

Tax News

Germany 2008/2009

By Oliver Biernat, October 2008

Modernisation of Limited Company Act

A reform of the Limited Company Act, which will simplify the establishment of a German limited company (GmbH), is expected to come into effect on November 1st, 2008.

If a company does not have more than one managing director and not more than three shareholders, one-page standard minutes ('Musterprotokoll'), that will also serve as articles of association, can be used for establishing a GmbH. We recommend not to use standard minutes if there is more than one shareholder because they do not cover a number of important topics that can normally be found in individualised articles of association and therefore will probably be very unpredictable when shareholders disagree or sell their shares.

Other changes refer to shareholder loans which will automatically be treated as subordinated liabilities in case of insolvency. Exemptions are only granted to

- a) small shareholders who are holding not more than 10% of the share capital and are not managing directors or
- b) shareholders who purchased their shares during a crisis with the intention of corporate recovery.

Nevertheless, they have to be shown as liabilities in a status of over-indebtedness. Therefore, insolvency can only be avoided by granting shareholder loans if a qualified subordination clause is signed by the shareholder, too. Paybacks of shareholder loans can be claimed back by an insolvency practitioner within a time frame of one year backwards. Objects (like real estate property) that shareholders have transferred for use to the GmbH cannot be claimed

Editorial

Dear readers, dear clients and friends,

Many important changes are in process to be established in German tax and business law, having partially significant impact on international companies doing business in this country. The long expected Limited Company Act is doubtlessly the most spectacular change.



Find our comment on this and other relevant changes in taxation and accounting issues in 2008 or starting in 2009 in this information sheet.

Good news can also be provided on Benefitax internals: Oliver Biernat is one of the first professionals in Germany to have obtained the qualification as Specialist Advisor in International Taxation. Congratulations by his team! Welcome aboard Benefitax to two more tax experts who have joined our team recently: Dorothea Lausen and Martin Thieslauk. Get to know them in this newsletter.

Finally, we proudly report about the German Speaking Chapter of Geneva Group International, Benefitax hosted in Frankfurt with a lot of international participation. It was a great honour to have them here.

Astrid Rechel-Götz

back in insolvency proceedings if these objects are important for the going concern of the company.

Whereas the minimum share capital for a GmbH (German Ltd.) remains 25,000 Euros, a new form of a kind of small GmbH with a minimum share capital of just 1 Euro will be introduced. This new corporation is called *Unternehmergeinschaft* ("haftungsbeschränkt") or *UG* ("haftungsbeschränkt") which means "entrepreneur-company with limited liability".

No contribution in kind will be allowed. It is designed to be an alternative to the £1 UK-Ltd. company acting in Germany via a permanent establishment and to give those entrepreneurs that cannot afford 25,000 Euros to establish a normal GmbH a chance to start a business with limited liability.

Shareholders will be obliged to allocate 25% of their annual profits (possibly after reduction of losses carried forward) to retained earnings in UGs. As soon as 25,000 Euros share capital is reached normal GmbH-law is applicable and the company can be turned into a normal GmbH if the managing directors can prove a share capital of 25,000 Euros in audited annual financial statements. Due to its smaller share capital and easy identification of "very limited liability" by its name, it will not be a good choice for those entrepreneurs who are looking for good reputation in Germany and you should be very careful when doing business with a German "UG haftungsbeschränkt" as a high insolvency-rate is predicted.

Reform Concerning Dividends and Interest Income in 2009

A lump-sum tax of 25% for private individuals concerning interest income and dividends will come into effect in 2009. Simultaneously the now existing more advantageous half income rule for dividends (50% of e.g. the maximum income tax rate of 45% = 22.5%) will be abolished. As a result, the total tax burden for private individuals that are subject to unlimited taxation in Germany with dividend income from corporations will rise to 25% in 2009.

