PKF

Accountants &
business advisers

Doing business in Germany

Edition 2010

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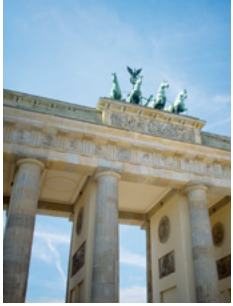


Berlin, Brandenburg Gate

Hamburg, view on the Alster

Preface

Thank you for choosing PKF Germany as your source of choice for information about doing business in Germany.

As the title indicates, this booklet is addressed to foreign individuals and companies who are contemplating starting business activities in Germany beyond exporting goods to Germany or providing services from abroad.

The information provided in this booklet is based on the legal situation at the beginning of 2010. Although thoroughly researched, we cannot give any guarantee for the accuracy, completeness or adequacy of the information compiled. Therefore, this brochure cannot and is not intended to replace professional advice based on the facts of the individual case.

Last, but not least, we would be happy if you come to a positive decision about doing business in Germany. For additional advice, please find the up-to-date contact information for all PKF Germany offices at www.pkf.de.

Best regards,

PKF Germany

Munich, Frauenkirche

Introduction

1. I. Geography

Due to both its geographical situation and the standard of industrialisation, the Federal Republic of Germany (Bundesrepublik Deutschland) holds a central position in Europe. From Frankfurt (Frankfurt am Main), all major European urban and industrial centres can be reached within a distance of about 1,000 km.

At the end of 2008, Germany had about 82 million inhabitants in an area of about 357,000 square kilometres.

1. II. Advantages of Investing in Germany

Germany is Europe's leading economy and one of the world's largest economies. It offers a large domestic market and furthermore an easy access to the growing markets in the enlarging European Union. In 2008, Germany is still the world's number one exporter.

The economic system of the Federal Republic of Germany is a so-called social and free market economy. This means that the German economy is based upon a free market economy, combined with regulative measures from the state (e.g. unemployment support).

For years, Germany proved to be one of the top regions for foreign investors. Due to a series of social and market reforms, Germany is one of Europe's most cost-effective production locations and still keeps its high productivity rates and quality standards ("Made in Germany").

Its central position in Europe as well as the sophisticated energy, communication and transportation infrastructure make Germany Europe's number one logistics market. The

elaborate network of airports, freeways, railways and waterways enable easy movement of goods within the country or to destinations all over Europe and beyond. Important commercial centres are Berlin, Cologne, Hamburg, Munich, the Rhine-Ruhr-Area and Stuttgart. The national and international finance centre is Frankfurt. A comprehensive range of incentive programs make it even more attractive and easier for all investors to start up their businesses in Germany.

1. III. Constitution

The Federal Republic of Germany is a parliamentary democracy, consisting of 16 Federal States (Bundesländer) with their own state governments. The capital of Germany is Berlin.

1. IV. Communications

The above mentioned sophisticated communication infrastructure links Germany to the world. Communication systems in Germany meet international standards, benefiting from an almost entirely deregulated telecommunications sector and Germany's status as a pacesetter in the development of modern telecommunications technologies.

1. V. Language and Currency

Besides their national language German, a considerable and increasing number of citizens speak one or two foreign languages. The most common are English, French, Spanish and even Russian. In most parts of Germany, foreigners will not face difficulties being understood in English.

The Euro became Germany's national currency in 2002. Sixteen of the 27 European member states use the Euro as their official currency. Furthermore, the Euro is officially valid in 22 countries worldwide, which make payment transactions easier and faster. Moreover, there is no need for currency hedging within the large European economic market. In addition, the Euro is one of the world's leading currencies.

1. VI. Legal System

Germany's legal system is based on the Constitution (Grundgesetz) and its basic principle of separation of powers. Consequently, although they co-operate with each other, legislative and executive organs as well as jurisdictions are functionally separate from each other.

The Federal President (Bundespräsident) represents Germany under international law. The Federal Government (Bundesregierung) consists of the Federal Chancellor (Bundeskanzler) and the Federal Cabinet (Bundeskabinett). The Federal Parliament (Bundestag), whose members are elected every four years, elects the Federal Chancellor.

The Federal Council (Bundesrat) is a federal constitutional organ and functions as a second chamber alongside the Federal Parliament. Federal laws that affect the responsibilities of the Federal States need to be approved by the Federal Council whose members are appointed by the state governments. The majority of political decisions must be based on consent in both the Federal Parliament and the Federal Council. If such consent cannot be achieved, a Conciliation Committee (Vermittlungsausschuss) consisting of members of both chambers has to bargain for a compromise to avoid political decisions and corresponding legislation being blocked.

Besides legislation, executive organs may issue guidelines of their interpretation of federal laws (e.g. guidelines on German Income Tax Act) in order to achieve a consistent application of the law. Such guidelines need to be approved by the Federal Council and are binding only for the executive organs.

The third element of the German legal system is the jurisdiction. Except for the only two-tiered tax courts, jurisdiction is normally three-tiered (local, regional and federal courts). As national supreme court, the Federal Constitutional Court (Bundesverfassungsgericht) deals with cases in which constitutional issues are involved. Besides, as far as European issues are involved (e.g. fundamental freedoms guaranteed by the Treaty establishing the European Community), the European Court of Justice (Europäischer Gerichtshof) is the competent supreme court. Normally, all court decisions are binding only for the involved parties. Nevertheless, decisions of higher courts (e.g. Federal Tax Court-Bundesfinanzhof) may be applied on similar cases.

1. VII. Exports and Imports

Due to high educational standards, well-developed technological knowledge and efficient production facilities, Germany is one of the largest trading nations. In 2008, Germany was the world's leading exporter. This was mainly reached by exporting motor vehicles, machinery, and chemicals products. The total amount of exports was over EUR 994 billion. However, the major imports encompass chemical products, crude petroleum and natural gas, as well as motor vehicles. The imports reached EUR 818 billion. Hence, Germany had a trade surplus in 2008 amounting to EUR 176 billion.

1. VIII. Government Policy on Foreign Investment in Germany

In general, German law does not distinguish between Germans and foreign nationals regarding investments or establishment of companies. Furthermore, business activities in Germany are free from regulations restricting day-to-day business. Moreover, intellectual property is well protected by laws that cover the same conditions enjoyed by Germans to foreign entrepreneurs.

The Foreign Trade and Payments Act (Außenwirtschaftsgesetz) is the legal framework for foreign direct investment (FDI) in Germany. Generally, it favours the principle of freedom of foreign trade and payment transactions, but it also allows the imposition of restrictions on inward and outward FDI for reasons of foreign exchange, foreign policy, or national security.

The above mentioned comprehensive range of incentive programs is available to all investors – regardless of whether they are from Germany or not. They can be split up into operational incentives to subsidize expenditures after the investment has been settled and investment incentives with different measures to reimburse investment costs. The amount of incentives depends on the type of investment, the business sector and the investment location. Other than the federally administered so-called European Recovery Program, local communities are prepared to supply land or even buildings at favourable conditions to facilitate the start-up of a business entity if new jobs are created by such investments.

1. IX. Import Controls

In general, there are neither import permissions nor import control declarations necessary for importers, importing their goods to Germany. This holds true for both residents, namely individuals as well as legal entities or partnerships. The only requirement is that the importer has to be resident in Germany in any form. However, on certain goods, EU-wide import duties or restrictions may apply.

1. X. Exchange Controls

There are no exchange control measures in Germany. However, transfers of funds to and from foreign jurisdictions have to be notified to the German Central Bank (Deutsche Bundesbank) for statistical purposes.

1. XI. Source of Finance

Germany is a major international financial centre in Europe as well as in the world. Even the European Central Bank is located in Frankfurt. Germany also has the third largest stock exchange in the world – the Frankfurt Stock Exchange.

In addition to a wide range of competitive financial services, investors can choose from a wide range of public funding in Germany.

Debt financing is a central financing resource and the classic supplement to equity financing. The availability of debt financing depends on the default risk of a company or an investment project and has to be determined by a credit rating of the debtor.

There is one unique concept in Germany referring to a company's primary banking institution, called "The German Hausbank Concept" (literally "house bank"). It comes from the longstanding tradition of companies in Germany to have a strong financial and business relationship with just one particular bank. In times of crisis, this concept is declining, but it still plays an important role in the procurement of public funding.

1. XII. Commercial Register Number

Each entrepreneur who is qualified as a businessman under the terms of Art. 1, 2 German Commercial Code (Handelsgesetzbuch – HGB) has to register his business in the Commercial Register (Art. 29 HGB). Depending on the legal type of the corresponding business, there are different publication requirements. After the registration, each company has its unique Commercial Register Number.

Business Structures

Cologne, Cathedral,
World Heritage Site

2. I. Types of legal entities

As well as a corporation or a partnership, business activities may also be conducted through a sole proprietorship of an individual. However, this option seems to be of minor relevance for foreign investors and therefore will be omitted in this section.

2. I. 1. Corporations

A corporation is a legal entity apart from its shareholders. Therefore, except from cases of severe abuse, only the corporation's assets are available to satisfy the corporation's creditors.

2. I. 1. a) Limited Liability Company

The legal framework for a Limited Liability Company (Gesellschaft mit beschränkter Haftung-GmbH) is provided by the German Limited Liability Company Act (GmbHG).

The form of GmbH is made available to conduct business by a small and relatively stable number of shareholders. However, there is neither limitation of the size of the company nor to the number of its shareholders. Consequently, a GmbH may also have only one shareholder. The GmbH is the most commonly used type of corporation.

One or more founders who may be individuals, corporations or partnerships can set up a GmbH. There is no need for the founder(s) to be resident in Germany or have German citizenship. The whole process of formation of a GmbH needs to be notarised. Legal existence of a GmbH starts with its registration in the (electronic) Commercial Register (Handelsregister). The articles of association (Gesellschaftsvertrag) as well as an up-to-date list of all shareholders (Gesellschafterliste) have to be filed on the Commercial Register.

Generally, the minimum share capital of a GmbH is EUR 25,000, while the minimum value of a single share is EUR 1. For a registration on the (electronic) Commercial Register, at least half of the total share capital has to be contributed. As stipulated in the articles of association, contribution may be made in cash or in kind.

Every GmbH has to have at least one managing director (Geschäftsführer). Managing directors must be individuals and need to be appointed by the shareholders' meeting. Generally, any managing director is empowered to represent the company in all legal and business matters. The power of representation cannot be restricted in relation to third parties. However, in case of more than one managing director, it is possible to stipulate a joint signatory that becomes effective against third parties as soon as it is registered on the Commercial Register. The shareholders' meeting may instruct a managing director to act in a certain manner on behalf of the GmbH. There is no requirement for any of the managing directors to be a German citizen or to be resident in Germany.

On voluntary basis, a GmbH may have a supervisory board (Aufsichtsrat). If the number of employees exceeds 500, based on provisions in the German Co-determination Act (Mitbestimmungsgesetz), a supervisory board is mandatory. In these cases, depending on their total number, the employees elect one third up to half of the members of a supervisory board.

Each business year at least one general shareholders' meeting is mandatory. Its most important functions are:

- approval of financial statements for the previous business year
- appointment of managing directors or termination of directorship
- resolution about usage of financial result
- appointment of GmbH's auditors
- any modification of the articles of association.

Generally, a GmbH is the most flexible legal form of a corporation. The legal framework fixes its structure and organization only on a rather low level. Therefore, a GmbH is very suitable for integration into international groups.

Since late 2008, a so-called business company with limited liability (haftungsbeschränkte Unternehmergesellschaft – UG) may be founded as an alternative to a regular GmbH. An UG must not have more than three founders. The initial minimum share capital is at least EUR 1. Over the following years, at least 25 % of the annual profits have to be treasured. As soon as the sum of the initial share capital and the treasured reserves exceed EUR 25,000, the UG can be transformed into a regular GmbH.

A GmbH is considered as insolvent in case of illiquidity or over-indebtedness. Generally, for a test of over-indebtedness, the fair market values are relevant. Different from that, up to the end of 2013, a test of over-indebtedness is based on the book values that are relevant for statutory accounting purposes and results in insolvency only if there is additionally a negative going-concern prognosis. If a situation of insolvency is identified, the managing directors have to apply for the opening of the bankruptcy procedure within three weeks. Otherwise, they become personally liable and may have to face criminal penalties.

2. I. 1. b) Stock Corporation

The form of Stock Corporation (Aktiengesellschaft-AG) is made available to conduct business by a large but relatively anonymous number of shareholders. Therefore, the shares in an AG may be listed and quoted on a stock exchange.

Due to the possibility of being listed and quoted on a stock exchange, the legal framework as provided in the German Stock Corporation Act (AktG) in most parts is mandatory. This means that the articles of association of an AG may only deviate from the provisions as provided in the legal framework where this is expressly permitted. One or more founders who may be individuals, corporations or partnerships can set up an AG. There is no need for the founder(s) to be resident in Germany or have German citizenship. The whole process of establishing an AG needs to be notarised. Legal existence of an AG starts with its entry into the (electronic) Commercial Register.

