



Business & Investment Guide for Germany

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Introduction

More than 55,000 foreign companies are currently operating in Germany, employing about three million people. This demonstrates Germany's position as a top location for investors.

As the strongest economy in Europe and one of the largest markets worldwide, Germany offers excellent opportunities for investment in all economic areas. Germany's climate for innovation, the comparatively flexible labor market with its highly qualified work force as well as the advanced infrastructure are only some of the factors contributing to the outstanding success of German enterprises and investors in Germany. Despite the current worldwide economic slump, Germany established its position as a robust international player.

While these perspectives set the foundation for investment decisions in Germany, a carefully planned investment strategy and well-structured implementing procedures remain the key to success.

The *S·K· Business & Investment Guide for Germany* gives a useful overview with regard to company formation and business tax as well as employment regulations in Germany. By providing general background information, this booklet will serve as reference guide for your preliminary planning efforts.

For further advice, please find our contact details on the pages 26 and 27 of this booklet or on our homepage: www.sk-berater.com

We are looking forward to assisting you in doing business in Germany.

Frankfurt am Main, January 2020

Lothar Boelsen
-Managing Partner-

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Where to Start?

I. Germany at a Glance: Economic Background

In the global economic crisis, the broad-based German economy proved to be the solid backbone of Europe - a position that has contributed considerably to Germany's allure for foreign investors.



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As the largest market in the EU and with its central position in Europe, Germany offers attractive investment opportunities in numerous sectors as well as easy access to the export markets of the EU and the developing countries in the east.

While investors are indeed faced with comparably higher investment costs in Germany, the German market offers very cost-efficient production with high levels of productivity and quality, a highly skilled labor force and first-class infrastructure in a transparent and stable legal environment.

Access to a large market

- *Europe's largest economy* and 4th worldwide with a GDP (PPP) of USD 3.818 trillion in 2018
- *Europe's biggest consumer market*: lowest unemployment rate since 1990 encourages private consumption of 82.79 million people
- Central location in Europe and highly developed *infrastructure* (No. 1 Logistics Performance Index 2018)

Healthy economic structure

- Solid industrial base (21% of GDP in 2016)
- Highly specialized, innovative and export-oriented SMEs with strong regional base
- About 1,800 global market leader and hidden champions
- Central and Eastern Europe integrated in production processes
- Advantageous infrastructure and innovation clusters between science and industry

"Made in Germany": trademark for world-famous quality

- *World's no. 1 exporter*: exports rose 3 % since 2017, also due to strong foothold in Asian and other emerging countries
- Exports valued over 1.32 trillion Euro in 2018: US, France, China, Netherlands and UK as the main trading partners
- Main trading partner for 28 EU countries

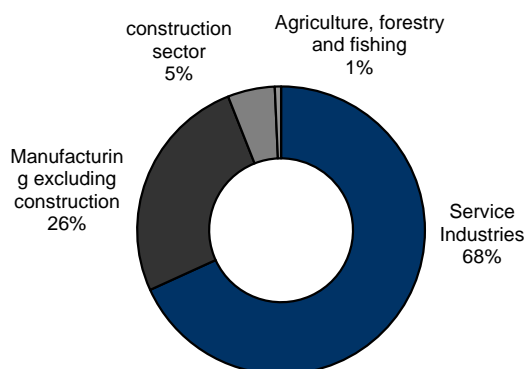
Traditionally strong in the high technology sectors, Germany has held a long reputation of leadership in the fields of manufacturing, research and development.

Dominating the German export market with machines, cars and electronics, the mechanical engineering and electronic industries are certainly the most visible flagships of the German industry. The chemical and pharmaceutical industries also contribute to the overall GDP (PPP) of USD 3.8 Trillion (2018).

Furthermore, investment incentives for other research intensive industries have stimulated the future-oriented medical technology and health industries as well as green technologies, causing these sectors to grow at enormous rates and gain notable importance in the world market in some sectors.

In recent years, the more sophisticated parts of the technical, commercial and financial services sector have also expanded greatly.

Economic Sectors in Germany (Gross Value Added 2018)



Source: <https://de.statista.com>

II. Potential for Investors: High Level of Research-intensive and High-tech Industry

- **Mechanical Engineering and Process Technology:** World export leader with strong home market and immense growth potential (5.3% in 2018)
- **Electronics and Micro Technology:** Fast growth due to rising demands of automotive, medical device and photovoltaic industries
- **Information and Communication Technology:** Largest IT-market in Europe (1/4 of Euro-market)
- **Pharma:** Largest European market with potential in specialized hospital market and cell- and bio-therapeutics
- **Plastics and Chemicals:** Trend towards “green” products with chemicals based on natural ingredients, renewable chemicals, innovative coatings
- **Green Technologies:** World's leading producer of wind turbines and solar power technology
- **Medical Industries:** Growth driven by changing demographics with trend towards nanotechnology, optical technology, biomedicine and biotech, home and e-care products. In 2017, 383 medical biotechnology companies in Germany generated a turnover of EUR 10.2 billion.



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III. Foreign Investment in Germany: Access to New Markets Major FDI Interest

Recent studies highlight that Germany had a considerable rise in foreign direct investment (FDI) over the last couple of years, providing a stable and profitable investment location. According to the United Nations Conference on Trade and Development (UNCTAD), Germany ranks among the world's leading countries for FDIs with EUR 731 billion in inward stocks in 2016. In 2017, FDI inflows in Germany doubled compared to the previous year to around USD 34.7 billion (from USD 16.9 billion).

2018 was a record year as nearly 2,000 investment projects were initiated in Germany – 55% of which were Greenfield projects. Over 40 % of all FDI stocks in Germany originate from within the EU, but investments from outside the EU continue to grow. Especially Asian countries increased their FDI stocks in Germany in recent years. Leading FDI sectors are the business and financial services, ICT and software industry, industrial machinery as well as electronics and chemicals.

Investment by Country (2018)

U.S.	17%
Switzerland	11%
China	9%
UK	8%
Netherlands	6%

Branches of Interest (2018)

Business Services	22%
ICT & Software	16%
Industrial Machinery	8%
Healthcare & Pharma	6%
Chemicals	5%

Source: www.gtai.de

IV. Grants and Incentives

In nearly all industry sectors and lines of business, Germany provides a welcoming market for foreign investments. Grants or other incentives like loans by the state-owned Development Loan Corporation (*Kreditanstalt für Wiederaufbau*) offer an attractive range of financial support for investors to start a business in Germany.

