



Wiesbaden Legal Assistance Office
Client Services & Policy Division
OJA, USAREUR-AF



Spousal Employment in Germany

Booklet Courtesy of the
Kaiserslautern Legal Services Center



This information paper provides basic information only, and is not intended to serve as a substitute for a personal consultation with a Legal Assistance Attorney. For an appointment to see an attorney, please email us at USARMY.WIESBADEN.USAREUR.MBX.OJA-WLC-LEGAL-ASSISTANCE-CALENDAR@ARMY.MIL.

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I. BASICS

This handout applies to all persons seeking employment on the German economy, while being present in Germany in accordance with the NATO Status of Forces Agreement (SOFA) and its Supplementary Agreement (SA). It also applies to employment by local resident AAFES Concessionaires. However, it does **not** apply to you if you are German or an ordinary resident of Germany.

A. SOFA Card and SOFA Status

a. SOFA-CARD. According to Art. III SOFA, dependents need a passport with the NATO Status of Forces Certificate therein. Since January 15, 2005 the new blue SOFA certificates replaced the old SOFA stamps and now bear an expiration date. As of June 14, 2006 AER 600-77 (USAFE Inst. 51-714) requires that dependents from certain countries (country list DOD 4500.54-G) must first have a US Green Card, *i.e.*, homeland security approval, BEFORE a SOFA card can be issued. The laminated document should be carried with the passport. Article III paragraph 3 NATO-SOFA reads:

”Members of a civilian component and dependents shall be so described in their passport.”

b. For any person bearing the SOFA certificate in his/her passport, the German Residence Act ("Aufenthaltsgesetz - AufenthG") does not apply (§ 1 para. 2 No. 3 AufenthG, Art. 7 SA). Furthermore, these persons are also exempt from the requirement of obtaining a labor permit in accordance with Art. 7 SA and § 1 para. 1 sentence 5, § 4 para. 3 sentence 2 AufenthG. Consequently, the dependent spouse can look for a job right away as soon as he/she has obtained the SOFA certificate and keeps it near his/her passport.

c. Although your SOFA status also allows you to seek any kind of employment in Germany because it also serves as a labor permit, it is very important to understand that in any such jobs you will have **no** SOFA Status for that work. For example, if you are a dependent, then you only have SOFA status as a dependent (= stay-home family member) and will be subject to German taxes in any other job (Art. X para. 2 NATO SOFA, Art. 68 para. 4 SA). The only exception to that rule exists if that job itself provides for SOFA status of the employee, *e.g.*, a dependent working in a GS-job or DOCPER approved contractor job with TESA status.

d. Do not register your residence at the local Town Hall. All persons with NATO SOFA status in Germany are exempt from that requirement under Art. 6 SA. Registration will cause legal issues, *e.g.*, trigger a German universal ID number, radio/TV tax demands (ADZBS/GEZ), inquires by the German alien authorities,...

B. German Social Security ID Card

a. The employer has to register the employee with German social security agencies (health care, elderly care, pension insurance) or - in special limited cases - apply for an exemption. If no social dues are withheld from your pay check, ask to see a copy of the granted exemption in order to avoid liability issues later on.

b. The pension insurance institution issues a German Social Security Insurance Number in accordance with § 147 German Code of Social Law Title VI ("Sozialgesetzbuch VI" - SGB VI), which consists of two numerical characters, followed by your date of birth (DD/MM/YY) and the first letter of your (maiden) name as well as three additional numerical characters, *e.g.*, 12180277D123. The employee receives a corresponding notification letter, a so-called German Social Security ID Card ("Sozialversicherungsausweis") based on § 18h para. 1 German Code of Social Law Title IV ("Sozialgesetzbuch IV" - SGB IV). An American SSN will not be sufficient.

b. The German Social Security ID Card has to be presented to the employer. Moreover, in certain professions you are required to carry that ID card constantly with you while you are at work, *e.g.*, cleaners.

