# Germany – General Insurance

<table>
<thead>
<tr>
<th><strong>Definition</strong></th>
<th><strong>Accounting</strong></th>
<th><strong>Taxation</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>Definition of ‘property and casualty insurance company’</td>
<td>A company carrying on any kind of direct insurance business other than life insurance (including annuities), health insurance, legal expenses insurance and social security.</td>
<td>No separate definition.</td>
</tr>
</tbody>
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<tr>
<th><strong>Commercial Accounts/Tax and Regulatory Returns</strong></th>
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<tr>
<td>Basis for the company’s commercial accounts</td>
<td>Generally accepted accounting principles and special accounting principles for insurance companies, both embodied in the Commercial Code (HGB). Specific regulations on technical reserves and the valuation of investments must be observed.</td>
<td>Taxation is based on the commercial accounts, as adjusted according to tax legislation and fiscal court decisions.</td>
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- **Regulatory returns**: Separate detailed returns have to be filed with the German regulator (Bundesanstalt für Finanzdienstleistungsaufsicht or BaFin).
- **Tax returns**: N/A

Annual returns are to be submitted as required by tax law, based on the (adjusted) commercial accounts.
Germany – General Insurance (continued)

<table>
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<tr>
<th>Technical Reserves / Equalisation Reserves</th>
<th>Accounting</th>
<th>Taxation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unearned premium reserves (UPR)</td>
<td>The 1/360th or 1/24th method in principle as a discretionary regulatory minimum, generally net of 85% of commission (92.5% for reinsurance).</td>
<td>As per accounts.</td>
</tr>
<tr>
<td>Unpaid claims reported (Outstanding loss reserves)</td>
<td>Item-by-item valuation. The full amount of an estimated claim has to be added to the reserves. Reasonability of the reserves will be disputed if the estimates exceed 10% (motor liability) or 20% (general liability) of the amounts later paid. The statistical method (group valuation) – especially in certain lines of insurance (i.e. transport) – is accepted for small claims.</td>
<td>Reserves for the same type of obligations have to be set up according to statistical experience (as defined by tax law and guidelines from the tax authorities) with respect to the probability of the reduced final obligations in total. In principle, liabilities with a remaining lifetime of at least 12 months have to be discounted at a rate of 5.5% p.a.</td>
</tr>
<tr>
<td>Claims incurred but not reported (IBNR)</td>
<td>Based on experience or statistical methods. The full estimated claims have to be reserved.</td>
<td>As for unpaid claims reported.</td>
</tr>
<tr>
<td>Unexpired risks</td>
<td>Not separately shown in the balance sheet.</td>
<td>N/A</td>
</tr>
</tbody>
</table>
### Germany – General Insurance (continued)

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<tr>
<th>Category</th>
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<tbody>
<tr>
<td>General contingency / solvency reserves</td>
<td>To guarantee solvency, a minimum capital is required, depending on the scope of the (envisaged) business. A contingent loss reserve may be set up for insurance contracts taken out in that business year, valued as the collective risk for each type of insurance. The collective risk is calculated as the difference between the premiums received and benefits paid out for each type of insurance. No other contingency / solvency reserves (apart from below).</td>
<td>The contingent loss reserve is not recognised for tax purposes.</td>
</tr>
<tr>
<td>Equalisation / catastrophe reserves</td>
<td>An equalisation reserve must be established and calculated if significant fluctuations in the annual requirement may be expected, using a formula reflecting the standard deviation of net losses for the past 15 years (30 years in some specified cases). Equalisation reserves must be increased by 3.5% per annum up to a maximum limit. Moreover, additional reserves for certain large risk insurance categories are deductible according to specific regulations. Catastrophe reserves are only allowable for pharmaceutical business liability insurance, nuclear plants insurance and insurance for large-scale terrorist acts.</td>
<td>As per accounts.</td>
</tr>
</tbody>
</table>
## Germany – General Insurance (continued)

### Expenses/Refunds

<table>
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<tr>
<th>Description</th>
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</tr>
</thead>
<tbody>
<tr>
<td>Acquisition expenses</td>
<td>Direct and indirect costs arising from the conclusion of insurance contracts (e.g. commission, advertising costs, administrative expenses for processing applications) must be deducted immediately.</td>
<td>As per accounts.</td>
</tr>
<tr>
<td>Loss adjustment expenses on unsettled claims (claims handling expenses)</td>
<td>Fully deductible for individual cases; flat-rate deduction under certain circumstances.</td>
<td>In principle as per accounts.</td>
</tr>
<tr>
<td>Experience-rated refunds</td>
<td>Deductions for refund of excess premiums permitted.</td>
<td>As per accounts.</td>
</tr>
</tbody>
</table>