Amongst others, funding is available for:

- Start-ups;
- Investments in economically underdeveloped areas;
- Entrepreneur loans;
- R&D activities;
- Environmental and energy-saving programs.

Types of Business Entities

Business activities of foreign investors in Germany may have very diverse (legal) structures, depending primarily on the individual circumstances of the investor or business and the intended goals of the investment.

For short-term or otherwise limited activities on the German market, foreign investors may prefer not to base their staff in Germany. Instead, they may handle all activities through cooperation and/or direct transactions with local business partners, *independent sales agents* or *distributors*.

If a foreign investor intends to conduct a business that requires a direct long-term presence in Germany, the business can be set-up as a

- *Permanent establishment*, in form of an independent branch or as a dependent permanent establishment; or
- *Subsidiary* with a legal structure of its own (i.e. a partnership or corporation).

If a foreign business operates a German site solely for the purpose of performing preparatory or auxiliary tasks for the enterprise, the German place of business will generally not be defined as permanent establishment (e. g. warehouses, representative offices) from a profit tax perspective. However, from a VAT perspective, the qualification of this activity depends on the fact if this “site” supplies services to the principal establishment for which it receives transfers or not. In case there are internal services, this activity is qualified as a so-called passive permanent establishment according to the German tax authorities as of today. So this passive permanent establishment can receive services but it is not liable to pay VAT in Germany. However, each case should be reviewed very carefully to avoid a denial of the entitlement to deduct input VAT from the German tax office.

Of course, any business, factory or other enterprise must be registered with the respective local administration and tax authorities prior to taking up any activities. Due to the arising consequences for taxation, liability and other legal matters, the choice of the appropriate legal form should be carefully made.

I. Permanent Establishment (PE) and Branch

From a legal point of view, a permanent establishment (PE) in Germany is defined as an incorporated part of the foreign investor’s business and is not considered a legal entity of its own.

Business activities of a PE may not differ from those of the parent company and invoices are issued in the name of the head office. Dependent offices like these are not entered in the Commercial Register. A registration with the respective local municipality is sufficient.

Alternatively, business activities can be performed as an independent branch provided its German business activities are structured in such a way that the business could continue, if the main branch no longer existed. These branches are typically led by their own management with a certain freedom of authority and possibly its own accounting.

Despite this degree of independence of the branch, all liabilities and obligations are still borne by the parent company. The branch is subject to the regulations of the main branch. Branch offices require both, a business registration with the municipality and in the Commercial Register.

In principle, the profits earned both by a PE and a branch in Germany are subject to limited tax liability in Germany. Most double tax treaties agree that the profits earned in Germany are either exempt from taxation in the country of the parent company or the taxes paid in Germany are deductible from or creditable against the tax burden in the country of origin.

However, the VAT assessment is quite different from the corporate tax assessment. From the VAT perspective in general, it is relevant if the PE or the branch supplies services to third parties. In this case, the PE or the branch is liable to pay VAT and has to be registered in Germany.

II. Subsidiaries

Subsidiaries form legally independent structures from their (foreign) parent company, trading under their own name and preparing their own balance sheet.

The German Commercial and Company Law distinguishes between unincorporated companies (i. e. partnerships) and corporations and offers various forms of organizations for subsidiaries.

Most legal forms must be registered both in the (electronic) Commercial Register and with the relevant municipal trading department. The local tax office will then be notified automatically about the registration. (Please see the following [chapter on Business Taxes](#) and the [chapter on Accounting, Auditing and Filing Requirements](#) for further details.)

III. Corporations

As a legal entity that is assessed separately from its shareholders, the corporation itself carries all rights and obligations and liability is limited to the corporation's business assets, including its share capital. Corporations do not depend on a certain number of shareholders and may be formed by one or more person, including corporations, partnerships or individuals. Regulations regarding foundation, reporting and auditing are, however, much more extensive than for partnerships.

For tax purposes, the corporation and its shareholders are treated separately. The corporation is viewed as an independent taxable entity, and both, trade tax and corporate tax, are levied on its income.

The location of the corporation determines whether it is subject to tax in Germany with its worldwide income or only its German-source income. Location in Germany is assumed if a registered office or principal place of management of the corporation is established and/or maintained in Germany.

Profits distributed to shareholders are taxable at the level of the shareholders. Depending on whether the shareholder is an individual or a corporation, they will be either charged for income tax or corporate tax. The rules of residence correspond to those applicable for the corporation.

The two most common forms of incorporations are the stock corporation (AG) and the limited liability company (*GmbH*). The choice of the appropriate legal form depends on a number of factors, among them considerations regarding the management structure, reporting and auditing requirements, incorporation costs or employee co-determination rights.

The **Limited Liability Company (GmbH)** is a very common business structure for medium-sized businesses that are led by a relatively stable number of shareholders. They are often family-owned businesses and owner-managed.

Minimum Share Capital: EUR 25,000.00

Legal Liability: Liability limited to registered share capital

Advantages: Most common legal entity of all limited liability companies, less administrative efforts than the stock corporation

The **Entrepreneurial Company (UG)**, also known as Mini-GmbH, is the alternative to a limited liability company for business start-ups. Founding regulations are similar to the ones of a GmbH with the amount of share capital being specified in the articles of association. The minimum amount of share capital is EUR 1.00. Until an equity of EUR 25,000.00 has been established, 25% of the annual profit is deposited in a surplus fund. At this point, the company can be renamed into a Limited Liability Company (GmbH).

Minimum Share Capital: EUR 1.00

Legal Liability: Liability limited to registered share capital

Advantages: Less administrative efforts than the stock corporation, low start-up capital

Disadvantages: high risk of accounting insolvency, no non-cash capital contribution, low acceptance among German business partners

The **Stock Corporation (AG)** is a popular structure for commercial enterprises that have large capital needs. Shares may be traded publicly on the stock exchange.

Minimum Share Capital: EUR 50,000.00

Legal Liability: Liability limited to shareholder capital

Advantages: High market reputation, flexible capital acquisition, anonymity of shareholders, flexible transfer of shares

Disadvantages: Strict founding formalities and high costs, extensive organizational obligations

IV. Partnerships with Unlimited Tax Liability

Partnerships may be formed by two or more persons. In contrast to corporations, partnerships are directly linked to the person of the shareholder and liability attaches to the individual partners. The advantages of a partnership lie in its uncomplicated formation, as minimum share capital and sometimes registration is not required, and the reduced accounting and/or auditing obligations.

