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Moving a business to another Member State

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Modul	Sachverhalt
Leistungsschlüssel	99154050000000
Leistungsbezeichnung I	Moving a business to another Member State
Leistungsbezeichnung II	Moving a business to another Member State
Typisierung	11 - SDG: Allgemeine Rechte und Pflichten
Quellredaktion	Bund
Freigabestatus Katalog	unbestimmter Freigabestatus
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Begriffe im Kontext	
Leistungstyp	Leistungsobjekt
Leistungsgruppierung	SDG allgemeine Rechte und Pflichten (154)
Verrichtungskennung	
SDG-Informationsbereich	Verlagerung eines Unternehmens in einen anderen Mitgliedstaat
Lagen Portalverbund	Grenzüberschreitende Tätigkeit (2070100), Betriebsübernahme (2160200)

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Einheitlicher Ansprechpartner	Nein
Fachlich freigegeben am	12.12.2022
Fachlich freigegeben durch	Federal Ministry for Economic Affairs and Climate Action
Handlungsgrundlage	<ul style="list-style-type: none"> • Civil Code (Bürgerliches Gesetzbuch - BGB) • Corporation Tax Act (Körperschaftsteuergesetz - KStG) • Income Tax Act (Einkommensteuergesetz - EStG) • Foreign Transaction Tax Act (Gesetz über die Besteuerung bei Auslandsbeziehungen/Außensteuergesetz - AStG) • Conversion Tax Act (Umwandlungssteuergesetz - UmwStG) • SE Implementation Act (SE-Ausführungsgesetz - SEAG) • SE Participation Act (SE-Beteiligungsgesetz - SEBG) https://www.gesetze-im-internet.de/seag/ https://www.gesetze-im-internet.de/seag/ https://www.gesetze-im-internet.de/estg/ https://www.gesetze-im-internet.de/astg/index.html https://www.gesetze-im-internet.de/kstg_1977/index.html https://www.gesetze-im-internet.de/sebg/ https://www.gesetze-im-internet.de/estg/index.html https://www.gesetze-im-internet.de/sebg/ https://www.gesetze-im-internet.de/bgb/ https://www.gesetze-im-internet.de/umwstg_1995/ https://www.gesetze-im-internet.de/kstg_1977/ https://www.gesetze-im-internet.de/astg/ https://www.gesetze-im-internet.de/bgb/index.html https://www.gesetze-im-internet.de/umwstg_2006/
Teaser	Here you can find information on your rights and obligations when relocating a business from Germany to another Member State and from another Member State to Germany.
Volltext	Any businessperson wishing to relocate their registered office abroad has several things to take into account and should therefore start planning early. The Chambers of Industry and Commerce (Industrie- und Handelskammern, IHK) and the German Chambers of

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Commerce Abroad (Auslandshandelskammern, AHK) are on hand as competent points of contact concerning the relocation of a business from Germany to another country.

Notification and reporting obligations at the new location

The notification and reporting obligations and the permits to be obtained depend on the regulations in the EU country where the new business location is situated. In Germany, official business registration is strictly required for commercial activities. For certain legal forms, your company must be registered in the relevant national trade register. In the case of EU citizens, a valid passport and, where appropriate, a residence registration certificate are sufficient to register a business.

Obtaining any necessary permits at the new business location

Certain sectors and activities require special permits and licences, such as professions dealing with high-risk issues. Examples of sectors normally subject to a permit or authorisation include:

- pharmaceutical sector
- security industry
- financial service providers
- gambling industry
- arms trade

Find out at an early stage which permits you may need in your country of destination.

The following legal provisions in the country of destination may have to be taken into account:

- urban planning and building law
- legislation regarding permanent establishments
- water law
- waste disposal law
- legislation regarding nature and environmental protection

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- forestry law
- legislation regarding telecommunication
- legislation regarding the road and rail sector

Where appropriate, other permits should also be taken into consideration, such as:

- land use and zoning plans
- building permits
- operating licences
- environmental impact assessments

Tax arrangements when transferring assets to another EU country

If you are transferring assets, parts of the company or the entire company abroad, tax regulations apply.

Transfer of assets to another EU country

There are tax regulations regarding the cross-border transfer of assets that need to be taken into account. This means that hidden reserves accrued in Germany are taxable when assets, parts of a business or entire businesses are transferred abroad. The exit tax rules governing the taxation of hidden reserves accrued in Germany in the event of departure are laid down in the third sentence of Section 4(1) of the Income Tax Act (Einkommensteuergesetz - EStG), Section 16(3a) EStG and Section 12(1) of the Corporation Tax Act (Körperschaftsteuergesetz - KStG) .

The transfer of assets to a foreign part of the same enterprise is subject to immediate taxation in Germany. Only in certain cases can the resulting tax burden be extended by means of a balancing item (Section 4g EStG). In accordance with the fourth sentence of Section 4(1), such a balancing item may be formed in an amount equal to the hidden reserves to be disclosed. This applies only when the assets are transferred within the EU. The balancing item must be dissolved by one fifth in the financial year of formation and in each of the four following financial years with the effect of increasing profit. It may only be made on request and must be reported separately for each

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asset.

