

Legal and tax insights into the forms of business activities in Germany

Markus Terassa, Executive Director, EY GmbH

Jörg Leissner, Executive Director, EY Law GmbH

27 June 2018

Content

1. General Principles

- 1.1 German Companies and Taxes
- 1.2 Legal Differences between Corporations and Partnerships
- 1.3 Taxation of Partnerships
- 1.4 Taxation of Permanent Establishment
- 1.5 Taxation of Corporations

2. Corporate Income Tax – Tax Loss Utilization

3. Trade Tax

4. Distribution Channels in Germany

1. General Principles



1.1 German Companies and Taxes

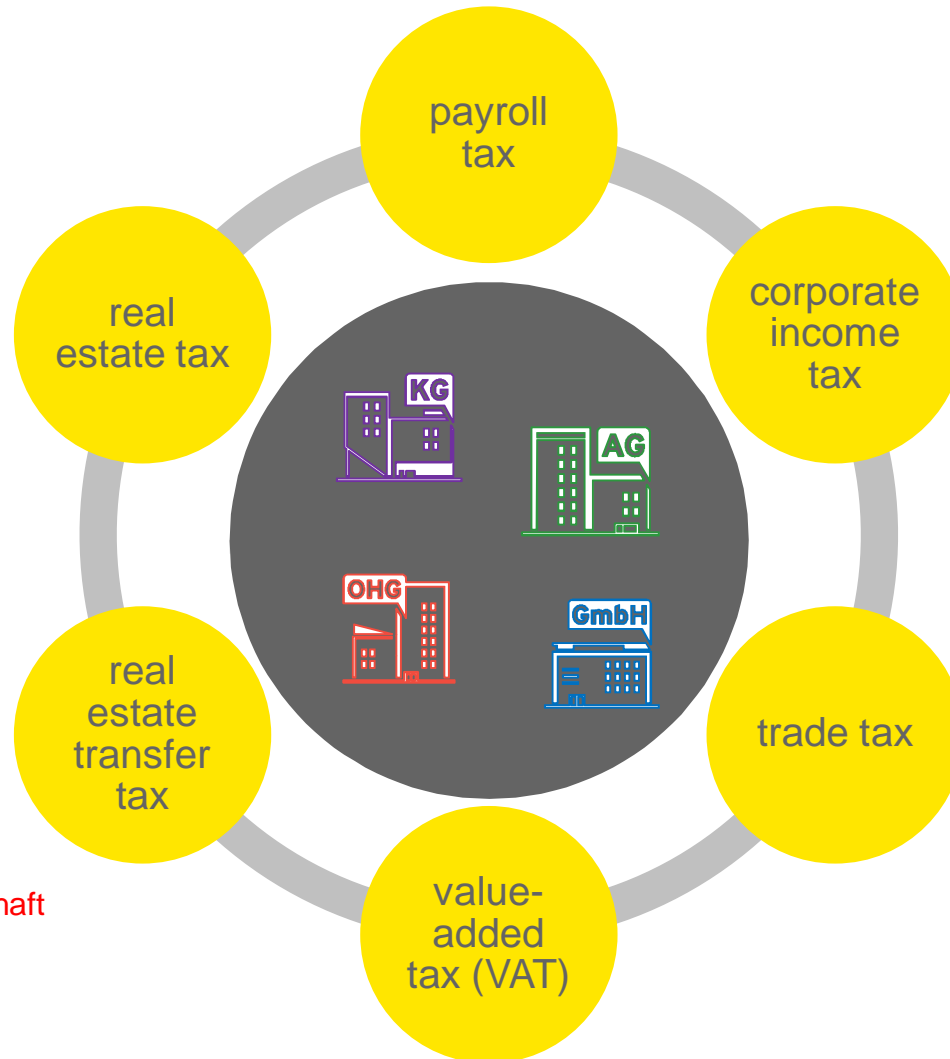
KG - Kommanditgesellschaft

- ▶ Limited Partnership
no fixed capital

Partnerships
(approx 400,000)

