



**REAL ESTATE TAX GUIDE  
GERMANY**



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This guide to Real Estate Tax in Germany is intended to provide an initial overview of German real estate taxation. Your contacts at RSM Ebner Stolz will be more than happy to answer any questions you may have.

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## **PRELIMINARY GERMAN TAX CONSIDERATIONS**

The principal taxes applicable to real estate related businesses and companies in Germany are individual income or corporate income tax, trade tax and value added tax (VAT). For individuals with private owned property only individual income tax is applicable.

In case of commercial partnerships, taxation is split between the partnership and the partners. While partnerships are liable for trade tax and VAT, the partners are assessed to income or corporate income tax.

Other taxes like property tax and real estate transfer tax are also relevant for investments in real estate. There is no tax on corporate capital and no branch remittance tax, excess profits tax or alternative minimum tax.

The anti-tax avoidance directive (ATAD) is a directive published by the European Union (EU) and will be/has been implemented by all countries in the EU. ATAD contains certain restrictions that may also affect investors in real estate.

Germany has adopted the Minimum Tax Act at the end of 2023 which in general applies to financial years beginning calendar year 2024. This Tax Act implements the regulations of an EU Directive based on OECD BEPS Action Point 1 (Pillar 2) in domestic law. It affects international groups with a revenue of at least EUR 750 million in two of the last four fiscal years, regardless of their international or national activities. The Minimum Tax Act is intended to ensure that these companies pay at least 15 % income tax in future, irrespective of the country in which the profits are generated. There is a five-year exemption for groups with limited international activity. The minimum tax applies irrespective of the legal form of the company.

## **CORPORATE TAXATION**

The corporate income tax rate is 15 %, plus a 5.5 % solidarity surcharge thereon, which results in a combined rate of 15.825 %. Combined with trade tax the total effective income tax rates in major cities typically ranges between 30 % and 33 %. Corporations that are resident in Germany are generally taxed on their worldwide income. However, tax treaties may exclude foreign-source income from German taxation. Non-resident companies are only taxed on certain German-source income, such as income from a German permanent establishment (PE) or rental income from German-situs real estate.

The taxable income is calculated on the basis of the profit as per the commercial balance sheet and adjusted by adding all non-tax deductible expenses (e.g. non-deductible taxes like corporate income tax and trade tax, excessive depreciation) and by deducting exempt income (e.g. according to a double tax treaty). Accordingly, in principle, the taxable income will be determined as the difference between rental income and expenses.

Capital gains from the sale of shares in German or non-German corporations are effectively exempt from corporate income tax and trade tax up to 95 %. If the shareholder holds at least 10 % of the shares at the beginning of the calendar year, dividends are also effectively 95 % exempted from corporate income tax.

Capital gains from the disposal of real property are in principle fully subject to corporate or individual income tax. However, the German tax law offers the possibility under certain conditions to transfer the respective capital gains to an acquired (or erected) replacement asset resulting in a deferral of the taxation of the respective built-in gains in the disposed real property. This transfer of built-in gains rules applies to capital gains from the

disposal of real property qualifying as business assets realised by individuals as well as to capital gains from the disposal of real property realised by partnerships qualifying as trading (by activity or by legal structure) or realised by corporations.

## **TRADE TAX**

Trade tax is levied by the local authorities typically at rates between 14 % and 17 %, although in some cities it can be as high as 19 %. All entrepreneurs with commercial activities carried out through a subsidiary or a non-resident's permanent establishment in Germany are liable for trade tax. Corporations that are resident in Germany are generally deemed to carry on commercial trade or services, regardless of their actual activities. Individuals, alone or in partnership, are not liable for trade tax on income from professional or other independent services, unless the activities are deemed to be commercial under the income tax law. This is e.g., the case for property owners if the individual or partnership provides additional services such as cleaning or a concierge service to the tenant. If the shareholder holds at least 15 % of the shares in the distributing corporation since the beginning of the fiscal years, dividends are effectively 95 % exempt from trade tax.

