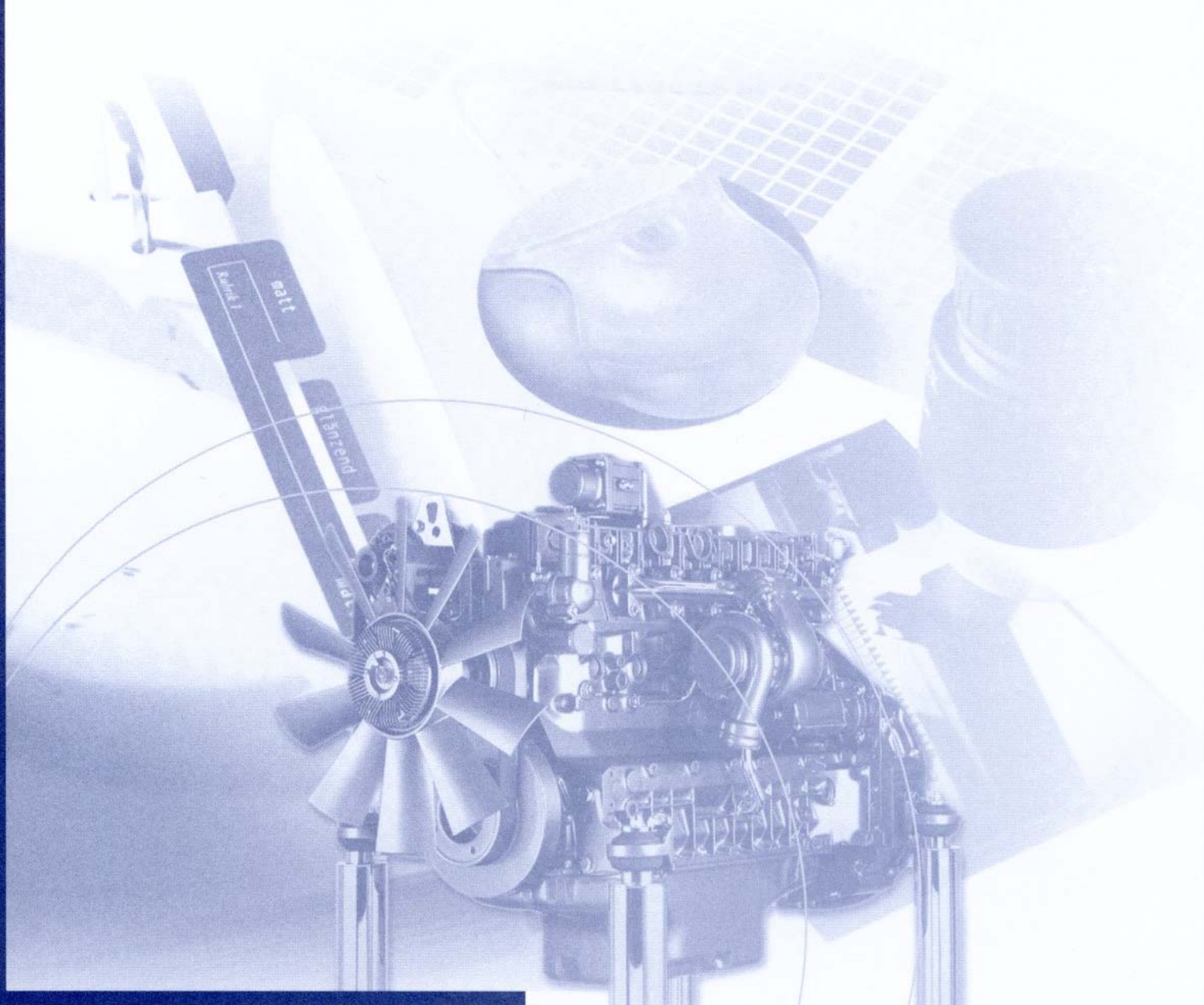




Industrie- und Handelskammer
zu Köln



Forming an Enterprise

in Germany

Impressum

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Self-employed work by foreign nationals / the setting up of dependent and independent branches by companies from abroad

With its central location at the heart of Western Europe and its excellent transport links, the city of Cologne and its surrounding area provide ideal conditions for foreign nationals to work on a self-employed basis or for companies from abroad to set up dependent and independent branches.

According to §1 section 1 of the law in Germany concerning trade, commerce and industry regulations (GewO) anyone is allowed in principle to run a business insofar as exceptions or restrictions (for example the crafts code) aren't permitted or stipulated by law. This to a large extent unrestricted right of access to running a business also applies in principle to foreign nationals and companies from abroad.

I. Provisions in the law concerning foreign nationals

There are restrictions set down in the law concerning foreign nationals which affect foreign nationals who don't originate from an EU or an EEA (European Economic Area) country. This law was liberalised by the new immigration law, which came into effect on 1st January 2005.