Modernisation of German GAAP

A draft bill for the reform of the German Commercial Law has been published by the Federal Secretary of Justice and might come into effect in 2009. The main aims of the law act called "BilMoG" are deregulation and reducing costs for SME, adopting international accounting standards in German law and increasing information in annual financial statements. To achieve that

- Sole proprietors (and probably partnerships) that are not engaged on the capital market and are not included in consolidated financial statements and do not exceed 500 KEuros sales and 50 KEuros profits in two consecutive years (or have just been established) will be relieved from Ger-

Germany Establishes Personal Tax ID

In the last weeks most of the Germans have received a letter from their tax authorities communicating the new personal tax ID. As in many other European countries this lifelong ID will serve to identify all tax subjects for any tax purpose, starting from the birth to 20 years after the death of a natural person.

The eleven digit personal tax ID will also be assigned to non-residents with income from Germany, but for practical means these addressees will not be contacted before summer of 2009.

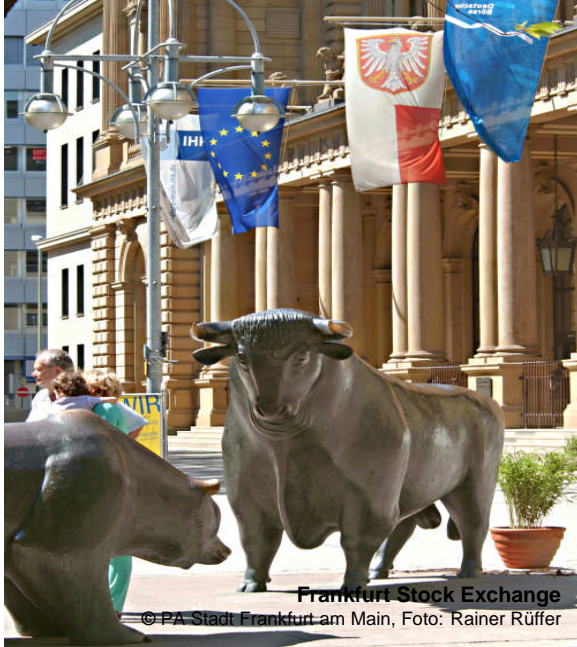


In a second step, a business unity tax ID will be assigned to professionals, companies and associations for strict business use. Natural persons working autonomously, in free professions or owning a private company or partnership will be assigned two ID numbers: the personal ID and the business unity ID.

However, once in use the business unity tax ID, the European VAT ID number will be abolished as all VAT issues can than be handled with the business unity tax ID.

man GAAP. Only German tax law will be applicable.

- Two size criteria for compulsory auditing of corporations shall be raised by 20% starting for financial year 2008. Therefore, an audit will be obligatory if two of the following size criteria are exceeded in two consecutive years:
 - a) balance sheet total 9.68 million Euros,
 - b) total sales 9.68 million Euros,
 - c) 50 employees.
- Annual financial statements shall be enlarged by a cashflow statement, a statement of changes in equity and probably reporting by market segments.



- Big corporations using IFRS as accounting standards for their group accounting will no longer be obliged to prepare their single entity financial statements according to German GAAP.
- Many IFRS accounting rules will be adopted.
- German audit standards will be replaced by translations of the ISAs (International Standards on Auditing).

Geneva Group International: Going Public

Members of GGI's German Speaking Chapter met in Frankfurt from 12 to 14 September to discuss a **marketing strategy for the German-speaking region and the latest legal and fiscal developments in their home countries. Hosted by Benefitax GmbH in Frankfurt, the annual meeting was a success.**

Oliver Biernat, managing partner of Benefitax GmbH, Tax Consulting and Public Audit Company, heartily welcomed the guests, who came from six different member countries to attend the meeting. After Oliver's welcome, Claudio Cocca, founder of Geneva Group International, opened Saturday's meeting, underlining the importance of smaller GGI meetings which allow for the discussion of new ideas and development of detailed strategies. Claudio thanked Oliver and his team for their initiative in inviting a marketing expert who discussed the importance of being present and reported on print and online media.