Trade tax is based on taxable income as calculated for corporate or individual income (business income) tax purposes with some modifications (e.g., a 25 % add-back of interest expense, a 6.25 % add-back of royalty payments, a 5 % add-back of rental payments for movables and a 12.5 % add-back of rental payments for immovables to the extent these add-backs in total exceed EUR 200,000). On the other hand, 1.2 % of the unitary tax value (Einheitswert) of real property belonging to the business assets and not being exempt from property tax can be deducted from income for trade tax purposes. From 1 January 2025 onwards this reduction is calculated based

on the property tax value (in German: Grundsteuerwert). For individual income tax purposes, trade tax is generally deductible with a standardised calculation method. However, trade tax is a non-deductible expense for corporate income tax purposes.

Even if a taxpayer's activities are, in principle, regarded as business income and liable for trade tax, trade tax may be avoided under the following conditions. A taxpayer that merely holds and administers their own real property may apply for a so-called 'extended trade tax deduction' (in German: Erweiterte Gewerbesteuerlürzung). Such a deduction is made from the tax base for trade tax purposes of income derived from merely passive rental activities, thereby reducing the tax base for such activities to zero and effectively leading to an exemption from trade tax. This exemption can also avoid trade tax on capital gains. However, a number of restrictions or prerequisites have to be considered in order to benefit from this exemption.

Partnerships qualifying as trading (by activity or by legal structure) are liable for trade tax but are treated as transparent for income tax purposes and thus are not subject to income tax itself.

## **INDIVIDUAL INCOME TAXATION**

### **Basics of Individual Income Taxation**

The individual income tax differentiates between an unlimited and limited tax liability in a similar way as explained for corporate taxation. Individuals having their residence or main habitual abode in Germany, are subject to unlimited income tax liability with their worldwide income. However, various tax exemptions and other tax reductions could apply according to applicable Double Tax Treaties to avoid double taxation.

Individuals with neither residence nor habitual abode in Germany may be subject to limited income tax liability if they earn certain German-source income, such as rental income from real estate located in Germany.

Germany taxes individuals at a progressive tax rate, currently ranging from 14 % to 42 %. If a taxpayer's income in 2024 exceeds EUR 277,826 (EUR 555,652 for married couples with a joint tax assessment), a special tax rate of 45 % applies for the income exceeding the aforementioned amount. In addition, Germany levies a solidarity surcharge of up to 5.5 % on the income tax liability and church tax of 8 % or 9 % if the taxpayer is registered with a German church. No solidarity surcharge is levied on income tax up to EUR 18,130 (EUR 36,260 for married couples with a joint tax assessment). There is a sliding scale for taxable income above this amount. Individual taxpayers with taxable income above EUR 105,508 (EUR 211,016 for married couples with a joint tax assessment) are fully subject to the 5.5 % solidarity surcharge.

### **Special Tax Regulations for Partnerships**

Upon request for partners of partnerships and individual entrepreneurs, retained earnings are subject to a separate income tax rate of 28.25 % (plus 5.5 % solidarity surcharge) at the level of the partners and the individual entrepreneurs. If retained earnings are withdrawn in subsequent years, they are additionally taxed at a rate of 25 %.

**Note:** With effect for fiscal years starting 2022 onwards, the partnerships may opt to be treated as corporations for income tax purposes.

## Taxation of Capital Income and Real Estate Income

In most cases, income from private savings and capital investments and connected capital gains are subject to a separate tax flat rate of 25 % (26.375 %, including 5.5 % solidarity surcharge), mostly via withholding at source. Where a shareholding of at least 1 % has been held at any time during the five years prior to a disposal of the shares, 60 % of the capital gain is taxed at the individual's regular (progressive) income tax rate (40 % is tax exempt). This also applies to dividends and capital gains when the underlying assets qualify as business assets.