A partnership is not itself taxable for corporate tax purposes. Although the income is calculated at the level of the partnership by filing a tax return for informational purposes, it is taxed at the level of the partners in their personal tax returns. Trade tax still applies to partnerships and is levied if the partnership's business activity constitutes a commercial activity.

In case of a business, owned by a foreign investor without permanent residence in Germany (no registered office, residence or habitual abode), the business income is only subject to income tax with the German-source income attributable to the German partnership.

Common forms for unincorporated companies are the limited partnership (*KG*) and the general partnership (*OHG*).

A **General Commercial Partnership (OHG)** is a legal entity on its own. The individual partners bear all liability, either jointly or separately. A partnership's agreement regulates the conditions for the partnership and usually all partners are entitled to represent and manage the business. The OHG needs to be registered in the Commercial Register.

- *Legal Liability:* General partner(s) with personal unlimited liability and limited shareholder(s) with limited share liability
- *Advantages:* Achievement of contractual purposes, uncomplicated formation without obligations, no auditing requirements
- *Disadvantages:* Personal liability and Commercial Register entry required

In contrast to the OHG, only one general partner in a **Limited Partnership (KG)** has unlimited liability, while there are also limited partners with limited share liability. Limited partners usually do not participate in the management and cannot represent the KG.

- *Legal Liability:* General partner with personal unlimited liability and limited shareholder(s) with limited share liability
- *Advantages:* Achievement of contractual purposes, uncomplicated formation without obligations, only one partner with limited liability, no accounting or auditing requirements
- *Disadvantages:* Personal liability

V. Other Business Entities

The **Societas Europaea (SE)** is aimed at unifying company structures across Europe and is based on EU law. It can only be founded by a merger of stock corporations or the conversion of a business with involvement in at least two EU-member states. With a required minimum share capital of EUR 120,000.00, the requirements are set higher than those for the establishment of a stock corporation (AG).

The **GmbH & Co. KG** is a special form of the limited partnership (KG), in which one or more corporations act as general partner(s). This form combines the advantageous flexibility of the KG and the limited liability of the GmbH.

The **Silent Partnership (Stille Gesellschaft)** is not a legal entity, but can simply be seen as a contractual financial investment in an existing company. Silent partners do not participate in the business, but share in the enterprise's profits and losses. They are not apparent to external parties.

There are various other legal forms that apply either only to very special cases or are of minor relevance to foreign investors and are therefore omitted in this section.

VI. Corporate Reorganization and Changes of the Legal Form

In answer to shifting markets, changing legal requirements or simply for purposes of tax optimization, corporate reorganizations are quite common and legally accepted. Business activities are continued within a new legal form or structure. All forms of corporate reorganization are regulated in the Reorganization of Companies Act (*Umwandlungsgesetz*).

These can be:

- *Change of the legal form*
- *Mergers:* Two or more companies merge into one
- *Splits:* A legal entity may be split up into several new legal entities (*Aufspaltung*)
- *Demerger:* Sections of the parent are split off as a separate business entity
- *Transfer of assets and liabilities*

The tax policy choices and consequences are regulated in the Reorganization Tax Act (*Umwandlungssteuergesetz*). Provided the required formalities or procedures are observed, most of the transactions are possible without triggering detrimental tax effects. Changes from partnership to corporation and vice versa are possible without having to recognize a taxable capital gain. Accordingly, depreciation policies and valuation options can be carried over into the new entity. Excluded from this are branches, which cannot be converted into corporations without triggering a taxable gain.

Business Taxes

All businesses in Germany, regardless of their organizational form, are principally liable for taxation. Currently, there are two types of taxes on business profits. While trade tax is levied on the corporation's basic trade activities, corporate tax applies to the earnings of a corporation. Furthermore, solidarity surcharge is added to the corporate tax.

Overall Tax Liability for Corporate Enterprises in Germany

The overall tax liability may be as low as 25% in certain regions where trade tax is levied at a lower rate, but in strong economic regions the rate for business taxes usually varies from 29% to 34%.

Type	Tax Rates	Total
Corporate income in EUR		100,000.00
Trade tax (3.5 % x Multiplier) in EUR (German Average Municipal Multiplier 411%*)	14,39%	14,390.00
Corporate Tax (15 %) in EUR	15%	15,000.00
Solidarity Surcharge (5.5% on Corporate Tax)	5.5%	825.00
Net Income in EUR		69,785.00
Overall Tax Liability		30.22 %

* DIHK 2018. considering municipalities with at least 20.000 inhabitants

In addition, handling the extensive rules for > *Value Added Tax (VAT – Umsatzsteuer)* that is levied on each stage of the production and distribution chain is a major issue for most businesses. Other taxes applicable to companies operating in Germany include real estate tax, real estate transfer tax as well as customs and excise duties.

Generally, all German resident companies and entrepreneurs with commercial activities in Germany are liable for taxation. There is only limited tax liability for non-resident companies. Depending on their organizational form, they may only be liable to pay taxes on business activities conducted in Germany. The taxable income from business is calculated with the respective tax balance and income statement, usually included in the financial statements (according to German Accounting Principles, if applicable).

I. Corporate Tax

> *Corporate tax (Körperschaftsteuer)* is an income tax for legal entities, i. e. companies like *AG*, *GmbH* or *European Company* and other organized groupings (such as associations) and conglomerations of assets (such as foundations). It is imposed at the level of the company that generated the profit and applies to all taxable earnings, i. e. retained and distributed profits earned during the tax year.

Resident corporations are subject to corporate tax on their worldwide income. In practice, however, double tax treaties generally provide that taxed income from a foreign country remains tax-free in Germany. Non-resident companies are subject to German corporate tax only on German-source income.

In an ownership chain of companies, there may be a tax exemption for dividend income from holdings, as, in principle, profit distributions within a chain of companies are not added to the taxable income of the stake-holding company. The detailed rules for chains of companies, however, are very specific, requiring a careful review and assessment of each individual case and ruling out general advice. Furthermore, the German government and the OECD are working on further plans and regulations to avoid base erosion

and profit shifting. It is therefore important to build solid structures in order to distribute dividends to foreign countries.

