

# nhs\* MANAGEMENTLTR

#03

SCOPE OF THE ANNUAL FINANCIAL STATEMENTS

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Share capital companies and their legal representatives are required to prepare annual financial statements in accordance with generally accepted accounting principles. Annual financial statements must provide a true and fair view of the company's net assets, financial position and results of operations. The scope of the annual financial statements and the deadlines for their preparation depend on the company's legal form and the legally prescribed size category it is assigned to.

## HGB SIZE CATEGORIES

The German Commercial Code (HGB) defines the following size categories:

	Micro company	Small company	Medium-sized company	Large company
Net profit	EUR < 350k	EUR < 6 m	EUR < 20m	EUR > 20m
Revenue	EUR < 700k	EUR < 12m	EUR < 40m	EUR > 40m
(Average) no. of employees	< 10	< 50	< 250	> 250

Companies move up to the next higher size category if they exceed two out of three of the thresholds in two successive financial years. Different rules apply in special cases such as abridged financial years and mergers. The number of employees must always be established on the basis of headcount and not full-time equivalents. In other words, part-time employees and marginal part-time employees are all counted in full. However, the company's managing directors are not counted.

Additional requirements may be imposed by company statutes or articles of association such as small or medium-sized companies having to apply the same accounting principles as large companies. This can mean that even a small German limited liability company (GmbH) would have to prepare a management report and more comprehensive notes to the annual financial statements. Com-

pany statutes or articles of association can also impose shorter deadlines for the preparation and approval of annual financial statements than those stipulated by HGB, or an obligation to have them audited by a certified public accountant.

One of the most significant changes occurs when a company moves up from the small company category into the medium-sized company category because then, like large companies, it is obliged to have its annual financial statements audited; and financial statements that are not audited are invalid! The company also has to prepare a management report and engage an auditor to confirm that all legal requirements have been met. If a company's inventory assets are a significant balance sheet item, the auditor must also be present during the physical inventory count. As a result, the company will generally need to hire an auditor

before the end of the financial year.

### ANNUAL FINANCIAL STATEMENT COMPONENTS, DEADLINES AND AUDIT REQUIREMENT

The annual financial statements process includes the following steps in this order:

- Preparation
- Audit
- Approval
- Publication

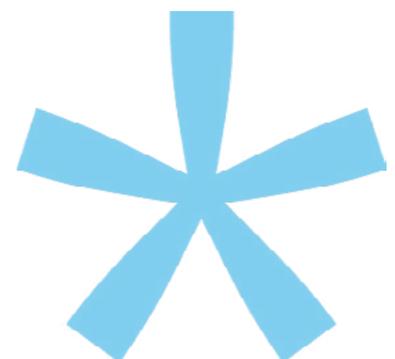
The necessary components of the annual financial statements and the deadlines for completion of each step are shown in the following table.

	Balance sheet	Income statement	Notes	Management report	Preparation deadline	Mandatory audit	Approval deadline	Publication
Micro company	+	+	-	-	Six months	No	Eleven months	Filing requirement only
Small company	+	+	+	-	Six months	No	Eleven months	Only balance sheet and (abridged) notes
Medium-sized company	+	+	+	+	Three months	Yes	Eight months	Full publication (abridged balance sheet)
Large company	+	+	+	+	Three months	Yes	Eight months	Full publication
	\$264 HGB*	\$264 HGB*	\$264 HGB*	\$264 HGB*	\$264 HGB*	\$316 HGB*	\$42a GmbHG**	§§ 325-327 HGB*

When the annual financial statements and, where appropriate, the management report have been prepared they are submitted to the shareholders for approval. If the company is legally required to have its annual financial statements audited by an independent financial statement auditor, they are not submitted to the shareholders until the auditor's report has been received. The

shareholders then have until the end of the first eight months of the new financial year – or until the end of the first eleven months for small companies – to approve the annual financial statements and decide on the appropriation of profits. Once they have been approved the annual financial statements become binding and no more amendments can be made.

