a short-term profit from trading activities ("held for trading exception"), life or health insurance companies or pension funds. Since the end of 2006, the exemption applies only if the dividend has not been treated as a deductible business expense at the level of the distributing company. The 95% exemption generally will apply for Trade Tax (TT) purposes only if certain minimum holding and minimum ownership requirements are met. In addition, certain activity requirements apply to shareholdings in companies that are resident outside the EU.

A similar rule applies to capital gains on the sale of corporate shareholdings. Capital gains arising from the sale of shares by a corporation should be 100% tax exempt with a 5% add-back as non-deductible business expenses. A minimum shareholding requirement does not exist for the sale of shares. Exceptions apply to certain banks, financial institutions, shares held by finance companies for the purpose of realising a short-term profit from trading activities ("held for trading exception"), life or health insurance companies or pension funds that do not benefit from the 95% exemption.

In general, all expenses are deductible if they are incurred as a result of the company's business operations. Certain expenses may be disallowed (e.g. expenses related to exempt income) or may be deductible only up to a limited amount.

As regards interest expenses, as from fiscal year 2008 the so-called "earning stripping" rules apply in Germany which might limit the deduction of interest expenses. According to these rules, taxpayers may immediately deduct only (net) interest expense up to 30% of taxable earnings before net interest expense, tax, regular depreciation, and amortization (tax EBITDA). An EBITDA carryforward is generated if the taxpayer has net interest expense lower than 30% of the EBITDA for tax purposes, unless an exception to the interest expense limitation (see below) applies. The difference between 30% of the EBITDA and the net interest expense (excess EBITDA) may be carried forward and used in the following five years when the net interest expense exceeds 30% of current EBITDA. The limitation does not apply where: (i) the annual (net) interest burden is less than EUR 3 million; (ii) the taxpayer is not part of a group of companies; or (iii) the taxpayer can demonstrate that the equity ratio of the German borrower does not fall short by more than two percentage points of the worldwide group's equity ratio. Excess interest may be carried forward indefinitely (although change in ownership rules apply). Disallowed interest expense will not trigger withholding tax.

3.5.2.1.2 Losses

Losses that cannot be offset against profits in the same year may be carried forward indefinitely and carried back for one year. Losses that cannot be offset can be carried back to the prior taxable period up to an amount of EUR 1 million for CIT purposes. No carry-back is possible for Trade Tax purposes. No restrictions are imposed on the utilisation of loss carry-forwards of up to EUR 1 million; however, the utilisation of loss carry-forwards exceeding EUR 1 million is capped at 60% of income. Therefore, the remaining 40% of income will be taxed at the general rates ("minimum taxation"). The concept of minimum taxation also applies for TT purposes.

A change of ownership rule applies as from 1 January 2008. All corporate income tax and trade tax losses will be forfeited if more than 50% of the shares in a loss corporation are directly or indirectly transferred to one buyer (or a group of related buyers) within a period of five years. As from 1 January 2010, loss carry-forwards will not be forfeited if a single person or entity owns directly or indirectly 100% of the shares in the transferring and the receiving company. Loss carry-forwards continue to be available to the extent built-in gains in the loss company are subject to tax in Germany. Since 2016, losses continue to be available also in certain cases where the historic business of the loss company is continued on an unchanged basis.

Negative income of a controlling entity or a controlled entity in a German tax-consolidated group are regarded non-deductible for German tax purposes 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.

3.5.2.2 Trade tax

Trade tax is based on taxable income as calculated for CIT purposes; however, several income adjustments apply.

The tax rate varies depending on location, but is generally within the range of 14%-17% of income (with a minimum rate of 7%). The basis for trade tax is increased by 25% (which means that the expenses mentioned below are tax deductible for TT purposes only to the extent of 75%, not 100%) of the sum of, among other things:

- all interest expenses,
- 1/5 of the rent for moveable assets,
- 1/2 of the rent for immoveable assets, and
- 1/4 of licence fees;
- less an exemption of EUR 200,000.

Furthermore, several other additions or deductions might apply. There are special regulations for financial institutions and financial service providers regarding the adding back of interest expenses: under certain conditions financial institutions and financial service providers do not have to add back their interest expenses.

3.5.2.3 Filing requirements

The tax assessment period is generally the calendar year, although a resident company may choose a divergent financial year as its tax year. A company may only change its financial year (and hence its tax year) to a divergent financial year with the consent of the tax authorities (but may change it back from a divergent financial year to a calendar year without the tax authorities' consent). Financial years may not be longer than 12 months, but they may be shorter.

Under to German tax law, tax returns have to be filed for income tax purposes on an annual basis. The tax returns have to be prepared using specific forms provided by the tax authorities and have to be filed electronically (see also E-tax Balance legislation in Chapter 3.5.6.2).

Final tax returns must generally be filed electronically by 31 July of the following year. If a certified tax advisor prepares the return, the due date is extended to the last day of February of the second year following the tax year.

Moreover, it has to be taken into consideration that the tax authorities assess prepayments for corporate tax and solidarity surcharge. These assessed prepayments are generally calculated by the tax authorities based on the taxable income for prior years and have to be paid on a quarterly basis to the tax authorities in advance.

In addition to the CIT mentioned, a surcharge tax, the Solidarity Surcharge, is charged by the tax authorities. The solidarity surcharge is a surtax calculated on the assessed CIT and is applied at a rate of 5.5%.

3.5.2.4 German tax group ("Organschaft")

German tax law allows groups of companies to form a tax group ("Organschaft") for German CIT and TT purposes and to file the consolidated income in the tax return of the tax group parent. In this case, current losses of companies that are part of the group may be offset against the profits at the head of the consolidated tax group (and profits transferred to the parent from other tax group subsidiaries).

To form a tax group, the parent company (either a German company, German partnership operating a trade or business, a German individual or the German branch of a foreign company) must hold the majority of the shares or the voting rights in a German corporation from the beginning of the subsidiary's financial year. Moreover, a profit and loss pooling agreement with a minimum duration of five years must be agreed by the members of the tax group, which also must be registered in the subsidiary's financial year before the end of the financial year for which the tax group will be effective.

3.5.2.5 Non-resident companies and permanent establishments

Foreign companies that have neither their registered office nor their place of management in Germany are non-resident for German tax purposes. Non-resident companies are subject to German CIT only on German-sourced income. The income of a non-resident company derived from a branch, a permanent establishment in Germany or a partnership interest in a German partnership or other certain income, which qualifies as German-sourced income, is subject to the general CIT rate of 15% and additionally 5.5% Solidarity Surcharge and potentially Trade Tax.

(Fixed) interest income, for example, received by a non-German resident qualifies as German sourced-income as well if the capital is directly or indirectly secured by domestic real estate property, by domestic rights subject to the provisions of the civil law regarding land.

A non-resident company's other sources of income (e.g. from royalties) are taxed by way of a withholding tax, which may be reduced under an applicable tax treaty. For China, the applicable withholding tax under the DTA is reduced to 10%.

German tax law contains a general definition of the term "permanent establishment" (PE) for German tax purposes. By comparing the definition of the term "permanent establishment" in German tax treaties, the definition under German tax law is rather broad and results in a wide scope for the taxation of business activities by foreign companies. Unlike the German tax treaties, domestic law does not contain a list of situations in which no permanent establishment exists. Thus, if activities are undertaken from jurisdictions without a DTA, such as Hong Kong, careful planning is advised in order to either avoid creating a PE or ensure compliance with German tax reporting requirements.

According to German tax law, a permanent establishment is generally defined as "any fixed place of business or business facility which serves the activities of a company". In particular the following qualifies as a permanent establishment under German tax law:

- the place of management;
- branches;
- offices;
- warehouses;
- purchasing or sales locations;
- mines, quarries or any other fixed or floating site or sites which progressively change their location for the extraction of natural resources;
- building sites or installations, also those which progressively change their location or are floating, if the construction of

  a) the individual building site or installation or
  b) one of many building sites or installations which exist contemporaneously or
  c) several building sites or installations which are constructed one after the other in an uninterrupted series takes more than six months.

