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2.5.1.2 Regulatory formalities for setting up a bank in Germany
2.5.1.3 Direct cross-border services
2.5.1.4 Setting up a branch in Germany
2.5.1.5 Representative office
2.5.1.6 Business under the freedom of services regime
2.5.1.7 A side note on financial services institutions as well as payment institutions and electronic money institutions
2.5.2 Corporate Income Tax
2.5.2.1 Attribution of profits
2.5.2.2 Minimum amount of “equity” for German tax purposes
2.5.2.3 Specific tax computation considerations for branches of Chinese Banks
2.5.3 Value Added Tax
2.5.3.1 Output VAT: the VAT exemption on financial services
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2.5.4 Withholding tax
2.5.4.1 Dividends
2.5.4.2 Interest
2.5.4.3 Royalties
2.5.5 Capital gain taxation
How can Deloitte help?
Our Services
Deloitte offices in China
Deloitte offices in Germany
Dear Reader,
Welcome to the 2016 edition of “Investing in Germany – A guide for Chinese businesses”.

Today, China has become an economy with net capital outflow and has recorded significant outbound investments and cross-border M&A transactions for consecutive years. For Chinese companies, the linchpin of growth is shifting from the domestic market to overseas markets. Over 2005-2015, Chinese investors were largely buying Manufacturing and Consumer Business assets in Western Europe, among which, Germany remains one of the top target countries for Chinese investments in the region.

Established in 2003, Deloitte’s Global Chinese Services Group (GCSG) aims to advise Chinese companies who are expanding their global presence. This network is deployed in various countries and geographic regions with professionals possessing Chinese speaking capabilities and knowledge about China and Chinese companies so as to provide professional advice and comprehensive solutions to Chinese companies investing overseas.

Through the joint efforts of our CSG team in Germany and the Deloitte German Desk in Shanghai, we hereby present you with this “Investing in Germany – A guide for Chinese businesses”, to help you obtain an overview of the investment environment and business guidelines in Germany. We hope you will find this publication useful and also encourage you to reach out to us for professional advice on and comprehensive solutions for your investment in Germany.

Rosa Yang
Global Chinese Services Group Chairman

Dirk Hällmayr
Chinese Services Group Leader
Germany
1. Economic environment

1.1 China-German economic relationship

1.1.1 General relationship and trade volume

Over the past 25 years (1990-2015), 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.

In 1991, German companies exported goods worth just EUR 2.15 billion to China. According to Federal Statistical Office figures, in 2015 German exports to China were worth EUR 71.2 billion. German imports from China in 2015 were worth EUR 91.5 billion, an increase of 14.7 per cent compared with the previous year.

Since 2002, China has been Germany's second biggest export market outside Europe, after the USA and ahead of Japan. Germany is China’s largest European trading partner by far, ranking fifth overall among China's trading partners (and fourth excluding Hong Kong).

China is also the largest supplier of German imports, its exports to Germany consisting mainly of electrical goods, toys, textiles and garments as well as machinery and plant.

1. Economic environment

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 cities in Germany (including their surrounding metropolitan areas) attracted most Chinese investment until now:

- Duesseldorf
- Frankfurt and
- Hamburg.

But there are other cities and regions in Germany that might accommodate the individual needs of Chinese investors just as well or even better. 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 Putzmeister by Sany in 2012 was doubtless a milestone in this regard and other transactions followed and reached a new height in early 2016 with the acquisition of EEW Energy from Waste at a purchase price of about EUR 1.4 billion (although the Federal German Cartel Office still has to approve the deal). The following table (see page 06) provides some examples of M&A transactions by Chinese investors over the past years:
### Selected M&A transactions over the past years

<table>
<thead>
<tr>
<th>Announcement</th>
<th>German Target</th>
<th>Chinese Investor</th>
</tr>
</thead>
<tbody>
<tr>
<td>22 March 2016</td>
<td>MANZ</td>
<td>Shanghai Electric Group</td>
</tr>
<tr>
<td>6 February 2016</td>
<td>Bilfinger Water Technologies</td>
<td>Chengdu Techcent Environment Group</td>
</tr>
<tr>
<td>4 February 2016</td>
<td>EEW Energy from Waste</td>
<td>Beijing Enterprises</td>
</tr>
<tr>
<td>11 January 2016</td>
<td>KraussMaffeiGruppe</td>
<td>ChemChina</td>
</tr>
<tr>
<td>8 July 2015</td>
<td>Hauck &amp; Aufhaeuser</td>
<td>Fosun</td>
</tr>
<tr>
<td>29 May 2014</td>
<td>Hitite</td>
<td>AVIC / AVICEM</td>
</tr>
<tr>
<td>28 January 2014</td>
<td>CYBEX</td>
<td>Goodbaby (HK)</td>
</tr>
<tr>
<td>30 September 2013</td>
<td>Flex Power Tools</td>
<td>Chervon Holdings</td>
</tr>
<tr>
<td>4 May 2013</td>
<td>Sphairon Technologies</td>
<td>ZyXEL Communications Corporation</td>
</tr>
<tr>
<td>3 May 2013</td>
<td>Kugel- und Rollenlagerwerk Leipzig</td>
<td>Wafangdian Bearing Group</td>
</tr>
<tr>
<td>28 September 2012</td>
<td>ThyssenKrupp Tailored Blanks</td>
<td>Wuhan Iron and Steel Corporation</td>
</tr>
<tr>
<td>26 September 2012</td>
<td>Solibro</td>
<td>Hanergy Holding</td>
</tr>
<tr>
<td>21 April 2012</td>
<td>Schwing Group</td>
<td>Xuzhou Construction and Machinery Group</td>
</tr>
<tr>
<td>13 March 2012</td>
<td>Kieckert</td>
<td>Hebei Lingyun Industrial Group</td>
</tr>
<tr>
<td>30 January 2012</td>
<td>Putzmeister</td>
<td>Sany Heavy Industry</td>
</tr>
<tr>
<td>18 January 2012</td>
<td>Saunalux</td>
<td>Anhui Sauna King</td>
</tr>
<tr>
<td>10 January 2012</td>
<td>Kromberg &amp; Schubert Group</td>
<td>Shenzhen Deren Electronic</td>
</tr>
<tr>
<td>2 January 2012</td>
<td>Sunways</td>
<td>LDK Solar</td>
</tr>
<tr>
<td>16 December 2011</td>
<td>Vits Print</td>
<td>Shanghai Electric Group</td>
</tr>
<tr>
<td>9 November 2011</td>
<td>Sellner und IPG Industriepalast</td>
<td>Ningbo Huaxiang Electronic</td>
</tr>
<tr>
<td>7 September 2011</td>
<td>Format Tresorbau Beteiligungs</td>
<td>Dutech</td>
</tr>
<tr>
<td>24 August 2011</td>
<td>Roth &amp; Rau CTF Solar</td>
<td>Buyer undisclosed</td>
</tr>
<tr>
<td>7 July 2011</td>
<td>KSM Castings</td>
<td>Citic Dicastal Wheel Manufacturing</td>
</tr>
<tr>
<td>16 June 2011</td>
<td>Rhode &amp; Schwarz Professional Mobile Radio</td>
<td>Hytera Communications</td>
</tr>
<tr>
<td>1 June 2011</td>
<td>Medion</td>
<td>Lenovo Group</td>
</tr>
<tr>
<td>8 April 2011</td>
<td>Preh</td>
<td>Ningbo Joyson Automotive Electronic</td>
</tr>
<tr>
<td>3 April 2011</td>
<td>SaarGummi International</td>
<td>Chongqing Light Industry and Textile Holdings Group</td>
</tr>
<tr>
<td>29 March 2011</td>
<td>Vivanco Gruppe</td>
<td>Ship Group</td>
</tr>
<tr>
<td>25 January 2011</td>
<td>Gustrower Wärmepumpen</td>
<td>SmartHeat</td>
</tr>
<tr>
<td>21 December 2010</td>
<td>KHD Humboldt Wedag International</td>
<td>Aviation Industry Corporation of China</td>
</tr>
<tr>
<td>8 December 2010</td>
<td>Emag Holding</td>
<td>Jiangsu Jinsheng Industry</td>
</tr>
<tr>
<td>30 August 2010</td>
<td>Dürkopp Adler</td>
<td>Zoje Sewing Machine</td>
</tr>
<tr>
<td>22 June 2010</td>
<td>CM Chemiemetall</td>
<td>Buyer undisclosed</td>
</tr>
<tr>
<td>10 March 2010</td>
<td>Multiple targets</td>
<td>Chongqing Machinery &amp; Electric</td>
</tr>
</tbody>
</table>
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.

1.1.3 Cooperation agreements
There is a wide variety of cooperation and twinning 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:

### Major partnerships between cities and regions

<table>
<thead>
<tr>
<th>German City/ Federal State/Region</th>
<th>Chinese City/Province</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hamburg</td>
<td>Shanghai</td>
</tr>
<tr>
<td>Berlin</td>
<td>Beijing</td>
</tr>
<tr>
<td>German Federal State – Saarland</td>
<td>Tianjin, Hubei</td>
</tr>
<tr>
<td>German Federal State - Lower Saxony</td>
<td>Province-Anhui</td>
</tr>
<tr>
<td>Wolfsburg (LS)</td>
<td>Chongchun</td>
</tr>
<tr>
<td>German Federal State – Hesse</td>
<td>Province-Jiangxi</td>
</tr>
<tr>
<td>Frankfurt am Main (Hesse)</td>
<td>Guangzhou</td>
</tr>
<tr>
<td>Offenbach am Main (Hesse)</td>
<td>Yangzhou</td>
</tr>
<tr>
<td>German Federal State – Saarland</td>
<td>Province-Hunan</td>
</tr>
<tr>
<td>German Federal State – North Rhine-Westphalia (NRW)</td>
<td>Province-Sichuan, Province-Jiangsu</td>
</tr>
<tr>
<td>Cologne (NRW)</td>
<td>Beijing</td>
</tr>
<tr>
<td>Duesseldorf (NRW)</td>
<td>Chongqing, Shenyang</td>
</tr>
<tr>
<td>Bonn (NRW)</td>
<td>Chengdu</td>
</tr>
<tr>
<td>Dortmund (NRW)</td>
<td>Xi’an</td>
</tr>
<tr>
<td>Duisburg (NRW)</td>
<td>Wuhan</td>
</tr>
<tr>
<td>Bochum (NRW)</td>
<td>Xuzhou</td>
</tr>
<tr>
<td>German Federal State - Bavaria</td>
<td>Province-Shandong</td>
</tr>
<tr>
<td>Augsburg (Bavaria)</td>
<td>Jinan</td>
</tr>
<tr>
<td>Freising (Bavaria)</td>
<td>Weifang</td>
</tr>
<tr>
<td>Konstanz (Bavaria)</td>
<td>Suzhou</td>
</tr>
<tr>
<td>Nuremberg (Bavaria)</td>
<td>Shenzhen</td>
</tr>
<tr>
<td>German Federal State – Bremen</td>
<td>Province-Guangdong, Dalian</td>
</tr>
<tr>
<td>German Federal State - Baden Wuerttemberg (BW)</td>
<td>Province-Jiangsu, Province Liaoning</td>
</tr>
<tr>
<td>Mannheim (BW)</td>
<td>Zhenjiang</td>
</tr>
<tr>
<td>German Federal State - Schleswig-Holstein</td>
<td>Province-Zhejiang</td>
</tr>
<tr>
<td>German Federal State – Rhineland-Palatinate</td>
<td>Province-Fujian</td>
</tr>
<tr>
<td>German Federal State - Thuringia</td>
<td>Province-Shaanxi</td>
</tr>
<tr>
<td>German Federal State - Saxony-Anhalt</td>
<td>Province-Heilongjiang</td>
</tr>
<tr>
<td>Erfurt (Thuringia)</td>
<td>Yan’an</td>
</tr>
<tr>
<td>Rostock (Mecklenburg-Vorpommern)</td>
<td>Dalian</td>
</tr>
<tr>
<td>Leipzig (Saxony)</td>
<td>Nanjing</td>
</tr>
</tbody>
</table>
Germany is one of the world's premier trading nations, with a powerful export sector.
Investing in Germany | A guide for Chinese businesses

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, Luxembourg, 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 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
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. Promotion can be granted either as a tax benefit, allowance, guarantee, loan or participation.
1.3 Industry focus: an introduction to the German automotive and real estate industries

1.3.1 Automotive industry and automotive suppliers

1.3.1.1 Automotive industry – recent developments

According to the industry association VDA, the automotive industry in Germany is looking back on a successful year 2014. In spite of a difficult economic and political environment, revenues across all segments increased to EUR 368bn (+2% year-on-year). Approximately two thirds of this amount (EUR 237bn) were generated by export sales, while domestic turnover totalled EUR 131bn. At EUR 285bn, automotive OEM generated the largest portion of overall revenues.

In terms of new car registrations, the automobile market achieved a sales volume of slightly over 3 million. Reduced private customer spending was a main driver of this development, as new private registrations fell by almost 2%. Overall, the proportion of private owners hit a new low at 36%, driven by the uncertain economic outlook. Passenger cars are lasting longer and being kept longer, which increases average vehicle age and negatively impacts consumption.

In terms of unit sales of OEM brands, German manufacturers slightly increased their market share to 72%, followed by Japan as the largest importer and France in third place, both at around 9%; South Korea was at about 5%.

1.3.1.2 The German automotive supplier industry

The German supplier industry increased its turnover in 2014 by 5% to EUR 73.3bn. Unlike motor manufacturers, who achieve an export share of about 72%, German suppliers generate the bulk of their turnover domestically, with OEMs predominantly producing in Germany. Export revenues accounted for 37% of overall suppliers’ revenues (EUR 27.4bn), thus growing by 8% over the previous year. However, taking account of the OEMs’ significant export
Based on its globalisation efforts in recent years, global footprint and cutting-edge technology, German suppliers are also a major contributor to employment in Germany. At the end of 2014, 297,500 people (+2% year-on-year) were employed in the components industry.

1.3.1.3 Current trends and topics in the automotive supplier industry

The European automotive supplier industry has recently seen new trends affect their business models. In particular, the eMobility theme is driving diversification, consolidation and changes in suppliers’ business models.

Financing and investing are becoming more and more strategic instruments for leading financial officers. Managing capital investments and taking the right decisions on asset allocation is important for suppliers, due to a growing need for flexibility in productive capacity and local customer proximity.

Technology continues to be the main differentiator of successful companies. The innovation power of R&D departments is vital, while hiring highly qualified personnel in Europe is still a bottleneck. In the near future we will see products becoming further modularised.

German supply industry: Turnover and employment

<table>
<thead>
<tr>
<th>Turnover in billions of euros</th>
<th>Employees in 1,000s</th>
</tr>
</thead>
<tbody>
<tr>
<td>180</td>
<td>220</td>
</tr>
<tr>
<td>220</td>
<td>240</td>
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<tr>
<td>260</td>
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<td>2006</td>
<td>2013</td>
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<tr>
<td>2007</td>
<td>2014</td>
</tr>
</tbody>
</table>

Source: VDA
Protectionism will cause a regional shifting of productive capacity to Asia. We will see an enhanced importance of entering into strategic alliances, joint ventures and direct investment in emerging markets. Founding a new branch or production plant will bring considerable advantages when entering new markets. Localisation is not only essential for achieving customer proximity, but also for a successful market entrance. Additional productive capacity in the USA, Mexico, China and other emerging markets will come on stream in the next few years. The motor manufacturers are depending here on support from their Tier 1 suppliers, who can further reinforce their business relationship by expanding global parts supplies.

What for larger suppliers may seem almost self-evident is far from normality for their smaller brethren. This is because executing such a project often requires a major commitment of finances and manpower, which places a considerable strain on available resources. That is why these companies should also investigate whether it makes sense to venture abroad in collaboration with other companies. Without international positioning, smaller companies as well will be unable to sustain their competitive position. Even in the upstream links of the value chain, the ability to produce and deliver worldwide will assume greater importance.

Even if after careful investigation and initial successes the localisation decision seems positive, there are certain risks of a project such as this that cannot be entirely eliminated, as can be seen from the current difficult development of the Russian market. However, the long-term market opportunities should not, and must not, be overlooked.

Current trends in the automotive supplier industry
1.3.1.4 M&A opportunities among German automotive suppliers

Historically, the automotive supplier industry and industrial companies have always been focus areas for Chinese investments in Europe, and particularly Germany. This is mainly due to the fact that China’s auto industry has extended its ambitions to a global scale and requires international know how, technology, employees and a production footprint as well as access to European OEMs. Accordingly, Chinese investors nowadays intend to grow and foster acquired companies rather than closing down formerly unproductive targets.

Accordingly, most distressed automotive suppliers which were taken over by Chinese buyers during or after the automotive crisis years have been restructured and turned around. OEMs heavily support a vivid supplier landscape in order to avoid market shares of >40% and reduce their dependency on single suppliers. Furthermore, OEM welcome Asian, and in particular Chinese, interest in German suppliers as they profit from a globally qualified Tier 1 and 2 base, and expect to profit from Chinese low-cost approaches combined with Western technology.

In terms of subsectors, the German electronics and power train manufacturers are of particular interest. According to Deloitte surveys, German suppliers in these segments have significantly outperformed their European peer group in terms of revenue growth and return on assets driven by recent industry trends such as efficiency improvements, hybridisation and engine downsizing. Additionally, the German supplier landscape is characterised by a large number of successful medium-sized enterprises. These hidden champions often show profitability profiles which are equal to, or even excel, their comparable large companies.

An additional supporting trend for Asian investment is the withdrawal of financial investors from the automotive segment. Many private equity-backed suppliers experienced severe trouble during the crisis, which backfired into highly leveraged financing structures. While the financial industry has slowly regained confidence in the sector, it is still strategic investors, including Asian parties, who currently dominate the M&A market.

Overall, Chinese investors have professionalised their M&A approach in Germany and are today a buyer group which plays a significant role in almost any transaction process for automotive suppliers.
1.3.2 Real estate industry

1.3.2.1 Real estate market – recent developments

German real estate continues to perform steadily, if not impressively, according to the latest available data. German property achieved a total return (income return plus capital growth) of roughly 6.0% during 2014, according to MSCI, its best performance in more than 12 years. Of the major asset classes, only bonds produced a higher return, at 12.8%.

All sectors and all the main markets have seen yield compression (prime yields in the meaning of net initial yields) in 2015. However, significant further falls are only expected with the strength of investment demand in some sectors, for core+ and opportunistic investments outside A-/B-locations. With investor sentiment improving across the majority of sectors, including office premises, shopping centres and logistics, further downward pressure on yields is expected, which should produce further solid performance.

<table>
<thead>
<tr>
<th>Prime Yields per Sector</th>
<th>Q4 2015</th>
</tr>
</thead>
<tbody>
<tr>
<td>Office</td>
<td>4.00 %</td>
</tr>
<tr>
<td>Retail – High street</td>
<td>3.50 %</td>
</tr>
<tr>
<td>Retail – Shopping centre</td>
<td>4.20 %</td>
</tr>
<tr>
<td>Retail - Warehouse</td>
<td>5.75 %</td>
</tr>
<tr>
<td>Logistics</td>
<td>5.50 %</td>
</tr>
<tr>
<td>Residential – Portfolios</td>
<td>3.50 %</td>
</tr>
<tr>
<td>Hotel</td>
<td>5.00 %</td>
</tr>
</tbody>
</table>

Source: Deloitte

In the first half of 2015, Germany produced one of the strongest growths in investment volume among the main European countries, rising by 14% on H1 2014 to just over EUR 28.8bn. Much of this has been due to an increase in residential investment, from around EUR 6.8bn in H1 2014 to EUR 10.8bn in H1 2015, overtaking office premises as the largest sector in the process.

Domestic investors have dominated the residential sector, accounting for 88% of purchases during the year to June 2015, with Israeli, Swedish and UK buyers leading cross-border activity.

By type of buyer, REITs and other listed property companies have largely driven the increase in transactions – up 60% compared with H1 2014. US, French and Israeli firms notably picked up the pace along with German companies. Private companies became net disinvestors in H1 2015.

The top four German cities (Berlin, Frankfurt, Hamburg and Munich) have increased their share of the total investment in German real estate, up from 37% in H1 2014 to 49% in H1 2015.
1.3.2.2 Commercial real estate investment market sets new cyclical record

In 2015, the German commercial real estate investment market almost reached the 2007 all-time high. 2015 marked the sixth consecutive annual increase. A total volume of EUR 55bn was transacted in the national commercial real estate investment market. The investment volume 2015 surpasses the corresponding previous year result by nearly 40%.

The fourth quarter 2015 just contributed over 30% to the annual result and marked the strongest quarter for sales in the past five years.

By international standards, the potential returns on commercial and residential property are in some cases still significantly higher than in other markets, e.g. in Asia. Accordingly, a significant proportion of foreign investors were buying, running at around 50% in 2015.

In the top 7 locations, Berlin, Duesseldorf, Frankfurt, Hamburg, Cologne, Munich and Stuttgart, the investment volume increased significantly by EUR 8bn overall, up 35% year-on-year.
1.3.2.2.1 Office premises
In the fourth quarter of 2015, approximately 40% of total transaction volume was in the office sector, which has traditionally been the most significant in the German market. Most notable investment still takes place in Germany’s top 7 cities, with Berlin becoming the new investment magnet (EUR 7.9bn in 2015).

Office letting markets have seen rental growth over recent months: take-up volume stood at approx. 3.6 million sqm at year end, 21% higher in comparison to 2014. The fourth quarter alone contributed about 30% to this result. Prime rents are traditionally attained in the German top 7 markets (cf. table). In Q4 2015, after some stagnation, prime rents have seen growth in most of the top 7 markets, where demand is still not fully anticipated in the current rental levels.