C. Tax Certificate

a. German citizens and ordinary residents of Germany are subject to unlimited taxation in Germany. Everyone else being in Germany under the NATO SOFA is only subject to limited German taxation, *i.e.*, limited to the income generated in a non-SOFA job/status in Germany. Note, if you rent out a house in Germany, such rental income will be subject to German taxation.

b. Persons only subject to limited taxation have to complete an online "Application for the assignment of a tax identification number for non-registered persons" (Form-ID: 010250) at <https://www.formulare-bfinv.de> in order to receive an 11-digit German tax identification number. The employer's human resources office should be able to assist in this process b/c the form to be completed requires the employee to agree to the transfer of data to the employer anyways. Thereafter, the Federal Central Tax Registry Office (BZSt, Bundeszentralamt für Steuern) will issue the employee's ID number and send it to employer's tax office ("Betriebsstättenfinanzamt") (§ 41a para. 1 sentence 1 No. 1 EStG) for processing IAW § 39 para. 2 sentence 2 German Income Taxation Act ("Einkommensteuergesetz - EStG"). That tax office will assign tax class I (§ 38b para. 1 No. 1 b) EStG) and ultimately inform the applicant.

c. You do not need to bother about filing a German income tax return because § 50 para. 2 EStG creates the legal fiction that tax withholdings in tax class I equal the tax debt for persons subject to limited taxation.

d. In contrast to the above-mentioned, you may elect to be treated as subject to unlimited taxation by filing an application in accordance with § 1 para. 3 EStG, in order to change your tax

status from subject to limited taxation to subject to unlimited taxation, thereby subjecting your world-wide income to German taxation. If the application is approved, you are allowed to file a German tax return (filing in single status). But it will only be approved on condition that:

- the primary source of income is in Germany (90% rule) and
- your non-German income is not higher than the German annual tax-free amount (“Grundfreibetrag”, § 32a para. 1 sentence 2 No. 1 EStG) of €9,984 in 2022. The numbers for the past years are: €8,820 (in 2017), €9,000 (in 2018), €9,168 (in 2019), €9,408 (in 2020), €9,744 (in 2021).
- the American (State and Federal) IRS provides a confirmation about your non-German income, which is hard to obtain, unless your US tax return is accepted as corresponding proof.

II. GERMAN LABOR LAW BASICS

A. Written Employment Contract

The employee has a right to demand that all essential parts of the employment contract are put in writing in accordance with § 2 of the German Proof on Essential Terms of Employment Act ("Nachweisgesetz - NachWG"). It is strongly recommended to document the following in writing:

(1) NAME AND ADDRESS OF CONTRACTING PARTIES. Wouldn't you like to know the name and address of the company you are working for? Whom are you going to call if you are sick? And where do you send the sick leave slip? It is also in your employer's interest to have your correct address and full name on the payroll.

(2) START OF CONTRACT. In order to determine deadlines and to calculate due dates, it is also helpful to know when you started working for your employer. A written document will provide sufficient proof thereof.

(3) DURATION OF JOB. Unless you are permanently employed, you probably would like to know exactly when your temporary job ends.

(4) PLACE OF WORK. Where do you have to perform your work? Do you have a permanent place of work or can your employer send you around to different places?

(5) DESCRIPTION OF THE WORK TO BE PERFORMED. What do you have to do in your job? Which closely related activities are expected of you?

(6) PAY. How much do you make in gross pay? Is overtime compensated? Do premiums or extra pay exist? Once you have worked in your job for four weeks, sick pay becomes mandatory on condition you provide a medical statement from your doctor.

(7) WORKING HOURS. How many hours do you have to work during the week? Which days do you get off? If you have to work on German holidays or Sundays, usually some premium or extra compensation is paid.

(8) LEAVE TIME. How many days of leave do you get? Which holidays do you get off? Generally there are 4 weeks of annual leave in addition to getting the German holidays off.

(9) PROCEDURE TO TERMINATE THE CONTRACT. How many days in advance do you need to send or receive a termination notice?

(10) APPLICABLE UNION AGREEMENTS. What union agreements are applicable in your job?

