Rödl & Partner

Investment Profile – Germany

■ Investing in Germany

Key Aspects of Corporate And Tax Law

one-stop-shopping – seamless service

Rödl & Partner is an international Professional Service Firm providing services in the areas of tax, legal, assurance and business/IT consulting through 67 branches with 2.300 professionals worldwide[1]. We advise clients in all important industrial nations of the world, focusing particularly on Europe, Asia and the USA. We are accredited by the SEC. Our goal is to provide our services in a one-stop-shop for our clients. Since Rödl & Partner is not a network, we are able to advise you doing business anywhere in the world while you keep one single contact. This is what we call seamless service.

our success story

Unlike the Big Five accounting firms or the internationally operating law firms, Rödl & Partner provides balanced consultation services which are neither audit nor legally dominated. Our client-orientation and our flexible structures have enabled us to become the fastest growing Professional Service Firm in Europe. Among all of the strongest growing companies of all industries Rödl & Partner ranks No. 99 in Europe, No. 32 in Germany, No. 8 in Bavaria and No. 1 in Nuremberg[2]. And we are expanding further.

German inbound business

Rödl & Partner is deeply rooted in the German economy. Our internationally experienced professionals provide comprehensive advice to foreign companies who are doing business in Germany or intend to establish or purchase a company or branch office in Germany. We focus particularly on the following areas:

- German and international taxation, including
- tax-efficient structuring,
- transfer pricing,
- expatriates,
- artists and professional athletes,
- corporate, commercial and labor law,
- intellectual property and information technology law,
- audit services including US GAAP and IAS,
- bookkeeping and payroll accounting,
- business and IT-consulting,
- tax & legal advice for the construction and industrial installation industry,
- due diligences.

[1] as of 2001
[2] Europe's Top 500 – Survey of Growth Plus

Common Types of Investment in Germany

(STOCK) CORPORATION	
German name	Aktiengesellschaft (abbreviation: AG)
Liability	Limited to the company's assets; the shareholder's liability is limited to the portion of his contribution
Minimum statutory capital	€ 50,000.00
Corporate bodies	General shareholders' meeting, board of directors, supervisory board (mandatory)
Audit of financial statements	Mandatory
Taxation	Trade tax on income from 12% to 20% of income before income taxes, varying locally; corporate income tax of 25% of income after deduction of trade tax. Dividend withholding tax 20%, reduced by double tax treaties to 0% - 15% (within EC 0%)
COMPANY WITH LIMITED LIABILITY (CLOSELY-HELD CORPORATION)	
German name	Gesellschaft mit beschränkter Haftung (abbreviation: GmbH)
Liability	Limited to the company's assets, the shareholder's liability is limited to the portion of his contribution
Minimum statutory capital	€ 25,000.00
Corporate bodies	Shareholders' meeting, board of directors, supervisory board (discretionary)
Audit of financial statements	Mandatory, if 2 of the following criteria are met: balance sheet total > € 3,438,000.00, turnover > € 6,875,000.00 and number of employees > 50
Taxation	Trade tax on income from 12% to 20% of income before income taxes, varying locally; corporate income tax of 25% of income after deduction of trade tax. Dividend withholding tax 20%, reduced by double taxation treaties to 0% - 15% (within EC 0%)
GENERAL PARTNERSHIP	
German name	Offene Handelsgesellschaft (abbreviation: OHG)
Liability	All partners are jointly and personally liable for the partnership's liabilities
Minimum statutory capital	None
Corporate bodies	No corporate entity; the partners are entitled to represent the company
Audit of financial statements	None
Taxation	Trade tax on income from 12% to 20% of income before income taxes, varying locally; the partners are liable for corporation income tax (if partner is a corporate entity) or individual income tax (up to 48.5% for individuals) of income after deduction of trade tax. No dividend withholding tax.

LIMITED PARTNERSHIP

German name	Kommanditgesellschaft (abbrevation: KG)
Liability	The general partners are jointly and personally liable for the partnership's liabilities, the limited partners only with their contribution to the company
Minimum statutory capital	None
Statutory bodies	No corporate entity; only the general partners are entitled to represent the company
Audit of financial statements	None
Taxation	Trade tax on income from 12% to 20% of income taxes, varying locally; the partners are liable for corporation income tax (see above) or individual income tax (up to 48.5% for individuals) of income after deduction of trade tax. No dividend withholding tax.