OHG - offene Handelsgesellschaft

- ▶ General Commercial
Partnership
no fixed capital



AG - Aktiengesellschaft

- ▶ Stock Corporation
at least 50,000 Euro fixed
share capital

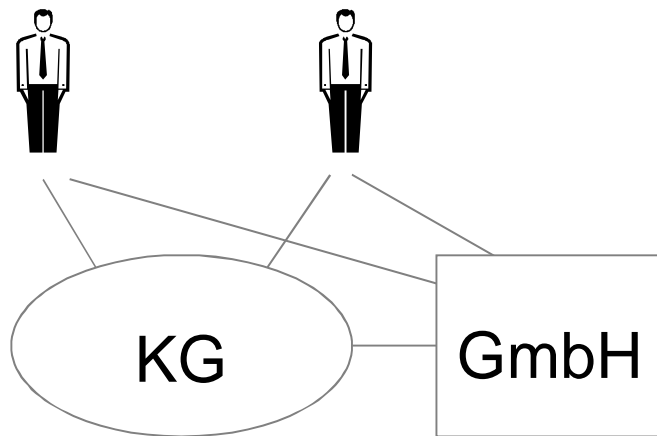
Corporations
(approx 500,000)

GmbH - Gesellschaft mit beschränkter Haftung

- ▶ Limited Liability Company
at least 25,000 Euro
fixed share capital
- ▶ UG ("Unternehmer-
gesellschaft haftungs-
beschränkt) without
minimum fixed capital

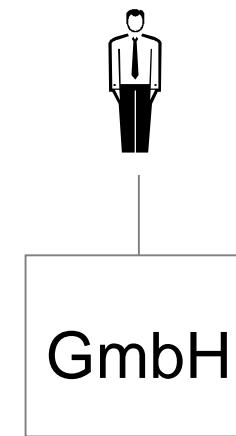
1.2 Legal Differences between Corporations and Partnerships

Partnership



- ▶ at least two partners
- ▶ limited / unlimited liability of partners
- ▶ usual legal form: GmbH & Co. KG:
GmbH is general partner with unlimited liability and one or more limited partner(s)

Corporation



- ▶ might be one or more shareholders
- ▶ in principle limited liability of the shareholders
- ▶ managing directors
- ▶ supervisory board
(mandatory in a stock corporation)

1.3 Taxation of Partnerships

- ▶ Transparency principle
 - ▶ Profits and losses are to be taxed on the partners' level (personal income tax/corporate income tax/solidarity surcharge)
 - ▶ But: **partnership is subject to trade tax**
- ▶ Compensation paid for a partner's services rendered to the partnership neutral for tax purposes
- ▶ Losses of the partnership
 - ▶ Losses can be set off against other positive earnings of the partner as long as positive capital for income tax purposes is available

1.4 Taxation of Permanent Establishment (PE)

- ▶ Fixed Place of business from which business activities are carried out
 - ▶ Also dependent agent or representative with authority to conclude contracts
- ▶ Non resident corporations with income from PE subject to limited taxation (corporate income tax/solidarity surcharge/trade tax) in Germany
- ▶ Shareholding in German partnership will be treated as (proportional) PE of the relevant partner

1.5 Taxation of Corporations

- ▶ Principle of separation
 - ▶ As legal entities corporations are liable to corporate income tax.
 - ▶ Level of corporation and level of shareholder are to be strictly separated for tax purposes.
- ▶ Corporate income tax rate of 15%
 - ▶ Irrespective of profit allocation (retained or distributed)
- ▶ Cash principle at shareholder level
 - ▶ Only distributed profits are subject to income or corporate income tax at the level of shareholder

1.5 Taxation of Corporations

- ▶ Contractual relations between shareholder and corporation
 - ▶ Effective for tax purposes, if adequate
 - ▶ Otherwise hidden profit distribution (non deductible)
- ▶ Losses
 - ▶ No off-setting of losses against shareholder's positive earnings
 - ▶ Exemption: fiscal unity

2. Corporate Income Tax (CIT)



2. Corporate Income Tax

Tax Loss Utilization

- ▶ **Requirements for tax loss carryback:**
 - ▶ up to a maximum of 1,000,000 €

- ▶ **Requirements for tax loss carryforward:**
 - ▶ Losses which are not set off against profits in the current or previous assessment period can be set off against future profits
 - ▶ unlimited up to 1 million €
 - ▶ above 1 million € up to 60% of the remaining profit after unlimited set-off of losses

- ▶ Remaining profit (after limited tax loss utilization)
has to be taxed – **minimum taxation**