1. Citizens of the EU and EEA

According to Article 2 of the Immigration Law the principle of freedom of movement (Law on Freedom of Movement of EU citizens/FreizügG/EU) applies to you as an EU or EEA citizen. In order to enter Germany you simply need a passport or equivalent.

As a citizen of the EU you are issued, in accordance with §5 section 1 of the Law on Freedom of Movement (FreizügG/EU), with official written confirmation of your right of abode by the relevant registration office. This written confirmation is of a purely declaratory nature. According to §4 section 1, sentence 1 of the Residence Law (AufenthG) you are exempted from the requirement for visa documentation. Consequently, citizens of the EU and EEA can work in Germany on a self-employed basis almost without restrictions.

In the case of skilled crafts or trades the Chamber of Handicrafts must check if the intended trade has to be registered on the handicrafts roll and if the necessary pre-conditions for this registration have been met. Further information on this can be obtained from the Cologne Chamber of Handicrafts at Heumarkt 12, 50667 Köln Tel. +49 221 2022-0, www.handwerkskammer-koeln.de.

2. Citizens not from EU and EEA countries

As a citizen from a non-EU/EEA country you require for entry into the territory of the Federal Republic of Germany a valid passport or equivalent and relevant visa documentation (Turkey excepted: because of the association agreement between the EEC (European Economic Community) and Turkey, Turkish citizens have a right of abode). This visa documentation can be issued as a visa, as a residence permit which is valid for a restricted period of time or as a residence permit which is permanent. This documentation is only issued upon application.

The missions of the German Foreign Office are responsible for visa affairs abroad. Should you come from a country in which the Federal Republic of Germany does not have a mission, you need to apply for residence authorization to the Immigration Service of the Foreign Office in Berlin: www.auswaertiges-amt.de.

The German immigration authorities are responsible for all questions concerning residence rights. The competent local immigration authority is determined by the actual or intended place of residence of the foreign national. All extensions and changes to residence authorizations must be applied for at the local immigration authority.

In principle, you are, as a foreign national, only allowed to work if your visa documentation permits this. It can be seen clearly from all visa documentation if the holder is allowed to work.

a) Visa documentation

Visa documentation can be issued as a visa (§6 of the Residence Law/AufenthG), as a residence permit which is valid for a restricted period of time (§7 of the Residence Law/AufenthG) or as a residence permit which is permanent (§9 of the Residence Law/AufenthG).

aa) Residence Permit – valid for a restricted period of time (§7 of Residence Law)

You can acquire such a residence permit for the purpose of working on a self-employed basis if:

- there exists an overriding economic interest or a particular regional need,
- this business activity can be expected to have a positive effect on the economy and
- the financing of the business idea has been secured by your own capital or by the assurance of a loan.

The residence permit is at first valid for three years and can thereafter be changed into a permanent residence permit if you have successfully put into practice your planned business idea and are able to earn your living from it.

The first and second criteria above are generally deemed to have been met if an investment of at least €1 million is made or at least ten jobs are created. An assessment of the above criteria is also based, in particular, on the workability of your basic business idea, your entrepreneurial experience, the amount of capital deposited, the effect on the job and job training situation and the contribution to innovation and research.

If you are older than 45, you must, in addition, have an appropriate pension plan.

The Chamber of Commerce and Industry with responsibility for the locality in question, the relevant private and public sector trade and professional associations and the authorities responsible for the registration of occupations are involved in making this assessment. In order to guarantee that your application is processed quickly you should, when making your application, submit information about your planned business activity that is as comprehensive as possible.

bb) Residence Permit – permanent (§9 of Residence Law)

As a highly qualified specialist you can be granted residence for the purpose of being engaged in remunerative work; this permit is permanent and comes with no restrictions as to location. Highly qualified are:

- scientists/specialists with particular specialist expertise,
- teaching staff engaged in exceptional work or scientific/academic researchers engaged in exceptional work or
- specialists or executives with particular professional experience who earn a salary that is at least twice the income level up to which contributions to state health insurance are payable.

In addition, such specialists must guarantee that they will integrate into life in the Federal Republic of Germany and that they are able to earn their living without state support.

cc) Visa (§6 Residence Law)

The visa is a further independent document which confers rights upon the holder. It is issued by embassies and consulates as a Schengen-visa for the purpose of transit, as a Schengen visa for stays of up to three months or as a national visa for long-term stays abroad. These visas cannot be extended here in Germany except in special circumstances. A list of countries for which a visa is or is not required for the purpose of entering Germany can be found at: www.auswaertiges-amt.de/www/de/willkommen/einreisebestimmungen/liste_html

aaa) Visa for self-employed work

The issuing of a visa for a longer-term stay (national visa) is guided by the regulations which apply to permanent and fixed-term residence permits. In the case of an intended stay that is longer than three months the local immigration authority in Germany becomes involved. Insofar as there is an intention to engage in remunerative work, the local employment office in Germany also becomes involved. To ensure that the correct procedure is carried out it is important that the intended purpose of the stay is given when the visa is first applied for. After entry into Germany a residence permit for a different purpose can only be issued in exceptional circumstances. The application form for a long-term stay can be found at: www.auswaertiges-amt.de/www/de/infoservice/download/pdf/formulare/aufenthalt.pdf

Citizens of the following countries can also apply for a residence permit after entering Germany: Australia, Israel, Japan, Canada, the Republic of Korea, New Zealand, USA.

bbb) Short stays (for example for business purposes)/visitors' visas

Should you be staying short-term in Germany with a visa for stays of up to three months (within a period of six months counting from the first date of entry into Germany), it is not permitted for you to take up work on a self-employed basis. However, your visa can be used to hold talks or negotiations on federal German territory or to conclude business deals (for example, the signing of a contract).