The minimum share capital to be subscribed by the founders is EUR 50,000 in total. The minimum nominal value of a share is EUR 1. Normally, for a registration in the Commercial Register, at least half of the total share capital has to be contributed. As stipulated in the articles of association, contribution may be made in cash or in kind. In case of a single founder, the full share capital needs to be paid in or collateral has to be given regarding the subscribed capital not paid up.

The so-called management board (Vorstand) is responsible for the management of an AG. All members of the managing board must be individuals. The minimum number of members is one. Unless otherwise specified in the articles of association, all members of the managing board have to act conjointly in both managing the day-to-day business and representing the AG towards third parties. However, the managing board may set rules for an internal division of work.

Every AG must have a supervisory board (Aufsichtsrat) which consists of at least three individuals. Its most important functions may be summarised as follows:

- appointment of the members of the managing board
- review of the management's actions
- representation of the AG in case of disputes with members of the managing board
- examination and audit of the financial statements including management reports and the proposal on appropriation of profits.

An individual cannot be a member of both the managing board and the supervisory board at the same time. There is no requirement for the members of neither the management board nor the supervisory board to be German citizens or to be resident in Germany.

Each business year at least one general shareholders' meeting is mandatory within a period of eight months after the end of the previous business year. Besides, with a quorum of at least 5 %, one or more shareholders may summon an extraordinary shareholders' meeting. The most important functions of the shareholder's meeting are identical to the one at a GmbH. Besides, in their meeting, the shareholders of an AG appoint the members of the supervisory board. If the number of employees exceeds 500, based on provisions in German Co-determination Act (Mitbestimmungsgesetz), depending on their total number the employees elect one third up to half of the members of a supervisory board. Unless otherwise stipulated in the articles of association, the shareholders decide in their meeting by a simple majority of 50 % plus one vote. However, for an amendment of the articles, an increase or decrease of the subscribed capital and some other reasons, a majority of at least 75 % of the votes cast is mandatory. The minutes of a shareholders' meeting need to be notarised.

The insolvency rules described above for the GmbH are also applicable for the AG.

2. I. 2. Partnerships

For foreign investors, only commercial partnerships as defined in the German Commercial Code (HGB) seem to be relevant. Therefore, other types of partnerships provided by German civil law are omitted in this section.

Both resident or non-resident individuals and corporations may become partners of a partnership.

2. I. 2. a) General Partnership

A general partnership (offene Handelsgesellschaft – OHG) is formed by at least two partners. Since the legal framework provides only a minimum of mandatory provisions, the partners are free to agree upon their rights and obligations in the partnership agreement.

An OHG needs to be registered on the (electronic) Commercial Register. However, such registration is not relevant for the legal existence of an OHG.

Based on mandatory law, there is joint and several liability of all partners for the OHG's debts. Consequently, no minimum capital is necessary. The personal liability of a partner for already existing liabilities of an OHG ends five years after the partner retired from the partnership. Newly joining partners are liable for all existing and arising liabilities of the OHG.

Unless ruled differently in the partnership agreement, each partner is entitled to manage the OHG's business activities and to represent the OHG towards third parties.

2. I. 2. b) Limited Partnership

A limited partnership (Kommanditgesellschaft – KG) is very similar to a general partnership. The most important distinction is that there has to be at least one general partner (Komplementär) with unlimited personal liability for the KG's debts while the personal

liability of each limited partner (Kommanditist) is limited to the funds he promised to contribute to the KG.

Unless ruled differently in the partnership agreement, the general partner is exclusively entitled to manage the KG's business activities and to represent the KG to third parties. Basically, third parties (i.e. non-partners) are not entitled to manage the partnership.

In case where a KG has no individuals but only one or more corporations as general partners, the KG's name has to indicate this. So if, for example, a GmbH is the only general partner of a KG, the addendum "GmbH & Co. KG" must be added to the KG's firm. The limited partners may – and usually do – hold the shares in the GmbH. One or more limited partners or even a third party may be appointed as managing director(s) of the GmbH. Since this derivate form combines advantages of both a partnership (e.g. flexibility) and a corporation (e.g. limited liability), a GmbH & Co. KG is the most popular form of a partnership in Germany.

For the foundation of a KG, no minimum capital and no registration on the Commercial Register are necessary. However, if a limited partner performs a capital contribution, limitation of personal liability becomes legally effective only if properly registered. Therefore, if a KG starts its business activities before a registration, the same unlimited personal liability of each partner as in a general partnership applies.

2. I. 3. Other forms of business entities

Two or more stock corporations resident in at least two different EU member states can found a European Stock Corporation (Societas Europaea (SE)). Without losing its legal status, it may change its statutory seat to another member state of the EU or the European Economic Area (EEA). The legal design of a SE is similar to a German stock corporation. The minimum share-capital of a SE is EUR 120,000. A SE may have either a managing board and a supervisory board or only a single board.

In a silent partnership (stille Gesellschaft), an investor has a financial participation in another commercial business. As the name indicates, a silent partnership is not a legal entity by itself. Therefore, except for an investment in a stock corporation, a silent partnership is not registered in any official register and allows the investor to avoid disclosure

of his investment. The contribution of a silent partner is a mere financial investment in another commercial business and therefore not considered as equity. Depending on the contractual basis, a silent partner most commonly may participate in profits and losses or in profits only. As any other lender, a silent partner has no voting rights in the business in which he has invested.

Besides, there are other forms of business entities (e.g. Kommanditgesellschaft auf Aktien – KGaA, Europäische wirtschaftliche Interessenvereinigung – EWIV, Partnerschaftsgesellschaft – PartG) that may be relevant in particular cases only and therefore will not be presented in detail in this booklet.

2. II. Branches in Germany

Without establishing a separate legal entity, foreign investors (i.e. individuals, corporations or partnerships) may also conduct business activities in Germany directly through a branch (Zweigniederlassung). Since a branch is not a legal entity by itself, the foreign owner is responsible for all liabilities of the branch. On the other hand, the foreign investor directly owns all assets of the branch.

A branch needs to be registered on the (electronic) Commercial Register. As part of the registration process, evidence of the legal status of the foreign investor (e.g. legal existence, names and authority of managing personnel) and information about the planned branch itself (e.g. names of acting persons) may be requested.

For certain types of business (e.g. banking and insurance), evidence of the required formal qualification may have to be proven to achieve the necessary permit.

From a tax perspective, every branch qualifies as a permanent establishment being subject to (at least limited) tax liability in Germany. Vice versa, not every permanent establishment qualifies as a branch in a legal sense. Consequently, based on provisions in German tax law, any fixed place of business with a certain degree of permanence qualifies for a permanent establishment. However, if a double taxation agreement is applicable, not every permanent establishment existing from a German tax point of view will actually cause a tax liability.

2. III. Initial Public Offering (IPO)

For IPOs in Germany, two different ways are available:

- The first entry point for small or recently founded companies is the Regulated Unofficial Market or Open Market (Freiverkehr).

- Higher entry, reporting and transparency standards are required by EU regulations for entering the Regulated Market (Amtlicher Markt).

2. IV. Shareholdings by non-residents

Shares in German companies do not have to be held by German resident shareholders exclusively. However, there may be restrictions in specific industries. Further, there is the obligation to report to the German Central bank (Deutsche Bundesbank), if a non-resident (stand alone or in conjunction with several other individuals or corporations/partnerships) holds more than 10 % of the shares of a resident company in a direct or indirect way. This only applies, if the resident company has total assets exceeding EUR 3 million. The same applies, if the resident company becomes dependent of the non-resident company in a direct or indirect way. This is given by a shareholding of more than 50 %. It is important to state, that the German Central bank has a confidentiality obligation and is only allowed to use the submitted data for statistical purposes. Furthermore, there is a general legal obligation to make a takeover offer for any remaining shares, when one shareholder holds more than 30 % of a listed company.

2. V. Joint Ventures

Joint ventures, either incorporated or unincorporated, are common business vehicles, especially in development projects. There are no special regulations governing the establishment of joint ventures.

2. VI. Additional registration requirements

Every legal entity mentioned above must be registered on the (electronic) Commercial Register and – based on this registration – with the relevant municipal trading supervision department (Gewerbeamt).

The local tax office will be notified automatically about these registrations. Therefore, they will promptly request the completion of a questionnaire with additional information for a tax registration and an assessment of tax prepayments.

Accounting and reporting

Essen/Ruhr, Zollverein Coal Mine, World Heritage Site

3. I. Statutory requirements

Based on the fourth, seventh and eighth EU-directive, the German Commercial Code (Handelsgesetzbuch – HGB) provides the legal framework for financial information of business entities. The HGB contains provisions with which all business entities have to comply and supplementary provisions that apply only for certain business entities (corporations and partnerships that do not have any individual as general partner) or industrial sectors (i.e. credit and insurance companies).

All business entities have to comply with the following basic provisions:

- Preparation of an opening balance sheet at the very start of business activities
- Book keeping, where the businessman records his commercial transactions and his assets under the terms of the Generally Accepted German Accounting Principles (Grundsätze ordnungsgemäßer Buchführung (GoB)).
- Financial statements at the end of every business year
- Business years which may not exceed a period of 12 months and are, unless otherwise stipulated, identical with the calendar year
- Set-up of all financial information in German language and in EUR currency
- Storage of all business records for a period of at least ten years starting with the year after the records have been created.

The range of financial reporting requirements depends on the company's category. Depending on their total assets, turnover and number of employees the HGB distinguishes between three categories of companies:

Category	Total assets (k EUR)	Turnover (k EUR)	Employees
Small	≤ 4,840	≤ 9,680	≤ 50
Medium-sized	> 4,840 and ≤ 19,250	> 9,680 and ≤ 38,500	> 50 and ≤ 250
Large	> 19,250	> 38,500	> 250

A company belongs to one of these categories if it meets at least two criteria on two consecutive balance sheet dates. However, corporations whose shares are quoted on a stock exchange are always deemed as large companies.

Regardless of its legal form, every business entity with limited liability has to disclose financial information. Additionally, there are special provisions for the disclosure of financial information for very large partnerships even if they have individuals with unlimited liability as partners.

Depending on its category, a company has to fulfil different set-up requirements. The following table provides a survey:

Category	Balance sheet, profit & loss account	Notes on the financial statements	Management report on the business situation
Small	+	+	–
Medium-sized	+	+	+
Large	+	+	+

Depending on its category, a company has to fulfil different disclosure requirements. The following table provides a survey:

Category	Balance sheet, profit & loss account	Notes on the financial statements	Management report on the business situation
Small	Balance sheet only	balance sheet related information only	–
Medium-sized	+	+	–
Large	+	+	+

Amongst others, the notes on the financial statements have to provide information about the accounting policies, affiliated companies and the remuneration of the managing directors.

Capital market oriented companies have to fulfil additional disclosure requirements such as a balance sheet oath, a funds flow statement and a statement of changes in equity.

Since 2007, an electronic form of disclosure with the German Federal Gazette (Bundesanzeiger) is mandatory.

3. II. Applicable accounting and auditing standards

The annual financial statements have to be prepared in Germany under the terms of national law, in particular the German Commercial Code (HGB). Thereby the annual financial statements relating to commercial law of corporations primarily provide a protective function for the creditors. The protection of creditors against bad debts is the central purpose of the accounting set-up by the accounting enterprise. Simplifying this is achieved by calculating the assets of corporations available to settle the creditors through a prudent ascertainment of profits in connection with the restriction of the profits distributable to the shareholders.

The protective function relating to commercial law is a German special feature, which is strange from an International Financial Reporting Standards (IFRS) perspective. In view of the straight information function of IFRS-accounting, the German legislator decided to allow the application of IFRS in preparing annual financial statements only as choice on a voluntarily base. By claiming on this right of choice, financial statements have to be prepared in addition under the terms of German Commercial Code to determine the distribution potential as well as the basis of taxation. The importance of the HGB-accounting for taxation purposes results from the fact that the German tax law in principle ties in with HGB-accounting (authoritative principle – Maßgeblichkeitsprinzip). Additional specifics have to be considered in the tax balance sheet, which will be explained separately below.

Large corporations, which prepare their financial statements voluntarily under the terms of IFRS, are allowed to restrict the required disclosure of the financial statements in the German Federal Gazette on the IFRS-accounting. The HGB-accounting does not have to be disclosed by using this right of choice.

Groups based in Germany basically have to prepare consolidated annual financial statements. The legally independent group enterprises are treated and presented as one entity in financial and legal terms in the consolidated financial statements (one-entity theory). The more a group enterprise loses its disposition possibilities and therefore acts as a part of the group, the lower is the informational value of the annual financial statements of such an enterprise. Hence, for assessment purposes of this company, the knowledge of the situation of the whole group increases.