LIMITED PARTNERSHIP WITH A CORPORATION AS THE GENERAL PARTNER

This is a limited partnership with a GmbH as the general partner, combining advantages of limited liability with the tax transparency of a KG, which is widely spread among German family-owned businesses. For foreign investors it can combine limited liability with tax advantages of a (flow-through) partnership.

German name	GmbH & Co. KG
Liability	The general partner – typically a GmbH – is jointly and personally liable for the partnership's liabilities (normally has 0% interest in the KG), limited partners only with their contribution to the company
Minimum statutory capital	None for KG, € 25,000.00 for GmbH
Statutory bodies	see above => KG (for the GmbH & Co. KG) and GmbH (for the general partner)
Audit of financial statements	See above => GmbH
Taxation	Trade tax on income from 12% to 20% of income before income taxes, varying locally; the limited partners are liable for corporation income tax (see above) or individual income tax (up to 48.5% for individuals) of income after deduction of trade tax. No dividend withholding tax for limited partners.

BRANCH OFFICE

German name	Zweigniederlassung (i.e. "Betriebsstätte")
Liability	Unlimited
Minimum statutory capital	None (assigned equity may be required individually, e.g. for banks)
Statutory bodies	None (no separate corporate entity); only a representative is required under commercial law
Audit of financial statements	None
Taxation	Trade tax on income from 12% to 20% of income before income taxes, varying locally; the branch is either liable for corporation income tax (see above) or individual income tax (up to 48.5% for individuals) of income after deduction of trade tax, depending on the legal form of the foreign entity. No dividend withholding tax.

German Tax Rates

Corporation income tax	25%
Dividend withholding tax (domestic rate)	20%
Withholding tax on interest (domestic rate)	0% - 35%
Withholding tax on royalties (domestic rate)	25%
Trade tax on income	12% - 20%[1]
Individual income tax[2]	0% - 48,5% (as of 2001) 0% - 47% (as of 2003) 0% - 42% (as of 2005)
Payroll tax	is a prepayment of individual income tax withheld by the employer and based on the individual income tax rates
Solidarity surcharge	5.5% of corporation income tax, individual income tax, payroll tax, withholding taxes
Church tax (for members of certain churches)	8% or 9% of personal income tax and wage tax
Withholding tax for supervisory board members	30%
Withholding tax for self-employed artists, professional athletes, authors, journalists	25%
Social security taxes[3]	
■ employer portion	50%
■ employee portion	50%

of:

- pension insurance - 19.1% of compensation up to € 54,000.00 (Western Germany) and € 45,000.00 (Eastern Germany) per annum
- unemployment insurance - 6.5% of compensation up to € 54,000.00 (Western Germany) and 45,000.00 (Eastern Germany) per annum
- health insurance - 13.5% (average rate) of compensation up to € 40,500.00 per annum
- disability (nursing care) insurance - 1.7% (average rate) of the salary up to € 40,500.00 per annum

Value added tax	16% (standard rate) 7% (reduced rate) 0%
Net assets tax	not imposed
Capital transfer tax[4]	not imposed
Real estate transfer tax	3.5%
Real estate tax (propery tax)	0.8% - 2.1%[5]
Estate and gift tax	7% - 50%[6]

[1] Varies locally
[2] Tax credit of trade tax on income is not reflected in tax rates
[3] Imposed on employment income; figures as of 2002
[4] On the purchase or sale of interest in a company
[5] Varies locally; tax base is the assessed value for tax purposes which is substantially lower than the market value
[6] Dependent on degree of relationship and value of property transferred; exemption amounts not considered

Withholding Taxes Under German Double Tax Treaties

Country	Dividends		Interest	Royalties
	Qualifying Companies	Other companies, Individuals		
	%	%	%	%
Argentina	15	15	10/15	15/26.38
Australia	15	15	10	10
Austria	5	15	0	0
Bangladesh	15	15	10	10
Belgium	15	15	0/15	0
Bolivia	10	10	15	15
Brazil	15	15	10/15	15/25
Bulgaria	15	15	0	5
Canada	15	15	15	0/10
China (without Hong Kong and Macao)	10	10	10	7/10
Cyprus	10	15	10	0/5
Czech Republic	5	15	0	5
Denmark	5	15	0	0
Ecuador	15	15	10/15	15
Egypt	15	15	15	15/25
Estonia	5	15	0/10	5/10
Finland	10	15	0	0/5
France	5	15	0	0
Greece	domestic rate	domestic rate	10	0
Hungary	5	15	0	0
Iceland	5	15	0	0
India	10	10	10	10
Indonesia	10	15	10	7.5/10/15
Iran	15	20	15	10
Ireland	10	10	0	0
Israel	25	25	15	0/5
Italy	15	15	0/10	0/5
Ivory Coast	15	15	15	10
Jamaica	15	10	10/12.5	10
Japan	15	15	10	10
Kasachstan	5	15	0/10	10
Kenya	15	15	15	15
Korea (Rep.)	10	15	10/15	10/15
Kuwait	5	10/15	0	10
Latvia	5	15	0/10	5/10
Liberia	10	15	10/20	10/20
Lithuania	5	15	0/10	5/10
Luxembourg	10	15	0	5

