



Thinking beyond borders: Management of extended business travelers – Germany

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01

Key message

A person's liability to German individual income tax is determined by residence status for taxation purposes and the source of income derived by the individual. Income tax is levied at progressive rates on an individual's taxable income for the calendar year. It is calculated by subtracting allowable deductions from the total assessable income.

1 Key message

It is essential that transfer pricing rules be observed, which means that appropriate cost sharing between the home and the host country/jurisdiction should be upfront agreed upon and properly documented.

Extended business travelers are likely to be taxed on employment income relating to their German workdays.

In this respect, withholding obligations may arise for the host company. It should be noted that the tax withholding for non-resident employees follows special rules, which differ from those for resident employees. It is important that the home and host country/jurisdiction establish a reporting system that allows them to exchange all the relevant information in a timely manner.

Individuals working in Germany are subject to German social security regulations unless exempted under the applicable European Regulation (EC) 883/2004, a totalization agreement or domestic German law. The home and the host company should carefully review whether there is a social security withholding obligation for inbound business travelers or, if an exemption applies, whether a certificate of coverage has been obtained.

Germany applies a strict regime of immigration laws for non-European Union (EU) citizens, European Economic Area (EEA) and non-Swiss citizens. Despite all immigration privileges they have to comply with labor law requirements, especially the new statutory minimum wage.

A review of the immigration status of your business travelers well in advance of the business trip or assignment is strongly recommended.

02

Income tax

2 Income Tax

2.1 Liability for income tax

A person's liability to German individual income tax is determined by residence status. A person can be a resident or a non-resident for German tax purposes. A resident of Germany generally refers to an individual who has a domicile in Germany or spends more than 6 consecutive months in Germany (habitual place of abode). A domicile is a home or dwelling owned by, or rented to, the taxpayer who has full control over the property. Domicile is determined by fact, not by the intention of the taxpayer.

A non-resident of Germany is generally someone who spends less than 6 consecutive months in Germany. The general rule is that a person who is a resident of Germany is assessable on the individual's worldwide income. Non-residents are generally assessable on income derived from German sources. Extended business travelers are likely to be considered non-residents of Germany for tax purposes, unless they stay in Germany for more than 6 months in a row (brief interruptions such as home trips over the weekend or vacations are disregarded).

2.2 Definition of source

Employment income is generally treated as German-sourced compensation where the individual performs the services while physically present in Germany. Additionally, specific rules apply for salary received as a board member, managing director, or other authorized representative (Prokurist) of a German company. Double tax treaty provisions may prevent Germany from taxing employment income if certain conditions are met.

2.3 Tax trigger points for employment income

Technically, there is no minimum threshold/number of days that exempts the employee from the requirements to file and pay tax in Germany. To the extent that the individual qualifies for relief in terms of the dependent personal services article of an applicable double tax treaty, there will be no tax liability. In some cases, treaty relief can be obtained only by submitting a formal upfront application to the German tax authorities. The treaty exemption will not apply if the German entity is the individual's economic employer or if the salary is paid by a direct branch of a foreign employer who has created a permanent establishment (PE) for treaty purposes in Germany.

2.4 Types of taxable income

For extended business travelers, the types of income that are generally taxed are employment income and German-sourced income, as well as gains from taxable German assets (such as real estate located in Germany); fringe benefits (broadly non-cash employment income) also fall into this category.

2.5 Tax rates

Taxable income is taxed at graduated income tax rates ranging from 14 percent to 45 percent. In addition to income tax, a solidarity surcharge amounting to 5.5 percent of the assessed income tax is charged (This surtax is levied only if the income tax exceeds EUR 18,130 for single taxpayers and EUR 36,260 in the tax year 2024). If the taxpayer is a member of a church that is recognized for tax purposes, church tax at 8 or 9 percent of the income tax is levied. Non-resident employees are also subject to income tax at graduated rates as well as a solidarity surcharge. Non-residents are not subject to church tax.

03

Social Security

3 Social Security

3.1 Liability for social security

In Germany the principle of territoriality applies to social security law. That means, employees working in Germany are generally subject to German social security system. For business travelers and multi-state-workers from other EU or EEA member states or Switzerland the Regulation (EC) 883/04 determines the applicable social security legislation. The guiding principle is that persons to whom the Regulation (EC) 883/2004 applies are subject to the legislation on social security of a single Member State only. The A1 certificate documents the applicable law (certificate of coverage). Extended business travelers from other countries/jurisdictions may be exempted from German social security legislation under a bilaterally social security agreement or under Germany's domestic law. Contributions to pension insurance and unemployment insurance, as well as health insurance and long-term nursing care insurance, are capped for both the employer and the employee (contribution assessment ceiling). Employers are obliged to comply with the contribution and reporting obligations.

