



# DOING BUSINESS IN GERMANY

nhs\*

winglobally 

# TO SET UP A BUSINESS IN GERMANY YOU CAN EITHER

Open a branch office OR choose one of the different forms of company as a subsidiary

BRANCH	SUBSIDIARY
Not a company on its own	Legally independent company which can take on its own corporate structure
Does not require notary for minimum capital	Requirement of German notary and minimum capital
Executing the same activities as the parent company – independent in its own business activities	Independent legally but connected to the parent company commercially
Separate management (with full power of attorney) team and accounting system	Separate management team and accounting system
Its liability extends to the parent company	Limited liability
Double tax treaties concluded by Germany	Double tax treaties concluded by Germany
Subject to the German taxation system	Subject to the German taxation system
Taxation on their worldwide income – Prevention of double taxation according to the double taxation agreements (DTA)	Taxation on their worldwide income - Prevention of double taxation according to the double taxation agreements (DTA)

## TYPES OF SUBSIDIARIES (and its characteristics)

A subsidiary in Germany is an affiliated company which is independent and can take its own legal structure. It is registered with an own companies register number and it is taxed according to its residency which is Germany.

There are 3 forms of companies, namely

GmbH Limited Liability Company	AG Stock Company	KG, OHG Partnership
Minimum share capital in the amount of EUR 25,000	Minimum share capital in the amount of EUR 50,000	No minimum share capital for incorporation
Minimum one shareholder for incorporation needed	Minimum one shareholder for incorporation needed	Minimum two natural person or juridical person for incorporation needed (KG) or minimum two legal persons (OHG)
The liability of the shareholders is limited to the amount of their shares	The liability of the shareholders is limited to the amount of their shares	Unlimited liability, also with private assets (special conditions for KG)
Perfect for small and medium sized companies	Perfect for big companies	No share capital necessary, but risky, because of personal and unlimited responsibility

# TAXES

## CORPORATE INCOME TAX (KÖRPERSCHAFTSTEUER)

Corporate income tax is applicable exclusively to corporations (GmbH, AG) and cooperatives. Foreign corporations (Limited, PLC, etc.) with business premises (e.g. permanent establishment, branch office) in Germany are also subject to corporate income tax.

It is levied on the profits made by legal entities in a financial year. This implies the exemption of corporate income tax for companies with an annual deficit.

All profits are taxed at 15 percent. Taxation is independent of whether the profits remain in the company (accumulation) or are distributed. In addition to the corporate tax, 5.50 percent solidarity surcharge is added to the fixed corporate tax. The corporate income tax is paid by advance payments. The amount of the taxation is determined on the basis of the expected income. These advance payments have to be paid on a quarterly basis. The submission has to be done by the 31st of July of the following year. In case of transmission via a tax consultant agency then the filing deadline is extended to the last day of February of the year after next (14 months after the end of the calendar year concerned).

## TRADE TAX (GEWERBESTEUER)

Taxation is based on the profit from the income statement of each company, which is corrected on the basis of income tax and corporate tax law. Additionally, there are extra calculations and reduction in the profit that apply only to local business tax (for example expenses for interest and rent, share income and loss from shares in corporations and partnerships). Sole proprietorships and partnerships are also allowed up to EUR 24,500 as an exempt income. Furthermore, there is an exemption for freelancers (e.g. tax consultants, architects or doctors) and forestry & agricultural businesses. The tax rate is a combination of 3.5% (base rate) and the municipal assessment rate (e.g. in Düsseldorf for 2022 440%). For example, the total trade tax rate in Düsseldorf is 15.4% (base rate times municipal assessment rate).

The Trade tax is determined by the local tax authorities by the annual financial statements and is paid by advance payments quarterly. Because it is a communal tax, due taxes are collected by the local city or town.

### Example:

- Profit in the Financial year 2022: EUR 100,000
- Taxable income: EUR 100,000
- Trade tax measurement amount:  
 $100,000 \text{ EUR} \times 0.035 = \text{EUR } 3,500$
- Trade tax:  $3,500 \text{ EUR} \times 4.40 \text{ (Düsseldorf)} = \text{EUR } 15,400$

## VALUE-ADDED TAX (UMSATZSTEUER)

The levied VAT is only paid by the end user of a product or service. This amount is shown on the customer's invoice and therefore passed to each consumer. The standard German VAT with a rate of 19% is just below the European average. The reduced rate of 7% applies on certain consumer goods and services such as local public transport, books, newspapers and some other items.

