



LEX MUNDI
PUBLICATION

ISSUES RELATING TO FOREIGN INVESTMENT

GERMANY Nörr Stiefenhofer Lutz

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1) Is national governmental permission required for foreign investors to acquire real estate? If so, please identify.

As Germany is rather a capital-exporting country there is no specific legislation regarding capital-import through foreign investment in Germany. Therefore foreign juristic persons do not need a special permit to acquire real estate or to take up business activities as such in Germany.

The legal position is different in case of a foreign natural person, who wants to invest and also reside in Germany. Such person is obliged to obtain a residence permit which is required by the Aliens Act.

However, a foreign investor has to follow several terms and conditions which are relevant notwithstanding the question of nationality of the investor – for example if the property lies in a nature protection area. Particularly with respect to the acquisition of real estate one main requirement is that the purchase agreement and the conveyance (declaration by the vendor that ownership shall transfer to the purchaser) have to be authenticated by a notary in the presence of both parties or respectively by their authorized representatives.

2) Are there other national restrictions imposed on ownership of real estate by foreign investors? To acquire interests in entities which own real estate? If so, please identify.

As suggested above the German legislation does not contain any restrictions regarding the acquisition and the transfer of property by foreigners and therefore in this particular connection no distinction is made between the ownership of foreign juristic persons and domestic juristic persons. This does also apply with regard to the acquisition of interests in entities which own real estate.

Nevertheless, there are some restrictions on foreign investment in general like regarding employment Law for example, which provides that any foreign person, the foreign investor wants to employ in Germany

must obtain a residence permit and a work permit (the latter except for the managing director and the managing employee).

3) Are foreign investors required to invest with a local partner? If not, is investment with a local partner advisable?

German Legislation does not require domestic investors to be involved in the business.

4) What national taxes are levied solely on foreign individuals or entities acquiring or transferring real estate or interests in entities which acquire real estate?

In Germany no additional taxes are levied solely on foreign investors – on contrary, the fiscal legislation intends to enhance investments in Germany. In order to avoid a double-taxation Germany has concluded double-taxation treaties which are effective between Germany and all other countries in the European Union and the majority of countries apart from those belonging to the EU. Accordingly particular revenues of are subject to taxation either in the country of the residence of the business/tax payer or in the country of the income source.

The following description is meant to give a very simplified overview over the tax policy regarding the acquisition of property in Germany: In case of the acquisition of real estate in total the purchaser (foreign or domestic, individual or entity) is obliged to pay 1.5 % of the purchase price as notary fee, 3.5 % tax on acquisition of real estate and 0.5 % of the purchase price as fee for the registration in the land register. (The tax on acquisition of real estate is also levied if a business partnership owns a property and 95 % minimum of the company's share of the partnership are transferred to new partners within five years).

5) Describe reporting requirements for reporting the acquisition, ownership or disposition of real estate which relate solely to foreign direct or indirect owners of real estate.

There are no reporting requirements for reporting the acquisition, ownership or disposition of real estate which relate solely to foreign direct or indirect owners of real estate.