The consolidated financial statements have only an information function under German law. There is no possibility to deduce legal claims out of the consolidated financial statements. Any claims of shareholders, creditors, or tax authorities can only be addressed to the individual group enterprise but not to the group as an entity.

The group accounting in Germany has to follow the accounting regulations of the HGB. As an exemption is permitted to capital market parent companies and to parent companies which applied for domestic listing. Those parent companies have to use the EU accepted IFRS on group level if they are obliged to prepare consolidated financial statements due to commercial law requirements. The obligation to prepare consolidated financial statements under the terms of the HGB is inapplicable in return.

The remaining parent companies resident in Germany are entitled to a the right of choice to apply IFRS in their consolidated financial statements. Parent companies doing so on a voluntary basis are exempt from the obligation to follow the group accounting regulations of the HGB.

The annual financial statements and the management report of medium-sized and large corporations as well as the consolidated financial statements and the consolidated management report of corporations are subject to an audit by the auditor. Auditor can be a Certified Public Accountant (Wirtschaftsprüfer) or an audit company.

This mandatory audit of the annual financial statements and the consolidated financial statements has to refer to the compliance with the legal prescriptions and complementary clauses stated in the shareholders' agreement. The management report and the consolidated management report have to be audited regardless of whether they are consistent with the annual financial statements and the consolidated financial statements as well as with the auditor's findings. Furthermore, they should procure an appropriate perception of the economic situation of the unit under audit. Thereby it has to be audited to ensure that chances and risks of the company's further progress are appropriately presented.

The auditor has to summarise his findings in the auditor's opinion, which has to be disclosed together with the annual financial statements and the consolidated financial statements in the electronic German Federal Gazette. Furthermore, the auditor has to prepare the auditor's report, which states the description, comprehension, and result of the audit. The auditor's report has to be submitted to the legal representatives and the board of directors of the accounting enterprise.

3. III. Form and content of annual reports

The annual financial statements of corporations under the terms of HGB have to follow the German Generally Accepted Accounting Principles (GoB) and have to give a true and fair view of the state of the company's affairs (general standard).

Beyond that, it is required that the balance sheet separately shows and itemises fixed and current assets, equity, accruals, liabilities and deferred items. In the profit and loss statement for the relevant accounting period, the expenses and revenues have to be opposed.

Frankfurt, Financial District

Business taxation

4. I. Determination of taxable income

Principally, the taxable income of any business unit (i.e. corporations as well as partnerships) is determined on basis of the results accounted for commercial purposes (Maßgeblichkeitsprinzip). Nevertheless, there are many exceptions from this general principle. The most important are mentioned below:

- **Depreciation:**
  Historical costs (i.e. acquisition or production costs) of assets with a useful life of more than one year have to be depreciated over the useful life. Generally, from 2008 on, only depreciation according to the straight-line method is permitted. As an exception, for assets acquired or produced within the calendar years 2009 and 2010, depreciation according to the declining-balance method is allowed. In this case, depreciation rates may not exceed the lower of 2.5 times of the otherwise applicable straight-line rate or 25 % p.a.

  The German Federal Ministry of Finance (Bundesfinanzministerium, BMF) has issued officially recommended tables for the annual depreciation rates of certain assets (e.g. premises: 2 % to 3 %; plant equipment: 5 % to 20 %; office equipment and furniture: 10 % to 20 %; motor vehicles: 16.67 %; EDP equipment: 33.33 %; statutory rate for acquired goodwill: 6.67 %).

  Assets with acquisition costs of up to EUR 410 (German VAT excluded) may be depreciated completely in the year they are acquired or produced. All assets with acquisition costs of more than EUR 150 and less than EUR 1,000 within a business year may be summed up to a compound item (Sammelposten) which is depreciated over a period of five years following the straight line method. Exceptional depreciation to a market value below the book value is possible. Unless annual evidence is made that the market value is still lower than the updated book value, a revaluation on the updated book value is mandatory.

- **Repair and maintenance expenses:**
  Unless a new asset is created, such expenses are deductible in the period they occurred.

- **Contributions:**
  Neither open nor constructive contributions (i.e. with or without an increase of the share capital) are taxable at level of the company to which the contribution was made. However, there might be tax consequences at the level of the contributor.

- **Costs of foundation:**
  Expenses related to the forming of a corporation or an increase of its capital (e.g. consulting or registration fees) may only be deducted as business expenses in the year they occurred. In case of a corporation, an upper limit of such expenses needs to be defined in the articles of association. Capitalisation and depreciation of such expenses is not allowed.

- **Capital gains and losses:**
  Generally, capital gains and losses are part of the taxable income. If certain conditions are met, capital gains resulting from the sale of real estate may be offset from the acquisition or construction costs of other, newly acquired or constructed similar assets (so-called roll-over relief). For a limited period up to the end of 2010, the same applies for registered barges.

  For capital gains resulting from the sale of shares in a corporation, special provisions apply.

- **Remuneration paid to participators (i.e. shareholders or partners):**
  Amounts paid by a corporation to a shareholder may be deducted as business expenses as far as the arm's length principle is met. Exceeding amounts are treated as constructive dividends and therefore do not reduce the corporation's taxable income. Amounts paid by a partnership to a partner are always considered as part of the taxable income.

- **Interest expenses:**
  Interest expenses may be deducted as far as the arm's length principle is met and there is no relation to tax-exempt income.

From 2008 on, provisions for a so-called Interest Deduction Rule (Zinsschranke) limit the deduction of interest expenses.

- **Taxes:**
  Neither taxes on income (i.e. income tax in case of individuals, corporation tax in case of corporations, trade tax and solidarity surcharge) nor related amounts (e.g. interest on tax payments, administrative fines or late payment fines) are deductible. Real estate transfer tax has to be capitalised as part of the acquisition costs of the real estate. Excise taxes are deductible in the year they occurred.

- **Pension provisions:**
  For tax purposes, such provisions may only be created if certain criteria are met. Besides, pension provisions have to be calculated annually according to actuarial principles using an interest rate of 6 %.

- **Other expenses:**
  Generally, any amounts related to the conducted business and not related to tax exempt income are deductible. However, there are special exceptions to this rule. Deduction of business entertainment expenses is limited to 70 % of the actual costs. Costs of business gifts are only deductible if they do not exceed an amount of EUR 35 per year and recipient. Fees paid to members of the supervisory board are deductible only up to an amount of 50 %.

  Costs for hunting, yachts and guesthouses not located on business premises as well as fines and penalties of any kind and bribes as far as they are forbidden under criminal law are non-deductible.

4. II. Taxation of corporations

4. II. 1. Corporate income tax

4. II. 1. a) Basics

Any corporation with its statutory seat or place of management located in Germany (so-called resident) is subject to unlimited taxation in Germany. Unlimited taxation in this sense means that the corporation will be taxed on its worldwide income. However, due to double taxation agreements with other countries, parts of the corporation's income may be tax exempt in Germany or a tax credit will be granted for taxes paid abroad.

Without having its statutory seat or place of management located in Germany (so-called non-resident), a corporation is subject to limited taxation with its German-sourced income only (e.g. income resulting from a permanent establishment).

Regardless of whether the taxable income is retained or distributed, from 2008 onwards a flat corporation tax rate of 15 % applies. In addition, a solidarity surcharge of 5.50 % on the corporation tax is levied which results in a total nominal tax burden of 15.825 % of the taxable income.

Agreements between a corporation and its shareholders or persons related to the shareholders are checked whether or not they meet the arm's length principle. As far as the arm's length principle is not met, expenses of the corporation are treated as constructive dividends to the respective shareholders. On the other hand, profits of a corporation resulting from agreements that are not at arm's length may be treated as hidden contributions.

Generally, from dividends paid to its shareholders the corporation has to deduct a withholding tax of 25 % and a solidarity surcharge of 5.50 % of the withholding tax. These deductions result into a total nominal withholding tax burden of 26.375 %. However, based on provisions in double taxation agreements, the amount to be withheld may be limited to a lower rate.

4. II. 1. b) Dividends received from other corporations

In a tax assessment, dividends from another (resident or non-resident) corporation are tax exempt and related costs are deductible. Nevertheless, 5 % of the dividends are treated as non-deductible business expenses and therefore increase the taxable income of the receiving company.

For a resident corporation, a tax assessment is mandatory. Consequently, dividends paid from a resident corporation to another resident corporation will result in a total nominal tax burden of about 0.79 % of the dividend (= 15.825 % of 5 %).

For a non-resident corporation, a tax assessment is only possible if the corporation has income from German sources and no withholding tax has to be deducted at these sources. Consequently, due to provisions regarding German withholding tax, dividends paid from a resident corporation to a non-resident corporation without a tax assessment will result into a total nominal tax burden of 26.375 %. However, due to provisions in double taxation agreements or EU directives, a lower withholding rate or even a zero rate may apply.

4. II. 1. c) Losses

Losses sustained in one year may be carried back into the previous year up to an amount of EUR 511,500. However, there is no obligation for a loss carry-backward. Losses not carried back into the previous year are carried forward into future years. Currently, there is no temporal limitation for a loss carry-forward.

In each following year a remaining loss carry-forward may be offset from the current year's taxable income without limitation up to an amount of EUR 1 million. In case the current year's taxable income exceeds EUR 1 million, the exceeding income may be set-off only in an amount of 60 % by a loss carry-forward. Therefore, even if the loss carry-forward is higher than the current year's taxable income, taxes may have to be paid.

Example:

loss carry-forward per 01/01 ..... EUR 3.00 million

income current year ..... EUR 2.00 million

maximum loss deduction
(i.e. 1.0 M + 60 % of 1.0 M) ..... EUR 1.60 million

taxable income current year ..... EUR 0.40 million

remaining loss carry-forward per 12/31 ..... EUR 1.40 million

Depending on the amount of shares transferred to a new shareholder or a group of new shareholders with congruent economic interest within five years, from 2008 onwards existing loss carry-forwards will cease to exist according to the following scheme:

If more than 25 % but less than 50 % of the shares are transferred, loss carry-forwards cease to exist pro-rata to the percentage of the transferred shares. If more than 50 % of the shares are transferred, loss carry-forwards cease to exist completely. Therefore, any transfer or similar transaction of shares in a corporation with loss carry-forwards should be checked very thoroughly in advance.

Losses resulting from sources abroad may only be set off from domestic taxable income if positive income resulting from the same sources, due to provisions in double taxation agreements, may be taxed in Germany.

4. II. 1. d) Limitation of interest deduction

With effect from 2008, deduction of interest expenses is limited in two stages according to a so-called Interest Deduction Rule (Zinsschranke): In the first stage, deduction is limited to the amount of interest yield. In the second stage, exceeding interest expenses are deductible up to an amount of 30 % of the taxable income before interest expenses, interest yield, depreciation and amortisation (so-called tax-EBITDA). Interest expenses that were non-deductible according to the Interest Deduction Rule will be carried forward without temporal limitation. Each following year, an interest carry-forward from previous years will be added to the interest expenses of the current business year before the Interest Deduction Rule is applied.

There are three exceptions to the second stage of the interest barrier:

- Exception 1 (“exemption threshold”):
  Interest expenses do not exceed the interest yield for more than EUR 3 million.

- Exception 2:
  The company belongs either not at all or only pro-rata to a group. Since the German tax authorities tend to have a rather wide understanding of what a group is, exception 2 seems to be of minor relevance.

- Exception 3 (“escape clause”):
  The company belongs to a group but is able to prove that its equity-ratio is at least as high as the average equity-ratio of the whole group. If the company’s equity-ratio is up to 1 % lower than the average equity-ratio of the whole group, this is also tolerated.

Provisions regarding the Interest Deduction Rule are part of the determination of the taxable income and therefore binding for all companies (corporations as well as partnerships or sole proprietorships). However, corporations have to meet additional conditions for an application of exceptions 2 and 3.

- For an application of exception 3 (“escape clause”), a corporation has to prove additionally that remunerations for borrowed capital of the corporation itself (or any other company belonging to the same group) paid to

  · a person who directly or indirectly holds more than 25 % of the voting rights in the corporation itself or in any other company that belongs to the same group (qualified shareholder) or

  · a person who is related to a qualified shareholder (related person) or

  · a person who is able to take recourse upon a qualified shareholder or a related person

  do not exceed 10 % of the company’s interest expenses that exceed the company’s interest yield.

4. II. 1. e) Tax groups

There is no taxation on basis of consolidated financial statements in Germany. Nevertheless, two or more related companies may build a tax group (Organschaft) in which the taxable income of each controlled company is added to the taxable income of the controlling entity (Organträger). Since only the sum of all taxable incomes is taxed at the level of the controlling entity, profits and losses of all companies belonging to a tax group are pooled.

