This publication is a joint project with pwc

HSBC Commercial Banking

Doing business in Germany

Contents

Executive summary

Germany's highly developed infrastructure, relative economic stability and location in the middle of Europe has made it a popular hub for investment. This guide introduces some of the key issues which investors should be aware of in setting up and running a business in Germany, ranging through corporate structures, tax and employment matters.

Some of the key matters to be aware of are as follows:

- In Germany you will find a highly developed economic, political and infrastructural framework providing the necessary security.
- Judiciary and civil service institutions are professionally regulated to ensure consistently excellent service. Contractual agreements are secure and intellectual property is strictly protected.
- Germany's foreign direct investment reached EUR 509 billion in 2010. More than 55,000 foreign companies are already operating in Germany.
- Germany has significantly reduced the level of its corporate tax burden since 2008.
- The government also develops reforms to improve the general tax framework in order to keep indirect labour costs down.
- Customers in the German market do appreciate contracts under German law and local contacts and addresses.
- Make sure you find the right location under consideration of available work force, customer base and trade tax.
- Enjoy the cultural background and the regional differences in Germany!

Foreword

While doing business in Germany, you gain valuable insights into the German market and ideas to unlock its enormous potential. This guide is a collaboration of HSBC and PricewaterhouseCoopers. Like PwC, we both have a strong global network and a deep understanding of local markets. Together, we possess a wealth of experience to support your ambitions in these markets.

HSBC Trinkaus-founded more than 227 years ago- is one of Germany's leading commercial banks and a member of the HSBC group.

Based on HSBC Trinkaus' consistent strategy, the resulting earnings strength and integration into the HSBC Group. Our current Fitch rating of AA- Stable, still makes us the best-rated private commercial bank in Germany.

In Germany we bank primarily internationally operating companies from the corporate segment.

Experienced relationship advisors serve our clients at our head office in Düsseldorf and at five further locations in Germany. They are the central contacts and coordinate the deployment of the product specialists.

Having had first-hand experience that you should never underestimate local knowledge, I am certain you will find this guide useful.

Manfred Krause
Member of the Management Board and Head of Corporate Banking Germany

Introduction

Doing business in Germany

Economic environment of Germany

More and more companies discover Germany as a secure and profit-driving investment location. In the last five years (2005 to 2010), Germany's foreign direct investment stocks increased by a total of 42% to reach EUR 509 billion in 2010. More than 55,000 foreign companies are operating in Germany, employing over three million people.

According to recent studies, Germany ranks as the top investment location in Europe with a relative economic stability. As the largest domestic market within the EU it creates a considerable and stable customer base for investors. Germany earned 20% of Europe's GDP (EU-27) and was home to 16% of the total European Union population in 2011. The German economy is both highly industrialised and diversified – with equal focus placed on services and production.

Given its location in the middle of Europe, Germany is frequently used as a hub for investments and logistics likewise to reach established and growing markets across Europe and especially Eastern Europe. Germany's infrastructure ranked number one in the world in a Global Competitiveness Report of the World Economic Forum – 2011/2012.

Germany's economic performance has improved from the economic downturn of the 2008/2009 winter since the second quarter of 2009. In 2011 Germany's economy grew by 2.7%. Despite the ongoing European debt crisis the German government forecasts an economic growth of 0.7% in 2013.

Also in the business climate index in October 2010, people's opinion on the future of the German economy has continued to be optimistic.

Industries and Business Segments

Germany's economic position enhances an extensive and competitive industrial environment with a focus on innovative future technologies. Many small-and medium-sized enterprises use this potential, making them market leaders in their respective markets. German 'Middle Market' is regarded as the backbone of the German economy with more than 99.7% (2011) of all companies being small- and medium-sized entities and approximately 39.1% (2011) of net value added being generated by small- and medium-sized entities.

The GDP (2011) of EUR 2.6 trillion was earned to 54% by Services, to 30% by Industry, to 15% by Trade and to 1% by Agriculture.