Thus, for the assumption of a permanent establishment in Germany for German tax purposes the following four main criteria must be cumulatively satisfied:

- the existence of a fixed place of business or a business facility;
- the sustainability, i.e. the time element of the fixed place of business;
- the taxpayer's control over and power to dispose of this fixed place of business; and
- the carrying on of an activity of the permanent establishment in the fixed place of business.

In the case that a branch office of a company originally located in a foreign country is registered in the German commercial register, there exists the general assumption that a permanent establishment exists in Germany for German tax purposes. This assumption is based on legal practice. The German national definition of a PE is rather wide. Thus, where a tax treaty exists, the German PE definition would be limited to that in the respective DTA.

According to Art. 5 para. 2 of the China – Germany tax treaty the term "permanent establishment" means a fixed place of business where the business of the company is wholly or partially carried on. In particular a permanent establishment shall include the following:

- a place of management;
- a branch;
- an office;
- a factory;
- a workshop;
- a mine, quarry or other place of extraction of natural resources.

Furthermore, the following qualifies as permanent establishment under Art. 5 para. 3:

- a building site or construction or assembly project which exists for more than six months (under the not yet ratified new DTA the duration of 6 months will be replaced by 12 months);
- the furnishing of services, including consultancy services, by an enterprise of a Contracting State through its employees or other personnel if the activities in the other Contracting State (for the same or a connected project) continue for a period or periods aggregating more than six months (under the new DTA the duration of 6 months will be replaced by 183 days).

In contrast to German domestic tax law, the tax treaty contains a "negative list", i.e. inter alia the following services are excluded and do not constitute a taxable permanent establishment:

- The use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the company;
- The maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or for collecting information, for the company;
- The maintenance of a fixed place of business solely for the purpose of advertising, for the supply of information, for scientific research or for similar activities which have a preparatory or auxiliary character, for the company.

3.5.3 Taxation of individuals

3.5.3.1 Overview

Income tax rates	Progressive up to 45% (47.475% including solidarity surcharge)
Capital gains tax rates	Progressive up to 45% (47.475% including solidarity surcharge), non-taxable in certain cases, partially tax exempted in certain cases
Basis	Worldwide income
Double taxation relief	Yes
Tax year	Calendar year
Return due date	31 July

Withholding tax	
• Dividends	25% (26.375% including solidarity surcharge)
• Interest	25% (26.375% including solidarity surcharge)/0%
• Royalties	15% (15.825% including solidarity surcharge)
Church tax	8% or 9% of income tax/wage tax/ withholding tax, applicable to resident members of certain officially recognised German churches
Net wealth tax	No
Social security	Yes
Inheritance tax	7%-50%
Real estate tax	1.5%-2.3% (effective tax rate in major cities, depending on municipality)
VAT rate	19% (standard rate)/7% (reduced rate)

3.5.3.2 Residence

An individual is considered tax resident if he/she:

- Maintains a home or dwelling in Germany for personal use with the intention of keeping it and using it on a regular basis; or

- A habitual place of abode in Germany, i.e. is physically present in Germany for a consecutive period of more than six months or with the intention of staying 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. An applicable tax treaty might allocate the tax residency differently.

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.

3.5.3.3 Taxable income and rates

Residents are liable to income tax on their worldwide income, while non-residents 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 self-employment and from 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 are taxed separately 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. Unless higher deductible costs are substantiated by the taxpayer a lump-sum of EUR 1,000 per year is deducted from the taxable income.

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 one calendar month.

Capital gains derived from the sale of non-business 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 where the taxpayer has lived during the period between acquisition and sale or at least during the current year and the two preceding years. The sale of private shareholdings of 1% or more in corporations is taxable irrespective of a minimum holding period; however, only 60% of the capital gain is taxed.

A percentage of pension payments from the statutory pension insurance scheme is taxed, depending in which year the pension begins; for example 80% of pensions commencing in 2020 are taxable and for 2021 the figure is 81%.

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; realised capital gains or losses are always included; or
- For other income – on a cash basis, by deducting income-related expenditures from gross receipts; realised capital gains or losses are generally 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 relief

Each resident taxpayer is entitled to a basic personal allowance of EUR 9,744 (EUR 19,488 for married couples filing a joint return) from year 2021.

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 (92% for 2021) up to EUR 23,724 in 2020 (92% of EUR 25,787) 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 organisations up to 20% of total net income (before special deductions) or, in case of businesses, 4% of the sum of turnover and paid salaries and wages; or
- Church tax paid to an officially recognised German church.

There also are deductions for children. Eligible taxpayers automatically receive a monthly child benefit payment of EUR 219 for each of the first two children, EUR 225 for the third child and EUR 250 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 8,388; in case of separated parents half of the amount) is more advantageous for the taxpayer and automatically adjust the final tax. Non-resident taxpayers may claim the child allowances if they are taxed as a resident in Germany.

Rates

The tax rates for resident individual taxpayers range from a minimum of 14% on income exceeding EUR 9,744 (EUR 19,488 for married couples filing a joint return) to a top rate of 45% for income exceeding EUR 274,613 (EUR 549,226 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 solidarity surcharge) withholding tax applies to income from private capital investments (e.g. from the receipt of dividends or the disposal of bonds or minor shareholdings of less than 1%), regardless of the holding period. An 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 solidarity surcharge), the taxpayer may apply for a more favourable tax treatment in his/her return.

Non-residents are taxed at a flat rate of 15% (15.825% including 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
- licence fees 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. Non-resident individuals from EU or EEA countries may opt for the deduction of income-related expenses. In this case, a 30% (31.65% including solidarity surcharge) withholding tax applies. Non-resident 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.

3.5.3.4 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. Additional social security contributions comprise the insolvency fund levy (0.15% of total salaries), the levy `U2' for maternity (compensating the employer for salary payments during maternity protection; about 0.3% 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 1.3% up to 3.9% of the salary depending on the public health insurance scheme under which the employee is insured and the percentage of compensation chosen).

3.5.4 International taxation

Most business activities take place in a cross-border context: this may be in the form of supplies of goods or services across borders or investment activities across borders. Of particular relevance here is inbound investment from China to Germany and also German outbound investment in the event that a Chinese investor uses Germany as an intermediate holding location. In view of the present OECD BEPS (Base Erosion and Profit Shifting) developments, this is a scenario that may become more common as there is mostly substance in German entities.

Germany provides different measures for avoiding double taxation which can be divided into national unilateral measures and bilateral measures regulated in its tax treaties.

3.5.4.1 Unilateral measures for the avoidance of double taxation

In non-treaty situations (e.g. Hong Kong) or treaty situations (e.g. China) where the treaty provides for a tax credit, German taxpayers with foreign-source income may be credited with foreign taxes paid to the extent they relate to income that is subject to tax under domestic law (a per-country limitation must be recognised).

Alternatively, the deduction of foreign tax can be chosen, which is relevant particularly in situations where the German entity is in a loss situation and therefore does not have any tax cost against which to credit foreign tax. If the income is exempt from German tax, neither credit nor deduction will be possible.

3.5.4.2 Tax treaties

Comprehensive agreements for the avoidance of double taxation are the basis for bilateral measures of avoidance of double taxation.

Germany has a broad tax treaty network; with around 100 jurisdictions in place. Currently, there is no tax treaty between Germany and Hong Kong. There are six inheritance and gift tax treaties. Furthermore, Germany has signed several Tax Information Exchange Agreements (TIEA) with various countries. Finally, Germany has some treaties regulating the treatment of shipping and airline income.

If the domestic tax rate is lower than the treaty rate, the domestic rate (D) applies. Additionally, the EC Parent-Subsidiary Directive or the Interest and Royalties Directive may also apply to lower the rate.

3.5.4.2.1 China – Germany tax treaty

The PRC – Germany tax treaty has been in force since 10 June 1985 and generally follows the OECD Model Tax Treaty. A revised version of the China – Germany tax treaty is in effect since 1 January 2017.