At three different workshops the GGI members discussed their own experiences in this field and formulated their ideas on how to strengthen the image of Geneva Group International in German-speaking regions. In the end, the assembly decided on a new marketing concept which shall soon be submitted to all concerned members for final resolution.

Protagonists of the afternoon session were the GGI members themselves. Directed by Oliver Biernat, eight short presentations with concentrated information on recent developments in legal and fiscal affairs in six member countries and the European Union were held by Niels Fischer (CH), Carlos Frühbeck and Dr. Astrid Dorfmeister (E), Dr. Karl Friedrich Dumoulin (D), Dr. Hubert Tramposch (A), Uffe Bass Johannsen (DK), Klaus Küspert (D), Dr. Attila Kovács (HU) and Claudio Cocca (CH). At the end of the meeting all participants could take home a wealth of information for their international work.



The guests' stay began on Friday, with a short visit to *Alt-Sachsenhausen*, the historic center of south Frankfurt, the home of Benefitax. Carrying blue Benefitax umbrellas in the rain, the group dined at a typical restaurant that is known for its local cider called *Ebbelwoi* and traditional home-made dishes. A last drink at Harry's New York Bar closed the first evening before the guests returned to their spacious rooms at the Main Plaza Hotel and enjoyed its panoramic view of Frankfurt.

After the intense work session on Saturday, Astrid Rechel-Götz, in charge of the entire organisation of the meeting, guided the GGI-group along the idyllic Main River to the historic Frankfurt town hall, the *Römer*, where the guests had the special honour of visiting the *Kaisersaal*, which for several centuries was the place of enthronement of all German kings. The walk continued through the narrow streets of the *Römer* area and finished with a visit to the impressive buildings of the *Alte Oper* and the *Deutsche Börse*, seat of the Frankfurt stock exchange. The only European hotel paternoster lift was the last challenge the GGI delegates had to pass before enjoying dinner on the roof top of Fleming's, the five-star city hotel, and saying good-bye to Frankfurt with a last night glance over 'the smallest metropolis in the world'.

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Benefitax Internals

Oliver Biernat

is one of the first professionals in Germany to have obtained the qualification as Specialist Advisor in International Taxation.

The title has been conferred to him after attending a circle of advanced studies, proving diverse international experience in numerous cases and passing three written and one oral exam by the Official Chamber of Tax Advisors.

The idea of a specialist qualification, traditional in Germany for the law section, has recently been transferred to the tax branch and is offered for the specialisation in different sub-branches. It is especially meant as a useful tool for the client at the time of selecting the adequate partner for each special tax matter.



The foto shows Oliver Biernat opening the GGI German Speaking Chapter in Frankfurt (see page 3).

Dorothea Lausen,

German Tax Advisor, has joined Benefitax as Team Manager in September. She is your contact for all kind of questions on taxation in Germany and for setting up annual and company statements.



Martin Thieslauk,

German Tax Advisor, supports Benefitax especially in jobs related with international tax law. With focus on South Korea, Hong Kong, Bangkok and Singapore, he is our expert in advising German companies wishing to do business there and viceversa.



Modernisation of German Inheritance Tax Law

The German Federal Constitutional Court declared that the present Inheritance Tax Law is not in line with the German Constitution and will expire on December 31st, 2008. The German government is therefore working on a new inheritance tax act as they do not want to loose 4 billion Euros taxes per year. It is expected that total revenues from inheritance tax will remain the same for the tax authorities but many changes will apply.

The losers of the reform will be owners of land property and of holding companies. Big winners with a tax-free rate of 85% and a deduction of 150.000 Euros at maximum will be entrepreneurs who transfer their enterprise if the business successor carries on the business and keeps wages stable for 10 years.

Note of the author: This information has been prepared with utmost diligence. Nevertheless, no liability will be accepted for any errors in this brochure. This general information does not replace individual consulting.

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