<table>
<thead>
<tr>
<th>City/Market</th>
<th>Prime rent (Q4 2015)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Berlin</td>
<td>24.00 €/sqm</td>
</tr>
<tr>
<td>Duesseldorf</td>
<td>26.00 €/sqm</td>
</tr>
<tr>
<td>Frankfurt/M</td>
<td>37.00 €/sqm</td>
</tr>
<tr>
<td>Hamburg</td>
<td>25.00 €/sqm</td>
</tr>
<tr>
<td>Cologne</td>
<td>22.00 €/sqm</td>
</tr>
<tr>
<td>Munich</td>
<td>34.00 €/sqm</td>
</tr>
<tr>
<td>Stuttgart</td>
<td>21.50 €/sqm</td>
</tr>
</tbody>
</table>

Source: CBRE, JLL, Colliers

1.3.2.2.2 Retail
After office, retail was again the most active sector in the German investment market in 2015, recording about 33% of total transaction volume. In 2015, retail deals tended to involve larger ticket sizes and portfolios. At the same time the number of deals has been falling slightly.

The retail letting market (High Street and centres) achieved a total result of approx. 525,000 sqm (or 10% lower than in 2014). Prime rents in the top 7 markets seemed rather stable in the fourth quarter of 2015. Currently, Berlin is the only city expected to see a further significant rise in prime rents in the near future.

<table>
<thead>
<tr>
<th>City/Market</th>
<th>Prime rent (Q4 2015)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Berlin</td>
<td>24.00 €/sqm</td>
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<td>Duesseldorf</td>
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<td>Cologne</td>
<td>22.00 €/sqm</td>
</tr>
<tr>
<td>Munich</td>
<td>34.00 €/sqm</td>
</tr>
<tr>
<td>Stuttgart</td>
<td>21.50 €/sqm</td>
</tr>
</tbody>
</table>

Source: CBRE, JLL, Colliers
1.3.2.3 Logistics
Total investment volume rose in 2015 for the fourth year in a row, reaching nearly EUR 4.1bn at year-end. With EUR 1.5bn being sold in the fourth quarter of 2015, this is the strongest quarterly result since 2007.

Demand for logistics space continues to be high. Especially as the supply of new and modern space is still low, new sites designated for logistics use in metropolitan areas, in particular in and around the top 5 (cf. table), and at transport hubs are especially sought after. The ongoing shortage of supply is limiting the volume of transactions, which is in turn limiting further yield compression.

<table>
<thead>
<tr>
<th>City/Market</th>
<th>Prime rent (Q4 2015)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Berlin</td>
<td>4.70 €/sqm</td>
</tr>
<tr>
<td>Dusseldorf</td>
<td>5.40 €/sqm</td>
</tr>
<tr>
<td>Frankfurt/M</td>
<td>6.00 €/sqm</td>
</tr>
<tr>
<td>Hamburg</td>
<td>5.60 €/sqm</td>
</tr>
<tr>
<td>Cologne</td>
<td>22.00 €/sqm</td>
</tr>
<tr>
<td>Munich</td>
<td>6.80 €/sqm</td>
</tr>
</tbody>
</table>

Source: CBRE, JLL, Colliers
1.3.2.4 Residential portfolios

The overall investment volume for residential portfolios in 2015 was EUR 24bn, exceeding the record result from 2005 by almost 25%. In the fourth quarter of 2015 alone residential units worth around EUR 4.8bn were sold (an increase of 159% compared with Q4 2014). Further takeovers and portfolio (share) deals are expected in 2016.

While multiple small- and medium-sized deals took place in the third quarter of 2015, large-scale transactions by German listed housing companies predominated the market in Q4 2015, including a number of share deals. Recently, the big players, in particular German listed housing companies, have pursued aggressive takeover strategies to achieve further growth and to unlock potential synergy from the acquisition and asset management of large stocks of multi-family apartments.

In a nutshell, the German residential market is characterised by distinct factors such as polycentricity and the heterogeneity of locations; unlike other European markets such as France or the U.K., there is no clear investment focus on the capital or a limited number of major cities, but rather a large number of relevant A- to C-locations and metropolitan areas for investment opportunities. Multi-family residential property is still in demand with reference to A-/B-locations enhanced by additional demand due to the influx of refugees in H2 2015 and 2016. While prices are still heating up in the most popular markets (especially in top 7 locations), there is also currently a shift of investment focus to B-/C-locations where yields are more attractive and there is still deemed to be upside potential. However, the German residential letting market is also highly regulated, limiting upward rental opportunities from the investor’s point of view.

<table>
<thead>
<tr>
<th>City/Market</th>
<th>Average sales prices for single apartments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Berlin</td>
<td>3,450 €/sqm</td>
</tr>
<tr>
<td>Dusseldorf</td>
<td>3,340 €/sqm</td>
</tr>
<tr>
<td>Frankfurt/M</td>
<td>3,990 €/sqm</td>
</tr>
<tr>
<td>Hamburg</td>
<td>4,000 €/sqm</td>
</tr>
<tr>
<td>Cologne</td>
<td>3,940 €/sqm</td>
</tr>
<tr>
<td>Munich</td>
<td>6,600 €/sqm</td>
</tr>
<tr>
<td>Stuttgart</td>
<td>4,340 €/sqm</td>
</tr>
</tbody>
</table>

Source: Deloitte Research based on RCA, MSCI
1.3.2.5 Recent key developments in top 4 locations (Berlin, Frankfurt, Hamburg and Munich)

**Berlin**

The attraction of Berlin to investors has risen tremendously over the last couple of years, even more in 2015. The total value of deals completed in H1 2015, EUR 5.5bn, was more than double the total for the same period in the previous year, moving Berlin ahead of Frankfurt as the largest market in Germany.

Interest in retail property has picked up noticeably over recent quarters, with just under EUR 0.72bn transacted in Q2 2015, close to the volume of office deals. The residential sector, however, has become the dominant sector: the first quarter of 2015 saw an exceptional EUR 1.5bn of apartment assets traded, across seven separate deals, with both domestic and cross-border listed property companies prominent in the market.

Overall, the share of foreign capital has increased slightly. A more noticeable shift since the start of 2015, however, has been the share of the market gained by listed property companies – from below 5% in the whole of 2014, they took 38% of transactions in H1 2015, spending around EUR 2.2bn.

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**Market metrics – Berlin**

<table>
<thead>
<tr>
<th>metric</th>
<th>2015 value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total investment H1</td>
<td>EUR 5,502m</td>
</tr>
<tr>
<td>Percentage from foreign investors</td>
<td>45.5%</td>
</tr>
<tr>
<td>All property total return 2014</td>
<td>6.2%</td>
</tr>
<tr>
<td>All property income return 2014</td>
<td>4.8%</td>
</tr>
<tr>
<td>All property capital growth 2014</td>
<td>1.3%</td>
</tr>
<tr>
<td>Office prime yield Q3 2015</td>
<td>4.25%</td>
</tr>
</tbody>
</table>

Source: RCA, MSCI

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With the assignment of multinational and interdisciplinary teams, Deloitte can support you in real estate investments, in practice in real estate valuation, financing strategies and tax-related planning

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**Frankfurt**

Despite slipping to second place behind Berlin among German cities, Frankfurt still saw a substantial increase in investment volume - up about 45% comparing H1 2015 with the previous year, with the second quarter of 2015 particularly strong.

Frankfurt’s market remains weighted towards the office sector: the 63% share in H1 2015 was just marginally below that in the whole of 2014. Funds are the largest class of purchaser in this sector, with domestic and foreign-based funds closely matched.

Among the other sectors, residential property has increased its share of the market, from 5% in 2014 to 12% in H1 2015, driven largely by domestic buyers, but foreign capital is becoming more active.

### Market metrics – Frankfurt

<table>
<thead>
<tr>
<th>Metric</th>
<th>Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total investment H1 2015</td>
<td>EUR 4,230m</td>
</tr>
<tr>
<td>Percentage from foreign investors</td>
<td>45.4%</td>
</tr>
<tr>
<td>All property total return 2014</td>
<td>4.4%</td>
</tr>
<tr>
<td>All property income return 2014</td>
<td>4.6%</td>
</tr>
<tr>
<td>All property capital growth 2014</td>
<td>-0.3%</td>
</tr>
<tr>
<td>Office prime yield Q3 2015</td>
<td>4.40%</td>
</tr>
</tbody>
</table>

Source: RCA, MSCI

**Hamburg**

Of the four main German cities for real estate investment, Hamburg has seen slow but steady growth over the last year. The H1 2015 total of EUR 2.4bn was 8% higher than H1 2014.

Alone among the top four German cities, Hamburg faced a decline in the market share of foreign investment, down from 46% in 2014 to 31% in H1 2015. Domestic demand has been more volatile, peaking recently in Q1 2015 when transactions totalled EUR 1.3bn, over half of which was on apartment buildings. Not surprisingly, therefore, the market share has shifted significantly towards residential, up from 12% in 2014 to 36% in the first half of 2015, and this has been largely at the expense of the office sector.

### Market metrics – Hamburg

<table>
<thead>
<tr>
<th>Metric</th>
<th>Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total investment H1 2015</td>
<td>EUR 2,401m</td>
</tr>
<tr>
<td>Percentage from foreign investors</td>
<td>30.6%</td>
</tr>
<tr>
<td>All property total return 2014</td>
<td>6.4%</td>
</tr>
<tr>
<td>All property income return 2014</td>
<td>5.0%</td>
</tr>
<tr>
<td>All property capital growth 2014</td>
<td>1.3%</td>
</tr>
<tr>
<td>Office prime yield Q3 2015</td>
<td>4.10%</td>
</tr>
</tbody>
</table>

Source: RCA, MSCI
**Munich**

Cross-border investor activity in Munich has been notably stronger in H1 2015. From a 33% share of the market in 2014, foreign investors now outstrip domestic buyers.

Overseas funds focussed almost exclusively on the office sector, while private companies were more active in acquiring retail assets.

The total value of investment in Munich in H1 2015, EUR 2.9bn, was around 19% higher than the first half total the previous year, a somewhat lower increase than seen in Berlin and Frankfurt.

The types of property in demand have largely remained unchanged since last year, with a small increase in the market share taken by residential - in line with other German cities – with domestic buyers dominant.

### Market metrics – Munich

<table>
<thead>
<tr>
<th>Metric</th>
<th>2015 Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total investment H1</td>
<td>EUR 2,910m</td>
</tr>
<tr>
<td>Percentage from foreign investors</td>
<td>57.2%</td>
</tr>
<tr>
<td>All property total return 2014</td>
<td>7.2%</td>
</tr>
<tr>
<td>All property income return 2014</td>
<td>4.7%</td>
</tr>
<tr>
<td>All property capital growth 2014</td>
<td>2.4%</td>
</tr>
<tr>
<td>Office prime yield Q3 2015</td>
<td>3.80%</td>
</tr>
</tbody>
</table>

Source: RCA, MSCI
2. Regulatory environment

2.1 Company law and setting up a business

2.1.1 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 beschränkter 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 oder KG), in which the liability of at least one partner is unlimited (general partner) and limited for the other partner(s) (limited partner(s)).

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

Dr. Michael Fischer
Deloitte Legal
mifischer@deloitte.de
• 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 of Incorporation 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% of the capital has been paid in; the minimum that must be paid in at registration is EUR 12,500 (additional collateral requirements up to 100% exist where there is only one founding member). 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 Europaea (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.
2.1.2 Characteristics of the principal forms of business entities

Requirements for an AG

Capital. Minimum capital is EUR 50,000. At least 25% of the nominal 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% 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% of annual profits after taxes must go into a legal reserve account until the reserve has reached 10% 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 EUR 500,000 in shares may do the following: call an extraordinary shareholders’ meeting or put topics on the agenda of the shareholders’ meeting; object to a decision of the shareholders’ meeting for the formation of reserves, if this decision is shown to be “economically unreasonable” and request a special audit if the business report seems incomplete or assets are believed to be undervalued. A minority of 10% or EUR 1 million may force a vote on a nominated board member and demand a special audit of the annual financial statements and management report, even if the report appears to be complete.
**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 (additional collateral requirements up to 100% exist in cases where there is only one founding member). 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 “Unternehmergeellschaft (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 by-laws. 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.

Corporate income tax is assessed on branch income at a flat rate of 15% (plus the 5.5% solidarity surcharge, which results in a combined rate of 15.825%), regardless of whether branch profits are retained in Germany or repatriated to a foreign head office. Additionally, municipal trade tax is levied. It typically ranges between 14% and 18%. Accordingly, the effective corporate rate typically ranges between 30% and 33%. The remittance of branch profits is not subject to withholding tax, but remitted subsidiary profits (dividends) face a 25% (26.4%, including the solidarity surcharge) withholding tax (except for profits remitted to qualifying EU parent companies), with a possible 40% refund for non-resident corporations, giving rise to an effective rate of 15.825%. A tax treaty may specify a lower rate. Strict anti-treaty shopping rules apply.

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.
2.1.3 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. Furthermore, the UK is a good location as well, considering there is no withholding tax under national tax law.

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 which are only accepted up to three tiers, so a flat structure would be preferable from the perspective of an ultimate Chinese shareholder.

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.
2.1.4 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 regulation on technology transfer (“TT-Regulation”) 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 TT-Regulation only applies where the joint market share of the parties on the relevant market does not – in case of competitors – exceed 20% and – in case of non-competing entities – 30%.

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 TT-Regulation 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.

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).

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
2.1.5 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, in German, of mergers and acquisitions (M&As) 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 25 million; and
- domestic turnover of another participating company was more than EUR 5 million.

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.

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 achieves 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 achieves 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.
2.1.6 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.

2.1.7 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%.

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.
2.1.8 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 an 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.

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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2.2 Labour law

2.2.1 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 between trade unions and employers. The German Civil Code regulates employment contracts. The Commercial Code partly covers the employer-employee relationship and contains regulations on commercial agents.

German labour law is aligned with EU guidelines governing wage 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 local personnel are employed, 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 staff, workers 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 employee works councils and employee representation on the Supervisory Board level. In a company with more than 100 employees, the Works Council may elect a economic committee, which discusses company decisions with management and then passes the information on to the Works Council. In a company with more than 500 but not more than 2,000 employees, one-third of the seats on the Supervisory Board must be reserved for worker representatives. For companies with more than 2,000 workers, 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. Collective labour and Works Council agreements usually regulate the details. The normal working day is eight hours and can be extended to 10 hours if the six-month average does not exceed eight hours per day. Certain exceptions apply to healthcare, restaurants, transport and agriculture. Shift work is permitted, and there must usually be an 11-hour break between shifts. Collective labour 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 vacation period is 20 working days for full-time employees (five-day week). On average, the workforce is entitled to an annual vacation of 30 days, by collective labour agreement.
2.2.2 Wages and benefits

(Minimum) Wages
The German Minimum Wage Act has been in effect since 1 January 2015. Under this, employees in Germany are entitled to a minimum wage of EUR 8.50 gross per hour. 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 made from 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. 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 2.4.6.6). 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 on average 40% of gross income below annually defined ceilings. Typically, employers and employees each pay half of the charges. Non-wage worker costs include the following:

• Compulsory health insurance
The insurance covers employees and their families. The general contribution percentage is 14.6% of the monthly gross pay up to EUR 4,125.00 (the employer’s contribution rate is 7.3% and the employee’s contribution is also 7.3% plus an additional contribution if implemented by the respective insurance institution – on average 0.9%). All workers with regular annual salaries lower than EUR 54,900.00 must be enrolled in the compulsory scheme.

• Private health insurance
Salaried workers whose wages exceed the ceiling may opt out of the compulsory scheme and choose private health insurance. Privately insured persons may claim a contribution toward their premium from their employer equal to that required for the compulsory health insurance.

• Long-term nursing care/disability insurance
This scheme is compulsory. Contributions are 2.35% of the monthly gross salary up to EUR 4,125.00, payable half by employer and employee each. Additionally, since January 1, 2005, employees without children have to pay a supplemental 0.25% of their contribution base. This does not apply to persons under 23 years of age, born before January 1, 1940, or currently drafted in military or civil 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. These 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 3.0% of the gross monthly salary up to EUR 6,050.00 (EUR 5,200.00 in the former Eastern states), payable half by employer and employee each.

• **Pension insurance**
The statutory pension scheme calls for contributions of 18.7% of gross monthly salary up to EUR 6,050.00 (EUR 5,200.00 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 that will allow the employee to remain in his/her home scheme for a limited number of years under certain conditions. Germany has such agreements with 50 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 branches 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.

2.2.3 **Termination of employment**
The law governing dismissals protects from dismissal those workers hired after 1 January 2004 who work for companies with a workforce of more than 10, unless there is specific justification. Dismissal notice periods vary according to the length of the labour contract. 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. 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. Members of Works Councils may be dismissed only in grave instances. Women may not be dismissed during their pregnancy and within four months of giving birth.

Employers must inform the Works Council of planned layoffs. Trade unions enforce these rules rigorously. In practice, companies wishing to lay off staff 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. Notice periods may be modified, within limits, in collective bargaining agreements. The rules for firms employing 10 or fewer than ten persons are considerably less stringent.
2.2.4 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 labour agreements traditionally apply to an entire industry nationwide.

German labour law requires arbitration and approval of a strike by 75% of union members. The law limits the reasons for which strikes may be called and provides for penalties for infractions. 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 Law blocks federal compensation for workers on short time or laid off because of a strike in another part of the country. The legislation provides for disputes to be settled by a “neutrality committee,” with the right of appeal to the Federal Labour Court.

2.2.5 Employment of foreigners

2.2.5.1 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.

2.2.5.2 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 takes approximately 4 - 8 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. After arrival this visa will have to be converted into a short or long term residence permit.

2.2.5.3 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 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 will be necessary to ask for an amendment of the existing German residence permit.

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 49,600 (in 2016). For occupations in which there is a shortage (doctors, IT professionals, mathematics, engineers, etc.) according to the Federal Ministry of Labour the annual salary threshold amounts to EUR 38,688 (in 2016). In those cases the employees are exempted from the time-consuming priority review.

Blue Card holders can receive a permanent residence permit (“Niederlassungserslaubnis”) 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.

In contrast to the above, EU nationals do not require a residence or work permit for Germany.
2.2.5.4 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.

2.2.5.5 Dependents
The application for residence permits for accompanying family members 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.

2.2.5.6 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 arrival. The confirmation of registration is a pre-requisite 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 2.4.3). 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 leaving.

Various services are offered by Deloitte to support the process of workforce deployment and related employee relocations. They comprise, for example, easy-to-handle solutions for employers and the employees to comply with German regulations.

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2.3 Accounting and auditing

2.3.1 Obligation to prepare statutory accounts and the respective exemptions

Separate financial statements

The basic rules, codified in the Commercial Code, affect all firms. 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 after six to nine months 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 are met in two years in a row

<table>
<thead>
<tr>
<th>Category</th>
<th>Balance sheet total (EUR)</th>
<th>Revenues (EUR)</th>
<th>Employees (average headcount)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Very small corporations (&quot;Kleinstkapitalgesellschaften&quot;)</td>
<td>&lt; 350,000.00</td>
<td>&lt; 700,00.00</td>
<td>&lt; 10</td>
</tr>
<tr>
<td>Small corporations</td>
<td>&lt; 6,000,000.00</td>
<td>&lt; 12,000,000.00</td>
<td>&lt; 50</td>
</tr>
<tr>
<td>Medium-sized corporations</td>
<td>&lt; 20,000,000.00</td>
<td>&lt; 40,000,000.00</td>
<td>&lt; 250</td>
</tr>
<tr>
<td>Large corporations</td>
<td>&gt; 20,000,000.00</td>
<td>&gt; 40,000,000.00</td>
<td>&gt; 250</td>
</tr>
</tbody>
</table>

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.
• Very small corporations do not need to prepare separate 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 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. if the parent company of the concern 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 paid (see also Chapter 2.4.6.1).
Consolidated accounts

Corporates 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 do not need to be prepared if two of the following thresholds are not exceeded – 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. Note that the consolidated financial statements of a Chinese ultimate parent company generally do not 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 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. 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 2.3.4.

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 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.

<table>
<thead>
<tr>
<th>Category</th>
<th>Summarised accounts (EUR)</th>
<th>Consolidated accounts (EUR)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Balance sheet total</td>
<td>24,000,000.00</td>
<td>20,000,000.00</td>
</tr>
<tr>
<td>Revenues</td>
<td>48,000,000.00</td>
<td>40,000,000.00</td>
</tr>
<tr>
<td>Employees</td>
<td>250</td>
<td>250</td>
</tr>
</tbody>
</table>
2.3.2 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 2.1.1 and 2.1.2.

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, together with • the management report, • a proposal (and later on the decision) on the allocation of profits and • the audit opinion by an independent accountant • (and, in the case of listed AGs, a statement of compliance with the German Corporate Governance Codex).
Certain exemptions apply to small and medium-sized companies. Those exemptions refer to disclosure and are more comprehensive than the exemptions which apply to the preparation of the financial statements (see Chapter 2.3.1) 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:

<table>
<thead>
<tr>
<th>Item to be published</th>
<th>Very small corporations</th>
<th>Small corporations</th>
<th>Medium corporations</th>
<th>Large corporations</th>
</tr>
</thead>
<tbody>
<tr>
<td>Balance sheet</td>
<td>Submission of an aggregated balance sheet to the Federal Gazette, but no publication</td>
<td>Balance sheet may be further aggregated for publication</td>
<td>Balance sheet may be further aggregated for publication</td>
<td>No exemption</td>
</tr>
<tr>
<td>Income statement</td>
<td>No submission or publication due to exemption</td>
<td>Income statement may be further aggregated for publication</td>
<td>No exemption</td>
<td>No exemption</td>
</tr>
<tr>
<td>Notes to the financial statements</td>
<td>Not applicable</td>
<td>Aggregation corresponding to balance sheet</td>
<td>Aggregation corresponding to balance sheet and income statement</td>
<td>No exemption</td>
</tr>
<tr>
<td>Management report</td>
<td>Not applicable</td>
<td>Not applicable</td>
<td>Aggregation corresponding to balance sheet and income statement</td>
<td>No exemption</td>
</tr>
<tr>
<td>Audit opinion of independent external auditor</td>
<td>Not applicable</td>
<td>Not applicable</td>
<td>No exemption</td>
<td>No exemption</td>
</tr>
<tr>
<td>Report of the Supervisory Board</td>
<td>No submission or publication due to exemption</td>
<td>No publication due to exemption</td>
<td>If Supervisory Board exists: no exemption</td>
<td>If Supervisory Board exists: no exemption</td>
</tr>
<tr>
<td>Proposal (if applicable) and decision for the allocation of profits</td>
<td>If applicable: submission to Federal Gazette but no publication</td>
<td>If applicable: no exemption</td>
<td>If applicable: no exemption</td>
<td>If applicable: no exemption</td>
</tr>
<tr>
<td>Statement of compliance with the German Corporate Governance Codex</td>
<td>Not applicable (as listed companies are treated as large companies)</td>
<td>Not applicable (as listed companies are treated as large companies)</td>
<td>Not applicable (as listed companies are treated as large companies)</td>
<td>If listed company: no exemption</td>
</tr>
</tbody>
</table>

1 see Baetge/Hagemeister/Brembt/Lappenkuepper 2014, Publizitaet und Offenlegung in: Baetge/Krisch/Thiele.
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 single-entity 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 2.3.1 for the requirements), are also exempted from the publication of their financial statements. Those companies only have to publish the fact that they enjoy the relevant exemption and the name of the company in whose consolidated financial statements they are included.