However, there are certain differences with respect to the current OECD Model Tax Treaty; the main ones are outlined below:

Art. 5 Permanent establishment

The term permanent establishment shall also include:

- a building site, or construction, assembly or installation project or supervisory activities in connection therewith, but only if such site, project or activities last more than twelve months;
- the furnishing of services, including consultancy services, by an enterprise through employees or other personnel engaged for such purposes, but only if activities of that nature continue (for the same or a connected project) within a Contracting State for a period or periods aggregating more than 183 days within any twelve-month period.

Art. 7 Business profits

When determining the profits of a PE, expenses which are incurred for the purposes of the PE, including executive and general administrative expenses, shall be allowed as deductions whether in the State in which the permanent establishment is situated or elsewhere.

No profits shall be attributed to a PE by reason of the mere purchase by that PE of goods or merchandise for the enterprise.

Furthermore, the tax treaty states that the profits to be attributed to the PE shall be determined by the same method every year unless there is good and sufficient reason to the contrary.

Art. 10 Dividends

Dividends may also be taxed in the contracting state in which the company paying the dividends resides at a maximum rate of 5%, provided that the recipient is the beneficial owner of the dividends and holds directly at least 25 per cent of the capital of the company paying the dividends.

Art. 11 Interest

The DTA mentions several exemptions from withholding tax on interest.

For example, interest derived from Germany is exempt from German tax, if paid:

1. to the Government of the People's Republic of China;
2. to the People's Bank of China;
3. the China Development Bank Corporation;
4. the Agricultural Development Bank of China;
5. the Export-Import Bank of China;
6. the National Council for Social Security Fund;
7. the China Investment Corporation;
8. any other public credit institution of the Government of China, if the competent authorities of both States have agreed thereto.

Interest derived from the People's Republic of China is exempt from Chinese tax, if paid:

1. to the Government of the Federal Republic of Germany;
2. the German Federal Bank (Deutsche Bundesbank);
3. the Development Loan Corporation (Kreditanstalt für Wiederaufbau);
4. the German Investment and Development Company (DEG – Deutsche Investitions- und Entwicklungsgesellschaft mbH);
5. any public credit institution of the Federal Republic of Germany, if the competent authorities of both States have agreed thereto

Regarding the possible pitfalls but also the attractive alternatives of the tax treaty - for example regarding the beneficial withholding tax - of the new treaty, Deloitte has experienced cross-border tax experts, who can advise you on the treaty's impacts on your business.

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Art. 12 Royalties

Royalties may be taxed in the country of residence. However, such royalties may also be taxed in the state of source, if the recipient is the beneficial owner of the royalties, the tax so charged shall not exceed 10 % of the gross amount of the royalties. With regard to the use of or the right to use industrial, commercial or scientific equipment, the tax rate is reduced to 6% effectively.

Art. 23 Methods for Elimination of Double Taxation

Chinese residents:
The amount of income tax payable in Germany may be deducted from the Chinese tax levied on that resident. However, the amount of this credit must not exceed the amount of Chinese tax on that income.

In addition, the underlying taxes could be deducted, provided that the income received is in the form of a dividend paid by a company resident in Germany to a company resident in China and which owns not less than 20% of the shares of the latter.

German residents:
In general, income arising in the People's Republic of China and any item of capital situated within the People's Republic of China which, according to the Agreement, may be taxed in the People's Republic of China shall be excluded from the basis upon which German tax is imposed. However, Germany retains the right to take the items of income and capital so excluded into account in the determination of its rate of tax.

In the case of dividends, the aforementioned shall only apply to such dividends paid to a company (not including partnerships) being a resident of Germany directly holding at least 25% of the capital in the company being a resident of the People's Republic of China paying the dividends.

Inter alia, as regards the following income arising in the People's Republic of China, subject to the provisions of German tax law regarding credit for foreign tax, the Chinese tax paid under Chinese laws and in accordance with the Agreement shall be credited against German income tax:

1. dividends;

2. interest;

3. royalties.

3.5.4.2.2 Hong Kong

At present, there is no comprehensive double tax treaty between Hong Kong and Germany in place. However, negotiations have been ongoing. This will be of particular interest to Chinese investors using Hong Kong as an intermediary and for Hong Kong investors to Germany, as investments currently suffer considerable withholding tax rates under German local tax law, e.g. 26.375% on dividends paid from Germany to Hong Kong with no tax credit available at the Hong Kong level, but with a tax credit potentially available in China, depending on circumstances.

The DTA will also simplify secondment situations where at present no 183 days rule protection exists, thus staff travelling to Germany may be subject to German taxation even for short stays.

3.5.4.3 German transfer pricing rules

The transfer price is the price that is charged for a supply of services or goods between related parties. Germany has had considerable regulation on transfer pricing for years and unsurprisingly this is reflected in tax audits of multinational companies where typically transfer pricing issues will have to be discussed. The main legal basis is Section 1, Foreign Tax Act. German transfer pricing rules are generally in line with OECD guidelines and sometimes more specific.

Related parties must apply the so-called "arm's length principle" when engaging in cross-border transactions, i.e. they have to agree on pricing that is comparable to that among unrelated parties. German legislation and administrative regulations contain detailed rules on how transfer prices should be determined. Standard transfer pricing methods to be applied when comparable prices 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 on 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 (minimum EUR 5,000) apply. The penalty for late submission of requested documents is a minimum of 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.

For many companies, Transfer Pricing Documentation (TPD) is the most important part of Transfer Pricing. Considering that German tax auditors require the substance of transactions to be proven by underlying contracts and supporting documentation as appropriate, the value of TPD cannot be underestimated in Germany.

Taxpayers are obliged to provide documentation about the manner and content of their business relationships with related parties. This not only includes transactions between related legal entities referred to in Art. 9 OECD Model Tax Convention, but also the income allocation between head office and a permanent establishment. The law is supported by detailed guidelines for documentation requirements which are described in the "GAufzV" and the administrative principles procedure. With effect for fiscal years starting after 31 December 2016 a new version of the GAufzV applies, aligning the German transfer pricing documentation rules with Master File/Local File concept as stipulated by BEPS Action Point 13. The Master File is the top-down view, containing inter alia:

- visual representation of the organisational structure (legal and ownership structure) as well as of the geographical distribution of the companies and permanent establishments that are part of the company group;
- an overview of the important drivers of the group's overall profit;
- a description of the supply chains for the group's five products or services that generate the largest turnover;
- a description of the main geographical markets for the group;
- a brief functional analysis;
- a brief description of important restructurings of the group's business activities occurring during the fiscal year;
- a general description of the group's overall strategy for intangible assets;
- a general description of how the group is financed;
- a list or brief description of any existing unilateral advance pricing agreements relating to the group's transfer pricing approach.

The Local File is the bottom-up view, containing inter alia:

- general information about the ownership structure, the business operations and the organisational structure incl.:
  - a representation of the ownership structure between the taxpayer and related parties
  - a representation of the organisational and operational structure of the group
  - a description of the management structure
  - a description of the taxpayer's areas of activity and the business strategy
- records of the taxpayer's business relations incl.:
  - a representation of the taxpayer's business relations, overview of the type and scope of these business relations, for example goods purchases, services, loan arrangements and other transfers of usage rights
  - a list of the main intangible assets that belong to the taxpayer and that the taxpayer uses
- functional analysis and risk analysis incl.:
  - information about the functions performed and risks assumed
  - information about the main assets used
  - the agreed contractual conditions
  - the chosen business strategy and the taxpayer's contribution to the value chain
- transfer pricing analysis incl.:
  - time of determination of the transfer prices
  - representation of the transfer pricing method used
  - justification for the choice of the transfer pricing method used

In general, taxpayers must submit documentation within 60 days after the tax authorities' request. It is not required to submit transfer pricing documentation when filing the tax return. However, extraordinary transactions must be documented promptly (i.e. within 6 months of the end of the business year in which the transaction took place) and must be submitted within 30 days upon request. The following are considered to be an extraordinary business transaction:

- Conclusion and amendment of significant long-term contracts that have a substantial impact on the amount of income generated from the business with related parties;
- asset transfer during restructuring;
- transfer or contribution of assets or advantages in connection with a change of functions and risks in the group;
- a business transaction in connection with a change in the group's business strategy with significant impact on the setting of transfer prices;
- conclusion of cost-sharing agreements.