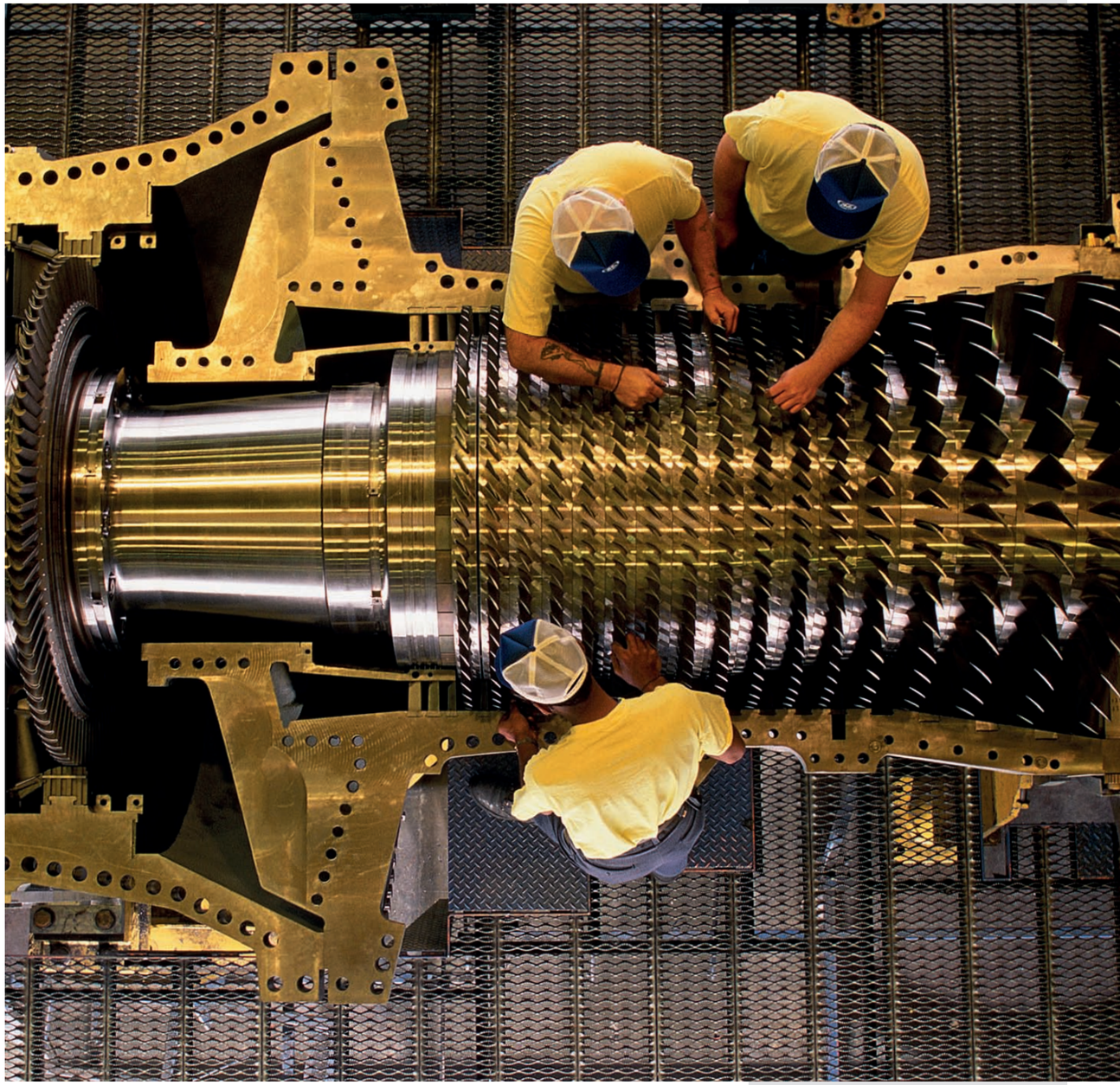
Traditionally, strong industries in Germany are: mechanical engineering, the automotive industry, aerospace, logistics, and the pharmaceutical and chemical industries. But also Germany is the world leader in the sustainable industry revolution and German companies also lead the field in new technologies (i.e. nanotechnology, medical technology and biotechnology).

With exports of goods of EUR 952 billion (2010) and imports of goods of EUR 798 billion (2010), Germany is a traditional exporting nation.

Availability of Labour

Germany has highly qualified and motivated specialists and is known as having a high standard of efficiency and organisation. The German education and sophisticated training system ensures that employed personnel are qualified for companies' purposes.

Although there is a current unemployment rate of 6% (2011 estimated) reported by the International Labor Organization in 2012, it is not always easy to find skilled employees at short notice.



One of the reasons for this is that the location of available and skilled employees does not always match the regions of high economic power and demand. Therefore, depending on the business of the investors, they should make sure that the relevant workforce is available in the region of set-up.

Foreign Direct Investments

The German market is welcoming investments in nearly all industry sectors and lines of business. There are industries and professions, however, that are restricted to specific qualifications or necessitate a registration (i.e. auditors, lawyers, tax advisors, insurance companies, banking companies).

The legal framework for foreign direct investments in Germany grants the principle of freedom of foreign trade and payment.

Germany was quoted fifth in the world as a recipient of foreign direct investment, according to the United Nations Conference on Trade and Development (UNCTAD) in 2010.

Attractive foreign investment sectors in Germany are the information and communication technology and software industry, the business and financial services industry, the automotive industry, the industrial machinery and equipment industry and the consumer goods and chemical industries.

The business activities of new investment projects are sales, marketing and support offices. Also, in almost 21% of all investment, project activities are carried through by manufacturing sites. Projects with the highest volume were initiated by the Netherlands (22%), Luxembourg (16%) and France/US (10%) in 2011, as reported by the International Monetary Fund. Also, in recent years, Germany has become increasingly more attractive for investors from Asia.

Trade

China, the Netherlands and France are the largest importers to Germany, whilst the most exports go to France, the US and the Netherlands. Germany's main trading partners include European countries such as France, the Netherlands, UK and Italy as well as international markets such as the United States, China, Russia and Japan.

Incentives

If you start up a new business, the German government and local authorities may support you financially, irrespective of whether you are a German citizen or not but dependent on the area of the business and creation of jobs.

The most important development institution at the federal state level is the state-owned Kreditanstalt für Wiederaufbau (KfW). Companies must submit applications for loans and incentives via their house bank. Funding is generally available for:

- Start-up funds
- Capital for start-ups
- Capital for growth
- Entrepreneur loans
- Micro loans
- Environmental and energy-saving programmes

Also financial support can be expected by different German authorities when starting up a business in specific regions. Regional business development units may take over parts of the set-up costs and specific loans are generally available under defined conditions. Regional Business Development Agencies have competent experts with in-depth knowledge of the respective region. There are subsidies amounting to up to 50% for investments in structurally weak areas.

There are industries that are specifically promoted, such as new technologies and environmentally compatible, energy-saving production procedures.

Make sure that potential incentives are scrutinized and applied for before the actual set-up because this may be relevant for the incentive being granted.

Cost of living

With the cost of living below the global average and that of other European countries (i.e. Norway, Denmark, Belgium, the Netherlands, UK and Italy), Germany provides moderate consumer prices.

Whilst total goods and services expenditures in German cities are around the European average, the service prices in Germany lie below the Western European average.

The monthly gross apartment rent levels range among the lowest in Western Europe.

Language

The official language is German. However, there are several different dialects in the various regions.

English is the best known foreign language and is frequently used as a cross-border business language. Many Germans speak at least one other foreign language such as French, Spanish, Russian or Italian.

Business Etiquette

Business dress code in Germany is generally conservative. Businessmen wear suits, conservative ties, and plain or only slightly patterned shirts. Women also dress conservatively, in suits and blouses.