If an individual receives rental income in respect of a German-situs real estate, capital gains realised on the disposal of such German-situs real estate are only subject to personal income tax if the period between acquisition and disposal does not exceed ten years and the property was held as private property. In case the real property was privately used at least in the disposal year and the two previous years, the capital gain is tax exempt. If the rental activities have been qualified as 'business income' instead, capital gains are always subject to income tax as ordinary business income.

## REAL ESTATE TRANSFER TAX (RETT)

Real Estate Transfer Tax (RETT) is imposed on the transfer of real estate located in Germany and on certain transactions that are deemed to constitute such a transfer. This includes the direct or indirect transfer of at least 90 % of the shares in companies or the interest in partnerships owning German-situs properties to new shareholders/partners within a ten-year period. This also applies to shares/interests of the shareholder/partners throughout the chain of participation. The economic share or interest approach requires looking through intermediary companies and adding the direct and indirect participations. Further, an (economic) 'unification' of 90 % of the shares/interest in a corpora-

tion/partnership owning German-situs properties can also give rise to an event subject to RETT.

Exceptions to RETT apply for certain intragroup restructurings under the laws of a member state of the European Economic Area (EEA), for transfers of shares executed via a qualified stock exchange, an equivalent third party trading venue/multilateral trading facility as well as for transactions between related individuals or transfers by way of inheritance.

In general, RETT is levied on basis of the agreed consideration – in most cases the purchase price. However, where no consideration exists, a separate real property evaluation based on the rules of the German Valuation Act is required for determining the RETT base. This is the case in a number of special transactions, such as group restructurings, transfer of shares in a corporation or interest in a partnership of at least 90 %. The regulations of RETT apply, irrespective of whether the transaction itself is subject to VAT. VAT is not part of the consideration for RETT purposes.

The tax rate depends on the federal state in which the German-situs real estate is located and ranges between 3.5 % and 6.5 % of the consideration (or alternative tax base, i.e. the assessed value). In 2024 a tax rate of 3.5 % applies for real estate located in Bavaria; 5.0 % in Baden-Wuerttemberg, Bremen, Lower Saxony, Rhineland-Palatinate, Saxony-Anhalt and Thuringia; 5.5 % in Hamburg and Saxony, 6.0 % in Berlin, Hesse, Mecklenburg-Western Pomerania and 6.5 % in Schleswig-Holstein, Saarland, Brandenburg and North Rhine-Westphalia.

**Note:** Due to the entry into force of the Act on the Modernisation of Partnership Law on 1 January 2024 (in German: Gesetz zur Modernisierung des Personengesellschaftsrechts – short form in German: MoPeG; please see also the explanations in the part for legal forms be-