You need to provide proof of the fact that the cost of your stay in Germany is covered. You are not allowed to claim any German public money for the purpose of your visit. If you are unable to finance your journey and your stay yourself, then a host who is resident in Germany can undertake to cover all the costs that arise from the guest's stay including costs for possible medical treatment. The German immigration authorities in the area of residence of the host are usually responsible for registering such an undertaking, in accordance with §§66 ff of the Residence Law (AufenthG).

b) Work on a self-employed basis

Every permissible self-employed activity engaged in for a certain length of time for the purpose of generating profit is to be classified as "self-employment" insofar as this activity doesn't constitute an employment relationship.

aa) Basic principle

Typical self-employed activities are, for example:

- wholesale and retail
- import/export
- restaurant owner
- commercial agent etc
- producers

In addition, freelance activities, for example artists (painters, musicians, writers), journalists, engineers, architects, and businesses in the primary sector of the economy e.g. agriculture and forestry should be seen as "self-employment".

Self-employed persons are also:

- in a limited partnership – every ordinary partner within the limited partnership
- in an unlimited partnership – each individual partner
- in a company constituted under civil law – each individual partner because partnerships cannot themselves be regarded as traders

bb) Paid employment that is comparable to self-employment

Persons, e.g. managing directors of private limited companies or directors of public limited companies, who are entitled to represent juristic persons do not work on a self-employed basis but are treated as such by dint of the duties they perform. Likewise, the authorized representatives of companies and also senior managers who have full power of attorney are treated as if they were self-employed by dint of the duties they perform. As part of the procedure for registering a private or public limited company with the commercial register the local magistrate's court will also check if a foreign national, who is ordinarily resident in Germany and who has been appointed as a company's lawful representative, is in possession of authorisation from the immigration authorities such as would be necessary for engaging in work on a self-employed basis.

cc) People employed in travelling occupations

In principle, permission to carry out employed work in travelling occupations must be obtained (travelling occupation card). Such work is treated in immigration law as self-employed work which, moreover, irrespective of the person's nationality or the length of their stay, is always to be seen as remunerative work.

dd) Financial stake in a company

In principle, a financial stake in a company is not to be regarded as remunerative work. This is just as true for the dormant partner as it is for the limited partner in a limited partnership. As a rule, this also applies to someone who holds a minority interest in a private limited company. If, on the basis of your shareholding in the company, you exert determining influence on the company's decision-making, then immigration law assumes that this activity is "comparable to self-employed remunerative work". In

this case, as a majority shareholder, even without being the managing director yourself, you have to be treated under immigration law as a self-employed person.

II. Registering a trade/business

When you open a business you must register it with the office for the registration and supervision of trades in the local authority in which the business is to have its registered address. Excepted from this is the work of freelancers. They don't register their business with the office for the registration and supervision of trades but only with the tax office. Such work does not come within the scope of the law in Germany concerning trade, commerce and industry regulations (GewO) and is, therefore, not liable for trade tax. Classified as freelancers are people who work:

- scientifically/academically
- in a consultative capacity
- technically
- artistically
- in an educative/teaching capacity or
- providing "high level services" (for example as a tax adviser, engineer, journalist, architect or in healing professions)

The precise decision as to whether, in a particular case, a person is a freelancer or not is made by the tax office. (§18 section 1 of the Income Tax Law/EStG). Freelancers simply apply directly to the tax office in their place of residence in Germany to be issued with a tax number.

The taking up of self-employed work must be registered – irrespective of whether this work constitutes the person's main job or second job. The taking over of a business that is already in existence must be registered, too.

In order to register as a sole trader the following documentation is required:

- ID card/passport
- a valid residence permit which permits the holder to engage in self-employed work
- confirmation of registration as a resident, insofar as you don't live in Cologne
- proof of being registered with the Chamber of Handicrafts (for trades which require a specific licence)

The office responsible for matters relating to trades and businesses in the city of Cologne is to be found at: Willy-Brandt-Platz 3 (Stadthaus Deutz) 50679 Cologne (Köln), Tel. +49 221 221-27751

In order to register a company that has to be entered into the Commercial register the following documentation is required:

- personal details of the directors
- a valid residence permit
- an excerpt from the Commercial register (the entry into the Commercial register must be carried out before registration with the office for the registration and supervision of trades)
- in the case of ordinary or limited partnerships or a registered businessman/-woman: Commercial register A, in the case of joint-stock companies e.g. private or public limited companies: Commercial register B. In addition, a copy of the memorandum and articles of association, certified by a notary, should be submitted.