04

Compliance obligations

4 Compliance obligations

4.1 Employees' compliance obligations

Tax returns are due by 31 July following the tax year-end, which is 31 December. Where an authorized tax agent is used, there is an automatic extension until 28 February of the subsequent year. Note: Due to the Covid-19 pandemic, filing extensions are currently in effect (Status February 2024). The following deadlines apply to tax returns prepared by tax consultants:

- Tax year 2023, filing deadline 02 June 2025
- Tax year 2024, filing deadline 30 April 2026
- Tax year 2025, filing deadline 01 March 2027 (no more extension due to Covid-19 pandemic)

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. If the host company is obliged to withhold German wage tax on a non-resident's wages, the non-resident taxpayer generally cannot file a German income tax return (exceptions may exist for EU/EEA citizens in specific situations). As a consequence, the German wage tax withholding needs to be accurate and precise, since it very often represents the taxpayer's final tax liability.

4.2 Employers reporting and withholding requirements

If an individual is taxable on employment income, the German employer has a withholding requirement. A company that economically bears an individual's wages is also deemed to be a German employer, even if no employment contract exists between the German company and the individual (this is the so-called economic employer concept). Further, due to a most recent amendment in German tax law, the economic employer concept is also applied and will hence trigger a German withholding obligation in scenarios where – based on arm's length considerations – a salary recharge should have occurred but was deliberately "ignored".

A PE of a foreign employer in Germany is also obliged to withhold German wage tax. It is important to note that a PE as defined by German domestic law is sufficient to trigger a withholding obligation. It does not necessarily have to qualify as a PE under an applicable tax treaty.

05

Immigration

5 Immigration

Following is an overview of the concept of Germany's immigration system for skilled labor.

(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.

EU citizens enjoy the rights from the EU Freedom of movement, which includes an unrestricted access to the German labor 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.

Most foreign nationals who intend to engage in active, productive employment in Germany will need at a minimum a visa and if there is an extended stay also a work and residence permit. Depending on the purpose of travel to Germany and the nationality of the traveler, 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 in certain cases legalize corporate and personal documentation.

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) also known as entry visa) 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, United Kingdom, and Northern Ireland 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 but can submit the application for the work and residence permit directly to the local immigration authorities within 90 days after entering Germany.

However, a Non-Visa National may not start working until the written work authorization has been issued. 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.

Visa Nationals are citizens of countries/jurisdictions who are neither part of the EU/EEA Non-Visa Nationals. Nationals from these countries/jurisdictions are required to apply for a national visa (D) abroad in order to enter Germany. The German missions abroad are responsible for visa applications. Before granting a visa, the German missions abroad might seek consent from the local authorities (labor/immigration). The entry visa is typically valid for a short period of time (6-12 months) and must generally be converted to a work and residence permit upon arrival in Germany. If an employee will remain in Germany for only up to one year, they can receive the national D Visa for a validity of 12 months and do not need to apply for a conversion to a work and residence permit. If necessary, an additional work authorization from the Federal Employment Agency has to be obtained. The future employer can either apply for a pre-approval with the FEA before the visa applicant submits his/her visa application or the German mission abroad will request the approval internally from the FEA in the course of the visa procedure.

- **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-Visa nationals visit Germany as either tourists or business visitors, they are allowed to enter Germany using their passports for up to 90 days within 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 (see [Overview of visa requirements/exemptions for entry into the Federal Republic of Germany - Federal Foreign Office](#)). All other nationalities will also require a visa in order to enter Germany for business purposes. 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. Some activities are permitted for 90 days within a rolling period of 180 days others for 90 days within a rolling period of 12 months. This should be reviewed based on the planned activity.

Overview of visa exemptions for entry into Germany

In Germany, business visitors must generally limit their activities to the following (according to their available Schengen days):

- Attending meetings and negotiations, preparing contract offers, signing contracts and supervising the implementation of contracts for an employer outside Germany
- attending or holding internal seminars or trainings (up to 90 days within a rolling period of 12 months)
- 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 (up to 90 days within a rolling period of 12 months)
- Touring a company facility

- Attending a trade show or seminar convention.

This list is not exhaustive, as there are other special cases in which an exception to the visa requirement may apply. In each case, the individual circumstances should be examined on a case-by-case basis.

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 traveler 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, Bulgaria, Czech Republic, Croatia, Denmark, Estonia, Finland, France, Greece, Hungary, Iceland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and Switzerland.

Describe (a) the regulatory framework for business travelers 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 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 or other additional documents depending on the individual case.

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.

- **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 outside the 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, but work can be performed in Germany on the basis of said permit.

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

Requirements:

- The host subsidiary in Germany belongs to the employing home company abroad.
- 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 is 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. However, this short-term mobility for intra-company transferred employees requires that the receiving branch in the other EU member state notifies the Federal Office for Migration and Refugees and the competent authority of the other member state about the foreign national's intention to work in Germany. This notification must be accompanied by specific documents, including proof of a valid residence permit under the ICT Directive, evidence of company affiliation, a work contract, a copy of the passport, and, if necessary, a professional practice 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 labor market neutral and thus no priority test applies, however the working conditions must meet the German labor market conditions.