If no documentation is available or the available documentation is inadequate, the burden of proof shifts to the taxpayer, and tax authorities are permitted to adjust to the most unfavourable point within the arm's-length range. Furthermore, a penalty of between 5% and 10% of the transfer pricing adjustment (and a minimum of EUR 5,000) may apply. In case of late submission, the penalty can reach EUR 1 million, at least EUR 100 for each day the documentation is overdue.

3.5.4.4 Base Erosion and Profit Shifting ("BEPS")

The discussion on "Base Erosion and Profit Shifting" has been strongly supported by the German government. It therefore does not come as a surprise to see that a considerable number of the OECD measures have already been part of German tax law for some years. And anti-base erosion measures have been developed regularly in Germany, e.g. the exit taxation regulations introduced in 2009.

A few key points worth considering in this regard:
Germany considers a server located in Germany potentially as the permanent establishment of a foreign entity. This might have an impact on the digital economy in certain cases.

On hybrid mismatches, Germany does already have an anti-hybrid rule. CFC rules as recommended by OECD have been in place for several decades. The OECD interest limitation rule is largely based on the German interest limitation rule. Tax treaty anti-abuse rules have also been in place for some time.

This means on the other hand that the German tax environment may not be as heavily impacted by the OECD BEPS initiative as many other tax regimes, e.g. Chinas.

Further to the OECD BEPS initiative the European Union has its own initiative against aggressive tax planning. The action items are largely coordinated with the OECD action items. However, some items are more specific, such as the idea of creating a Common Consolidated Corporate Tax Base (CCCTB) within the EU.

For the investor from China it is recommended to follow both developments closely, both at the OECD and the EU levels, and to assess the impact on investment in Germany.

3.5.4.5 EU - Anti Tax Avoidance Directive ("ATAD")

On 20 June 2016 the Council of the EU adopted the so-called "Anti Tax Avoidance Directive" (ATAD) laying down rules against tax avoidance practices that directly affect the functioning of the EU internal market. ATAD contains five legally-binding anti-abuse measures, which all EU Member States should apply. The EU Member States were required to implement these measures into local law from 1 January 2019. The anti-avoidance measures in the ATAD are:

- Controlled foreign company (CFC) rule;
- Switchover rule;
- Exit taxation;
- Interest limitation;
- General anti-abuse-rule.

Furthermore, a separate directive was adopted with Anti-Hybrid measures.

Germany has not yet implemented all the required measures as stipulated by ATAD, however fulfils the minimum standards in some areas already (e.g. interest limitation).

3.5.4.6 Mandatory Disclosure Rules ("DAC 6")

On 25 May 2018 the EU adopted a Council Directive regarding BEPS Action 12 "Mandatory Disclosure Scheme" imposing mandatory reporting of certain cross-border tax arrangements by so-called intermediaries or the taxpayer. In Germany as from July 2020, reporting to the tax authorities has to be done within 30 days after the arrangement is made available/ready for implementation or the first step in implementation has taken place. Reportable cross-border arrangements between 25 June 2018 and 1 July 2020 had to be reported by 31 August 2020.

The EU Directive aims at providing tax authorities with additional information regarding tax structures and tax planning used by taxpayers and to counter harmful tax practices.

In case the DAC 6 report is not (correctly) submitted, this could constitute an administrative offence and can be sanctioned with a fine up to EUR 25,000. The same holds true in case the DAC 6 report is not timely submitted.

3.5.5 Indirect taxes

3.5.5.1 Value Added Tax

Value Added Tax (VAT) is an indirect tax which is imposed at every stage of production, distribution or the supply of goods and services. VAT is designed to tax final consumption by taxing the value added at each stage of the manufacturing and selling process. Thus, generally, it should not add a cost to the company.

VAT charged by the seller to his customer is called "output VAT". The VAT paid on the purchase of goods or services is called "input VAT". The VAT payer can generally deduct the input VAT, whereby the VAT burden ultimately arises (only) at the level of the final consumer.

VAT payers are generally entitled to deduct the input VAT if they regularly supply goods or services which are subject to VAT or if VAT was paid on transaction relating to international trade or on deductible transaction conducted outside Germany.

Certain transactions are exempt from VAT, particularly supplies of goods abroad and supplies of goods and services relating to insurance and financial activities, health, education, culture and the transfer and the lease of residential property. Therefore, in particular entities acting in the financial sector (banks, etc.) have to carefully analyse possibilities of increasing the Input-VAT-recovery rate (see Chapter 3.5.3).

The German VAT law does not apply in the area of Büsingen, on the Island Helgoland and in the specific free trade zones ("Freihäfen").

The standard VAT rate in Germany is 19%. Under German VAT law there is only one reduced VAT rate, 7%. The supplies of certain goods such as food, books, medical equipment and art objects and the supplies of certain activities (e.g. cultural activities) are subject to the reduced VAT rate.

Taxpayers who carry out transactions subject to VAT in Germany are generally obliged to register for VAT purposes in Germany and will be given a tax registration number. This also applies to non-German companies doing business in Germany. Thus careful planning of the distribution or procurement business model is required either to avoid a registration in Germany (or in the EU) or to ensure compliance.

Additionally, taxpayers need a special VAT number ("VAT identification number") if they conduct transactions within the European Union, here especially: intra-community supplies of goods and services. The obligation to register for VAT applies under the strict wording of the German VAT law also to tax-exempt transactions and is independent of the volume of the transactions carried out.

VAT returns must be filed monthly if the VAT liability for the previous calendar year exceeds the amount of EUR 7,500. Otherwise, quarterly filing is required.

Entities may elect taxation as a VAT-group. In this case, the entities file only one consolidated VAT return for the group and intra-group transactions will not be VAT-taxable.

The EU adopted on 12 February 2020 a package modernising VAT for cross-border e-commerce. The package intends to facilitate cross-border trade, to combat VAT fraud and ensure fair competition for EU businesses. Businesses operating electronic interfaces such as marketplaces or platforms will, in certain situations, be deemed for VAT purposes to be the supplier of goods sold to customers in the EU by companies using the marketplace or platform. Therefore, they will have to collect and pay the VAT on these sales. Furthermore, the current VAT exemption for goods in small consignment of a value of up to EUR 22 will be abolished. The rules will enter into force on 1 July 2021.

3.5.5.2 Real estate transfer tax

The transfer of real estate located in Germany is subject to Real Estate Transfer Tax (RETT). For transfer tax purposes, it is only necessary for the real owner to change.

A common case of a transaction subject to RETT is the transfer of shares in companies which own real estate. In this case, the transfer tax is calculated on the real properties of the companies, if at least 95% of the corporate shares are transferred. The change of at least 95% of the partners in a partnership can be realised within five years.

The rate of the transfer tax ranges from 3.5% to 5.5%, depending on where (i). e. in which Federal State of Germany) the transferred real estate is located.

There are exemptions from transfer tax, e.g. a transfer of real property based on gifts inter vivos or inheritance.

On 31 July 2019, the German Federal Government discussed a draft law amending the RETT in order to increase revenues by limiting the options of share deals. The measures include reducing the thresholds to 90% (instead of currently 95%) and extending the required holding period to ten years (instead of currently five years). The German Federal Government agreed that further discussions regarding the draft law are necessary and postponed the implementation into national law. Currently, it is not clear when draft law will be further discussed.

3.5.5.3 Stamp tax

No stamp tax is levied in Germany.

3.5.5.4 Real estate property tax

Landowners have to pay real estate property tax to the local tax authorities. Real estate property tax is calculated on the rateable value of the relevant real property. Additionally, each local tax authority fixes its own municipal rate, so the real estate property tax liability for a property can be different depending on where the property is located in Germany. The procedure for calculating real estate property tax, particularly the calculation of the rateable value is quite complex.

