



Home Based Business



Please note that this Information Paper only provides basic information and is not intended to serve as a substitute for personal consultations with a Legal Assistance Attorney.

GENERAL INFORMATION

This handout only provides general guidance on the administrative requirements to operate a home-based business. Army Regulation (AR) 27-3 paragraph 3-8(a)(2) prohibits the Legal Assistance Office from providing legal counseling on private business activities, which includes home-based businesses.

WHAT IS A HOME-BASED BUSINESS?

Individuals residing in Government-owned or -leased quarters who create and sell goods or perform services on a frequent and recurring basis for profit are operating a Home-Based Business (HBB) which is governed by Army in Europe Regulation (AER) 210-70, On-Post Commercial Solicitation. They must receive approval from the Installation Commander (IC) before conducting business and comply with all applicable regulatory restrictions and host nation (HN) laws.

Individuals operating an HBB in non-Government-leased private quarters are not subject to AER 210-70 but must comply with the terms of their lease and all HN laws. If they want to solicit business on an Army installation, they must apply for commercial solicitation privileges and comply with AER 210-70. Servicemembers and DOD, DA, and Non-Appropriated Funds Instrumentality (NAFI) employees must comply with other applicable regulations.

USAG Stuttgart created an Installation Commercial Affairs Office (ICAO) to assist Stuttgart community members with the HBB approval process. This office is located on Kelley Barracks and can be reached at DSN 421-2622, CIV 0711-729-2622.

APPLICATIONS TO OPERATE

Individuals may not operate an HBB in Government-owned or -leased quarters until they have received written approval from the IC. The ICAO will provide you with the documents that need to be provided and forms that need to be filled out in order to obtain the necessary approval. An individual who wishes to operate an HBB must submit the required documentation to the local ICAO at least 30 days before beginning operations.

Failure to properly register your HBB violates U.S. Army in Europe regulations and leaves you susceptible to military administrative or civilian misconduct action, as well as fines and prosecution from German authorities. Additionally, see AER 210-70 ¶ 19.

PERMISSIBLE GOODS AND SERVICES

Normally, only the sale of goods and services *not* available from the Army and Air Force Exchange Service (AAFES), Morale Welfare, and Recreation (MWR), or NAFI activities will be authorized. However, exceptions may be made. The IMCOM-Europe or local Commercial Affairs Officer will review, at a minimum, the following AAFES, MWR, or NAFI facilities' considerations: (1) availability of the goods or services; (2) any delays before they can provide the goods or services in question; and (3) comments received from their respective managers concerning the goods or services offered for commercial solicitation or provided by an HBB. See AER 210-70 ¶ 6.

WHO MAY OPERATE AN HBB?

Servicemembers, DOD civilians, and their families may operate an HBB. However, U.S. military personnel and DOD civilians may *not* directly or indirectly represent, be employed by, or act as an agent for any company or individual engaged in commercial solicitation or HBB on a USAG Stuttgart installation, including Government-owned or -leased housing. Additionally, see AER 210-70 ¶ 7.

PROHIBITED ACTIVITIES

Individuals operating an HBB may not:

- 1) solicit door-to-door in housing or other areas;
- 2) make unsolicited contact;
- 3) solicit personnel on duty;
- 4) use quasi-official titles;
- 5) participate in unit-sponsored programs;
- 6) solicit a "mass" or "captive" audience;
- 7) use roster listings of U.S. Forces personnel;
- 8) offer unfair, improper, or deceptive inducements or rebates to promote transactions or eliminate competition;
- 9) make any representation suggesting that a DOD agency sponsors or endorses the business;
- 10) compensate promoters;
- 11) use coercive, threatening, misleading, manipulative, deceptive, or fraudulent conduct;
- 12) sell unapproved goods or services;
- 13) advertise at bazaars sponsored by AAFES, MWR, or a Private Organization without a signed contract with the bazaar organizer and written approval from the installation commander;
- 14) use military personnel or DOD civilian employees;
- 15) employ individuals under the age of 18;
- 16) participate in any educational or orientation program that is sponsored by an Army unit or organization, discussing budgeting, estate planning, Government benefits, insurance, real estate or savings; or
- 17) violate the Truth in Lending Act Standards of Fairness in AR 210-7 Appendix B.

In addition, if an HBB owner expands services or products beyond those detailed in the original HBB application, the HBB owner must update the application and receive new authorization for those additional goods and services. For additional restrictions and details, see AER 210-70 ¶ 8.