The German thought and planning process is very time-intensive, with each aspect of a project being examined and discussed in great detail. However, after the planning process, a project will move very quickly and deadlines are expected to be held.

Germans do not like surprises. Sudden changes in business transactions, even if they may improve the outcome, are unwelcome. Punctuality is a necessity in Germany. Arrive on time for every appointment, whether for business or social. Being late, even if it is only by a few minutes, may be regarded as very insulting to a German executive.

In business situations, shake hands at both the beginning and the end of a meeting. Additionally, a handshake may be accompanied with a slight bow. Reciprocating the nod is a good way to make a good impression, as failure to respond with this nod/bow (especially a superior) may get you off to a bad start. Be sure to look directly into the person's eyes while shaking hands.

In Germany business is viewed as being serious, and Germans do not appreciate humour in a business context.

Germans frequently greet each other with Herr or Frau and the last name, even when they know each other very well. Titles are very important to Germans. Do your best to address people by their full, correct title, no matter how long that title may seem to foreigners. This is also true when addressing a letter.

Germans love to talk on the telephone. While important business decisions are not made over the phone follow-up calls are expected.

Germans guard their private life, so do not phone a German executive at home without permission. Business cards are frequently handed out on the occasion of a meeting.

Regulation

There are restrictions and prohibitions in place to protect business and economic environments. The restrictions intend to ensure as far as possible equality of chances between the different opponents and to avoid hindering the development of new businesses in the market.

Import restrictions of general application are those in accordance with the UN standards. Otherwise there is a special licensing procedure for certain specific types of goods such as military equipment and drugs. Also there are import quotas set by the EU.

The import and export rules differ according to the country of origin and the type of goods involved.

No customs duties apply to trade within the EU. Many customs-related regulations for trade outside the EU are nonetheless uniform. This applies in particular to trade regulations dealing, inter alia, with dual use goods, technical barriers to trade and safety and health requirements, protection of intellectual property rights, restrictions imposed on specific items, such as illegal substances or goods deemed to be of special cultural value.

Import duties

Deliveries to and from Germany and other EU countries are not regarded as imports or exports, as the EU member states are regarded as one single European Market. Customs duties at different rates are levied depending on origin and type and value of goods. The administration of customs duties has to be carried through at the entry into Germany by the carrier or any other forwarding agent. Also the importer needs to comply with return, reporting and filing requirements within the EU-Intrastat system.

Exit

Base shifting of companies established in Germany and exit of private individuals or companies from Germany, may lead to an exit taxation depending on the circumstances. Also incentives granted may be at risk.

Conducting business in Germany

Forms of business

When doing business in Germany, one of the initial decisions to be made is the form in which the business is to be conducted. This decision cannot be generalised as it highly depends on the individual circumstances of the investor. In this context the investor needs to decide if, for example, limitation of the liability, separate taxation of profit making and distribution, a stable business unit or flexible exit are necessary.

Types of vehicles available are Corporates, Partnerships and Branches.

Corporations

A corporation is a legal person, meaning that the holder of rights and obligations is not the individual shareholder, but the company itself. The company itself concludes contracts, possesses assets and must pay taxes. Liability is limited to the corporation's business assets, including share capital. A minimum share capital is required, and the accounting obligations are more extensive than those for other business legal forms (such as partnerships).

Possible forms of corporation are:

- SE (Societas Europaea, SE).
- Stock Coporation (Aktiengesellschaft, AG).
- Partnership Limited by Shares (Kommanditgesellschaft auf Aktien, KGaA).
- Limited Liability Company (Gesellschaft mit beschränkter Haftung, GmbH).
- Limited Liability Entrepreneurial Company (Unternehmergesellschaft (UG), haftungsbeschränkt/ 'Mini GmbH').

Societas Europea (SE)

Aim: Unification of company structures across Europe.

Disadvantage: Founding formalities and costs of a SE are relatively high, and the SE is subject to extensive organisational obligations in day-to-day business (Compared to GmbH).

Minimum Share Capital: EUR 120,000.

Premises: Involvement of businesses in at least two EU-member states.

Organs: Shareholders' assembly, management board, optional supervisory board.

Liability: Shareholder capital, whereby each shareholder is liable to the extent of his share in the registered capital.

Stock Corporation (AG)

Aim: High market reputation, flexible capital acquisition, anonymity of shareholders, flexible transfer of shares partners.

Disadvantage: Founding formalities and costs of an AG are relatively high, and the AG is subject to extensive organisational obligations in day-to-day business (Compared to GmbH).

Minimum Share Capital: EUR 50,000.

Organs: Shareholders' assembly, management board, optional supervisory board.

Liability: Shareholder capital, whereby each shareholder is liable to the extent of his share in the registered capital.

Partnership Limited by Shares (KGaA)

Aim: Connection of structures of a stock corporation (AG) and a limited partnership (KG) flexible capital acquisition, anonymity of shareholders, flexible transfer of shares partners.

Disadvantage: Not very frequently used.

Minimum Share Capital: EUR 50,000.

Organs: general partners, shareholders' assembly, optional supervisory board.

Liability: Shareholder capital, whereby each limited shareholder is liable to the extent of his share in the registered capital. At least one partner, the general partner, has to be liable for debts and liabilities of the KGaA without limitation.

Private Limited Liability Company (GmbH)

Aim: Most widely used legal form for limited liability.

Disadvantages: Share transfers need to be notarised.

Minimum Share Capital: EUR 25,000. At the time of registration, at least half of the minimum capital (i.e. EUR 12,500) must be actually and verifiably contributed into a bank account.

Organs: Shareholders' assembly, management board/ managing director, optional supervisory board.

Liability: Shareholder capital, whereby each shareholder is liable to the extent of his share in the registered capital.

Special Form of Limited Liability Entrepreneurial Company ('Mini GmbH')

Aim: Reduced share capital. Accelerated foundation process (i.e. sample articles).