In a ruling on 10 April 2018, the Federal Constitutional Court declared the way in which properties are valued for the purpose of real estate property tax to be unconstitutional, as the tax has been calculated on the basis of old values (from 1964 or 1935 respectively depending where the real estate is located). According to the new legislation, the basic structure remains unchanged and it is expected that the new legislation will not result in a change of the total amount of tax generated.

3.5.5.5 Customs and excise duties

As an EU Member State, Germany applies the EU Community Customs Code, which sets out the general rules and procedures for all EU Member States. Based on the EU Community Customs Code all Member States are obliged to collect duties with the same criteria and efficiency, since once in the EU, the free movement principle is applied. The principle means that goods move freely within the customs territory of the European Union, without paying customs duties or any commercial restrictions or customs requirements being applied.

As a result, national rules must be adapted to Community Directives.

The German Customs & Excise Authorities, together with the Customs Authorities of the other EU Member States, have direct relations with the Customs Authorities of countries which are not part of the European Union, especially with the candidates to join the EU, with Latin America and the North of Africa. Relations involve all the fields of information exchange and mutual assistance in the fight against fraud and smuggling, and technical assistance for the development and modernisation of the Customs “Environment”. For this purpose, Germany has signed bilateral and multilateral conventions.

Generally, imports of goods to Germany are subject to import duties, i. e. customs duties, import VAT and, if applicable, excise duties. But there are exemptions available. Excise duties are imposed on the consumption of certain products. The excise duties are generally levied in the country of destination. That means the country in which the certain products will be de facto consumed or used. In addition to the imposition of excise duties, the consumption of the certain products is subject to VAT.

In Germany excise duties are levied on the consumption of coffee, various alcohol products, tobacco, oil, gas and electricity, if the products will be used on German territory. The excise taxes are paid by the producer, importer or merchant. Additionally, the sale of certain products is subject to German VAT.

The relevant excise tax for each product is calculated as a fixed amount in relation to a certain measurement unit.

3.5.5.6 Other taxes

Motor vehicle tax

The payer of motor vehicle tax is the registered keeper of the vehicle. The tax is calculated on the cubic capacity of the vehicle and on the CO_2 emissions of cars.

There are certain exemptions from motor vehicle tax.

Insurance premium tax

Insurance companies are normally obliged to pay insurance premium tax, generally amounting to 19% of the insurance premium.

A special type of the insurance tax is the fire protection tax in Germany. This tax is also normally calculated based on the standard tax rate of 19%.

Others

Other taxes in force in Germany are taxes regarding bets and lottery and casino duties. Different tax rates are applicable.

Due to the fact that the other indirect taxes mentioned above are applied, these transactions are generally exempt from German VAT.

3.5.6 Other tax issues

3.5.6.1 General bookkeeping obligations for taxpayers

Under German tax law, anyone who is obliged under any law to keep accounts and records that are of relevance for taxation shall be obliged to fulfil the obligations imposed by such other laws in the interest of taxation as well. Generally, bookkeeping in Germany is subject to the regulations of the German Commercial Code and the relevant rules apply to all merchants (except for very small businesses of sole-proprietors). The bookkeeping according to the German Commercial Code (German GAAP) is consequently the basis for the tax accounting and in determining the taxable profit.

Under the German Commercial Code, the bookkeeping must be maintained in such a manner that a competent third party is able to understand the bookkeeping in an adequate time. In addition, accounts and all other required records shall be kept in a complete, correct, timely and orderly manner. If IT is used to process and record the bookkeeping, it must be ensured that all data can be made readable at any time. Additionally, tax law generally requires the above-mentioned documents to be kept and stored within Germany. However, if certain conditions are met, on application the fiscal authorities may allow electronic bookkeeping or parts of it to be processed and stored outside Germany. In any case the bookkeeping must be maintained in the German language, otherwise translations must be provided.

According to German tax law, the tax authorities are entitled to audit taxpayers' accounting records. If the records are created with the help of data processing systems, the tax authorities will require data access in their external tax audits. It should be noted that the taxpayer is generally obliged to support the tax authorities in the execution of their right to data access. The Federal tax authority has defined general principles of electronic bookkeeping and data access (GoBD). Those principles have to be considered in designing the bookkeeping system and in preparing for a tax audit.

Deloitte has outstanding technical experience in XBRL as it is a member of the association representing XBRL in Germany (XBRL Deutschland e.V.) and – together with its clients – participated in a voluntary E-Tax balance Sheet trial period in 2011, which was conducted by the Federal Ministry of Finance. Accordingly, Deloitte Germany can advise on all E-Tax Balance Sheet questions. Deloitte's E-Tax Balance Sheet Readiness Assessment offers a structured and practically-tested project approach.

3.5.6.2 E-tax balance legislation

German companies which compute their taxable income using double-entry accounting need to submit a standardised electronic book/tax schedule (E-Tax Balance Sheet) as an appendix to their electronic income tax returns.

The Federal Ministry of Finance (MOF) defined eXtensible Business Reporting Language (XBRL) as the mandatory technical format (taxonomy) for all standardised electronic data transmissions to the tax authorities relating to E-Tax Balance Sheets. XBRL is a global and open technical standard for the exchange of company information. XBRL is already widely used by various institutions such as the U.S. Securities and Exchange Commission and the German electronic Federal Gazette for public disclosure of German GAAP financial statements.

The XBRL taxonomy for the E-Tax Balance Sheet is a hierarchically structured data scheme, comparable to a model chart of accounts, which consists of balance sheet and income statement account items. Each value in an XBRL document is clearly attributed to an element from the XBRL taxonomy so that the document is fully machine-readable. The German taxonomies for E-Tax Balance Sheets are available electronically (http://www.esteuer.de).

The taxonomies require tax information which is often not available in standard charts of accounts or ERP systems used by many companies for financial accounting purposes. To avoid changes to charts of accounts, the taxonomies offer fall-back positions; the tax authorities have suggested that these fall-back positions be eliminated in the near future. Accordingly, the tax authorities want to see, at least mid-term, all mandatory tax information requested by the taxonomies on individual accounts directly in all companies' charts of accounts so that this information can be made available to the tax authorities electronically in the required E-Tax Balance Sheet format.

Special E-Tax Balance Sheet issues may arise for all companies that do not maintain German GAAP accounting but account in accordance with PRC-GAAP or IFRS with a one-time annual adjustment to German GAAP or for all companies that do not account fully electronically in one ERP- or financial accounting system (e.g. financial accounting in PRC GAAP or IFRS with a one-time manual adjustment to German GAAP at year-end outside the ERP- or financial accounting system).

3.5.6.3 Advance rulings

The tax offices and the central Federal Tax Office may, on application, provide advance rulings on the treatment for tax purposes of precisely defined, as yet unrealised circumstances where this is of special interest in the light of significant tax implications. Fees are charged for processing applications and are calculated on the basis of the value of the advance ruling for the applicant (i.e. based on the amount of taxes at stake). The value amounts to at least EUR 5,000 and is limited to EUR 30 million. Therefore the minimum fee is EUR 241 and the maximum fee EUR 109,736. Where the value cannot be determined even by way of estimate, a time-related fee of EUR 50 per half hour will be charged, the minimum being EUR 100.

Advance Pricing Agreements (APA) are possible if a double tax treaty is applicable that contains a mutual agreement and consultation procedure comparable to Section 25 of the OECD Model Convention (subject to a fee). A bilateral APA provides certainty particularly on transfer pricing for transactions between two countries.

3.5.6.4 Registration requirements for tax purposes

After the general business registration of the enterprise in the relevant municipality, the company must register with the competent tax authorities. This registration must be effected within one month after the general business registration has taken place.

Registration for tax purposes is effected by completing a specific tax questionnaire provided by the tax authorities to the taxpayer. The tax authorities use the tax questionnaire to collect certain information for tax purposes, for example the register number, the address and the form of business of the company. Moreover, this questionnaire contains information concerning the planned future taxable income for corporate income tax and trade tax prepayment purposes for the year of initial registration and on a preliminary basis for following years.

3.5.6.5 Tax audit
The statute of limitation is generally four years following the year of filing the tax return. For larger businesses, generally every tax year will be tax audited.