USE OF GOVERNMENT RESOURCES

An HBB cannot use any Government-provided, -subsidized or tax-free products or services, such as Government -owned or -leased quarters, U.S. Forces-plated privately owned vehicles, tax- and duty-free gasoline, and the military postal system. An HBB also cannot purchase goods for its use (ledger books, computers) from AAFES, a commissary, or any other tax- or duty-free sales facility, and cannot use VAT deduction forms. Individuals operating an HBB also may not use MWR facilities, (craft shops, recreation centers) in support of the HBB.

Individuals operating an HBB are liable for all applicable HN individual and business taxes and fees. They may also be liable for U.S. income, social security, and corporate taxes. Individuals operating an HBB must obtain an HN tax number and may be required to obtain a U.S. taxpayer identification number. Individuals operating an HBB are not authorized to receive legal or tax assistance regarding their HBB from military legal offices, with the exception that family members who are registered family child care (FCC) providers may receive tax assistance.

GERMAN (HOST NATION) REQUIREMENTS

Americans who engage in home based business activities here in Germany are subject not only to U.S. law, but also to German taxes and regulations. Your protections under the NATO Status of Forces Agreement (SOFA) do NOT extend to your self-employed business activity. The only benefit derived from SOFA status is that you do not need a residence permit (“Aufenthaltserlaubnis”) or work permit (“Arbeitserlaubnis“), thanks to the German Supplementary Agreement to the NATO SOFA. If you lose your SOFA status and intend to remain in Germany (for example, if you retire here), you must obtain these permits.

To set up your home based business properly, you should contact the local trade supervision office (“Gewerbeamt”) to find out if your business needs to be registered with them. While some for-profit activities require registration, others do not. If your business needs to be registered, you will be asked to fill out a questionnaire and pay a small registration fee. Thereafter, the “Gewerbeamt” will inform the German Finance Office (“Finanzamt”) of your newly-registered business. The “Gewerbeamt” will also inform you if any special permits are required to perform your business activity.

If your business is considered a “handicraft,” you may also want to consult the local Chamber of Handicrafts (“Handwerkskammer”). If you are dealing with food items, you should contact the local Health Office (“Gesundheitsamt”). If it turns out that your business does not need to be registered with the “Gewerbeamt”, you have to contact the German Finance Office (“Finanzamt”) yourself. A business activity has to be registered with the local “Finanzamt” so that it can be assigned a tax identification number (“Steueridentifikationsnummer”).

Since the German Finance Office will only answer general questions, you should consider hiring a German tax consultant (“Steuerberater”). In doing so, you should stress your special NATO SOFA status, allowing you to remain subject to “limited taxation” (“beschränkte Steuerpflicht”) by the German government. You may want to refrain from declaring yourself an ordinary resident of Germany which subjects you to unlimited German taxation (“unbeschränkte Steuerpflicht”). Doing so could backfire and subject all of your world-wide income to German taxation.

Your business's profits will be subject to German income tax ("Einkommensteuer"). On your US tax return you will also have to report that income but you should be able to exclude it as foreign earned income. Furthermore, German value added tax (VAT or "Umsatzsteuer") and municipal trade tax ("Gewerbesteuer") could be charged. However, the latter two taxes probably won't be relevant to you as they have high annual thresholds and/or opt out options. For example, the municipal trade tax has a threshold of €24,500 and the German VAT has an opt-out option in case your turnovers will be small, totaling no more than €17,500 per year."

As far as your German income taxation is concerned, you will have to maintain a balance sheet (expenses vs. income) in order to calculate your profits. Everything must be in writing and well documented. Don't throw away any receipts or bills even after you have filed your German tax return.

Instead of an itemized list of business expenses, you may consider taking a flat deduction for your expenses (e.g., no more than 20% of your income). This would facilitate the filing process if accepted by the "Finanzamt," which will depend on your type of business.

You should also realize that it is illegal to use privileges derived from your NATO SOFA status for your private business. For example, you cannot use your APO mailing address, your USAREUR plated car, or customs and tax-free goods for your private business. These would violate of customs laws and could adversely affect your privileges. Itemized deductions for such items cannot be made, so the flat deduction mentioned above might be your best option.

The Legal Assistance Office is prohibited from rendering case-specific advice on German tax laws for private businesses. As mentioned above, your best option may be to hire a German "Steuerberater". Also, you should remember to deregister once you end your private business activity in Germany.

For further information, contact the Legal Assistance Office, Stuttgart Law Center, DSN 421-4152; Civ 0711-729-4152 or make an appointment at www.stuttgartcitizen.com/appointments.