The Commercial register is held at the magistrates' court in Cologne, Reichenspergerplatz 1, 50670 Cologne (Köln), Tel. +49 221 7711-0

In principle, freedom of trade exists in Germany. However, for some trades/businesses particular licensing criteria have to be met, as follows:

- trade with over-the-counter pharmaceutical products (test of specialist knowledge)
- production of weapons and pharmaceutical products (test of specialist knowledge)
- trade in weapons, munitions, explosives and poisons (test of specialist knowledge)
- trade in parakeets and vertebrates (test of specialist knowledge)
- the running of hostelrys which serve food and drink (attendance at official information seminar/in some cases a licence to trade)

- freight transport company (test of specialist knowledge)
- broker (permission according to §34c of the law concerning trade, commerce and industry regulations (GewO) and a police clearance certificate)
- work in the security industry (test of specialist knowledge)
- accounting assistant (qualifications in business/commerce and three years' professional experience)
- debt collection agency (permit in accordance with the law on providing legal advice)
- nursing/caring professions
- skilled trade/craft (see the explanatory leaflet entitled "Separation of handicraft/industry" – "Abgrenzung Handwerk/Industrie")

In the above cases proof must be provided of personal reliability, of specialist knowledge and, where necessary, that particular criteria are met in respect of rooms or premises.

The office for the registration and supervision of trades distributes, amongst other things, copies of documents for registering a trade/business to the following institutions and authorities:

- **Chamber of Industry and Commerce**

By law, as someone running a business, you are compulsorily a member. Further information about the role of the Chamber of Industry and Commerce and the services it provides can be found in the brochure "The Chamber of Industry and Commerce from A to Z" (available from the Service Centre of the Chamber of Industry and Commerce in Cologne, Tel: +49 221 1640-130).

- **Chamber of Handicrafts**

By law, as someone plying a skilled trade/craft, you are compulsorily a member. To be registered on the handicrafts roll is a necessary pre-condition for being allowed to run your own business as a skilled craftsman. For many skilled crafts you require a master craftsman's diploma before you can be entered into the handicrafts roll.

- **Tax Office**

After the tax office has received copies of your registration from the office for the registration and supervision of trades, it issues you with a tax number and sends you a form to fill in. On this form you have to provide, amongst other things, details concerning the turnover and profit you expect to achieve. After you have returned the completed form, you receive from the tax office notification of the advance payments you must make for income tax, sales tax and, where necessary, for trade tax, too. If you aren't yet able to predict the level of your turnover and profit accurately, you should provide turnover and profit forecasts that are on the low side so as not to have to make high advance tax payments unnecessarily. (For further information see the information sheet "Steuern für Existenzgründer/-innen" ("Taxes for people starting up a business"))

- **Trade Co-operative**

As a rule, the appropriate trade co-operative will get in touch with you. You are insured against accidents which occur at work. Further information can be obtained from the Hauptverband der gewerblichen Berufsgenossenschaften (Association of Trade Co-operatives), 54754 St Augustin, Tel. +49 2241 23101.

III. Setting up a dependent or independent branch

1. Types of business activity

Many businesses want to expand and so they establish a new location. This throws up the question of how the new business establishment can be organised by law within the overall structure of the business. There are three possibilities available:

- The founding of a subsidiary
- The setting up of an independent branch office
- The setting up of a dependent branch office

a) Subsidiary

When a subsidiary is founded, a business that is legally independent of the parent company is created. As with the founding of any business, the legal provisions that apply to a particular type of business organisation are binding. Even in the case of a foreign national who is founding a business, it

is solely German regulations that apply to the founding of the company, registering it as a business and entering it into the Commercial register.

b) Independent Branch Office

A branch office is not itself a juristic person which is separate from the headquarters of the company. It is legally and in terms of how it is organised part of that company and, in so being, is subject to the laws that apply to the headquarters of the company. If the branch office is set up by foreign company, it is subject to the foreign laws that apply to the headquarters of that company.

According to the commercial code (HGB) a branch office is a branch which is physically separate from the company's main place of business, created as an additional focus of the company and which is intended to exist long-term. The typical features of a branch office are:

- The branch office must be organised in such a way that it is able to engage in business activity independently. Therefore, its continued existence must be possible should the headquarters cease to exist.
- It conducts business that is typical of the whole company.
- The branch office must demonstrate a certain independence by having its own management with its own authority to act, by having separate accounting systems, its own balance sheet and its own working capital allocated to it by headquarters.

Since the branch office is not an independent company but a constituent part of an overall company, the name of the branch office is usually the same as that of the company headquarters. Additions e.g. Branch Office Germany or Cologne or things like this are possible.