B. Continued Remuneration Act (“Entgeltfortzahlungsgesetz - EntgFZG”)

a. Proved illness entitles the employee to full wages during the illness for up to 6 weeks. However, the employee has to inform the employer promptly of his/her inability to work and the expected period of illness (§ 5 EntgFZG). Furthermore, the employee must submit a medical certificate before the expiration of the third calendar day following the beginning of the inability to work, the employer may even request it before the third day. Even if the employee is abroad, e.g., back in the USA, he/she must contact the employer as soon as possible and provide the above-mentioned information. Yet, the employer bears the costs relating to transmission of that information (§ 5 EntgFZG). After 6 weeks wages will be paid in accordance with § 44 para. 1 German Code of Social Law Title V (“Sozialgesetzbuch V” - SGB V) if the illness still continues.

b. Continued remuneration will not be paid if the employee has been sick with the same disease within the past 6 months or if not at least 12 months have past since contracting the disease (§ 3 EntgFZG). Furthermore, the Act does not apply if:

- the employment did not last at least 4 weeks (§ 3 para. 3 EntgFZG)
- the employee caused the illness and the inability to work by gross negligence
- the employee receives maternity pay

C. Mother Protection Act (“Mutterschutzgesetz - MutterSchG”)

a. Pregnant employees must notify their employer of the pregnancy and the expected date of the child’s birth. Upon the employer’s request and at his/her expense, the pregnant employee has to submit a medical certificate to this effect (§ 15 MutterSchG). The employer is then obligated to notify the Trade Licensing Office (“Gewerbeamt”). That office may thereafter monitor compliance with the Mother Protection Act.

b. Pregnant employees may not be employed in a manner which could endanger mother or child (§ 9 MutterSchG). They should neither be required to work at night between 2000 and 0600 nor on Sundays or other German holidays (§ 5 MutterSchG). Nevertheless, they are entitled to a make-up payment for loss of such extra pay, called mother protection pay (“Mutterschutzlohn”). That pay can be claimed from the employer based on § 18 MutterSchG. Pregnant mothers should also not work more than 8 ½ hours per day or more than 90 hours within two consecutive weeks (§ 4 MutterSchG). Moreover, pregnant mothers may not be required to work during the last 6 weeks before the expected birth (§ 3 para. 1 MutterSchG). If the employee has requested to work during that time, she can revoke her request at any time. Similarly, pregnant mothers may not be required to work for the 8-week period following the birth (§ 3 para. 2 MutterSchG). Consequently, they are entitled to a total 14-week period of

maternity leave. In case of a premature or multiple birth, the pre-birth period not used up will be added to the post-birth period. The statutory health insurance provider pays the maternity pay, bears the delivery costs, and certain other birth related costs based on § 24c SGB V. However, the employer may buy insurance from the statutory health insurance provider against any losses due to work prohibitions during the employee's pregnancy (§ 1 Aufwendungsausgleichsgesetz - AAG).

III. CHILD ALLOWANCES ("KINDERGELD")

a. In Germany, a qualifying person can receive Kindergeld (*i.e.*, child allowance) either in accordance with the German Federal Child Benefit Act ("Bundeskindergeldgesetz" - BKGG) or under the German Income Tax Act ("Einkommensteuergesetz", EStG). It is important to understand the two different ways you can file for the allowance and the potential consequences of each method of filing for it.

b. Persons employed on the German economy and subject to limited taxation are entitled to Kindergeld under BKGG, provided they contribute to the German social security system. If a dependent spouse happens to be a citizen of another EU member country, she/he does not even have to work, in order to qualify for Kindergeld under BKGG.

c. Kindergeld is a very valuable benefit for those who qualify for it. Since January 2021 the monthly Kindergeld payments amount to €219 per child for the first two children, €225 for the third child, and €250 for the fourth child.

d. In order to receive Kindergeld under the BKGG, you must apply for it through the Family Allowance Register ("Familienkasse") of the Federal Employment Office ("Bundesagentur für Arbeit") in Nuernberg. The Family Allowance Register in Nuernberg is the central office for processing all Kindergeld claims under the BKGG. [Note: any such application filed with the local employment office in Wiesbaden will be denied for lack of jurisdiction.] The mailing address reads:

Bundesagentur für Arbeit
- Familienkasse Bayern Nord -
90316 Nuernberg

e. Since the Family Allowance Register in Nuernberg is the central office for all claims under the BKGG, they have bilingual forms (German/ English). The necessary application forms can be downloaded (<https://www.arbeitsagentur.de/familie-und-kinder/downloads-kindergeld-kinderzuschlag>). Generally the following documents are needed:

- (1) Application Form for Kindergeld ("Antrag auf Kindergeld"),
- (2) SOFA Status Certificate ("Statusbescheinigung"),

- (3) Composition of Family Form (“Familienzugehörigkeitsbescheinigung”),
- (4) Copies of passports and child’s birth certificate,
- (5) Certificate of attendance from the children’s school (*e.g.*, letter from the principal’s office) (“Bescheinigung über den Schulbesuch”),
- (6) German Social Security Number (if applicable),
- (7) Certificate from the employer confirming that the working spouse is subject to limited taxation status only (“Auskunft über Einkommensteuerpflicht”).

g. Please note, Kindergeld is paid retroactively only for the last six months before the beginning of the month in which your application for Kindergeld has been received (§ 6 para. 3 BKGG), provided you meet all other requirements during that period.

f. Once your employment ends or you or your children leave Germany, you must notify the German agency that pays you Kindergeld to stop payments. Failure to make such notification is punishable under the German Criminal Code and will give rise to claims for repayment of any amounts improperly received.

g. If you or your spouse file a German income tax return, you will no longer qualify for Kindergeld under the BKKG. Instead, the German Income Tax Act (“Einkommensteuergesetz”, EStG) rules on Kindergeld will be applied (§ 62 EStG). If you fall into this category, your application for Kindergeld should be filed with the Family Allowance Register of your local Employment Office instead of the office in Nuernberg mentioned above. The German Income Tax Act will provide either Kindergeld or the German Child Tax Credit (“Kinderfreibetrag”, KFB). Often non-EU citizen spouses do not qualify for Kindergeld under the German Income Tax Act but are limited to receiving the sometimes less-valuable German Child Tax Credit.

IV. TAXES AND REFUND OF SOCIAL CONTRIBUTIONS

A. German Taxes and the Paycheck

a. Standard practice is to get paid once a month. Instead of handing out paychecks, the employer directly deposits the net pay into the employee's bank account. The net pay is the amount paid out to you after the gross pay has been corrected to reflect contributions into the social security system and taxes withheld. Monthly earnings statements listing all figures should be handed out.

- **INCOME TAX.** First of all, income tax is subtracted from the gross income. The income tax withheld depends on the employee's tax class and the amount of the gross income. Furthermore, the income tax withheld is used as a basis for calculating other tax withholdings.
- **SOLIDARITY TAX.** As of 2021 the solidarity tax has been abolished for low incomes (§ 3 para. 4 SolzG 1995). For higher incomes it gradually increases up to 5.5% of the sum withheld in income tax. If applicable, it will be subtracted from the gross income for the costs of the German unification.
- **CHURCH TAX.** 9% of the sum withheld in income tax is subtracted from the gross income as a church tax (for recognized churches), unless one has renounced membership with such a church either by having filled out a renunciation form at the Town Hall ("Rathaus") or by simply sending a notification to the employer. The later is sufficient if your church does not enjoy special status in Germany because it is not recognized, *e.g.*, scientology. Ask your Legal Assistance Office for further information on this subject.

b. In addition to the above-stated taxes, social dues will have to be paid. Employer and employee each pay half of the social dues. The employee's share of his/her social insurance dues is taken out of his/her paycheck. The social dues are paid to the employee's health care provider that distributes them to the appropriate authorities.

- **PENSION INSURANCE DUES.** 9.3% of the gross income goes to the pension insurance (total percent: 18.6%! - since 2018).
- **UNEMPLOYMENT INSURANCE.** An additional 1.2% of the gross income goes to the unemployment insurance (total percent: 2.4% - since 2020).
- **HEALTH INSURANCE.** Of the gross income the employer pays about 7.95% (= 7.3% + approx. 0.65%). The employee pays an equal 7.95% (= 7.3% + approx. 0.65%) (total percent: 15.9 - since 2021).