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.
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.
2.3.3 Audit of financial information

The shareholders of large and medium-sized firms (see explanation of large and medium-sized companies in Chapter 2.3.1) 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 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 the same as 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 2.3.2) 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 an AG it is required that the auditor of the annual financial statements also give 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 spill over 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 fulfill 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 2.1.8).
2.3.4 Accounting rules according to German GAAP, IFRS and PRC-GAAP (CAS)

As mentioned above (See Chapter 2.3.1), 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.
## Intangible assets

### General treatment

<table>
<thead>
<tr>
<th>Area</th>
<th>CAS - PRC GAAP</th>
<th>IFRS</th>
<th>HGB – German GAAP</th>
</tr>
</thead>
<tbody>
<tr>
<td>Intangible assets</td>
<td>Generally recognised as an asset if recognition criteria (owned or controlled by the enterprise, probability of economic benefit flows and reliable measurement of cost, CAS 6.3 &amp; 6.4) are fulfilled.</td>
<td>Generally recognised as an asset if recognition criteria (owned or controlled by the enterprise, probability of economic benefit flows and reliable measurement of cost, IAS 38.13, IAS 38.21 &amp; IAS 38.22) are fulfilled.</td>
<td>Recognised if general recognition criteria for assets are fulfilled and intangible asset is acquired from a third party. Capitalisation of internally generated intangible assets (development costs) optional (§ 248 II HGB). Non-recognition of:</td>
</tr>
<tr>
<td></td>
<td>Non-recognition of:</td>
<td>Non-recognition of:</td>
<td>• internally generated goodwill</td>
</tr>
<tr>
<td></td>
<td>• internally generated goodwill, brands and publishing titles, etc. (CAS 6.11)</td>
<td>• internally generated goodwill (IAS 38.48)</td>
<td>• internally generated goodwill</td>
</tr>
<tr>
<td></td>
<td>• internal research cost (CAS 6.8)</td>
<td>• internally generated brands, mastheads, publishing titles, customer lists and items similar in substance (IAS 38.63)</td>
<td>• internally generated customer lists, brands and publishing titles (§ 248 II HGB)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• internal research cost (IAS 38.54)</td>
<td>• research costs (§ 255 II S. 4 HGB)</td>
</tr>
</tbody>
</table>

### Development cost

<table>
<thead>
<tr>
<th>Area</th>
<th>Recognised as an asset if the following conditions are met (CAS 6.9):</th>
<th>Recognised as an asset if the following conditions are met (IAS 38.57):</th>
<th>Expensed or option to capitalise development costs (definition in § 255 IIa HGB) as a non-current asset if the general recognition criteria including the following condition are met:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>• technical feasibility of completion</td>
<td>• technical feasibility of completion</td>
<td>• high probability of generating an individually marketable asset</td>
</tr>
<tr>
<td></td>
<td>• intention of completion for sale or internal use</td>
<td>• intention of completion for sale or internal use</td>
<td>According to the prevailing view in the accounting literature it is acceptable to consider the criteria of IAS 38.57.</td>
</tr>
<tr>
<td></td>
<td>• demonstration of generating future economic benefits flowing to the entity</td>
<td>• demonstration of generating future economic benefits flowing to the entity</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• availability of adequate technical, financial and other resources for completion of development and ability to use or sell</td>
<td>• availability of adequate technical, financial and other resources for completion of development and ability to use or sell</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• ability of reliable measurement of expenditures during development phase</td>
<td>• ability of reliable measurement of expenditures during development phase</td>
<td></td>
</tr>
</tbody>
</table>

### Subsequent measurement

| Area                  | 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). For intangible assets with an indefinite useful life: impairment-only approach (CAS 6.19 & CAS 8.4). Reversals of impairment losses in subsequent periods are prohibited (CAS 8.17). | Cost model or option of revaluation model if the assets are traded on an active market (IAS 18.72). 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 For intangible assets with an indefinite useful life: impairment only approach (review annually). Impairment losses must be reversed in subsequent periods if the reasons for the recognition do not exist anymore (exception: goodwill). | For intangible assets with a finite useful life: amortisation over useful life (usually straight-line). 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 (development costs). Impairment losses must be reversed in subsequent periods if the reasons for the recognition do not exist anymore (exception: goodwill, § 253 V HGB). |

### Acquired goodwill

<p>| Area                  | 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). Negative goodwill recognised as income in the current period after thorough reassessment (CAS 20.13 for business combinations). | Obligation to capitalise (IFRS 3.32) and impairment-only approach for subsequent measurement with an annual review. Negative goodwill recognised as income in the current period after thorough reassessment (IFRS 3.34.) | Obligation to capitalise (§ 246 I 5.4 HGB) and amortise over useful life - usually 5 years, if longer, explanatory statement required in the notes (§ 285 No. 13 HGB). Negative goodwill must be recognised on the liability side of the balance sheet between equity and liabilities (§ 301 I clause. 3 HGB) and may be released to the income statement according to the general principles (§ 309 II HGB). |</p>
<table>
<thead>
<tr>
<th>Area</th>
<th>CAS - PRC GAAP</th>
<th>IFRS</th>
<th>HGB – German GAAP</th>
</tr>
</thead>
<tbody>
<tr>
<td>Property, plant and equipment General definition</td>
<td>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).</td>
<td>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).</td>
<td>Property, plant and equipment include items which are intended to be used on a continuous basis in the business operations of the entity (§ 247 Abs. II HGB).</td>
</tr>
</tbody>
</table>
| 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)  
- borrowing cost if certain criteria are met (CAS 17 qualifying asset)  
If a lump sum payment is made for purchasing several fixed assets that are not priced separately, the cost of each fixed asset shall be determined by allocating the lump sum payment according to the proportion of fair value of each asset to the total fair value of all assets acquired. | 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 dismantling 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  
- 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. |
| 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).  
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).  
Reversals of impairment losses in subsequent periods are prohibited (CAS 8.17). | 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.  
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.  
Impairment losses must be reversed in subsequent periods if the reasons for the recognition do not exist anymore. | Depreciation over useful life (§ 253 III HGB); different depreciation methods are allowed.  
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.  
Impairment losses must be reversed in subsequent periods if the reasons for the recognition do not exist anymore.  
German accounting standards also accept the usage of a fixed value for immaterial items under certain circumstances (§ 240 III HGB). |
<table>
<thead>
<tr>
<th>Area</th>
<th>CAS - PRC GAAP</th>
<th>IFRS</th>
<th>HGB – German GAAP</th>
</tr>
</thead>
<tbody>
<tr>
<td>Leasing</td>
<td>A lease is defined as an agreement whereby the lessor conveys to the lessee in return for a rent the right to use an asset for an agreed period of time (CAS 21.2).</td>
<td>A lease is defined as an agreement whereby the lessor conveys to the lessee in return for a payment or series of payments the right to use an asset for an agreed period of time (IAS 17.4).</td>
<td>German accounting law does not include any special 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).</td>
</tr>
<tr>
<td>Classification</td>
<td>A finance lease is a lease that transfers substantially all the risks and rewards incidental to ownership of an asset. Title may or may not eventually be transferred (CAS 21.5).</td>
<td>A finance lease is a lease that transfers substantially all the risks and rewards incidental to ownership of an asset. Title may or may not eventually be transferred.</td>
<td>Accounting practice for the classification 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:</td>
</tr>
<tr>
<td></td>
<td>An operating lease is a lease other than a finance lease.</td>
<td>An operating lease is a lease other than a finance lease.</td>
<td>1) full amortisation contracts, if</td>
</tr>
<tr>
<td></td>
<td>According to CAS 21.6 a lease is normally classified as a finance lease if one of the following criteria is fulfilled:</td>
<td>According to IAS 17.10 a lease is normally classified as a finance lease if one of the following criteria is fulfilled:</td>
<td>• for land, the buildings on the land meet the criteria for finance leases</td>
</tr>
<tr>
<td></td>
<td>• lease transfers ownership of asset to lessee by the end of the lease term</td>
<td>• lease transfers ownership of asset to lessee by the end of the lease term</td>
<td>• 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</td>
</tr>
<tr>
<td></td>
<td>• lessee has bargain purchase option</td>
<td>• lessee has bargain purchase option</td>
<td>• for property, plant, equipment and buildings, the fixed lease term is below 40 % or exceeds 90 % of useful life</td>
</tr>
<tr>
<td></td>
<td>• lease term is for the major part of the economic life of the asset</td>
<td>• lease term is for the major part of the economic life of the asset</td>
<td>• the leased assets are of such a specialised nature that only the lessee can use them without major modifications</td>
</tr>
<tr>
<td></td>
<td>• present value of minimum lease payments amounts to at least substantially all of the fair value of the leased asset at the inception of the lease</td>
<td>• present value of minimum lease payments amounts to at least substantially all of the fair value of the leased asset at the inception of the lease</td>
<td>2) partial amortisation contracts, if</td>
</tr>
<tr>
<td></td>
<td>• the leased assets are of such a specialised nature that only the lessee can use them without major modifications</td>
<td>• the leased assets are of such a specialised nature that only the lessee can use them without major modifications</td>
<td>• 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</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>• the contract includes a bargain purchase option or a bargain renewal option.</td>
</tr>
<tr>
<td>Area</td>
<td>CAS - PRC GAAP</td>
<td>IFRS</td>
<td>HGB - German GAAP</td>
</tr>
<tr>
<td>-------------------------------------------</td>
<td>-------------------------------------------------------------------------------</td>
<td>----------------------------------------------------------------------------------------------------------------</td>
<td>-------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Leasing Recognition of finance leases</td>
<td>Lessee records leased asset at the lower of the fair value of the leased asset and the present value of the minimum lease payments and recognises a long-term payable at an amount equal to the minimum lease payments. A difference between the recorded amounts of the leased asset and the payable is referred to as unrecognised finance charge (CAS 21.11). An unrecognised finance charge is allocated to each period during the lease term using the effective interest method (CAS 21.15). Leased assets are depreciated or amortised over their useful life. If there is no reasonable certainty that the lessee will obtain ownership by the end of the lease term, the asset is fully depreciated over the shorter of the lease term and its useful life (CAS 21.16). Lessors recognise the aggregate of the minimum lease receipts and the initial direct costs as finance lease receivables. The difference between the aggregate of the minimum lease receipts, the initial direct costs as well as the unguaranteed residual value, and the aggregate of their present values is referred to as unearned finance income (CAS 21.18). Unearned finance income is allocated to each period during the lease term using the effective interest method (CAS 21.19).</td>
<td>Lessees recognise finance leases as assets and liabilities at amounts equal to the fair value of the leased property or, if lower, the present value of the minimum lease payments (IAS 17.20). Minimum lease payments are apportioned between the finance charge and the reduction of the outstanding liability. The finance charge is allocated to each period during the lease term so as to produce a constant periodic rate of interest on the remaining balance of the liability (IAS 17.25). Leased assets are depreciated or amortised over their useful life. If there is no reasonable certainty that the lessee will obtain ownership by the end of the lease term, the asset is fully depreciated over the shorter of the lease term and its useful life (IAS 17.27). Lessors recognise assets (including minimum lease receipts and initial direct costs) in their statements of financial position and present them as a receivable at an amount equal to the net investment in the lease (IAS 17.36). The recognition of finance income shall be based on a pattern reflecting a constant periodic rate of return on the lessor's net investment in the finance lease (IAS 17.39).</td>
<td>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. 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.</td>
</tr>
<tr>
<td>Area</td>
<td>CAS - PRC GAAP</td>
<td>IFRS</td>
<td>HGB - German GAAP</td>
</tr>
<tr>
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<tr>
<td>Leasing Recognition of operating leases</td>
<td>Lessees recognise lease payments as an expense over the lease term, usually on a straight-line basis (CAS 21.22).</td>
<td>Lessees recognise lease payments as an expense over the lease term, usually on a straight-line basis (IAS 17.33).</td>
<td>Lessees recognise lease payments as an expense over the lease term, usually on a straight-line basis.</td>
</tr>
<tr>
<td></td>
<td>Lessors present assets in their balance sheet according to the nature of the asset. Lease income is recognised in income over the lease term, usually on a straight-line basis (CAS 21.26).</td>
<td>Lessors present assets in their statements of financial position according to the nature of the asset. Lease income is recognised in income over the lease term, usually on a straight-line basis (IAS 17.49 and 50).</td>
<td>Lessors present assets in their balance sheet. Lease income is recognised in income over the lease term, usually on a straight-line basis.</td>
</tr>
</tbody>
</table>

The International Accounting Standards Board (IASB) has issued a new standard on leasing contracts (IFRS 16). This standard will be effective for periods beginning on or after January 1, 2019. As an outlook on the new standard, its basic rules are presented in the following:

**Lessee Accounting:** Nearly all leasing arrangements have to be accounted for similar to a finance lease. Also former operating leases need to be capitalised in the lessee’s balance sheet. Exceptions only apply to short-term leases and leases of low-value assets. For capitalised leases the asset and the respective liability comprise the discounted fixed lease payments, reasonably certain optional payments and residual value-guarantees.

**Lessor Accounting** remains basically unchanged.
### Area

<table>
<thead>
<tr>
<th>Financial assets/financial instruments</th>
<th>CAS - PRC GAAP</th>
<th>IFRS</th>
<th>HGB - German GAAP</th>
</tr>
</thead>
<tbody>
<tr>
<td>General treatment</td>
<td>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).</td>
<td>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).</td>
<td>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.</td>
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<td>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 22.56).</td>
<td>Financial assets are generally measured at acquisition cost including incidental and subsequent acquisition expenses.</td>
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<tr>
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<td>Financial instruments are measured based on the following categories: • Loan and receivables • Measurements based on contracted-for amounts using amortised cost and the effective interest method • Held-to-maturity • Measurements based on investment (acquisition) cost • Available-for-sale • Fair value through other comprehensive income • Held-for-trading as well as designated as at fair value (so-called fair value option) • Fair value through profit and loss • In contrast to IFRS a reclassification of financial assets out of the available for sale and held for trading categories is not possible.</td>
<td>Financial instruments are measured based on the following categories (IAS 39): • Loan and receivables • Measurements based on contracted-for amounts using amortised cost and the effective interest method • Held-to-maturity • Measurements based on investment (acquisition) cost • Available-for-sale • Fair value through other comprehensive income • Held-for-trading as well as designated as at fair value (so-called fair value option) • Fair value through profit and loss In rare circumstances non-derivative financial assets can be reclassified out of the available for sale and held for trading categories.</td>
<td>Financial assets are generally measured at acquisition cost including incidental and subsequent acquisition expenses.</td>
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<td>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.</td>
<td>Impairment losses must be reversed in subsequent periods if the reasons for the recognition do not exist anymore (§ 253 V HGB).</td>
<td>Accounting for fair values above acquisition cost is generally not allowed (an exception applies only to certain financial instruments held by banks).</td>
</tr>
</tbody>
</table>
The International Accounting Standards Board (IASB) has issued the new comprehensive standard on financial instruments accounting (IFRS 9). This standard will be effective for periods beginning on or after January 1, 2018. As an outlook on the new standard, its basic rules are presented in the following:

Financial instruments are categorised into financial assets subsequently measured:

- at amortised cost,
- at fair value through other comprehensive income or
- at fair value through profit or loss based upon the entity's business model and the contractual cash flow characteristics of the assets. In certain circumstances, there is an option to designate financial assets to latter two categories (IFRS 9.4.1).

The rules regarding the timing and extent of the recognition of impairment losses on financial assets was changed from the “incurred loss model” to the “expected loss model”. Accordingly prognostic information on future credit losses needs to be applied (IFRS 9.5.5).

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- at fair value through profit or loss based upon the entity's business model and the contractual cash flow characteristics of the assets. In certain circumstances, there is an option to designate financial assets to latter two categories (IFRS 9.4.1).

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</table>
| Inventories初始测量           | Measured at acquisition or production cost including incidental and subsequent acquisition expenses and other costs. According to CAS 1.5 – 8 production costs includes:  
  • material cost  
  • manufacturing cost  
  • manufacturing overheads based on a reasonable allocation according to the nature of the overheads  
  • borrowing cost if certain criteria are met (CAS 17 qualifying asset)  
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. (CAS 1.8.) | Measured at acquisition or production cost including incidental and subsequent acquisition expenses. According to IAS 2.11 – 2.17 production costs include:  
  • material cost  
  • manufacturing cost  
  • fixed and variable material and manufacturing overheads based on normal capacity of the production facility  
  • borrowing cost if certain criteria are met (IAS 23 qualifying asset)  
Other costs are included in the cost of inventories only to the extent that they are incurred in bringing the inventories to their present location and condition. | 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  
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估值方法           | 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. | Generally individual cost per item (IAS 2.23). However, if specific identification of cost is inappropriate the following methods are allowed:  
  • first in, first out (IAS 2.25)  
  • weighted average cost (IAS 2.25)  
The standard cost method and the retail method are explicitly mentioned as techniques for the measurement of cost (IAS 2.21). | Generally individual cost per item (§ 252 I No. 3 HGB). Based on the circumstances the following other valuation methods are allowed:  
  • first in, first out (§ 256 HGB)  
  • last in, first out (§ 256 HGB)  
  • weighted average cost (§ 240 IV HGB)  
  • group valuation (§ 240 IV HGB)  
  • valuation using a fixed value (§ 240 III HGB). |
| Inventories后续测量           | 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 clause 1 HGB). |
| Inventories预付款收到          | Advance payments received have to be presented as a liability. Only for construction contracts advance payments are presented net of the gross amount due from customers. | Advance payments received have to be presented as a liability. Only for construction contracts advance payments are presented net of the gross amount due from customers. | Advance payments received are allowed to be presented alternatively net of inventories on the face of the balance sheet or as a liability (§ 268 V S. 2 HGB). |
Construction contracts

A construction contract is a contract specifically negotiated for the construction of an asset or a combination of assets that are closely interrelated or interdependent in terms of their design, technology and function or their ultimate purpose or use (CAS 15.2).

When the outcome of a construction contract can be estimated reliably at the balance sheet date, contract revenue and contract costs shall be recognised using the percentage of completion method (CAS 15.18).

If the outcome of a construction contract cannot be estimated reliably revenue shall be recognised only to the extent of contract costs incurred that it is probable will be recoverable; and contract costs shall be recognised as an expense in the period in which they are incurred (CAS 15.25).

An expected loss on the construction contract shall be recognised as an expense immediately (CAS 15.27).

The wording of CAS 15 requires direct costs incurred in securing a construction contract to be expensed as incurred (CAS 15.17). However, that difference to IAS 11 was eliminated by Interpretation No.1, Q&A 3 to CAS 15 so that inclusion as part of the contract costs is allowed if the cost can be separately identified and measured reliably and it is probable that the contract will be obtained.

IAS 11 allows direct costs incurred in securing a construction contract to be included as part of the contract costs if they can be separately identified and measured reliably and it is probable that the contract will be obtained (IAS 11.21).

German accounting law does not include any special rules on construction contracts. Therefore the general accounting rules for inventory, accounts receivable, payments received and revenue recognition apply.

Generally, it is not permitted to realise revenues and profits before completion of all major contractual duties and customer acceptance. Therefore the completed contract method is usually applied.

Only if the construction contract allows for the identification of separate parts, revenue can be recognised upon formal acceptance of those parts by the customer.

