



# Taxation of international executives: Germany



March 2023

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**01**

# **Overview and Introduction**

# 1 Overview and Introduction

The German taxation scheme for individuals is composed of an income tax, a solidarity surcharge, and where applicable, church tax. Individuals residing in Germany are subject to tax on their worldwide income unless exempt under the provisions of a tax treaty. This is known as the concept of unlimited tax liability. The social insurance system provides for pension insurance, unemployment insurance, health and nursing insurance as well as accident insurance and covers all employees working in Germany. Exemption may be granted under the applicable European Union (EU) regulations or a totalization agreement.

The maximum tax rate in Germany is 45 percent plus a solidarity surcharge of 5.5 percent of the income tax. In addition, the individual may be liable to pay church tax at 8 or 9 percent of the income tax.

Non-residents are subject to tax on certain categories of income from German sources under the concept of limited tax liability.

The official currency of Germany is the Euro (EUR).

Herein, the host country refers to the country to which the employee is assigned. The home country refers to the country where the assignee lives when they are not on assignment.

**02**

# **Income tax**

# 2 Income Tax

## 2.1 Tax returns and compliance

### When are tax returns due? That is, what is the tax return due date?

Note: Due to the Covid-19 pandemic, filing extension are currently in effect (Status: March 16, 2023). The following deadlines apply to tax returns prepared by tax consultants:

- Tax year 2022, filing deadline 31 July 2024
- Tax year 2023, filing deadline 02 June 2025
- Tax year 2024, filing deadline 30 April 2026

### What is the tax year end?

31 December.

### What are the compliance requirements for tax returns in Germany?

#### Residents

In general, income tax is assessed by calendar year after filing an individual tax return. Married couples and persons living in a civil union may file either separate or joint returns. However, to file a joint return, both spouses need to be German residents and should – at least for a part of the year – have not lived separated. Some exceptions to this general rule exist for EU/EEA citizens.

Returns for the preceding calendar year must be filed with the local tax office by 31 July. An extension until 28 February of the subsequent year will be granted without application where a professional tax adviser prepares the return. A further extension may be available by special request. However, the tax authorities may request, on an individual basis, to file the return before these dates. NOTE: Due to the Covid-19 pandemic the above mentioned filing deadlines currently apply to tax returns prepared by tax consultants.

If the tax return is not filed on time, there will be late filing penalties. These amount to 0.25 percent of the assessed income tax reduced by tax prepayments and withholdings (additional tax payment) – but at least 25 € - per each started month of delay (unless the tax assessment results in a refund to the taxpayer).

If the employer is a German company or a foreign enterprise with a permanent establishment or a representative in Germany, the employer is legally obliged to withhold taxes from an employee's salary and to remit the taxes to the tax office monthly.

A German entity is also obliged to withhold wage taxes from an employee's salary that is paid abroad if the salary costs are economically borne by the German entity ("economic employer approach"). The withholding requirement also arises in scenarios where salary costs should have been recharged to Germany under the arm's length principle, but where this obligation has been deliberately "ignored".

The income tax is not payable at the time the tax return is filed. The tax authorities will issue a final tax assessment notice once they have processed the return. Any balance due is payable within 1 month after disclosure of the tax assessment notice. Interest is charged or credited on final payments if the tax assessment notice is not issued within 15 months after the end of the respective calendar year. The applicable rate is 0.15 percent for each full month after the 15th month.

If a tax assessment results in an additional tax payment, late payment penalties will be imposed by law whenever payment is not made in due time. Penalties for late payment amount to 1 percent of the unpaid amount per each started month.

The tax office can assess quarterly prepayments based on the prior year's tax or on estimates of income not subject to withholding tax. These prepayments are due quarterly on 10 March, 10 June, 10 September, and 10 December. In certain cases, advance payments may be assessed subsequently.

### Non-residents

Non-residents are subject to tax on certain categories of income from German sources under the concept of limited tax liability. If the income from employment is subject to wage tax withholding, the tax obligations are basically fulfilled with the withholdings and in many cases no German tax return needs to be filed or can't even be filed at all (exceptions exist for EU nationals). In other words, the payroll withholdings become final in many cases. Hence, it is of great importance that the payroll tax collected by the employer is correct.

Non-residents who derive German-sourced employment income and no other income from German sources are required to file an income tax return only if the employment income was not subject to German wage tax withholdings or if the received income includes inter alia termination payments or LTI/stock options remuneration.

### What are the current income tax rates for residents and non-residents in Germany?

#### Residents

Income tax is calculated by applying a progressive tax rate schedule to taxable income as follows:

#### Income tax table for 2023 (tax year 2023)

Taxable income bracket		Tax rate on income in bracket
From EUR	To EUR	Percent
0	10,908	0
0	21,816	0*
10,909	62,809	14-42
21,818	125,618	14-42*
62,810	277,825	42
125,620	555,650	42*
277,826	No limit	45
555,652	No limit	45*

\*Married couple filing a joint return

In addition to the income tax rates indicated above, the following taxes and surcharges are levied on all types of income:

- solidarity surcharge: 5.5 percent of the income tax
- Note: As of tax year 2021 the solidarity surcharge has been abolished for taxpayers with lower income. There will be no surcharge if the payable income tax does not exceed 17,543 EUR (35,086 EUR for married couples) in 2023. However, this exemption does not apply to the 25% flat income tax generally imposed on investment income.
- church tax: 8.0 or 9.0 percent of the income tax – church tax is only levied if the taxpayer is a member of a religious organization that is recognized for church tax purposes. A church tax liability arises for (resident) taxpayers who have been baptized and have thus become a member of an officially recognized religious organization. They are liable for church tax in Germany as long as they have not officially withdrawn from this religious organization.

### Non-residents

Resident tax rates in general also apply to non-residents - with the exception of the zero percent tax bracket as shown earlier. However, the zero percent tax bracket DOES apply to non-resident taxpayers with regard to their German sourced employment income (i.e. on other types of income, no zero percent tax bracket is granted). Married non-residents are generally not allowed to file a tax return jointly (however special EU rules exist).

## 2.2 Residence rules

### For the purposes of taxation, how is an individual defined as a resident of Germany?

An individual is considered resident if they maintain a domicile or habitual place of abode in Germany. A domicile is a home or dwelling owned by or rented to the taxpayer who has full control over that property. Domicile is a question of fact and is not determined by the intention of the taxpayer.

The habitual place of abode is established when an individual is physically present in Germany on a long-term basis. Long-term is defined as a consecutive period of more than 6 months.

### Is there a de minimus number of days rule when it comes to residency start and end date? For example, a taxpayer can't come back to the host country/jurisdiction for more than 10 days after their assignment is over and they repatriate.

No. The habitual place of abode is established when the individual is physically present in Germany for a continuous timeframe of more than 6 months. A continuous abode is established and maintained if the interruptions are for a short period only (such as holidays, journey home, and business travel), so that the stay is still regarded as one continuous stay.

However, the habitual abode in Germany is basically deemed to be abandoned if the taxpayer stays abroad for a continuous period of more than one year.

### What if the assignee enters the country/territory before their assignment begins?

For determining the habitual abode, the continuous period of 6 months will be considered as explained above. The duration of the physical stay is decisive.

