

Legal Status Forms for Artists in Germany

You want to earn money as an artist in Germany? This fact sheet will give you some information about the legal aspects of things, from income tax to social insurance. The footnotes lead to further information, but most of this is in German language.

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Employment vs. Freelancing

The most important difference: Are you working as an employee („abhängig Beschäftigte_r“ in German) or as a freelancer?

Employees

- “Abhängig Beschäftigte” (employees) by German law include “Angestellte” (clerks), “Arbeiter_innen” (workers) and “Auszubildende” (apprentices).
- Employees have a work contract, are embedded in the organisational structure of their employers, have to follow their directions and normally receive monthly wages. That is: employees have bosses, they work mostly at times and places defined by their bosses.

Freelancers

- “Selbstständige” (freelancers) by German law freely dispose of their own labour force and can mostly define times and places of their work by themselves. Freelancers have *various* clients, none of which should bring in more than 5/6 of the annual income.

- If the above does not apply, a freelancer might be regarded as „Arbeitnehmerähnliche Person“¹ (a person similar to an employee) or even as „Scheinselbstständige_r“² (a person with a false claim of being a freelancer).
- German law also includes entrepreneurs owning a company without an own legal personality (such as a “GbR”; while a “GmbH” is a legal personality) in their definition of “freelancer”.

Being an employee and a freelancer at the same time

Only a minority of the artists in Germany are full-time employees; like, in big theatres and operas or in professional orchestras. Many artists have a non-artistic part time employment to give them financial security, and additionally work as freelance artists. Generally, for people being employees and freelancers at the same time, the following applies in Germany:

The decisive question is: Which is the main occupation? To answer this question, German law looks both at the time spent and at the money earned at freelancing vs. employment.

- Rule #1: If you work more than 20 hours per week as an employee while earning at least half of the so-called “monatliche Bezugsgröße” (“monthly reference”; current value to be found at <https://de.wikipedia.org/wiki/Bezugsgr%C3%B6%C3%9Fe>), then you are mainly an employee.
- Rule #2: If you put about 20 % more time into freelancing than into your employment, and you earn about 20 % more money with freelancing, too, then you are mainly a freelancer.³
- In case you are somewhere between those two rules, the Deutsche Rentenversicherung (German pension insurance) will take a decision on by-case basis.

Taxes

Depending on their legal status, artists may have to pay different kinds of taxes, including:

- income tax (“Einkommensteuer” or “Lohnsteuer”)
- business tax (“Gewerbesteuer”)
- VAT (“Mehrwertsteuer” or “Umsatzsteuer”)

Income Tax

Every person with residency or usual stay in Germany starting from a certain limit of annual income has to pay German income tax. In 2016, this limit was a gross annual income of 8.652 €.⁴

- Employees pay their income tax as “Lohnsteuer”; that means: their employers calculate the tax and transfer it directly to the tax authorities; the employee only receives the net salary (=gross salary minus taxes and social insurance).
- Freelancers pay their income tax directly to the tax authorities.⁵

¹ https://de.wikipedia.org/wiki/Arbeitnehmer%C3%A4hnliche_Person

² <https://de.wikipedia.org/wiki/Scheinselbst%C3%A4ndigkeit>

³ see <https://www.ikk-nord.de/index.php?id=802>

⁴ see https://de.wikipedia.org/wiki/Grundfreibetrag_%28Deutschland%29

- When the company *sells* goods or services, it has to include VAT in their prices and pay that VAT to the tax authorities; in Germany currently 19 % on top of the net price. For certain products including art works, there's a reduced USt rate of 7 %.¹⁰

Small business entrepreneurs (“Kleinunternehmer_innen”) can opt for being exempt from VAT according to §19 of the German VAT law (Umsatzsteuergesetz/UStG). You count as a small business entrepreneurs in case your taxable turnover does not exceed 17.500 € per year.¹¹ Most freelance artists will not earn more than 17.500 € annually in their first business years, so they can opt for VAT exemption due to §19 UStG. In case you opted for VAT exemption and at some point earn more than 17.500 € per year, you don't become liable to VAT right away, but only in the following year – unless you make more than 50.000 € in the transition year. Important note: Even if you are VAT exempt, you still have to write correct invoices that comply with the German VAT laws.¹² Reasons why you may want to go for a VAT exemption:

- You will have less bureaucratic work; like, you don't have to hand in quarterly (or even monthly) sales tax summary reports that would be compulsory for annual turnovers starting from 6.200 € and 47.000 € resp.¹³
- For clients that are not able to recover VAT (like, other small business entrepreneurs, private persons, many associations) your services will become cheaper, since you don't have to add VAT to your prices.