Corporate tax is levied at the rate of 15% on the profit earned during the calendar year. Solidarity surcharge is added on the corporate tax (5.5%), resulting in a combined tax rate of 15.825%.

What constitutes taxable income with regard to corporate tax and how it is to be determined, is regulated in the Income Tax Act (*Einkommensteuergesetz*) with specific provisions in the Corporate Tax Act (*Körperschaftsteuergesetz*). Quarterly installments of corporate tax have to be paid and are taken into account in the annual tax return. Assessment basis for the quarterly prepayments is the profit of the previous year.

II. Trade Tax

> *Trade tax (Gewerbesteuer)* is directed at businesses' real earning capacity. As a non-personal tax, it is charged on the earnings generated by a business regardless of the personal circumstances of any of the owners.

Trade tax is levied by the local municipalities totaling a minimum of 7%, with the average usually ranging from 14% to 17%.

Basis for the trade tax is the 'basic federal rate', fixed at 3.5% of the business profits. This basic rate is then multiplied by a mandated municipal rate of at least 200%. As one of the decisive location factors, this multiplier differs from municipality to municipality and usually ranges between 300% to 450% in active and successful business and industrial areas.

All businesses that operate and have a permanent establishment in Germany are charged with trade tax, regardless of their actual activities. The taxpayer is the business entity under whose name the business is carried out. This may be a sole trader, a corporation or a partnership.

Individual entrepreneurs and partnerships qualify for a tax-free deduction of EUR 24,500.00 on their business profits. Sole traders and partners can also claim a tax deduction in their personal tax assessment reflecting the trade tax they have paid. Corporations do not qualify for the tax-free allowance.

Trade Tax: Example for a partnership

In 2018, a partnership generated a profit of EUR 150,000. The tax-free deduction of EUR 24,500 results in EUR 125,500 of taxable business profits, on which trade tax is levied.

Consequently, the basic tax rate with 3.5% on the business profits amounts to a uniform base amount for trade tax of EUR 4,392.50 for the partnership. Depending on the location of its registered office, however, the total amount of the trade tax may differ widely.

	Frankfurt	Eschborn*	Berlin	Munich
Municipal Multiplier	460%	330%	410%	490%
Total Trade Tax (in EUR)	20,205.50	14,495.25	18,009.25	21,523.25
<i>Total Trade Tax (in % on business profits)</i>	13.47%	10%	12%	14.35%

* The city of Eschborn is located 20 km outside of Frankfurt. The example illustrates the differences of municipal rates and resulting trade tax rates even within close distances.

If a business maintains establishments in several municipalities during the year of assessment, the basic tax amount will be divided among them, normally using the wages paid by the business as a yardstick.

Agricultural and forestry businesses as well as freelance work and other forms of self-employment are not subject to trade tax.

III. Income Tax for Partner of Partnerships

As the individual partners carry all rights and obligations in a partnership, general and limited partnerships (*OHG* and *KG*) themselves are not taxable entities. Both, undistributed and distributed profits of a partnership, are calculated at the level of the partner according to their share.

The taxable income of the partner is subject to > *Income Tax (Einkommenssteuer)*. It is levied at a minimum of 14% for income that exceeds the annual personal exemption of EUR 9,168.00 and progressively increases to a top rate of 45% for income exceeding EUR 265,327.00. Solidarity surcharge of 5.5% is added to the corresponding rate of income tax. Additionally, partners of a partnership can offset trade tax against payable income tax.

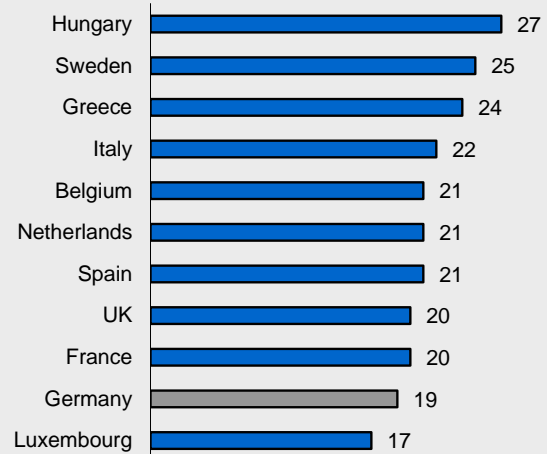
IV. Valued Added Tax (VAT)

As a tax on consumption, > *Value Added Tax (VAT – Umsatzsteuer)* is levied at each stage of the production and distribution chain. It operates in the same way as a general excise duty and is chargeable in principle on all public and private consumption (i. e. goods and services purchased by final consumers). Since it would not be technically feasible to collect VAT from consumers, however, the business is liable for the VAT and any administrative effort.

The standard VAT rate in Germany of 19% is below the European average. For basic goods (e. g. food, books or public transportation for short distances), a reduced tax rate of 7% currently applies. Exempt from VAT are, in general, lease of buildings for residential purposes, insurance and medical services as well as any transaction subject to German Real Estate Transfer Tax.

VAT paid by entrepreneurs (so-called Input VAT) may be deducted from the VAT payable from their own turnover, if the turnover is not generally exempt from VAT. Thus, VAT is often neutral within a chain of entrepreneurs entitled to deduct input VAT.

Value Added Tax in Selected EU Countries 2019



Source: European Commission

According to German tax law, businesses are required to issue invoices for all taxable sales. Most importantly, all invoices have to indicate separately the charges for VAT.

The correct invoicing practice cannot be detailed here. [For more information, please see our leaflet on our homepage.](#)

Businesses Liable for VAT

Businesses, whose turnover from the previous year (excluding VAT payable thereon) exceeded EUR 17,500.00, are required, without exception, to pay VAT. Consequently, they are entitled to deduct input VAT and have to issue invoices separately detailing VAT amounts.

The same applies to businesses whose turnover did not exceed the EUR 17,500.00 threshold in the previous year but is expected to exceed EUR 50,000.00 (excluding VAT payable thereon) in the current calendar year.

In cases where non-resident businesses provide taxable supplies of work and/or materials or other taxable services to other VAT liable entrepreneurs in Germany, the recipient becomes liable for VAT (so-called reverse charge system). On sale invoices, the foreign entrepreneur does not have to state German VAT but must refer to the *reverse-charge method*.

Businesses resident in Germany, whose turnover (excluding VAT payable thereon) did not exceed EUR 17,500.00 in the previous calendar year and is not expected to exceed EUR 50,000.00 in the current calendar year (i. e. small businesses), are not required to pay VAT. Consequently, they are not entitled to deduct input VAT charged to them or issue invoices listing VAT.