The controlling entity in a tax group has to be subject to unlimited taxation in Germany. Besides a corporation, the controlling entity may also be an individual or a partnership. In case of the latter, all partners have to be subject to unlimited taxation in Germany. Finally, even a registered German branch of a non-resident company may be the controlling entity of a tax group. All controlled companies have to be corporations that are resident in Germany.

In order to form a tax group, the controlling entity has to hold the majority of the voting rights in each controlled company. Such majority of the voting rights may be directly or even indirectly held if the controlling company holds the majority of the voting rights in each intermediate holding company. Besides, both companies have to conclude a profit and loss transfer agreement (Gewinnabführungsvertrag). The shareholders' resolution of each controlled company which the shareholders agree to the profit and loss transfer agreement needs to be notarised. All shareholders' resolutions as well as the profit and loss transfer agreement have to be filed to the Commercial Register. The profit and loss transfer agreement has to be concluded for a minimum period of five business years. A premature termination without officially accepted reasons (e.g. sale of shares or merger) may have adverse tax consequences for the previous years.

4. II. 1. f) Capital gains or losses related to shares in other corporations

Capital gains resulting from the sale of shares in another corporation are tax exempt. Related costs are deductible. Nevertheless, 5 % of the capital gain is treated as non-deductible business expenses and therefore increases the taxable income of the receiving company. Any losses related to the shares in another corporation (e.g. depreciation or sale) are non-deductible. There are different rules for banks, credit institutions, insurance companies and certain other finance companies (e.g. holding corporations that trade with shares in other corporations and therefore balance these shares as current assets).

Due to most double taxation agreements, capital gains or losses of a non-resident corporation resulting from the sale of shares in a resident company may not be taxed in Germany.

4. II. 1. g) Relief from double taxation

Generally, since the worldwide income of corporations resident in Germany is taxed, income earned abroad may be taxed both in the country of its source and in Germany. Such double taxation is avoided either by provisions in German national tax law or by a double taxation agreement:

Based on provisions in German national tax law, a tax credit up to the amount of German corporation tax on the same income is granted for foreign income taxes. However, if taxes paid abroad are not equivalent to German corporation tax, they may only be deducted as additional business expenses. In case a corporation has earned income in several foreign countries, tax credits have to be determined separately for each country in which taxes have been paid (so-called per-country-limitation). Taxes paid abroad may be credited or deducted only in the year the respective foreign income was earned.

Double taxation agreements with more than 90 countries are in effect at the beginning of 2010. Most of these agreements are based on the Model Tax Convention of the Organisation for Economic Co-operation and Development (OECD). However, since there may be important deviations from the OECD Model Tax Convention, provisions of an agreement should be checked thoroughly based on the facts of each individual case.

In general a double taxation agreement grants the right of taxation to either the country in which the source of income is located (country of source) or where the recipient is resident (country of residence) while this income has to be exempted from tax in the other country. However, certain categories of income may be taxed in both countries while a tax credit is granted in the country of residence.

Finally, since 2007, German national tax law contains a subject-to-tax clause. If, based on a double taxation agreement, foreign income is tax-exempt in Germany and the other country does actually not tax this income, regardless of the provisions in the double taxation agreement, this income will be taxed in Germany.

4. II. 1. h) Withholding taxes

Corporations, subject either to unlimited or to limited taxation in Germany, have to withhold taxes from dividends paid to shareholders, profits paid to silent partners as well as amounts paid on profit-participating loans. Such payments are subject to a withholding tax (Kapitalertragsteuer) of 25 % and a solidarity surcharge of 5.50 % on the withholding tax. The paying company has to remit the withheld amounts to the local tax authorities and certificate them to the payee.

In addition, other payments to non-resident payees are subject to withholding tax at the following rates plus solidarity surcharge of 5.50 % of the withholding tax:

- Fees paid to members of the supervisory board: **30 %**
- Fees paid to independent artists, authors, journalists etc.: **15 %**
- Royalties: **15 %**.

In cases where the EU Parent-Subsidiary-Directive applies, withholding tax from dividends is reduced to zero. Main preconditions are a holding structure within the EU, a direct shareholding of at least 10 %, a holding period of at least 12 months, and no abusive character of the structure.

In cases where the EU Interest and Royalties Directive applies, withholding tax from royalties is reduced to zero for payments between associated companies within the EU, provided a minimum shareholding of 25 %.

Due to the provisions in double taxation agreements, withholding tax from dividends or other payments may be limited to a lower rate (e.g. 10 %) or even to a zero-rate. In these cases, no additional solidarity surcharge needs to be withheld.

Generally, withholding tax has to be deducted in their regular amounts (i.e. 30 %, 25 % or 15 % plus solidarity surcharge, see above). Subsequently, based on a double taxation agreement or an EU directive, the payee subsequently may apply for a refund at the German Federal Finance Office (Bundeszentralamt für Steuern). Alternatively, the payee may apply for an exemption certificate (Freistellungsbescheinigung) at the German Federal

Finance Office. If the payee provides the payer with such an exemption certificate valid at the time of payment, only the lower withholding tax of a double taxation agreement or EU directive has to be withheld. An exemption certificate or a refund of withholding tax is granted to a non-resident corporation only if certain criteria of activity are met. Besides, the beneficial owners of the shares in the non-resident corporation have to be eligible themselves for an exemption or a refund.

4. II. 2. Trade tax

4. II. 2. a) Basics

Trade tax is based on a federal law but levied by the local municipalities. Corporations are subject to trade tax as a consequence of their legal status. Nevertheless, in case of very special activities, an exemption may apply. Foreign income is not subject to trade tax.

Tax basis is the so-called trade income (Gewerbeertrag). Due to certain additions and deductions, the trade income may differ from the tax base relevant for income taxation. In case a corporation's income exclusively consists of rental and capital income, trade tax burden may be reduced to zero if certain conditions are also met.

Basically, trade tax is determined in two steps. In the first step, the trade income is multiplied with a flat rate of 3.50 %. This results in the base amount (Steuermessbetrag). In the second step, a multiplier appointed by the relevant local municipality is applied on the base amount. Minimum multiplier is 200 %. Currently, average multipliers range between 270 % and 490 % (which leads to a factor of 2.70 up to 4.90) and may be changed annually by the relevant municipality. As a general rule, larger municipalities have higher multipliers.

If a company has branches in more than one municipality, the base amount has to be apportioned to all involved municipalities. Generally, apportionment follows the ratio of salaries and wages paid in the municipalities. However, if no salaries and wages have been paid, other criteria apply.

From 2008 onwards, trade tax is not deductible from the taxable income for corporation tax purposes anymore. Consequently, assuming a municipal multiplier of 400 %, trade

tax results in a total nominal tax burden of 14 % of the taxable income.

A tax group (Organschaft) is possible but only in combination with a tax group for corporation tax. For trade tax, each controlled company is considered as a branch of the controlling entity (Organträger). Consequently, if not all companies are located in the same municipality, the integrative base amount needs to be apportioned according to the ratio of salaries and wages paid from all companies belonging to the tax group.

4. II. 2. b) Additions to and deductions from taxable income

Trade income is computed by additions and deductions from the taxable income. However, additions and deductions are limited to amounts previously deducted from or added to the taxable income.

Important additions are:

- 25 % of remuneration paid for any kind of financing exceeding an exemption of EUR 100,000. Besides interest payments, remunerations are also added back to the extent outlined below:
  - 20 % of rental or lease payments for movable assets
  - 65 % of rental or lease payments for immovable assets
  - 25 % of royalties and franchise fees
  - profits paid to a silent partner unless the silent partner himself is also subject to trade tax
- Dividends received from other corporations unless a shareholding of at least 15 % was held at the beginning of the relevant business year
- Shares in the losses of a partnership.

Important deductions are:

- 1.68 % of the assessed value (Einheitswert) of real estate located in Germany
- Shares in the taxable income of a partnership
- Donations to charitable organisations up to a total amount of 20 % of the trade income or 4 % of the sum of turnover and paid salaries and wages.

4. II. 2. c) Losses

For trade tax purposes, there is no loss carry-back. Nevertheless, losses may be carried forward without limitation in time. Besides, loss carry-forwards may be offset from future trade income following the same principles as for corporation tax.

4. III. Taxation of partnerships

4. III. 1. Income taxation

4. III. 1. a) Basics

For income taxation purposes a partnership is considered as being transparent. This means that the income of a partnership is not taxed at level of the partnership itself but pro-rata at level of the partners. Since these partners can be either individuals or corporations, provisions of either German Income Tax Act (Einkommensteuergesetz) or German Corporate Income Tax Act (Körperschaftsteuergesetz) apply.

Generally, if a partnership runs a business, all taxable income is considered as trading income. However, under certain conditions the activities conducted may be considered as property management. In this case, generated income may also consist of rental or investment income.

The taxable income of a partnership is determined in two steps. In the first step, the determination follows the same general principles as the determination of the taxable

income of a corporation. This first-step-income is allocated to the partners according to the allocation key as fixed in the articles of the partnership. In the second step, certain amounts need to be added to the partnership's income. Such amounts are allocated directly to the respective partner:

- **Special remunerations** (Sondervergütungen):
  Apart from the articles of the partnership, the partners may render services, grant loans or lease assets (e.g. real estate) to the partnership on a separate contractual basis. For statutory accounting purposes, related remunerations paid to the partners have to be deducted as business expenses. However, for tax purposes, these amounts do not reduce the partnership's taxable income and are added back.

- **Special business assets** (Sonderbetriebsvermögen):
  Partner-owned assets used by the partnership are deemed special business assets. If applicable, depreciation of such assets reduces the partnership's taxable income.

- **Supplementary tax balance sheets** (Ergänzungsbilanzen):
  The acquisition costs of an interest in a partnership may exceed the book value of the purchased part of the partnership's equity capital. The exceeding amount has to be allocated to the partnership's assets and liabilities in proportion to their going concern values (Teilwerte) and capitalised in a supplementary tax balance sheet. A remaining amount has to be capitalised as goodwill. If applicable, depreciation of capitalised surplus values follows the depreciation method applied on the respective assets on the statutory balance sheet.

- **Special business income or expenses** (Sonderbetriebseinnahmen oder Sonderbetriebsausgaben):
  Income or expenses of the partners that are economically linked to their interests in the partnership (e.g. financing costs) are deemed special business income or special business expenses. Such amounts increase or reduce the partnership's taxable income.

In its tax return, the partnership has to state both the determination and allocation of its entire taxable income (i.e. the first-step-income as well as the second-step-income). Costs for such tax return are non-deductible expenses.

The shares of all partners in the partnership's taxable income are assessed in a compendious tax assessment note. Besides, the share of each partner in the partnership's entire taxable income will be communicated officially to the local tax office relevant for the taxation of the respective partner.

A partnership may be the controlling entity in a tax group but not a controlled company.

4. III. 1. b) Trade tax credit for individuals as partners

In order to reduce an economical double taxation with trade tax (at level of the partnership) and income tax (at level of the partners), individuals as partners may credit a standard amount of up to 3.8 times of their share of the partnership's trade tax base amount (Steuermessbetrag) from their income tax liability.

4. III. 1. c) Losses

Generally, shares in the losses of a partnership may be offset from other positive income at the level of each partner.

Limited partners may offset their shares in the losses of a partnership from other positive income only up to the amount of their equity capital account (Kapitalkonto) or the amount up to which the partner guaranteed for liabilities of the partnership. The equity capital account in this sense consists of the partner's share of the partnership's equity capital as well as any (positive or negative) equity capital resulting from supplementary tax balance sheets. Apart from that, special business assets are irrelevant for a partner's equity capital account. Exceeding losses may only be offset from future shares in any positive taxable income of the partnership.

4. III. 1. d) Sale of an interest in a partnership

A capital gain or loss resulting from the sale of an interest in a partnership is determined as part of the partnership's taxable income. Calculation of a capital gain or loss follows this scheme:

Consideration	
./.	costs of sale (e.g. consultancy costs)
./.	equity capital account
./.	losses that could so far not be offset from other positive income
=	capital gain or loss

An individual as selling partner may claim tax benefits (i.e. an exemption of at most EUR 45,000 and a reduced tax rate) if certain conditions are met.

4. III. 2. Trade tax

4. III. 2. a) Basics

Although a partnership for income taxation is considered as transparent, a commercial partnership by itself is subject to trade tax (Gewerbesteuer). In this sense the term "commercial" means that the partnership either runs a business or – according to its legal structure (e.g. all general partners are corporations) – is deemed commercial.

The determination of a partnership's trade income is based on the entire taxable income of the partnership. Determination of a partnership's trade income generally follows the same principles as the determination of a corporation's trade income. Besides, for the trade income of a partnership an annual exemption of EUR 24,500 is granted.

4. III. 2. b) Losses

For trade tax purposes, there is no loss carry-back. Nevertheless, losses may be carried forward without any timely limitation.