The tax authorities execute a tax audit for an overall review regarding taxable issues on a regular basis. The tax audit generally covers a period of 3 to 5 years of earlier years which have been assessed with reservation as to verification. Once a tax audit has been finalised, a tax audit report will be issued, the taxes under review will be newly assessed considering any changes made during the tax audit. After this assessment, the tax years are finally assessed and cannot be in general changed again.

3.5.6.6 Obligation to deduct and pay wage taxes and social contributions for German employees
If the company plans to hire employees in Germany, registration with the following authorities is required:

- tax office (the competent tax office for wage tax purposes may differ from the competent tax office for corporate income tax),
- Government employment agency,
- statutory health insurance under which employees are insured,
- statutory insurance against industrial accidents.

The competent tax office will issue a tax number which must be used when reporting monthly withholding taxes, i.e. wage tax, church tax, and solidarity surcharge.

The Government employment agency provides an employer number ("Arbeitgebernummer") which is used to report the monthly contributions to the German social security carriers, i.e. pension insurance, unemployment insurance, health insurance and old-age care insurance.

The health insurance is provided by the companies with whom the employees are insured and they are the body to whom the total amount of the monthly social contributions to the German social security carriers has to be paid.

German legislation obliges an employer to withhold wage tax and solidarity surcharge, as well as church tax if applicable. The taxes withheld by the employer have to be reported and paid to the competent tax authorities on a monthly basis.

Up to 2012, the employee was required to obtain a tax card from the tax authorities. The tax card contained details of the marital status of the employee which were important for the employer's wage tax deduction obligations. The card had to be handed to the employer by the employee. From 2013 onwards an electronic process named ELStAM was adopted. The employee's obligation was completely transferred to the employer, who is now responsible for the collection of electronic data. Furthermore, the employer is obliged to provide employees with their ELStAM data and to provide access to this data upon request.

To cope with the specific requirements of the Financial Sector, Deloitte's specialists in this industry can provide valuable insights and support.

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3.6 Specific regulatory considerations for the banking sector in Germany

3.6.1 Entering the German banking market

3.6.1.1 Overview

Despite the effects of the financial crisis, the German banking market is considered healthy compared to other banking markets in Europe. This is mainly due to a strong savings bank and credit union sector.

Foreign banks have used several strategies to conduct banking business in Germany. Foreign banks have

- offered direct cross-border services;
- established subsidiaries;
- set up branches;
- set up representative offices;
- “passported” financial services: i.e. they have conducted their business cross-border within the European Economic Area (EEA) under the freedom of services regime.

In addition, several foreign banks have established a stand-alone credit institution in Germany or purchased shares in existing credit institutions.

The amount of supervision a foreign bank requires depends on the services provided. The following subsections provide a brief overview of the regulatory systems which apply to the above-mentioned strategies.

3.6.1.2 Regulatory formalities for setting up a bank in Germany

Pursuant to § 32 of the German Banking Act (KWG), prior administrative authorisation by the BaFin (Federal Financial Supervisory Authority) is required to conduct banking business in Germany.

To obtain the required regulatory authorisation, specific requirements must be met. These requirements cover the essential aspects of the organisation such as the minimum capital required, shareholder control, “fitness and properness” of Board of Directors, and business plans which include the business strategy, administrative structure as well as the control procedures.

3.6.1.3 Direct cross-border services

Direct cross-border services are any banking activities which are directed at the German market. Cross-border services are made possible by offering services from China, with no special licensing or permission required as long as a German business was the one asking for the services. This is known as reverse solicitation or passive freedom of services. However, reverse solicitation must be documented and proven and may not be used in a systemic way to avoid license requirements.

Although there is an exemption process under § 2 (5) (KWG), it unfortunately remains the case that Chinese banks are still not eligible. It is to be hoped that this will change in future, considering the way in which the Chinese banking sector continues to build upon their recent successes. Brexit led to a reevualiation of the exemption process.

3.6.1.4 Setting up a branch in Germany
There are two ways of setting up a subsidiary in Germany. Foreign banks may either purchase shares in a bank or set up a de novo subsidiary.

Purchasing shares in an existing bank is relatively simple from the corporate point of view. There is no licensing process, and the subsidiary is ready to use, in the sense that the subsidiary already has a building with the staff to run the business, and potentially existing clients. On the downside, there is a non-objection process under § 2c KWG. It may take time to find a subsidiary that suits all the needs of the acquiring bank, and care should be taken with hidden costs such as Due Diligence and changing the structure of the organisation or carving out certain businesses or assets that do not match with the acquirer's business strategy.

Setting up a subsidiary can help reduce these problems. For one thing it is possible to establish a customised bank, designed specifically with certain goals in mind. In addition, no Due Diligence is involved, and no historic legal or tax risks to worry about. The drawbacks of doing this include having to pass a demanding licensing process, and finding new clients.

Passporting: branch of an EEA bank in Germany
Passporting is a way of using the permission of one country inside the EEA in another country. In other words, first a legal organisation is created in another European country such as Luxembourg. Once this organisation is established, a German subsidiary can be formed using a faster and more simplified notification process. The new subsidiary would still have to follow German regulations, but not as many (so called residual supervision). For example, anti money laundering rules, liquidity and capital requirement reporting must still be respected.

Passporting has a few advantages. Firstly, supervision and regulation by the German authorities is minimised. German auditing rules do not have to be followed, and there are no unique capital requirements. Specific transfer pricing contracts are possible, and often there is no requirement to take part in a deposit or investment protection fund.

However, there are drawbacks: it is still necessary to show the capital allocation, and the bank in Germany is limited to the activities permitted by the original European home country. Also, anti-money laundering documentation may be requested, and the main office's annual financial statements must be published.

Branch of a non-EEA bank in Germany
A non-EEA entity is entitled to establish a branch in Germany, which provides banking services. Because this branch will be considered to be a credit institution, the application and regulatory requirements are identical to the ones needed to set up a credit institution in Germany.

This would mean having to find a proper location, new clients, and setting up new relationships with a variety of regulators in order to obtain the licences and permits needed. However, an advantage is that this could possibly grant more control to head office, and the branch could be set up the way head office would like it to be.

3.6.1.5 Representative office
Setting up a representative office is a very limited way to enter the German banking market. A representative office must inform the German authorities about their purpose in setting up an office, and they may only do market research and advertising and no active marketing of financial services which require authorisation.

3.6.1.6 Business under the freedom of services regime
Based on § 53b (1) KWG, credit institutions dealing with deposits, lending, principal broking or underwriting services in a member state of the EEA are entitled to provide their services in Germany under the freedom of services regime within the EEA (European Passport), without establishing a representative office in Germany. The regulatory supervision remains solely with the regulatory authority of the Home State.

3.6.1.7 Financial services institutions as well as payment institutions and electronic money institutions
The options for foreign banks, financial services institutions or entities to operate a financial services institution in Germany are basically the same as with regard to credit institutions as outlined above. However, one exception applies to services provided under the European Passport regime. § 53b (1) KWG covers only financial services institutions which provide investment broking, investment advice, placement business, contract broking, portfolio management, proprietary trading or operate a multilateral trading system.

In order to operate a payment institution or an electronic money institution in Germany the options outlined above are generally also available to foreign payment institutions, electronic money institutions or entities respectively. However, they may differ as the relevant law is the Payment Services Supervision Act (ZAG), rather than the KWG. The ZAG does not cover representative offices in Germany.

3.6.2 Corporate Income Tax
3.6.2.1 Attribution of profits
A branch of a Chinese Bank in Germany will normally be deemed to be a permanent establishment (PE) of the Chinese Bank for German tax purposes. As already outlined above, this means that the Chinese Bank will be subject to limited income taxation in Germany on the net taxable income deemed attributable to the German branch. The combined applicable tax rate will be about 32% (CIT and TT) (see Chapter 3.5.2).

