



## 10 common mistakes and misconceptions when opening a business in Germany

As of 11/2021

### 1 Underestimating the German bureaucracy

Yes, it can be even worse than expected. The German system is very bureaucratic and there is no real viable way around it: Paper forms have to be filled out and it does take some time to finalize the official processes. But no need to worry. We are happy to guide you through the entire process of setting up a business in Germany or helping you with any ongoing issues.

### 2 Assuming that the English language can be used when communicating with German authorities

While the level of English proficiency is rather high in Germany – it's typically the first foreign language in the school systems - the bureaucracy is still very much exclusively based on German. Forms and applications must be filled in German language and are rarely available in English. This is not only limited to public bureaucracy but also applies to the bank system, trade offices and social security providers. As learning German typically is not an option and if so, is all too often a lifetime project, there is no need to be concerned. We are happy to assist you and guide you through the formalities and helping you overcome the language and cultural barriers.

### 3 Underestimating the time needed to set up a corporate entity in Germany

While setting up a corporation in Germany – typically a GmbH – is a very formal and structured process, foreign investors and companies all too often underestimate the time needed to set up an entity in Germany. The preparatory steps (i.e. drafting the company statutes) and setting up a notary appointment is rather straightforward and can be realized on short notice. Having the necessary documents, in particular the necessary power of attorney for setting up the entity, opening of the bank account, the registration of the entity in the company registry and the application for the tax number can however take several weeks. While many foreign investors underestimate this process, we are here to help guide you through it. We help to streamline the entire process, setting up a realistic time frame and avoiding any time-consuming deviations. Let us help guide you into Germany.

### 4 Before your newly established entity can operate, make sure you have a valid tax number – and don't forget the VAT ID Number

Once the notary confirms the registration of the newly established corporation in the German company registry, a major milestone in setting up your business presence in Germany is concluded.

However, to be able to actively engage in trade and business, the entity needs to have a valid tax number and should also consider applying for a VAT ID number.

Unfortunately, the application for a tax number and VAT ID number is not part of the notarization process. After the notarization, the fiscal authorities will send a letter requesting the filing of a tax questionnaire (naturally in German language) to apply for a tax number.

This questionnaire is rather extensive and requires accurate information, also in respect to the VAT characteristics of the business. Many investors feel overburdened and are surprised to hear that the tax number and VAT ID number may take another few weeks until they are received.

We are happy to help you with the tax registration and to liaise with the fiscal authorities to receive the tax number much faster. Let us help save your time.

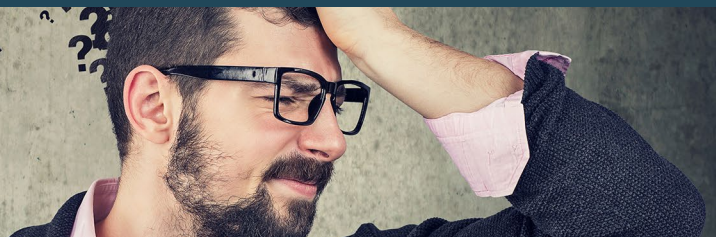
### 5 Don't underestimate the issues that may arise when setting up a German bank account

When setting up a corporation in Germany the opening of a German bank account is typically a vital part of the process. Many foreign based investors and businesses underestimate the obstacles that may arise from this. Identifying an appropriate bank early in the process of setting up a business is crucial. The bank should be contacted to verify what documents are required, as this can vary between banks and the preparations of the required documents might take some time.

For US businesses setting up a bank account for their German entity can be particularly challenging.

We have helped numerous foreign clients from all around the world setting up their business and bank accounts in Germany. We are happy to help.





**6 Underestimating the formal requirements when employing staff to the newly established business**

In addition to the very competitive German labour market, the formal process of employing staff in Germany is rather complex. To be able to employ staff, an active tax number for payroll must be available. In addition, the social security providers require an employer identification number (EIN, "Betriebsnummer"). Before hiring your first employee in Germany you therefore must apply for an EIN, which allows you to pay the required social insurance contributions. This number must also be used in all communications with health insurance companies and the DRV (German statutory pension insurance scheme). The application for the EIN must be made with the Federal Employment Agency ("Bundesagentur für Arbeit").