Generally, loss carry-forwards may be offset from future trade income according to the same principles that apply for corporations. Besides, loss carry forwards may only be offset from future trade income if both the partnership and its partners did not change their identity during the periods in which the losses have been incurred. Consequently, in case a partner retires from the partnership or sells his interest in the partnership to a person who

previously held no or a smaller interest in the partnership, the portion of loss carry-forwards equal to the share of the retiring or selling partner in the partnership ceases to exist.

4. III. 2. c) Sale of an interest in a partnership

Unless an individual sells his or her interest in a partnership, a capital gain or loss resulting from such sale is taxed as part of the partnership's trade income. In other words, in case a corporation or another partnership sells an interest in a partnership, the capital gain or loss resulting from this sale is taxed as part of the trade income of the partnership of which an interest was sold.

4. IV. Transfer pricing

4. IV. 1. Basics

Transactions between related companies (corporations, partnerships or sole proprietorships) are tested whether or not the arm's length principle is met. If this is not the case, exceeding amounts may be considered as deemed dividends or hidden contributions. Cross-border transfer pricing contains the risk of an economical double taxation. Therefore, over the past decade, transfer pricing has become increasingly relevant for the tax planning of related companies.

Up to now, only the following three transfer pricing methods have been generally accepted by the German tax authorities:

- **Comparable uncontrolled price method:**
  Transfer prices are based on prices that third parties have agreed upon for similar transactions.

- **Resale price method:**
  Transfer prices are based on the activities of the reselling company (e.g. extent of modification of the goods) and a usual market margin for such activities. Consequently, this method is applicable only for the calculation of transfer prices for goods that a company buys from a related company and sells to a third party customer.

- **Cost plus method:**
  Calculation of transfer prices is based on the actual costs of a producer or service-provider and its pricing policy towards third parties.

If none of these methods is reasonably applicable, under special circumstances even the transactional net margin method or the profit split method will be accepted. The comparable profit method is not accepted at all.

The transfer of a business function (e.g. production or distribution) together with all related tangible and intangible assets, chances and risks and other advantages from one to another related company is treated as a special kind of a transfer pricing issue. Similar to a business valuation, a capitalised earnings value needs to be calculated for this business function. Unless this amount is paid as compensation by the receiving company, it will be treated as a deemed dividend from the transferring company to its shareholders. In cases where intangible assets have been transferred and actual profits differ from the forecasted profits for the business valuation, remuneration needs to be adjusted by law within ten years after the transfer of the business function.

4. IV. 2. Documentation requirements

Generally, based on the German Gerneral Tax Code (Abgabenordnung), taxpayers have to fulfil certain obligations to co-operate (Mitwirkungspflichten) with the tax authorities in the tax assessment procedure. Such obligations are increased in case where facts implemented abroad in which the taxpayer should have been able to arrange for his later access on any information required for his or her tax assessment procedure.

When business is implemented abroad, taxpayers are obliged to create and retain documentation about the nature and the content of business relations with close related persons and companies in the sense of German Foreign Transaction Tax Act (Außensteuergesetz). Besides the mere facts, there is documentation necessary that the conditions agreed upon meet the arm's length principle.

Extraordinary transactions (e.g. conclusion of long-term contracts with substantial business impact, transfer of assets in business restructurings) need to be documented promptly, at the latest within a period of six months after the end of the business year in

which they have been realised. Beyond this, there is no temporal requirement for when documentation has to be made. However, on request of the tax authorities, taxpayers are obliged to present the necessary documentation within a period of 60 days for regular and 30 days for extraordinary transactions.

There are several sanctions for a breach of documentation duties. If either no documentation at all, insufficient documentation or late documentation is presented, based on a disprovable assumption, the tax authorities may estimate higher profits resulting from the relevant business activities. In addition, penalties of up to 10 % of the estimated additional profits may be charged in cases where no documentation at all or substantially unusable documentation is provided. If usable documentation was provided late, penalties of EUR 100 per day may be charged up to a total amount of EUR 1 million.

In case of an existing double taxation agreement, a taxpayer may apply for an ex-ante mutual agreement procedure (Verständigungsverfahren) regarding transfer prices of planned but so far not established intercompany transactions (so-called Advance Pricing Agreement (APA)). The tax authorities will charge a basic fee of EUR 20,000 for a first-time APA. For a prolongation of an already existing APA, a fee of EUR 15,000 will be charged. For smaller cases, these fees are reduced to 50 % by law.

4. IV. 3. Secondment of staff

Staff employed at a company abroad may be seconded to a related company in Germany or vice versa. During the period of secondment, based on a contractual basis or at least from an economic point of view, the host company needs to qualify as a (new) employer. In other words, staff delegated from one to another related company in order to fulfil services stipulated by contract do not qualify as seconded in the sense of this section.

Generally, the company on whose behalf the seconded staff works (the base company) has to bear all costs related to the secondment. If the staff works partly on behalf of the base company and partly on behalf of the host company, costs need to be apportioned based on an appropriate scale.

Wages and salaries paid from a host company resident in Germany will be most probably subject to German wage tax. If so, the base company has to withhold wage tax and the

employee's contribution to the German social security system. In case of doubt whether or not wage tax needs to be withheld, the base company may apply for a ruling at the relevant local tax office (Anrufungsauskunft) which is free of charge.

4. V. Restructuring of business entities

For purpose of this publication, the term "restructuring of business entities" is understood as business activities that are continued within a new legal form or structure.

4. V. 1. Framework by civil law

German Reorganisation of Companies Act (Umwandlungsgesetz) provides the legal framework for the most important types of reorganisation:

- Merger (Verschmelzung): Two or more companies merge into one
- Split (Spaltung): A legal entity may be split up into several new legal entities (Aufspaltung), or there are two different types of a spin-off (Abspaltung, Ausgliederung)
- Change of legal form (Formwechsel).

According to the German Reorganisation for Companies Act, there is universal succession (Gesamtrechtsnachfolge) in case of a merger or a split. This means that all assets, liabilities and contractual relationships are transferred in one step from the transferring to the acquiring entity; insofar as the acquiring entity enters into the legal position of the transferring entity. In case of a change of legal form, no transfer of any assets, liabilities or contractual relationships is necessary. Apart from the new legal status, the entity is identical before and after the change of form.

Apart from this, reorganisation of business entities is also possible by transferring assets and liabilities. Each contractual partner (e.g. creditors) has to agree when liabilities or contractual relationships are transferred. :

Regarding tax implications German Reorganization Tax Act (Umwandlungssteuergesetz) contains the most important provisions for the taxation of reorganisations of business entities. Besides, German Income Tax Act (Einkommensteuergesetz) contains several provisions regarding the transfer of discrete assets or separable parts of business operations.

Provisions in German Reorganisation Tax Act (Umwandlungssteuergesetz) follow the basic principle that all transferred assets (even self-produced intellectual property) have to be capitalised with their fair market values at the acquiring entity. So, in the amount of any hidden reserves (i.e. the difference between the fair market values and the book values), a taxable capital gain is deemed at the transferring entity. However, if certain conditions are met, the acquiring entity may request to continue with the tax book values of the transferring entity. The most important condition that needs to be fulfilled is that a capital gain resulting from a future sale of the transferred assets or the shares in the acquiring entity may be taxed in Germany without any limitation. Such limitations may arise from double taxation agreements or provisions in German tax law.

Additionally, German Income Tax Act (Einkommensteuergesetz) contains several provisions regarding the transfer of discrete assets between a partnership and its partners or between the partners themselves. Due to these provisions, a taxable capital gain may be avoided if no remuneration was granted or the tax book value of the transferred assets was booked against the relevant equity capital account. Since these provisions only cover the transfer of discrete assets, any associated transfer of liabilities will be considered as remuneration and result in a taxable capital gain.

Apart from these provisions, any other transfer of assets from one to another business entity is deemed to be a sale for remuneration in the amount of the fair market value of the transferred assets and therefore leads to a taxable gain at the transferring entity.

4. VI. Selected other taxes

This section provides an overview of the most important indirect taxes. However, other indirect taxes such as electricity tax (Stromsteuer) or mineral oil tax (Mineralölsteuer) may also be of great importance for certain industry sectors.

4. VI. 1. Value added tax (VAT)

4. VI. 1. a) Basics

Goods supplied or services rendered by an entrepreneur for remuneration within the territory of Germany are subject to German VAT. For VAT purposes any individual, corporation or partnership may be considered as an entrepreneur as long as they are engaged independently in a business or profession with the object to generate income.

Goods are deemed to be supplied where the goods are located at the point of time the purchaser acquires the authority to dispose of the goods. Where the goods are transported, the place of supply is where the transportation starts. Services are generally deemed to be rendered at the place where the supplying entrepreneur runs its business. However, since there are specific rules for certain services, the place of supply should be checked thoroughly.

The general VAT rate is 19 %. For basic goods (e.g. food, books or transportation over short distances) a reduced tax rate of 7 % applies. However, there are various exemptions from VAT. The most important are leasing of buildings for residential purposes (except hotels), banking and insurance services, medical services and any transaction subject to German Real Estate Transfer Tax.

Generally, VAT paid by entrepreneurs (so-called input-VAT) may be deducted from the VAT payable from their own turnover. Input-VAT related to VAT-exempt deliveries or services may not be deducted. Nevertheless, an entrepreneur may opt for regular taxation if he or she renders certain VAT-exempt services in order to achieve input-VAT deduction. Exports are also VAT-exempt but qualify for input-VAT deduction.

In cases where a corporation is integrated financially, organisationally and economically into the business of another entrepreneur, both enterprises may build a tax group (Organschaft) which is considered as an integrated enterprise for VAT purposes. Please bear in mind that the conditions to form a tax group for VAT purposes are different from a tax group for corporation tax or trade tax.

4. VI. 1. b) VAT registration

Any person who sets up a business in Germany is legally obliged to file an official questionnaire to the relevant tax office within one month.

Small entrepreneurs with a maximum total turnover of EUR 17,500 in previous years and an expected turnover of less than EUR 50,000 in the current year are neither submitted to VAT nor may they take advantage of the input-VAT relief. They are deemed non-entrepreneurs. However, on application deemed non-entrepreneurs may opt for regular taxation and input-VAT deduction for a minimum period of five years.

4. VI. 1. c) Computation, filing and payment

Entrepreneurs are obliged to file monthly or quarterly advance notifications (Voranmeldungen) and an annual VAT return (Umsatzsteuerjahreserklärung). In both the advance notifications and the annual VAT return, the entrepreneurs have to compute their VAT liability by deducting the recoverable input-VAT from the value-added tax on their own turnover.

Generally, advance notifications have to be filed electronically by the tenth day of the subsequent month at the latest. Also by this day, VAT payable (i.e. VAT on own turnover exceeding deductible input-VAT) is due. In case of bank transfers, any delay of more than three days will cause a late payment fine (Säumniszuschlag) of 1.0 % of the amount not paid in time. However, entrepreneurs can apply for a permanent extension (Dauerfristverlängerung) of an extra month but in general have to make a deposit. A VAT liability resulting from an annual VAT return is due within one month after the VAT return was filed. If input-VAT exceeds the VAT on own turnover, a refund will be paid as soon as the local tax office has accepted the filed advance notification or VAT return.

In case of services or work supplies from an entrepreneur not registered for VAT in Germany (foreign entrepreneur), the liability to pay the VAT to the tax authorities is transferred to the recipient (so-called reverse-charge). The foreign entrepreneur must not state German VAT in his invoices but refer to the reverse-charge method.

4. VI. 1. d) Refund of paid VAT to foreign entrepreneurs

A foreign entrepreneur who is registered for VAT in the territory of the community and who did not deliver any goods or render any services for which he owes German VAT may apply to the German Federal Central Tax Office (Bundeszentralamt für Steuern) for a refund of German input-VAT. The respective application has to be filed on an official form and transmitted electronically via the corresponding portal of the state where he is resident. The application has to be filed by September 30th of the subsequent calendar year to which the application refers at the latest. If the net amount of turnover exceeds a threshold of EUR 1,000 (EUR 250 in case of fuel purchases), copies of the respective invoices have to be attached to the electronic transmission. The originals have not to be submitted until the German Federal Central Tax Office makes a specific request. After an idle period of four months and ten working days beginning with the filing of the application, the amount refundable is subject to interest of 6 % p.a. in favour of the entrepreneur.

The procedure applying for a foreign entrepreneur who is registered for VAT outside of the territory of the community is different. He may also apply to the German Federal Central Tax Office for a refund of German input-VAT under the same conditions like an EU member, but only if his country grants comparable advantages to German entrepreneurs. The respective application has to be filed on an official form by June 30th of the subsequent calendar year to which the application refers at the latest. A certificate of the VAT status issued by the authorities of the state in which the entrepreneur is resident and registered for VAT together with all originals of invoices in which German VAT was stated must be attached to the form. The application has to be signed personally by the entrepreneur.