Country	Dividends		Interest	Royalties
	Qualifying Companies	Other companies, Individuals		
	%	%	%	%
Malaysia	5	15	15	10/26.38
Malta	5	15	10	0/10
Mauritius	5	15	0	15
Mexico	5	15	10/15	10
Mongolia	5	10	10	10
Morocco	5	15	10	10
Namibia	10	15	0	10
Netherlands	10	15	0/15	0
New Zealand	15	15	10	10
Norway	0	15	0	0
Pakistan	10	15	10/20	10
Philippines	10	15	10/15	10/15
Poland	5	15	0	0
Portugal	15	15	10/15	10
Romania	10	15	10	10
Russia	5	15	0	0
Singapore	10	15	10	0/26.38
Slovak Republic	5	15	0	5
South Africa	7.5	15	10	0
Spain	10	15	10	5
Sri Lanka	15	15	10	10
Sweden	0	15	0	0
Switzerland	5	15	0	0
Thailand	15	20	10/25	5/15
Trinidad and Tobago	10	20	10/15	0/10
Tunesia	10	15	10	10/15
Turkey	15	20	15	10
Ukraine	5	10	2/5	0/5
United Arab Emirates	5	15	0	0
United Kingdom	15	15	0	0
United States	5	15	0	0
Uruguay	15	15	15	10/15
USSR	15	15	5	0
Venezuela	5	15	5	5
Vietnam	5/10	15	5	7.5/10
Yugoslavia	15	15	0	10
Zambia	5	15	10	10
Zimbabwe	10	20	10	7.5

Explanations

The chart shows the withholding tax rates under German double taxation treaties for dividend, interest and royalty payments to nonresidents. Withholding tax rates under domestic law can be lower. As an example, only certain types of interest are subject to withholding tax under German tax law. The chart does not reflect the definition of dividends, interests and royalties, which may vary from treaty to treaty, particularly regarding royalties. Payments for the lease of assets, for example, may also qualify as royalties under a treaty. Dividend withholding tax on payments to qualifying companies (usually companies holding at least 25% interest in a German subsidiary) is in many cases imposed at a reduced rate. Under the conditions of the EC Parent-Subsidiary Directive, the withholding tax on dividends to companies in other EC member states is nil. There are a few territorial exemptions under which German treaties are not applicable, e.g., the treaty with the People's Republic of China is not applicable for Hong Kong and Macao. The treaty between Germany and former Yugoslavia is further applied to the Federal Republic of Yugoslavia, Bosnia-Herzegovina, Croatia, Macedonia and Slovenia. The treaty between Germany and the former USSR is further applied to Armenia, Azerbaijan, Belarus/Belorussia, Georgia, Kirghizia, Moldova, Tajikistan, Turkmenistan and Uzbekistan.
This chart should simply provide an overview of the treaty rates. It cannot describe all of the details. The individual treaties, including the protocol (if any) should be referenced for detailed information.

Taxation of International Holding Companies Based in Germany

Effective tax rates of corporation income tax plus trade tax on income, including solidarity surcharge	37% - 41%
Dividends from German companies	exempt
Dividends from foreign companies	exempt: 95% of the dividends
Gains from disposal of German companies	exempt
Gains from disposal of foreign companies	exempt
Losses from disposal of German companies	not deductible
Losses from foreign branches	not deductible
Income from foreign branches[1]	exempt[2]
Cost of financing the acquisition of foreign subsidiaries	deductible
Cost of financing the acquisition of German subsidiaries	deductible only as far as the expenses exceed the annual dividends[3]
Thin capitalization rules	debt : equity = 1 : 3 for holding companies and 1 : 1.5 for other companies[4]
Write-down of tax book value of shares to the lower market value	not deductible
German double taxation treaties	75 treaties[5] + 14 special treaties[6]
Elimination of double taxation in treaties	credit method for interest and royalty income, exemption method for dividends and gains from the disposal of companies
Dividends to EC[7] member states	no dividend withholding tax[8]
Common market of EC	no customs, uniform VAT rules within EC
Capital transfer tax[9]	not imposed
CFC rules	yes[10]
Consolidated group taxation	yes[11]
Business reorganization[12]	in certain cases tax neutral
Net asset tax	not imposed
Real estate transfer tax	3.5%[13]
Expatriates' individual income tax	top rate 2001: 48.5%[14]