But there's also a reason why some small business entrepreneurs decide NOT to opt for VAT exemption: That is, they only have to pay net prices for their investments (like, buying music production equipment to build a recording studio), and also consumables and rented business rooms become cheaper, since the tax authorities will reimburse the VAT.

“Übungsleiterpauschale” and VAT

Even a person liable to VAT in their main occupation who does an avocational job as “Übungsleiter_in” (see above) may write an invoice for this without VAT, in case they write it for “Aufwandsentschädigung” (allowances), but not for “Honorar” (fees/renumeration). For this, the allowance amount per hour has to be traceable and may not exceed 50 € per hour. So the invoice should say something like „Aufwandsentschädigung für die Tätigkeit als Übungsleiterin am 28.03.2016 von 10:00 bis 13:00 und 14:30 bis 17:30, 6 Stunden à 40 € = 240 €. Der Betrag ist MWSt-frei.“ (“allowances for my services as ‘Übungsleiterin’ on March 28th, 2016, from 10:00 to 13:00 and from 14:40 to 17:30, 6 hours at 40 € = 240 €; the amount is exempt from VAT”)¹⁴.

¹⁰ see https://de.wikipedia.org/wiki/Umsatzsteuergesetz_%28Deutschland%29

¹¹ https://de.wikipedia.org/wiki/Kleinunternehmerregelung_%28Deutschland%29

¹² https://de.wikipedia.org/wiki/Rechnung#Rechnung_im_deutschen_Umsatzsteuerrecht

¹³ https://de.wikipedia.org/wiki/Umsatzsteuer-Voranmeldung_%28Deutschland%29

¹⁴ see <http://www.betriebsausgabe.de/magazin/kurz-notiert/ehrenamt-und-umsatzsteuer-84231470>

Social insurance

Social insurances in Germany include health insurance, long term care insurance, accident insurance, old age insurance (pension insurance) and unemployment insurance.¹⁵

- Employees are automatically insured: Their contributions to the five above listed insurances are deducted from their wages, employers have to add a similar amount (employers share) and transfer the total directly to the social insurances.
- Freelancers are obliged to make a health insurance and a long term care insurance. They have the choice to do this in private health insurance or a statutory health insurance. Artists who are members of “Künstlersozialkasse” (KSK, a special social insurance for artists; see below) normally will be in a statutory health insurance, only under certain circumstances they may join a private one.¹⁶
- Some freelancers are also obliged to make an old age insurance; this applies amongst others for freelance teachers, trainers and educators. Like, if you are *not* a member of “Künstlersozialkasse” and you mainly work as freelance artistic coach, you are obliged to pay the full contributions to an old age insurance.
- If you are an employee in your main occupation and additionally do freelancing, then you can cover your social insurance via the employment, and you don’t have to pay social insurance for your freelance activities.

Künstlersozialkasse (KSK)

If your main occupation is to be a freelance artist and you are mainly active in Germany, you have to insure yourself in the KSK.¹⁷ What looks like a duty on first glimpse is actually a privilege compared to other freelancers: KSK members are treated similar to employees when it comes to health, long term care and old age insurances; that is, they only pay half of their insurance contributions, the other half is covered by KSK. KSK is not actually an insurance company; the actual insurance services are done by regular health, long term care and old age insurance companies. However, other than employees, KSK members don’t automatically get an accident insurance and an unemployment insurance.

To become a KSK member, you have to prove that you are mainly working as freelance artist making a certain minimum income from your artistic work; since 2004, this minimum is defined as 3.900 € per year / 325 € per month.¹⁸ Anybody who hires a freelancer for an artistic job in Germany has to pay a KSK contribution (currently 5,2 % on top of the freelancer’s artist fee) to the KSK; no matter if that freelancer is a KSK member or not. The client may not charge this KSK contribution from the artist.

Exception: If an artist fee is free of taxes and social insurances due to “Übungsleiterpauschale” (see above), clients don’t have to pay a KSK contribution.

¹⁵ see auch <http://www.deutsche-sozialversicherung.de> und <http://touring-artists.info/sozialversicherung-in-de.html>

¹⁶ www.kuenstlersozialkasse.de/wDeutsch/kuenstler_und_publizisten/leistungen/privateodergesetzliche_krankenversicherung.php

¹⁷ see http://www.kuenstlersozialkasse.de/wDeutsch/kuenstler_und_publizisten/

¹⁸ www.kuenstlersozialkasse.de/wDeutsch/kuenstler_und_publizisten/voraussetzungen/mindestgrenzedesarbeitseinkommens.php

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