



## Deloitte Legal German Desk

### 1. General overview

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

German law is subject to and largely influenced by EU law with implications for almost all fields of (national) law. The

European Single Market, one of the central goals of the European Union, currently comprises all 27 member states and guarantees the free movement of goods, services, labor and capital.

Germany and eighteen other European member states have adopted the Euro as their official currency, constituting the Eurozone.

The single currency allows for lower transaction costs, eliminates exchange rate uncertainties and therefore improves trading among the participating states. ➔

**2. Economic environment**

The automotive and chemical industry are at the heart of Germany's mainly export-oriented economy. However, biotechnology, telecommunications and digital industry have also become very important. The heavy industry sector, including the steelmaking sector in the Ruhr region, has declined, as has the significance of agriculture. Yet, the remainders of these industries are still noted for their high quality and sophisticated production techniques.

Recent development in the energy market is characterized by a shift from traditional energy production using coal, gas and nuclear power towards renewable energy, referred to as "green energy". The same trend can be observed in the automotive industry.

Foreign investments are largely welcome, with investments in certain regulated industries (especially military and dual-use goods) and/or cases of endangering of the



ordre public being a notable exception. 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 licenses, securing building permits and obtaining approval for investment incentives.

**Our services**

**Consulting**

- Strategy, Analytics and M&A
- Customer & Marketing
- Core Industry Operations
- Human Capital
- Enterprise Performance

**Legal\***

- Corporate Law & M&A
- Employment Law & Benefits
- Commercial
- Regulated Industries
- Dispute Resolution
- IP/IT Law

**Financial Advisory**

- Actuarial & Insurance Services
- Corporate Finance Advisory
- Forensic
- Financial Advisory Analytics
- Operational Transaction Services
- Restructuring & Transaction Services

**Risk Advisory**

- Accounting & Internal Controls
- Cyber & Strategic Risk
- Regulatory & Legal Support

**Tax**

- Business Tax/International Tax
- Transfer Pricing
- Tax Management Consulting
- Global Employer Services
- Indirect Tax

**Audit & Assurance**

- Audit
- Accounting & Reporting Advisory
- Business Assurance

\* Legal advisory services in Germany are provided by Deloitte Legal.

### 3. Regulatory Environment

#### 3.1 Company law

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.

As in the case of a joint stock corporation, the liability of a limited liability company is limited only by its total net assets being available to its creditors in case they must enforce their claims against the company. Therefore, its name might be misleading: It is the liability of its shareholders that is limited; and not only that, it is excluded under normal circumstances. Both types of corporations may be funded with the statutory minimum capital and the shareholder(s) have no obligation to make further capital contributions, unless otherwise provided for. Some companies are incorporated as a commercial partnership limited by shares (*Kommanditgesellschaft auf Aktien* or *KGaA*).

The most common forms of unincorporated businesses are:

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

Foreign companies may also establish an **independent branch** in Germany. Unlike a subsidiary, a branch is not a legal entity and has no rights or obligations of its

own that would be distinct from those of the head office. An independent branch may be set up by entering it in the local Commercial Register. Branch managers may be foreign nationals and are not subject to residence limitations.

#### 3.2 Labor law

There is no single law governing the individual and collective aspects of employment in Germany. Labor-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.

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 piecework 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 for companies with more than 500 employees.

**Working hours** in Germany are governed by law. Collective labor and Works Council agreements usually regulate the details. The normal working day is eight hours and can be extended to ten hours if the six-month average does not exceed eight hours per day. Shift work is permitted, and there must usually be a break of 11 hours between shifts.

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 labor agreement.

Since 2015, employees in Germany are entitled to a **minimum wage**, which amounts to EUR 9.60 gross per hour as of 1 July 2021 and is set to increase to EUR 10.45 from 1 July 2022 and to EUR 12 from 1 October 2022.

Wages and salaries constitute only a part of the cost of labor. 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. These social insurances include health insurance, long-term nursing care/disability insurance, accident insurance, unemployment insurance and pension insurance.