Disadvantages: In order to compensate the initial absence of capital the company has to retain a quarter of its annual profit until it has accumulated the minimum shareholder capital of an ordinary GmbH (EUR 25,000). New company type and therefore less established.

Minimum Share Capital: 1 EUR.

Organs: Shareholders' assembly, management board/ managing director, optional supervisory board.

Liability: Shareholder capital, whereby each shareholder is liable to the extent of his share in the registered capital.

In general, directors and supervisory board members may be held liable under civil law by the company and creditors and criminal law if acting against statutory provisions or commonly agreed diligence of a business man.

Partnerships

The main aspect of a partnership is the personal commitment of the partners and generally the liability of the partners for the partnership's debts and liabilities is unlimited and personal. Accounting obligations and publication requirements are generally less extensive than those for corporations. Most commonly used partnerships are:

- *Civil Law Partnership (Gesellschaft bürgerlichen Rechts, GbR)*
- *General Commercial Partnership (Offene Handelsgesellschaft, oHG)*
- *Limited Partnership (Kommanditgesellschaft, KG)*
- *Corporate Partnership (GmbH & Co.KG)*

Civil Law Partnership (GbR)

Aim: Association of individuals or enterprises to achieve a contractual purpose; uncomplicated formation without obligation of written agreement or registration into commercial register if no considerable business activity.

Disadvantage: Personal liability of partners with their private assets.

Premises: At least two shareholders.

Minimum Share Capital: No minimum share capital.

Organs: Shareholders' assembly.

Liability: Personal liability of partners with their private assets.

General Commercial Partnership (oHG)

Aim: Association of individuals or enterprises to achieve a contractual trade purpose; uncomplicated formation without obligation of written agreement.

Disadvantage: Personal liability of partners with their private assets, commercial register entry.

Premises: At least two shareholders.

Minimum Share Capital: No minimum share capital.

Organs: Shareholders' assembly.

Liability: Personal liability of partners with their private assets.

Limited Partnership (KG)

Aim: Same as oHG but with the option of limiting the liability of some of the partners, flexible increase of capital by including other limited partners.

Disadvantage: Personal liability of general partners with their private assets.

Premises: At least two shareholders, limitation needs to be registered in the commercial register.

Minimum Share Capital: No minimum share capital.

Organs: General partners assembly.

Liability: At least one partner, the general partner (Komplementär), is personally liable without limitation. The liability of the limited partners (Kommanditisten) is limited to their respective share of the partnership capital.

Corporate Partnership (GmbH & Co. KG)

Aim: Same as KG, but general partner (Komplementär) is a limited liability company (GmbH), leading to limitation of the liability; common form among middle-sized companies.

Premises: At least two shareholders, limitation needs to be registered in the commercial register.

Minimum Share Capital: No minimum share capital.

Organs: General partners assembly.

Liability: The GmbH is fully liable for the GmbH & Co. KG's debts and liabilities.

The liability of the limited partners (Kommanditisten) is limited to their respective share of the partnership capital.

Branch Offices

Another possibility to establish a business in Germany is a German branch office.

Aim: A branch office is suitable for a foreign company wanting to establish a presence in Germany for the purpose of initiating business and maintaining contacts with business partners in combination with offering a contact point in Germany for potential or already existing customers. In legal and organisational terms, it is part of the head office business and is therefore subject to the laws the head office is governed by.

Minimum Share Capital: No minimum share capital.

Organs: Depending on the type of a branch.

Liability: A branch office has no independent or separate legal personality. The legal liability of the branch office depends on the liability of the legal entity of the head office.

There are different types of branch offices:

Autonomous Branch Office *(selbstständige Zweigniederlassung)*

Display of autonomy by having its own:
– *management with its own executive powers;*
– *separate bank accounts;*
– *separate balance sheet; and*
– *independent business assets.*

Extensive registration obligations
The application for registration with the Commercial Register must include detailed information on the foreign company i.e. certified and notarised translations of key documents of the headquarter company. The Register in Germany must be notified of changes in the headquarter companies key information.

Registration with the local trade office including documentation on the foreign company

Dependent Branch Office *(unselbstständige Zweigstelle)*

No autonomy registration with the local trade office including documentation on the foreign company.

Representative Office

The so-called representative offices are neither known to German commercial law nor to tax law. Their defined purpose is simply to make the company known within the country and to maintain business links with the country. The offices do not undertake any commercial transactions themselves, although they may initiate such transactions. They are not independent organisations and should therefore not be regarded as branches. Notice of the start of activity must be sent to the local authority exercising supervision over commercial activity (usually the trade division of the regulatory office of the city or other local community – Gewerbeabteilung/ Ordnungsamt). Self-employed external business person (e.g. a commercial agent authorised by the company) without any independent business activity on behalf of the foreign company generally do not require a registration as branch of the foreign company.

Formation procedures (general)

The formation process of investment vehicles can be generalized as follows:

1. Procurement of capital and partners.
2. Notarisation of the Articles of Association/Formation Report if required/Resolution to set-up branch.
3. Opening a bank account and payment of share capital.
4. Commercial register application (notary required).
5. Commercial register entry.
6. Limitation of liability comes into effect if applicable.
7. Trade office registration.
8. Application for permits if applicable (respective research should be done beforehand).
9. Registration with tax authorities.

The cost for registration and publication at the commercial register are:
– *for a partnership is currently EUR 250 minimum;*
– *for a GmbH EUR 400 minimum; and*
– *for an AG EUR 500 minimum.*

Additional costs are incurred through the use of a notary and a legal advisor to draft documents.

German law requires notarisation of various types of legal transactions covering i.e. real estate, family status, some business structuring activities. In particular, the transfer of shareholdings in a limited liability company (GmbH) and the appointment or removal of managing directors in a GmbH require notarisation.