Generally, VAT must be reported and paid quarterly to the tax office. If the annual VAT liability is over 7,500 Euro, the pre-reporting must be done monthly, and if it is less than 1,000 Euro, once a year is sufficient. In the first and the following year of registration in tax, the pre-reports are to be prepared monthly, depending on the expected VAT liability. Additionally, an annual return must be submitted for each calendar year.

## WITHHOLDING TAXES (QUELLENSTEUER)

In Germany, source taxes are withheld as part of profit taxation from the income of resident taxpayers and also that of non-resident taxpayers. Withholding of source tax is intended to simplify the taxation process and reduce

administration costs. Especially in cases of limited tax obligation, i.e. for persons and companies not resident in Germany, source taxes also serve to ensure the state's tax income, because the tax has already been applied to the (liquid) liable person's income who is now responsible for payment to the tax office.

Source tax deduction is applied to the following types of income:

- Salary tax on income from salary (Lohnsteuer) at the level of that person's tax rate
- Capital gains tax on capital gains (Abgeltungssteuer / Kapitalertragsteuer) at a level of 25 percent
- Construction deduction tax (Bauabzugsteuer) at 15 percent

## CAPITAL GAINS TAX (KAPITALERTRAGSTEUER)

Capital gains tax is a special form of collection for income tax and corporate tax. To ensure the tax claim, it is withheld as a source tax directly at the point which is paying out the capital gains (for example a bank, insurance company or corporation) for the creditor's calculation of capital gains (shareholder, partner, investor) and paid to the tax office. Tax is applied to gross profit from capital investments such as interests, but also to dividends from share corporations as well as open and hidden distributions of profit for GmbHs. Please note that this "Capital Gain Tax" in Germany defines not only the tax on the difference between net realizable value and acquisition cost, but also investment incomes such as interests and dividends which are widely called "Income gains". Generally, capital gains tax is always 25 percent. The solidarity surcharge is applied in addition to the capital gains tax.

In cases of payments of capital gains or distributions from German companies to persons and companies based in other countries, there are various special issues. For example, a signed double taxation agreement or the EU Parent/Subsidiary Regulation may limit the withholding of German capital gains tax.

## INCOME TAX (EINKOMMENSTEUER)

In case of residence or habitual abode in Germany, an individual is considered to be a tax resident in

Germany. The citizenship is irrelevant for German tax purposes. A German tax resident is taxed on the world-wide income (unrestricted tax liability). Some foreign source incomes will be exempt from German tax but considered as progression income according to the Double Tax Treaty (increases applicable tax rate).

In Germany the initial income tax rate is 14% which can increase progressively to 42% adapting to the income level. In addition there is a basic tax-free amount up to which no taxes have to be paid. In 2022 this threshold is EUR 9.984. For higher incomes the top tax rate of 45% is due if the income lies above EUR 277.826 in case of a single. Between the tax rate of 0% and the top tax rate of 45%, the tax is levied as a percentage of income. For married couples who file a joint tax return (married couples may choose a joint or a separate filing), income tax is calculated by using the splitting method. The tax office adds up the annual income of husband and wife. For tax purposes, the couple is now treated as one taxpayer. The amount is divided by half and income tax is calculated for this half. The calculated income tax is doubled. The result is the income tax that a married couple has to pay.

## SOLIDARITY SURCHARGE (SOLIDARITÄTSZUSCHLAG)

The solidarity surcharge of 5.5% is levied as an additional tax to income and corporation tax. From 1995 onwards, the solidarity surcharge was introduced to finance the costs of German unification and exists to date. It is only payable if a tax burden arises that exceeds a tax exemption limit for income tax. Germany plans to abolish the solidarity surcharge gradually in the future. Therefore, as of the 1st January 2021, the tax exemption limit has been increased and a mitigation zone has been implemented.

## CHURCH TAX (KIRCHENSTEUER)

In addition, Germany levies church tax of 8% (in Bavaria and Baden-Wuerttemberg) or 9% (in the rest of the country) of the income tax, if a taxpayer registers with a German church.



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This guide has been prepared by NHS\* group, with an intention of providing an overview of the German Investment Scenario.