## 2.3 Termination of residence

### Are there any tax compliance requirements when leaving Germany?

Before leaving Germany, individuals must inform the registration office (Einwohnermeldeamt) in the town where they have been living and they should verify they have a current passport which is valid until the

end of their expected foreign stay. No exit requirements exist for tax purposes, i.e. no declaration has to be filed with the tax office before leaving the country.

However, recipients of tax allowances (e.g., child benefit – so called “Kindergeld”) are obliged to inform the responsible authority (e.g., the child benefit fund – so called “Familienkasse”) about their departure immediately.

Further, German financial institutions and banks where accounts or deposits are held should be informed about the departure in order to enable them to withhold the capital gains tax correctly in the future.

There are no special payment procedures on termination of residence, and no tax clearance is required. After leaving Germany, the employee is no longer subject to unlimited German taxation, but may be taxed as a non-resident on income from German sources, such as on bonus payments for the assignment period.

There is no special filing requirement on termination of residence. In the year following the termination of residence, the taxpayer has to file an income tax return for the prior year (i.e., the moving year) under the normal rules covering the residence period and the period after the move during the tax year.

If the taxpayer receives income from German sources as a non-resident in later years, they must file an annual tax return covering this income, unless it was subject to (final) withholding tax.

#### **What if the assignee comes back for a trip after residency has terminated?**

If the journey is actually in connection with the previous stay, these days will also be added to the previous stay for the determination of the habitual place of abode.

For treaty purposes, the German tax authorities have officially adopted the Organisation for Economic Co-operation and Development (OECD)-approach on counting the 183 days in cases of changing treaty residence.

#### **Communication between immigration and taxation authorities**

##### **Do the immigration authorities in Germany provide information to the local taxation authorities regarding when a person enters or leaves Germany?**

No special notification is made, but registration data can be retrieved electronically by the tax authorities at any time.

#### **Filing requirements**

##### **Will an assignee have a filing requirement in the host country/jurisdiction after they leave the country/jurisdiction and repatriate?**

There is no special filing requirement on termination of residence, but they have to file a German income tax return for the tax year of departure.

## **2.4 Economic employer approach**

##### **Do the taxation authorities in Germany adopt the economic employer approach<sup>1</sup> to interpreting Article 15 of the OECD treaty? If no, are the taxation authorities in Germany considering the adoption of this interpretation of economic employer in the future?**

Yes.

Note: The economic employer approach is also applied to scenarios where the cost recharge is required under the arm's length principle but has deliberately been ignored.

## De minimis number of days?

### Are there a De minimis number of days before the local taxation authorities will apply the economic employer approach? If yes, what is the De minimis number of days?

No. However, if an assignee works for the host company for only 3 months or less, there is a chance to argue that the host company should not be regarded as the individual's economic employer, unless the individual was fully integrated in the host company's business operations during this time. However, the tax authorities clarified that this is not and should not be seen as a firm De minimis regulation. Hence, all depends on facts and circumstances.

## 2.5 Types of taxable compensation

### What categories are subject to income tax in general situations?

As a rule, it can be stated that all types of remuneration and benefits received by an employee for services rendered constitute taxable income. These include, but are not limited to, the items below:

- Reimbursements/payments of foreign and/or home country/jurisdiction taxes
- Reimbursements/payments of school tuition fees
- Reimbursements/payments of tax return preparation fees
- Reimbursements/payments of home leave costs
- Cost-of-living allowances
- Expatriate premiums
- Housing allowances and the imputed value of housing provided directly by the employer
- Benefits-in-kind generally form part of taxable compensation

Certain benefits, however, are subject to a favorable method of taxation, including company cars. Where a company car is provided, the private use of the car represents a fringe benefit to the employee, which must be included in the monthly salary calculation. The taxable benefit may be assessed by calculating one percent per month of the list price (gross amount) of the new car plus an additional amount for commuting. If electric vehicles or externally rechargeable hybrid electric vehicles are purchased between 2019 and 2030, additional tax reliefs on the benefit are available.

- incentive compensation in certain circumstances
1. If Foreign Service premiums or bonuses are paid as inducements to accept an assignment before the tax year in which the individual arrives in Germany and becomes a resident, such payments are taxable at non-resident rates. If the foreign premiums or bonuses are paid in the same calendar year in which the individual becomes resident, these payments are taxable at resident rates together with other income earned in the year.
  2. Stock option plans or other kinds of equity compensation have become common features of German compensation schemes. German income tax law does not recognize the granting as a taxable event. Instead, the exercise of a stock option or receipt of other equity compensation generates ordinary income from employment. The taxable value of stock options is the difference between the fair market value at the date of exercise of the shares and the option price. If a tax treaty applies, sourcing is determined in the timespan "grant to vest". A favorable tax rate may apply on such income (one-fifth method).

## 2.6 Intra-group statutory directors

**Will a non-resident of Germany who, as part of their employment within a group company, is also appointed as a statutory director (i.e. member of the Board of Directors in a group company situated in Germany) trigger a personal tax liability in Germany even though no separate director's fee/remuneration is paid for their duties as a board member?**

Generally, yes. The German tax authorities explicitly state that – should no separate remuneration for that (operational) management role with the German subsidiary be agreed and paid for – they will allocate a reasonable amount to that position on an estimated basis. Hence, it is clearly advisable to clarify and properly document this issue upfront.

**a) Will the taxation be triggered irrespective of whether or not the board member is physically present at the board meetings in Germany?**

Yes. The full remuneration received for an (operational) management position (Managing Director/Board Member/Proxy holder – “Geschäftsführer/Vorstand/Prokurist”) of a German entity is subject to German taxation. It does not matter where the MD etc. performs their duties physically, unless a tax treaty provides otherwise.

**b) Will the answer be different if the cost directly or indirectly is charged to/allocated to the company situated in Germany (i.e. as a general management fee where the duties rendered as a board member is included)?**

In theory, the tax authorities recognize that there might be scenarios where a foreign entity renders a real management service to the German group company. However, the authorities explicitly instruct their inspectors to then thoroughly check whether - by rendering these management services – the foreign entity itself will create a taxable PE in Germany. Should a German PE of the foreign entity be affirmed by this check, both German business taxes as well as payroll/income taxes will be due.

**c) In the case that a tax liability is triggered, how will the taxable income be determined?**

The full remuneration for the MD position will be subject to German tax unless a tax treaty otherwise stipulates. Withholding obligations should be observed.

**Note:** German Corporate Law strictly differentiates between operational management positions as described above (MD etc.) and a position at a company’s “Supervisory Board” (non-operational role/pure overseeing and controlling role).

Non-residents being a member of a “Supervisory Board” (Aufsichtsrat/Beirat) are also subject to German withholdings. In these cases, a 30 percent flat taxation (plus 5.5 percent solidarity surtax) is imposed on all types of remuneration paid, including travel expenses.

## 2.7 Tax-exempt income

**Are there any areas of income that are exempt from taxation in Germany? If so, please provide a general definition of these areas.**

Among others, the following categories of income are exempt from tax:

- certain payments from health or accident insurance
- certain social security benefits including unemployment benefits and maternity grants as well as parental leave benefits
- Various benefits granted by the employer in addition to the wages owed anyway (e.g. company bicycles, kindergarten fees if certain conditions are met).