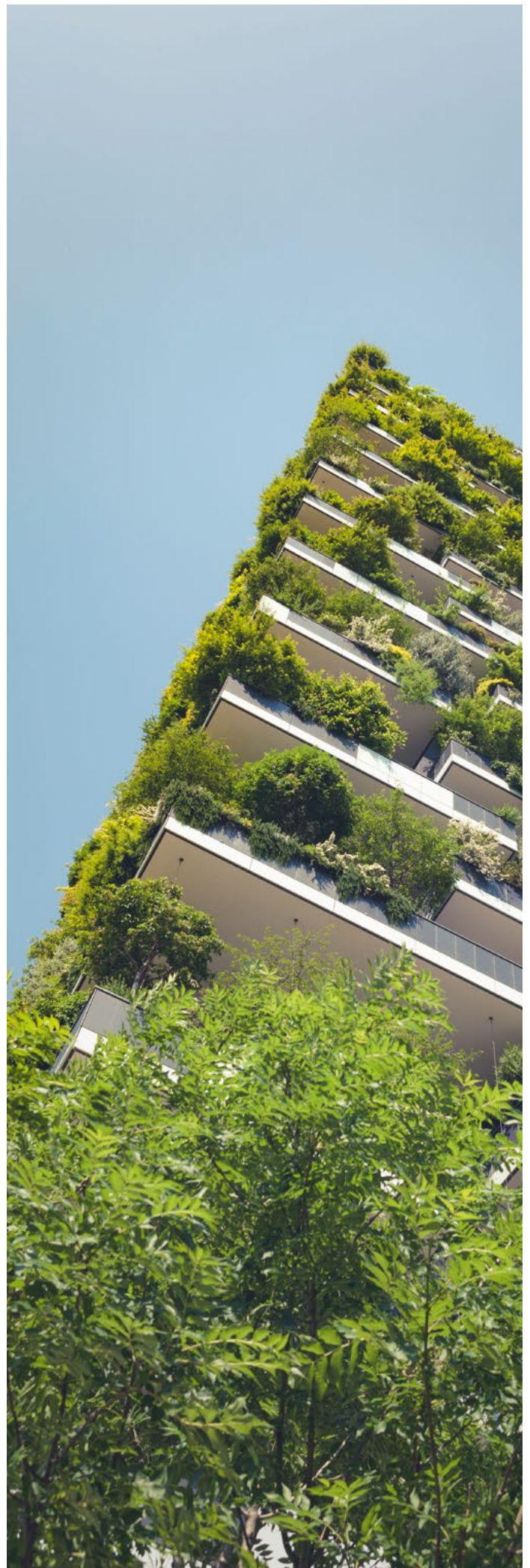
low), certain transactions between partners and partnerships would no longer be exempt or preferential for the purposes of RETT due to the extensive abandonment of the joint ownership principle. In order to avoid (short-term) tax disadvantages, a statutory regulation was passed shortly before the end of 2023, according to which these exemptions or preferential treatment will continue to apply until the end of 2026. Within the next three years, the German legislator intends to pass new legal regulations in the area of RETT.

## VALUE ADDED TAX (VAT)

Value added tax (VAT) is levied on supplies of goods and services at each stage of the production and distribution chain. To be subject to VAT, the supply must be carried out by an entrepreneur in the course of his business and the taxable supply, acquisition or receipt must take place (or be deemed to take place) in Germany. In the chain of entrepreneurs, VAT should in principle be tax neutral at each stage until the goods or services reach the final customer (or are used for VAT-exempt purposes).

The standard rate of VAT in Germany is 19 %, with a reduced rate of 7 %, applicable to certain consumer goods and basic services.

Long-term leases of real estate are generally exempt from VAT, unless and to the extent that the lessor waives the VAT exemption. The waiver of the VAT exemption requires, inter alia, that the lessee is an entrepreneur for VAT purposes and that his services are subject to VAT. Hence, the lessor cannot waive the VAT exemption for the letting of real estate to entrepreneurs who provide VAT-exempt services or to private individuals (residential). The long-term letting of parking areas and the letting of hotel rooms (or other



short-term accommodation) are subject to VAT (VAT exemption does not apply).

Any input VAT relating to the real estate for services received by the lessor is generally deductible only to the extent that it is allocable to letting services subject to VAT. If the service is split between services subject to VAT and VAT-exempt services, an allocation must be made on the basis of the underlying areas.

Input VAT relating to construction and refurbishment services (and other services) of real estate is generally subject to a ten-year correction period (capital goods scheme). Hence, in case the initial input VAT deduction was 100 % (because 100 % let subject to VAT) and later a change of use occurs (e.g. only 80 % let subject to VAT and 20 % let VAT exempt) the initial input VAT deduction has to be corrected (subject to various provisions (including some de minimis thresholds)).

As a general rule, the sale of German real estate is exempt from VAT. However, in the case of a VAT-exempt sale, the seller might want to charge VAT on the transaction for buildings with leases subject to VAT in order to avoid any correction for input VAT (e.g. for nonresidential (commercial) buildings). In this case, the reverse charge mechanism (partially) applies. Under the reverse charge mechanism, the liability to pay VAT to the tax authority is transferred to the buyer and may simultaneously be offset as input VAT if and to the extent that the buyer plans to use the real estate (partially) for activities that are not VAT exempt.