- NURSING INSURANCE. 1.525% of the gross income is subtracted from the gross income and paid into the long-term care insurance (total percent 3.05% - since 2019). Note, since January 2005 adults above the age of 24 are required to pay an additional 0.25%, if they have no children (§ 55 para. 3 SGB XI).

c. For calculating unemployment insurance and pensions insurance dues, the monthly gross income is capped at €7,100 in 2021 (€6,900 on 2020), so-called upper income limit (“Beitragsbemessungsgrenze”). The gross income cap for health insurance and nursing insurance is set at €4,837.50 in 2021 (€4,687.50 in 2020). Social dues are mandatory unless the employee’s monthly gross income is €5,362.50 or higher (“Versicherungspflichtgrenze 2021”). In 2020 that threshold had been set at €5,212.50.

B. US Taxes

a. On the US side, a qualified taxpayer can exclude a substantial sum as Foreign Earned Income (FEI) from total federal taxable income. If applicable, you may want to use the physical presence test instead of claiming a bona fide residence since you have SOFA status (and no residency status) in Germany. Yet, the income will have to be converted at the average exchange rate for that year into US Dollars and has to be reported on Form 2555. It applies to all jobs on the German economy, including employment by local national AAFES Concessionaires. Any salary from AAFES, even if paid in "Euro" is fully subject to US taxation.

Tax Year	Maximum Foreign Earned Income Exclusion		Tax Year	Maximum Foreign Earned Income Exclusion
2000	\$76,000.00		2016	\$101,300.00
2001	\$78,000.00		2017	\$102,100.00
2002-2005	\$80,000.00		2018	\$103,900.00
2006	\$82,400.00		2019	\$105,900.00
2007	\$85,700.00		2020	\$107,600.00
2008	\$87,600.00		2021	\$108,700.00
2009	\$91,400.00			
2010	\$91,500.00			
2011	\$92,900.00			
2012	\$95,100.00			
2013	\$97,600.00			
2014	\$99,200.00			
2015	\$100,800.00			

b. Do not confuse the term FEI with the term Foreign Source Income (FSI) since the later is broader. It also includes among other things: interest, capital gains and rent paid from foreign sources.

c. German child allowances (“Kindergeld”) does not have to be reported to the IRS. In 2010 the Office of Chief Counsel IRS stated in a memorandum that Kindergeld acts as a

reduction to German tax and, thus should not be considered an item of income for U.S. federal income tax purposes.

d. On June 1, 2006 the United States and Federal Republic of Germany signed a Protocol amending the Tax Treaty 1989/91. It is in force since 28 December 2007. The saving clause is now contained in Art. 1 para. 4 a) of the Convention between the Federal Republic of Germany and the United States of America for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and Capital and to certain other Taxes of 1 June 2006 and reads:

“Except to the extent provided in paragraph 5, this Convention shall not affect the taxation by the United States of its residents (...) and its citizens.”

e. Yearly average conversion rates are listed below. Historical ones can also be looked up at <http://www.oanda.com/currency/historical-rates/> (e.g., Jan. 2002: €1 = DM 1.95583 = \$1.16)

Year	US Dollar	Euro		Euro	US Dollar		Year	US Dollar	Euro		Euro	US Dollar
2006	\$1	€0.80		€1	\$1.25		2019	\$1	€0.877		€1	\$1.14
2007	\$1	€0.73		€1	\$1.37		2020	\$1	€0.893		€1	\$1.12
2008	\$1	€0.68		€1	\$1.47		2021	\$1			€1	
2009	\$1	€0.72		€1	\$1.38							
2010	\$1	€0.755		€1	\$1.32							
2011	\$1	€0.7188		€1	\$1.39							
2012	\$1	€0.7777		€1	\$1.29							
2013	\$1	€0.783		€1	\$1.28							
2014	\$1	€0.784		€1	\$1.28							
2015	\$1	€0.937		€1	\$1.07							
2016	\$1	€0.94		€1	\$1.06							
2017	\$1	€0.923		€1	\$1.08							
2018	\$1	€0.848		€1	\$1.18							

Here's the IRS website:

<https://www.irs.gov/individuals/international-taxpayers/yearly-average-currency-exchange-rates>