In addition, a formal employment contract is required. The contract should reflect the very strict German labour law. In addition, the German minimum wage must be considered in the employment contract. Please note that any violation of the federal minimum wage is subject to significant fines.

The German tax code offers certain optimization provisions, that offer the possibility of net wage optimization.

The required monthly payroll filings must be filed in due time.

Based on the above it is highly recommended to utilize a payroll service. We are happy to help you with these payroll services. Our payroll team will be happy to take care of all ongoing compliance issue and help to guide you through issues that may arise when employing staff or dealing with a wage tax or social security audit.

**7 The German Trade Tax varies between municipalities**

While Germany has a strong federal tax system, with a common income tax and corporate tax system, the trade tax varies between municipalities.

All entrepreneurs with commercial activities carried out through a subsidiary or a nonresident's commercial permanent establishment in Germany are subject to trade tax.

Corporations are by default deemed to carry out commercial activities (trade or business), regardless of their actual activities.

It is important to note, that the municipal trade tax rate varies between municipalities, but averages between 14% and 17% of the taxable income. The trade tax is based on taxable income as calculated for corporate income tax purposes, with several income adjustments.

We are happy to assist you in identifying the most appropriate municipality for your entity.

**8 German companies and businesses are required to file annual tax returns with the fiscal authorities**

German corporation and businesses are required to file annual tax returns with the local German fiscal authorities. In case a German tax advisor is engaged with filing the return, the deadline for the annual filings are 14 months after the financial year end (e.g., tax filing for the financial year ended 31 December 2021 is due 28 February 2023).

The financial statement is to be filed with the German Federal Gazette ("Bundesanzeiger") within nine months after the financial year end.

We are happy assist you with all compliance related issues for your business in Germany. We provide services in respect to accounting, payroll, tax compliance as well as preparation of the annual financial statements. We are here to help.

**9 Transparency obligations in Germany**

Every corporation in Germany must be registered in the public company registry. The annual financial statements are also subject to certain publication requirements. Since the introduction of the German Transparency Register in 2017, most German companies became subject to transparency obligations with respect to their beneficial owners.

However, the Transparency Register was not set up as a "full register", but only a "backup register". Due to new legislation, the German Transparency Register will be amended to become a full register. As a result, all German companies would be obliged to report their beneficial owners to the Transparency Register.

Furthermore, foreign companies, which currently must report their beneficial owners only if they acquire German real estate, will also become subject to reporting obligations to the German Transparency Register, if they intend to acquire shares in a company that holds real estate located in Germany.

The transparency obligations in Germany are – like other EU member states – rather extensive and any shortcomings are subject to fines. We are here to help you meet these requirements and avoid any fines. Let us help you meet the requirements.

**10 German corporations, businesses or permanent establishments need to file monthly or quarterly VAT filings**

Germany, like all EU-member countries, levies a Value Added Tax (VAT) on transactions. As a sales tax, the VAT is levied at all levels of taxable supplies of goods and services made by a taxable person in the course of any business activity carried on in Germany and on the importation of goods from other jurisdictions.

In Germany VAT must be reported to the local tax authorities on a monthly or quarterly basis (VAT advance notifications, "Umsatzsteuer Voranmeldungen") and additionally on an annual basis (VAT annual return, "Umsatzsteuerjahreserklärung"). Where input tax paid can be offset against output tax received, only the balance has to be paid. If input tax exceeds output tax, a refund may be obtained. Special rules apply if a taxable person makes both taxable and non-taxable supplies, which have the effect of restricting the input tax relief to the taxable element of supplies received.

VAT in particular can be a major tax liability issue as the Germany fiscal authorities are very strict in respect to VAT. We are happy to assist you with your ongoing VAT filing requirements and resolving any questions or issues that may come up in this respect.



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**We are here to help.**

With over 20 years of experience in guiding foreign based entities and investors into the German market, we are efficient and pro-active in assisting you in setting up your German GmbH.

Get in touch with us.