**Note:** Where the seller opts to VAT liability for the transaction, RETT does not increase the calculation basis for VAT.

Further, if the sold real estate qualifies as a letting business (which is usually the case if the existing tenancy agreements are acquired by the purchaser together with the real estate), the sale is not subject to VAT (i.e. outside the scope of VAT) and will be treated as a transfer of a business as a going concern for VAT purposes. Consequently, such a transaction does not result in an input VAT correction, but the purchaser assumes any open input VAT correction volumes of the seller. This means that input VAT correction periods (which are in general 10 years) do not end upon the acquisition of the real estate, but the purchaser is obliged to continue any open input VAT correction periods as the legal successor of the seller.

## PROPERTY TAX

Property tax is assessed on an annual basis at the level of the German municipality in which the real estate is located. Every type of real estate, including undeveloped land, is subject to property tax. For the calculation of the property taxes, so far, the following three factors have to be taken into account:

Unit value (Einheitswert) X property tax measurement number (Grundsteuermesszahl) X assessment rate (Hebesatz).

Each municipality can determine the assessment rate and thus the actual amount of the tax itself. In general, the current property tax base calculation results in significantly lower values than the properties market value.

In April 2018, the Federal Constitutional Court declared the property tax assessment system to be incompatible with the German constitution and required the German legislature to establish new property tax rules by 31 December 2019. As part of the subsequent reform of Germany's property tax system, the value of all German real estate (including both residential and non-residential property) will be



revaluated as per 1 January 2022. The new property tax rules will enter into effect as from 1 January 2025. In principle, the calculation of the property tax as of 1 January 2025 is based on a so-called federal model (in German: Bundesmodell) which is based on the standard earnings value method (in German: typisiertes Ertragswertverfahren) – for example, for residential rental properties and condominiums – and the standard substance value method (in German: typisiertes Sachwertverfahren), for example, for commercial properties and part-ownership. However, the German legislator provided an opening clause to the federal states. The state opening clause has been used by Baden-Wuerttemberg, Bavaria, Hamburg, Hesse and Lower Saxony. In future, these federal states will apply their own models for calculating property tax.

**Note:** Several lawsuits have been filed in various federal states regarding the federal model. E.g., in Rhineland-Palatinate, the responsible tax office has lodged an appeal with the Federal Fiscal Court following two urgent rulings by the Rhineland-Palatinate Fiscal Court in the dispute over property tax value assessments as part of the property tax reform. Both cases concern single-family homes. The property owners' complaints are directed against the revaluation according to the federal model. At the end of November 2023, the tax court expressed 'serious doubts' about the constitutionality of the statutory valuation rules and ruled in favour of two applicants in summary proceedings (case no. 4 V 1295/23, case no. 4 V 1429/23).

## NET WEALTH TAXES

A (net) wealth tax is currently not levied in Germany.

## LEGAL FORMS – VEHICLES FOR GERMAN REAL ESTATE

Germany provides numerous legal forms for establishing a business and holding real estate. The choice of the legal form depends on many different factors, including liability, taxation and accounting. A real property investor is not locked into a specific legal form after making his initial selection. Fortunately, as the business evolves, the German law allows a change of the legal forms. To assure that the proper and most beneficial legal form for the investment is selected, it is advised to seek the joint advice of a tax expert and corporate lawyer. In the following sections, we introduce the common legal forms for real property investments in Germany.

### Civil Law Partnership (Gesellschaft bürgerlichen Rechts – GbR)

Investments in real estate are often made on a collective basis by entities and/or individuals. The Civil Law Partnership (in German: 'Gesellschaft bürgerlichen Rechts') is a partnership commonly used. In order to establish a Civil Law Partnership, it is required to have at least two separate partners. The partnership agreement may be oral, written or conclusive. However, it is highly recommended that a partnership agreement is formed in writing. In addition to the assets of the partnership, a partner has an unlimited personal liability.