C. Refund of Social Contribution

a. The SOFA status will protect you from unlimited German income taxation unless you are a German citizen or an ordinary resident of Germany (Art. X NATO SOFA, Art. 68 para. 4 SA) or opted for unlimited taxation. Persons only subject to limited (German) income taxation are excluded from filing a German income tax return. Like stated before, § 50 para. 2 EStG creates the legal fiction that tax withholdings in tax class I equal the tax debt for persons subject to limited taxation. Therefore, it is not possible to get a refund with respect to the taxes withheld.

b. All contributions into the German statutory health insurance cannot be demanded back either because the insurance provided coverage or would have done so if you had become sick. Yet, your share of contributions paid into the retired pay system may be demanded back in accordance with § 210 SGB VI. In order to qualify for the refund, the following three requirements have to be met:

- US citizenship of applicant (and not a dual national of any EU Member State country)
- return to the USA
- paid into the system for less than 60 months

c. The claim has to be submitted to the German Retired Pay Insurance ("Deutsche Rentenversicherung - Bund") no earlier than 24 months(!) after the work terminated on the bilingual (German/English) Form V0901, which can be download at http://www.deutsche-rentenversicherung.de/Allgemein/de/Navigation/5_Services/04_formulare_und_antraege/06_gesamt/V_formulare_node.html (click on the "Fremdsprachen" [foreign languages] button at the top right of the website for English) or obtained by writing to:

Deutsche Rentenversicherung - Bund
BKZ 5565
10704 Berlin

d. You will have to put your German Social Security Insurance Number and the reference code "5565" on the top line of Form V0901. Thereafter, follow the steps for refund to the insured person.

e. In cases where the working spouse has not paid into the system for more than 60 months but her/his contributions amount to at least 18 months that spouse may apply for a transfer of any future American interest into the German system instead of a refund in accordance with the German-American Agreement on Social Security ("Agreement between the United States of American and the Federal Republic of Germany on Social Security" of January 7, 1976 as amended on October 2, 1986 and its Supplementary Agreements and Administrative Agreements). That way that spouse may qualify - like persons who have paid into the system for at least 60 months - for retired pay payments from Germany.

V. SPECIAL RULES FOR SMALL-SCALE JOBS

A. Scope

a. All small-scale jobs require an employment contract. The best known small-scale employment is called a “Minijob” a.k.a. “€450 job”. The gross pay (including payments in kinds!) per month shall regularly not exceed € 450.00. In Germany, the minimum wage amounts to €9.60 per hour since July 1, 2021. It will increase to €9.82 on January 1, 2022 and to €10.45 on July 1, 2022. Therefore, the max. work hours per month for a €450 job will be 46.87 hrs (Jul.’21), 45.83 hrs (Jan.’22), and 43.06 hrs (Jul.’22). Furthermore, there is a distinction between jobs for household helpers, which the employer needs to register at <http://www.minijob-zentrale.de>, and other jobs.

b. There is also a “short-term Minijob” a.k.a. “seasonal job”, which is a fixed-term employment of no more than 3-months (with 5 working days per month) but no more than 70 working days (if there are less than 5 working days per month). There is no earned-income limit but the “short-term Minijob” rules apply per calendar year.

c. Another form of small-scale employment is the so-called “Midijob”, in which the monthly gross income fluctuates between €450.01 and no more than €1,300.00.

B. Taxes and Social Dues

a. Small-scale jobs are subject to a variety of different options concerning taxes and social dues, *e.g.*, an employee with a €450 job may want to opt out of the pension insurance, whereas an employee with a “short-term minijob” cannot opt in(!). These rules and options are explained in detail at <https://www.minijob-zentrale.de> (German only). It is important to clarify these with your employer before you start working.

b. A “Midijob” requires that taxes are withheld and social dues need to be paid, too, but only at a reduced rate.