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.
- Not every kind of allowance can be taken into account. The allowances may not be tight to a specific purpose and need to be paid as a lump sum and should be for free disposal of the assignees.

A specialized unit of the Federal Employment Agency is responsible for administering the pre-approval application.

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 48,300 for the year 2025
- Or a contract in the so-called shortage occupation or young professionals (university graduation within the last three years) with the amount of EUR 43,759.80 for the year 2025
- EU Blue Card for IT-specialists and IT-leading executives without an university degree: Minimum of 3 years of professional experience within the last 7 years in the IT area; gross annual salary of at least EUR 43,759.80 for the year 2025.

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 27 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 applicant 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 Non-Visa Nationals (local employment contract not required)

Citizens of Australia, Canada, Israel, Japan, South Korea, New Zealand, Northern Ireland, the USA and the United Kingdom have privileged access to the German labor market 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 if the employment is not considered labor leasing.

German authorities have the discretion to complete a “labor-market-test” prior to approving the application. Next to reviewing the working conditions, the authorities are allowed to pre-check whether a German/EU-citizen would also be available 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) – not including any verification or legalization processes

- 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 and file visa application online with the Federal Office for Foreign Affairs (visa department) via Consulars Service Portal (1-2 days)
- Visa Appointment at 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)

Non-Visa Nationals from Japan, USA, the United Kingdom, Australia, Canada, Israel, South Korea, Northern Ireland, 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 1.5 – 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 general minimum salary requirement for all work and residence permits in Germany, Additionally, in general for work and residence permit applications 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 and is subject to comparable working conditions (e.g., holidays).

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 48,300.00 or a contract in the so-called shortage occupation or young professionals (university graduation less than three years ago) or IT-specialists / IT leading executives with a minimum salary of EUR 43,759.80.

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 the pre-approval 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 entry work 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?

Generally, this is not possible. Only in very limited cases it might be 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. The renewal process can take place in Germany, the applicant is not required to leave the country.

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).

Are there any labour market related tests or a priority check in place?

The German Federal Employment Agency will conduct a labor market test in most of the work-related immigration cases. The aim of the labor market test is to protect the German labor 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

- **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 and Blue 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. A family reunion visa/permit also provide the dependent a full access to the German labor 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 27 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 residency in Germany, access to the labor market is extended and approval 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 the validity of the existing permits. 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 existing permit if an approval of absence has not been obtained from the local immigration authorities. Furthermore, they can jeopardize affect future Long-Term Residency and Citizenship applications.

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 not the date of the 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 foreigners for a period of time or exclusion from obtaining subsidies.

- **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 next to a formal registration with the local town hall. The applicant might be required to prove that adequate living arrangements have been acquired.
- **Registered Residence and occupation confirmation** – Landlord needs to provide a confirmation of property occupation and the employee must then take up their legal residence in Germany to convert to the work and residence permit.
- **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. Exemptions may apply for labour immigration cases.
- **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.

06

Other issues

6 Other issues

6.1 Double taxation treaties

In addition to Germany's domestic arrangements that provide relief from international double taxation, Germany has entered into double tax treaties with approximately 100 countries/jurisdictions to prevent double taxation and allow cooperation between Germany and other tax authorities in enforcing their respective tax laws. Each year new treaties are to be signed and numerous existing ones are subjected to re-negotiations and amendments.

6.2 Permanent establishment implications

There is the potential that a PE could be created as a result of extended business travel, but this would be dependent on the type of services performed, the duration, and the level of authority the employee has. Further, home office scenarios should also thoroughly be checked with respect to a potential PE exposure.

The definition of a PE under Germany's domestic laws differs from the definition of a PE for treaty purposes. A PE, as defined by German domestic law, is sufficient to trigger a wage tax withholding obligation.

6.3 Indirect taxes

Value-added tax (VAT) is applicable at 19 percent (standard rate) for taxable supplies. A reduced rate of 7 percent is applied to exceptional transactions, only.

6.4 Transfer pricing

Germany has a tough transfer pricing regime. A transfer pricing implication could arise to the extent that the employee is being paid by an entity in one jurisdiction but performing services for the benefit of the entity in another jurisdiction, in other words, a cross-border benefit is being provided. This would also be dependent on the nature and complexity of the services performed. There is a strict legal requirement to have comprehensive documentation on cross-border activities (cost and benefit analysis) at hand for a future tax audit.

6.5 Local data privacy requirements

Germany has – often resulting from the implementation of EU directives - rather strict data privacy laws. This topic has got more and more attention and subsequently gained greater importance recently.

6.6 Exchange control

Germany does not restrict the flow of German or foreign currency into or out of the country/jurisdiction. Certain reporting obligations are imposed, however, to control tax evasion and money laundering.

6.7 Non-deductible costs for assignees

The deduction of assignee-related costs may be limited where the salary level of an inbound assignee significantly exceeds the cost of a local individual in the same role. Hence, proper documentation should be kept available.

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