In case a secondary household is established in Germany for business purposes, the following payments are exempt under certain circumstances:

- Home trips (once per week)
- Meal allowances up to certain amounts and subject to certain time limits
- Rent at the place of work (actual costs but limited to EUR - 1,000 per month).

If certain other conditions are met, rental cost incurred for the employee, meal allowances and commuting expenses can be reimbursed tax-free, in general.

Some benefits (e.g. social security benefits) are basically tax free but will increase the individual tax rate of the recipient (so called “progression clause”).

## 2.8 Expatriate concessions

### Are there any concessions made for expatriates in Germany?

German income tax law does not provide for special deductions or tax-free expatriate premiums. The German Constitution stipulates that German nationals and foreigners must be treated equally for tax purposes.

## 2.9 Salary earned from working abroad

### Is salary earned from working abroad taxed in Germany? If so, how?

The taxable salary of residents cannot be reduced by allocating income to foreign business trips except where exclusions are available under tax treaties. Such exclusions generally require a foreign employer or a permanent establishment in the other country/jurisdiction. Split payrolls are possible.

In the absence of a tax treaty or depending on the provisions of the applicable treaty, a managing director/board member/“Prokurist” of a German company may be subject to German income tax even if they are a non-resident of Germany and is not physically present in Germany while performing the services (see above explanations).

Further, non-residents who have a German employer and work outside Germany might become taxable in Germany if their “work results” are made available to the German employer (for example by providing marketing studies/opinions/data bases etc. to them). However, where a tax treaty applies, this domestic tax provision will be overruled.

## 2.10 Taxation of investment income and capital gains

### Are investment income and capital gains taxed in Germany? If so, how?

A resident taxpayer’s worldwide investment income is subject to German income tax at 25 percent plus solidarity surcharge plus church tax (where applicable). The tax is generally withheld at the source.

The tax withheld is final unless one of the following applies.

- The taxpayer’s individual income tax rate is lower than 25 percent.
- Not all investment income was subject to withholding (such as foreign investment income). Church tax was not considered in the withholding although applicable.
- Upon request, especially when standard annual deduction or foreign tax credit has not been considered for withholding purposes.
- In certain cases when the flat rate tax of 25 % is not applicable

A standard annual deduction of EUR 801/EUR 1,602 (single/married) is offset against the taxable part of worldwide investment income. The annual deduction was increased to EUR 1.000/ EUR. 2.000

(single/married) on January 1<sup>st</sup>, 2023. Investment income includes inter alia interest, dividends and gains from the sale of shares.

Special rules apply to shares purchased prior to 1 January 2009. Additionally, specific complex rules are in place for mutual investment funds.

Further, the sale of shares will lead to business income if the seller has directly or indirectly held at least 1 % of the capital of the corporation within the last five years. That kind of income is not subject to the 25 % flat rate tax. It is taxed with the individual's personal tax rate. However, a special exemption of 40 % applies.

Gains derived by an individual from the sale of non-business property other than shares are not subject to tax, except in cases where the asset has not been held for the required holding period (generally 1 year) or where certain thresholds are exceeded. For real property, tax will be due on the gain if on the date of sale the property has been held 10 years or less (exemptions exist for the sale of the taxpayer's (principal) residence). Even if the asset has not been held for the required holding periods mentioned earlier, the gain will be tax-free if all gains in a calendar year are less than EUR 600 in total.

## 2.11 Dividends, interest, and rental income

See earlier for taxation of dividends and interest.

Rental income is taxable unless exempt under a tax treaty (in general, principle of location).

Gains from stock option exercises generally qualify as employment income. They are taxed in the following manner:

Residency Status	Taxable at		
	Grant	Vest	Exercise
Resident	N	N	Y
Non-resident	N	N	Y

Note: Sourcing under a tax treaty follows the "grant to vest" method.

## 2.12 Foreign exchange gains and losses

Depending on certain circumstances, foreign exchange gains will be treated as a "speculative" transaction, which is taxable. However, German tax law does not provide any taxation of fictitious, unrealized exchange gains.

## 2.13 Capital losses

The use of capital losses for tax purposes is subject to various restrictions and limitations. Especially, there is no possibility of offsetting such losses against other types of income.

## 2.14 Gifts

Inheritance and gift tax are levied on transfers of property by reason of death, gifts during lifetime, and transfers for certain specified purposes (gift tax), as well as on the net worth of certain family foundations and trusts. The tax is generally assessed on the net worth of the property transferred after deducting certain exemptions as well as personal exemptions depending on the family relationship. Taxable transfers of property are subject to tax at graduated rates (ranging between 7 percent and 50 percent).

## 2.15 Additional capital gains tax (CGT) issues and exceptions

### Are there additional capital gains tax (CGT) issues in Germany? If so, please discuss?

See above explanations for investment income and capital gains

For non-residents tax on investment income withheld at source is basically deemed to be final. Hence, it is not possible to declare investment income subject to source tax in a non-resident's tax return. Consequently, those source taxes will not be credited against other German income taxes even if withheld contrary to a double tax treaty.

If Germany has no or only a limited right to tax investment income from German sources according to a double tax treaty, the non-resident individual can apply for a refund of the withheld and paid source tax with the Federal Central Tax Office (so called "Bundeszentralamt für Steuern"). Basically, the refund application needs to be filed within four years as of the end of the calendar year in which the investment income was received.

### Are there capital gains tax exceptions in Germany? If so, please discuss? Pre-CGT Assets

No. (But see above explanations on gains from disposal of real property in exceptional situations).

#### Deemed disposal and acquisition

Generally, no. However, special rules apply if a taxpayer has been holding one percent or more of the shares in a corporation/legal entity at any time during a 5-year period prior to leaving Germany or in scenarios where Germany loses its taxation right under a tax treaty (for example by shifting a taxpayer's center of vital interests (Art. 4 para 2 - tie breaker rule) to a foreign country. Further, the taxation of income from investment funds may include a taxation of "deemed" income, too.

## 2.16 General deductions from income

### What are the general deductions from income allowed in Germany?

Tax year 2023	EUR
Standard annual investment deduction	
Single	1,000
Married	2,000
Standard investment expense deduction	
Standard employment deduction	1,230
Standard special expense deduction	
Single	36
Married	72
Special non-resident deduction	0

Furthermore, a series of non-income related deductions are granted. The most important are:

- Standard deductions apply (see earlier charts) payments to public, mandatory pension insurance (cap)

- Payments to public or private health and nursing insurances for basic insurance coverage
- expenses for the taxpayer's professional education
- Thirty percent of fees for a child's attendance of a private school up to a maximum amount of EUR 5,000 (on certain conditions)
- Two-thirds of the expenses, up to a maximum of EUR 4,000 per child, for childcare services (e.g. nursery school fees), provided that the child has not yet reached the age of 14 years / 25 years, if disabled
- Church taxes
- Charitable contributions to European / EEA charities and charitable activities abroad if certain conditions are met (limited to the lesser of the amount incurred or 20 percent of income from different classes)
- Alimony payments to the ex-spouse (limited to the lesser of the amount incurred or EUR 13,805), if the payments are taxed at the level of the recipient
- Under special circumstances, further deductions are available. Examples: Certain education expenses, supporting expenses, and deductions for disabled individuals as well as additional insurance contributions.