Businesses have to register for VAT with the responsible tax office and receive a VAT number as well as usually also a VAT identification number, which is provided by the Federal Central Tax Office (*Bundeszentralamt für Steuern*).

Submission and Payment

Entrepreneurs, registered for VAT purposes in Germany, are generally obligated to submit provisional VAT returns. They have to assess their VAT liability by deducting the recoverable input VAT from the VAT on their own turnover and remit a prepayment to the tax office.

Newly formed businesses as well as businesses with high tax burdens are required to file provisional returns on a monthly basis. The filing and payment deadline for the preliminary VAT returns is 10 days after the end of the reporting period.

After a calendar year ended, businesses are required to file an annual VAT return containing their final VAT assessment, which is to be reviewed by the German tax office.

V. Other Taxes Applicable to Businesses and Entrepreneurs

An annual **> Real Property Tax** is imposed on all immovable property, regardless of whether the property is held as a business asset or for private use. The tax base is assessed according to the value of the real estate, usually estimated much lower than the market value. The effective tax rate depends on the intended use of the property and is calculated using a multiplier which varies by municipality.

Any transfer of real estate located within the territory of Germany to a new owner is subject to **> Real Estate Transfer Tax (RETT)**. Taxable transfers for the purposes of RETT are defined broadly and may also be triggered when real estate-owning businesses are restructured or transfer shares. RETT is set at state level and ranges from 3.5% to 6.5% of the agreed remuneration for the transfer or the assessed value of the real estate.

Importer are obliged to declare all goods intended for commercial use to customs, even if they are duty-free. The rates for **> Customs Duties** differ depending on the imported goods and their source. Defined

rates, uniform across the EU, are applied to all imported goods released for free circulation. *Excise duties* are levied on various items, including tobacco, alcohol, petrol, oil and heating oil.

The *withholding tax on investments* currently amounts to 26.375%, including solidarity surcharge, and is retained at source, usually by a bank. Non-resident companies are granted a refund on application with the Federal Central Tax Office according to Anti-Treaty Shopping Rules.

The statutory withholding tax rate on *Royalty and Lease Payments* on movable property is 15.825% (including solidarity surcharge) for non-resident corporations. Withholding tax on royalties may be reduced according to a double tax treaty or the EU interest and royalties directive (*Council Directive 2003/49/EC*).

> *Wage Tax* is generally levied on all income that an employee receives from an employment relationship, given the employer is based in Germany. Although the employee is fully liable for wage tax, the German resident employer is required to withhold the tax and remit it to the tax office. Expenses for the employers are the > *Social Security Contributions*, nearly equally divided between employer and employee (please see [chapter on Employment and Labor](#) for further details).

Other indirect taxes, such as *electricity tax (Stromsteuer)* or *mineral oil tax (Mineralölsteuer)* may also be of relevance to businesses in certain industry sectors.

VI. Deductibility and Tax Relief

In principle, the taxable income of any business is determined on the basis of the results of the annual accounts in the year of assessment. Nevertheless, many factors are taken into account, allowing deductions and tax reliefs. In general, any expenses related to the company's business operations and not to tax-exempt income are deductible. These deductible expenses include the *costs of foundation* of a corporation or the *increase of its capital, repair and maintenance expenses or remuneration for shareholders and interest payments*. Most of the expenses are only deductible in the year they incurred.

Depreciation is generally allowed on all tangible and intangible fixed assets with a useful life of more than one year. These include investments in plant and office equipment, motor vehicles, patents, trademarks and goodwill amortization. Depending on their worth, these assets may be either depreciated during their useful life or entirely in the year of acquisition or over a period of five years according to the straight line method.

Losses are generally offset against gains for computing the taxable income. Losses that cannot be offset in the same year may be carried forward indefinitely or carried back one year with certain limitations. Under certain conditions, capital gains from the sale of real estate may be offset against the acquisition costs of a new, similar asset (so-called *roll-over relief*).

The creation of *provisions* for certain liabilities or anticipated losses will be discounted by 5.5% for tax purposes. Companies may generate accruals for surety obligations, warranties, damage claims, litigation expenses or future pensions to employees.

In cases where corporations are integrated financially, organizationally and economically in another, e. g. corporation or partnership, these enterprises may form a > *Fiscal Unity (Organschaft)*. In a tax group, the profit and losses of controlled companies and the controlling company are offset against each other for corporate income and/or trade tax purposes. Different rules apply for forming a tax group for VAT purposes.

Other Tax Matters for International Businesses

I. Double Tax Treaties and Tax Relief

Double tax treaties (DTT) ensure tax relief for internationally operating corporations and taxpayers with foreign-source income, allowing the income to be basically taxed only once, either at its source or where the recipient is resident.

In both, non-treaty and treaty situations, German taxpayers with foreign-sourced income may offset the foreign taxes paid with the German tax liability, if foreign taxes are comparable to German taxes. Alternatively, the taxpayer may deduct foreign taxes paid as a business expense.

Most DTTs follow the OECD model treaty. Germany has concluded treaties with about 90 countries.

II. Anti-avoidance Rules

Aimed at the prevention of tax avoidance or evasion, the Foreign Tax Act (*Außensteuergesetz*) sets a number of anti-abuse provisions, specifically with regard to the transfer of income to low-tax regimes abroad or treaty shopping.

In general, taxpayers are free to handle their affairs in a way that allows the minimum taxation as long as this is by legal means. The abuse of certain tax planning schemes, however, is deemed inappropriate, when a legal option is chosen merely for tax-minimizing purposes without further justifiable business reasons.

In line with General Anti-Avoidance Rule (*GAAR*) statutes, German tax law contains several specific anti-avoidance rules, e.g. regarding thin capitalization and controlled foreign companies as well as an extensive set of transfer pricing rules.

III. Related-party Transfer Pricing

Cross-border transactions between *related parties* are regulated by extensive transfer pricing rules and may contain the risk of a double taxation. These rules do not only establish methods to determine transfer prices, but also include comprehensive rules in respect to transfer pricing documentation, which can be of major concern in tax audits. Accordingly, foresighted tax planning may be very beneficial for related companies with regard to any transactions, the allocation of income, intercompany service charges or the secondment of staff.