[1] Where a double taxation treaty applies
[2] In most cases
[3] The German government's draft of a tax amendment act provides for full deduction of such expenses
[4] Safe haven is applicable only for loans with fixed interest rates;
[5] The treaties with the former USSR, Yugoslavia and Czechoslovakia are applicable to most of the successor states
[6] Estate tax, gift tax, air and sea transportation and shipping
[7] European Community
[8] If shares of at least 25% / 10% are held for at least 12 months
[9] E.g. on contribution of equity in form of cash or assets or purchase of shares
[10] On passive income of foreign companies in low-tax countries
[11] Inter alia, equalizing profits and losses within a German group regarding income taxes
[12] E.g. mergers, de-mergers, changes in legal entity of a company, contributions of shares
[13] Exemptions possible
[14] Various deductions and allowances possible; reduction of top rate to 42% as of 2005

Business Acquisitions in Germany

1. TAXATION OF CAPITAL GAIN BY SELLER?

asset deal[1]	yes
share deal	yes/no
	(exempt if a German corporate entity sells shares in another corporate entity)
purchase of interest in a partnership	yes

2. DEPRECIATION OF PURCHASE PRICE BY BUYER?

asset deal	yes
share deal	no
purchase of interest in a partnership	yes

3. IS THE COST OF FINANCING THE PURCHASE PRICE TAX DEDUCTIBLE IN GERMANY?

asset deal	yes (thin capitalization rules apply only for corporate entities)
share deal	no/yes
	(a proposed change of the Corporation Tax Act[2] would allow interest deduction for a German holding company)[3]
purchase of interest in a partnership	yes[4]

[1] Either a purchase of individual assets or of a business segment

[2] As of August 2001

[3] An frequently recommended structure for the purchase of a German company is to form a German GmbH or partnership which acquires the shares of the target company; combined with the subsequent tax treatment of both companies as a consolidated group.

[4] A deduction of the finance cost in Germany and abroad may be allowed in certain instances.

Corporation Income Tax

Taxable entities	corporate entities under German law German branches of foreign corporate entities
Tax residence	place of incorporation or place of management
Taxable income if resident in Germany	worldwide income
Taxable income of branches	income derived by the German branch
Significant types of exempt income	exempt under double taxation treaty: dividends capital gains from the disposal of shares in corporate entities shareholder contribution
Significant deductions	business expenses which do not need to be capitalized trade tax on income depreciation provisions[1] reserves on certain capital gains write-down to lower-going group value[2] losses carried back and carried forward[3]
Capitalization of expenses	expenses connected with the purchase, the production or the change of substance of an asset must be capitalized and depreciated; cost of maintenance and replacements (e.g. replacement of old windows by new windows in a building) are deductible
No deduction or limited deduction	gifts entertainment expenses penalties with punitive character 50% of compensation paid to supervisory board dividends
Corporation income tax rate	25% (not including trade tax on income)
Solidarity surcharge	5.5% of corporate income tax

[1] Some types are not deductible.
[2] A write-up is required if the going group value increases again.
[3] Losses can be carried back one year up to an amount of € 511,500.00 and indefinitely carried forward without limitation.

Depreciation

I. Depreciation under the Commercial Code (accounting depreciation) is based on the useful lifetime of an asset

II. Tax depreciation

Straight-line method	equal annual amounts over the useful life for all depreciable fixed assets
Declining-balance method	fixed rate of depreciation (up to 25%) applied to the declining book value of the asset for movable tangible fixed assets
Accelerated depreciation	in case of extraordinary use
Production method	depreciation rate varies according to the physical wear of asset
Depreciation rates for commercial buildings:	
1. straight-line depreciation	2% to 3%[1]
2. declining-balance method	8 x 5% , 6 x 2.5%, 36 x 1.25%[2]
Examples[3] (straight-line method)	
Machinery	6.25 to 12.5%
Office equipment	10 to 16.67%
Office furniture	7.7%
Computers	33.3%
Cars, trucks, etc.	11.15 to 16.7%
Goodwill	6.67%
Intangible assets with a limited useful lifetime	depends on useful lifetime[4]
Shares	no depreciation
Land	no depreciation
Assets with acquisition cost (without VAT) up to € 410	100%

[1] Depending on the date of the application for the construction permit or date of purchase

[2] Building purchased or application filed after 31 December 1995

[3] Average rates; the useful lifetime of an asset is determined by a schedule of recovery classes published by the German tax authorities.