## 2.17 Child-related deductions

For all children, a monthly benefit of EUR 250 (2023) is paid per child. Payment is dependent on certain conditions being met. If the taxpayer does not qualify for the monthly child benefit or if the tax savings from the following exemptions exceed the child benefit, then these deductions can be claimed instead on the annual tax return for single/married taxpayers.

Age	EUR
0 - 17 years	EUR 4,476/8,952
18 - 25 years	EUR 4,476/8,952 if attending school/university/vocational training, plus EUR 600/1,200 if not living at home
Without age limitation	EUR 4,476/8,952 if severe disability occurred before the child reached the age of 25

Parents can offset two thirds (up to EUR 4,000) of the expenses for childcare per child per year if the child is under age 14, and for disabled children between age 14 and 25.

## 2.18 Other deductions

Alimony payments to a divorced or to a separated spouse who is a resident of Germany, another EU Member State or certain treaty countries/jurisdictions can be deducted as personal expenses up to a maximum amount of EUR 13,805 per year if certain requirements are met. Additionally, basic health and nursing contributions which are paid for the supported person are deductible. The alimony payment constitutes taxable income to the recipient. Alimony payments to a divorced or to a separated spouse who is not a resident of Germany can be deducted under certain conditions up to a maximum amount of EUR 10,908 (2023) per year, if this is applied for. If the other annual income of the recipient exceeds EUR 624, the deductible amount is reduced by the excess over EUR 624.

Expenses incurred in carrying out employment can be deducted from gross salary. These expenses include commuting expenses, expenses for tools or other work equipment, certain membership dues, and

certain away-from-home expenses. The deduction is generally not limited. If the employee does not claim higher itemized business expenses, a standard annual deduction for income-related expenses of EUR 1,200 (tax year 2022) or EUR 1,230 (tax year 2023) is granted.

If the employees use their private car for business travel and are not reimbursed by the employer tax-free, they can claim as a business expense a flat amount for business mileage (presently EUR 0.30 per kilometre).

Church taxes paid under German church tax codes are deductible for income tax purposes in the year of payment.

## 2.19 Tax reimbursement methods

### What are the tax reimbursement methods generally used by employers in Germany?

German employers often conclude net salary agreements with their assignees from abroad. Consequently, the German tax allocable to company income is borne by the employer and tax refunds allocable to company income are also due to the employer. Tax equalization schemes are treated in a similar manner.

## 2.20 Calculation of estimates/prepayments/withholding

### How are estimates/prepayments/withholding of tax handled in Germany? For example, pay-as-you-earn (PAYE), pay-as-you-go (PAYG), and so on.

Wage tax needs to be withheld on salary by the employer, whereas prepayments can be assessed by the authorities for all other categories of income.

### When are estimates/prepayments/withholding of tax due in Germany? For example: monthly, annually, both, and so on.

The wage tax is due monthly and is arranged by the employer. If applicable, tax prepayments are in general due on a quarterly basis and need to be paid by the individual.

## 2.21 General tax credits

### What are the general tax credits that may be claimed in Germany? Please list below.

#### Residents

Tax residents have to declare their worldwide income. Depending on the type of income, income from foreign sources might either get tax exempt under a tax treaty - or Germany will credit foreign taxes on such income paid abroad. However, the German tax law provides complex preconditions and limitations to establish the amount of foreign taxes finally qualifying for the offset.

The withholding tax from investment income (inter alia interest, dividends, gains from shares sold) will be credited against the German tax on investment income if investment income is included in the assessment. The foreign withholding tax on foreign investment income (if taxable in Germany) can also be credited against the German tax on investment income. The credit is limited to the percentage allowed by the applicable tax treaty.

#### Non-residents

Tax on investment income withheld at source is basically deemed to be final. Hence, it is not possible to declare investment income subject to source tax in a non-resident's tax return. Consequently, those source taxes will not be credited against other German income taxes.

## 2.22 Sample tax calculation

This calculation assumes a married taxpayer resident in Germany with two children whose 3- year assignment begins 1 January 2022 and ends 31 December 2024. The taxpayer's base salary is 100,000 US dollars (USD) and the calculation covers 3 years.

	2022 USD	2023 USD	2024 USD
Salary	100,000	100,000	100,000
Bonus	20,000	20,000	20,000
Cost-of-living allowance	10,000	10,000	10,000
Housing allowance	12,000	12,000	12,000
Company car	6,000	6,000	6,000
Moving expense reimbursement	20,000	0	20,000
Home leave	0	5,000	0
Education allowance	3,000	3,000	3,000

Exchange rate used for calculation: USD 1.00 = EUR 0.9174.

## 2.23 Other assumptions

- The calculation has been generated based on KPMG LINK Cost Projector, Version 2023.1.0
- All earned income is attributable to local sources. All allowances are paid gross.
- Bonuses are paid at the end of each tax year and accrue evenly throughout the year. The employee is deemed resident throughout the assignment.
- Tax treaties and totalization agreements are ignored for the purpose of this calculation (i.e., German social security contributions do apply, ceiling for pension and unemployment insurance applicable to the old federal territory).
- The employee is not subject to German church tax.
- The housing allowance and the company car allowance are provided in cash. Only standard deductions have been considered.
- All moving expenses can be proven by receipt/invoices.

## 2.24 Calculation of taxable income

Year-ended	2022	2023	2024
	EUR	EUR	EUR
Days in Germany during year	365	365	365
Earned income subject to income tax			
Salary	91,740	91,740	91,740
Bonus	18,348	18,348	18,348
Cost-of-living allowance	9,174	9,174	9,174
Housing allowance	11,009	11,009	11,009
Company car 1	5,504	5,504	5,504
Moving expense reimbursement	0	0	0
Home leave	0	4,587	0
Education allowance	2,752	2,752	2,752
Total income	138,527	143,114	138,527
Deductions			
Employment deduction	-1,200	-1,230	-1,230
Social insurance deduction	-12,239	-13,714	-13,714
Special expenses	-72	-72	-72
Child allowance deduction	-17,096	-17,904	-17,904
Total taxable income	107,920	110,194	105,607

## 2.25 Calculation of tax liability

Year-ended	2022	2023	2024
	EUR	EUR	EUR
Taxable income as above	107,920	110,194	105,607
Income tax	26,742	26,644	24,865
Solidarity surcharge	0	0	0
Child subsidy (back added*)	5,456	6,000	6,000
Less:			
Domestic tax rebates (dependent spouse rebate)	0	0	0
Foreign tax credits*	0	0	0
Total German tax	32,198	32,644	30,865

\*In many cases assignees are entitled to receive child subsidy (cash payments) from the authorities. To eliminate a double benefit/advantage by claiming on top the child allowance deduction in the tax return, the child subsidy must be paid back together with the income tax.

**03**

**Special considerations  
for short term  
assignments**

# 3 Special considerations for short-term assignments

For the purposes of this publication, a short-term assignment is defined as an assignment that lasts for less than 1 year

## 3.1 Residency rules

### Are there special residency considerations for short-term assignments

Please see explanations regarding resident/non-residents.