German transfer pricing rules are based on recommendations by the OECD and must meet the arm's length principle. The choice of which standard transfer pricing method is used to determine a reasonable price is left to the business:

- With the *comparable uncontrolled price method*, transfer prices are based on comparable prices for third parties.
- Calculation of transfer prices with the *cost plus method* is based on the actual costs of the producer or service-provider and its pricing policy towards third parties.
- The *resale price method* defines transfer prices according to the activities of the reselling company and the usual market margin for such activities.

If none of these methods is reasonably applicable, other methods may be accepted under special circumstances.

Accounting, Auditing and Filing Requirements

All companies operating in Germany are required to keep adequate records of their finances and commercial transactions according to German Generally Accepted Accounting Principles (GAAP). By giving a true and fair view of the company's affairs and state, a company's annual financial statements and management reports serve as a business card vis-à-vis shareholders, banks, business partners and customers, but furthermore as a basis for tax assessment.

Generally, all business records - from account books to vouchers and inventory lists - must be filed according to German GAAP and kept in Germany. The relocation of the accounting to other countries can be granted by the fiscal authorities upon application *before moving*, but includes merely the electronic book-keeping. The access to all data for unannounced reviews by the fiscal authorities must be provided. Without exception, all paper files have to remain in Germany.

Accounting principles under German law also aim at protecting creditors, going beyond the mere informational function regulated in the International Financial Reporting Standards (IFRS).

I. Legal Foundation

In order to give a detailed and orderly numerical reflection of a company's position, annual reports must follow the GAAP under the German Commercial Code (*Handelsgesetzbuch - HGB*) and the General Tax Code (*Abgabenordnung - AO*).

While the German Commercial Code sets the basic provisions for all business entities with regard to bookkeeping, the General Tax Code regulates tax reporting, filing, assessment and appeal procedures and thereby complements the respective tax codes.

II. IFRS – International Financial Reporting Standards

According to European law, companies quoted on the stock exchange market must publish their financial statements according to IFRS. German law allows non-quoted companies to apply IFRS on a voluntary basis, although financial statements must still be prepared according to the German Commercial Code in order to serve as a basis of taxation.

III. German Generally Accepted Accounting Principles (GAAP)

Only sole proprietors with sales revenues under EUR 600,000.00 and net income of less than EUR 60,000.00 for two consecutive fiscal years are exempt from the requirements of keeping records and preparing financial statements. All other businesses are subject to the statutory accounting rules, regardless of size or legal structure.

These companies are required to record all of their commercial transactions, assets and correspondence according to German GAAP. Other documents for orderly accounting generally include commercial business records, inventories and procedural instructions and other organizational documents and respective vouchers, amongst others. All records must be filed and kept for at least ten years for tax purposes or audits by the fiscal authorities.

Besides keeping adequate records, these companies are also required to generate annual financial statements including a balance sheet and an income statement at the end of each financial year.

Corporations and partnerships, whose liable general partner is not an individual, must disclose their annual financial statements in the (Electronic) Federal Gazette (*Bundesanzeiger*). This information is published on the website: www.bundesanzeiger.de. The requirements for the content of the annual financial statements and the items of disclosure, however, depend on the size of the company.

Requirements for Annual Financial Statements According to Company Size

Classification & Size	Requirements
<p>Smallest Corporations</p> <p>Two of the following values may not be exceeded in two consecutive financial years:</p> <ul style="list-style-type: none"> ▪ Balance sheet: EUR 350,000.00 ▪ Sales revenue: EUR 700,000.00 ▪ 10 employees per yearly average ▪ Exception from FY 2016 on: investment company, pure holding company, equity investment company 	<p><i>Annual report:</i> reduced requirements for balance sheet and P&L account with notes</p> <p><i>Disclosure:</i> disclosure in or deposit at (Electronic) Federal Gazette</p> <p><i>Audit:</i> not required</p>
<p>Small Corporations (GmbH, AG or partnership with corporate general partner)</p> <p>Two of the following values may not be exceeded in two consecutive financial years:</p> <ul style="list-style-type: none"> ▪ Balance sheet: EUR 6 m ▪ Sales revenue: EUR 12 m ▪ 50 employees per yearly average 	<p><i>Annual Report:</i> balance sheet, P&L account and notes on the financial statement</p> <p><i>Disclosure:</i> in the (Electronic) Federal Gazette, balance sheet and notes on the financial statement with balance sheet related information only</p> <p><i>Audit:</i> not required</p>
<p>Medium-sized Corporations (GmbH, AG or partnership with corporate general partner)</p> <p>Two of the following values may not be exceeded in two consecutive financial years:</p> <ul style="list-style-type: none"> ▪ Balance sheet: EUR 20 m ▪ Sales revenue: EUR 40 m ▪ 250 employees per yearly average 	<p><i>Annual Report:</i> balance sheet and P&L account, notes on the financial statement and management report on the business situation</p> <p><i>Disclosure:</i> in the (Electronic) Federal Gazette, required for annual report, annex, management report and, if applicable, proposal and decision for the appropriation of the distributable profit</p> <p><i>Audit:</i> required for annual report and management report by a public auditor</p>
<p>Large Corporations (GmbH, AG or partnership with corporate general partner)</p> <p>Two of the values for balance sheet, sales revenue and number of employees exceed those of the medium-sized corporate in two consecutive financial years.</p>	<p><i>Annual Report:</i> balance sheet and P&L account, notes on the financial statement and management report on the business situation</p> <p><i>Disclosure:</i> in the (Electronic) Federal Gazette, required for annual report, annex, management report and, if applicable, proposal and decision for the appropriation of the distributable profit</p> <p><i>Audit:</i> required for annual report and management report by a public auditor</p>

IV. Annual Reports

Annual reports usually include the financial statement, the proposal or resolution for profit appropriation and the management report (business report). Annual reports of smaller companies are typically not as extensive and may forego the management report.

In detail, the financial statement according to GAAP contains a balance sheet and the profit and loss account. The appendix with notes on the financial statements provides additional information regarding accounting policies, affiliated companies and the remuneration of the managing directors. Where applicable, the financial statement is accompanied by an auditor's report.

In addition, the management report –not required for all companies – focuses on the business situation, important events and developments, market trends and future prospects or R&D activities.

Companies quoted on the stock market must additionally generate a cash flow statement and a statement of changes in equity, which are also part of the annual financial statement and subject to disclosure.