All foreseeable losses on construction contracts have to be recorded immediately as expenses.
The International Accounting Standards Board (IASB) has issued the new comprehensive standard Financial Revenue from Contracts with Customers (IFRS 15). This standard will be effective for periods beginning on or after January 1, 2018. As an outlook on the new standard, its basic rules are presented in the following:

The entity shall recognise revenue when (or as) the entity satisfies a performance obligation by transferring a promised good or service to a customer. The good or service (i.e. an asset) is transferred, if the customer obtains control of such asset (IFRS 15.31). The necessary steps according to the standard for revenue recognition are:

• identification of the customer contract
• identification of each party’s contractual performance obligations
• determining the transaction price
• allocating the transaction price to the respective performance obligations
• revenue recognition upon satisfaction of a performance obligation

For performance obligations that are satisfied over a period of time (rather than at a point of time), revenues shall be recognised by measuring the progress towards complete satisfaction of the performance obligation (IFRS 15.39). Cost based measures for the progress are allowed (IFRS 15.B18)
<table>
<thead>
<tr>
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</tr>
</thead>
<tbody>
<tr>
<td>Provisions and accrued</td>
<td>According to CAS 13.4 the recognition of a provision requires:</td>
<td>According to IAS 37.14 the recognition of a provision requires:</td>
<td>Under German GAAP the recognition of a provision generally requires</td>
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<tr>
<td>liabilities</td>
<td>• a present obligation (legal or constructive) as a result of a past event,</td>
<td>• a present obligation (legal or constructive) as a result of a past</td>
<td>• a present obligation (legal or constructive) against a third party</td>
</tr>
<tr>
<td>Recognition</td>
<td>• probability of an outflow of resources embodying economic benefits to settle</td>
<td>event,</td>
<td>• the entity is economically burdened by the obligation</td>
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<td>the obligation, and</td>
<td>• probability of an outflow of resources embodying economic benefits</td>
<td>• the amount can be estimated (at least a range)</td>
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<td>• a reliable estimate of the amount of the obligation.</td>
<td>to settle the obligation, and</td>
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<td>If these conditions are not met, provisions are not allowed to be recognised.</td>
<td>• a reliable estimate of the amount of the obligation.</td>
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<td>Deferred maintenance and land reclamation expenses (which have to be provided</td>
<td>If these conditions are not met, provisions are not allowed to be</td>
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<td>for under German GAAP) are not allowed to be recognised under CAS if there is</td>
<td>recognised. Deferred maintenance and land reclamation expenses (which</td>
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<td>no legal or constructive obligation to carry out the measures.</td>
<td>have to be provided for under IFRS if there is no legal or constructive</td>
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<td>obligation to carry out the measures.</td>
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<td>Furthermore, § 249 I HGB requires that provisions and accrued liabilities be</td>
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<td>recognised for the following business matters:</td>
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<td>• contingent liabilities</td>
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<td>• anticipated losses on pending onerous contracts</td>
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<td>• deferred maintenance expenses for maintenance not carried out in the current</td>
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<td>fiscal year but expected to be carried out within the first three months of</td>
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<td>the following fiscal year</td>
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<td>• deferred land reclamation expenses that are not carried out in the current</td>
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<td>financial year but are expected to be carried out in the following financial</td>
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<td>year</td>
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<td>• warranties given with no legal obligation.</td>
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</table>

The provision for deferred maintenance and land reclamation expenses 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.
<table>
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</thead>
<tbody>
<tr>
<td>Provisions and accrued</td>
<td>Provisions are recognised at the best estimate of the expenditure required to settle the present obligation (CAS 13.5).</td>
<td>Provisions are recognised at the best estimate of the expenditure required to settle the present obligation (IAS 37.36).</td>
<td>Provisions are recognised at the settlement amount necessary based on prudent business judgment (§ 253 I S. 2 HGB).</td>
</tr>
<tr>
<td>liabilities Measurement</td>
<td>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.</td>
<td>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.</td>
<td>German accounting law includes far less details on the valuation of provisions than IAS 37 and CAS 13.</td>
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<td>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).</td>
<td>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).</td>
<td>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). This is due to the prevailing prudence principle in 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.</td>
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<td>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).</td>
<td>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).</td>
<td>Provisions with a term of more than one year are 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 in accordance with a statutory regulation (RueckAbzinsV).</td>
</tr>
<tr>
<td>Provisions and accrued</td>
<td>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). According to accounting literature the requirements for setting up provisions under CAS 13 could be interpreted less strict than under IAS 37 because the plan announcement is a necessary and sufficient requirement whereas IAS 37 elaborates on expectations by those affected by the plan.</td>
<td>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).</td>
<td>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.</td>
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<tr>
<td>liabilities Restructuring</td>
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<tr>
<td><strong>Provisions and accrued liabilities</strong></td>
<td>CAS 9 differentiates between defined benefit plans and defined contribution plans.</td>
<td>IAS 19 differentiates between defined benefit plans and defined contribution plans.</td>
<td>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.</td>
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<td>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.</td>
<td>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).</td>
<td>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.</td>
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<td>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.</td>
<td>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.</td>
<td>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 clause 2 HGB allows the use of an assumed residual term of 15 years for all individual obligations.</td>
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<td></td>
<td>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 9.13ff.</td>
<td>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.</td>
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<td>The following measurement principles are applied:</td>
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<td></td>
<td>• use of projected unit credit method (CAS 9.13)</td>
<td>• use of projected unit credit method (IAS 19.67)</td>
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<td></td>
<td>• discount rate based on market yield (CAS 9.15)</td>
<td>• discount rate based on market yield (IAS 19.83ff.)</td>
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<td>• actuarial gains and losses as well as changes in fair value of plan assets arising from factors other than time value are recognised are recognised immediately in other comprehensive income (CAS 9.16)</td>
<td>• actuarial gains and losses as well as changes in fair value of plan assets arising from factors other than time value are recognised are recognised immediately in other comprehensive income (IAS 19.120)</td>
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</tr>
</tbody>
</table>

### 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 22.30 & 31).**
- **Subsequent measurement is at amortised cost using the effective interest method (CAS 22.33).**
- **Foreign currency liabilities are translated using the spot rate at the balance sheet date (CAS 19.11 (1)).**
- **Liabilities are recognised at the settlement amount (§ 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).**
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<td>Deferred taxes</td>
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<td>The recognition of deferred taxes is based on the temporary concept.</td>
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<td>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 &amp; 13):</td>
<td>Deferred tax assets and liabilities are recognised for all temporary differences between the asset and liabilities in the IFRS balance sheet and their tax base with the following three exceptions (IAS 12.15 &amp; 24):</td>
<td>Deferred tax liabilities are recognised for all taxable temporary differences between the asset and liabilities in the German GAAP balance sheet and their tax base (§ 274 I clause 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.</td>
</tr>
<tr>
<td></td>
<td>• initial recognition of goodwill</td>
<td>• initial recognition of goodwill</td>
<td>Recognition of deferred tax assets on deductible temporary differences between the asset and liabilities in the German GAAP balance sheet and their tax base is optional (§ 274 I clause 2 HGB).</td>
</tr>
<tr>
<td></td>
<td>• 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</td>
<td>• 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</td>
<td>The recognition of a deferred tax asset for unused tax losses and unused tax credits is also optional and limited to offsetting against anticipated taxable profits within the next five years (§ 274 I clause 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.</td>
</tr>
<tr>
<td></td>
<td>• 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.</td>
<td>• 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.</td>
<td>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).</td>
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<td>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).</td>
<td>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).</td>
<td>Deferred tax assets and liabilities are not discounted (§ 274 I clause 1 HGB).</td>
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<td>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).</td>
<td>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 12.46).</td>
<td>Deferred tax assets and liabilities are not discounted (§ 274 I clause 4 HGB).</td>
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<tr>
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<td>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.</td>
<td>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).</td>
<td>Deferred tax assets and liabilities are presented under a separate line item. Netting of assets and liabilities is optional (§ 274 I clause 4 HGB).</td>
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2.4 Taxation

2.4.1 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, for example 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 a German place of management and control 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 2.4.4.2.1).

Foreign companies that have neither their legal seat nor a place of management and control 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 28 EU Member States, 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.

From an indirect 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 are expected to 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 taxation 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.
2.4.2 Taxation of companies

2.4.2.1 Corporate income tax

2.4.2.1.1 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) (for bookkeeping requirements, see Chapter 2.3.1 and Chapter 2.4.6.1).

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. 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. According to these rules, taxpayers may immediately deduct only (net) interest expense up to 30% of annual pre-interest, pre-loss carry-forward profits for tax purposes, increased by the tax depreciation incurred (taxable EBITDA – earnings before interest, tax, depreciation and goodwill impairment/intangible asset amortisation). The 30% limitation applies to all interest regardless of whether the debt is granted by a shareholder, related party or third party. Excess interest may be carried forward indefinitely. The 30% limit does not apply where (1) the annual (net) interest burden is less than EUR 3 million; (2) the taxpayer is not part of a group of companies; or (3) under the “group clause,” the taxpayer demonstrates 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.

Interest expense exceeding the 30% limitation is non-deductible for German CIT and TT purposes (unless one of the exceptions applies). The interest carry-forward is subject to change-in-ownership rules (a direct or indirect ownership change of more than 25%/50% to one shareholder (or a group of shareholders with similar objectives), which could result in a partial/complete forfeiture of all interest-expense carry-forwards.

2.4.2.1.2 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 two-tier 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. In the case of transfers of more than 25% but at most 50% to one buyer (or a group of buyers) within a period of five years, losses will be forfeited on a pro rata basis. 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.

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.
2.4.2.2 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 within the range of 14%-18% of income. From the 2008 financial year onward, trade tax is no longer deductible as a business expense. 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 100,000.

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.

2.4.2.3 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 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-Balance legislation in Chapter 2.4.6.2).

Final tax returns must generally be filed by 31 May of the following year. If a certified tax advisor prepares the return, the due date is automatically extended to 31 December of the following year; however, the tax authorities may request that a taxpayer file the tax return earlier.

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.
2.4.2.4 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 one single tax return. 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.

2.4.2.5 Non-resident companies and permanent establishments

Foreign companies that have neither their legal seat nor a place of management and control 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 by fulfilling one of the following criteria a permanent establishment in Germany is assumed for German tax purposes:

- 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.
2.4.3 Taxation of individuals

2.4.3.1 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-tax-able in certain cases |
| Basis | Worldwide income |
| Double taxation relief | Yes |
| Tax year | Calendar year |
| Return due date | 31 May |

Withholding tax

- Dividends: 25% (26.375% including 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: 19% (standard rate)/7% (reduced rate)
2.4.3.2 Residence
An individual is considered tax resident if he/she:

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

- He/she has his/her habitual place of abode in Germany, i.e. he/she is physically present in Germany for a consecutive period of more than six months or with the intention 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. The residence status of an individual may be overruled by a tax treaty. On application, resident status is extended to individuals who do not otherwise meet the residence test if their German-source income subject to German taxation comprises 90% or more of their worldwide taxable income.

2.4.3.3 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 tax-ation 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 up to EUR 1,000 per year. Benefits in kind (e.g. vouchers) are not taken into account if their value (less any extra payment made by the employee) does not exceed EUR 44 in 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 on in which year the pension begins; for example 68% of pensions commencing in 2014 are taxable and for 2015 the figure is 70%.

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 8,652 (EUR 17,304 for married couples filing a joint return) from year 2016.

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 (80% for 2015) up to EUR 17,737.60 in 2015 (80% of EUR 22,172) 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 190 for each of the first two children, EUR 196 for the third child and EUR 221 for the fourth and each additional child. At the end of the year, the tax authorities calculate whether the child benefit payment or a tax allowance for the costs of a child’s living, care and education (in total EUR 3,524) 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 8,652 (EUR 17,304 for married couples filing a joint return) to a top rate of 45% for income exceeding EUR 254,447 (EUR 508,894 for married couples filing a joint return). An additional 5.5% solidarity surcharge is levied on the income tax assessed. Trade tax levied on business income is, with some limitations, credited against the income tax allocable to that income.

A 25% (26.375% including 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.
2.4.3.4 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).

2.4.4 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 BEPS (Base Erosion and Profit Shifting) developments, this is a scenario that may become more common due to the typical existence of substance in Germany. Germany provides different measures for avoiding double taxation which can be divided into national unilateral measures and bilateral measures regulated in its tax treaties.

2.4.4.1 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.

2.4.4.2 Tax treaties
Comprehensive agreements for the avoidance of double taxation (DTA) are the basis for bilateral measures of avoidance of double taxation. Germany has a broad tax treaty network; with around 100 jurisdictions in place. In addition 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.
2.4.4.2.1 People’s Republic of China – Germany tax treaty
The People’s Republic of China – Germany tax treaty has been in force since 10 June 1985 and generally follows the OECD Model Tax Treaty (for potential changes in a newly negotiated tax treaty, see the explanations at the end of this section).

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 assembly project or any supervising activities connected therewith, if the construction, assembly or supervising activities last for more than 6 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 6 months within any 12-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 10%, provided that the recipient is the beneficial owner of 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:

(i) to the Government of the People’s Republic of China;

(ii) to the People’s Bank of China, the Agricultural Bank of China, the People’s Construction Bank of China, the Investment Bank of China or the Industrial and Commercial Bank of China;

(iii) on a loan directly guaranteed or financed by the Bank of China or the Chinese International Trust and Investment Company; or

(iv) to public credit institution of the Government of the People’s Republic of China, if the competent authorities of both States have mutually agreed thereto.

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

(i) to the Government of the Federal Republic of Germany;

(ii) to the Deutsche Bundesbank, the Kreditanstalt für Wiederaufbau or the Deutsche Finanzierungsgesellschaft für Beteiligungen in Entwicklungsländern (the German Federal Bank, the Credit Institute for Reconstruction, or the German Finance Company for Investment in Developing Countries);

(iii) on a loan, directly guaranteed or financed by Hermes; or

(iv) to a public credit institution of the Federal Government, if the competent authorities of both States have agreed thereto.
Art. 12 Royalties
Royalties may be taxed in the country of residence. However, such royalties may also be taxed in the state of source, but 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.

Art. 24 Methods of eliminating the 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 10% 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 10% 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:

(i) dividends;
(ii) interest;
(ii) royalties.

For German investors to China, notional tax credits are available with regard to royalties and interest income.

A new tax treaty has been negotiated and is expected for 2017. Under the new DTA, the following withholding tax rates apply:

Dividends: 5% (minimum shareholding of 25% applies)
Interest: 10%
Royalties: 6% or 10%

While on the positive side the tax rates are being reduced, on the negative side the notional tax credit will be discontinued. Further smaller changes include the time requirements for permanent establishments. And the implementation of BEPS measures may have an impact of the interpretation of some clauses in the tax treaty in the future.
2.4.4.2 Hong Kong – Germany tax treaty
At present, there is no comprehensive double tax treaty between Hong Kong and Germany in place. However, negotiations have been finalised and the first DTA is expected to come into force soon. 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.

2.4.4.3 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.

Specifically, from a German transfer pricing perspective, the documentation should comprise the following:

- General information on the group of companies, especially concerning shareholding relationships, business operations and organisational structures;
- description of the manner and extent of the business operations between related companies (including a summary of the underlying contracts together with a compilation of the essential intangibles);
- functional and risk analysis;
- transfer pricing analysis to support the arm’s length nature of the remuneration (including a description of the transfer pricing method used, the reasons for the appropriateness of its application, underlying calculations, and prices or financial data of independent companies that are used for comparison and documentation of performed adjustment calculations).

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.
2.4.4.4 “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. China’s.

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.
2.4.5 Indirect taxes

2.4.5.1 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 2.5.3).

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.
2.4.5.2 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.

2.4.5.3 Stamp tax
No stamp tax is levied in Germany.

2.4.5.4 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.

2.4.5.5 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.
2.4.5.6 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 CO2 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.

2.4.6 Other tax issues

2.4.6.1 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.
2.4.6.2 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).

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.
2.4.6.3 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 121 and the maximum fee EUR 91,456. 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.

2.4.6.4 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.

2.4.6.5 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 changed again.
2.4.6.6 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.

2.5 Specific regulatory considerations for the banking sector in Germany

2.5.1 Entering the German banking market

2.5.1.1 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;

- “passport” 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.
2.5.1.2 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 set up a 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, shareholders, Board of Directors, and business plans which include the administrative structure as well as the control procedures.

2.5.1.3 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.

Although there is an exemption process under § 2 (4) 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.

2.5.1.4 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.

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 process. The new subsidiary would still have to follow German regulations, but not as many. For example, 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.
2.5.1.5 Representative office
Setting up a representative office is a very limited way to enter the German banking market. A representative office must tell the German authorities their purpose in setting up an office, and they may only do market research and advertising.

2.5.1.6 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.

2.5.1.7 A side note on 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.

2.5.2 Corporate Income Tax
2.5.2.1 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 2.4.2).

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.
2.5.2.2 Minimum amount of “equity” for German tax purposes

Under the 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
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.

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.

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 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.
2.5.2.3 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 2.4.6.1.1).

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.

2.5.3 Value Added Tax

2.5.3.1 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.
2.5.3.2 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.

2.5.4 Withholding tax

2.5.4.1 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.

2.5.4.2 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.

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 to 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.

In each case the German Anti Treaty Shopping Rules need to be observed.
2.5.4.3 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.

2.5.5 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 (see Chapter 2.4.3.1.1).

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.

<table>
<thead>
<tr>
<th>Payments to:</th>
<th>Interest</th>
<th>Dividends</th>
<th>Royalties</th>
</tr>
</thead>
<tbody>
<tr>
<td>Resident companies</td>
<td>26.375%</td>
<td>26.375%</td>
<td>0%</td>
</tr>
<tr>
<td>Non-resident companies</td>
<td>0% - 26.375%</td>
<td>0% - 26.375%</td>
<td>15.825%*</td>
</tr>
</tbody>
</table>

* provided that the tax is not borne by the German debtor
How can Deloitte help?

Chinese Services Group

Deloitte’s large client base in China consists of both state-owned and privately-owned enterprises ranging in size from medium to very large enterprises. We have considerable experience working with Chinese enterprises and a history of successfully supporting their globalising activities. We are therefore familiar with the particular needs of enterprises in China that are investing globally and describe below the special support structures we have created to provide the highest level of support and the principles on which our service relationships are based.

The Deloitte global network contains a platform that is unique among professional services firms – the Chinese Services Group (CSG). Over the course of its history in the Deloitte organisation, the CSG has become a unique resource in the market for companies, government bodies and investment organisations both in China and abroad. The network extends to all corners of the globe and our understanding of serving Chinese companies from Duesseldorf to Lagos and from Perth to Sao Paulo is vast.

The CSG serves as the unifying force to market, facilitate and deliver Deloitte professional services both to multi-national corporations investing in China and to Chinese companies expanding overseas. Operating as a platform to leverage China expertise, bridge the cultural gap and to ensure client service excellence, the Global CSG, in coordination with the Chinese firm, complements a multi-member firm, multi-industry, multi-functional and multi-disciplinary approach.

Deloitte’s CSG practice has coverage in nearly 120 locations around the world, spanning six continents. With such an expansive geographical reach, combined with a decentralised group of dedicated China practitioners ready to serve your company, Deloitte can serve you no matter where you expand overseas.
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Our Services

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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.

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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.

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Whether you are looking to expand overseas or to invest in Hong Kong or the Chinese Mainland, you will need to maximise the 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 Hong Kong, the Chinese Mainland as well as in any other tax jurisdictions in which you may be interested. Our tax advisors in Germany will support you to implement intelligent 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 in Berlin and Hanover 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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2.5.2.3 中资银行分行特定税款计算考虑事项
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德勤如何提供帮助?
我们的服务
在中国的德勤事务所
在德国的德勤事务所
前言

尊敬的读者：

敬请启阅2016版《中国企业投资德国指南》。

目前，中国已经成为净资本输出国，境外投资规模和跨境并购交易连续数年创下纪录。对中国企业来说，增长的关键在于从国内市场向海外市场转移。2005年至2015年间，中国投资者在西欧地区大量收购制造业和消费业资产，而德国一直是中国投资者在该地区的首选投资目的国之一。

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，服务网络分布于多个国家和地区，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）和德国事务部（上海）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。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。

杨莹
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25年里（1990年－2015年），中德经济关系已发展成为稳固的贸易投资关系。因此，难怪中国会将德国视为其“通往欧洲的门户”，并达成众多的双边合作协议，进一步促成这一段经济成功的佳话。

1991年德国对华出口贸易额仅21.5亿欧元。据德国联邦统计局统计，2015年德国对华出口贸易额达712亿欧元。2015年德国对华进口贸易额为915亿欧元，比上年增长14.7%。

中国自2002年成为德国在欧洲以外的第二大出口市场，排名仅次于美国之后，日本之前。而德国是中国目前最大的欧洲贸易伙伴，是中国第五大贸易伙伴（除香港以外，排名第四）。中国还是德国最大的进口供应商，中国出口德国的产品主要有电气产品、玩具、纺织品和服装以及机器和设备。

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。从区域来看，目前中国投资最青睐的三个德国城市（及其周边的都市区）是：

- 杜塞尔多夫
- 法兰克福
- 汉堡

但德国其他的城市或地区可能也同样能满足或更好地满足中国投资者个性化的需求。总之，选择合适的投资目的地需要深思熟虑。

2010年以后，中国投资者在德并购活动明显增多。而且，近年来这类投资的质量和规模也得到提升。尤其是中国投资者的关注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。毫无疑问，2012年三一集团对普茨迈斯特的收购具有里程碑的意义。自此以后，其他并购交易接踵而至。2016年初对EEW Energy from Waste的收购以约14亿欧元的成交价创下新高（尽管德国联邦卡特尔局还未批准该交易）。近年来著名的并购交易案例如下表所示：