3. Trade Tax



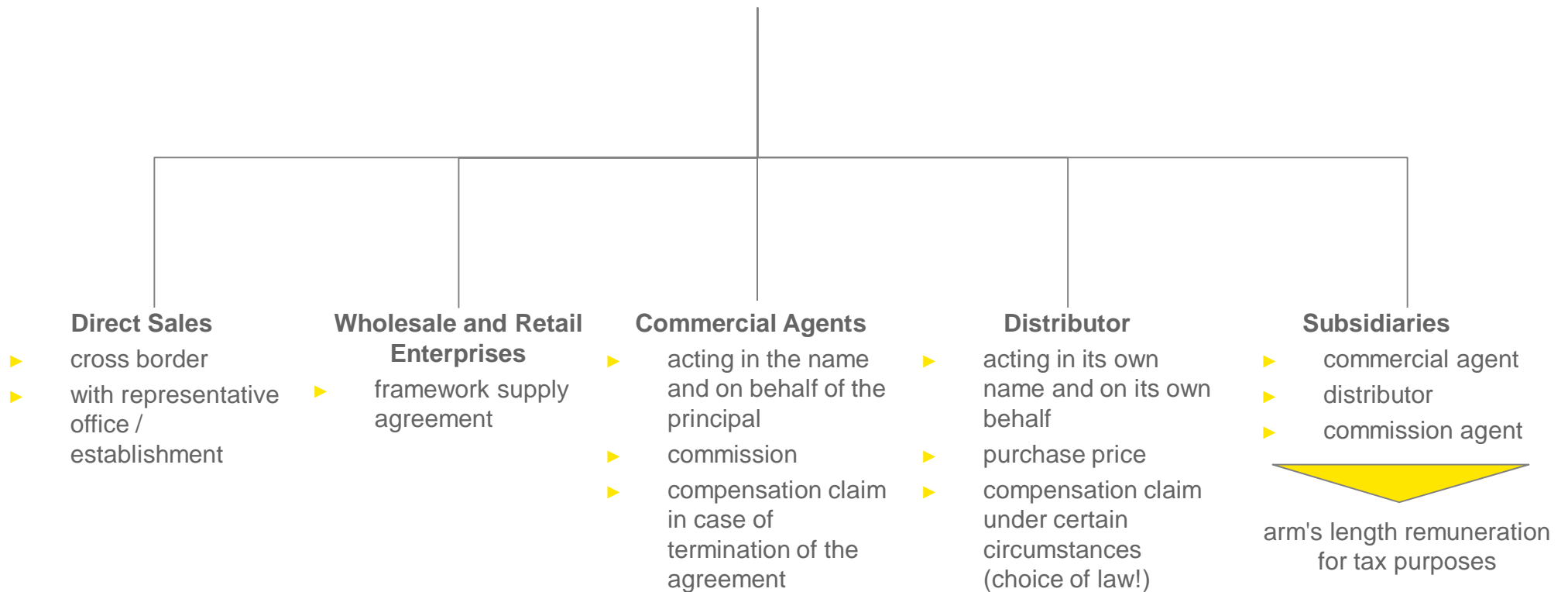
3. Trade Tax

- ▶ Municipalities raise trade tax as a municipal tax
- ▶ A stationary trade business (sustainable activity with intention to realize profit and participating in economy) is subject to trade tax, as far as it is located domestically
- ▶ There is no loss carry back, only loss carry forward (see CIT)
- ▶ Determination of the trade tax burden:
 - ▶ Uniform trade tax rate (GewSt-Messzahl) of 3,5% applicable to all legal forms
 - ▶ Trade tax multiplier determined by the municipalities and applied on the trade tax base (at least 200%)
 - ▶ Method of calculating trade tax:

*taxable trade income * trade tax rate * trade tax multiplier*

4. Distribution Channels in Germany

In principle, no restrictions => can select best suited channels depending on product and preferred degree of involvement in the German market



Contact



Markus Terassa
Executive Director

Tel +49 911 3958 28133
Mobil +49 160 939 28133
Fax +49 911 3958 550
E-Mail markus.terassa@de.ey.com



Jörg Leissner
Executive Director

Tel +49 911 3958 28369
Mobil +49 160 939 28369
Fax +49 911 3958 28284
E-Mail joerg.leissner@de.ey.com

About EY

EY is a global leader in assurance, tax, transaction and advisory services. The insights and quality services we deliver help build trust and confidence in the capital markets and in economies the world over. We develop outstanding leaders who team to deliver on our promises to all of our stakeholders. In so doing, we play a critical role in building a better working world for our people, for our clients and for our communities.

EY refers to the global organization, and may refer to one or more, of the member firms of Ernst & Young Global Limited, each of which is a separate legal entity. Ernst & Young Global Limited, a UK company limited by guarantee, does not provide services to clients. For more information about our organization, please visit ey.com.

This material has been prepared for general informational purposes only and is not intended to be relied upon as accounting, tax, or other professional advice. Please refer to your advisors for specific advice.

© 2018

Ernst & Young GmbH Wirtschaftsprüfungsgesellschaft
All Rights Reserved.

www.de.ey.com