V. Audits

As banks, shareholders and finally the managers themselves rely on the information given in the annual report, medium- and large-sized companies have to appoint an independent certified public auditor to audit and confirm the information contained in the annual financial statements and management report.

The auditor generates an audit report and auditor's opinion, thus giving independent confirmation that the company's situation is presented appropriately.

Furthermore, on the basis of the knowledge acquired during the audit, the auditor may also be a reliable partner to analyze the economic strengths and weaknesses of a company and propose solutions in the fields of accounting, controlling or taxes.

The auditor's opinion is disclosed together with the annual financial statements.

VI. Filing Requirements and Tax Payment

The accounting principles of the German Commercial Code also correlate with German tax law, establishing correct accounting as the starting point for tax assessment and annual financial statements as the basis of taxation for business income.

While taxes are assessed on an annual basis, businesses make quarterly *installments* for business taxes and have to withhold wage taxes on a monthly basis. The amounts for these payments are usually derived from the tax assessment notice of the preceding year or are based on the taxpayer's estimated results.

Final tax returns for businesses and individuals must generally be filed annually by July 31 following the period of assessment. A unique tax identification number serves as permanent identifier in all tax respects for individuals. The *business year* is the basis for tax assessment and can be shorter but may not be longer than 12 months. This is generally the calendar year. A resident company may, however, select a deviating fiscal year with the consent of the tax authorities.

Taxpayer, who prepare their tax return with the help of a certified tax consultant, are granted an automatic extension of the filing deadline until February 29 (or 28) of the year after the next year

of the assessment (e.g. filing deadline for 2018 Tax Return is February 29, 2020). In order to reduce bureaucracy, companies are required to submit their tax balance sheets and income statements electronically.

Of course, all tax returns need to include a detailed *documentation of all income and expenses* during the tax year. In addition to the financial statements, corporations must also include a copy of the auditor's report; a reconciliation of financial statement figures and those reflected by the tax accounts, a copy of the resolution of the supervisory board of shareholders approving the financial statements and finally a copy of the shareholder resolution for the distribution of the year's profit. Tax groups may be obliged to prepare consolidated financial statements that present legally independent group enterprises as a single entity.

Eventually, the annual income tax return (*Einkommensteuererklärung*) or corporate income tax return (*Körperschaftsteuererklärung*) will close the accounts of the tax year and determine the final income with its respective taxes. Any payment obligations are then balanced by a final adjusting payment or refunded when the assessment is issued.

An appeal of the assessment is possible from the taxpayer's side as well as from the side of the tax administration. Notices of assessment that are issued by the authorities under reverse of re-examination may result in a future tax audit for the respective company.

The detailed reviews of the books, records and other relevant documents of the company very frequently result in additional tax claims and revised tax base amounts.

In 2017, tax audits for previous tax years have yielded EUR 17.5 billion additional taxes, mostly resulting from the review of corporate and trade taxes.

Tax audits are usually conducted every three to five years. Larger companies (with foreign shareholders), however, are almost always subject to continuous and comprehensive German tax audits. In addition, special audits may be conducted in order to verify correct VAT payment.

Employment and Labor

The labor market in Germany is comparatively flexible, but the high standard of employee protection sets limitations. Also, while Germany's highly qualified labor force offers foreign employers good conditions for recruitment and employment, this high standard is also expensive. Generous remuneration and the additional social security contributions amount to relatively high employment costs.

I. Employment Law - High Standards of Protection

Extensive legal regulations set the framework for employer-employee relationships. The majority of these regulations is established by the *German Labor Law (Arbeitsgesetzbuch – ArbG)* and the *below mentioned special laws* and sets high standards of protection for employees.

The following laws settle some of the basic rights and duties of employers and employees as follows:

- *Working Time Act (Arbeitszeitgesetz)*: The general German workweek is between 37 to 40 hours and varies according to industry sector and location. The maximum workweek allowed is 48 hours.
- *Minimum Wage Act (Mindestlohngesetz)*: Since 2019, the minimum wage is set at EUR 9.19 per hour and will be increased in 2020 to EUR 9.35. Exceptions are very few, for example for certain trainees.
- *Holiday Benefits Act (Bundesurlaubsgesetz)*: The annual statutory minimum of paid vacation is set at 20 working days based on normal full-time employment and a five-day workweek.
- *General Equal Treatment Act (Allgemeines Gleichbehandlungsgesetz)*: Employees and applicants may not be discriminated against on the basis of gender, race or ethnic origin, religion, disability, age or sexual orientation.
- *Occupational Safety and Health Act (Arbeitsschutzgesetz)*: Employers must observe health and safety regulations that vary according to industry sector and location.
- *Continued Remuneration Law (Entgeltfortzahlungsgesetz)*: Employees are entitled to continued remuneration during the first six weeks of absence from work due to illness as well as for public holidays.
- *Maternity Protection and Parental Leave Act (Mutterschutzgesetz)*: Women are not allowed to work during the last six weeks of pregnancy and the first eight weeks after giving birth, and are entitled to continued remuneration during maternity protection. Furthermore, parents of a newborn child may opt for a parental leave of up to three years during which the employment contract is suspended. The employee is entitled to resume his or her former job or a similar position after parental leave on equal payment.
- *Employment Protection Act (Kündigungsschutzgesetz)*: Employers' right to terminate an employment contract is severely restricted by this law in relation to the notice periods, social costs for employees and reasons for termination.
- *Works Council Constitution Act (Betriebsverfassungsgesetz)*: Businesses employing five or more people must allow their employees to form a workers council that has positive co-determination

rights over a range of social issues in the interest of the employees. The size of this council depends on the number of employees.

II. Employment Agreements

Employment contracts are usually settled in written form, but this is not mandatory. They should contain a job description, details on the duration of the contract, remuneration, paid vacation days and working conditions. A probationary period of up to six months is common, during which either party may terminate the contract with a shorter period of notice.

Termination of Employment

For a normal termination, employer or employee can terminate the contract by giving notice of termination to the contracting party within the contract period of notice, usually a minimum of four weeks. In order to be effective, the notice of termination must be in writing. Fixed-term contracts terminate automatically at the end of their agreed term.