The reason for notarisations in Germany is not only to ascertain the identities of the parties signing the documents but also to inform the participants of the risks resulting from the signature in the respective transaction. In most cases of business structuring activities, the notary is also required to notify the trade registry of the notarisation or to submit the notarised documents themselves for particular information to be recorded in the trade registry. The fees of a German notary are set by a schedule that, like court filing fees, is based on the value of the particular transaction at hand.

If documents within a foundation process that need notarisation under German law are signed abroad, proper care should be taken to surrogate the notarisation by an acceptable certification act in the respective country.

Taxation in Germany

Companies and individuals generally have to file their annual tax return by 31 May following the year of assessment. This deadline can be extended, but usually no longer than 31 December of the following year.

There is unlimited taxation for tax residents and limited taxation for non-resident companies with income achieved in Germany i.e. through a permanent establishment or a partnership. The taxation of a permanent establishment very often corresponds with branches held in Germany, but there are cases where a permanent establishment is constituted without a branch being voluntarily established. Therefore all businesses conducted in Germany non-withstanding their organisational form, may be liable to pay taxes in Germany.

Company Taxation

There are two types of taxes on business profits:

- *corporate income tax for all corporates or personal income tax for partnerships both levied by the federal government and solidarity surcharge thereon;*
- *trade tax for all business operations, imposed by local municipalities (i.e. the town or city where the company is based).*

In the case of corporations, income tax applies on the level of the corporations themselves. In the case of partnerships or branches, the income taxation applies on the level of the partners, or headquarters respectively.

Trade tax is levied on the level of the corporate or partnerships.

Corporate Income Tax for Corporations (Körperschaftsteuer)

The standard corporate income tax rate is 15% and it applies to all the corporation's taxable earnings. Corporate income tax applies to both retained and distributed profits. A solidarity surcharge of 5.5% of the assessed amount of corporate tax is added to a combined corporate income tax and solidarity surcharge burden of 15.825%.

Adjustments are required to the profits shown in a company's statutory accounts to arrive at the amount of taxable profits due to differences in accounting between statutory law and tax law (i.e. depreciation, valuation), disallowance of entertainment expenses for tax purposes etc.).

Once the profits are distributed to shareholders, the shareholders are liable to withholding tax on these profits (i.e. dividends). This needs to be withheld and paid by the company making the profit distribution. Withholding tax may also be applicable on interest and royalties paid by the company depending on the respective Double Tax Treaty, the national law and the EU Parent Subsidiary Directive.

In certain cases withholding tax on income paid to foreign parent companies can either be refunded to a certain extent or participation exemption can be applied for, according to the rules set out in the EU Parent Subsidiary Directive or Double Tax Treaties combined with the German tax law.

Income derived from participations of corporates in other corporates are tax-free except for an add-back of 5% of the income. Income derived from partnerships are taxed on the level of the shareholder (individual person/corporate) for income tax purposes.

Trade Tax (Gewerbesteuer)

Income from commercial operations in Germany is subject to trade tax (Gewerbesteuer). For partnerships and individuals, this applies only to taxable income exceeding EUR 24,500 p.a.

The applicable trade tax burden depends on two factors:

- *the tax assessment rate (3.5%);*
- *the trade tax collection rate stipulated individually by every municipality (Hebesatz).*

The trade taxable earnings are multiplied with the tax assessment rate and the applicable municipal collection rate (Hebesatz). The municipal collection rate is at least 200% (leading to a minimum trade tax of 7%). There is no statutory ceiling, so that the collection rate in some municipalities may actually be up to 490%. The average municipal collection rate lies between 350% and 400% leading to an effective trade tax between 7% and 17.15%.

The trade tax can be credited against personal income tax for shareholders of partnerships or individuals paying trade tax. A standard municipal collection rate of 380% is applied by the law for the crediting.

The tax base is calculated by making adjustments to the accounting profits to reflect differences in accounting between statutory law and tax law. Generally, the tax base is derived from the tax base calculated for corporate or income tax purposes. However, there are specific partially non-deductible items for trade tax purposes (i.e. rent, lease payments, licence fees) and further requirements for the applicability of the general dividend taxation for corporate companies (add-back of 5%) such as a minimum percentage of shares held and/or activity clauses.

Overall Tax Burden (Corporate Tax Trade Tax) in Germany by Municipal Multiplier

Examples	Minimal Municipal Multiplier (mun. multiplier: 200%) Trade Tax Rate 7%	Minimal Municipal Multiplier (mun. multiplier: 490%) Trade Tax Rate 17.15%	German Average (mun. multiplier: 400%) Trade Tax Rate 14%
Taxable Corporate Income (EUR)	100,000	100,000	100,000
Trade Tax (3.5% x Municipal Multiplier = 7% to 7.15%)	-7,000	-17,150	-14,000
Corporate Income Tax (Tax Rate 15%)	-15,000	-15,000	-15,000
Solidarity Surcharge (5.5% of Corporate Income Tax = 0.825%	-825	-825	-825
Net Income (EUR)	77,175	67,025	70,170
Overall Tax Burden	22.83%	32.98%	29.83%

Personal Income Tax

Personal Income Tax for Partnerships (Einkommensteuer) and individuals

Personal income tax applies to all resident or limited taxable non-resident individual persons. In case of partnerships the partners that are individuals are subject to personal income tax at an individual tax rate applicable to each partner.

Also individuals in general are subject to personal income tax with their total taxable income derived from different sources (i.e. employment, capital investments, partnership investments, rent, etc.).

The personal income tax rates for 2012 are set out in the table below (for married couples the doubled amounts apply). In 2013 the amounts will increase by 1.6%.

Taxable Income up to EUR per fiscal year	Percentage
Up to 8,004	–
Between 8,005 and 13,469	14%
Between 13,470 and 52,881	sliding scale up to 42%
Between 52,882 and 250,730	42% less EUR 8,172
More than 250,730	45% less EUR 15,694

The solidarity surcharge is also added to personal income tax.