The manager of the branch office represents it independently to the outside world. The debtor in respect of liabilities is, however, always the natural or juristic person that is the company headquarters.

c) Dependent Branch Office

A company can have several branches. Such a branch is dependent on the company headquarters in every respect. Invoices, too, are issued in the name of the headquarters. Since this is a case of a single business operation which is simply carried out at various points that are physically separate, such branches may not conduct business of their own which differs from that of the headquarters. All dependent branches must be registered with the office for the registration and supervision of trades.

The term "representative office", which is often used in this context, does not exist in German commercial law. Very often offices are described as "representative" which serve merely to observe the market and pave the way for initial customer contacts. In this case, too, this is a matter of a business activity which has to be registered.

Only if an office is opened which is managed by a self-employed external business person (e.g. a commercial agent) who has been authorised by the company, can it be said that there is no independent business activity on the part of the foreign company; in this case registration with the appropriate office for the registration and supervision of trades is not required.

2. Formalities

a) Registration of a trade/business

All business activities of a subsidiary, an independent branch or a dependent branch must, in accordance with the commercial and industrial code, be registered with the office for the registration and supervision of trades.

b) Entry into the Commercial register

aa) Subsidiaries

Independent subsidiaries must be registered with the Commercial register at the relevant local magistrates' court. The registration must be certified by a notary.

bb) Independent branch

In the case of an independent branch, registration with the office for the registration and supervision of trades and also entry into the Commercial register is required. Thereby the branch acquires its own

registered location, its own company registration number and its own place of jurisdiction. Registration with the Commercial register must be certified by a notary.

Whether the independent branch of a foreign company is entered into the Commercial register A or B will depend on the type of business organisation to which the foreign company is most similar.

cc) Dependent branches

Dependent branches are not entered into the Commercial register. Registration with the office for the registration and supervision of trades is sufficient.

dd) Required authorisation

It is necessary for various trades/businesses to acquire authorisation from the appropriate authority before they begin trading.

In particular, the establishment of any business relating to a skilled trade requires authorisation. The business must be entered into the handicrafts roll of the Chamber of Handicrafts that is responsible for that particular region. Normally it is required that the business is run by someone with a qualification as a master craftsman. Only to a limited extent are exceptions to this requirement permitted.

Apart from this there is freedom of trade. In particular, most commercial enterprises (wholesale and retail) are not regulated. Of course, the running of a business is subject, in each particular case, to a range of special rules and regulations.

c) Required information and documentation

aa) Registration with the office for the registration and supervision of trades

When registering a trade/business with the office for the registration and supervision of trades the following documents must be produced:

Identification documents for the person filing the application

As in Chapter II, section 5 above. Further:

- where necessary written evidence of being authorised to act for a third party (natural or juristic persons); in the case of a managing director, a board member or an authorised signatory of a company: an excerpt from the Commercial register giving proof of that company being registered.
- Where necessary, permits (for example, skilled craftsman's card, broker's permit etc.)

Proof of the identity of the company

- A company that is entered into the Commercial register must demonstrate the existence of this entry with an excerpt from the Commercial register.
- A company that is entered into a foreign Commercial register must likewise produce the relevant documents that provide proof of this entry. Furthermore, a translation into German must be produced; normally, authentication of this translation is not required.
- In the case of a foreign company there must be someone in Germany authorised to act for the company; a German address is also required. This authorised person must produce evidence of his being authorised to act for the company (see above).
- In case of doubt, if, for example, the address of the person making the registration is not the same as that of the company, the existence of these business premises must be proved by a rental agreement or confirmation of such by a landlord.
- If there is a good reason for this, a police clearance certificate can be demanded or information from the central trade register.

bb) Entry into the Commercial register

Registering an independent branch of a German sole proprietorship or partnership

Registration is made at the court responsible for the headquarters or the principal location of the company; the required signatures must be supplied to the court of registration responsible for the branch. The same information which was necessary for registering the headquarters of the company should be provided in respect of the branch.

Registering an independent branch of a German joint-stock company

The branch of a joint-stock company is registered at the court responsible for the headquarters so that entry into the Commercial register can be made by the directors/the board. The same information which was necessary for registering the headquarters of the company should be provided in respect of the branch. The required signatures must be supplied to the court responsible for the branch. In addition, the following documents must be attached:

- the memorandum and articles of association
- in the case of a limited company, a list of the members

Registering in Germany an independent branch of a company whose principal seat is abroad Registration is carried out by the branch manager at the court in whose area of jurisdiction the branch is to be established. The following information is required in respect of the:

Company headquarters:

- the register in which the company is listed insofar as such an entry is required by the law of the country to which the company is subject.
- the type of business organisation of the company e.g. GmbH
- If the company is not subject to the law of a member state of the European Union (EU) or of a state which is signatory to the agreement concerning the European Economic Area (EEA), the law of the country to which the company is subject.
- the name of the company and its location
- the objects of the company
- the day on which the memorandum and articles of association were signed
- the names of the directors or the board members as well as the scope of their authority
- the amount of original share capital
- whether the life of the company is limited in time