4. VI. 2. Real estate transfer tax (RETT)

Any transaction that leads to a transfer of real estate located within the territory of Germany to a new owner is subject to RETT (Grunderwerbsteuer). A transfer of shares in a legal entity (corporation or partnership) that owns real estate or a business restructuring of such an entity (except a change of legal form) may also cause RETT.

The general tax rate for RETT is 3.50 %. As exceptions, Berlin and Hamburg apply a rate of 4.50 %.

Generally, the assessment basis for RETT is the agreed remuneration for the transfer of real estate. If no remuneration was granted (e.g. business restructurings), RETT is levied on the assessed value (Einheitswert) of the real property. Such assessed values currently reflect a range of 40 % up to 70 % of the fair market values.

As RETT occurs normally in the course of transactions, it has to be capitalised as incidental acquisition costs of the real estate.

4. VI. 3. Real estate tax

Real estate tax (Grundsteuer) is levied on an annual basis by the municipality in which the real estate is located. The mere ownership of real estate is the basis for being subject to real estate tax. Tax basis is the assessed value (Einheitswert) of the real estate.

Similar to trade tax, real estate tax is also determined in two steps: In the first step, the assessed value is multiplied by a flat rate of 0.35 %. This results in the base amount (Steuermessbetrag). In the second step, a multiplier determined by the relevant local municipality is applied to the base amount. Currently, average multipliers range between 150 % and 600 % (which leads to a factor of 1.50 up to 6) and may be changed annually by the relevant municipality. As a general rule, larger municipalities have higher multipliers.

Real estate tax related to premises used for business activities is deductible for income tax purposes (i.e. corporation tax or income tax and trade tax).

4. VI. 4. Customs duty

Customs duty is imposed on various goods imported from non-EU member states into Germany. The assessment base depends on the corresponding good. As Germany is a member of the European Union, there will be no customs duties for imports or rather exports in other countries, which are also member states of the EU.

Heidelberg, Neckar bridge

Taxation of individuals

5. I. Income tax

5. I. 1. Tax liability

Any individual with a dwelling place or a physical presence of more than six months (exclusively private purposes: one year) in Germany (so-called resident) is subject to unlimited taxation in Germany. Unlimited taxation in this sense means that the individual will be taxed on their worldwide income. However, due to double taxation agreements with other countries, parts of the individual's income may be tax exempt in Germany or a tax credit will be granted for taxes paid abroad.

Individuals without a dwelling place or a physical presence for more than six months in Germany (so-called non-resident) are subject to limited income taxation on their German-sourced income only (limited tax liability).

5. I. 2. Taxation of resident individuals

5. I. 2. a) Basics

Resident individuals are taxed on their income realised within a calendar year (tax year). The German Income Tax Act (Einkommensteuergesetz) lists the following seven categories of income:

- Income from agriculture and forestry
- Income from trade or business
- Income from independent profession

- Income from employment
- Investment income (including capital gains from the sale of most shares and bonds)
- Income from rent and lease (e.g. real estate, tangible assets of a business, royalties)
- Specific other income (e.g. pensions, lease of tangible private assets, capital gains from the sale of real estate within a period of ten years after the purchase).

Income not belonging to any of these categories is not liable to German income tax.

There is a general principle that each individual is assessed separately. However, married couples who live in the same dwelling place may apply for a joint assessment (Zusammenveranlagung) which may lead to a lower total tax burden than two separate tax assessments.

Basically, German income tax is imposed with a single tax rate on the total amount of the taxable income. The tax scale 2009 applicable for a single assessment consists of the following four elements:

- No income tax applies up to a total income of EUR 7,834 (Grundfreibetrag / personal allowance).
- Within the range from EUR 7,835 to EUR 52,551 the total income is taxed at a progressive marginal tax rate. This rate increases from 14 % to 42 %.
- A total income of more than EUR 52,552 up to EUR 250,400 is taxed at a flat marginal tax rate of 42 %.
- An increased flat marginal tax rate of 45 % applies (so-called Reichensteuer) to a total income of more than EUR 250,400.

In case of married couples filing jointly, all income amounts of the tax scale are doubled.

From 2009 on, investment income generally is taxed at a flat rate of 25 %.

In addition to income tax, a solidarity surcharge of 5.50 % on the assessed income tax is levied. Although this surcharge was originally declared to be temporary, no date of expiry has been fixed yet.

If an individual is member of either Catholic, Protestant or a small number of other churches, a second surcharge on the assessed income tax is levied as church tax (Kirchensteuer). The rate is either 8 % or 9 % of the income tax due, depending on the federal state of Germany in which the individual lives.

5. I. 2. b) Computation of taxable income

Except for investment income, income of each category is computed by deducting business expenses or other income-related expenses from the revenues. In several categories, standard deductions for income-related expenses (Werbungskostenpauschbeträge) are granted unless higher actual expenses are proven.

Generally, the income of all different categories is totalled. That way positive and negative income generated within the same tax year is netted. However, there are certain restrictions. The netted income is the basis for further deductions that can be categorised as follows:

- **Special expenses** (Sonderausgaben):
  Up to certain amounts, expenses not related to any category of income may be deducted due to socio-political reasons. Examples are donations, alimonies, premiums for selected insurances (life, health etc. but not property) and church tax.

- **Extraordinary expenses** (außergewöhnliche Belastungen):
  Generally, expenses are extraordinary if they are unavoidable and unusually high compared to individuals in the same economic position. Deduction is limited to the amount the actual expenses exceed a reasonable burden that depends on the income and the familial circumstances. Besides, special expenses may be deducted up to an absolute limitation (e.g. deductions for disabled, bereaved or high-maintenance individuals).

Furthermore, there are a few other deductions (e.g. donations to political parties, expenses for close-to-home services) which need to be checked for each particular case. The remaining amount is the taxable income on which the tax rate is applied.

5. I. 2. c) General taxation of investment income

From 2009 on, investment income and capital gains from the sale of most shares and bonds are normally taxed at a flat tax of 25 % (so-called Abgeltungssteuer). As a solidarity surcharge of 5.50 % is also levied, this results in a total nominal tax burden of 26.375 % of the taxable investment income. If the individual is a member of a Catholic, Protestant or a small number of other churches, the church tax due leads to a total nominal tax burden of about 27.82 % (church tax rate of 8.0 %) or about 28 % (church tax rate of 9.0 %).

The flat tax rate of 25 % is not applicable by law on:

- interest income from (personally or economically) closely related persons or companies
- investment income paid by a corporation to a shareholder or a person closely related to the shareholder if the shareholder holds at least 10 % of the shares in the corporation
- in certain cases of so-called back-to-back financings.

In these cases, the investment income is taxed with the regular tax rate.

The flat tax rate of 25 % is also not applicable by law on capital gains or losses resulting from the sale of shares in a corporation if the seller during a period of five years before the sale at one point in time held at least 1 % of the shares in the corporation. In this case, the so-called partial income procedure (Teileinkünfteverfahren) applies.

Besides, on request the flat tax rate of 25 % is not applicable on dividends paid by a corporation to an individual if:

- the individual holds directly or indirectly at least 25 % of the shares in the corporation or
- the individual holds directly or indirectly at least 1 % of the shares in the corporation and is acting on a professional basis for the corporation (e.g. as executive).

If these preconditions are fulfilled, the individual may opt for a taxation of the dividends according to the partial income procedure (Teileinkünfteverfahren) allowing the partial deduction of expenses. Such option would be valid for a period of five years but may be revoked by the individual earlier.

Generally, the paying agent (i.e. normally the bank) withholds the flat tax of 25 %, the solidarity surcharge and the church tax (if applicable). Consequently, losses from certain investments (e.g. sale of shares) will be offset from positive income received via the same paying agent and taken into account for the flat tax to be withheld.

Besides a blanket allowance (Sparerpauschbetrag) of EUR 801 (doubled in case of married couples filing jointly) no income-related expenses may be deducted from investment income. In case all investment income of an individual had been taxed with the flat tax, no further declaration of investment income in the annual income tax return would be necessary. However, there are certain exceptions in which an individual needs to declare all investment income in its annual income tax return:

- An individual receives investment income from which no flat tax was withheld.

- Losses could not be offset from positive income received via the same paying agent but could be offset from positive income received via another paying agent.

On request, investment income will be taxed with the regular tax rate if the relevant marginal tax rate for the individual's total income including investment income is lower than the flat tax rate of 25 %. In this case, dividends are taxed according to the partial income procedure and income-related expenses may be deducted. Accordingly, investment income needs to be declared in the individual's annual income tax return.

5. I. 2. d) Partial income procedure for certain investment income

The partial income procedure (Teileinkünfteverfahren) is a special taxation of dividends and capital gains or losses that is relevant in the following scenarios:

- The dividends and capital gains or losses are part of trade or business income resulting from a commercial sole proprietorship or an interest in a commercial partnership.

- Capital gains or losses of an individual resulting from the sale of shares in a corporation are subject to the partial income procedure if the seller during a period of five years before the sale at one point in time held at least 1 % of the shares in the corporation.

- For other reasons the flat tax rate of 25 % is not applicable on dividends and capital gains or losses.

According to the partial income procedure, 40 % of the revenues (i.e. dividends or capital gains in case of a sale) received are tax exempt. Correspondingly, 40 % of related costs are non-deductible as income-related expenses.

5. I. 2. e) Losses

Losses in the sense of this section are negative amounts resulting from negative income of one or more categories and exceeding positive income from other categories within the same tax year.

For individuals the same principles apply as for corporations. For married couples filing jointly, all amounts that limit a loss deduction are doubled.

5. I. 2. f) Relief from double taxation

For an avoidance of double taxation, the same principles apply as for corporations. If, based on a double taxation agreement, foreign income from employment of resident individuals has to be exempted in Germany, another subject-to-tax clause in German national tax law may become relevant. In these cases, an exemption is granted only if evidence is made that the foreign income was actually taxed in the other country.

5. I. 3. Taxation of non-resident individuals

5. I. 3. a) Basics

Non-resident individuals are subject to income taxation only with German-sourced income as defined by law (so-called limited tax liability). Outstanding kinds of German sources income are:

- Income from agriculture and forestry conducted in Germany
- Income from trade or business such as
  - income resulting from a branch (i.e. a permanent establishment or representative) in Germany;
  - capital gains resulting from the sale of shares in a resident corporation if the seller at one point of time within five years before the sale held at least 1.0 % of the shares in the corporation;
  - rental income of a non-resident corporation if the rented property (e.g. real estate, tangible or intangible assets) is located or registered in Germany as well as capital gains resulting from a sale of this property.
- Income from independent profession as far as work is conducted or results are utilised in Germany
- Income from employment as far as work is conducted or results are utilised in Germany; remuneration paid to executives, proxy holders and or board members of German-resident corporations
- Investment income such as
  - dividends paid by German-resident corporations
  - interest paid on mortgages or bonds by German borrowers
- Income from rent and lease of an individual as far as the leased property (e.g. real estate, tangible or intangible assets) is located or registered in Germany
- Specific other income (e.g. pensions paid by the German social security administration, capital gains from the sale of real estate located in Germany within a period of ten years after the purchase).

Based on provisions in double taxation agreements, the listed income may be fully or partly tax exempt in Germany.

Generally, limited tax liability is focussed more on the item of income than on the individual. Consequently, individuals with only limited tax liability may not claim most personal allowances and deductions.

5. I. 3. b) Withholding tax

A debtor has to deduct withholding tax from remunerations granted for certain activities of non-resident individuals or corporations. Quarterly, by the tenth day of the month following the quarter at the latest, the debtor has to file a declaration and to pay the withheld amounts to the local tax office relevant for the debtor's taxation.

From any remuneration granted to non-resident members of a supervisory board of a resident corporation, 30 % of the gross amount (plus 5.50 % solidarity surcharge on the withholding tax) needs to be withheld. This results in a total nominal tax burden of 31.65 % of the granted remuneration.

From any remunerations granted for artistic, sporting, artistic or entertaining performances executed or utilised in Germany as well as from remuneration granted for the use of intellectual property (e.g. patents, industrial property rights or know how) 15 % of the gross amount (plus 5.50 % solidarity surcharge on the withholding tax) needs to be withheld. This results in a total nominal tax burden of 15.825 % of the granted remuneration.

As far as the remuneration granted consists of reimbursed actual travelling costs, no deduction of withholding tax is necessary.

Except from remuneration granted for the use of intellectual property, withholding tax may even be deducted from a net amount (i.e. after deduction of income-related expenses) if the following conditions are met:

- The recipient has proved income-related expenses at the payment date.
- The recipient is either a citizen of a member state of the EU or the EEA and resident in one of these states or a corporation resident in the EU or EEA.