### Investments

<table>
<thead>
<tr>
<th>Description</th>
<th>Accounting</th>
<th>Taxation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gains and losses on investments</td>
<td>All realised gains and losses resulting from capital investments must be shown in the profit and loss account. Qualifying realised gains from real estate, however, may be set up as an untaxed reserve for up to six years.</td>
<td>For business years up to 2003 inclusive, capital gains from direct investments are tax-exempt; corresponding losses are not deductible. For the business year 2004 onwards, capital gains from direct investments are only 95% tax-exempt and corresponding losses are not deductible. Capital gains realised on the disposal of fund units are generally taxable. Due to the transparency of fund investments, the proportional part of any tax-free equity income gained by the fund (dividends and capital gains from its direct investments, see above) is deductible. Corresponding losses from the fund’s direct investments are not taken into account.</td>
</tr>
</tbody>
</table>
**Germany – General Insurance (continued)**

<table>
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<tr>
<th>Section</th>
<th>Description</th>
</tr>
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<tbody>
<tr>
<td><strong>Assessment of Investments</strong></td>
<td>As a basic rule, investments are valued at acquisition costs, depreciated by any reduction in the market value. Long-term investments are valued at acquisition costs, which may be depreciated if any value decrease is likely to be temporary. If the value decrease is likely to be permanent, depreciation is mandatory.</td>
</tr>
<tr>
<td>Investment income</td>
<td>Interest and dividends must be included in the profit and loss account, with credit for taxes withheld.</td>
</tr>
<tr>
<td><strong>Reinsurance</strong></td>
<td>Reinsurance premiums and claims</td>
</tr>
<tr>
<td><strong>Mutual Companies</strong></td>
<td>Mutual companies (all 'profits' – in principle – returned to members = policyholders)</td>
</tr>
<tr>
<td>Accounting</td>
<td>Premiums are deductible immediately. Reinsurance claims reduce reserves.</td>
</tr>
<tr>
<td>Taxation</td>
<td>Premium refunds are deductible to a certain extent.</td>
</tr>
</tbody>
</table>
GERMANY
International Comparison of Insurance Taxation
January 2005

Germany – Other Tax Features

- **Further corporate tax features**
  - **Loss carryovers**

- **Taxation**
  - One-year carry-back up to EUR 511,500.
  - Carry forward of loss remaining after carry-back:
    - for business years up to 2004 without limitation in respect of amount and duration and can be offset in full,
    - for the business year 2004 onwards the amount of loss carried forward that can be offset in full in one business year is restricted to EUR 1 million. Any amount over and above this can be offset at 60% (i.e. minimum taxation of 40% for remaining income after EUR 1 million off-set).
  - The remaining loss can be carried forward indefinitely.

- **Foreign branch income**

  Taxation depends on the double taxation treaty applicable: either fully taxable with credit for foreign tax or tax-exempt.
  According to the German tax authorities, a foreign insurance branch must be allocated income as if it were a fully operational insurance company. Therefore the actual function of the branch is not taken into account. Capitalisation will generally be recognised if required by the host state’s insurance regulations.
Germany – Other Tax Features (continued)

**Domestic branch income**
Calculated according to German tax rules (including transfer pricing rules). According to the German tax authorities, a domestic insurance branch must be capitalised and allocated income as if it were a fully operational insurance company. Therefore the actual function of the branch is not taken into account.

**Corporate tax rate**
Corporate tax:
- for business years before 2003: 25%.
- for business year 2003: 26.5%.
- for business years 2004 onwards: 25%.
Solidarity surcharge: 5.5% of corporate tax payable.
Trade tax: rate depends on the individual municipality in which the company is situated (average 18%). Trade tax is a deductible expense for corporate tax purposes. Average effective tax rate is between 39% and 42%.
Germany – Other Tax Features (continued)

**Premium taxes**

- In general, 16% insurance tax on all gross premiums for direct business.
- In certain specified cases, a rate of 2% to 15% applies.
- No premium taxes on health insurance, statutory social security insurance, and reinsurance.
- Fire brigade tax is also payable on the gross premium for fire insurance (8%), property insurance (effective rate 2%), and contents insurance (effective rate 1.6%).
- Generally, if fire brigade tax is payable, the premium tax rate is reduced, although the overall effective tax rate will be higher than the standard premium tax rate.

