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Establishing a cross-border business between UK and Germany

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Introduction

Expanding your German business to the UK or your UK business to Germany requires careful planning and decision-making. This joint article by **Moore Global** members **Moore Kingston Smith** (UK) and **SONNTAG** (Germany) explores the key considerations for German businesses setting up in the UK and UK businesses setting up in Germany.

When a business sets up across an international border, corporate legal and tax issues must be considered in tandem. Decisions made in one jurisdiction inevitably have direct tax and legal implications in the other. Establishing an entity in the target jurisdiction triggers different corporate tax obligations and regulatory requirements than in the home jurisdiction.

Cross-border arrangements between UK and German entities, such as intra-company transactions, must be structured to comply with both legal systems while optimising tax efficiency and minimising risk. Coordinated legal and tax planning is essential to ensure regulatory compliance and support long-term success in both markets.

Key differences between a UK branch and a UK company

When it comes to establishing an entity in the UK, understanding the key differences between a UK branch and a separate UK company is crucial for making the right choice for your German company's business activities in the UK.

Legal status of UK entity

UK branch

A UK branch is not a separate legal entity; it is legally part of the German business. The business in Germany is directly liable for any legal issues or debts incurred by the UK branch.

UK company

A UK company is a separate legal entity incorporated in the UK. While it is a subsidiary of the German business, it is legally independent of it. The German parent business is not directly liable for the UK subsidiary company's debts or legal obligations.

Movement of workers from Germany to the UK

If the German business is to send employees to the UK to set up and work for the UK entity, the UK entity must be registered in the correct manner. Once registered, the UK entity must apply for a sponsor licence, which is the vehicle used to 'sponsor' migrant workers (including EU and EEA nationals) in the UK.

German companies that have not started trading in the UK can apply for a UK expansion worker (global business mobility) sponsor licence. For this type of licence application, if the UK entity has not yet secured a physical premises, it must either be registered as a UK branch or as a wholly owned subsidiary of the German parent business.

German companies already trading in the UK have more options. However, to meet the operational and recruitment needs of the UK entity, they should carefully select which type of sponsor licence to apply for. The type of sponsor licence determines whether the employees can remain employed (and paid) by the German business or whether they must be employed (and paid) by the UK entity.

Accountancy and regulatory compliance

UK branch
A UK branch of a German business must comply with UK regulations but its reporting obligations are less onerous than those of UK companies. It must file the German business's accounts with Companies House. There is no requirement to undertake a UK audit, regardless of size.

UK company
A UK company must comply with UK regulatory requirements, including filing its own annual accounts and maintaining statutory registers. The regulatory burden is higher and, if group thresholds are exceeded, an audit is mandatory.

Taxation

UK branch
A UK branch is subject to UK corporation tax at 25% on the profits and gains it generates in the UK only. The UK branch's profits and gains are also subject to tax in Germany and a foreign tax credit may be available on the UK taxes paid under the UK/German double tax treaty.

UK company
A UK company is subject to UK corporation tax at 25% on its worldwide profits and gains. As it is a separate legal entity, the UK profits and gains are not subject to German tax and there is no foreign tax credit.

Other commercial considerations

UK branch

- Lower cost of compliance and administrative reporting.
- Simple to initially test the UK market without too much commitment.
- Easier to exit the UK market.

UK company

- Attractive to customers and suppliers to have a UK-based entity.
- Easier to rent an office space, obtain equipment leases and open a UK bank account.

Key differences between a German branch and a German company

The key consideration for UK companies expanding to Germany is the legal organisation. Understanding the differences between a branch (or permanent establishment) and a company (or subsidiary) is vital for ensuring your UK business fully complies with German regulations.

Legal status of German entity

German branch

The German branch of a UK company is legally and organisationally part of the UK business. It is not a separate legal entity and has no legal standing of its own. To qualify as a branch office (Zweigniederlassung), it must have a certain level of organisational independence from the main office and must then be registered in the German commercial register. If the relevant German site lacks such organisational independence, no registration in the commercial register is required and the site is a so called German permanent establishment (Betriebsstätte) only. In both cases, the UK business is directly liable for any legal issues or debts incurred by the German branch.

German company

A German company (or subsidiary) has its own legal standing and is legally independent from the UK parent business. The UK parent business is generally not directly liable for the Germany company's debt or legal obligations.

A German company must be registered in the German commercial register. In the case of a limited liability company, the formation procedure in addition requires notarial recording in the presence of a German notary public or by means of notarial recording via an official video call with a German notary public.

Movement of workers from the UK to Germany

If the UK business is to send employees to Germany to set up and work for the German entity, it is essential to determine the scope of the work and how the work will be performed in relation to German customers. The legal consequences – especially the social security and tax issues – differ substantially, depending on the set-up and nature of the work.

In Germany, the personnel of a UK entity can continue to work for their own entity and thus for their previous employer. Then, only the national laws on foreign workers (if not Germany or EU residents) apply. However, the legal and tax status depends on the distinction between branch and permanent establishment.

If the work of the employees of the UK entity is performed in close relation to the German customers, it must be determined whether it is temporary employment to a third party or a typical subcontracting arrangement. If it is classed as temporary employment, the UK entity needs a permit. This is applied for at the national employment agency and is a complex process. If the work is classed as subcontracted, no such licence is required.

Importantly, the distinction between temporary employment and subcontracting is determined by mandatory legal provisions, not by the UK entity. An incorrect set-up in the execution of work may result in substantial fines and can often lead to a ban on operating in Germany.

Accountancy and regulatory compliance

German branch
A German branch must follow German accounting rules but faces fewer reporting obligations than a German company. It may need to register with the local commercial register and file UK company accounts. An audit is not mandatory, which can reduce costs.

German company
A German company must comply with full German regulatory requirements, including preparing and publishing annual accounts. An audit might be required if thresholds are exceeded. The overall compliance burden is higher than for a branch.

Taxation

German branch
A German branch is subject to limited tax liability and is taxed only on its local profits. The German branch of a UK business is subject to corporate income tax at 15% plus a 5.5% solidarity surcharge and local trade tax (ranging from 7% to 17%, depending on the municipality). These profits may also be taxable in the UK, with potential relief available under the UK/German double tax treaty. German local tax authorities scrutinise whether the requirements for a branch are met.

German company
A German company (or subsidiary) is taxed on its worldwide income. A company is subject to corporate income tax at 15% plus a 5.5% solidarity surcharge and local trade tax (ranging from 7% to 17%, depending on the municipality). As a separate German entity, its profits are not subject to UK tax and no UK tax credit applies. However, dividends paid to the UK parent business might be subject to German withholding tax, which can be reduced under the UK/German double tax treaty.

Other commercial considerations

German branch
- lower cost of compliance and administration;
- faster and simpler market entry;
- easier to close operations if needed.

German company
- stronger local presence;
- more attractive to local clients and authorities;
- easier to hire staff, lease property and open a German bank account.

Moore Kingston Smith and SONNTAG are here to help

If you are a German business looking to set up in the UK or a UK business looking to set up in Germany, our dedicated teams of legal and tax experts are here to guide you. Please get in touch to find out how we can support your expansion and compliance needs.

Contact Moore Kingston Smith

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