The Branch Profit Attribution Regulation introduced into German law provides detailed guidance regarding the application of the Authorised OECD Approach ("AOA") in Germany. The basic idea of the AOA is to treat a PE as a (nearly) fully independent and separate entity for tax purposes. This implies the consistent application of the arm's length principle also to internal dealings between the PE and its head office and between PEs of the same company based on a respective function and risk analysis. The Branch Profit Attribution Regulation governs, in particular, the principles of asset attribution, branch capital allocation and the recognition of internal dealings.

Usually, arm's length transfer prices are determined taking into account the functions performed, the risks assumed and the assets used by the related parties involved in the intercompany transaction. In the context of PEs, in a first step, the significant people functions performed by the PE have to be identified based on the activities of the locally employed personnel. Next, the assets used and risks assumed that are associated with these people functions have to be attributed to the different parts of the enterprise. Finally, the branch capital must be attributed to the permanent establishment in relation to the attributed functions and risks. On the basis of this attribution, the internal dealings between the head office and its PEs and between PEs of the same company have to be identified and an arm's length remuneration must be determined. The general two-step approach of the AOA for the profit attribution is applicable.

According to Art. 7 para. 2 of the Republic of China – Germany tax treaty, the profits to be attributed to a PE are those which the PE might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a PE. This approach corresponds to the application of the "dealing at arm's length" principle.

3.6.2.2 Minimum amount of "equity" for German tax purposes

Under German legal requirements, companies acting in the banking sector and having their registered office outside Germany have to ensure that the German branch is provided with sufficient capital ("allotted capital"). A circular from the Federal Ministry of Finance must be observed when determining the minimum amount of allotted capital to be allocated to the German branch. The rules for banks' branch capital allocation remain nearly unchanged in comparison to the above-mentioned relevant Administrative Principles.

The capital allocation method is the preferred method for determining the capital attributable to the domestic PEs of foreign banks. According to this method, the bank's equity ("free capital") must be attributed to the German branch using the risk-weighted exposure amounts determined according to the regulatory law of the home country of the bank as the allocation key. According to the reasoning of the regulation, the term "risk-weighted exposure amounts" directly refers to EU-Regulation No. 575/2013 (the Capital Requirements Regulation – CRR). Based on the strict wording of the CRR, the risk-weighted exposure amounts relate only to the credit and dilution risk and the counterparty risk for certain transaction types. With regard to the operational and market risks, the wording of the regulation does not use the phrase "risk-weighted exposure amount", so it would seem that these risks need not be considered for the branch capital allocation. The German branch must be allocated a share in the equity that equals the total equity of the bank - determined according to German tax accounting rules - times the risk-weighted exposure amounts attributable to the German branch divided by the risk-weighted exposure amounts of the whole bank. For purposes of this calculation, the risk-weighted exposure amounts resulting from internal dealings should not be taken into account. For the sake of simplicity, the taxpayer can use as the amount of equity the paid-in capital plus the reserves and retained earnings minus the accumulated deficit – all taken from the foreign balance sheet – if it can make plausible that this equity amount does not significantly deviate from the equity that would have been determined based on German tax law.

The taxpayer can apply a different method for the capital allocation and attribute less capital to the German branch if it can demonstrate that this result better reflects the arm's length principle. If the taxpayer applies this escape clause, at least the capital amount that would result from applying the regulatory minimum capital approach must be attributed to the German branch. This means that the PE must be attributed core capital at least in the amount the branch would be required to hold based on the regulatory law if it were to operate as a legally separate entity in the German market. In addition to this, the German legislator assumes that the branch holds a buffer of 0.5 percentage points of the sum of its risk-weighted exposure amounts in order to be able to expand the business at any moment.

It is well appreciated that the simplification rule for small banks has been extended to domestic PEs of foreign banks with a balance sheet total in their Auxiliary Calculation below EUR 1 billion (before that, the threshold amounted to only EUR 500 million). The PEs eligible for this safe harbour rule do not need to determine their branch capital based on any of the above mentioned methods if the PE is attributed capital in the amount of at least 3% of its total assets. The minimum amount of capital attributed to the German branch under this rule is EUR 5 million. The taxpayer is free not to apply this simplification rule but to use the standard method, e.g. if the capital allocation methodology leads to a capital of less than 3% of the branch's total assets or to a lower amount than the minimum amount of EUR 5 million.

The Branch Profit Attribution Regulation does not permit the application of one of the methods described above to lead to the attribution of free capital to the German PE that is less than the capital that has been recorded in the statutory accounts of the German branch – if such statutory accounts have been prepared.

After having determined the assets and the branch capital in the Auxiliary Calculation, the liabilities have to be attributed to the German branch in order to equalise the balance sheet. If feasible, a direct attribution of liabilities and their associated refinancing expenses must be performed. If a direct attribution is not feasible or causes a disproportionate burden, an indirect attribution of liabilities must be performed and the average refinancing expenses of the indirectly attributable liabilities have to be attributed to the German branch. In comparison to the actual public ruling on the branch capital allocation, the simplification rule to apply the average 12-month EURIBOR for any correction of the non-deductible refinancing expenses associated with the free capital did not find its way into the new regulation.

3.6.2.3 Specific tax computation considerations for branches of Chinese Banks

In general, based on the assumption that the accounting books of the branch reflect a true and fair view of the fact that the key functions performed, assets used and risks borne by the branch are consistent with the assets and liabilities and hence the income allocation to be made to the branch for German tax purposes, the tax base of the branch will be determined on the basis of the branch's accounting profit or loss calculated under German GAAP, which must then be adjusted to take into account the provisions of German tax law (see also Chapter 3.5.6.1).

An area where differences typically arise between the accounting profit or loss of bank branches and the German tax base is inter alia allowances for bad debts.

Receivables can be written down to a lower value either by way of lump-sum allowances or by way of a provision for specific doubtful debts.

The general risk of default is crucial for applying lump-sum allowances. Hence, such an allowance should reflect default risks which occur with a certain probability. However, there is no specific indication at the level of the company that the receivables on hand are doubtful. For financial institutions, the German Ministry of Finance issued a specific decree as regards lump-sum allowances (BMF circular dated 10.01.1994, IV B 2-S 2174-45/93). As stated in this decree, a financial institution may recognise a lump-sum allowance for the general default risk inherent in receivables from customers, which is existent at the balance sheet date, but which has not been identified and hence no specific bad debt provision is possible.

Provided that the company identifies circumstances that enable it to draw the conclusion that the receivable concerned is subject to a specific risk which overlaps the general default risk, it must recognise the specific risk by means of a provision for specific doubtful debts.

3.6.3 Value Added Tax

3.6.3.1 Output VAT: the VAT exemption on financial services

Most of the transactions performed by banks and other entities in the financial service sector are regarded as VAT exempt for German VAT purposes.

The following transactions are exempt from German VAT for example:

- granting of and dealing with credits,
- issuance of and dealing with money,
- dealing with shares, stocks, bonds, debentures and promissory notes,
- operation of the usual current, savings and deposit accounts.

If the VAT exemption on certain financial services applies, banks and other financial entities, which are VAT-registered in Germany (such as in principle a branch in Germany of a foreign bank), may generally not charge German output VAT to their customers.

3.6.3.2 Input VAT

VAT paid when purchasing goods and services can generally be deducted if the taxpayer performs transactions which are subject to German VAT.

Due to the fact that most of the usual transactions of banks and other financial entities are exempt from German VAT, banks and other financial entities cannot fully deduct input VAT paid. Moreover, although according to German VAT law, taxpayers can in certain cases opt in favour of VAT, this rule does not normally apply to most business activities in the financial sector. As a result, input VAT typically constitutes an area of cost for the financial services sector.

Banks and other financial entities can only deduct a limited amount of input VAT if they additionally perform transactions that are subject to German VAT or other VAT-exempted transactions qualifying for the input VAT deduction.
In view of the limitations on input VAT recovery, intra-group services within banking groups may potentially increase the group's tax bill. Therefore, to minimise the VAT costs arising from intra-group transactions it could be helpful to establish a VAT-group in Germany or to choose other methods of structuring commissions within the group.

In the light of the implementation of the reverse charge mechanism for EU-cross-border services, the input VAT deduction restrictions also apply to those transactions. In addition, obligations for a VAT registration need to be checked. Finally, taxpayers operating in the financing sector are also obliged to submit European sales lists.