The German income taxation concept is based on the idea that individuals are to be taxed according to their individual economical situation. Therefore according to specific tax rules costs in connection with receiving the taxable income (i.e. such as travel costs to the working site) and special costs are deductible within defined limits.

There are options to apply different tax rates to income derived from a partnership and retain part of the income to be taxed later under certain conditions.

Employees working in Germany receive a net wage or salary from which tax and social security contributions have already been deducted. The employer withholds personal tax that the employee is required to pay and transfers the money directly to the tax authority. Generally, all payments and non-cash benefits exceeding explicit allowances (i.e. company car, subsistence) are subject to wage tax. Therefore the wage taxable amount can differ from the actually agreed wage.

The employer is also liable regarding this withholding type tax. Therefore, all employees must be registered with the local tax authority. Social security contributions are also withheld by the employer from the gross wage and transferred to the employee's health insurance company.

Social security contributions in 2013 are made up of:

- health insurance: 15.5% (0.9% to be borne solely by the employee; remainder to be split in two equal shares)
- nursing care insurance: 2.05% (2.3% childless)
- pension insurance: 18.9%
- unemployment insurance: 3.0%
- accident insurance (borne solely by the employer; the amount depends on the wage and the class of risk).

Social security contributions are roughly shared equally by employer and employee. Employees earning a gross wage of less than EUR 3,937.50 (if privately insured as at 31.12.2002) or less than EUR 4,350 (2013) per month are compulsorily insured by one of the public health insurance providers and employees earning a gross wage of less than EUR 5,800 in the Western German states and EUR 4,900 in the Eastern German states are compulsory insured by the state pension scheme. Employees whose earnings are above these income thresholds can choose from both public and private insurance companies.

Generally, income from financial investments (i.e. dividends, disposal profit) bares a final withholding tax at a flat rate of 25% (+ 5.5% solidarity surcharge). If in the absence of an exemption certificate, a bank or other financial institution pays out such income from capital, the bank or financial institution simply withholds the tax and transfers it to the responsible tax authorities. Exemption certificates are available for capital gains up to a threshold of EUR 801 per person. If the individual tax rate is lower than the withheld tax, the inclusion of such gains into the income tax declaration may lower the withheld amount to the individual tax rate. In case of dividend income a flat of 25% (+ 5.5% solidarity surcharge) may apply or under certain circumstances for shareholdings of 1% or more, 60% of the dividend may be taxed at the individual tax rate.

General Income Taxation Information

Loss Carry-Back and Loss Carry-Forward

Losses for corporate income tax purposes (not for trade tax purposes) may be carried back for one year, limited to a total loss amount of EUR 511,500. Losses can be carried forward for trade tax and corporate income tax purposes with no time restriction. Up to an amount of EUR 1 million loss carry-forward is possible free from any restrictions. For sums in excess of EUR 1 million, at least 40% of the taxable income must remain subject to taxation. Therefore a maximum 60% of taxable earnings exceeding EUR 1 million can be offset against incurred losses.

The change of direct or indirect shareholders of more than 25% within 5 years may lead to a partial loss carry forward forfeiture, in case of change of more than 50%, a total loss carry forward forfeiture arises if the shares are acquired by one shareholder or a number of new shareholders regarded as a group. There are however specific and complex rules that may save the losses in case of group restructuring or hidden reserves could be set off.

The question whether the current regulations concerning the loss carry-forward may be unconstitutional is discussed by the German Federal Finance Court which may lead to changes within the corporation law in the future.

Also amendments to the current loss carry forward and forfeiture scheme are being discussed.

Deductibility of Interest Payments

There is a restriction in deducting the negative interest margin (surplus of interest expenses over the interest income) exceeding 30% of the total EBITDA (earnings before interest, taxes, depreciation and amortization). This restriction is not applicable for negative interest margins of less than EUR 3 million. It is also not applicable if the company does not or only partially belongs to a group or if it is a group company that meets specific equity ratio compared to the group equity ratio. For corporates the last sentence only applies if less than 10% of the negative interest margins paid to a shareholder of at least 25%. Negative interest margins that cannot be used in one year may be carried forward. The sale of shares of an interest carrying forward company may lead to the loss of the forwarded interests similar to the loss forfeiture rules (see above).

Fiscal Unit Concept

There is a fiscal unit concept in place that, if certain conditions are met, allows profit and loss pooling in order to determine the profit at the level of the controlling parent within Germany for tax purposes. Conditions are, amongst others, the conclusion and public registration of a profit and loss pooling agreement as well as generally a 5-year minimum period.

Changes of the fiscal unity concept are currently being discussed, in particular the legal requirement of a profit and loss pooling agreement.

Transfer Pricing

Germany has extensive transfer pricing rules not only setting out the ways to determine transfer prices but also including strict and comprehensive rules in respect of transfer pricing documentation, which is reviewed on the occasion of tax audits. Transfer prices need to be agreed beforehand and have to meet the arm's length principle. Methods to determine a reasonable price depend on the business.

A branch is not regarded as related party as technically it belongs to the headquarter company. However, whenever costs and profits are allocated the transfer pricing principles are a good guideline.

VAT

Value Added Tax

For all countries located in the EC the basic rules on VAT treatment are similar as they are based on a EC directive.

Some of the details e.g. regarding tax exemption and documentation may be different in each country.

Companies must generally add value added tax (VAT) to the prices of their services or goods, save for defined exemptions. Other companies may deduct VAT paid on incoming invoices from their liability from outgoing invoices. Therefore VAT is only paid by the end user of a product or service. Companies transfer the VAT received netted with the VAT paid to the tax authorities on either a monthly, quarterly, or annual basis. The frequency generally depends on the level of a company's turnover.

The general VAT rate amounts to 19%. A lower rate of 7% is charged on the sales of goods and services needed on a day-to-day basis (i.e. food, newspapers or public transport). Some services (including banking unless opted in, healthcare, and non-profit work) are VAT exempt.