It also follows from the transfer of assets that neither (parts of) businesses nor rights of use can be the subject of a transfer.

When transferring assets from abroad to Germany, the respective tax rules of the country from which the assets are being transferred must be observed.

For more information on tax issues, please contact the competent tax office (Finanzamt).

Relocating a business to another EU country

If a sole trader is to continue operating in another EU country, it is recommended that the business be closed and then re-established again in the country of destination. If you decide to close your business, you will have to deregister it with the relevant public authorities:

- trade licensing office (Gewerbeamt)
- tax office
- local court, known as Amtsgericht (in the case of companies registered in the trade register)
- national insurance authority
- trade association
- Chamber of Industry and Commerce/Chamber of Skilled Trades (Handwerkskammer)
- statistical office (Statistisches Landesamt)

Anyone who does not wish to close their sole trader business should convert it into a limited liability company (Gesellschaft mit beschränkter Haftung - GmbH), provided that their domicile is also transferred abroad.

Irrespective of the legal form, the relocation of German business abroad always involves what is known as the transfer of functions (Funktionsverlagerung) in accordance with Section 1(3) of the Foreign Transaction Tax Act (Außensteuergesetz - AStG) and the legislation regarding exit tax in accordance with Section 4(1) EStG. The result is a notional sale of your company in

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Germany. Members of a joint-stock company (Kapitalgesellschaft) are also subject to exit taxation in accordance with Section 6 AStG. The level of the exit taxes fundamentally depends on the value of the company.

Regulations on cross-border transfers of employees

If a business is transferred, the employees employment contracts are automatically transferred to the buyer in accordance with the first sentence of Section 613a(1) of the Civil Code (Bürgerliches Gesetzbuch - BGB). This also applies where the transfer is a (partial) transfer of a business. Therefore, dismissals due to the transfer of a business are, in accordance with Section 613a(4) BGB, invalid.

However, if the employer transfers production abroad and, in connection with this, makes redundancies, it is necessary to examine whether there has been a transfer of a business in which employees employment contracts are protected. If the situation involves closure of a business, however, dismissals may be made for operational reasons. A transfer of a business may occur, for example, if the distance between the new and old establishments is not too great. In the event of dismissals within the context of the closure of a business, the statutory notice period laid down in Section 622 II No 6 BGB must be observed and, if there is a works council, its rights must be respected.

Furthermore, the employer is not obliged to offer the employee a vacant position in a business located abroad. The Act on Protection against Dismissal (Kündigungsschutzgesetz - KSchG) refers to the concept of an establishment (Betrieb). An establishment within the meaning of Section 1 KSchG is only the organisational units or parts of an undertaking situated in Germany.

Businesspersons wishing to transfer their businesses from another EU country to Germany can use the following legal forms to do so.

Establishing a subsidiary

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Establishing a subsidiary results in the creation of an undertaking that is legally independent from the parent company. There are no special legal conditions or restrictions on foreign companies establishing subsidiaries in Germany. Foreign founders are subject exclusively to German regulations on setting up and registering the subsidiary and entering it in the trade register. The capital needed to establish the subsidiary may be introduced into Germany without restriction.

Establishing an independent branch

A branch is not a legal entity that is separate from the main establishments business. It is a legal and organisational part of the main establishments business. German law also applies for the legal treatment of the branch in Germany. This is the case, in particular, for registration in the trade register.

In accordance with Section 13 et seq. of the Commercial Code (Handelsgesetzbuch - HGB), a branch is an establishment which is physically separate from the principal business and which must be entered in the trade register. An independent branch may be established only by a commercial undertaking. A non-commercial undertaking can only set up a permanent establishment. Permanent establishments are non-independent branches and are not entered in the trade register.

An application for entry in the trade register must be filed in writing with the competent local court. Signatures for the company must be authenticated by a notary.

Procedures required

In addition to being entered in the trade register, the establishment of a subsidiary or a branch is subject to fulfilment of the following requirements:

- Business registration: All commercial activities carried out by a subsidiary, a branch or a permanent establishment must be registered under commercial

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law with the competent trade licensing office in the municipality.

- Permits required: The commencement of any artisanal business in particular is subject to authorisation. The business must be registered in the Roll of Craftsmen (Handwerksrolle) of the competent regional Chamber of Skilled Trades. Entry into the Roll of Craftsmen is subject to the requirement that the business must be run by a master craftsman (Handwerksmeister).

European Cooperative Society

Another form of enterprise is the European Cooperative Society (SCE). These can operate on the European single market with a single set of rules and a single structure. In doing so, workers rights to information, consultation and participation are respected. An SCE must have a minimum capital base of EUR 30 000.