1.1经济环境
近年来著名并购交易案例

<table>
<thead>
<tr>
<th>声明日期</th>
<th>德国标的 企业</th>
<th>中国投资者</th>
</tr>
</thead>
<tbody>
<tr>
<td>2016年3月22日</td>
<td>曼兹 (MANZ)</td>
<td>上海电气集团</td>
</tr>
<tr>
<td>2016年2月6日</td>
<td>比尔芬格污水处理公司 (Bilfinger Water Technologies)</td>
<td>成都天润环境有限公司</td>
</tr>
<tr>
<td>2016年2月4日</td>
<td>EEW Energy from Waste (仍待卡特尔局批准)</td>
<td>北京控股</td>
</tr>
<tr>
<td>2016年1月11日</td>
<td>首克劳斯玛菲集团 (KraussMaffeiGruppe)</td>
<td>中国化工集团公司</td>
</tr>
<tr>
<td>2015年7月8日</td>
<td>Hauck &amp; Aufhaeuser</td>
<td>复兴国际</td>
</tr>
<tr>
<td>2014年5月29日</td>
<td>海力达 (Hilite)</td>
<td>中航工业集团公司</td>
</tr>
<tr>
<td>2014年1月28日</td>
<td>CYBEX</td>
<td>好孩子 (香港)</td>
</tr>
<tr>
<td>2013年9月30日</td>
<td>Flex电动工具公司(Flex Power Tools)</td>
<td>奈峰控股有限公司</td>
</tr>
<tr>
<td>2013年9月4日</td>
<td>Sphairon Technologies</td>
<td>合勤科技 (ZYXEL)</td>
</tr>
<tr>
<td>2013年5月3日</td>
<td>Kugel- und Rollenlagerwerk Leipzig</td>
<td>瓦房店轴承集团</td>
</tr>
<tr>
<td>2012年9月28日</td>
<td>蒂森克虏伯激光拼焊集团 (ThyssenKrupp Tailored Blanks)</td>
<td>武汉钢铁公司</td>
</tr>
<tr>
<td>2012年9月26日</td>
<td>Solibro</td>
<td>汉能控股</td>
</tr>
<tr>
<td>2012年4月21日</td>
<td>施维英 (Schwing Group)</td>
<td>徐工集团</td>
</tr>
<tr>
<td>2012年3月13日</td>
<td>凯毅德 (Kieckert)</td>
<td>河北凌云工业集团</td>
</tr>
<tr>
<td>2012年1月30日</td>
<td>莱茨迈斯特公司 (Putzmeister)</td>
<td>三一重工</td>
</tr>
<tr>
<td>2012年1月18日</td>
<td>Saunaulux</td>
<td>安徽桑乐金</td>
</tr>
<tr>
<td>2012年1月10日</td>
<td>Kromberg &amp; Schubert Group</td>
<td>深圳得润电子</td>
</tr>
<tr>
<td>2012年1月2日</td>
<td>Sunways</td>
<td>江西赛维LDK太阳能高科技</td>
</tr>
<tr>
<td>2011年12月16日</td>
<td>Vits Print</td>
<td>上海电气集团股份</td>
</tr>
<tr>
<td>2011年11月9日</td>
<td>塞尔纳公司 (Seltner und IPG Industriepalast)</td>
<td>宁波华翔电子</td>
</tr>
<tr>
<td>2011年9月7日</td>
<td>Format Tresorbau Beteiligungs</td>
<td>多维科技控股有限公司</td>
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<tr>
<td>2011年8月24日</td>
<td>Roth &amp; Rau CTF Solar GmbH</td>
<td>未公开买家</td>
</tr>
<tr>
<td>2011年8月9日</td>
<td>太阳能电站</td>
<td>浙江向日葵光能科技</td>
</tr>
<tr>
<td>2011年7月2日</td>
<td>德国KSM铸造集团 (KSM Castings)</td>
<td>中信戴卡</td>
</tr>
<tr>
<td>2011年6月16日</td>
<td>罗德施瓦茨公司(Rhode &amp; Schwarz Professional Mobile Radio)</td>
<td>海能达通信</td>
</tr>
<tr>
<td>2011年6月1日</td>
<td>Medion</td>
<td>联想集团</td>
</tr>
<tr>
<td>2011年4月8日</td>
<td>Preh</td>
<td>宁波均胜汽车电子</td>
</tr>
<tr>
<td>2011年4月3日</td>
<td>萨固密集团 (SaarGummi International)</td>
<td>重庆轻纺控股集团</td>
</tr>
<tr>
<td>2011年3月29日</td>
<td>威运福 (Vivanco Gruppe)</td>
<td>一舟集团</td>
</tr>
<tr>
<td>2011年1月25日</td>
<td>Gustrower Wärmepumpen</td>
<td>中能太阳能 (沈阳)能源技术</td>
</tr>
<tr>
<td>2010年12月21日</td>
<td>洪堡公司 (KHD Humboldt Wedag International)</td>
<td>中航工业集团公司</td>
</tr>
<tr>
<td>2010年12月8日</td>
<td>埃马克机床集团 (Emag Holding)</td>
<td>江苏金辰实业</td>
</tr>
<tr>
<td>2010年8月30日</td>
<td>杜克普爱华 (Dürkopp Adler)</td>
<td>中捷缝纫机</td>
</tr>
<tr>
<td>2010年6月22日</td>
<td>CM Chemiometall</td>
<td>未公开买家</td>
</tr>
<tr>
<td>2010年3月10日</td>
<td>多个投资目标</td>
<td>重庆机电</td>
</tr>
</tbody>
</table>
中国投资者在世界各地不断地收购公司并取得先进技术的所有权，由于在中国未来经济发展
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"）通常是国内业
内的全球市场领导者，我们希望未来在德国能
有更多此类交易。

1.1.3 合作协议
基于两国间的人文交流、类似的文化关联和历
史，以及紧密的发展关系和专家互动，中德两国
的省、市、联邦州和地区间可在科技、政治以及
经济层面开展广泛的合作和结对。

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：

<table>
<thead>
<tr>
<th>德国城市、联邦州、地区</th>
<th>中国城市/省</th>
</tr>
</thead>
<tbody>
<tr>
<td>汉堡</td>
<td>上海</td>
</tr>
<tr>
<td>柏林</td>
<td>北京</td>
</tr>
<tr>
<td>德国联邦州 — 萨尔州</td>
<td>天津、湖北</td>
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<td>德国联邦州 — 下萨克森州</td>
<td>安徽省</td>
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<tr>
<td>沃尔夫斯堡 (下萨克森州)</td>
<td>长春</td>
</tr>
<tr>
<td>德国联邦州 — 黑森州</td>
<td>江西省</td>
</tr>
<tr>
<td>美因河畔法兰克福 (黑森州)</td>
<td>广州</td>
</tr>
<tr>
<td>美因河畔美因河畔 (黑森州)</td>
<td>扬州</td>
</tr>
<tr>
<td>德国联邦州 — 萨尔州</td>
<td>湖南省</td>
</tr>
<tr>
<td>德国联邦州 — 北莱茵 - 威斯特法伦州</td>
<td>四川省、江苏省</td>
</tr>
<tr>
<td>科隆 (北莱茵 - 威斯特法伦州)</td>
<td>北京</td>
</tr>
<tr>
<td>杜塞尔多夫 (北莱茵 - 威斯特法伦州)</td>
<td>重庆、沈阳</td>
</tr>
<tr>
<td>沃恩 (北莱茵 - 威斯特法伦州)</td>
<td>成都</td>
</tr>
<tr>
<td>多特蒙德 (北莱茵 - 威斯特法伦州)</td>
<td>西安</td>
</tr>
<tr>
<td>杜伊斯堡 (北莱茵 - 威斯特法伦州)</td>
<td>武汉</td>
</tr>
<tr>
<td>波鸿 (北莱茵 - 威斯特法伦州)</td>
<td>徐州</td>
</tr>
<tr>
<td>德国联邦州 — 巴伐利亚州</td>
<td>山东省</td>
</tr>
<tr>
<td>奥格斯堡 (巴伐利亚州)</td>
<td>济南</td>
</tr>
<tr>
<td>弗赖辛 (巴伐利亚州)</td>
<td>潍坊</td>
</tr>
<tr>
<td>康斯坦茨 (巴伐利亚州)</td>
<td>苏州</td>
</tr>
<tr>
<td>纽伦堡 (巴伐利亚州)</td>
<td>深圳</td>
</tr>
<tr>
<td>德国联邦州 — 不来梅州</td>
<td>广东省和大连</td>
</tr>
<tr>
<td>德国联邦州 — 巴登-符腾堡州</td>
<td>江苏省和辽宁省</td>
</tr>
<tr>
<td>曼海姆 (巴登-符腾堡州)</td>
<td>镇江</td>
</tr>
<tr>
<td>德国联邦州 — 石勒苏益格-荷尔斯泰因</td>
<td>浙江省</td>
</tr>
<tr>
<td>德国联邦州 — 莱茵兰-普法尔茨州</td>
<td>福建省</td>
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<td>德国联邦州 — 图灵根州</td>
<td>陕西省</td>
</tr>
<tr>
<td>德国联邦州 — 萨克森-安哈尔特州</td>
<td>黑龙江省</td>
</tr>
<tr>
<td>埃尔福特 (图灵根州)</td>
<td>延安</td>
</tr>
<tr>
<td>罗斯托克 (梅克伦堡-前波美拉尼亚州)</td>
<td>大连</td>
</tr>
<tr>
<td>莱比锡 (萨克森州)</td>
<td>南京</td>
</tr>
</tbody>
</table>
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。联邦政府和议会关于负责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会(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和配套的服务业，支柱产业是汽车和化工(了解更多汽车行业信息，参见1.3.1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。能源市场展开新的发展趋势，利用煤、天然气和核能的传统能源生产开始向利用可再生能源，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，传统能源生产也面临着更加严格的监管，比如，2022年以前逐渐退出使用核能的规定导致该行业中的一些公司陷入财务混乱。除绿色能源以外，环保技术领域还有一些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。新的房地产项目得到投资，尤其是大城市的住宅建筑，同时一些地段好且已建的房产的价值也出现上涨(了解更多房地产行业信息，参见1.3.2章节)。

德国是全世界最重要的贸易国家之一，进出口实力强大。国内的重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。

德国拥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，欧元的自由兑换便利了境外融资。但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
德国政府欢迎能够提供新的就业机会的外商投资。除法律要求向外国投资者出售国防公司须提前获得政府批准以外，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。外商投资申请无任何永久的货币或行政限制。外国投资者与德国投资者在获取营业执照、建筑许可和投资优惠批准方面享受同等待遇。

1.2.4 税收激励
德国拥有各种不同税收优惠激励计划。如，在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善和效率提升（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。地区和联邦政府也会有不同的激励计划。对于取得进步的企业可准予税收优惠、补贴、担保、贷款或参与贷款。
### 1.3 行业焦点：德国汽车和房地产行业简介

#### 1.3.1 汽车行业和汽车供应商

#### 1.3.1.1 汽车行业 — 最新动态

据德国汽车工业协会统计，2014年德国汽车行业收获颇丰。尽管经济和政治环境均相当不利，境外的总收入却高达3,680亿欧元（同比增长2%），其中约三分之二的收入（2,370亿欧元）来自外销，国内销售总额为1,310亿欧元。总收入中汽车整车厂的收入占比最高，达2,850亿欧元。

在新车注册方面，汽车销量略超过300万辆。由于个人消费开支减少，新车注册量下降了约2%。总体来看，经济前景不明朗导致私家车主所占比例跌至36%，创下新低。乘用车的使用和保有年份变长，因而平均车龄延长，对汽车消费产生负面影响。

在汽车整车厂品牌的销量方面，德国制造商的市场份额小幅增至72%，拔得头筹，最大的进口国日本紧随其后，法国位居第三，均为9%左右，韩国的市场份额约为6%。

#### 1.3.1.2 德国汽车供应商行业

2014年德国汽车供应商行业成交额增加5%，达到733亿欧元。汽车制造商占72%的外销市场份额。与汽车制造商不同，几乎所有整车制造商几乎都在德国国内生产，因此德国供应商大部分的营业额来自国内市场。出口收入占供应商总收入（274亿欧元）的37%，比上年增长8%。整车厂可观的出口份额表明，德国的供应商基地确实是在全球范围内销售产品。

德国供应商的业务遍布全球，拥有前沿技术。且近年来一直努力推进全球化，他们也为德国就业做出了重要贡献。2014年底，零部件行业吸收就业29.75万（同比增长2%）人。
### 1.3.1.3 汽车供应商行业的当前热点和话题

新的趋势正在影响欧洲汽车供应商的商业模式。尤其是电动交通主题正在促进供应商商业模式的多样化、整合以及变革。

关于市场动态，中国和印度的经济增长似乎已暂时减缓，但却仍快于其他地区：新兴市场不断加剧的保护主义迫使我们更加依赖本地生产。

由于竞争激烈，供应商开始研发非汽车产品，以实现差异化。然而，第二/三级供应商的弱点却会为价值链引入风险。预计将会发生破产，引发一系列企业整合，并重新定义移动出行行业，重塑现有的商业模式。

在驱动领域，当前的趋势是提升产量并同时缩小新的动力传动系统。电气化虽然是一个必然的趋势，但某种程度上被高估了。金融和投资正在成为引领财务人员的越来越具有战略意义的工具。由于我们越来越需要灵活的生产能力以及贴近当地消费者，因此对供应商而言管理资本投资并做正确的资产分配决策非常重要。

技术仍将是成功企业主要的差异化手段。研发部门的创新能力非常关键，但在欧洲招聘到优秀的人才仍旧面临瓶颈。在不久的将来产品模块化将进一步深化。

保护主义将导致产能向亚洲发生地区性转移。我们将发现加入战略联盟、合资企业以及对新兴市场的直接投资将变得更加重要。拓展新市场时，组建新的分公司或装备生产设备将带来很多好处。本地化不仅对贴近消费者非常必要，对成功拓展新市场同样如此。

未来几年，美国、墨西哥、中国和其他新兴市场将有更多产能投入使用。汽车制造商正依靠一级供应商的支持，通过扩张全球零件供应商，进一步巩固他们的业务关系。

### 德国供应商行业：成交额和就业

<table>
<thead>
<tr>
<th>年份</th>
<th>营业额(十亿欧元)</th>
<th>雇员(千人)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2000</td>
<td>180</td>
<td>300</td>
</tr>
<tr>
<td>2001</td>
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<td>2013</td>
<td>440</td>
<td>560</td>
</tr>
<tr>
<td>2014</td>
<td>460</td>
<td>580</td>
</tr>
</tbody>
</table>

来源：德国汽车工业协会
对大型供应商来说或许不言而喻，但对小型供应商而言却非同寻常。因为执行这样的项目通常需要大力投入资金和人力，为现有的资源带来非常大的压力。这就是为什么这些公司应该弄明白与其他公司合作在海外投资是否有意义。

没有国际化的定位，小型公司也将不能维持他们具有竞争力的地位。甚至在价值链的上游环节全球生产和交付的能力将变得更加重要。即使仔细调查并取得初步成功后，本地化决策似乎是正确的，但此类项目仍存在一些不能完全根除的风险，这可以从当前俄罗斯市场艰难的发展境况中可以得到印证。然而，长期的市场机遇不应该，而且，不能被忽略。

汽车供应商行业当前的趋势

来源：德勤
1.3.1.4 德国汽车供应商的并购机遇

长期以来，汽车供应商行业和业内的公司一直是是中国在欧洲尤其是德国投资的重点。主要因为中国汽车行业的野心已经扩大到全球范围，它们需要国际化的专业知识、技术以及了解欧洲的整车厂。因此，中国投资者如今更愿意发展并培育收购的公司，而非关闭之前一直低效运转的目标企业。

因此，在汽车行业危机的几年里以及之后，大多数由中国买家接手的不景气的汽车供应商均已重组并重现生机。为了避免单一供应商市场份额超过40%，并减轻对单一供应商的依赖，整车厂商非常支持供应商发展的百花齐放。此外，由于整车厂商依靠获得全球认可的一级和二级基地利益，并期望能结合中国的低成本方法与西方的技术，因此整车厂商很乐意看到亚洲，尤其是中国投资者，对德国供应商感兴趣。

在中国汽车行业，德国电子和传动系统制造商现在非常热门。德勤调查表明，受近来的行业趋势如效率提升、混合技术以及发动机小型化的影响，这些板块的德国供应商的收益增长和资产回报率远胜过他们的欧洲同行。此外，德国的供应商企业中很多都是非常成功的中型企业。这些隐形冠军企业的盈利能力常常甚至优于同行业的大企业。

对亚洲的投资来说，另一个有利趋势是金融投资者正逐渐退出汽车行业板块。在危机期间不少私募股权供应商都曾经历过严重的困境，形成了高度杠杆化的融资结构。尽管汽车行业已经逐渐重拾对该行业的信心，但目前仍然是战略投资者，包括亚洲投资者，主导着并购市场。

总体来看，中国投资者已使他们在德国的并购方式变得专业化，而且，如今已成为几乎任何汽车供应商的交易中一个非常重要的买家团队。
### 房地产行业

#### 房地产市场 — 最新动态

据最新数据，德国房地产行业不出意外地继续保持平稳发展态势。根据摩根士丹利资本国际指数，2014年德国房地产行业总回报率（收入回报率加资本增值率）约为6%，是近12年来最好的表现。在主要资产类别中仅债券实现了较高的回报率，达到12.8%。

2015年所有的领域和主要市场均出现回报压缩（净初始最高回报）。然而，预计只有部分领域的需求会进一步大幅下滑，因为A-/B-级的投资目的地没有核心增值型和投机性投资。随着大多数领域投资者情绪扬升，包括写字楼、购物中心和物流等板块，预计回报率将继续承受下行压力，并继续保持稳定表现。

2015年上半年，欧洲主要国家中德国的投资额实现了最为强劲的增长，比2014年同期增加14%，超过288亿欧元。这很大程度上应归功于住宅投资的增加。该板块投资从2014年上半年68亿欧元增长至2015年上半年的108亿欧元，超过了写字楼，成为最热投资板块。

当以色列、瑞典和英国买家引领跨境交易活动时，国内投资者在住宅板块投资占主导地位，在截止2015年6月的一年内占了88%的交易额。

关于买家类型，房地产信托投资基金和其他上市房地产公司一直在大力地推动交易的增加 — 相比2014年上半年增加了60%。美国、法国以及以色列公司和德国公司均明显加快了步伐。私营企业在2015年上半年进行了大量撤资。

德国前四大城市（柏林、法兰克福、汉堡和慕尼黑）在德国房地产领域的投资份额均已增加，从2014年上半年的37%增至2015年上半年的49%。

<table>
<thead>
<tr>
<th>各领域最高回报</th>
<th>2015年第四季度</th>
</tr>
</thead>
<tbody>
<tr>
<td>写字楼</td>
<td>4.00%</td>
</tr>
<tr>
<td>零售 — 商业街</td>
<td>3.50%</td>
</tr>
<tr>
<td>零售 — 购物中心</td>
<td>4.20%</td>
</tr>
<tr>
<td>零售 — 批发店</td>
<td>5.75%</td>
</tr>
<tr>
<td>物流</td>
<td>5.50%</td>
</tr>
<tr>
<td>住宅 — 投资组合</td>
<td>3.50%</td>
</tr>
<tr>
<td>酒店</td>
<td>5.00%</td>
</tr>
</tbody>
</table>

来源：基于RCA和摩根士丹利资本国际指数的德勤研究
1.3.2.2 商业房地产投资市场创下新的周期性记录
2015年，德国商业房地产投资市场几乎达到2007年创下的最高记录。2015年实现六连涨，全国商业房地产投资市场交易总额达到550亿欧元，投资额高出上年近40%。

2015年第四季度实现的交易额超过全年总额的30%，是过去五年销售业绩最佳的季度。

按照国际标准，在某些情况下，德国的商业和住宅房产潜在回报率仍明显高于其他市场，比如，亚洲。因此，2015年投资商业和住宅房产的外国投资者占比很高，约为50%。

在德国前七大城：柏林、杜塞尔多夫、法兰克福、汉堡、科隆、慕尼黑和斯图加特，投资总额同比增加80亿欧元，增幅为35%。
1.3.2.2.1 写字楼
2015年第四季度，总交易额中约40%来自写字楼板块。在中国市场该板块的交易额中最多。最大的几笔投资仍然产生在中国最大的七座城市，其中杭州成为新的投资热点（2015年吸引投资79亿欧元）。

写字楼出租市场近几个月租金上涨：年底时出租总面积约为360万平方米，比2014年增加了21%。仅2015年第四季度就实现了全年业绩的30%。通常中国的前七大市场（参见图表）的租金最高。2015年第四季度，经过一段停滞之后，七大市场中多数市场的最高租金都出现了上涨，但即使是当前的租金水平也未充分考虑市场需求。

<table>
<thead>
<tr>
<th>城市/市场</th>
<th>最高租金(2015年第四季度)</th>
</tr>
</thead>
<tbody>
<tr>
<td>柏林</td>
<td>24.00 欧元/平方米</td>
</tr>
<tr>
<td>多塞尔多夫</td>
<td>26.00 欧元/平方米</td>
</tr>
<tr>
<td>美因河畔法兰克福</td>
<td>37.00 欧元/平方米</td>
</tr>
<tr>
<td>汉堡</td>
<td>25.00 欧元/平方米</td>
</tr>
<tr>
<td>科隆</td>
<td>22.00 欧元/平方米</td>
</tr>
<tr>
<td>慕尼黑</td>
<td>34.00 欧元/平方米</td>
</tr>
<tr>
<td>斯图加特</td>
<td>21.50 欧元/平方米</td>
</tr>
</tbody>
</table>

来源：世邦魏理仕、仲量联行和高力国际

1.3.2.2.2 零售
紧随写字楼板块之后，零售再次成为2015年德国投资市场最活跃的领域，占总交易量约33%。2015年，零售投资交易包括更大规模的票据份额和投资组合。与此同时，交易量也有所下降。

零售出租市场（商业街和购物中心）租赁面积达到约52.5万平方米（比2014年低10%）。前七大市场的最高租金2015年第四季度看起来相当稳定。目前，柏林是唯一一个租金有望在未来继续上涨的城市。

<table>
<thead>
<tr>
<th>城市/市场</th>
<th>最高租金(2015年第四季度)</th>
</tr>
</thead>
<tbody>
<tr>
<td>柏林 Tauentzienstrasse</td>
<td>24.00 欧元/平方米</td>
</tr>
<tr>
<td>杜塞尔多夫 Koenigsallee</td>
<td>26.00 欧元/平方米</td>
</tr>
<tr>
<td>美因河畔法兰克福 Zeil</td>
<td>37.00 欧元/平方米</td>
</tr>
<tr>
<td>汉堡 Spitalerstrasse</td>
<td>25.00 欧元/平方米</td>
</tr>
<tr>
<td>科隆 Schildergasse</td>
<td>22.00 欧元/平方米</td>
</tr>
<tr>
<td>慕尼黑 Kaufingerstrasse-Marienplatz</td>
<td>34.00 欧元/平方米</td>
</tr>
<tr>
<td>斯图加特 Koenigstrasse</td>
<td>21.50 欧元/平方米</td>
</tr>
</tbody>
</table>

来源：世邦魏理仕、仲量联行和高力国际
1.3.2.3 物流
2015年总投资额连续第四年增长，年底时达到近41亿欧元。2015年第四季度交易额为15亿欧元，实现了2007年以来最佳的季度业绩。物流的空间需求仍然很大。尤其是目前新的和现代化的空间供应仍然很少，建在大都市地区供物流使用的，尤其是建在前五大城市（参见图表）或其周边地区的交通枢纽的新址很受追捧。当前的供应短缺限制了交易额，进而限制进一步的回报压缩。