Input VAT

Companies have to pay VAT when they purchase goods or services for the business. This VAT can be netted against VAT received from customers or claimed back as input VAT in case it exceeds the output VAT. There are requirements in place regarding the form of invoices documenting the input VAT that need to be adhered to avoid the rejection by tax authorities.

Other Taxes

Real Estate Tax

Every property owner in Germany is liable to pay real property tax (Grundsteuer). The tax rate depends on the type of real property owned.

Real Estate Transfer Tax (Grunderwerbsteuer)

When real estate in Germany is sold or changes ownership, a real estate transfer tax (Grunderwerbsteuer) of 3.5% to 5.0% of the purchase price (depending on the state of location) is levied if the purchase price or consideration exceeds EUR 2,500. Mostly the rate is 5%.

Real estate transfer tax may also be triggered on occasion of the sale of all shares in a company holding real estate, no matter if the change of shareholding happens at the level of the direct parent company or at the indirect parent company.

There are exemption possibilities in case of group restructuring.

Inheritance/Gift Tax

Germany has a complex system of inheritance and gift tax for transferrals without consideration. The tax is levied on the market value of assets transferred. The tax rates depends upon the relationship/kinship of the donor and beneficiary. There are allowances depending on the relationship between donor and beneficiary. There are special rules for transferral of family homes, businesses, and shares.

Audit and accountancy

Every businessman with sales exceeding EUR 500,000 or revenues exceeding EUR 50,000 is required to keep records in Germany prepared to the German accounting standards and prepare annual financial statements through balance sheet accounting under the German Commercial Law. With increasing size of the company preparation requirements rise. The annual financial statements are to be prepared on a calendar year basis generally, but other periods not exceeding 12 months can be determined. For tax purposes this needs to be agreed with the local tax authorities. If bookkeeping functions are to be taken over abroad, an application to the tax authorities to seek for permission has to be filed. It has to be made sure that German financial authorities are not restricted in their ability to seek information, for example, by viewing the bookkeeping system via electronic access.

The bookkeeping must therefore remain readable for the authorities with their programme.

The complexity of accounting depends on the size of the company.

The statutory accounting rules in Germany are generally set out in the Commercial Code (HGB). Under certain circumstances companies are allowed to use IFRS. However, as the statutory accounting is the starting point for tax declarations this very often does not relieve the company from preparing statutory accounts.

All corporates need to disclose their financial statements. However, the disclosure items depend on the size of the company. For example, whereas large- and medium-sized corporates need to disclose balance sheet, income statement, notes to the financial statements and the management report, a small corporate only needs to disclose the balance sheet and notes to the financial statements.

According to the MicroBilG (of 27 December 2012) companies that fulfil two out of three of the criteria (balance sheet < 350 kEUR or equal; Sales < 700 kEUR or equal; no more than 10 employees in average) as at two consecutive business years do no longer have to meet certain disclosure and reporting requirements such as: preparation of notes to the financial statements, publication of financial statements. Also the reporting schedule of balance sheet and profit and loss account will be less detailed.

Medium- and large-sized corporates need to have their financial statements audited.

There is an obligation to file group financial statements under specific circumstances. The filing fees start at EUR 20 up to a significant higher amount, depending on delivery format and length of the matter to be disclosed at the Electronic Federal Gazette.

Company Sizes			
If at least two of the following criteria apply for two consecutive financial statement dates	**Small Corporate up to and including**	**Medium-sized Corporate up to and including**	**Large Corporate More than**
Sales Revenue in EUR million	9.68	38.50	38.50
Balance Sheet total in EUR million	4.84	19.25	19.25
Employees	50	250	250

Human Resources and Employment Law

There are different types of contracts for employment:

- *Fixed-term contracts – unlimited term or defined term;*
- *Temporary employment agreements with temporary employment agency;*
- *Mini and Midi Jobs with the social security totally being paid by the employer within certain limits of the total wage; and*
- *Student jobs.*

Freelancing contracts with independent individuals are technically not employment contracts. In this case the employer generally would only pay an hourly fee (for example) to the contract partner without taking over social security amounts and wage tax deduction. There is always a risk of qualification as normal employment contract within a wage tax audit and obligation for the employer to pay social security afterwards, if certain requirements are not met.

Usually there is an up to six-month probationary period at the beginning of any new employment contract.

The general weekly working hours are forty hours per week with generally no work on Sundays and public holidays if not exceptionally permitted. Generally, under German labour law, employees are allowed to work up to 48 hours per week. A total of 60 hours per week (or ten hours a day over six days) is possible under certain circumstances. Overtime will generally be paid extra or the employee may take some time off as compensation.

The statutory minimum leave is 24 working days per year (6-day week) 20 working days per year (5-day week).

If an employee is sick, he or she continues to be paid by the employer for six weeks on submission of a doctor´s certificate.

The employees´ pay can be negotiated freely unless a minimum wage applies. Depending on the region, costs vary. The state is generally not involved in wage fixing. The associations of employers usually agree collective bargaining agreements with the industry trade unions. German trade unions are strong and well-organised.

If unions are not involved the wage is fixed individually. In Germany an employee receives a wage or salary from which tax and social security contributions (approx. 20% – see personal income tax) have already been deducted (net).

The state pays subsidies of up to 50% of the wage costs, if the employer hires employees that were unemployed for a long time, or are older.

Initially, the notice for termination period is four weeks. It increases depending on how long the employer has been working for the company. When termination is driven by the employers side and the German Employment Protection Act (Kündigungsschutzgesetz) is applicable there are specific reasons that justify dismissals and if termination is planned for economic reasons, a social selection has to take place. Termination periods can be prolonged under the German Employment Protection Act (Kündigungsschutzgesetz).

In the case of a short-term contract, the end of employment is contractually agreed from the outset. This contract is a good choice for young companies, however professionals mostly prefer an unlimited contract term.