Branch:

- the address and objects of the branch
- the amount of working capital
- the day on which the decision was taken to establish the branch
- The names of the directors or the board members who are allowed to represent the company in the branch both in court and out of court as well as the extent of their representative authority.
- whether the life of the branch is limited in time

Attached documents

- where necessary, proof of being authorised to act for a third party (natural or juristic persons); in the case of a managing director, a board member or an authorised signatory of a company: an excerpt from the Commercial register giving proof of that company being registered.
- proof of the existence of the company headquarters
- Insofar as German law requires authorisation for the company or for its objects, proof that this authorisation has been given must be attached.
- a publicly certified copy of the memorandum and articles of association and, where the original articles were not written in German, a certified translation of the same
- the certified signatures of the directors or board members

IV. Legal forms of companies in Germany

If you wish to form a company, you should first of all choose the appropriate type of business organisation. Basically, the law differentiates between sole proprietorship, partnerships and joint-stock companies. In the case of a sole proprietorship or a partnership the sole trader or partners are usually required by law to have full liability. This is not so in the case of joint-stock companies. Here liability is limited to the size of the capital contribution. The question of which type of business organisation is the most favourable for you depends on your company goals and must be decided by each person for himself.

As long as you run your young business on a scale which in respect of its annual turnover and business dealings does not require you to register it as a company, you are regarded as a small trader. As a small trader you don't have to prepare an annual balance sheet; you simply need to

present a calculation of surplus revenue to the tax office. This list contains your income (net price) minus costs. Since you don't have to get yourself entered into the Commercial register, the registration formalities can be dealt with simply and at low cost (20.45 euros). Responsible for this registration is the local government authority in the district or borough in which you run your business. Then you appear on the market simply with your first and surname. Your letter head can also state the purpose of your business.

You can also have yourself entered by a notary into the Commercial register at the magistrates' court, if, for example, you would like to use a business name (as opposed to just the proprietor's name) on your letter head. You are then a registered businessman/businesswoman because only as such are you allowed to use a business name. However, you are required, for example, to do double-entry bookkeeping and to draw up a balance sheet.

Here are a few examples of company names, if you are registered as a businessman/businesswoman in the Commercial register:

- Schulze, eingetragener Kaufmann/-frau (registered businessman/businesswoman)
- Frank Schulze e.K. (registered businessman)
- ABC Cloth Trade e.K. or e.Kfr. (registered businesswoman)

Furthermore, any company letter must contain the following information: the complete address, the competent registration court and the corresponding company registration number.

If you intend to enter the market on a much larger scale by taking out loans, achieving higher levels of turnover (for example, more than approx. 175,000 euros per annum, or in the case of commercial agents annual income from commission of more than approx. 76,000 euros) and cultivating business relationships with a range of suppliers and clients, then you must get yourself entered into the Commercial register.

As a sole proprietor, you alone decide what is done. However, you also bear all the risk alone and are liable with all your personal assets.

If you yourself don't have enough capital to get your business off the ground, you can involve a partner. Insofar as a partner is not visible in any of the company's external business dealings, you remain in commercial law a sole proprietorship (with a dormant partner). This partner can share profit and loss with you, but otherwise does not get involved in the conduct of your business.

1. Partnerships

If you run your business with at least one partner, you form a company constituted under civil law (Gesellschaft des bürgerlichen Rechts – GbR). On your business documents you must give your own first name and surname and those of your partner. Terms like Winfried Schulze and Partner or Winfried Schulze & Co. are not allowed. If the partners in a company constituted under civil law register with the Commercial register then the company turns into an unlimited partnership (OHG) or a limited partnership (KG).

Also important: the complete address, the competent registration court and the company registration number. In the case of a limited partnership (GmbH & Co. KG) the names of the companies involved in the partnership must be provided.

In an unlimited partnership (Offene Handelsgesellschaft - OHG) there are usually a number of partners involved alongside yourself. These partners not only put up capital but, like you, are liable with all their personal assets. For the capital contributions a fixed rate of interest is agreed. Each partner receives a share of the remaining profits just as s/he is liable for any losses. The unlimited partnership must likewise be entered into the Commercial register by a notary. On the business letters of an unlimited partnership the type of business must be shown:

- Frank Schulze OHG or
- ABC Cloth Trading OHG or
- Retros OHG

The limited partnership (Kommanditgesellschaft – KG) is a special type of unlimited partnership. Here, too, a number of providers of capital are members, but with different levels of risk. One group – the

personally liable partners (also called unlimited partners) – is fully liable in the same way as partners in an unlimited partnership (OHG); however, another group - the limited partners - are only liable to the extent of their capital contribution. The limited partners share in the profit and loss of the partnership in proportion to their capital contributions. The name of the limited partner(s) is allowed to appear in the name of the company. For example:

- Müller & Co. KG or
- Retros KG
- ABC Cloth Trading KG

Here, too, you must provide the complete address, the competent registration court and the company registration number on your letter head.