VI. TELEWORK

A. Employed

a. If the sponsor PCSes to Germany, the accompanying dependent spouse might be interested in telework, allowing the spouse to continue working for her/his US employer. Note, if the main characteristics of the work are physically performed in the USA (frequent fly-backs!) and the work in Germany is merely preparatory, it is not considered telework but an ordinary US job.

b. The US employer should be able to keep an employee temporarily working in/from Germany under the US social system by requesting an online Certificate of Coverage from the US Social Administration (https://www.ssa.gov/international/CoC_link.html).

c. Where the stateside employer is a governmental agency, the right to taxation also remains with the USA (Art. X para. 2 NATO SOFA, Art.68 para. 4 SA and Art. 19 German-US Tax Treaty of 2006/07). Yet, income tax is due in Germany if the stateside employer is a private company (Art. X para. 2 NATO SOFA, Art.68 para. 4 SA and Art. 15 German-US Tax Treaty of 2006/07).

d. When income taxes are due in Germany the stateside employer may have to proceed as follows: (a) complete a stateside W-4, explaining why the employer does not have to withhold any US taxes for the employee (*e.g.*, Military Spouses Residency Relief Act), (b) fill out a residency state “Employee’s Withholding Exemption” form, and (c) provide a blank Federal W-4 “Employee’s Withholding Certificate”. The employee will have to use either IRS Form 1116 (Foreign Tax Credit) or IRS Form 2555 (FEI) when it’s US tax filing season and apply for a German Tax Identification number.

B. Self-employed

In case of self-employment, working as an independent contractor/consultant, the person concerned is fully subject to German (Tax and Social Security) law based on Art. X para. 2 NATO SOFA, Art. 68 para. 4 German SA and Art. 7 para. 7 German US Tax Treaty of 2006/07.

VII. PRIVATE BUSINESS RULES – SELF-EMPLOYMENT

a. This article appeared first in our Kaiserslautern Legal Informer, Edition Fall 2013 under the title “Rules on Running a Private Business in Germany...”. Citations have been updated.

You are an American and your business caters to American ID cardholders. You perform your work on-post and report your business income on your US income tax return, based on the IRS Form 1099-MISC you receive for the services you render, so you shouldn’t have to worry about any German taxes or regulations, right? Think again...

Your NATO SOFA status (as a member of the troop, member of the civilian component, or dependent) does 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”), thanks to Article 7 of the German Supplementary Agreement to the NATO SOFA, and you do not need a work permit (“Arbeitserlaubnis”), either. Once you lose your SOFA status and intend to remain in Germany (*e.g.*, if you decide to retire here), you must obtain these permits.

How do you set up your business properly?

First of all, 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 don’t. The “Gewerbeamt” for the City of Wiesbaden is located at Bleichstraße 3. Due to the COVID pandemic, appointments are made by phone (0611-31-8000) or by email at: gewerbemeldestelle@wiesbaden.de.

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/established 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”), located at Bierstadter Str 45 in Wiesbaden. If you are dealing with food items, you should contact the local Health Office (“Gesundheitsamt”), located on Konradinrallee 11 in Wiesbaden.

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. The office for Wiesbaden is located at Dostojewskistraße 8 Rechter Gebäudeteil. 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 may 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”, § 50 EStG). You may want to refrain from declaring yourself ordinarily resident by opting for unlimited taxation (“unbeschränkte Steuerpflicht”, § 1 para. 3 EStG), as that could backfire by endangering your SOFA status.

Your business's profits will be subject to German income tax ("Einkommensteuer"). Furthermore, value added tax (VAT) ("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, *e.g.*, § 11 GewStG (€24,500), § 19 UStG (€22,000).

As far as your German income taxation is concerned, you will have to maintain a balancing sheet (expenses vs. income) in order to calculate your profits. Everything must be in writing and very 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 the "Finanzamt" accepts it, which will depend on your type of business.

Finally, a word of caution: 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 be violations of customs regulations 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.

Since the Legal Assistance Office is prohibited by regulation from rendering case-specific advice on German tax laws for private businesses, your best option might be to hire a German "Steuerberater". particularly since your German tax return will have to be e-filed, using German tax software. And don't forget to deregister once you end your private business activity in Germany.

b. For Home-based businesses, please also consult AER 210-70, On-Post Commercial Solicitation, 21 January 2016; AER 600-1, Regulated Activities in Europe, 20 May 2009.

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