** Capital taxes / VAT**

- No (general) capital taxes for the policyholder or insurer.
- Insurer may be liable for real estate (property) tax on the sale or transfer of domestic property (deductible).
- No VAT on insurance premiums; correspondingly no refund of input VAT.
Germany – Other Tax Features (continued)

Captive insurance companies

The only German fiscal guidelines regarding captives were developed as case law from the 1930s and some circulars issued in the 1970s, therefore the status is not fully clear. Companies only underwriting risks in the group are not allowed to set up technical reserves if the business is not carried out according to technical principles. In this case, premiums paid are not deductible for the policyholder. Captives may also be covered under German legislation concerning controlled foreign companies.
# Germany — Life Insurance

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<tr>
<td>Definition of life insurance companies</td>
<td>A company that carries on any kind of direct life insurance. The licence for life insurance does not include any related insurance classification, but the general (limited) permission to do supplemental business.</td>
<td>No separate definition.</td>
</tr>
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<td>Taxation is based on the commercial accounts, as adjusted according to tax legislation and fiscal court decisions. In addition, special regulations regarding surplus payments to policyholders have to be observed.</td>
</tr>
<tr>
<td>Regulatory returns</td>
<td>Separate detailed returns have to be filed with the German regulator (Bundesananstalt für Finanzdienstleistungsaufsicht or BaFin).</td>
<td>N/A</td>
</tr>
<tr>
<td>Tax returns</td>
<td>N/A</td>
<td>Annual returns are to be submitted as required by tax law, based on the (adjusted) commercial accounts.</td>
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Germany – Life Insurance (continued)

General approach to calculation of income
Allocation of the total results between shareholders (dividend) and policyholders (premium refund)

Accounting
As a general principle, for profit participation life insurance at least 90% of an insurer’s investment income must be allocated to a special reserve for premium refunds. In practice this percentage is higher (on average between 95% and 98% of the insurance company’s gross profits). These policyholder bonuses are expenses. For unit-linked life insurance there is no reserve for premium refunds, rather any fluctuations in the value of the funds in which the insurer has invested must be correspondingly reflected in the reserve for future claims.

Taxation
The reserve for premium refunds is deductible to a certain extent; as a basic rule it is deductible as far as an insurer’s overall annual profit is higher than the net investment income from its trading capital and other investments.
Germany – Life Insurance (continued)

Calculation of investment return

Calculation of investment income and capital gains

Accounting

Total income approach. Interest and dividends must be included in the profit and loss account, with credit for taxes withheld.

Taxation

Capital gains realised on the disposal of fund units are generally taxable. Between 01.01.2002 and 31.12.2003 dividend income and capital gains from shareholdings were tax-exempt and corresponding losses were not deductible. Due to the transparency of fund investments, this also applied to shares held indirectly via an investment fund, i.e. the proportional part of any tax-free equity income gained by the fund was deductible and corresponding proportional losses from the fund’s direct investments were not taken into account.

With effect from 01.01.2004, all dividend income and capital gains from holdings in corporate companies are fully taxable for life insurance companies, whereas write-offs on holdings in corporate companies and losses on the disposal of those assets are tax-deductible. The respective life insurance company could apply to use this rule retrospectively for all business years from 2001 onwards (deadline was 30.06.2004). However, such income, gains and losses can only be used at 80%, i.e. minimum 20% taxation for the years 2001 to 2003 inclusive.

The German Ministry of Finance (BMF) has indicated that the new rule will apply to both directly held investments and shares held indirectly via investment funds.
### Calculation of underwriting profits or total income

<table>
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<th>Actuarial reserves</th>
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</tr>
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<tr>
<td>Actuarial reserves covering the company’s obligations from the life policies must be established according to standard recognised actuarial methods (prospective method). If this is not possible, then figures from the last business year, with an interest mark-up, are to be used (retrospective method). When calculating the reserves, a maximum interest rate of 2.75% is to be used (3.25% before 01.01.2004).</td>
<td>As per accounts.</td>
<td>As actuarial reserves are interest-bearing, they are not to be discounted for tax purposes.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Commission expenses</th>
<th>Deductible. On-charge to policyholders possible (Zillmerung or “zillmerisation”).</th>
</tr>
</thead>
</table>

| Gains and losses on investments | All realised gains and losses resulting from capital investments must be shown in the profit and loss account. Qualifying realised gains from real estate, however, may be set up as an untaxed reserve for up to six years. | See calculation of investment income and capital gains above (Section 4). |
### Germany – Life Insurance (continued)