## 3.2 Payroll considerations

### Are there special payroll considerations for short-term assignments?

For non-residents earning employment income only, the tax obligations are generally fulfilled with the wage tax withholding procedure. There are various tax classes for withholding purposes and the more favourable tax class should be applied for by the employer on time. Since often the withholding tax submitted will become final (not followed by an individual tax assessment), the employer has to make sure that payroll withholdings are correct. However, severance payments or LTI payments (for example stock option income) made to non-residents will often trigger an (additional) annual income tax return filing obligation

## 3.3 Taxable income

### What income will be taxed during short-term assignments?

If the individual becomes a resident while on short-term assignment, they will be liable to tax on their worldwide received income. Non-residents are subject to tax on certain categories of income from German sources.

## 3.4 Additional considerations

### Are there any additional considerations that should be considered before initiating a short-term assignment in Germany?

No. However, special attention should be paid to the upfront structuring with respect to residence/non-residence position where feasible. Also, the cost sharing between home and host entity should be clear (and properly documented for tax purposes) prior to assignment start.

**04**

# **Other taxes and levies**

# 4 Other taxes and levies

## 4.1 Social security tax

Are there social security/social insurance taxes in the Germany? If so, what are the rates for employers and employees?

### Employer and Employee

The following rates (2023) have to be applied against the gross salary, with the ceilings indicated.

Type of Insurance	Paid by employer	Paid by employee	Total
Pension	9.3%	9.3%	18.6%
Unemployment	1.3%	1.3%	2.6%
Health*	7.3%	7.3%	14.6%
Nursing**	1.525%	1.525%	3.05%
Total Percent	19.325%	19.325%	38.65%

	Annual*** EUR (Ceiling)	Monthly*** EUR (Ceiling)
Pension	87,600	7,300
Unemployment	87,600	7,300
Health	59,850	4,987.50
Nursing	59,850	4,987.50

\* An additional average amount of 1.6 percent – shared equally between employer and employee – is levied. However, this percentage might slightly vary – depending on the individual insurance agency's discretion.

\*\* Plus, **0.35** percent surcharge on nursing insurance to be borne by employees without children. Furthermore, special rates apply for Saxony (1.025 percent employer and 2.025 percent employee rate).

\*\*\*The ceiling for pension and unemployment insurance applicable in the Eastern Bundeslaender (former German Democratic Republic – East Germany) is EUR 85,200 per year and EUR 7,100 per month.

## 4.2 Gift, wealth, estate, and/or inheritance tax

### Are there any gift, wealth, estate, and/or inheritance taxes in Germany?

Inheritance and gift tax are assessed on the transfer of property by reason of death, gifts during lifetime, and transfers for certain specified purposes, as well as on the net worth of certain family foundations or trusts.

Worldwide assets are potentially liable to this tax if the transferor or the transferee is resident in Germany at the relevant time. Otherwise, it applies only to assets situated in Germany.

Taxable transfers of property are subject to inheritance and gift tax at graduated rates, depending on the value of the property and the family relationship of the respective individuals. The rates vary from 7 percent up to 50 percent.

Since 1997, there has been no net worth tax in Germany.

## 4.3 Real estate tax

### Are there real estate taxes in Germany?

Yes, there is a property tax on the ownership of real property. Previously, property tax was determined based on the assessed value. This approach was ruled as unconstitutional in 2018 by the German Federal Constitutional Court on the basis that the assessed values no longer corresponded to actual market values. The subsequent property tax reform is currently in progress.

## 4.4 Sales/VAT tax

### Are there sales and/or value-added taxes in Germany?

The standard VAT rate for supplies and goods of services is 19 percent. For certain goods and services, the VAT tax rate is 7 percent.

## 4.5 Unemployment tax

### Are there unemployment taxes in Germany?

Yes. The rate for unemployment tax is 2.4 percent (see above – social security taxes).

## 4.6 Other taxes

### Are there additional taxes in Germany that may be relevant to the general assignee? For example, customs tax, excise tax, stamp tax, and so on.

Annual vehicle taxes are levied on motor vehicles registered in Germany.

## 4.7 Real estate transfer tax

This tax is generally imposed on any transaction that causes a change in the ownership of real estate property situated in Germany. The tax rate is generally 6 percent (ranging from 3.5 - to 6.5 percent, depending on the location).

## 4.8 Local taxes

Local taxes are levied only on income from trade or business.

Individuals owning a dog in Germany are obliged to register the dog at their local authority (in general the town hall) for dog tax purposes. Annual dog tax is levied in most cities and municipalities in Germany.

## 4.9 Foreign Financial Assets

### Is there a requirement to declare/report offshore assets (e.g. foreign financial accounts, securities) to the country's fiscal or banking authorities?

German resident taxpayers are taxable with their worldwide income. Tax residents have generally to declare their worldwide investment income, including income generated by investments in foreign (i.e. non-German) entities or investment vehicles such as trusts, partnerships, funds and the like. Treaty provisions might provide tax relief, if the taxpayer remains resident in another country/jurisdiction based on Article 4 of the OECD Model Convention.

The following should be noticed:

- German tax law includes CFC rules according to which income received in a separate foreign legal entity might – if certain conditions are met – become directly taxable at the level of the shareholder itself (“looking through approach”).
- The taxation of foreign Trusts follows special regulations. In short, such vehicles are very often regarded as “transparent” for German tax purposes thus triggering an income tax liability for the German tax resident beneficiary even if no distributions are paid by the trust itself.
- The taxation of investment income derived from investment funds is complex and not straight forward. New regulations apply from 2018 onwards, including taxation of “deemed income”.

Furthermore, German residents are obliged to separately report their participation and the acquisition of foreign companies/partnerships/vehicles if

- They hold at least 10 percent or more of the shares in a legal entity (directly and indirectly) or
- The acquisition costs of all shares (direct and indirect holdings have to be summed-up) exceed EUR 150,000 in total.
- Taxpayers and “related persons” (for example parents, children and other relatives) together do have “control” over foreign entities/vehicles (even in case they themselves hold a participation of less than 10 percent in the entity).

**05**

# **Immigration**

# 5 Immigration

**The following is an overview of the concept of Germany's immigration system for skilled labour.**

(E.g., which steps are required, authorities involved, in-country/jurisdiction and foreign consular processes, review/draft flow chart illustrating the process)

This summary provides basic information regarding business visits to, and work authorization for, Germany. The information is of a general nature and should not be relied upon as legal advice.

With regard to entry and residence into Germany it has to be differentiated between

- Nationals of the European Union (EU) respectively the European Economic Area (EEA)
- Nationals from privileged countries/jurisdictions and
- So-called third country/jurisdiction nationals.

Most foreign nationals who intend to engage in active, productive employment in Germany will need a Residence and Work Permit. Depending on the purpose of travel to Germany and the nationality of the traveller, there are different immigration schemes that will apply to the occasion, and which vary in their processes and processing times. For all work authorization types, foreign nationals must coordinate with their employer to collect and legalize corporate and personal documentation.

EU citizens enjoy the rights from the EU Freedom of movement, which includes an unrestricted access to the German labour market. A work and residence permit or visa won't be required to either enter or work in Germany. Similar rules apply to citizens of Iceland, Liechtenstein, Norway and Switzerland.