[4] straight-line method only

Value Added Tax (VAT)

Applicable particularly for	domestic supplies of goods, domestic supplies of services, import of goods from outside the European Community (EC), intra-EC purchase of goods in Germany
Standard rate	16%
Reduced rate[1]	7%
Examples of zero rated transactions	exports of goods, banking and insurance services, sale of land and buildings, rental of land and buildings, sale of shares in a company.
Tax base	consideration for supplies of goods and services, customs value for imported goods
Foreign resident entrepreneurs[2]	are generally liable for VAT equal to German-resident entrepreneurs pay VAT by means of the „deduction procedure“ or „zero procedure“ (as of 2002, the EC reverse-charge rules will be introduced) VAT refund possible if reciprocity[3] is given by the other state

[1] E.g. on food items and beverages, newspapers and books

[2] „Entrepreneur“ is the technical term for taxpayers under the VAT Act.

[3] The German Ministry of Finance updates the list of countries, which grant a VAT refund under the same conditions as Germany, on a regular basis.

Labor Law

Residence Permits

- Foreign nationals (i.e. non-EU nationals) must obtain a residence permit (Aufenthalts-genehmigung) in the form of a visa from an official representative of the Federal Republic of Germany in their home country before entering Germany if the purpose of entering the country is for an extended stay of more than three months.
- A visa will only be issued after prior approval from the immigration office (Ausländer-behörde) at the foreign person's chosen place of residence if he/she plans to stay in Germany for more than three months (see Work Permits).
- The issuance of a residence permit is usually at the discretion of the immigration office; however, in cooperation with the employment office (Arbeitsamt) it will normally be granted to executives who are sponsored by their foreign head offices.

Work Permits

- Nationals of EU member countries do not need a work permit due to the EU's rights of freedom of movement.
- Non-EU citizens who are not self-employed and who wish to work in Germany need a work permit in addition to a residence permit.
- In this case the employment office must approve the issuance of a visa before the foreign national enters Germany.
- If a foreign company sends an employee to Germany to work in a branch office for less than three months, the employee does not need a work permit. However, the employment office must be notified accordingly.
- A work permit is issued by the local employment office for the geographical area in which the job is located.
- The foreign person who wishes to work in Germany and who applies for an entry visa at a German consulate or embassy abroad must provide evidence at the time of applying for the visa that the local employment office has assured him/her that a work permit will be granted.
- Members of the management board of corporations are (inter - alia) not required to obtain a work permit, but must obtain a residence permit

	work permit	residence permit
managing director		✓
member of the board (supervisory board)		✓
manager	✓ (special requirements have to be fulfilled if not EU-member)	✓
other employees	✓ (only as an exemption if not EU-member)	✓

Labor Regulations

- Employment contracts usually provide for salary or wages calculated on a monthly basis.
- In the case of employment contracts subject to collective bargaining agreements (Tarifverträge) which determine a certain minimum compensation, the salary/wages must not be lower than such minimum compensation for the position in question. Such collective bargaining agreements can also determine regulations regarding vacation days, working hours etc.
- The minimum amount of vacation is 24 days in one calendar year.
- The maximum working hours per day are 8 hours (exemptions and overtime are possible).

Social Security System

- The German social security system provides for
  - pension insurance,
  - health insurance,
  - disability (nursing care) insurance
  - unemployment insurance and
  - workers' compensation insurance.
- In general, all employees working in Germany are subject to mandatory insurance, regardless of their citizenship or their employers' location.
- Contributions are made in equal amounts by employer and employee, except for workers' compensation insurance, which is entirely borne by the employer.
- The employer is liable for the full contribution amount and generally withholds the employee portion from his/her wages or salary.
- Employees temporarily transferred by a foreign employer to his German branch office are generally exempt from German social security. In order to qualify for exempt status, the employee must be able to prove his/her intention to return to his/her home country, and the foreign employer must retain crucial employer's functions, such as the determination of compensation, promotion, transfer etc. Whether or not the employee remains on the foreign payroll is a deciding factor to German authorities.

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