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<td>Depreciation is restricted. The lower going concern market value may only be used, if the value reduction is likely to be permanent. Depreciations of shareholdings are not deductible. As per accounts for capital investments made on behalf of holders of unit-linked policies.</td>
</tr>
<tr>
<td>Dividend income</td>
<td>To be included in the profit and loss account, with credit for taxes withheld.</td>
<td>See calculation of investment income and capital gains above (Section 4).</td>
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<td>Premium refunds to policyholders</td>
<td>As a general principle, for profit participation life insurance at least 90% of an insurer's investment income must be allocated to a special reserve for premium refunds (policyholder bonus). These policyholder bonuses are expenses.</td>
<td>The reserve for premium refunds is deductible to a certain extent; as a basic rule it is deductible as far as an insurer's overall annual profit is higher than the net investment income from its business assets.</td>
</tr>
<tr>
<td>Other special deductions</td>
<td>None.</td>
<td>N/A</td>
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Germany – Life Insurance (continued)

- **Reinsurance**
  - Reinsurance
  - Premiums are deductible immediately.
  - Reinsurance claims reduce reserves.

- **Mutual companies/Stock companies**
  - Mutual companies.
  - Profit distributions to members (rare) are appropriations and not expenses.

**Taxation**
- As per accounts.
Germany – Other Tax Features

Further corporate tax features

Taxation

One-year carry-back up to EUR 511,500.

Carry forward of loss remaining after carry-back:

- for business years up to 2004 without limitation in respect of amount and duration and can be offset in full,
- for the business year 2004 onwards the amount of loss carried forward that can be offset in full in one business year is restricted to EUR 1 million. Any amount over and above this can be offset at 60% (i.e. minimum taxation of 40% for remaining income after EUR 1 million offset).

The remaining loss can be carried forward indefinitely.

Loss carryovers

Foreign branch income

Taxation depends on the double taxation treaty applicable: Income is either fully taxable with credit for foreign tax or tax-exempt.

According to the German tax authorities, a foreign insurance branch must be allocated income as if it were a fully operational insurance company. Therefore the actual function of the branch is not taken into account. Capitalisation will generally be recognised if required by the host state’s insurance regulations.
Germany – Other Tax Features (continued)

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- for business years before 2003: 25%
- for business year 2003: 26.5%
- for business years 2004 onwards: 25%
Solidarity surcharge: 5.5% of corporate tax.
Trade tax: rate depends on the individual region in which the company is situated (average 18%). Trade tax is a deductible expense for corporate tax purposes.
The average effective tax rate is between 39% and 42%. |
Germany – Other Tax Features (continued)

Policyholder taxation

Deductibility of premiums

**Taxation**

For policies taken out before 01.01.2005:
Subject to certain criteria, premiums into an endowment insurance or annuity insurance are tax deductible up to specific amounts.
Unit-linked policies are excluded.

For policies taken out on or after 01.01.2005:
Only premiums into certain annuity insurance policies are tax deductible up to EUR 20,000 p.a. in principle. Strict criteria apply. In 2005 only 60% of the maximum deductible amount applies, and increases by 2% annually until 2025, when the full EUR 20,000 can be used. Premiums into endowment insurance policies are not tax deductible.
For policies taken out before 01.01.2005:
• Profits paid out as "one-off" payments are taxable in principle. The profits are tax-free if certain criteria are fulfilled.
• For regular annuity payments the deemed profit is taxable, which is calculated according to a statutory table.

For policies taken out on 01.01.2005 or after:
• Profits paid out as "one-off" payments are fully taxable in principle. Profits are only 50% taxable if certain criteria are fulfilled.
• For annuity insurance policies with tax-deductible premiums, the annuity payment is taxable in full in principle. A transition phase applies until 2040, during which the annuity payments are only partially taxable according to an increasing scale.
• For all other annuity payments the deemed profit is taxable, calculated according to a statutory table.

If the profits are not paid to the policyholder, these are subject to inheritance tax in principle on the side of the beneficiary. However, certain tax-free allowances apply, depending on the proximity of the beneficiary’s relationship to the policyholder (e.g. spouse, child, grandchild, etc). Moreover, under certain circumstances, the payment to a beneficiary will not be subject to inheritance tax if the beneficiary paid the premiums for the policy.
Germany – Other Tax Features (continued)

Proceeds during lifetime
As per profits generated (see above).

Proceeds on death
Not subject to income taxes, but depending on the circumstances the death benefit may be subject to inheritance tax on the side of the beneficiary. However, the aforementioned tax-free allowances apply (see profits generated above). Moreover, under certain circumstances, the payment to a beneficiary will not be subject to inheritance tax if the beneficiary paid the premiums for the policy.

Other tax features
Premium taxes

Taxation
No premium tax or sales tax.

Capital taxes
No (general) capital taxes for the policyholder or insurer.
Insurer may be liable for real estate (property) tax on the sale or transfer of domestic property (deductible).
GERMANY

International Comparison of Insurance Taxation
January 2005

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