Country Profile: Germany

The Facts

Location	Western and Central Europe
Languages	German
Nationality	German
Religions	Protestant – 34% Roman Catholic – 34% Muslim – 3.7% Others – 28.3%
Government	Federal Republic
Head of Government	Chancellor
Legislature	The Federal Council (Bundesrat) and the Federal Diet (Bundestag)
Constitutional Document	The Basic Law
Economy	Germany owns the largest economy in Europe. Germany has a highly skilled labor force. It is a leading exporter of machinery, vehicles, chemicals and household equipment. Thirty-seven of the world’s 500 largest stock market listed companies are headquartered in Germany.
Currency	Euro (EUR)
GDP (2011)	Total – EUR 2,568.20 billion Per capita – EUR 31,534 Real GDP growth – +3.1%
Population	81,305,856 (approx.)
Percentage of population	German – 91.5% Turkish – 2.4% Others – 6.1%
Area	357,022 km^2
Time zone	CET (UTC +1) CEST (UTC +2)
Public Holidays	National holidays – 10 Regional holidays – 6
Climate	Temperate and marine

Sources: Central Intelligence Agency, International Monetary Fund

Germany

The world's third largest economy and a founder member state of the European Union, Germany is a leading producer and exporter of automobiles, precision engineering products, electronic and communication equipment, chemicals and pharmaceuticals. One of the largest countries in Europe, Germany's location in the center of the continent, its access to the North and Baltic Seas and its world class infrastructure make it an attractive investment destination.

Although the company's growth was hit by the 2000-09 global financial crisis and the current financial crisis in the Euro zone, its overall economy has been faring well. A recent report by the Urban Land Institute and PriceWaterhouseCoopers included four German cities in their list of top ten European investment locations. The report cited Hamburg, Munich, Berlin and Frankfurt as attractive options, while mentioning that although the prospects of many European cities have been severely hit by the international credit crisis, these four cities have not only survived but even been bolstered by it.

The Germany Business Climate

Being a part of the Euro zone, Germany needs to ensure that inflation levels are low and government deficits and debt do not rise beyond a specific level. The country was severely affected by the 2008-09 recession with its GDP declining by 5.1% in 2009. Although subsequent measures by the country's central bank and improved manufacturing scenario led to 3.6% GDP growth in 2010 and 2.7% in 2011, the current financial crisis in the Euro zone is likely to restrict the 2012 GDP growth to 0.6%. The country that relied heavily on nuclear power for its energy needs and electricity production has decided to shut down all its 17 nuclear reactors by 2022, following the March 2011 Fukushma nuclear disaster. This change in Germany's energy policy has opened up several investment opportunities in the area of renewable energy.

The country's massive stabilization efforts and its return to a growth path have opened up newer opportunities for investors. A recent report by Ernst & Young mentioned that foreign direct investment projects increased by 7% in 2011, despite the ongoing Euro crisis. The survey of 840 international companies revealed that Germany's standing as an innovative business location and its superb R&D capabilities work in its favor. However, the country's complex labor and corporate laws continued to be an area of concern. Germany's business prospects continue to be driven by its outstanding infrastructure, qualified workforce and stability in industries, such as automotive, renewable energy and IT, strengthening the country's attractiveness.

Attractive and Salient Features of the German Economy

Some salient and attractive features of the German economy are:

- Germany is the most populous country and the second largest economy in the European Union. It central location makes it a hub for goods and services.
- Germany welcomes foreign investment in almost all areas and has almost no state controlled industries. However, special licenses may be required for certain types of businesses.
- The euro is the official currency of Germany and is freely convertible into other currencies. The import and export of capital is free in Germany but subjected to reporting requirements. There are no exchange controls on ordinary commercial transactions and companies can borrow and lend abroad.
- The country has an extensive banking system, comprising of over 2,000 banks with more than 40,000 branches. While most of the banks are universal banks and offer the whole range of banking services, some of them specialize in particular services, such as home loans.
- Germany has taken up taxation and other reforms in recent years, which have reversed the decline in the country's foreign direct investment levels.
- The country imposes no substantial restrictions on foreign investment. Germany treats foreign investors in the same way as domestic investors for obtaining licenses, seeking building permits and applying for investment incentives.
- People from outside the EU and outside the EEA require a work permit in addition to the residence permit in case they want to take up gainful employment in the country.
- Every business, before commencing activities, needs to notify the local authorities, administration and tax.
- Businesses that are polluting or harmful in any way to the environment need special authorization from the authorities.
- German corporate law has been overhauled in recent years to reduce delays and complications in takeovers and provide a better investment scenario.
- The typical form of foreign partnership in the German industry is the wholly owned or substantially owned subsidiary. Joint ventures or minority investments are rare and occur only in special circumstances.
- Germany also respects the legal capacity of companies formed in accordance with the laws of another EU state, even if the foreign company has moved its place of management to Germany. As per the German American Treaty of Friendship, Commerce and Navigation, US companies are also recognized in Germany.
- The country has a flourishing money market and stock market.
- There is no separate capital gains tax in Germany. All capital gains are included in taxable income unless otherwise exempted.

Investment Options in Germany

Foreign investments are welcome in Germany and foreign businesses can even takeover local firms, although under the prevalent laws, they have to register their proposed bids well in advance in accordance with the set criteria. Under the Foreign Trade Law, the German government can impose certain restrictions on the acquisition by an EU or a non-EU party of a domestic entity, if it is necessary for maintaining law and order in the country.

Germany offers several investment options to foreign investors, who can make direct investments or invest through a permanent establishment or representative. There is no specific investment legislation in Germany, nor is there a minimum percentage of German shareholding required for foreign investors. These investors can start a business in Germany as a sole proprietor, enter into a partnership or set up a subsidiary, a branch office or a representative office.

Direct Investments are the easiest way to do business in Germany. This option is ideal for businesses who wish to sell their products in Germany and create a new product. In this option, the foreign business supplies goods and services to a domestic player, without being liable for taxation in Germany. Investing through the direct investment route is one of the easiest options and involves the least administrative procedures.

In case a business requires a stronger presence and needs to establish a fixed place of business, the process of doing so is not complicated and requires the investor to just inform the municipality where the establishment is being opened. Any German source income derived from a permanent establishment qualifies as commercial income and subject to non-resident tax liability. Since the permanent establishment has no legal entity in Germany, the economic risk is assumed solely by the foreign head office.

Foreign investors who wish to operate in Germany on a long term basis should opt for setting up a company. This allows them to limit their liability or risk to the registered share capital of the established entity. Companies with registered offices in Germany have a separate legal entity and thus are subject to resident tax liability, corporate income tax and trade tax. All companies formed in Germany can be AGs or public limited companies, as defined under the Joint Stock Corporation Act or GmbHs (private limited companies) under the Limited Liability Company Act. While the shares of an AG company can be publicly traded on a stock exchange, the shares of a GmbH may not be. So, foreign investors wishing to set up business in Germany may opt for the AG form of company if they wish to opt for any kind of public offer. In case the investor wishes to keep the German unit under the parent arm fully, it should opt for the GmbH structure. While the minimum capital requirement for establishing an AG firm is €50,000, the capital requirement is €25,000 for GmbH firms. Now all public listed companies or public interest entities need to follow the German code of corporate governance.

The European Council's regulations on establishing a European Stock Corporation was also adopted by Germany via two statues, the SE Implementation Act and the SE Participation Act. Once incorporated, a Societas Europaea can change its place of management to another European member state, without giving up its legal structure. This form of company can move freely within the EU and the EEA (Norway, Iceland and Leichenstein) member states. An alternative for corporate reorganization on the European level, the SE is a publicly owned organization with a minimum capital of €120,000. An SE may be formed by the merger of stock corporations from at least two different states of the EU or by conversion. German law also allows for the formation of a German Private Company with limited liability or Societas Privata Europaea or SPE.