Unless evidence can be provided that one is an EU/EEA national, a permit will be required to work and reside in Germany.

Germany distinguishes further between Non-Visa Nationals and Visa Nationals. Non-Visa Nationals can enter Germany for business visitor purposes without the need to apply for an entry visa.

As a rule, third country nationals have to enter Germany with the right visa category (a national visa (D)) in order to apply for a long-term work and residence permit in Germany.

However, Germany has specific agreements with several countries/jurisdictions, which provides nationals of those countries/jurisdictions' privileges, when it comes to immigration to Germany. Non-Visa Nationals from Australia, Canada, Israel, Japan, South Korea, New Zealand, Andorra, Monaco, San Marino, USA and the United Kingdom are eligible to apply for a work and residence permit in country/jurisdiction. They won't require an entry visa for Germany to enter for work purposes.

However, a privileged national may not start working until the written work authorization has been issued. Applicants from privileged nations will not need to obtain an entry visa and can submit the application for the Residence and Work Permit directly to the local immigration authorities within 90 days after entering Germany. The Immigration Authorities will review the application and issue the permit, on most occasion the involvement of the Federal Employment Agency (FEA) will be required, as the FEA will need to give a pre-approval to the intended work activities and conditions.

Except for nationals of privileged states, a residence permit must be obtained by means of a visa before entering Germany. The German embassy/consulate abroad are responsible for visa applications. Before granting a visa, the embassies and consulates might seek consent from the local authorities (labour/immigration). Visa Nationals are citizens of countries/jurisdictions who are neither part of the EU/EEA nor from Visa exempt countries/jurisdictions. Nationals from these countries/jurisdictions are required to apply for a national visa (D) to enter Germany. The entry visa is typically valid for a short period of time (3-6 months, whereas national D visas for employees and their family members will usually be issued for 6 months) and must generally be converted to a work and residence permit upon arrival in

Germany. If necessary, an additional work authorization pre- approval from the Federal Employment Agency needs to be applied for.

## 5.1 International Business Travel/Short-Term Assignments

**Describe (a) which nationalities may enter Germany as non-visa national, (b) which activities they may perform and (c) the maximum length of stay.**

If Non-European nationals visit Germany as either tourists or business visitors, they are allowed to enter Germany using their passports for up to 90 days within a 180 days rolling period.

In some cases, a treaty or special agreement authorizes citizens of certain countries/jurisdictions to enter Germany without obtaining a visa. There are many countries/jurisdictions that have established visa exemptions with Germany. German visa waivers often permit foreign nationals to conduct business activities for up to 90 days, provided they are citizens of a country/jurisdiction that has a mutual immigration agreement with Germany.

### Overview off visa exemptions for entry into Germany

In Germany, business visitors must generally limit their activities to the following:

- Attending meetings and negotiations, preparing contract offers, signing contracts and supervising the implementation of contracts for an employer outside Germany
- Attending internal business meetings or discussions attending or holding internal seminars or trainings
- Establishing, auditing, or steering an entity in Germany for an employer outside Germany
- Participating in expositions to present and sell company products, buying goods for sale outside the country
- Testing or receiving training for use of equipment and facilities purchased by the employer with a commercial entity outside Germany
- Touring a company facility
- Attending a trade show or seminar convention.

Business visitors are generally prohibited from engaging in productive employment activities that are an extension of professional activities.

The following mode of calculation will apply: A traveller is required to count back 179 days from the current day of stay. The current day of stay counts as the 180th day. Within this time frame the days of stay in all Schengen member states must not exceed 90 days. Days of stay spent in the issuing Schengen member state (in this case: Germany) on the basis of a national visa or national residence permit do not count against the 90 days limitation.

The short-stay calculator on the following website can be used for calculating the period of allowed stay under the **Schengen rules**:

In addition to Germany, the following countries/jurisdictions are considered as Schengen member states: Austria, Belgium, Czech Republic, Denmark, Estonia, Finland, France, Greece, Hungary, Iceland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden and Switzerland.

**Describe (a) the regulatory framework for business travellers being visa nationals (especially the applicable visa type), (b) which activities they may perform under this visa type and the (c) maximum length of stay.**

Visa nationals are required to obtain a Schengen (C) visa to be able to enter into Germany for business visitor activities. The Schengen Visa is typically issued for multiple entries. Although circumstances may

vary, a business visitor may receive authorization to visit Germany for up to 90 days within a 180-day rolling period.

Schengen Visas are generally not eligible for in-country/jurisdiction extension, only in very limited, exceptional cases an extension would be possible (e.g., hardship).

The application for the Schengen Visa must be filed at the German embassy/consulate in the respective country/jurisdiction of residence in order to be allowed to enter Germany for up to 90 days within a 180-day rolling period.

With regard to the permitted activities and permitted duration of stay please see answers to question 2.

**Outline the process for obtaining the visa type(s) named above and describe (a) the required documents (including any legalization or translation requirements), (b) process steps, (c) processing time and (d) location of application.**

- Document gathering (1-2 weeks)
- Obtain pre-approval from Federal Employment Agency, if applicable (2-4 weeks)
- Book visa appointment at the German embassy/ consulate at the place of residence (1 day), whereas waiting times for an appointment vary with regards to the diplomatic mission in charge
- Prepare Visa application (1-2 days)
- File Visa application with the German embassy/ consulate at the place of residence (5-10 business days)
- Obtain Visa and travel to Germany (1 day)

**General requirements for business visitors**

Documents needs to be provided either in German or in English language:

- Valid passport or travel document
- Established purpose for the visit (i.e. Letter of Invitation (LOI) from the German company including a guarantee to cover certain expenses)
- Confirmation letter of the employer, if requested
- Proof of return or onward travel
- Proof of sufficient funds to cover all costs while in Germany; and
- Proof of health insurance coverage while travelling and staying in Germany, valid for all Schengen member states with a minimum coverage of 30,000 Euros (EUR)
- German Embassies may request a copy of the company's registration if a non-German Company.

**Are there any visa waiver programs or specific visa categories for contracts for work and materials (Werklieferungsverträge) on short-term assignments?**

Yes, Germany permits short term assignments based on contracts for work and materials to Germany without the need to obtain a work and residence permit prior to commence work. Only a business visa in combination with a notification issued by the Federal Employment Agency will be required. Non-Visa Nationals are exempt from the obligation to obtain a visa for Germany, only the notification from the Federal Employment Agency is required. The government processing time is approximately 2-4 weeks until the notification is available.

## 5.2 Long-Term Assignments

**What are the main work permit categories for long-term assignments to Germany? In this context please outline whether a local employment contract is required for the specific permit type.**

- ICT (local employment contract for Germany not required)

The ICT Card (Intra-Corporate Transfer) is a temporary residence permit for managers, specialists or trainees employed in entities based outside of the EU. Transfer may only last up to 3 years for managers and specialist and 1 year for trainees.

Holder of an ICT Card are allowed to temporarily work in German subsidiaries of their employer's entities located in other EU member states if the majority of the total stay is in Germany. Should the majority of the stay will be in another EU member state, a residence permit needs to be applied for in that state.