If the recipient is an individual, withholding tax of 30 % of the net amount (plus 5.50 % solidarity surcharge) needs to be withheld. However, if the recipient is a corporation, only 15 % of the net amount (plus 5.50 % solidarity surcharge) needs to be withheld.

The debtor has to certify the withheld amounts and the details of the deduction to the recipient.

5. I. 3. c) Tax assessment upon request

A non-resident individual may opt for taxation as deemed resident if at least 90 % of its taxable income is subject to German income taxation and income not being subject to German income taxation does not exceed the annual personal exemption. Consequently, a tax assessment is made and the non-resident individual benefits from all personal deductions granted to resident individuals. In addition, citizens of a member state of the EU or the EEA who are either resident or opted for a taxation as deemed residents and married to a non-resident spouse may benefit from some personal deductions normally granted only to married resident couples who file jointly.

Normally, if withholding tax has been deducted from the German-sourced income of a non-resident individual, this income will no longer be included in a tax assessment. Consequently, withholding tax (and solidarity surcharge) will be the final tax burden on this income. However, except for investment income, a tax assessment is possible upon request or even mandatory in several exceptional circumstances. Most personal deductions granted to resident individuals are suspended in a tax assessment of a non-resident individual. The personal allowance is also only granted to employees.

5. II. Inheritance and gift tax

The transfer of property either by succession in case of death or by gift at lifetime is subject to inheritance and gift tax (Erbschaft- und Schenkungsteuer). Furthermore, the net worth of family foundations is taxed periodically every 30 years.

From 2009 onwards, any transferred property must be valued at fair market values. For real estate, business property of a sole proprietorship or a partnership and the shares in

a corporation, values computed according to special valuation schemes apply unless the taxpayer proves a lower fair market values by an expert's opinion.

Up to certain amounts, there are exemptions for defined property (e.g. furniture) and personal allowances that depend on the classified kinship to the decedent or donor:

Class	Kinship	Exemption
I	Spouse, registered partner in a civil union	EUR 500,000
I	Children, children of deceased children	EUR 400,000
I	Grandchildren	EUR 200,000
I	Parents, grandparents (in case of death)	EUR 100,000
II	Siblings, nephews and nieces Parents, grandparents (in case of gifts) Children-/parents-in-law, step-parents Divorced spouse	EUR 20,000
III	Other resident recipients	EUR 20,000
III	Other non-resident recipients	EUR 2,000

The net worth of the inherited or gifted property is taxed at the following tax rates, again depending on the classified kinship to the decedent or donor:

Net worth up to	Tax class I	Tax class II / III
EUR 75,000	7 %	30 %
EUR 300,000	11 %	30 %
EUR 600,000	15 %	30 %
EUR 6,000,000	19 %	30 %
EUR 13,000,000	23 %	50 %
EUR 26,000,000	27 %	50 %
more than EUR 26,000,000	30 %	50 %

Inheritance or gift tax on business property or shares in a corporation of at least 25 % may be reduced or not levied if certain conditions are met over periods of 7 or 10 years after the transfer.

A tax credit is granted for inheritance and gift tax abroad on foreign property up to the amount of German inheritance and gift tax due on the same property. Besides, there are double taxation agreements with a small number of countries (e.g. Denmark, France, Greece Sweden, Switzerland and the USA).

5. III. Selected other taxes

A commercial sole proprietorship of an individual is subject to trade tax. As for a partnership, an annual exemption of EUR 24,500 is granted. Besides, the same provisions as for corporations and partnerships apply.

A sole proprietorship may be subject to value added tax. If an individual purchases real estate, real estate transfer tax applies. If an individual is owner of real estate located in Germany, real estate tax is also levied.

Grants and Incentives

Würzburg Residence,
World Heritage Site

6. I. Investments

The incentives for new investments are basically designed to foster economic growth. Incentives are offered to all investors, regardless of whether they are from Germany or not. The provided funds are from either the German government, the individual federal states, or the European Union (EU). In accordance with the EU-treaty, each incentive has to be declared and approved by the EU committee before it can be individually granted. The incentives have to be in line with the European single market, which means that they must not affect either the trade or the competition between EU member countries. Especially cash incentives in the form of non-repayable grants are the most common incentives. Further incentives are interest-reduced loans and public guarantees. In terms of the interest-reduced loans, special so-called development banks, which are publicly owned and organized. The financial tools offered by such banks are accessible to foreign investors as well as to investors from Germany with the same conditions. The nationally operating development bank of the Federal Republic of Germany is called the KfW Banking Group (Kreditanstalt für Wiederaufbau (KfW)). Additionally each German federal state has its own development bank. The above mentioned public guarantees are typically used for young and innovative businesses, supporting them during their start-up. Another major focus lies in the advancement of research & development (R&D) activities. Therefore, the public sector in conjunction with the industry has made a commitment to spend around three percent of national GDP per year on R&D activities.

Generally, the incentive programs can be grouped into two overall packages: the above mentioned investment package and the operational package which comes into effect once the location-based investment has been realized. The latter mostly consists of labour-related incentives and the above mentioned R&D incentives. Germany's Federal Employment Agency (Bundesagentur für Arbeit), with over 800 job centres located throughout Germany and the German federal states, offer a range of labour-related incentives programs. Since the job centers are governmental institutions, all services are provided entirely free of charge.

6. II. The legal and financial framework

The legal and financial framework for public funding is provided by the EU. Consequently, there are certain criteria applicable to all EU member states which have to be complied with in terms of public funding. The overall objective is the development and advancement of economic growth within the different regions of the EU. The EU is dividing the regions into "Convergence Regions" which receive comprehensive support and "Regional Competitiveness and Employment Regions" which should be enabled to maintain and expand their economic competitiveness levels. Generally, each German federal state is free to determine individual ceilings for investments but is bound to its maximum incentives level 'obviously'.

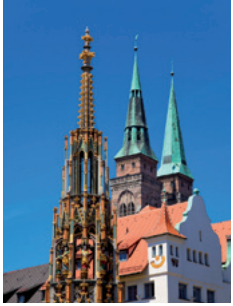
6. III. Protection of intellectual and industrial property

6. III. 1. Patents

German patent law applies in Germany and patents are granted by the German Patent and Trade Mark Office (Deutsches Patent- und Markenamt, DPMA). The application must include special information. Generally, the duration of a patent is 20 years. Foreigners have the same rights and obligations as German nationals when applying for a registration of patents. However, applicants without a domicile or an establishment in Germany have to appoint a patent attorney in Germany as their representative to fill the patent application. Furthermore, there is the option to apply for a patent under the European Patent Convention (EPC) to get an EU-wide protection.

6. III. 2. Trade Marks and Trade Names

Basically, something that identifies a company is called a trademark, or a trade name. In Germany the German Patent and Trade Mark Office (DPMA) is responsible for their protection. Therefore, an application must be filed at the DPMA, as with patents. Equally, a fee for trademark registration application and entry in the trademark register applies. Once granted, the protection of the certain trademark or rather trade name is valid for ten years with an option to extend for another ten years.



Nuremberg, Schöner Brunnen

Labour law

German labour law is not codified in a single consolidated labour code but derives from several different sources. Since labour law is designed to protect employees, professional advice is highly recommended in any matter related to labour law. This section focuses on aspects relevant for employers and their employees. Therefore, exceptions for self-employed individuals or freelancers are omitted.

7. I. Visa and Employment

7. I. 1. EU Nationals

In general, EU nationals may enter, stay, and work in Germany without any visa. They only have to consider that if they stay more then 90 days in Germany, they must register at the local registration office (Einwohnermeldeamt) to get a declaratory residence permit. Until 2011 at the latest, citizens of the new EU member states still require a work permit if they are employed in Germany.

7. I. 2. Non-EU Nationals

The majority of non-EU nationals need a visa prior to entering Germany. The type of visa needed does normally depend on the number of days that they plan to stay in Germany. Distinctions are made for visits exceeding 90 days. The Schengen Visa applies for short-term stays. The right visa for long-term stays does normally depend on the purpose of staying in Germany. However, it has to be considered that there are exceptions for several countries which are not EU member countries and the citizens can still stay in Germany up to 90 days without any visa. Therefore, we refer to the German Federal Foreign Office (Auswärtiges Amt) to get further details of entry requirements for nationals from all countries.

7. I. 3. The Schengen Travel Visa

The Schengen Travel Visa relates to the Schengen Agreement. This agreement stipulates that cross-border controls for passenger traffic will no longer be enforced.

The majority of activities required to set up a business in Germany can be accomplished by holding a Schengen Travel Visa. The holder is permitted to stay for up to 90 days per half year for purposes such as notarizations, applications, notifications or other preparatory activities. The requirements for such a visa consist of:

- a letter of invitation by the German business partner
- documentation of employment and salary certificate
- a letter from the applicant's employer confirming the business purpose of the trip
- proof of travel health insurance.

Further documents such as a copy of the foreign company's entry in the foreign commercial register, bank statements (last three months), and articles of association may be required when the entrepreneur personally applies for such a type of visa.

7. I. 4. Visas for Running a Business On-Site

Anybody who wants to run a business on-site in Germany is considered self-employed and therefore has to apply for a residence permit for the purpose of self-employment (Aufenthaltserlaubnis für selbständige Tätigkeit). People are considered self-employed if they plan to hold positions such as:

- managing partners, directors (Geschäftsführer), or company representatives
- executive board members of stock corporations (AG)
- entrepreneurs (including freelancers)

- authorized signatories (Prokurist)
- majority shareholders of a GmbH.

The permission of residence grants the applicant the right of residence as well as permit to work in a self-employed capacity in Germany. The cognizant authority is generally the German Embassy or German Consulate General of the respective home country. It will be granted if at least five new jobs are created and at least EUR 250,000 is invested. In cases where these requirements are not met, German authorities (local foreigner's registration office (Ausländerbehörde) in conjunction with the local Chambers of Commerce and Industry (Industrie- und Handelskammer (IHK)) will assess the underlying business idea to still grant the permit.

The other considerable permission is a (permanent) settlement permit (Niederlassungserlaubnis) which is unrestricted in place and time. This permit will be granted to a foreigner who has been in possession of a residence permit for five years or after only three years if he has successfully realized the business idea and his livelihood is secured.

7. I. 5. Employment contract

7. I. 5. a) Basics

Generally, employers and employees are free to agree the terms of an employment in an employment contract. Nevertheless, restrictions may result from mandatory applicable law, collective agreements (Tarifverträge) or works council agreements (Betriebsvereinbarungen).

Any employment contract should contain at least details regarding the following elements:

- Job description
- Duration of the employment contract (i.e. indefinite or limited period)
- Remuneration (e.g. gross wage or salary, benefits in kind)

- Annual paid vacation (statutory minimum of 20 working days)

- Working conditions (e.g. weekly working hours, start and end of a working day).

Written form is not mandatory. However the employer is obliged to lay core condition of the employment in writing and to hand out such paper to the employee. Fixed-term contracts (Zeitverträge) are permissible if the timely limitation is justified by a good business reason (e.g. project work). Besides, fixed-term contracts with a duration fixed to the calendar are permissible in the following cases:

- two years if the employee did not previously work for the same employer

- four years after the foundation of a company (start-up period)

- five years for employees aged 52 years or older who have been unemployed for at least four months immediately before the contract.

It is rather common that the parties agree on a probationary period (Probezeit) of up to six months for an employment contract. Within this period, each party may terminate the employment contract with two weeks' notice.

Full time employees of employers with more than 15 employees may request a part time employment. Unless there are operational reasons (e.g. workflow, safety), the employer has to agree to this request.

Women are not allowed to work for the last six weeks before and the first eight weeks after they give birth. During this maternity leave, employers are obliged to continue to pay regular wages or salaries. The mother or the father of the newborn child may also opt for a parental leave of up to three years. For the first 12 months of this period, the parent receives tax-free parental support (Elterngeld) from the federal government. After the parental leave, the parent is entitled to resume his or her former job or a similar position with the same employer.

7. I. 5. b) General Equal Treatment Act (Allgemeines Gleichbehandlungsgesetz – AGG)

Based on four EU-directives, the AGG was enacted in early autumn 2006. The law is intended to ensure equal treatment of all individuals in the workplace. Therefore, employers are expressly prohibited from discriminating job applicants or employees on basis of their gender, race or ethnic origin, religion or belief, disability, age or sexual orientation.

The AGG covers all employee-related measures of an employer, such as:

- posting of a job vacancy
- rules governing existing employment relationships
- terms and conditions of employment (e.g. general pay increases)
- termination of an employment contract
- terms of a social compensation plan.

Under German labour law, managing directors may in some cases not be considered as employees. Consequently, managing directors are protected only in a limited scope. Consultants, freelancers and other contractors are not covered by the AGG.