### 城市/市场

<table>
<thead>
<tr>
<th>城市/市场</th>
<th>最高租金（2015年第四季度）</th>
</tr>
</thead>
<tbody>
<tr>
<td>柏林</td>
<td>4.70 欧元/平方米</td>
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<tr>
<td>杜塞尔多夫</td>
<td>5.40 欧元/平方米</td>
</tr>
<tr>
<td>美因河畔法兰克福</td>
<td>6.00 欧元/平方米</td>
</tr>
<tr>
<td>汉堡</td>
<td>5.60 欧元/平方米</td>
</tr>
<tr>
<td>慕尼黑</td>
<td>6.80 欧元/平方米</td>
</tr>
<tr>
<td>慕尼黑</td>
<td>6.80 欧元/平方米</td>
</tr>
</tbody>
</table>

来源：世邦魏理仕、仲量联行和高力国际
1.3.2.4 住宅投资组合

2015年第三季度中小型交易很多，但2015年第四季度则主要是一些德国上市房产公司的大型交易，包括大量的股票交易。近来，大型企业，尤其是德国上市房产公司已采取了激进的收购战略，以实现进一步发展。并在对公寓式住宅大型股票的收购和资产管理中发挥潜在的协作优势。

简而言之，德国的住宅市场特点鲜明，如投资目的地分散且众多。不像其他的欧洲市场，如法国或英国，他们的投资并没有集中在首都或几个主要城市，而在很多的A--级到C--级的投资目的地和大都市地区均有投资机遇。2015年下半年和2016年难民的涌入使A--级/B--级投资目的地的额外需求增加，因此公寓式住宅需求很大。当最受欢迎的市场（尤其是前七大城市）的租赁仍在上涨时，投资的重点已开始转向B--级/C--级投资目的地。这些地区的租金更有吸引力，而且还有上涨空间。德国住宅出租市场高度管制，从投资者的角度来看，这限制了租赁机会的增加。

<table>
<thead>
<tr>
<th>城市/市场</th>
<th>独立式公寓的平均售价</th>
</tr>
</thead>
<tbody>
<tr>
<td>柏林</td>
<td>3,450 欧元/平方米</td>
</tr>
<tr>
<td>杜塞尔多夫</td>
<td>3,340 欧元/平方米</td>
</tr>
<tr>
<td>美因河畔法兰克福</td>
<td>3,990 欧元/平方米</td>
</tr>
<tr>
<td>汉堡</td>
<td>4,000 欧元/平方米</td>
</tr>
<tr>
<td>科隆</td>
<td>3,940 欧元/平方米</td>
</tr>
<tr>
<td>慕尼黑</td>
<td>6,600 欧元/平方米</td>
</tr>
<tr>
<td>斯图加特</td>
<td>4,340 欧元/平方米</td>
</tr>
</tbody>
</table>

来源：基于RCA和摩根士丹利资本国际指数的德勤研究
1.3.2.5 前四大投资目的地的最新关键动态
（柏林、法兰克福、汉堡和慕尼黑）

柏林
近几年，尤其是2015年，柏林对投资者的吸引力显著增强。2015年上半年投资交易总额达55亿欧元，比上年同期的两倍还多，使柏林超过法兰克福成为德国第一大市场。

最近几个季度零售房产利率明显上涨，2015年第二季度成交额为7.2亿欧元，接近写字楼板块的交易额。住宅已经成为了主要的市场板块，2015年第一季度，七个主要市场的境内外上市房地产企业的公寓成交额罕见地达到了15亿欧元。

总的来看，外资份额已略有增加。2015年年初起发生了另一个更明显地转变，上市公司的市场份额从2014年的6%以下增加到2015年上半年的38%，约22亿欧元。

在跨国和跨领域团队的支持下，德勤能够为您投资房地产提供帮助，具体包括房产估价、融资战略和税务规划。

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Dr. Stefan Zimmermann
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stzimmermann@deloitte.de

### 市场指标 — 柏林

<table>
<thead>
<tr>
<th>指标</th>
<th>数值</th>
</tr>
</thead>
<tbody>
<tr>
<td>2015年上半年总投资额</td>
<td>55.02亿欧元</td>
</tr>
<tr>
<td>外商投资比例</td>
<td>45.5%</td>
</tr>
<tr>
<td>2014年房地产总回报率</td>
<td>6.2%</td>
</tr>
<tr>
<td>2014年房地产收入回报率</td>
<td>4.8%</td>
</tr>
<tr>
<td>2014年房地产资本增长率</td>
<td>1.3%</td>
</tr>
<tr>
<td>2015年第三季度写字楼板块的最高收益率</td>
<td>4.25%</td>
</tr>
</tbody>
</table>

来源: RCA 和摩根士丹利资本国际指数
法兰克福
尽管在德国城市中落后于柏林，排名跌至第二，法兰克福的投资额仍有明显增长。与上年同期相比，2015年上半年投资额增加了约45% ，其中2015年第二季度的业绩尤为突出。

在写字楼板块，法兰克福的市场仍占有重要地位：2015年上半年占比63%，略低于2014年全年平均水平。在该领域，资金是最高等级的买方，国内外的资金数额相当。

在其他板块市场中，主要受国内买家的影响，住宅房产市场份额增加，从2014年的5%增加到2015年上半年的12%，但同时外资也更加活跃。

### 市场指标 — 法兰克福

<table>
<thead>
<tr>
<th>指标</th>
<th>数值</th>
</tr>
</thead>
<tbody>
<tr>
<td>2015年上半年总投资额</td>
<td>42.3亿欧元</td>
</tr>
<tr>
<td>外商投资比例</td>
<td>45.4%</td>
</tr>
<tr>
<td>2014年房地产总回报率</td>
<td>4.4%</td>
</tr>
<tr>
<td>2014年房地产收入回报率</td>
<td>4.6%</td>
</tr>
<tr>
<td>2014年房地产资本增长率</td>
<td>-0.3%</td>
</tr>
<tr>
<td>2015年第三季度写字楼板块的最高收益率</td>
<td>4.40%</td>
</tr>
</tbody>
</table>

来源：RCA和摩根士丹利资本国际指数

汉堡
过去一年里，在德国四个主要城市的房地产投资市场中，汉堡市场一直保持缓慢但却稳定的增长。2015年上半年实现投资额为24亿欧元，比2014年上半年高出8%。

在前四大德国城市中，仅汉堡的外商投资市场份额下跌。从2014年的46%下跌至2015年上半年的31%。国内需求更加不稳定，2015年第一季度达到峰值，国内投资额为13亿欧元，其中过半来自公寓大楼板块。

那么住宅投资的市场份额明显增长，从2014年的12%上涨至2015年上半年的36%，也就不足为奇了。增长的份额几乎等同于写字楼板块下跌的份额。

### 市场指标 — 汉堡

<table>
<thead>
<tr>
<th>指标</th>
<th>数值</th>
</tr>
</thead>
<tbody>
<tr>
<td>2015年上半年总投资额</td>
<td>24.01亿欧元</td>
</tr>
<tr>
<td>外商投资比例</td>
<td>30.6%</td>
</tr>
<tr>
<td>2014年房地产总回报率</td>
<td>6.4%</td>
</tr>
<tr>
<td>2014年房地产收入回报率</td>
<td>5.0%</td>
</tr>
<tr>
<td>2014年房地产资本增长率</td>
<td>1.3%</td>
</tr>
<tr>
<td>2015年第三季度写字楼板块的最高收益率</td>
<td>4.10%</td>
</tr>
</tbody>
</table>

来源：RCA和摩根士丹利资本国际指数
慕尼黑
2015年上半年慕尼黑的跨境投资活动明显更加活跃。2014年市场份额仅为33%，而现在外国投资者的市场份额已超过国内买家。
来源：RCA和摩根士丹利资本国际指数
境外资金近乎都集中在写字楼板块，而私有公司更热衷于收购零售资产。

2015年上半年慕尼黑的投资总额达29亿欧元，比上年同期增长19%，但增幅不及柏林和法兰克福。
自去年起受追捧的房产类型未发生变化，住宅板块市场份额略增，与其他德国城市一样，国内买家主导市场。

<table>
<thead>
<tr>
<th>市场指标 – 慕尼黑</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>2015年上半年总投资额</td>
<td>29.1亿欧元</td>
</tr>
<tr>
<td>外商投资比例</td>
<td>57.2%</td>
</tr>
<tr>
<td>2014年房地产总回报率</td>
<td>7.2%</td>
</tr>
<tr>
<td>2014年房地产收入回报率</td>
<td>4.7%</td>
</tr>
<tr>
<td>2014年房地产资本增长率</td>
<td>2.4%</td>
</tr>
<tr>
<td>2015年第三季度写字楼板块的最高收益率</td>
<td>3.80%</td>
</tr>
</tbody>
</table>

来源：RCA和摩根士丹利资本国际指数
2. 监管环境

2.1 公司法和设立公司

2.1.1 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），至少由一位承担有限责任的合伙人（普通合伙人）和承担有限责任的合伙人（有限合伙人）组成，且

- 普通商业合伙关系（有限责任公司），合伙人承担有限责任。

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有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。

在德国必须在当地法院商业注册处登记。股份公司或有限责任公司的注册对外国企业在德设立子公司非常关键，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、在德国注册办公地址、经营范围、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候选名单。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章程和章程协议、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。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。

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对公司章程承担保证。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）、业务对象和注册资本（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。只有认缴25%的股本之后，公司的登记注册才能生效。注册资本最低认缴额度须达到1.25万欧元（当仅有一名创始成员时，则还需要100%的抵押）。认缴股本少于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到外国投资者欢迎的公司类型。因为他们希望将投资活动风险控制在他们在中国的投资总额内，且并不打算在资本市场进行融资（要求股份公司的法律形式）。

欧洲股份公司，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。
2.1.2 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。组建公司时现金缴付（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可。如果股份公司不仅仅为了名义价值而发行股票，则最低25%的缴纳资本应包括股票溢价（常称为贴水）在内。资本也可以以工厂、机械、专利和专业知识等类似形式缴付。现金缴付必须100%支付，并由法院指派稽核员严格估价。一笔等同于税后年利润5%的数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。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，不超过21位。成员不超过10位。公司代表可在附属公司的监事会中，获得最多五个额外的席位。对董事的国籍和户籍无任何限制。股东大会选举股东代表列席董事会，任期一般不超过5年，具体任职期限取决于并年度大会上是否决定在代表任期第四财年时解除任命。上述决议应由超过75%的股东表决通过。如果持有至少5%或50万欧元的股本，则可以：召集临时股东大会，或为大会议程提供选题；如果决议显示为“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；或当商业报告不完整或资产估值过低时，要求开展专项审计。如果持有至少10%或100万欧元股本，则股东可对董事会成员强制发起投票表决；尽管报告看起来是完整的，也可要求对年度财务报告和管理层报告展开专项审计。

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，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，则可以：召集临时股东大会，或为大会议程提供选题；如果决议显示为“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；或当商业报告不完整或资产估值过低时，要求开展专项审计。如果持有至少10%或100万欧元股本，则股东可对董事会成员强制发起投票表决；尽管报告看起来是完整的，也可要求对年度财务报告和管理层报告展开专项审计。

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。
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（当仅有一位创始成员时，则需100%的额外担保）。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者型公司（“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者型企业所需的法定准备金应为年收益的25%。

创始人和股东。

公司至少应有一位初始成员。初始成员可是一公司或民营企业。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者型公司的官方名称须含有“Unternehmergesellschaft (haftungsbeschränkt)”或“UG (haftungsbeschränkt)”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）的附属企业或托管独立的贸易实体。仅独立的分公司需在商务注册处登记。两类分公司享有同等的税收待遇。不过分公司的利润是留在德国或送回其境外的总公司，统一按15%的税率（再征收5.5%的团结税，总税率达到15.825%）对分公司的收益征收企业所得税。此外，还将对分公司征收城市交易税，税率通常为14%到18%。因此，实际企业的税率达到了30%到33%。分公司的利润汇款不适用于预扣税。子公司的利润（分红）汇款须缴纳25%（包括团结税内为26.4%）的预扣税（汇款给符合资格的欧盟地区母公司的情况除外）。非居民企业可能会得到40%的减免，得到15.825%的实际税率。税务协定规定的税率也许更低。适用于严格的反协定滥用规定。

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。但分公司转为企业后，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实的公司章程（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。
2.1.3 税务结构考虑

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》将股息预扣税降至零。但这需要满足两个条件：该控股公司拥有一些经营活动，以达到德国法律规定的要求。另外，该控股公司的所在地不对股息征收税。过去的首选地是卢森堡与荷兰。而英国税法不要求征收预扣税，因此也是一个理想的控股公司所在地。

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（有限及两合公司）进行直接投资。这是德国中型市场（中型企业）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）相同的税负。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。因此，从中国大陆终极股东的角度看，扁平结构更为理想。

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，需要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。
2.1.4 许可协议法律体制
签订许可协议或向国外支付专利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低专利费金额，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相关规定（《技术转让条例》），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，《欧盟条约》仍禁止签订任何限制竞争的合同。同时，《技术转让条例》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国家限定在欧盟国家范围内（禁止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）。
2.1.5 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，但合并不会从实质上加强已存在的企业的联合的除外。

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。

在德国，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。
- 参与合并的企业中至少有两家企业在欧盟的年销售额超过25亿欧元；参与合并的企业中至少有两个企业各自在欧盟市场的年销售额超过1亿欧元；参与合并的各个企业在欧盟市场的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个国家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，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。

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。

满足下列情形，并购不必通知联邦卡特尔局：

- 合并对德国市场不构成影响；未达到最低销售额或最低限额条款适用时（全世界的年销售额达到或低于1,000万欧元的独立企业与另一家企业开展合并（不适用于印刷媒体））。

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. 参与合并的企业中至少有两家企业在欧盟的年销售额超过25亿欧元；参与合并的企业中至少有2家企业各自在欧盟市场的年销售额超过1亿欧元；参与合并的企业中至少有2个企业各自在欧盟市场的年销售额超过1亿欧元；参与合并的各个企业在欧盟市场的年销售额的三分之二以上不是来自一个和同一个成员国。
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。
2.1.6 卡特尔禁令
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）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——允许制定某些限制性规则，如非竞争条款、最惠条款以及排他性条款。

2.1.7 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。

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等参与者造成实际或潜在的障碍，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。
2.1.8 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商业机密，学术界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。

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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2.2 劳动法

2.2.1 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间集体谈判的影响。

德国《劳动法》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。

德国劳动法依照欧盟指导方针，管理工资协议。雇佣公司在一年内，雇主必须将劳动合同形成文件。若劳动合同中没有法律选择条款，法院采用德国法律，即便雇员是外籍公司也一样。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，帮助企业解决员工问题（如工资、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针对员工劳资委员会和员工代表做出了规定。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。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。集体劳动合同和劳资委员会协议对工作时间做出了规定。正常工作日的工作时间为8个小时，如6个月内平均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。医疗、餐饮、运输和农业行业存在例外情况。允许轮班工作，两班之间须保证基本11个小时的休息时间。集体劳动合同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。
2.2.2 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。根据《最低工资法》规定，最低工资标准为每小时税前8.5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。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税收优惠条件。私营企业员工享有法定社会退休福利（国家养老金）。如《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2.4.6.6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:

• 定期医疗保险

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7.3%，最高可达4,125欧元。如果保险结构或额外保费，则雇主还需额外缴纳0.9%的保费。所有正常年收入低于54,900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要求雇主支付与法定医疗保险相等的保险费。

• 长期护理/伤残保险

该计划是强制性的。保费缴费比例为税前月收入的2.35%，最高可达4,125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%。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，或当前服兵役或在行政机构在职人员。凡参加私人医疗保险的人员自动参加长期护理保险，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。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3%，最高可达6,050欧元（前欧盟东部国家为5,200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18.7%，最高可达6,050欧元（前欧盟东部国家为5,200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。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。德国与中国还签署了此类协定，其中包括中国的员工所属国的雇主必须申请获得保险单（欧洲FormAI）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。
2.2.3 解雇

根据解雇相关法律规定，在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2004年1月1日以后所聘用的员工。解雇通知期因劳动合同的长短而存在差异。试用期达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。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。劳资委员会成员因重大问题才可被解雇。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%，也可能是大大高于这一金额。

可在集体谈判协议规定的范围内修改通知期，员工人数为10人或少于10人的公司，通知期灵活度较高。

2.2.4 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。集体劳动合同一旦签订，通常会在全国整个行业内施行。

德国劳动法规定，75%工会成员赞成的情况下，才可实施仲裁与罢工。该法律对开展罢工的条件做出了限制，并为处罚相关违法行为提供了法律依据。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。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。
2.2.5 聘用外籍人士

2.2.5.1 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”）；
- 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。

2.2.5.2 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，整个流程大约需要4-8个周。入境工作签有效期通常为90天。工作签到期后则须办理短期或长期居留证。

2.2.5.3 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，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，则需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49,600欧元（2016年），对于人才紧缺的岗位（医生、IT专家、数学人才、工程师），税前年薪达38,688欧元即可（2016年），符合蓝卡条件的工作人员不用接受长时间的优先审查。

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。
2.2.5.4 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科技员工，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。

2.2.5.5 随行人员
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。由于随行人员许可办理涉及申请居留城市的地方移民局，因此耗时较长。

2.2.5.6 市政部门登记
所有人都必须在入境14天内到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2.4.3章，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。

德勤提供人力资源部署及相关员工调动服务，其中包括例如为遵守德国相关法规的便于雇主雇员操作的解决方案。

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2.3 会计与审计

2.3.1 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6-9个月）完成。

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定为结账日期，但公司章程也可将其他日期设定为结账日期。

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。最普通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说明，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，满足标准的效果才能得以应用

<table>
<thead>
<tr>
<th>类别</th>
<th>资产负债表总额（欧元）</th>
<th>收入（欧元）</th>
<th>员工人数（平均人数）</th>
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<td>微型企业</td>
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<td>&lt;250</td>
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<tr>
<td>大型企业</td>
<td>&gt;20,000,000.00</td>
<td>&gt;40,000,000.00</td>
<td>&gt;250</td>
</tr>
</tbody>
</table>
• 微型企业的财务报表可以不包括单独的附注。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说明中披露某些信息。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。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循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，例如母公司在德国。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（参见第2.4.6.1章节）。
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：若未超过以下阈值中两个阈值，则不用编制合并财务报表——可以是汇总账目相关阈值也可以是合并账目相关阈值。

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。需注意的是，中国最终母公司的合并财务报表通常不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、合并损益表以及合并财务报表说明组成。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2.3.4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。

<table>
<thead>
<tr>
<th>类别</th>
<th>汇总账目 (欧元)</th>
<th>合并账目 (欧元)</th>
</tr>
</thead>
<tbody>
<tr>
<td>资产负债表总额</td>
<td>24,000,000.00</td>
<td>20,000,000.00</td>
</tr>
<tr>
<td>收入</td>
<td>48,000,000.00</td>
<td>40,000,000.00</td>
</tr>
<tr>
<td>员工</td>
<td>250</td>
<td>250</td>
</tr>
</tbody>
</table>

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。需注意的是，中国最终母公司的合并财务报表通常不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、合并损益表以及合并财务报表说明组成。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。
2.3.2 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。基本所有公司均须公布法定账簿（法定信息公布要求）的公布要求与上市公司所执行的要求（资本市场信息公布要求）存在一些大体的差异。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2.1.1与第2.1.2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
- 利润分配提案（后期为决议）
- 一名独立会计师提出的审计意见
- （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2.3.1章节），同时也需要将两类豁免区分开。下表对公司公布要求及相关豁免进行了概述：

<table>
<thead>
<tr>
<th>公布项目</th>
<th>微型公司</th>
<th>小型公司</th>
<th>中型公司</th>
<th>大型公司</th>
</tr>
</thead>
<tbody>
<tr>
<td>资产负债表</td>
<td>向《联邦公报》提交汇总资产负债表但不用公布</td>
<td>进一步汇总资产负债表,用于信息公开</td>
<td>进一步汇总资产负债表,用于信息公开</td>
<td>不可免除</td>
</tr>
<tr>
<td>损益表</td>
<td>不用提交或公布</td>
<td>免于提交或公布</td>
<td>进一步汇总损益表,用于信息公开</td>
<td>不可免除</td>
</tr>
<tr>
<td>财务报表附注</td>
<td>不适用</td>
<td>对应资产负债表进行汇总</td>
<td>对应资产负债表及损益表进行汇总</td>
<td>不可免除</td>
</tr>
<tr>
<td>管理报告</td>
<td>不适用</td>
<td>不适用</td>
<td>对应资产负债表及损益表进行汇总</td>
<td>不可免除</td>
</tr>
<tr>
<td>独立外部审计师的审计意见</td>
<td>不适用</td>
<td>不适用</td>
<td>对应资产负债表及损益表进行汇总</td>
<td>不可免除</td>
</tr>
<tr>
<td>监事会报告</td>
<td>免于提交或公布</td>
<td>免于提交或公布</td>
<td>在有监事会的情况下:不可免除</td>
<td>在有监事会的情况下:不可免除</td>
</tr>
<tr>
<td>利润分配提案 (如适用)及决议</td>
<td>如适用:向《联邦公报》提交,但不用公布</td>
<td>如适用:不可免除</td>
<td>如适用:不可免除</td>
<td>如适用:不可免除</td>
</tr>
<tr>
<td>德国《公司治理法典》合规声明</td>
<td>不适用</td>
<td>不适用</td>
<td>不适用</td>
<td>上市公司:不可免除</td>
</tr>
</tbody>
</table>

1 参见 Baetge/Hagemeister/Brembt/Lappenkuepper 2014, Publizitaet und Offenlegung in: Baetge/Krisch/Thiele。
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2.3.1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的会计规定。此类公司只需公布其享有相关豁免权的事实以及哪家企业的合并财务报表将其包括在内。