The ICT Card is issued in all EU member states except Denmark, Great Britain and Ireland.

Requirements are:

- The host subsidiary in Germany belongs to the employing home company.
- A 6-month pre-employment for managers and specialist in the home company prior to the transfer.
- The intra-corporate transfer lasts for more than 90 days at a time.
- Employment at the host subsidiary in Germany as a manager, specialist or trainee.
- Proof of professional qualifications, a valid employment contract and, if necessary, an assignment letter.

A pre-approval for the work authorization by the Federal Employment Agency or exemption of the work in question needs to be obtained.

- Mobile ICT Card (employment contract for Germany not required)

Third country/jurisdiction nationals who are already in possession of a residence title under the ICT Directive for an EU Member State may stay in Germany for up to 90 days without the need to obtain a German residence permit. For any stay which lasts more than 90 days, a residence permit needs to be obtained, a Mobile ICT Card.

### Requirements

- Host entity in Germany and the entity established in another EU State belong to the same undertaking or group of undertakings to which the employee belongs.
- Proof of a valid residence title for the duration of the application procedure, of a valid employment contract and, if necessary, an assignment letter.
- Employment at the host subsidiary in Germany as a manager, specialist or trainee.
- The intra-corporate transfer lasts more than 90 days but is shorter than the duration of the residence in another EU member state.

A pre-approval for the work authorization by the Federal Employment Agency or exemption of the work in question needs to be obtained.

If the German Federal Office for Migration and Refugees (BAMF) has received a notification about a short-term mobility at least 20 days prior to the entry into Germany, one is allowed to stay and work in Germany for up to 90 days. In these cases, an application for the Mobile ICT Card must be filed at least 20 days prior to the end of the short-term mobility stay.

- International staff exchange program (employment contract for Germany not required)

The International Staff Exchange Program is a national ICT category which stands independently from the specialist category. It is based on an equalized number of outbound and inbound moves from and to Germany, is therefore considered to be labour market neutral and thus no labour market test applies.

## Requirements

- Free slots on the Staff Exchange list. Any move of the last 3 years of an employee (local hire, citizenship irrelevant) of an entity in Germany to an entity outside Germany of (more than) 3 months, opens one inbound slot for approval of up to 36 months.
- Assignee employed with sending entity (no minimum employment period required). Assignee holds a university degree or similar qualification.
- Salary must be comparable to a German employee in the same position.
- Allowances can be taken into account, however, need to be paid as a lump sum and should be for free disposal of the assignees.

In order to be able to use the program, the employer must register with the Federal Employment Agency.

A specialized unit of the Federal Employment Agency is responsible for administering the work authorization pre-approval application. Applications for work permission pre-approvals are usually approved within 2-4 weeks.

- Work and Residence Permits for Trainees (employment contract for Germany not required)

Third country/jurisdiction nationals may also be granted residence permits for in-company training in Germany. The in-company training does not require a work permit if it is less than 3 months within 12 months. Foreigners who require an entry visa for Germany are able to apply for a Schengen Visa for the duration of their training at their place of residency.

In case the Training is supposed to take longer than 3 months an approval of the Federal Employment Agency will be required. The same rules apply for non in-company training, which are less than 3 months.

Requirements for in-company training longer than 3 months/non-in company training for a shorter period of time:

- main aspect of the activities in Germany is receiving training
- training schedule for the duration of stay
- minimum wage salary.
  - EU Blue Card EU for highly skilled employees (local employment contract required)

The EU Blue Card can be a viable option for assignments if a German employment contract will be given to the assignees.

A foreigner, a citizen of a non-EU- country/jurisdiction, can apply for the EU Blue Card if the candidate has:

- A German or an accredited foreign university degree that is comparable to a German one and
- The candidate has an employment contract with a gross annual compensation of at least EUR 58.400 for the year 2023 (EUR 4.867 per month),
- Or a contract in the so-called shortage occupation (scientists, mathematics, engineers, doctors and IT-skilled workers) with the amount of EUR 45.552 for the year 2023 (EUR 3.796 per month).

The EU Blue Card is at first valid for 4 years. If the working contract covers a period of less than 4 years, meaning it is limited, the EU Blue Card will be valid for the time of the working contract plus 3 months (so-called job-seeking period).

Foreigners who own the EU Blue Card and have German language knowledge at level A1 can apply for permanent residence permit after 33 months. If they have German language knowledge at level B1 then they can apply earlier after 21 months.

- Specialist permit (local employment contract required)

The work and residence permit for a “company specialist” is the most issued permit for local hires next to the EU Blue Card for Germany.

If the EU Blue Card requirements are not met, there is the possibility to apply for a specialist work and residence permit.

Company specialists are foreigners who possess special, primarily company-specific, knowledge for the performance of qualified employment for their employer in Germany and hold a local employment contract (of limited or unlimited duration).

These are therefore persons who, as a result of their previous professional activity, have special knowledge or experience in their specialist field which, in turn, is of particular importance for the internal operation of the company or for its external economic activity.

The eligibility for this immigration category depends on the personal qualification, degree, experience level and the company-specific experiences of the applicant.

The more experienced the application is and the higher the salary is, that they will receive in Germany, the more likely the application will be approved.

A pre-employment with the hiring company won't be required.

- Work and Residence Permit for privileged nationals (local employment contract not required)

Citizens of Australia, Canada, Israel, Japan, South Korea, New Zealand, the USA and the United Kingdom have privileged access to the Germany labour market even when it comes to short- and long-term assignments.

The assignee would be able to work on customer sites for unlimited periods of time without the requirement of a company entity or branch office in Germany.

German authorities have the discretion to complete a "labour-market-test" prior to approving the application. This means they are allowed to pre-check whether a German/EU-citizen would also be eligible/comparable for the job that is offered by the company.

### **Provide a general process overview to obtain a work and residence permit for long-term assignments (including processing times and maximum validation of the permit).**

- Document gathering (1-2 weeks)
- File application with the Federal Employment Agency to obtain a work permit pre-approval, if required (10-15 business days)
- Book visa appointment at the German embassy/ consulate at the place of residence (1 day), whereas waiting times for an appointment vary with regards to the diplomatic mission in charge
- Prepare Visa application (1-2 days)
- File Visa application with the German embassy/ consulate at the place of residence (10-15 business days) in some circumstances the processing times at the embassy/ consulate can take several weeks
- Obtain Visa and travel to Germany (1 day)
- Register address with local town hall within 2 weeks of moving into long term residence (1 day)
- Book appointment with Immigration authorities and file application for final permit (1-2 days), whereas waiting times for an appointment vary with regards to the immigration office in charge

- Attend appointment and provide biometric data for final data (1 day)
- Pick up final work and residence permit (6-8 weeks until final permit can be collected)

Privileged nationals from Japan, USA, the United Kingdom, Australia, Canada, Israel, South Korea and New Zealand don't require an entry visa for Germany and would be able to apply for the final work and residence permit within 90 days after entering Germany in country.

The general processing time highly depends on the permit type, the authorities involved in the process and the place of filing the application. In general, the process can take anywhere from 4 – 16 weeks, from the day of filing with the Federal Employment Agency.

Depending on the permit type, the maximum validation varies from 3 – 4 years with the possibility of renewing the permit after.