Employment contracts generally must not be **terminated** at will but require a specific justification after a six-month probation period.

#### 3.3 Data protection law

With the EU-wide General Data Protection Regulation (GDPR) in place, there is the threat of severe fines for data protection violations.

For severe violations, **fines** of up to EUR 20,000,000 or 4% of the total annual turnover of the preceding financial year may be imposed, whichever is higher.

Data protection therefore has to be taken into account for all data processing activities related to personal data of EU citizens.

#### 3.4 Intellectual Property

Patents, industrial designs and models, trademarks and copyrights are legally recognized in Germany. The German legislation regarding intellectual property is largely aligned with that of other



EU member states. Enforcement of patent and trademark laws is rapid and satisfactory, and damages can be claimed in cases of infringement.

#### 4. Accounting and auditing

The basic rules for **financial statements**, 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, have to prepare annual financial statements consisting of a balance sheet and an income statement within a reasonable period after the closing date.

Limited liability corporations have to **disclose** these financial statements on a regular (i.e. yearly) basis in the Federal Gazette (Bundesanzeiger) together with

- a management report,
- a proposal (and later on the decision) on the allocation of profits,
- the audit opinion by an independent accountant, and,
- a statement of compliance with the German Corporate Governance Codex in the case of a listed joint stock corporation.

Certain exemptions apply to small and medium-sized companies.

#### 5. Taxation

German tax law is very formalistic, and penalties apply upon non-compliance. 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 on the other hand on type of income received.

Generally, the following types of taxes can be distinguished:

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

Since the German tax system is rather complicated, only a brief overview can be given at this point.

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. However, Agreements on the Avoidance of Double Taxation generally provide for an allocation of taxing rights to the different countries where the company is doing business.

Foreign companies with neither a legal seat nor a place of management and control in Germany are deemed to be **non-resident**. In this case, only German-sourced income is subject to German corporate income tax.

The general CIT rate amounts to 15% of the taxable income plus a 5.5% Solidarity Surcharge of the CIT payable, resulting in an effective tax rate of 15.825%.

Trade tax is based on taxable income as calculated for CIT purposes; however, several income adjustments apply. The tax rate varies depending on the municipality, but generally is within the range of 14%-20% of income.

German tax 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).

**Value-added tax** (VAT) is an indirect tax which is imposed at every stage of production, distribution or 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 the company. The standard VAT rate in Germany is 19%. A reduced VAT rate of 7% applies to certain types of goods such as food, books, medical equipment and art objects.

The transfer of real estate located in Germany is subject to **Real Estate Transfer Tax**. The rate of the transfer tax ranges from 3.5% to 6.5%, depending in which Federal State the transferred real estate is located.

Landowners have to pay **Real Estate Property Tax**. The 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 tax liability for a property can be different depending on where the property is located in Germany.

**Customs and excise duties** are collected as stipulated by the EU Union Customs Code (UCC). Imports of goods are subject to import duties, i.e. custom duties, import VAT, and, if applicable, excise duties.

## Deloitte

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### Risk Advisory

Executives need the right insight, best-in-class corporate governance, and a risk culture aimed at driving value. Learn how our strategic and reputation risk services help organizations make risk-informed strategic choices and respond to disruptions.

### Consulting

Innovation, transformation, and leadership occur in many ways. The ability to solve complex issues is critical. Together, we can help you imagine, deliver, and run your business, wherever you compete, using the latest technologies like cloud and cognitive, from strategy development to implementation.

### Tax

What is most needed in the global tax environment is also the most elusive: Confidence. We help you connect for impact by anticipating change, unlocking the full potential of your people, extracting strategic insights from your data, and creating new value through digital technologies.

### Financial Advisory

Our end-to-end advisory solutions help unlock and preserve value in mergers and acquisitions, restructuring, investigations, and disputes.

### Audit & Assurance

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