Investors can also choose to set up their business by establishing partnerships. In a partnership, one or more partners has unlimited or personal liability. Also, all partnerships are subject to trade tax, depending on their business activities. Partnerships can be general (HG) or limited (KG). German Company laws also allow for the formation of a business structure that is a mixture of partnerships and corporations (the GmbH & Co KG). In such a structure, the profits are allocated amongst the partners in the ratio of their investments but there is no requirement of unlimited personal liability for any of them. German law also allows an investor to become a silent partner in an existing company. The partners may be either individuals, German or Foreign Corporations. A foreign investor may prefer to enter into a partnership due to:

- Lesser publication requirements
- Ease of formation and dissolution
- Direct management and representation by the general partners.

Another form of partnership allowed in Germany is the Civil Law Association or GbR. Such a unit has no registered business name and does not constitute an entity separate from its partners. This form is generally used for non commercial purposes or for individual transactions and contracts for a limited period of time.

Apart from setting up or acquiring an existing company, foreign investors can also enter into joint ventures or strategic alliances with the German companies. Another investment form available to foreign corporations is a branch. Since a branch can never be a separate legal entity from its parent company, the latter will always bear unlimited liability for all the liabilities and obligations of the branch office. The branches of a foreign company are subject to non-resident tax liability in Germany as soon as they fulfill the requirements of being a permanent establishment. A branch attracts a corporate income tax of 15%, plus a solidarity surcharge of 5.5%. The branch is also subjected to a municipal trade tax. In case a foreign investor does not intend to have any staff based in Germany, it can set up a business relationship through independent sales agents and distributors. A representative office in Germany is not subject to all the requirements of opening a branch or a subsidiary.

Taxation

The taxation of commercial activities in Germany is dependent on the form of business organization chosen by them.

- While unincorporated companies are not taxable for income or corporate tax purposes, they are subject to trade tax levied by the local authorities. So, all types of partnerships are exempt and not eligible for income or corporate tax. However, the partners are liable to pay their individual taxes.
- The German sourced income of non residents in Germany is taxable. The income derived from direct transactions or investments by foreign investors, whether individuals or legal entities, is subject to only non-resident tax liability.
- Corporations, such as stock corporations, limited liability companies, etc., are subject to corporate income tax and solidarity surcharge.
- Corporations that have their legal seat or place of management in Germany are unlimited tax liable in Germany, with its worldwide income.
- In the case of corporations not having a legal seat or place of management in Germany, taxes are applicable on that portion of their income that is derived from German sources. This includes income from permanent establishments, permanent representatives, from sale of shares in a German Corporation, rental income and investment income.
- The profits generated by a foreign company's permanent establishment are subject to corporate income plus trade tax and solidarity surcharge.
- The transfer of assets of any permanent establishment or profit on sale of any such assets attracts taxation in Germany.

Accounting and Reporting Requirements

As per German law, all businesses operating in the country have to maintain adequate financial records. Their books should clearly show all commercial transactions and the financial position by following generally accepted accounting principles. Also, at the end of each financial year, both unincorporated and incorporated firms must prepare their annual financial statements.

Reference

KPMG Germany	www.kpmg.de/docs/investment_in_germany.pdf
International Monetary Fund	www.imf.org
Central Intelligence Agency	www.cia.gov
Germany Trade & Invest	www.gtai.de
PwC	www.pwc.de/de_DE/de/steuerberatung/assets/Fachbuch-Doing-Business.pdf
Australian Government – Department of Foreign Affairs and Trade	www.dfat.gov.au
Financier Worldwide	www.financierworldwide.com/article.php?id=1954
Deloitte	http://www.deloitte.com/assets/Dcom-Global/Local%20Assets/Documents/Tax/Taxation%20and%20Investment%20Guides/2011/dttl_tax_guide_2011_Germany.pdf
UHY	http://www.uhy.com/media/PDFs/doing_business_guides/Doing%20Business%20in%20Germany.pdf

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