\* German Commercial Code,  
 \*\* German Limited Liability Companies Act





## PUBLICATION OF THE ANNUAL FINANCIAL STATEMENTS AND MANAGEMENT REPORT

After approval the annual financial statements are published or filed. Section 325 ff. HGB sets out the obligations in this connection. The size category the company is assigned to is also relevant for the scope of its disclosure obligations. In this case the rule of thumb is: the smaller the company is, the more exemptions it can take advantage of.

In this connection it is also important to remember that when the Act Implementing the Directive on Digital Tools and Processes in Company Law (DiRUG) entered into force on 1 August 2022 it became a requirement to submit accounting documents and company reports for financial years commencing after 31 December 2021 to the Companies Register instead of to the Federal Gazette. Annual financial statements and all other accounting documents and company reports for financial years commencing before 1 January 2022 still have to be

submitted to the Federal Gazette. The deadline for publication in both cases is twelve months. However, the Federal Office of Justice has announced that no administrative fine proceedings can be initiated before 11 April 2023 against companies whose deadline for the publication of annual financial statements for the financial year with the reporting date of 31 December 2021 is 31 December 2022.

## TAX OBLIGATIONS

A so-called derivative obligation exists under the German Fiscal Code to prepare a tax balance sheet. Companies that are required to prepare a financial accounts balance sheet also have to prepare a 'derived' tax balance sheet so that the company's taxable income can be accurately established. The tax balance sheet is taken as the starting point for establishing the income tax, corporation tax and trade tax calculation basis. The Federal Ministry of Finance's circular on the principles for properly maintain-



ing, keeping and storing books, records and documents in electronic form and for data access is particularly relevant.

The most important principle is business transaction transparency with appropriate documentation of transaction origin and processing to make progressive and retroactive audits possible. In other words, up-to-date and complete process documentation is a necessary requirement in any company audit. Incorrect or incomplete process documentation can result in the revenue authority disregarding the accounts making an estimate. In this case the company's management is also liable for failure to comply with its accounting obligations.

## DEADLINES FOR TAX RETURNS

The following deadlines apply to returns for corporation tax, trade tax and VAT if the tax payer uses the services of a tax accountant:

	Submission deadline	Commencement of interest accrual
Tax return 2021	31.08.2023	01.10.2023
Tax return 2022	31.07.2024	01.09.2024
Tax return 2023	31.05.2025	01.07.2025
Tax return 2024	30.04.2026	01.06.2026

Interest is generally accrued on back taxes and tax refunds in accordance with section 233a of the German Fiscal Code (AO) as of the 15th month after the end of the calendar year in which the tax liability arose. However, the interest-free grace periods have been extended. The above table shows the times when interest accrual commences.

In addition to that the following deadlines apply:

VAT advance payment notice	<b>10<sup>th</sup> day of the next month</b> (permanent extension: extension of the deadline by one month)
Recapitulative statement	<b>25<sup>th</sup> day of the next month</b> (depending on the amount of monthly revenue, this may also be quarterly or yearly)
Wage tax	<b>10<sup>th</sup> day of the next month</b>

Property tax returns have to be submitted by 31 January 2023.

## SOCIAL INSURANCE

There is generally a specific due date in each calendar month. Social insurance contributions in the projected amount for the current month are payable on the third-last banking day of the month.

The deadline for submitting statements of contributions paid applies nationwide. The statement must be sent to the collecting agency two days before the payment due date at the latest, i.e. by midnight on the fifth-last banking day of the month. This means that companies have to submit the statements during the course of the previous day.

Employees can generally refer to the contributions paid in the previous month for guidance on contributions due in the current month. Any differences are deducted from or added to the amount paid in the following month. However, one-off salary payments are always attributed to the month in which they are paid and the amount of contribution is estimated if necessary.





\* **Wilhelm Hilgers**

Partner  
Certified Public Accountant  
Tax Consultant  
CVA  
+49 211 99 33 99 10  
+49 151 55 36 95 50  
w.hilgers@nhsgroup.de



\* **Ralph Stadler**

Senior Manager  
Certified Public Accountant  
+49 211 99 33 99 17  
+49 151 21114887  
r.stadler@nhsgroup.de

This is the third in our new series of Management Letters covering various aspects of the direct responsibilities of company directors, supervisory and advisory boards.

We're happy to answer any questions you may have and help you find the right solution for your business.



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