德国母公司法人代表必须依照大型公司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信息披露标准，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。
2.3.3 财务信息审计

大中型企业（参见第2.3.1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，该审计准则与国
际审计准则一致。在德国，审计师会对即将
公布的财务报表发表审计见解（参见第2.3.3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任风险预警系统（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2.1.8
章节）。
2.3.4 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）的会计规则

如上所述（参见第2.3.1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。

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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<table>
<thead>
<tr>
<th>关注领域</th>
<th>《企业会计准则》 - 中国公认会计准则</th>
<th>国际财务报告准则</th>
<th>《德国商法典》 - 德国公认会计准则</th>
</tr>
</thead>
<tbody>
<tr>
<td>无形资产</td>
<td>如果满足确认条件（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。</td>
<td>如果满足确认条件（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》第三条），则可确认为无形资产。</td>
<td>如果满足确认条件（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，《德国商法典》第二百四十八条第一节），则可确认为无形资产。</td>
</tr>
<tr>
<td>一般会计处理</td>
<td>对于使用寿命有限的无形资产，在其使用寿命内合理摊销。</td>
<td>对于使用寿命有限的无形资产，在其使用寿命内合理摊销。</td>
<td>对于使用寿命有限的无形资产，在其使用寿命内合理摊销。</td>
</tr>
<tr>
<td>无形资产</td>
<td>《企业会计准则第6号》第十九条</td>
<td>《国际会计准则第38号》第十九至二十七条</td>
<td>《德国商法典》第二百五十三条第五节</td>
</tr>
<tr>
<td>开发支出</td>
<td>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）：</td>
<td>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）：</td>
<td>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》第十三条“非同一控制下的企业合并”相关内容）：</td>
</tr>
</tbody>
</table>
|               | ① 完成分阶段资产在技术上具有可行性；② 具有完成该无形资产并使用或出售的意图；③ 证明无形资产产生的经济利益流入企业；④ 有足够的财务资源和其他资源支持，以完成该无形资产的开发，并有能力出售该无形资产；⑤ 归属于该无形资产开发阶段的支出能够可靠地计量。 | ① 完成分阶段资产在技术上具有可行性；② 具有完成该无形资产并使用或出售的意图；③ 证明无形资产产生的经济利益流入企业；④ 有足够的财务资源和其他资源支持，以完成该无形资产的开发，并有能力出售该无形资产；⑤ 归属于该无形资产开发阶段的支出能够可靠地计量。 | ① 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》第十一节）；② 内部研究支出（《企业会计准则第6号》第八条）。
| 无形资产     | 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。 | 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。 | 对于使用寿命有限的无形资产，在其使用寿命内合理摊销（通常采用直线法摊销）。 |
| 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。 | 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。 | 仅在极少数情况下确认为无形资产的使用寿命不明确。如确认为无形资产的使用寿命不明确，应在有关资产的报表附注中加以披露并说明原因。 |
| 无形资产     | 《企业会计准则第6号》第十八条 | 《国际会计准则第38号》第十九至二十七条 | 《德国商法典》第二百五十三条第五节 |
| 所获商誉     | 有义务予以资本化（《企业会计准则第20号》第十三节“非同一控制下的企业合并”相关内容），并对其后续计量进行减值测试。 | 有义务予以资本化（《国际财务报告准则第3号》第二节至二十五条），并对其后续计量进行减值测试。 | 有义务予以资本化（《德国商法典》第二百四十八至二十五条）。 |
|               | ① 经核实后负商誉，计入当期损益（《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）。 | ① 经核实后负商誉，计入当期损益（《国际财务报告准则第3号》第三节至四十五条）。 | ① 经核实后负商誉，计入当期损益（《德国商法典》第二百四十八至二十五条）。 |
|               | ② 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。 | ② 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。 | ② 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。 |

无形资产的后续计量：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。

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）。

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）。

仅在极少数情况下确认为无形资产的使用寿命不明确。如确认为无形资产的使用寿命不明确，应在有关资产的报表附注中加以披露并说明原因。

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。
### 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、出租或经营而持有的，且使用寿命超过一个会计年度（《企业会计准则》第3条）。

#### 初始计量
不动产、厂房和设备的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8、13条）
- 符合某些标准的借款费用（《企业会计准则》第23条）
- 以一笔款项购入多项没有单独标价的固定资产，应按该款项按各项固定资产公允价值占公允价值总额的比例进行分配，分别确定各项固定资产的成本。

#### 后续计量
按使用寿命计提折旧，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17条）。

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20条，参考《国际会计准则》第8号）。

### 《中国企业会计准则》—中国公认会计准则

#### 不动产、厂房和设备

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8、13条）
- 符合某些标准的借款费用（《企业会计准则》第23条）
- 以一笔款项购入多项没有单独标价的固定资产，应按该款项按各项固定资产公允价值占公允价值总额的比例进行分配，分别确定各项固定资产的成本。

### 《国际财务报告准则》

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条）

### 《德国商法典》—德国公认会计准则

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条）

按使用寿命计提折旧（《德国商法典》第253条），可使用不同的折旧方法。

如果资产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。

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。

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254条）。
<table>
<thead>
<tr>
<th>关注领域</th>
<th>《企业会计准则》 - 中国公认会计准则</th>
<th>国际财务报告准则</th>
<th>《德国商法典》 - 德国公认会计准则</th>
</tr>
</thead>
<tbody>
<tr>
<td>租赁分类</td>
<td>租赁，是指在约定的期间内，出租人将资产使用权让与承租人，以获取租金的协议（《企业会计准则第21号》第二条）。</td>
<td>租赁，是指在约定的期间内，出租人将资产使用权让与承租人，以获取租金的协议（《国际会计准则第17号》第四条）。</td>
<td>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，对租赁的会计处理应以一般条款为准，对租赁的会计处理应以一般条款为准，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款）。</td>
</tr>
<tr>
<td></td>
<td>融资租赁，是指实质上转移了与资产所有权有关的全部风险和报酬的租赁。其所有权最终可能转移，也可能不转移（《企业会计准则第21号》第五条）。</td>
<td>融资租赁，是指实质上转移了与资产所有权有关的全部风险和报酬的租赁。其所有权最终可能转移，也可能不转移。</td>
<td>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，且租金应至少能够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：</td>
</tr>
<tr>
<td></td>
<td>经营租赁是指除融资租赁以外的其他租赁。根据《企业会计准则第21号》第六条，符合下列一项或数项标准的，应当认定为融资租赁：</td>
<td>经营租赁是指除融资租赁以外的其他租赁。根据《国际会计准则第17号》第十条，符合下列一项或数项标准的，应当认定为融资租赁：</td>
<td>1) 完全补偿型租赁：</td>
</tr>
<tr>
<td></td>
<td>• 在租赁期届满时，租赁资产的所有权转移给承租人</td>
<td>• 在租赁期届满时，租赁资产的所有权转移给承租人</td>
<td>• 如为土地，该土地上的建筑满足融资租赁的标准</td>
</tr>
<tr>
<td></td>
<td>• 承租人有购买租赁资产的选择权</td>
<td>• 承租人有购买租赁资产的选择权</td>
<td>• 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少于40%或大于90%</td>
</tr>
<tr>
<td></td>
<td>• 租赁期占租赁资产使用寿命的大部分</td>
<td>• 租赁期占租赁资产使用寿命的大部分</td>
<td>• 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小于40%或大于90%</td>
</tr>
<tr>
<td></td>
<td>• 租赁开始日的最低租赁付款额现值，几乎相当于租赁开始日租赁资产公允价值</td>
<td>• 租赁开始日的最低租赁付款额现值，几乎相当于租赁开始日租赁资产公允价值</td>
<td>• 租赁资产性质特殊，如果不作较大改造，只有承租人才能使用</td>
</tr>
<tr>
<td></td>
<td>• 租赁资产性质特殊，如果不作较大改造，只有承租人才能使用</td>
<td>• 租赁资产性质特殊，如果不作较大改造，只有承租人才能使用</td>
<td>2) 不完全补偿型租赁：</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>• 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</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>• 租赁协议中包括购买选择权或续租选择权</td>
</tr>
</tbody>
</table>
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

租赁融资租赁的确认

在租赁期开始日，承租人应当将租赁开始日租赁资产公允价值与最低租赁付款额现值两者中较低者作为租入资产的入账价值，将最低租赁付款额作为长期应付款的入账价值，其差额作为未确认融资费用（《企业会计准则第21号》第十一条）。

未确认融资费用应当在租赁期内各个期间进行摊销，承租人应当采用实际利率法计算确认当期的融资费用（《企业会计准则第21号》第十五条）。

能够合理确定租赁期届满时取得租赁资产所有权的，应当在租赁资产使用寿命内计提折旧。无法合理确定租赁期届满时能够取得租赁资产所有权的，应当在租赁期与租赁资产使用寿命两者中较短的期间内计提折旧（《企业会计准则第21号》第十六条）。

出租人应当将租赁开始日最低租赁收款额与初始直接费用之和作为应收融资租赁款的入账价值，将其现值与未担保余值之和以及未担保余值之和与其现值之差额确认未实现融资收益（《企业会计准则第21号》第十八条）。未确认融资费用应当在租赁期内各个期间进行摊销。出租人应当采用实际利率法计算确认当期的融资租赁收入（《企业会计准则第21号》第十九条）。

承租人应以等于租赁开始日租赁资产公允价值的金额与最低租赁付款额的现值中的较低者，将融资租赁确认为资产和负债（《国际会计准则第17号》第二十条）。

最低租赁付款额应作为融资费用和未清偿债务的减少进行分摊，融资费用应分摊于租赁期内的各个会计期间，以便使每个会计期间的负债余额能有一个固定的定期利率（《国际会计准则第17号》第二十五条）。

能够合理确定租赁期届满时取得租赁资产所有权的，应当在租赁资产使用寿命内计提折旧。无法合理确定租赁期届满时能够取得租赁资产所有权的，应当在租赁期与租赁资产使用寿命两者中较短的期间内计提折旧（《国际会计准则第17号》第二十七条）。

出租人应在财务报表中确认资产（包括最低租赁收款额与初始直接费用），并列示为应收融资租赁额。出租人应按照其在租赁谈判中计算的购置或生产成本作为出租人的入账价值，分摊于租赁期的各个期间。（《国际会计准则第17号》第三十六条）。

出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出租人的入账价值，分摊于租赁期的各个期间。（《国际会计准则第17号》第三十五条）。

出租人应按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。
### 租赁

<table>
<thead>
<tr>
<th>关注领域</th>
<th>《企业会计准则》 – 中国公认会计准则</th>
<th>国际财务报告准则</th>
<th>《德国商法典》 – 德国公认会计准则</th>
</tr>
</thead>
<tbody>
<tr>
<td>经营租赁的确认</td>
<td>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（《企业会计准则第21号》第二十一条）。出租人应当按资产的性质，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。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（《企业会计准则第21号》第二十六号）。</td>
<td>出租人应当按资产的性质，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。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（《国际财务报告准则第17号》第三十三条）。</td>
<td>出租人应当按资产的性质，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。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（《国际财务报告准则第17号》第四十九条、第五十条）。</td>
</tr>
</tbody>
</table>

国际会计准则理事会发布了新版《国际财务报告准则第16号 — 租赁》。该准则将在2019年1月1日及之后开始的年度期间生效。纵观新标准，其基本规定如下：

承租人的会计处理：承租人将对所有租赁采用单一会计模型，与融资租赁会计类似。之前的经营租赁需在承租人的资产负债表中予以资本化。豁免仅限于短期租赁和低价值项目融资。对资本化的租赁，资产与相应负债由固定租赁付款额折现、某些合理的可选付款额与担保余值组成。

出租人的会计处理基本未作改动。
关注领域

<table>
<thead>
<tr>
<th>《企业会计准则》 – 中国公认会计准则</th>
<th>国际财务报告准则</th>
<th>《德国商法典》 – 德国公认会计准则</th>
</tr>
</thead>
<tbody>
<tr>
<td>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）。</td>
<td>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11条）。</td>
<td>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（《德国商法典》第253条第2款）。</td>
</tr>
<tr>
<td>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》第五十六条）。</td>
<td>按以下分类对金融工具进行计量：</td>
<td>金融资产通常按购买成本计量，含杂项费用以及后续收购费用。如有金融资产的可回收金额预计低于其账面价值，其账面价值可收回的，可按照《德国商法典》第253条第2款进行确认。</td>
</tr>
<tr>
<td>按以下分类对金融工具进行计量：</td>
<td>• 贷款和应收款项根据合同金额，采用实际利率法，按摊余成本计量</td>
<td>仅有银行的某些金融工具例外。</td>
</tr>
<tr>
<td>• 持有至到期投资以投资（收购）成本计量</td>
<td>• 可供出售金融资产以公允价值计量且其变动计入其他综合收益</td>
<td>仅对银行的某些金融工具例外。</td>
</tr>
<tr>
<td>• 可供出售金融资产以公允价值计量且其变动计入其他综合收益</td>
<td>• 交易性金融资产和指定为以公允价值计量且其变动计入当期损益的金融资产（即以公允价值计量且其变动计入当期损益的金融资产）</td>
<td>金融工具的法定义。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。</td>
</tr>
<tr>
<td>• 交易性金融资产和指定为以公允价值计量且其变动计入当期损益的金融资产（即以公允价值计量且其变动计入当期损益的金融资产）</td>
<td>以公允价值计量其变动计入当期损益</td>
<td>金融工具的法定义。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。</td>
</tr>
<tr>
<td>以公允价值计量其变动计入当期损益</td>
<td>与《国际财务报告准则》不同，可供出售金融资产与交易性金融资产不可进行重分类。</td>
<td>金融工具的法定义。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。</td>
</tr>
<tr>
<td>金融工具的法定义。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。</td>
<td>只有在极少数情况下，可供出售非衍生金融资产与交易性非衍生金融资产才可进行重分类。</td>
<td>金融工具的法定义。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。</td>
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</tbody>
</table>

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。
国际会计准则理事发布了新版《国际财务报告准则第9号——金融工具》。该准则将在2018年1月1日及之后开始的年度期间生效。纵观新准则，其基本规定如下：

金融工具归入金融资产，按以下分类进行后续计量：

- 以摊余成本计量
- 以公允价值计量且其变动计入其他综合收益
- 以公允价值计量且其变动计入当期损益

分类标准是企业管理金融资产的方式（商业模式）和金融资产现金流量特征。有些情况下，可选择将金融资产指定为后两类《国际财务报告准则第9号》第四条第一项。

该准则为确认金融资产减值损失的时间与限度引入了“预期损失模型”，以取代“已发生损失模型”，相应地需要获取未来信用损失的前瞻性信息《国际财务报告准则第9号》第五条第五项。
### 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》第五至八条，加工成本包括：
- 材料成本
- 制造成本
- 企业应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
- 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（《企业会计准则第1号》第八条）。

#### 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。

#### 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）。

#### 已收预付款的列示
已收预付款必须列示为负债。只有建造合同的预付款列示为客户付款总额的净值。

### 国际财务报告准则

#### 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）进行计量。根据《国际会计准则第2号》第十一至十七条，加工成本包括：
- 材料成本
- 制造成本
- 根据生产设备的正常能力，分配固定和变动的制造间接费用
- 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）

其他成本只有当它们是在使存货达到目前场所和状态过程中发生时，才能列入存货成本之中。

#### 计算方法
通常计算每个项目的个别成本（《国际会计准则第2号》第二十三条），然而，如果不适合使用成本的个别计价法，可使用以下方法：
- 先进先出法（《国际会计准则第2号》第二十五条）
- 加权平均法（《国际会计准则第2号》第二十五条）

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》第二十四条）。

### 德国商法典

#### 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）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

#### 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（《德国商法典》第二百五十五条第一节）。

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》第二百五十五条第一款）。

#### 已收预付款的列示
已收预付款可以选择性地列示为存货成本：
- 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）。

### 关注领域

<table>
<thead>
<tr>
<th>关注领域</th>
<th>《企业会计准则》 – 中国公认会计准则</th>
<th>国际财务报告准则</th>
<th>《德国商法典》 – 德国公认会计准则</th>
</tr>
</thead>
</table>
| 存货     | 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》第五至八条，加工成本包括：
- 材料成本
- 制造成本
- 企业应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
- 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（《企业会计准则第1号》第八条）。 | 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，加工成本包括：
- 材料成本
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- 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）

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- 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示为存货成本：
- 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     | 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。 | 通常计算每个项目的个别成本（《国际会计准则第2号》第二十三条），然而，如果不适合使用成本的个别计价法，可使用以下方法：
- 先进先出法（《国际会计准则第2号》第二十五条）
- 加权平均法（《国际会计准则第2号》第二十五条）

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》第二十四条）。 | 通常计算每个项目的个别成本（《德国商法典》第二百五十五条第二条），可视情况使用其他计算方法：
- 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（《德国商法典》第二百四十条第四节）
- 分组计算（《德国商法典》第二百四十条第四节）
- 使用固定价值计算（《德国商法典》第二百四十四条） |
| 存货     | 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）。 | 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》第二十三条），然而，如果不适合使用成本的个别计价法，可使用以下方法：
- 先进先出法（《国际会计准则第2号》第二十五条）
- 加权平均法（《国际会计准则第2号》第二十五条）

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）。 | 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》第二百五十三条第一款）。 |
<p>| 存货     | 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）。 | 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）。 | 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》第二百五十三条第一款）。 |
| 存货     | 已收预付款必须列示为负债。只有建造合同的预付款列示为客户付款总额的净值。 | 已收预付款必须列示为负债。只有建造合同的预付款列示为客户付款总额的净值。 | 已收预付款可以选择性地列示为资产负债表的存货净值或负债（《德国商法典》第二百六十八条第二项）。 |</p>
<table>
<thead>
<tr>
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</tr>
</thead>
<tbody>
<tr>
<td>建造合同</td>
<td>建造合同，是指为建造某一项或数项在设计、技术、功能、最终用途等方面密切相关或相互依赖的资产而专门订立的合同（《企业会计准则第15号》第二条）。</td>
<td>建造合同，是指为建造某一项或数项在设计、技术、功能、最终用途等方面密切相关或相互依赖的资产而专门订立的合同（《国际会计准则第11号》第三条）。</td>
<td>德国会计法未就建造合同作特别规定。因此，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。</td>
</tr>
</tbody>
</table>

在资产负债表日，建造合同的结果能够可靠估计的，应当根据完工百分比法确认合同收入和合同费用（《企业会计准则第15号》第三十八号）。

建造合同的结果不能可靠估计的，只有当合同成本可能收回时，才能确认为收入；合同成本应在其发生的当期确认为费用（《企业会计准则第15号》第二十条）。

建造合同的预计损失应立即确认为费用（《企业会计准则第15号》第二十七条）。

根据《企业会计准则第15号》，因订立合同而发生的与合同直接有关的费用，应当直接计入当期损益（《企业会计准则第15号》第十七条）。然而，根据《企业会计准则解释第1号》针对《企业会计准则第15号》的问答三，如果上述费用能够单独认定并且可以可靠地计量，同时很可能发生合同，则应将这些费用作为合同成本的一部分予以包括，这一点与《国际会计准则第11号》的要求相同。

当建筑合同的结果可以可靠地预计时，与该合同有关的合同收入和合同成本可以根据资产负债表日的工程完成进度分别确认为收入和费用（完工百分比法，《国际会计准则第11号》第二十五条）。

建造合同的结果不能可靠估计的，只有当合同成本可能收回时，才能确认为收入；合同成本应在其发生的当期确认为费用（《国际会计准则第11号》第三十二条）。

建造合同的预计损失应立即确认为费用（《国际会计准则第11号》第三十二号）。

根据《国际会计准则第11号》的要求，因订立合同而发生的与合同直接有关的费用，如果它们能够单独认定并且可以可靠地计量，同时很可能发生合同，则应将这些费用作为合同成本的一部分予以包括（《国际会计准则第11号》第二十一号）。
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

国际会计准则理事会发布了新版《国际财务报告准则第15号——与客户之间的合同产生的收入》。该准则将在2018年1月1日及之后开始的年度期间生效。纵观新准则，其基本规定如下：

主体应当在将商品或劳务的控制权转移给客户时确认收入。如果客户获得商品或劳务（如一项资产）的控制权，视作商品或劳务已发生转移（《国际财务报告准则第15号》第三十一条）。根据收入确认准则，需采用以下步骤：

- 识别与客户之间的合同
- 识别合同中的单独履约义务
- 确定交易价格
- 将交易价格分配至单独履约义务
- 在主体履行履约义务时确认收入

如果履约义务是在一段时间内履行的（而不是某一时点），应通过计量履约义务的进度确认收入（《国际财务报告准则第15号》第三十九条）。允许以成本为依据计量进度（国际财务报告准则第15号B部分第十八条），用于说明需从多大程度上考虑所提供的劳务与交付的商品。
### 关注领域

<table>
<thead>
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<th>《德国民法典》 - 德国公认会计准则</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>或有事项与预计负债确认</strong></td>
<td>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：</td>
<td>根据《国际会计准则第37号》第十四条规定，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：</td>
</tr>
<tr>
<td>• 因过去事项而承担的现时义务（法定或推定）</td>
<td>• 因过去事项而承担的现时义务（法定或推定）</td>
<td>• 针对第三方的现时义务（法定或推定）</td>
</tr>
<tr>
<td>• 履行该义务可能导致经济利益流出企业</td>
<td>• 履行该义务可能导致经济利益流出企业</td>
<td>• 履行该义务会造经济上的负担</td>
</tr>
<tr>
<td>• 该义务的金额能够可靠地计量</td>
<td>• 该义务的金额能够可靠地计量</td>
<td>• 金额能够计量（至少一定范围内）</td>
</tr>
</tbody>
</table>

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）
- 履行该义务会造经济上的负担
- 金额能够计量（至少一定范围内）

此外，《德国民法典》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前三个月内使用的递延土地复垦费
- 没有法律义务的保证条款