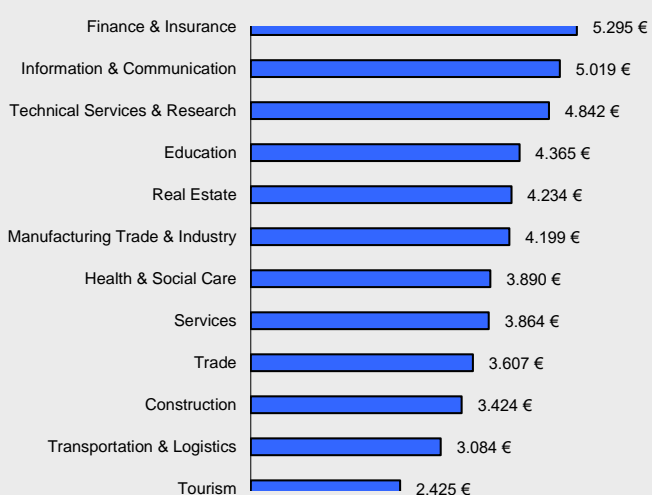
Usually, smaller companies with ten or less employees are not obligated to justify the normal termination of an employment contract. In companies with ten or more employees, employers need a specific reason for a dismissal according to the Employment Protection Act. In companies with a workers council, the opinion of the workers council must be heard before the termination of the contract.

In case of extraordinary severe cause, such as criminal behavior of the employee, non-payment of salary or discrimination by the employer, the employment contract can be terminated with immediate effect.

Remuneration and Social Security Contributions

Since 2015, a general mandatory minimum wage exists, applicable in all industries in Germany. In specific industry sectors, however, there are minimum wages based on collective agreements, but they may not be less than the statutory minimum wage.

Average Monthly Gross Earnings in Germany (Q4/2018)



Source: Statista 2019: The above figure shows the average monthly gross earnings for employees in Germany according to branches in the fourth quarter of 2018. Monthly gross earnings refer to the total earnings prior to tax and social security deduction.

In 2018, the average monthly gross earnings for employees in Germany were EUR 3,880. This figure, however, is merely a rough indication, as wage levels vary widely depending on various factors like company size and location, business branch and sector or the experience, skills and age of the employee. Fringe benefits in Germany usually include work amenities like canteen meals, fuel vouchers as well as company cars, which are common among senior employees and business travelers. Furthermore, larger German companies often offer their employees relief funds or voluntary pension plans that supplement the state retirement-pension scheme.

Wages and salaries only constitute a part of the total labor costs, however. Mandatory contributions for social security and health care increase labor costs considerably. Unlike in other countries, these contributions are not treated as taxes in Germany.

Social security coverage is generally mandatory for all employees working in Germany, regardless of their citizenship or the residence of the employer. They include payments to the statutory pension insurance and unemployment insurance, as well as health and long-term homecare insurance.

Employer and employee split these costs nearly equally, combining to an average of approximately 40% of the gross income. The employer is liable to remit all contributions and generally deducts the employee's portion from wages.

Social Security Contributions (2019)

Pension Fund	18.6 %
Health Insurance*	~ 15 %
Unemployment Insurance	2.5 %
Nursing Insurance**	3.05 %
Accident Insurance	~ 1,3 %***

* Differing rates for employer (7.3%) and employee (7.3%)

** Employees without children pay an additional 0.25%; bears employee alone

*** Rate depending on the risk of work; bears employer

III. Employment of Foreign Workers

EU citizens can migrate freely within the EU and do not require work visa or work permits. Non-EU nationals, who want to settle and work in Germany, are required to obtain a residence title issued by the immigration office (i. e. a visa, a residence permit or a permission of settlement) and a work permit, which is documented in the residence title. Citizens of certain countries may apply for a residence/ work permit from within Germany.

The work permit can be obtained at the Aliens Authority (*Ausländerbehörde*). The Federal Employment Agency (*Bundesagentur für Arbeit*) must approve the work permit. The issuance, however, is subject to considerations relating to the employment market. Usually, highly qualified employees, such as scientists, high-level teachers, professors, specialists and management level employees, who receive an annual salary of more than EUR 53,600, are granted work and residence permits of indefinite duration.

Assignment of Staff

If staff employed at a company abroad is only temporarily transferred to a German branch or a related company in Germany, they may be exempt from German social security contributions and wage tax.

In case of a long-term assignment, however, the host company resident in Germany will be assessed as the (new) employer of the assignee. Consequently, wages and salaries paid to the assignee will most likely be subject to German wage tax as well as social security contributions. As a general rule, income tax and social security contributions are paid in the country where the employment is carried out, unless the individual is protected by a double tax treaty. Other exemptions are possible.

This is also the case if the sending company does not have a *statutory place of business* in Germany and assigns *executive staff* to Germany. The German tax authorities will then assume that an *effective place of management* is being established in Germany. This may also trigger further tax liabilities for the sending company.

Since enacting the regulation (EG) 883/2004 on May 1, 2010, German employers are required to inform the responsible insurance institution about every single foreign assignment and to consider social-security-related specifics. This means that any professional cross-border activity within the EU, European

Economic Area (EEA) and to Switzerland requires an individual application for an assignment certificate (A1-certificate) according to the legal framework.

When assigning employees abroad, the A1-certificate is an official document proving that the employee belongs to only one social security system and determines that only one legislation is applicable (generally the one of the home country). The A1-certificate intends to avoid the obligation to pay double contributions or short-term and possibly repeated changes between the social security systems of different countries as well as time-consuming (de)registration processes. For more information, please [see our information sheet on the A1](#).

About S·K· Frankfurt

S·K· assists you in organizing your strategy for doing business in Germany and fulfilling the legal and economic requirements of your investment. By mapping out the details of your plans and assessing the resources required, we can help you to increase your business in Germany smoothly and with lasting success.

Reliability for your Decisions over 30 years

Cooperating with our professional colleagues of the Leading Edge Alliance (LEA), we are well equipped to keep up to requirements resulting from the internationalization of the economic and legal systems. Within these networks, we keep track of any legal changes and their repercussions and share international economic know-how and contacts with companies and chambers throughout the world.

Our experienced auditors and tax consultants, lawyers and M&A specialists are looking forward to accompanying your enterprise in Germany, whether regarding a business start-up, expansion or relocation plans. Please get in touch with us directly or visit our website www.sk-berater.com

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- Support during restructuring and audits
- Assistance in international enquiries
- Project management

Disclaimer

The S·K· Guide to Investment in Germany is issued by S·K· Steuerberatungs GbR in Frankfurt in January 2016. The information contained in this present investment guide has been assembled in 2019 and is based on present law and current available information.

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