When the Act on the Modernisation of Partnership Law (in German short form: MoPeG) comes into force on 1 January 2024, there will be far-reaching changes in relation to a GbR

The MoPeG enables the GbR to acquire legal capacity for the first time through legislation, so that a differentiation is made between 'partnership with legal capacity' and 'partnership without legal capacity'. Legal capacity gives the GbR the ability



to bear rights and obligations as well as replaced the joint ownership principle by direct allocation of assets to the GbR and enables GbRs to be active part of civil proceedings such as being sued or taking legal action itself (even against individual business partners).

However, registration in the new company register, so-called 'GbR register', is a prerequisite for obtaining legal capacity of the GbR, which represents a significant change with the MoPeG. After registration, the partnership is referred to as an eGbR (registered partnership, in German: eingetragene GbR).

A GbR that wishes to acquire or sell real estate or shares in corporations (e.g. in a private limited liability corporation), is obliged to get registered. Otherwise the aforementioned transactions cannot be carried out.

GbR's with property assets already founded and existing prior 1 January 2024 who are already entered in the land register as owners of the property alongside the partners are not generally obliged to be entered in the new company register. However, the entry must be made at the latest if, for example, new properties are to be acquired or existing properties are to be sold or general changes to the land register are required.

The register is kept at the local court responsible for the registered office of the GbR. The registered office of such a GbR can currently only be in Germany; however, it is envisaged that the partners will also be able to define a registered office abroad in the articles of association at a later date.

The entry in the GbR register can only be made by a notary which causes a registration fee for the GbR.

The following minimum details are required for registration:

- > Name of the partnership/GbR
- > Registered office
- > Domestic address
- > Details of the shareholders
- > Authorisations to represent the GbR

### **Limited Liability Partnership (GmbH & Co. KG)**

The GmbH & Co. KG is a special form of partnership. At least two partners are required in order to establish a GmbH & Co. KG: A GmbH (see below) as general partner and at least one limited partner. The general partner is usually responsible for managing the business and is represented by the managing director of the GmbH. Limited partners are regularly excluded from managerial duties but are only liable to the extent of their contribution. Their limited liability is the main advantage of the limited liability partnership. It should be noted that the GmbH and the KG are two different company types and require separate bookkeeping and incur separate expenses.

The GmbH & Co. KG usually operates as a commercial entity. The KG must be formulated and certified by a notary before the entry is submitted to the Commercial Register. Appointment and retirement of a limited partner must be reported to the Commercial Register. With the entry of new limited partners, the GmbH & Co. KG is able to raise capital. It should be noted that the GmbH and the KG are two different company types and therefore require separate bookkeeping and incur separate expenses.

The GmbH must have a minimum share capital of EUR 25,000 before registration can proceed. The limited partners are not required to make a contribution in this amount. To keep the liability of the general partner as small as possible, only the

minimum capital contribution is used in practice. The partnership agreement includes resolutions regarding management and representation, profit and loss distribution, majority decisions and succession plans for the company.

### **Private Limited Liability Corporation (Gesellschaft mit beschränkter Haftung – GmbH)**

The GmbH is the most popular business entity in Germany, because of the limited liability. The company must fund at least EUR 25,000 of equity in the form of a cash deposit, in kind capital contributions or a mixed deposit. The GmbH requires notarised Articles of Association and a registration in the Commercial Register by a notary. Until this registration is completed, the company is considered liable without limitation.

A GmbH is legally obliged to have at least one manager. Regulations for management and representation are defined in the Articles of Association. In addition to procedures regarding majority rulings, the Articles of Association must include basic company information such as name, place and purpose of the company. The most important aspect of the GmbH is the shareholders' meeting, where the shareholders meet and deliberate over the state of the company.