3.6.4 Withholding tax

3.6.4.1 Dividends

The dividend withholding tax rate is 25% plus solidarity surcharge of 5.5% according to domestic law. However, German domestic tax law provides for a unilateral relief of two-fifths of the levied withholding tax upon application if the beneficial owner of the dividend distribution is a foreign corporation, i.e. a withholding tax reduction from 26.375 % to 15.825 % can be achieved. The German withholding tax may further be reduced by an applicable double taxation treaty or the EU Parent-Subsidiary Directive.

Under the EU Parent-Subsidiary Directive, domestic withholding tax will be reduced to zero if dividends are distributed to a qualifying EU shareholder that has held at least 10% of the subsidiary for at least 12 months. The distributing company may only apply the lower rate of withholding tax under a treaty or the Directive if the parent company obtained an exemption certificate from the German Federal Tax Office before the payment is made.

But in each case the German Anti Treaty Shopping Rules need to be observed.

3.6.4.2 Interest

Generally, Germany does not levy any withholding tax on interest paid to non-resident companies in consideration of unsecured loans. Exceptions apply e.g. to 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% plus solidarity surcharge of 5.5%. The withholding tax rate may be reduced by an applicable tax treaty or if the requirements of the EC Interest and Royalties Directive are met.

In each case the German Anti Treaty Shopping Rules need to be observed.

3.6.4.3 Royalties

The statutory withholding tax rate on royalty and lease payments paid to non-resident corporations is 15%. A 30% withholding tax applies to royalty and lease payments if paid to persons other than corporations (e.g. individuals) and such persons opt for the deduction of business expenses when calculating the withholding tax base. Withholding tax on royalties may be reduced under a tax treaty or the EC Interest and Royalties Directive. The administrative procedure is similar to the procedure for dividends (i.e. an exemption certificate must be obtained before payment of the royalties).

In each case the German Treaty Shopping Rules need to be observed.

If the company is considered as a banking institution within the meaning of § 53b KWG, the company is obliged to deduct withholding tax for specific interest payments to domestic customers in respect of their deposits.

According to German tax rules, the company must pay the withholding tax deducted from interest payments to the tax authorities for and behalf of their customers. The withholding tax must be paid by the company to the tax authorities on a monthly basis within ten days of the end of the month concerned. There are exceptions from the company's obligation to deduct withholding tax.

Payments to:	Interest	Dividends	Royalties
Resident companies	26.375%	26.375%	0%
Non-resident companies	0% - 26.375%	0% - 26.375%	15.825%*

* provided that the tax is not borne by the German debtor.

3.6.5 Capital gain taxation

There is no separate capital gains tax in Germany; capital gains are included in taxable income unless exempt under the participation exemption. Generally, all capital gains realised by an enterprise from the disposal of business assets are treated as ordinary business income. But gains derived from sale of shareholding between corporations generally enjoy advantages.

But there are special rules applicable to banks and other financial institutions. The 100% tax exemption is not applicable to shares attributable to the trading book of banks and financial service providers under § 1a KWG. The same applies to shares acquired by a financial business within the meaning of the KWG with the aim of deriving a short-term proprietary trading gain.

Our Services

Our business model, with in-depth competencies in audit, tax, consulting and financial advisory services, uniquely positions Deloitte to deliver superior value and assist clients in managing change. Member firms are assisting companies to comply with new regulatory requirements so that they can successfully participate in the public capital markets. Deloitte is integrating clients' technology, processes and human capital so that they can compete more effectively. Below is a high-level introduction to the key services related to outbound investment.

Audit & Assurance Services

With our experience in local and international laws and regulations, we can assist you with the all-important obligation of meeting applicable reporting requirements. Our audit specialists examine your financial statements and accounting records to give you an independent opinion on reports to shareholders, directors, trustees and others. Our traditional role as Auditors also places us in an ideal position to build up a clear understanding of your business, enabling us to help you identify the major risks and opportunities in your strategies and activities. Additionally, we provide financial statement reviews, fact-finding reports on financial information, capital verification assurance, business operation assessment, and reporting services for foreign exchange and special purposes.

As your Reporting Accountants, we help prepare and submit audited statements and accounts in compliance with listing requirements. At the pre-listing stage, we can play a pivotal role in assisting you with approaching sponsors and underwriters, and in providing consultation and advice in your negotiations with them. With state of the art technology, our professionals deliver efficient and cost effective audit solutions to you.

Consulting Services

As the world's largest management consulting firm, we help organisations build value by providing insights that create new futures and doing the hard work to improve performance. Delivering this kind of value requires a broad range of talent and capabilities – across human capital, strategy & operations and technology – and importantly, aligned to the unique needs of specific sectors, businesses and organisations.

Our clients look to us for the ability to implement the ideas we present. They expect excellent performance that draws upon our breadth of industry and service experience. Simply put, we provide our clients with world-class insights that generate tangible and measurable impact.

Risk Advisory Services

With continual technological innovation, increased accountability at boardroom and senior management levels and changes to the regulatory environment, managing risk has become more complex. Our Enterprise Risk Services (ERS) combine to help you better identify, measure and manage risk and enhance the reliability of your control system and procedures.

Financial Advisory Services

The Financial Advisory practice at Deloitte provides expert and in-depth advice to corporate clients, private equity houses, MBO/MBI teams, entrepreneurs and government. We offer strategic and financial advisory services to help assess, measure and minimise the impact of fraud on business; business and advisory services to companies and their stakeholders in both in-court and out-of-court reorganisations and much more.

Our China Financial Advisory team is part of Deloitte's Asia Pacific network and, as a result, we are experienced in advising on complex cross-border assignments at a local level and offer you a breadth of sector expertise that few can rival. We are able to draw upon specialist knowledge within Financial Advisory and work across other areas of the firm to help you successfully implement a solution no matter how complex it may be.

The breadth of our skills is just the starting point. We combine these skills to develop well-rounded solutions based on a full understanding of your ambitions, your business and the environment in which you compete. We believe this integrated approach gives clients of Deloitte a clear commercial advantage.

Tax Services

Whether you are looking to expand overseas or to invest in Hong Kong or the Chinese Mainland, you will need to ensure compliance with the complex tax laws and regulations across jurisdictions while at the same time ensure efficiency and effectiveness of your assets. Our tax specialists are made up of professionals from the organisation's international tax practice, as well as local consultants, a number of whom are former tax officials with a thorough understanding of tax systems and regulations in all relevant locations. Based on long years of experience advising Chinese clients investing in Germany, our team of tax advisors in the CSG will support you to implement suitable tax concepts considering your individual business needs for your overseas investments and guide you through the regulations to meet your compliance obligations.

Legal Services

With our sub-service lines Commercial, Corporate/M&A, Employment & Pensions, Regulated Industries und Tax Controversy, we at Deloitte Legal cover all areas of law that are of importance for undertakings and entrepreneurs. A number of attorneys in our offices are also admitted as public notaries and can assist our clients with transactions which under German law require the involvement of a Notary Public, be it certifications or execution of agreements or resolutions as public deeds. Thanks to our multilingual Country Desks and the long-standing relationship with colleagues in a multitude of countries, Deloitte Legal is a reliable advisor whenever it comes to investments in foreign countries or expansion into new markets, where we combine our international experience with local roots. The bundling of expertise in our Industry Groups Energy & Resources, Manufacturing, Consumer Business and Real Estate allows us to render interdisciplinary advice that anticipates trends and developments specific to particular industries. Thereby, we help our clients in adapting to ever changing regulatory and economic needs.

We believe that legal advice is never an isolated component but as a contributing to comprehensive solutions for the challenges which our clients face. This means that not only can we render highly qualified legal advice for the benefit of our clients; our close cooperation with the other functions at Deloitte also gives us the opportunity to offer integrated one-stop solutions in tax advice, assurance, consulting and corporate finance. Solutions that come from a strong interdisciplinary team and do not just stop at the legal assessment but take all relevant aspects into consideration.

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