The personally liable partner in a limited partnership (KG) can also be a company with limited liability (GmbH) – see below. In this case liability is restricted to the share capital of the limited company and the capital deposits of the limited partners. Possible company names are, for example:

- Müller beschränkt haftende KG (limited partnership with limited liability) or
- ABC Cloth Trading beschränkt haftende KG (limited partnership with limited liability)

In addition to the usual information (the complete address, the relevant registration court and the company registration number) the name of the liable limited company must also be given on the letter head.

2. Joint-stock companies

Of the different joint-stock companies the company with limited liability (Gesellschaft mit beschränkter Haftung - GmbH) is particularly relevant to people starting their own business. What is different from partnerships is that the members are not personally liable but only to the extent of their capital contribution. The limited company (GmbH) is liable to creditors with its company assets. The ordinary share capital must amount to at least 25,000 euros and, when the company is formed, at least 12,500 euros must be paid-up. Instead of cash, tangible assets of equivalent value can be contributed. In the memorandum and articles of association, which must be signed in the presence of a notary, a duty to make additional payments can be agreed to make good possible losses. The management of the limited liability company can be entrusted to a member or a managing director employed by the company.

Possible company names are, for example:

- Müller GmbH
- Müller & Meyer GmbH (as long as they are both members of the company)
- Retros GmbH
- Müller Cloth Trading GmbH

3. Advice from the Chamber of Industry and Commerce

The types of business most often chosen by people starting their own business are the sole proprietorship and the company with limited liability. In many cases people starting their own business opt for the limited liability company because they wish to restrict their liability and so they put up with the high formation costs (400-700 euros) as well as the high accountancy costs for drawing up the annual balance sheet. At the same time it shouldn't be forgotten that the usual forms of security still have to be provided against bank loans and that liability is limited to the capital contribution only in respect of liabilities to suppliers. In cases of product liability the personal risk of the managing director is often unlimited because s/he must prove that s/he fulfilled his/her duty of care sufficiently.

However, the limited liability company can have tax advantages:

In the case of a high profit, the amount of trade tax to be paid can be reduced because the managing director can count his/her salary against profits. Alternatively, the managing director can make his/her salary subject to social insurance contributions. This means that the profits of the limited company must then be high enough for a higher amount of trade tax to be saved than is payable in social insurance contributions. Speak about these matters with your tax adviser.

Whether you form a sole proprietorship or a limited liability company depends, therefore, on your business aims. Inform yourself thoroughly about the advantages and disadvantages of both these types of business. The Chamber of Industry and Commerce will be happy to advise you.

4. Entry into the Commercial register

As a self-employed business person you must register your trade/business with the relevant district or borough council. If you are not a small trader, you are required to enter your company into the Commercial register. The Commercial register is kept at the competent registration court (magistrates' court). The registration must be certified by a notary. The company name that you register may not be such as to be potentially misleading and must include the type of business (e.g. GmbH, OHG etc.)

The Chamber of Industry and Commerce will help you with these registration procedures. You are welcome to seek advice there before you enter your company into the Commercial register. You will be told what exactly you are allowed to write on your company sign, business documents etc and what not. Since the regulations are very strict, you are protecting yourself from harm if you seek information at the appropriate time. This won't cost you anything; at most a little time and effort.

Attention

As your company registration is published, the formation of your company becomes known to dubious operators of mailing lists. Often advertising material is sent to new businesses which is made to look like a bill (for example, a bank transfer order is enclosed). These letters are made to look as if they have come from an official institution like the tax office or the Chamber of Commerce and Industry. Do not get tricked by this. Read such letters very carefully – including the small print!

Recommendation

If you realise that such a letter is simply an offer which you don't wish to accept, don't pay any money. Get in touch with the bank in question and tell them about the dubious practices of their customer. The bank can then choose to freeze the account and to reimburse the sums of money paid into it.

V. Tax

1. Turnover tax

The turnover tax is a consumer tax i.e. the business person charges the customer sales tax on goods and services which are liable for this tax and pays it to the tax authorities. In addition, goods and services for one's own consumption are taxed. Sales tax is currently 16% of the net amount on the bill. A reduced sales tax of currently 7% applies to certain goods and services.

With turnover tax it is intended that only the "added value" of a particular good or service is taxed. Tax law draws a distinction between turnover tax as an input tax, which has to be listed separately on bills/invoices, and turnover tax which is contained within turnover (Value Added Tax). The sales tax payable to the tax authorities is calculated as the difference between value added tax and input tax. Example:

$$\begin{array}{r} \text{VAT (contained in one's own invoices)} \\ - \text{input tax (listed separately as sales tax on the supplier's invoice)} \\ \hline = \text{turnover tax due} \end{array}$$

The turnover tax due arises at the point in time when performance is made, i.e. it has to be paid to the tax authorities even if the customer pays later. For the business person this can mean liquidity problems. If your annual turnover is no higher than 125,000 euros or if you are exempt from bookkeeping duty, you can apply to the tax office for turnover tax to be deemed to arise only when payment has been made. You can make your advance turnover tax declaration either monthly, quarterly or annually by, in each case, the 10th of the subsequent month. Agree this with the tax office responsible for your tax affairs. You will also be given the necessary forms there.