National cooperatives operating in more than one Member State may be converted into a SCE without prior dissolution. In Germany, registration in the Public Register of Co-operative Societies (Genossenschaftsregister) is required in order to do so. This is done in accordance with the regulations that apply to public companies limited by shares (Aktiengesellschaften):

In order to make an application, a notary must be used.

Registration is carried out exclusively by electronic means. An officially certified document is produced for this purpose. Since 1 August 2022, it has been possible for the document to be authenticated by means of video communication too.

The declaration is signed electronically and sent to the electronic judicial and administrative mailbox of the registration court.

European Company

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The European Company (SE) is a legal form for public companies limited by shares. It allows companies to operate in different European countries with a single set of rules.

To establish a European Company, you must fulfil all the requirements listed below:

- Your registered office and your head office must be in the same EU country.
- You must have a presence in other EU countries (subsidiaries or branches), or all companies involved need to be governed by the laws of at least two different EU countries.
- minimum subscribed capital of EUR 120 000
- The management of the company and the worker representatives must have reached an agreement on worker participation in company bodies and on how employees will be consulted and informed.

A European Company may be formed by:

- merger of existing companies
- establishment of a holding company
- establishment of a joint subsidiary by several companies or by an existing European Company within the EU
- conversion of a national public company limited by shares

The legal basis for the establishment of the SE with its registered office in Germany is contained in the European Regulation (EC) No 2157/2001 (SE Regulation) and the corresponding German SE Implementation Act (SE-Ausführungsgesetz - SEAG), which in turn refers in many cases to the German Act on Shares and Conversion. The worker participation procedure to be carried out in the course of every establishment of an SE is laid down in the European SE Directive and the German SE Participation Act (SE-Beteiligungsgesetz - SEBG).

You can relocate the registered office of a European Company to another EU country at a later date, without having to dissolve or re-establish it, unless it is

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subject to bankruptcy, liquidation or insolvency proceedings. You must publicly announce your intention to relocate the registered office 2 months in advance and the shareholders must agree to the relocation.

Tax regulations

The EC Merger Directive regulates the tax treatment of:

- establishment of SEs
- mergers
- splitting
- relocation of registered office to another country

In Germany, the provisions of this Directive are mainly regulated in the Conversion Tax Act (Umwandlungssteuergesetz - UmwStG). Accordingly, the establishment of an SE by means of a cross-border merger does not, as far as possible, give rise to an acute tax burden at the level of the company or the shareholders. However, it must be ensured that the hidden reserves already held by the participating companies or shareholders can still be kept available to the tax administration (Steuerverwaltung) for subsequent taxation and are not lost forever (tax neutrality). The relocation of the registered office of the SE is handled in accordance with the same principles.

European Private Company

The European Private Company (SPE) gives small and medium-sized enterprises (SMEs) the opportunity to operate throughout the entire EU. The subsidiaries of SMEs that are operating throughout the EU do not need to take the form of the company of the country in question. It is possible to establish an SPE with one euro of capital. Companies only have to provide a solvency statement.

https://www.gesetze-im-internet.de/kschg/__1.html

<https://www.gesetze-im-internet.de/seag/>

<https://eur-lex.europa.eu/legal-content/de/ALL/?uri=CELEX%3A32001R2157>

https://www.gesetze-im-internet.de/umwstg_2006/

https://www.gesetze-im-internet.de/hgb/__13.html

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https://www.gesetze-im-internet.de/kschg/_1.html
https://www.gesetze-im-internet.de/bgb/_613a.html
<https://eur-lex.europa.eu/legal-content/DE/ALL/?uri=celex%3A32001L0086>
https://www.gesetze-im-internet.de/hgb/_13.html
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<https://eur-lex.europa.eu/legal-content/DE/ALL/?uri=celex%3A32001L0086>
https://www.gesetze-im-internet.de/bgb/_613a.html
<https://www.gesetze-im-internet.de/seag/>
https://www.gesetze-im-internet.de/kstg_1977/_12.html
<https://eur-lex.europa.eu/legal-content/DE/ALL/?uri=CELEX%3A32009L0133>
<https://www.gesetze-im-internet.de/estg/>
https://www.gesetze-im-internet.de/umwstg_2006/
<https://eur-lex.europa.eu/legal-content/DE/ALL/?uri=CELEX%3A32009L0133>

Erforderliche Unterlagen
Voraussetzungen
Kosten
Verfahrensablauf
Bearbeitungsdauer
Frist
weiterführende Informationen

More information on how to set up a European company can be found on the Your Europe portal.
https://europa.eu/youreurope/business/running-business/developing-business/setting-up-european-company/index_de.htm
https://europa.eu/youreurope/business/running-business/developing-business/setting-up-european-company/index_de.htm

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Hinweise	
Rechtsbehelf	
Kurztext	
Ansprechpunkt	
Zuständige Stelle	
Formulare	
Ursprungsportal	Moving a business to another Member State, Verlagerung eines Unternehmens in einen anderen Mitgliedstaat