As previously mentioned, there is no personal liability for shareholders. Any profits may be distributed or retained. The regulations regarding the profit distribution (e.g. protection of minority shareholders) are also stated in the Articles of Association. Since the modernisation of the GmbH law in 2008, the opportunity to complete a foundation by a standardized governmental form provides a faster and a simpler establishment.

## **Real Estate Investment Trust (REIT)**

In 2007, Germany adopted the introduction of German real estate corporations with shares listed on the stock exchange (REIT). The REIT needs to have the legal form of a stock corporation (Aktiengesellschaft). The required minimum capital is EUR 15 million. Both the statutory seat established in accordance with the corporate articles and the actual seat of management must be in Germany. At least 15 % of the shares in the REIT must be widely spread in a way that from these shares no investor must hold 3 % or more ('small investor rule'). At the moment of listing, it is even required that 25 % of the shares must be held widely spread. No individual shareholder must hold 10 % or more of the REIT shares directly. Additional indirect holdings are possible to a certain extent. The ownership and transfer of REIT shares are supervised by the German Federal Financial Supervisory Authority (Bundesanstalt für Finanzdienstleistungsaufsicht, BaFin).

REITs are exempt from corporate income tax (including the solidarity surcharge) and trade tax if at least 90 % of the profit is distributed and at least 75 % of that profit is generated on real estate. Full taxation on income from shares in REITs is instead shifted to the investor level. For private investors, REIT distributions will be subject to final withholding tax at a rate of maximum 25 % (plus solidarity surcharge).

The REIT is subject to annual certification by its auditors as per 31 December, confirming that it has complied with the REIT specific rules. Failure to obtain such certification triggers penalties in different degrees of severity at the level of both the shareholders and the REIT, starting from penalty payments up to a potential loss of the REIT status. 75 % of the REIT's assets must consist of real property that is to be let, leased, or sold. Properties that are more than 50 % let to residential

tenants are non-eligible assets, unless they have been erected on or after 1 January 2007. Sale-and-lease-back arrangements are permissible without restrictions.

## **Real Estate Investment Funds**

A fundamental distinction must be made between open and closed real estate funds.

Closed funds in Germany are regularly structured as asset-managing limited partnerships under civil law. The investors hold either a direct interest as shareholders in the partnership or indirectly through a trustee. The general provisions for the tax treatment of partnerships apply to closed real estate funds. They differ from open funds in the fact that the investment is limited to a real estate project to be acquired or constructed by the fund. When the subscription amount is reached, the fund is closed.

An open fund is a special fund from which certificate holders receive income from capital assets. Open investment funds are generally taxed in accordance with the provisions of the German Investment Tax Act (InvStG).

## **Foreign Trusts**

The legal form 'trust' is unknown in German civil law. Accordingly, German tax law does not contain any provisions for trusts. The respective taxation has to be carried out according to the general principles and regulations. By means of a type comparison, it must be determined which domestic legal form is comparable to the foreign trust. The tax treatment in Germany will depend on this classification. It will be determined to what extent the trustees or the beneficiaries can influence the asset investment, and/or the income generated by the trust. If the administrator of the trust has a position corresponding to that of a trustee,

the trust is generally not to be regarded as an independent taxable entity and the income is taxed at the level of the trustee and/or the beneficiary.

### Foreign Entities

Foreign corporations and foreign partnerships can own real property in Germany. The real property is either allocated to the foreign entity directly or to a permanent establishment of the foreign entity

in Germany. For partnerships established under foreign law, a decision needs to be made whether the company is recognised as a partnership or a corporation in Germany for tax purposes. The decisive factor is whether the foreign company is comparable to a partnership or corporation under German law. As described above, partnerships are treated as transparent for income tax purposes and thus are not subject to income tax but subject to trade tax if a permanent establishment is constituted in Germany.

## CONTACT PERSONS



The contact persons you know at RSM Ebner Stolz as well as the experts in real estate taxation will be happy to provide you with further information on our approach and our range of services at any time.

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