Pursuant to AGG, a job applicant or employee who has been discriminated against may claim damages within two months after becoming aware of such discrimination. The damages for job applicants rejected for discriminatory reasons who nevertheless would have been rejected for other reasons is limited to three months' payment. Such restrictions do not apply to employees. Besides their financial loss, they are also entitled to claim for a non-pecuniary loss (e.g. pain and suffering). Additionally, discriminatory agreements (imposed sanctions or even a termination of the employment) are invalid.

In order to demonstrate suffered discrimination, a job applicant or employee merely has to provide prima facie evidence suggesting that discrimination has taken place. This leads to a reversed onus of proof and the employer has to provide evidence that no discrimination has occurred.

Different treatment of employees for reasons set out in the AGG is permitted only if the employer can demonstrate legitimate reasons (e.g. genuine business requirements). Consequently, in order to avoid or minimise claims for damage, employers are well advised to document their employee-related measures and the reasons for them carefully in writing.

7. I. 5. c) Termination

Each party of an employment contract can terminate this contract. To become effective, a notice of a termination has to be in writing; an electronic notice is not sufficient.

According to German labour law, there are two different types of termination:

- **Ordinary termination:**
  Generally, an ordinary termination is based on the provisions in the employment contract. It becomes effective after the notice period. Unless longer notice periods are defined in the employment contract, a statutory minimum notice period of four weeks applies. According to provisions in German Civil Code (Bürgerliches Gesetzbuch), the statutory minimum notice period extends in certain steps with the length of the employment. However, with qualified staff members, it is common to agree upon a minimum notice period of at least three months. The party terminating an employment contract by means of an ordinary termination does not have to give a reason.

- **Extraordinary termination:**
  An extraordinary termination of an employment contract becomes effective immediately and is possible in the case of an important reason. Such reason must be caused by circumstances that make an ordinary termination unacceptable (e.g. fraud). However, an extraordinary termination is permissible only within a period of two weeks after the acting party became aware of the relevant circumstances. Depending on the severity of the circumstances, an employer may have to give dissuasion before the dismissal of an employee.

Dismissed employees may file a suit with the competent labour court within a period of three weeks after they received the notice of dismissal.

If an employer has more than 10 employees, provisions of the German Employment Protection Act (Kündigungsschutzgesetz) apply. Due to the provisions of this law, an ordinary

termination of an employment contract is considered as ineffective unless the employer proves that the termination is socially justified. So in the case of a termination for business reasons (e.g. significant decrease in turnover), based on social criteria (e.g. family status, age), the employer has to select the employee(s) to be dismissed. Unless there are business reasons for a dismissal, the employer has to prove that either the employee himself / herself (e.g. long-term absence due to illness) or the employee's behaviour (e.g. fraud) is the reason for the dismissal.

Besides, the German labour law generally protects specific groups of employees (e.g. pregnant women, people with a disability or members of a works council) against dismissal.

Because of this situation, a termination of an employment contract may often be achieved more easily by a mutual agreement between the employer and the employee with - in the majority of the cases - the employer providing a severance payment (Abfindung). Usually the amount of such a payment is determined as a half-monthly wage or salary for each year the employment was valid.

7. II. Elements of collective labour law

Amongst others purposes, one important intention of collective labour law and especially co-determination of employees is to increase the employees' identification with the entrepreneurial tasks of a company. As a result, compared to other EU member states, Germany has a significantly lower number of strike days per year.

7. II. 1. Collective agreements

In many sectors, the labour unions (Gewerkschaften) and the employer associations (Arbeitgeberverbände) agree upon the general terms and conditions of employment in a collective agreement (Tarifvertrag).

A collective agreement (Tarifvertrag) between a labour union and an employer or an employer association may have a national, regional or local scope. They may cover a single company as well as an entire industrial sector.

Collective agreements are legally binding only for the parties who bargained them. Nevertheless, in order to avoid a higher rate of unionisation, employers normally grant the same terms and conditions as agreed upon in a collective agreement to employees who are not members of the respective trade union. On request of one of the negotiating parties, the Federal Ministry of Labour and Social Affairs (Bundesministerium für Arbeit und Soziales) is entitled to declare a collective agreement as universally binding. This means that all employees of an economic sector and a geographical region are in the scope of the relevant collective agreement, even if their employer is not a member of the respective employer association.

A collective agreement is normally not applicable to executive staff. Therefore, these employees need to negotiate the terms and conditions of their employment individually.

7. II. 2. Co-determination of employees

Employees may influence the decision-making process in a company at the operational level or even, depending on the legal form of the company, at the company level.

7. II. 2. a) Works council

The Works Constitution Act (Betriebsverfassungsgesetz) provides the legal framework for a works council (Betriebsrat). It is mandatory for all kinds of companies, regardless of their legal form.

The law refers to the term "establishment" (Betrieb) as an organisational unit within a company. Therefore, if a company consists of several organisational units that are distant from each other, it may have more than one works council. In these cases, a central works council at the company level is mandatory. It is not superordinate to the local works councils but deal with matters related to the company as a whole. Moreover, in a group of companies with works councils in more than one company, a group works council (Konzernbetriebsrat) may be established to represent the interest of all employees of the company group.

A works council has certain rights of participation and co-determination in social matters.

These include:

- to negotiate works council agreements (Betriebsvereinbarungen) between the works council and the employer. Such agreements contain detailed regulations regarding the terms and conditions of employment (e.g. work rules, working time including overtime, safety issues)

- to monitor all relevant laws, collective agreements and works council agreements (Betriebsvereinbarungen) regarding the terms and conditions of work

- to supervise the equal treatment of all employees in an establishment.

Besides, if a company has more than 20 employees, the employer has to inform the works council beforehand of the engagement or dismissal of employees.

The number of members of a works council increases with the number of employees normally occupied in a business establishment. Starting from a total number of 200 employees normally occupied in a company's establishment, an increasing number of members of a works council have to be released from their regular work. The law defines certain stages for both the number for members of a works council and the number of members to be released from work.

The members of a works council are safeguarded against dismissal by special provisions in the law.

7. II. 2. b) Supervisory board

Separate from a works council, employees may co-determine entrepreneurial decisions at the company level as members of a supervisory board (Aufsichtsrat). The legal framework is provided mainly by the Co-Determination Act of the Coal, Iron and Steel Industry from 1951 (Montan-Mitbestimmungsgesetz), the Co-Determination Act of 1976 (Mitbestimmungsgesetz) and the One-Third Participation Act of 2004 (Drittelbeteiligungsgesetz).

Due to provisions in company law, a supervisory board is mandatory only for a stock corporation (Aktiengesellschaft (AG)). However, due to provisions regarding co-determination, even a limited liability (Gesellschaft mit beschränkter Haftung (GmbH)) and a rather rare hybrid type of a stock corporation and a limited partnership, a so-called partnership limited by shares (Kommanditgesellschaft auf Aktien (KGaA)), may have to establish a supervisory board.

The acts providing the legal framework for a co-determination of employees in a supervisory board differ in their scope and their regulations. The most important characteristics may be summarised as follows:

- **One-third participation:**
  If an AG, GmbH or KGaA has 500 or more employees, one third of the members of the supervisory board have to be representatives of the employees. For AG and KGaA that are not family-owned and have been registered on the commercial register (Handelsregister) prior to the 10th August in 1994, the same provisions apply without a quorum of employees.

- **Co-determination in the coal, iron and steel industry:**
  If an AG, GmbH or KGaA in the respective industries has 1,000 or more employees, the supervisory board has to consist of an equal number of shareholder and employees representatives. Additionally, in order to avoid a standoff, any supervisory board has a neutral member who is obliged neither to the shareholders nor to the employees.

- **Co-determination on basis of parity:**
  If an AG, GmbH or KGaA has 2,000 or more employees, the supervisory board has to consist of an equal number of shareholder and employees representatives. In order to avoid a standoff, the Chairman (Aufsichtsratsvorsitzender) who normally represents the shareholders, has a double-vote.

7. III. Labour costs

7. III. 1. (Minimum) wages and salaries

Although periodically discussed, so far there is no generally mandatory minimum wage or salary in Germany. Nevertheless, based on the Posted Workers Act (Arbeitnehmerentsendegesetz), collective agreements originally negotiated only for the employees of certain sectors become generally binding by law.

At the beginning of 2009, minimum wages in effect ranged between EUR 6.58 to EUR 12.85 per hour. Most sectors also distinguish between the Western and the Eastern parts of Germany.

Contractors of employers who are obliged to pay minimum wages may become liable if the employer actually does not pay the mandatory minimum wage. Therefore, it is highly recommended to agree a contract to avoid any such liability.

7. III. 2. Contributions to the social security system

The German statutory social security system consists of five different elements. Each element is generally statutory for employees. There are, however, certain exceptions (e.g. controlling shareholders as managing directors of a corporation).

Contributions generally have to be paid half each by the employer and the employees except contributions to the occupational accident insurance, which have to be borne entirely by an employer. The employer's portion of the contributions is not part of the employees' taxable income. Employers or their managing directors are personally liable for the accurate payment of the contributions and therefore normally withhold the employees' portion from the employees' gross wages or salaries.

7. III. 2. a) Public pension insurance

The German public pension insurance secures pension payments for retired individuals. Generally, all employees are mandatory members of the German public pensions insurance.

Since the beginning of 2007, contributions are 19.90 % of the employee's earnings (wage or salary). Contributions are due up to certain ceiling amounts. For 2010, these ceiling amounts are EUR 5,500 (Eastern federal states: EUR 4,650) per month or EUR 66,000 (Eastern federal states: EUR 55,800) per year. These ceiling amounts are generally increased annually.

7. III. 2. b) Unemployment insurance

In case of involuntary unemployment, employees may receive benefits of about 60 % of their previous net earnings for a period between six and 18 months, depending on the employee's age. All employees are members of statutory unemployment insurance.

From 2009 onwards, the regular rate for contributions is 3 % of the gross earnings. For a period ending 30 June 2010, however, a reduced rate of 2.80 % applies. Contributions are due up to the same ceiling amounts as contributions to public pension insurance.

7. III. 2. c) Health insurance and nursing care insurance

Both health insurance and nursing care insurance are mandatory for employees. While health insurance covers costs for medication, doctors and hospitals, nursing care insurance covers the risk of becoming dependent on nursing care. Such risks may arise from serious accidents, diseases or ageing.

There are two parallel health insurance systems:

- **Compulsory health insurance:**
  Unless an employee opts for a private health insurance, the compulsory health insurance is mandatory. Although there are about 200 different compulsory health insurance companies, the rate (of contributions from the middle of 2009 onwards) amounts to 14% of the gross earnings up to certain ceiling amounts. While employer and employees each pay half of this contribution, the employees have to pay an additional contribution of 0.90 % of their gross earnings to cover costs for dental treatment and dentures. Employers are liable for the payment of the entire contributions including the additional contribution of their employees.

- **Private health insurance:**
  Employees who earned annual gross earnings of at least EUR 49,950 in three subsequent years may exit the compulsory health insurance and apply for a private health insurance police. Only licensed private insurance companies may offer private health insurance policies. Therefore, the general acceptances as well as the contributions depend mostly on the employee's health status and his or her personal risk profile are not related to gross earnings. The employee normally pays contributions directly. Employers have to grant a subsidy of 50 % up to the amount otherwise payable for a compulsory health insurance.

As an advantage of a compulsory health insurance, spouses and children with no or only very small income are insured at no extra charge. On the other hand, employees have to pay 50 % of the costs of dentures themselves as well as additional payments for in-patient hospital care or prescribed medication.

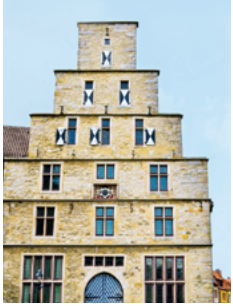
Nursing care insurance may be considered as a supplement to health care insurance as both elements of the German social security system are closely connected. Two parallel systems of nursing care insurance exist. If an employee is member of a compulsory health insurance, the same applies for the nursing care insurance. From 2009 on, contributions to the nursing care insurance for members of the compulsory health insurance are determined as 1.95 % of the gross earnings up to certain ceiling amounts. Childless employees must pay an additional contribution of 0.25 %. Contributions for private nursing care insurance depend on the employee's health status and his or her personal risk profile.

For both compulsory health insurance and nursing care insurance, the same ceiling amounts apply. For 2010, contributions are determined as a percentage of the gross earnings up to EUR 3,750 per month or EUR 45,000 per year.

7. III. 2. d) Occupational accident insurance

The statutory occupational accident insurance covers accidents while working. As well as full medical treatment, it also covers costs for occupational and social integration assistance as well as sick pay.

Different from the other elements of the German social security system, contributions for this insurance have to be borne entirely by the employer. Contributions are determined as a share in the costs. They depend on the individual risk of conducted business activities and vary normally between 0.50 % and 4.00 % of the aggregate wages and salaries. For very risky activities, higher rates may apply. Self-employed individuals or freelancers are not obliged to have such coverage for themselves but may opt into the system.



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