### **Is there a minimum salary requirement to obtain a long-term work and residence permit for assignments? Can allowances be taken into account for the salary?**

There is a minimum salary requirement for all work and residence permits in Germany, in general it would be required that the foreign national must earn a salary equivalent to a comparable German local employee in the German company where the foreigner intends to work/ be based.

Allowances can be taken into account, if they are paid as a lump sum and for free disposal of the assignees. Only allowances which are paid out to the employee for their free use in return for the work performed are considered for the minimum salary (e.g. per diems of cost-of-living allowances).

Some permit types, like the EU Blue Card for local hires, require a specific minimum salary. The minimum EU Blue Card will require a gross annual compensation of at least EUR 58.400 or a contract in the so-called shortage occupation (scientists, mathematics, engineers, doctors and IT- skilled workers) with a minimum salary of EUR 45.552)

### **Is there a fast-track process which could expedite the visa/ work permit?**

On 1 March 2020, the Skilled Workers Act came into force affecting the procedure for highly skilled workers. This procedure only applies to the first entry to Germany (i.e., the visa procedure, and not the issuance of the first long-term residence permit within Germany upon entry). Further, the procedure only applies to several visa categories (e.g., for vocational training, for measures for the recognition of foreign vocational training, for highly skilled specialists or for qualified employees, which can be in particular IT specialists, researchers, managers, company specialists or EU Blue Card candidates but not to assignments without a local employment contract). This procedure is called 'accelerated' because the diplomatic mission abroad must allocate an appointment for the visa application within three weeks after receiving all relevant documents from the German immigration office in this regard. Further, the diplomatic mission must decide within another period of three weeks about the issuance or rejection of the visa. This can be beneficial, especially in countries with a difficult appointment situation at the German diplomatic missions abroad. For this procedure, an additional government fee of EUR 411 per applicant (including family members, if applicable) will apply.

### **At what stage is the employee permitted to start working when applying for a long-term work and residence permit (assignees/ local hire)?**

The employee is permitted to start working once they have obtained either a valid Visa for Germany or the immigration authorities have either issued them an interim permit with work authorization or they have obtained their final work and residence permit.

### **Can a short-term permit/ business visa be transferred to a long-term permit in Germany?**

Only in very limited cases it is possible to transfer a short-term permit/ business visa to a long-term permit in country. This needs to be reviewed case by case as it is highly depended on the circumstances. If a transfer would not be possible, the applicant would need to leave Germany and apply for a national D visa at their place of residence abroad.

### **Is it possible to renew work and residence permits?**

Depending on the permit type it would be possible to renew work and residence permits in Germany. For specific assignment types, a cooling off period of 6 months needs to take place if the maximum of 3 years has been reached (e.g. ICT-Card). The renewal process can take place in Germany, the applicant is not required to leave the country.

### **Are there any labour market related tests or a priority checks in place?**

The German Federal Employment Agency will conduct a labour market test in most of the work-related immigration cases. The aim of the labour market test is to protect the German labour market from the migration of third-country nationals who are hired under worse working conditions than comparable German workers.

For some permit types a so-called priority check could take place to check out whether a German or EU national is available for the position. The labour market test is a discretionary decision of the responsible labour authorities, who will decide if one will be required.

## **5.3 General Immigration Related Questions**

### **Would it be possible to bring family members to Germany?**

Dependents are allowed to join the main applicant, if the assignment duration is longer than 12 months at the time of the dependent's application (exceptions may apply e.g. for ICT-Card holders, if the stay will not be longer than 12 months). According to German immigration law, spouses (marriage certificate required) and/ or children under 18 years (birth certificates required) are considered as dependents. Spouses, including same-sex spouses, may accompany employees to Germany. In certain circumstances, if the spouse does not hold a university degree or an A1 Level German language certificate, a visa/permit may not be granted until an A1 Level language - certificate has been obtained (exceptions may apply e.g. for dependents of EU Blue Card holders). A family reunion visa/permit also provide the dependent a full access to the German labour market.

### **Is it possible to obtain a permanent residence permit?**

Generally, one would be eligible to apply for a permanent residence permit after holding a Work and Residence permit for 5 years and provide sufficient German language knowledge. For certain permit types the timeframe can be reduced (EU Blue Card holders can qualify for a permanent residence permit after 21 or 33 months).

### **What if circumstances change after the Work and Residence application process?**

Any change in the term of the employment or personal situation, including job title, job role or salary may require a notification to the immigration office which will then check whether the requirements for the respective immigration scheme are fulfilled. After certain periods of residence in Germany, access to the labour market is extended and notification of the changes may no longer be necessary. This must be checked in each individual case.

### **How long can a permit holder leave Germany without their permit becoming invalid?**

Any extended absences from Germany may affect future Long-Term Residency and Citizenship applications. In particular, absences of more than 6 months, and in some cases up to 12 months for certain permit types (e.g. EU Blue Card), might lead to invalidity of the permit if an approval of absence has not been obtained from the local immigration Authorities.

### **Must immigration permissions be cancelled by the end of the assignment/employment?**

In case of a termination of the employment before the end of the validity of the permit, the immigration authorities should be informed by both the employer and the employee. The period of notice for the employer is 4 weeks from positive knowledge of the early termination. The deadline for the employee is 2

weeks. A de-registration at the local town hall needs to take place when the foreigner leaves Germany for good. The local town hall will then inform the immigration authorities automatically about the departure.

### **Are there any penalties for individuals and/or companies in place for non-compliance with immigration law?**

Germany differs between penalties for the individual and the companies. Penalties could be deportation of the employees, restriction on re-entering Germany or monetary fines. The fines for the company can be up to EUR 500.000. For the maximum fine to apply, serious and repeated violation need to take place. Besides monetary fines, the company could face additional sanctions such as a prohibition on employing foreigner for a period of time or exclusion from obtaining subsidies.

## **5.4 Other Important Items**

### **List any other important items to note, or common obstacles faced, in Germany when it comes to the immigration processes.**

Below you will find a list of other important items to note and the most common obstacles:

- **Salary in renewal cases** – it is of high importance that the salary indicated in the first application has been paid during the entire period of the assignment.
- **Payment conform German minimum wage standards.**
- **Salary needs to be comparable to a salary of a German employee.**
- **Degree verification** – the German authorities only recognize certain listed degrees for certain permit types.
- **Apostilles/Legalization/ Verification process** - personal status documents (e.g. marriage certificate, birth certificate) will often need to be apostilled/legalized or verified; this might increase processing times during the visa application procedure
- **Translations** – certain documents would require a German translation.
- **Rental agreements** – a copy of the rental agreement will be required for the in-country process. The applicant might be required to prove that adequate living arrangements have been acquired.
- **Occupation confirmation** - Landlord needs to provide a confirmation of property occupation.
- **Previous stays in Germany** – if an individual has previously lived and worked in Germany, the Embassy/ Consulate is obligated to request internal approval from the local immigration office in Germany.
- **Prior criminal records** – these can often result in a refusal of a residence permit.
- **Inconsistencies in documentation** – for example if there is a discrepancy in the name of the applicant as shown on their passport, degree or marriage certificates, the authorities may require further supporting documentation.

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