For stock companies or limited liability companies with more than 500 employees, the law sets out a requirement of representation of the employees in a supervisory board.

Trade

Customs

The customs regulations in Germany are governed by EU law as in all other EU member states. This is due to the European Customs Union. Administration lies in the hand of the German Customs Administration offices in Germany.

The European Customs Union

The European Customs Union is a single trading union based on the EU-wide community customs code (Zollkodex der Gemeinschaften). Custom duties between EU-member states were abolished by the European Customs Union as well as import VAT between EU-member states. The European Customs Union has stipulated common customs tariffs for rates of goods imported from non-EU-member states into the European Customs Union and created uniform customs rules.

Banking in Germany

The European currency (EUR) is managed by the European Central Bank in Frankfurt.

Banks in Germany usually offer universal services for businesses and individuals comprising both the lending side with the full service of corporate finance and the saving side also including investment banking.

Anyone running a company in Germany should have a bank account in Germany. To open a bank account, you usually need only a valid passport and a confirmation from the residents' registration office that your place of residence is in Germany.

In many banks, it is possible to have accounts in foreign currencies. Practically all large international banks are represented in Germany.

If amounts of more than EUR 15,000 are paid into an account in cash, the banks check the identity of the depositor, in order to prevent money laundering.

HSBC Trinkaus in Germany

Committed to values.
For more than 227 years.

HSBC Trinkaus is in a unique position among the German banks: Private bank since 1785 and at the same time part of HSBC, one of the world's largest banking groups. The bank has three target groups – high net worth private clients, institutional clients and corporate clients, in particular, internationally-operating companies from the upper SME segment as well as large corporations from the production, trading and service sectors.

Overview

- City of incorporation: Düsseldorf.
- Relationship with parent: HSBC Group holds 80.6% of our shares, 18.7% of the remaining shares are held by the Landesbank Baden-Württemberg and the rest are freefloat.
- Total assets (as at 30.09.2012): EUR 24.6 billion.
- Tier 1 ratio (as at 30.09.2012): 11.7%.
- Rating (Fitch): AA- Stable.

Network

Branches are located in Baden-Baden, Berlin, Cologne, Düsseldorf, Frankfurt/Main, Hamburg, Munich, Stuttgart and Luxembourg. HSBC Trinkaus has around 2,500 employees. Baden-Baden, Cologne and Luxembourg do not cover corporate customers.

Awards

- 'Wealth Manager of the year 2010, category dynamic', Börse Online 02/2011.
- 'The Elite among the asset managers', Elite Report 2011.
- 'Asset management for high demands', Fuchs-Report 2012.
- 'Outstanding asset management' according to Bankentest of Focus Money/ n-tv, October 2010.
- 'TOP-Risk management for asset management', Deutsches Institut für Servicequalität, July 2010.
- EUROMONEY Awards for Excellence 2011.
- Custodian of the Year: Germany 2008, 2009 and 2010, ICFA European Awards.

Historical Milestones

1785
Christian Gottfried Jäger set up his trading house in Düsseldorf.

1852
Christian Gottfried Trinkaus, a nephew of the founder, took over the house and gave it his name. He concentrated fully on the banking business.

1874
Together with a number of influential entrepreneurs from Düsseldorf, the Bank is instrumental in the establishment of the stock exchange in Düsseldorf.

1919
The last family members left the company. It was then taken over by institutional investors (including Deutsche Bank).

1972
C. G. Trinkaus merged with Bankhaus Burkhardt & Co. From then on the Bank operated under the name Trinkaus & Burkhardt.

1974
Citibank acquired the majority in 1974.

1980
The English Midland Bank Group took over the majority of the shares of Trinkaus & Burkhardt.

1985
Trinkaus & Burkhardt was converted into a partnership limited by shares (KGaA) and brought to the stock exchange.

1992
HSBC Holdings plc acquired Midland Bank giving it a majority holding in Trinkaus & Burkhardt.

1999
The Bank was renamed HSBC Trinkaus & Burkhardt KGaA.

2006
HSBC Trinkaus & Burkhardt changed the legal form of the Bank from a KGaA to an AG (German stock corporation).

2010
HSBC Trinkaus increased the share capital by EUR 150m to promote the growth in the corporate business in Germany as part of HSBC's overall strategy.

Corporate Sustainability

For HSBC, Corporate Sustainability is about bringing social and environmental issues together with financial performance to maintain and grow a successful business for the benefit of our stakeholders.

- We apply clear policies and processes to manage potential social and environmental risk in our lending and other financial activities in sensitive sectors.
- We help our clients to seize the opportunities presented by the shift to a low-carbon economy.
- We try to reduce our own environmental footprint and share good practice on this with our clients and other stakeholders.
- We focus our community investment (philanthropic activities) on education and the environment.

  Our education programmes help to lift people out of poverty, build financial literacy and promote environmental awareness.

Our environmental programme focuses on the HSBC Climate Partnership – a five-year environmental programme to reduce the impact of climate change on people, forests, freshwater and cities. HSBC's programme partners are carrying out original scientific research, developing demonstration projects, creating working models, and proving clear solutions so that governments can enact legislation for the adoption of low-carbon policies.

Country overview

Capital city	Berlin	
Area and population	Area of 357,104 sq km and population of 81.8 million	
Language	German	
Currency	EUR	
International dialling code	+49	
National Holidays	Scheduled Public Holidays for 2013	
	New Year's Day	1 January
	Good Friday	29 March
	Easter Monday	1 April
	Labour Day	1 May
	Ascension Day	9 May
	Pentecost	19 May
	Day of German Unity	3 October
	Christmas Day	25 December
	Boxing Day	26 December
Business and banking hours	Depend on the banking institutes and authorities involved	
Major Stock exchanges	Berlin, Düsseldorf, Hamburg/Hannover, Frankfurt, München, Stuttgart	
Political structure	Federal Republic of Germany/16 states	

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