Attention

With effect from 1st January 2002 there are new regulations for newly founded businesses concerning the procedure for declaring turnover tax. In the case of these businesses the tax office is no longer able to free upon application business people from the obligation to make advance turnover tax

declarations nor to allow them to make such declarations on a quarterly basis. Business people are required to make their advance turnover tax declaration on a monthly basis in the current and subsequent financial year. (§18 section 2 sentence 4 Sales Tax Law/USStG) After these two years the following regulations apply: you are required to make a quarterly advance turnover tax declaration if your annual sales tax comes to more than 512 euros and to make a monthly advance turnover tax declaration if your annual sales tax comes to more than 6,136 euros.

2. Income tax (wages and salaries)

As a rule, income tax for wages and salaries, just like sales tax, does not burden the company. One speaks of a so called item in transit. As the owner of the business you don't need to withhold wages and salaries tax in respect of yourself. However, as soon as you employ people, you have to pay wages and salaries tax to the tax authorities. So that you can deal with this deduction of tax properly, your staff – insofar as they don't work for you on a freelance basis – must produce a **tax card** (Lohnsteuerkarte). Based on the information entered on the tax card – this information, e.g. tax group, number of children, helps to determine the amount of tax due – the wages and salaries tax must be withheld. At the end of the year the tax card is returned to the employees. As an employer you are also required to run a salary account for each employee; this account must also contain the documentation necessary for the calculation of wages and salaries tax.

The wages and salaries tax that is withheld is usually reported and paid every month to the tax office using a (wages and salaries) tax return (Lohnsteueranmeldung). Small businesses can do this tax return on a quarterly or annual basis, too. You have to submit the relevant documentation to the tax office either monthly, quarterly or annually by, in each case, the 10th of the subsequent month, but at the very latest by the 15th of that month.

3. Flat-rate taxation

It is possible to make a flat-rate taxation payment in the case of low-wage or short-term employment. Further information about this can be obtained under the following telephone number: +49 221 1640-302

4. Income tax

Only natural persons, not joint-stock companies e.g. a limited liability company, are liable for income tax. As the owner of a commercial enterprise or as a partner in a partnership you are accordingly liable to pay income tax on the income realised by the commercial activity of the business. The person liable for tax is, therefore, not the business but the owner or the partner within a partnership. Small businesses can show their profit by means of a relatively straightforward surplus income calculation. Usually you can draw up this list of company income and expenditure yourself without difficulty. It gets more complicated when your company is entered in the Commercial register. Then, apart from opening balances and tax balance sheets, you are required to produce a detailed profit and loss account. For this you should seek the help of a professional accountant or tax adviser.

Tip

All of the costs involved in preparing the setting up of your company, e.g. seminar costs, brochures, travel expenses, can be set off against tax. So keep all your receipts!

5. Corporation tax

Corporation tax is the income tax of juristic persons e.g. a limited liability company. The basis for assessment is the taxable income, which is determined on the basis of a balance sheet comparison. Company profits are taxed at a uniform corporation tax rate of 25% plus the solidarity surcharge irrespective of whether the profits stay within the company or are paid out. At the level of the shareholder only half of the dividend that is paid out is included in the basis for assessment of income tax. The other half is left free of income tax (half earnings tax procedure).

6. Trade tax

All commercial enterprises are subject to trade tax. This tax is a tax on trade earnings, which means that the company's profit is taxed. The concept of profit is, however, not the same in the trade tax law as it is in corporation tax law. Consequently, for the assessment of trading profit in the case of sole proprietorships and partnerships all payments to the partners (salary, interest on partners' loans etc.) are counted as part of the profit.

7. Double taxation agreement (DBA)

How your business profits in Germany are dealt with in taxation terms depends on whether you establish permanent business premises or not. It is necessary here to comply with the double taxation agreements that exist.

Germany has made bilateral agreements (DBA) with most countries abroad; these agreements are intended to ensure that an item liable for tax is not simultaneously taxed to the full extent in both countries. It is established in nearly all DBAs that a foreign branch with its own turnover and profit must be taxed in the country in which the branch is located. It is necessary for the business to be registered with the office for the registration and supervision of trades. Then the German turnover and profit are taxed as normal in Germany. The taxes paid in Germany are in many cases deductible in the foreign country. If, however, the business in Germany is a representative office involved in promoting the company or creating contacts and the business deals proper are made in the foreign country where the company is based, then there is no obligation to pay tax in Germany.

Moreover, if you receive salary payments, dividends and certain other capital gains, you can in accordance with the DBA be relieved in whole or in part from tax deductions. This is often achieved by using a tax refund procedure. Further information can be obtained under the following telephone number: +49 221 1640-303.