除递延维修费与递延土地复垦费的预计负债以外，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。
<table>
<thead>
<tr>
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</thead>
<tbody>
<tr>
<td>或有事项与预计负债计量</td>
<td>预计负债应当按照履行现有义务所须支出的最佳估计数进行初始计量（《企业会计准则第13号》第5条）。</td>
<td>（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细说明（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方面。</td>
<td>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）。</td>
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<td>《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细说明。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。</td>
<td>《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）。</td>
<td>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，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。因此表明，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，往往倾向于以较高金额值进行确定。</td>
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<td></td>
<td>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5条）。</td>
<td>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。折现率按以市场行情为准（《国际会计准则第37号》第62条）。</td>
<td>对于为3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》第二百五十三二条第二款）。</td>
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<td>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。折现率按以市场行情为准（《企业会计准则第13号》第6条）。</td>
<td>对于为3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》第二百五十三二条第二款）。</td>
<td>根据法定法规（RueckAbzinsV），联邦银行每月都会公布折现率。</td>
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<tr>
<td>或有事项与预计负债重组</td>
<td>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)重组计划已对外公告（《企业会计准则第13号》第6条）。从会计文献来看，《企业会计准则第13号》将重组计划的对外公告视作承担重组义务的充分必要条件，而《国际会计准则第37号》则进一步细化了对重组计划影响的解释。因此，相较于《国际会计准则第37号》，《企业会计准则第13号》对重组义务的规定更为宽泛。</td>
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<td>德国会计法并未对承担重组义务的条件作出详细规定。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。</td>
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</tr>
</tbody>
</table>
关注领域 | 《企业会计准则》 - 中国企业会计准则 | 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 | 《企业会计准则第9号》将离职后福利计划分为设定提存计划和设定受益计划。 | 《国际会计准则第19号》将离职后福利计划分为设定提存计划和设定受益计划。 | 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。
离职后福利 | 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。 match against 《企业会计准则第9号》第十三条各项对负债（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（《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》第十六条规定）。
负债 | 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32号》第三十一条）。
| 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32号》第三十一条）。
| 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》第十一章（1）项）。
负债以结算金额计量（《德国商法典》第二百五十三条第一条）。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。外币货币性项目，采用平均即期汇率折算，前提是其价值不得低于购建成本。剩余期限达一年的负债，采用平均即期汇率折算，且无需以购建成本为限（《德国商法典》第二百五十六号a）。
债务 | 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》第二十三、三十一）。
| 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》第三十一条）。
| 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》第十一章（1）项）。
负债以结算金额计量（《德国商法典》第二百五十三条第一条）。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。外币货币性项目，采用平均即期汇率折算，前提是其价值不得低于购建成本。剩余期限达一年的负债，采用平均即期汇率折算，且无需以购建成本为限（《德国商法典》第二百五十六号a）。

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：

- 商誉的初始确认
- 不是企业合并，且发生时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、联营企业和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。

递延所得税资产和递延所得税负债不应进行折现。递延所得税资产和递延所得税负债在资产负债表中单独列示。递延所得税资产和递延所得税负债应以按照预期收回资产或清偿负债期间的适用税率计量。递延所得税资产和递延所得税负债不应进行折现。
2.4 税务

2.4.1 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支、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

拥有注册办公室或位于德国的管理场所的企业，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2.4.4.2.1章节）。未在德国拥有法定所在地或管理场所的外资企业视为非居民企业，非居民企业须为其德国国内所得缴纳企业所得税。

由于德国是欧盟28个成员国之一，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。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。
2.4.2 企业税制

2.4.2.1 企业所得税

2.4.2.1.1 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所得税。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》条款广泛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》中的特别条款予以补充（簿记要求见第2.3.1章和第2.4.6.1章）。

根据目前的准则，居民企业股息所得一般免收企业所得税。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5%进行预提（含贸易税），将超出部分的5%作为可抵扣营业开支列入应纳税所得额，按约1.5%进行预提（含贸易税）。

一般而言，因企业的业务运营而产生的费用均不可抵扣费用。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。根据这些规定，纳税人计税时仅可直接抵扣税前、亏损前结转的年利润最高30%的（净）利息费用。增加了所产生的税收折旧（息税折旧及商誉减值/无形资产摊销前的应纳税利润），30%限额适用于所有利息，无论该债务由股东、关联方或第三方持有。超额利息可无限期结转。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) “集团条款”下，纳税人在全球集团的产权比率不高于50%。

超过30%限额的利息所得属于不可抵扣利息，应缴纳德国企业所得税和贸易税（适用于其中一种例外情况的除外），结转利息须遵守所有权变更规定（直接或间接向某股东（或拥有相似目标的股东群体）变更股权超过25%/50%），有可能导致结转利息费用部分或全部取消。

2.4.2.1.2 企业所得税税率

根据上述规定，企业所得税税率为15%。
2.4.2.1.2 亏损
如果本年利润无法抵减同年亏损，则未抵消亏损的余额可无限期向后期结转或向前期结转一年。未抵消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。亏损抵前不得超过用于贸易税。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日起实行双重所有权变更规定。如果亏损企业在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。如果亏损企业五年内向一个买方（或一个关联买方集团）转移的股份超过25%但不超过50%，则按比例取消亏损抵免。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受企业100%的股权的，不会取消其亏损抵免。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。

德国合并纳税集团中某一控股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外国纳税，则视该负收入为不可抵扣亏损，须在德国纳税。
2.4.2.2 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，但均介于所得的14%–18%之间。从2008财年起，营业开支不得再用于抵扣贸易税。

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100,000欧元。

对金融机构和金融服务提供商利息费用的加回，德国有限定条件：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。

2.4.2.3 申报要求
税收评定期间一般按日历年划分，但居民公司可选择存在时间偏移的财务年度作为纳税年度。企业变更其财务年度（及纳税年度）须获得税务当局同意，但将其偏移的财务年度变更回日历年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。纳税申报单须用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2.4.6.2章“电子税收资产负债表立法”）。

最终纳税申报单一般须在下一年的5月31日前申报。若纳税申报单由注册税务师填写，则截止日期自动延长至下一年的12月31日。但税务当局可要求纳税人提前申报纳税申报单。

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。
2.4.2.4 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，并在一份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。

2.4.2.5 非居民企业和常设机构

拥有注册办公室或位于德国的管理场所的外资企业属于非居民企业。须在德国纳税。非居民企业通常为与其国内所得缴纳税款的德国企业所得税。

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。

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，认定为常设机构，缴纳德国税为：

- 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) 单个建筑工作或设施，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，若条件符合以下四个主要条件的，则被认定为在德常设机构，须缴纳德国税为：

- 存在固定经营场所或商业设施；
- 可持续性，即该固定经营场所或设施的时间因素；
- 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，但此种工地、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）；
- 经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。
### 2.4.3 个人税制

#### 2.4.3.1 概览

<table>
<thead>
<tr>
<th>税目</th>
<th>累进税率，最高税率45%（加上团结附加税为47.475%）</th>
</tr>
</thead>
<tbody>
<tr>
<td>资本利得税率</td>
<td>累进税率，最高税率45%（加上团结附加税为47.475%）, 某些情况下免税</td>
</tr>
<tr>
<td>计税基础</td>
<td>全球所得</td>
</tr>
<tr>
<td>双重征税减免</td>
<td>有</td>
</tr>
<tr>
<td>纳税年度</td>
<td>日历年</td>
</tr>
<tr>
<td>申报截止日期</td>
<td>5月31日</td>
</tr>
</tbody>
</table>

#### 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%）

#### 税收减免

- **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）
2.4.3.2 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，即使在德国居住连续超过六个月，或有意居留连续超过该期限。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。税收协定可否决个人的税收居民身份。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。

2.4.3.3 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因在德国所得须计税。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、租金所得、部分资本所得以及其他个人所得。多数情况下，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。用以补偿节假日、公假日或夜班工作，或购买雇主产品或服务给与的员工折扣等补贴给付一年1,000欧元的，适用于部分免税政策。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（如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2014年开始的，应税百分比为68%，而于2015年开始的，该比例则为70%。
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2016年起，居民纳税人享有每人8,652欧元（共同申报的已婚夫妇为17,304欧元）的基本补贴。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（2015年为80%），2015年最高为每年17,737.60欧元（22,172欧元的80%），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消耗完全；

- 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190欧元的儿童津贴，第三个子女为196欧元，第四个及之后的子女为221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3,524欧元）是否能让纳税人获益，并自动调整最终的税款。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8,652欧元 (共同申报的已婚夫妇为17,304欧元) 部分的14%到最高税率为收入超过254,447欧元 (共同申报的已婚夫妇为508,894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。
2.4.3.4 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（总裁资的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“U3”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%。以员工参加的公共医疗保险计划及所选择的补偿比例为准）。

2.4.4 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临时存放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，此种现象可能因德国商品典型存在的影响而愈发普遍。

德国规定了避免双重征税的措施，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。

2.4.4.1 避免双重征税单边措施
非税收协定情况（如香港）或税收协定情况（如中国）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应收入按德国国内法律须纳税的，则可以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。

2.4.4.2 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。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。
2.4.4.2.1 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（新商议税收
协定可能的变化见本节末尾注解）。
然而，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
  活动以连续六个月以上的为限；

- 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六个月的为限。

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，
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，最高税率不超过
股息的10%。

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) 中国银行、中国农业银行、中国建设银
行、中国工商银行或中国工商银行；

(iii) 由中国银行或中国国际信托投资公司直接
担保或提供的贷款；或

(iv) 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、德国复兴信贷银行和德国
在发展中国家投资金融公司；

(iii) 由赫尔姆斯担保公司直接担保或提供的贷
款；或

(iv) 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。
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%。

第二十四条 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到中国税收中抵免。但是，抵免额不应超过该项所得相应的中国税收数额。

此外，如果支付给德国居民企业的股息，该德国居民企业拥有支付股息企业股份不少于百分之十的，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10%资本的德国居民企业（不包括合伙企业）的股息。

除其他外，按照德国税法关于税收规定，对德国居民支付给德国税法和该协定的规定征收的外国税收，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。

投资中国的德国投资者，可享受特许权使用费和利息所得的名义税收抵免。

中德两国已着手商定新税收协定，有望于2017年执行。新的避免双重征税协议将采用以下预提税率：

股息：5%（最低25%股权）
利息：10%
特许权使用费：6%或10%

积极方面是降低了税率，而消极方面则是名义税收抵免将被取消。
其他较小的变化包括常设机构的时限要求。税基侵蚀和利润转移措施的实行也可能在一定程度上影响对未来税收协定中某些条款的解读。

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，例如关于新税改协定中的预提税条款，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。

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2.4.4.2 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，但首份避免双重征税协定已完成协商。希望于近期实施生效。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便是短暂停留可能也需要在德国纳税。

2.4.4.3 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，转让定价凭证文件不可过低估价。

纳税入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，还包含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。
具体是，从德国转让定价角度而言，这些凭证文件应包含以下:

- 企业集团的基本信息，特别是股权关系、业务经营和组织架构方面的信息；
- 与关联企业之间的业务经营方式和范围的描述（包括相关合同的概要以及主要无形资产报告）；
- 职能和风险分析；
- 证明报酬公平性的转让定价分析（包括对采用的转让定价方法、应用该方法的原因的描述、相关计算方式、用于对比的独立公司的价格或财务数据，以及已执行的调整计算文件）。

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，纳税人还可能被处以转让定价调整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，最低逾期一天罚款100欧元。
德国政府强烈支持“税基侵蚀和利润转移”的相关讨论。

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。项目基本与经合组织的行动计划相同，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，建议的做法是紧跟这两者在经合组织层面和欧盟层面上的发展，并评估对投资德国的影响。
2.4.5 间接税

2.4.5.1 增值税
增值税是间接税种，对商品和服务的生产、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扣除进项增值税。

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、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2.5.3章）。

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。
2.4.5.2 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%，则不动产按企业的不动产计征。合伙人变更多于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。

2.4.5.3 印花税
德国没有印花税。

2.4.5.4 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，尤其是应纳税值的计算。

2.4.5.5 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贸易限制或海关要求。

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。这种关系涉及各国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。

各类产品的相关消费税按特定计量单位的固定额度计算。
2.4.5.6 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。

2.4.6 其他税务问题

2.4.6.1 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，相关规则适用于所有商人（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存并存放于德国国内。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，否则须提供译本。

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。
2.4.6.2 电子税收资产负债表立法

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的电子数据传输标准。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计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板，由资产负债表和损益表账户科目组成。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）。

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计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计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。
2.4.6.3 强行裁定
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强行裁定。

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121欧元，最高为91,456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。

2.4.6.4 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，该调查问卷中涉及未来计划登记当年的预付企业所得税和交易税的应税收入，为未来几年奠定初步基础。

2.4.6.5 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，全面审查应税项目。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，不得再次更改。

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。
2.4.6.6 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、教堂税和团结税。

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、团结税和教堂税。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年开始采用电子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。

2.5 德银行的特殊监管考虑事项

2.5.1 进入德国银行市场

2.5.1.1 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贸易制度跨境开展业务。

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。以下分项简要概述了适用于上述策略的监管制度。
2.5.1.2 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（德国联邦金融监管署）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、董事会以及包含行政架构和控制程序的经营计划。

2.5.1.3 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，则中国服务提供商无须特别授权或许可即可获得来自中国的服务。这就是所谓的逆向邀请。尽管《德国银行法》第2条第4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内通过一些方式获得一定成功，未来这一局面有望改变。

2.5.1.4 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。

设立子公司能够减少这些问题。一方面，可以建立按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。换句话说，首先在卢森堡等其他欧洲国家创建合法机构，该机构一旦成立即可利用更快更简化的程序建立驻德子公司。新的子公司仍需遵守德国法规，但此类法规为数不多，例如，必须遵守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。驻德银行只能从事其原欧洲母国许可的活动。此外，需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支行
非欧洲经济区实体有权在德国设立提供银行服务的支行。由于该分行被视为信贷机构，因此其审批及监管要求与设立驻德信贷机构的要求相同。这表明需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。
2.5.1.5 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。

2.5.1.6 根据自由服务制度建立的企业
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。

2.5.1.7 关于金融服务机构、支付机构、电子货币机构的备注
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、自营业务服务或采用多边交易体系的金融服务机构纳入规定范围。

2.5.2 企业所得税
2.5.2.1 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，这意味着中资银行将德国的有限收入所得税，而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2.4.2章）。

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纳税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，正常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。

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条款。

2.5.2.2 税率
根据中德税收协定第7条第2款，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，该常设机构有取得的利润归其所有。该方法符合“正常交易”原则的适用性。
2.5.2.2 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《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，依本条例，应作为资本配置考虑。

纳税人在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正常交易原则，这部分资本则可以为其所有。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。这种选择的目的是因为内部交易的加权风险额不需纳入考虑，如果能让该股权额度明显偏离本应按德国税法决定的股权变得合理，纳税人出于简便可以将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。

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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不低于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本的3%，符合安全港条件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。依据该条例，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，资本配置法则计算得出的资本少于分行总资产的3%，或者低于500万的最低额。
《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住的分行承担。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。
2.5.2.3 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，分行税务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2.4.6.1.1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账。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。

2.5.3 增值税

2.5.3.1 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，为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。
2.5.3.2 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的德国增值税的交易或其他符合进项增值税抵扣条件的免税增值税交易，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。

依据欧盟跨境服务和维修服务的逆向收费机制，进项增值税抵扣限制同样适用于这些交易。此外，还需核实增值税登记义务。最后，从事融资业务的纳税人同样有义务提交欧洲销售详单。

2.5.4 预提税

2.5.4.1 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。倘若母公司在缴纳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》。

2.5.4.2 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公司的利息征收预提税。但德国居民公司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《欧盟利息和专利费指令》规定，可降低预提税率。

如果公司属于《德国银行法》第53b条定义的银行机构，则该公司有义务代扣向国内客户存款支付特定利息的预提税。

如果公司属于《德国银行法》第53b条定义的银行机构，则该公司有义务代扣向国内客户存款支付特定利息的预提税。

根据德国税法，公司从其客户或代他们向税务局所支付利息中代扣预提税，而该公司必须支付这部分税款。公司必须每月于有关月份的月末十日向税务局机关缴纳预提税。公司无须履行代扣义务。

任何情况下都必须遵守《德国反滥用税收协定条例》。
2.5.4.3 专利费
支付给非居民公司的专利费和租金需支付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《欧盟利息和专利费指令》，可降低专利费预提税。其行政程序与股息程序（即支付专利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》。

<table>
<thead>
<tr>
<th>支付给：</th>
<th>利率</th>
<th>股息</th>
<th>专利费率</th>
</tr>
</thead>
<tbody>
<tr>
<td>居民公司</td>
<td>26.375%</td>
<td>26.375%</td>
<td>0%</td>
</tr>
<tr>
<td>非居民公司</td>
<td>0% - 26.375%</td>
<td>0% - 26.375%</td>
<td>15.825%*</td>
</tr>
</tbody>
</table>

*假设税务不由德国债务人承担。

2.5.5 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税，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（参见2.4.3.1章节）。

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。

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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德勤如何提供帮助？

中国服务组
德勤在中国拥有广泛的客户基础，包括中型到超大型国有企业和私营企业。我们与中国企业合作的经验相当丰富，多次成功协助他们进行全球活动。因此，对于进行全球投资的中国企业，我们非常熟悉他们的特别需求，下述为我们构建的特定支持结构以提供最高层次的协助以及我们的服务关系立足的原则。

德勤全球网络拥有专业服务机构中独一无二的平台——中国服务组。在德勤机构的发展过程中，中国服务组已成为服务中外公司、政府机构和投资机构的市场独有资源。该网络遍布全球各个角落，对于服务从杜塞尔多夫到拉各斯、从珀斯到圣保罗的中国公司，我们有着较为深刻的认识。

中国服务组是市场的凝聚力，为跨国公司的在华投资和中国公司的海外拓展促进并提供德勤的专业服务。作为利用中国专业知识、跨越文化鸿沟，确保卓越客户服务的平台，全球中国服务组采用多成员所、跨行业、跨部门和跨学科的方式与德勤中国进行合作。

德勤中国服务组业务覆盖全球近120个地区，跨越六大洲。德勤服务范围广阔，拥有一群敬业的中国专业人士，虽分散各地但仍能随时为贵司提供服务。无论您想扩张到海外何处，德勤都能为您服务。
我们的全球业务
德勤全球网络分布在150个国家，员工人数超过200,000。对客户的承诺和跨境合作能力一直帮助我们的成员所在市场上脱颖而出。德勤成员所认为，作为全球顾问，业务覆盖全球，客户遍布每个城市远远不够，重要的是在任何地方都能利用我们的优势构建协作文化。我们的文化就是德勤的优势。我们期待迎接前方挑战，实现我们追求卓越、树立典范的愿景。

在大中华区的德勤事务所
德勤中国网络在中国拥有23个办事处，员工人数超过13,500。

在德国的德勤事务所
德勤德国网络在德国拥有17个办事处，员工人数超过5,000。
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，协助您与保荐人和承销商进行接洽。在您与各方面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、企业与机构的特别需求。

客户希望我们能够实现我们所展示的想法。我们的业务覆盖领域广，经验丰富，期待利用这一优势取得卓越表现。简言之，我们能为客户提供世界级的洞察，助其产生可衡量的实际影响。

企业风险管理服务
面对科技日益创新、董事会和高层管理人员问责制日益加强、以及监管环境的变革，风险管理的复杂程度日益增加。我们企业风险管理部通力协助您更好地识别、衡量和管理风险，加强您控制体系及程序的可靠性。
财务咨询服务
德勤财务咨询服务为企业客户、私募股本机构、管理层收购/管理层更替团队、企业家和政府提供专家深入意见。我们提供战略性财务咨询服务，协助评估、衡量和减少舞弊对企业的影响；我们还为公司及其股东的内阁和内阁重组提供商业和咨询服务，以及更多服务。

作为德勤亚太网络的一员，我们中国财务咨询服务组在为复杂的区域性跨境业务提供建议方面，拥有丰富的经验，且能提供大量行业领先的专精服务。我们利用财务咨询内部的专业知识，与本所其他地区的同事通力合作，协助您成功实施复杂的解决方案。

丰富的技能只是起点。我们将充分了解您的抱负、企业和竞争环境，借此综合所有的技能制定全面的解决方案。我们相信这个综合方法会为德勤客户带来明显的商业优势。

税务服务
无论是谋求海外拓展还是投资香港或中国大陆，您都需实现资产效率和效益的最大化。我们的税务专家团队囊括本所国际税务业务专业人士、本地顾问和众多曾担任税务官员的人士，他们深入香港、中国大陆和其他您可能感兴趣的地区法律制度和法律。我们在中国的税务顾问将支持您落实智慧税务理念，满足您关于海外投资的个人业务需求。根据法律指导您履行合规义务。

法律服务
我们拥有的子服务线包括商业法、公司/并购、就业和养老金，规制行业和税务争议，因此，德勤法律涵盖对企业和企业家至关重要的所有法律领域。我们柏林和汉堡办事处的众多律师同时担任公证员。针对德国法律要求公证员介入的交易，能够为客户提供资质证书、执行协议或公开行为决议等帮助。德勤国际服务部以及与众多国家的律师保持着的长久关系，德勤法律无论是在海外投资还是扩展新市场时，都是值得信赖的顾问，能够将我们的国际经验和本地根基紧密结合。我们的能源与资源业、制造业、消费行业和房地产业的行业组专业提供专业知识。援助提供能够预测特定行业趋势和发展的跨学科建议。因此，我们能帮助客户实现不断变化的监管和经济需求。

我们相信，法律服务从未被孤立，而是致力于提供全面解决方案以应对客户面临的挑战。我们不仅要为您提供高质量的法律建议，德勤各部门间的紧密合作还为我们带来机遇，能够提供税务建议、担保、咨询和公司金融方面的一站式综合解决方案。一支卓越的跨境团队和您提供的解决方案不会止步于法律评估，还应兼顾所有相关因素。
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