

Ansichts-
exemplar

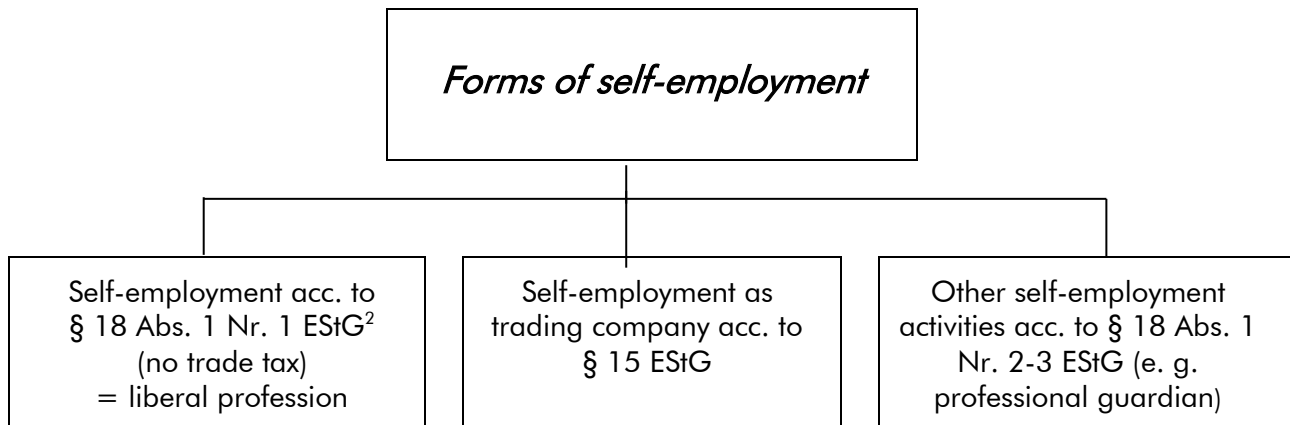
Liberal profession or trading company?

Overview

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Liberal professions refer to occupations that involve providing intellectual or ideational services, relying on specific professional qualifications. These professionals operate independently and responsibly, serving both the interests of their clients and the general public. Their work is usually governed by dedicated regulations either established by the state or through self-regulating professional bodies which ensure consistent standards of professionalism, service quality and confidentiality.¹



Liberal profession – Peculiarities

- **No registration of a trading company**

Professionals in liberal professions often do not need to register a formal trading company at the commercial office (= Gewerbeamt), which simplifies the administrative process. It is sufficient for liberal professions to register with the tax office. This can be the case for certain types of self-employed professionals (lawyers, doctors, architects, etc.) who do not have to adhere to the same regulations as businesses involved in commercial activities.

- **No business tax**

Liberal professions are exempt from business taxes that apply to commercial enterprises.

- **Net income method sufficient**

¹ BFB-General Assembly of 1995, Liberal Profession–Definitions: <https://www.freie-berufe.de/wordpress/wp-content/uploads/2017/10/Faktenblatt-Definitionen-FB-englisch.pdf>

² EStG = Einkommenssteuergesetz
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Liberal professionals can typically use a simplified accounting method based on net income. This means they report income minus expenses.

- **No need for double-entry bookkeeping**

Double-entry bookkeeping (which is a more complex accounting system) is not required for liberal professions. Instead, a simpler method of tracking income and expenses is sufficient.

- **Option for a "Partnerschaftsgesellschaft" (Partnership Society)**

In some legal systems, professionals have the option to form a Partnership Society (Partnerschaftsgesellschaft or "PartG").

Recognition by the tax office

The registration of a liberal profession is done with the questionnaire for tax registration. This can be obtained from the Elster portal of the tax office. There is no formal recognition of the liberal profession by the tax authorities at the beginning of registration!

The following can be evaluated as confirmations³:

Revocation of already issued trade tax notices
 This means that the previous trade tax assessments or notices (Gewerbesteuerbescheide) have been cancelled or annulled. The authorities have decided that the individual or entity no longer needs to be subject to trade tax.

Notification that the objection against the trade tax assessment notice has been granted

This indicates that the person or entity had filed an objection against the original trade tax assessment and that this objection has been accepted. As a result, they are no longer subject to the trade tax under the initial classification.

Notification that the income is classified as income from liberal profession activity

This confirms that the income generated by the individual or entity has now been officially classified as income from a liberal profession. This is a key distinction, as such income is generally exempt from business or trade taxes.

³ Grünewald, Benno (2000): Anerkennung als Freiberufler im Hinblick auf Gewerbesteuerpflicht und Betriebsprüfung, o.O., S. 16 further information: www.dr-grunewald.de
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Change of income tax assessment to income from liberal profession
 This means that the income tax assessment has been updated to reflect that the income is now recognized as coming from a liberal profession. Consequently, exemption from trade tax.

*"In addition, a so-called 'binding information' can be obtained from the tax office, especially before starting the self-employment. However, high demands must be met plus the tax offices are not obliged to provide this information."*⁴

Liberal profession in tax law

The *Einkommensteuergesetz* differentiates between three types of liberal profession in section 18 (1) No. 1:

- "Katalogberufe" (Catalogue professions)
- "Ähnliche Berufe" (Similar professions)
- "Tätigkeitsberufe" (Occupational professions)

What are catalogue professions?

Catalogue professions refer to the forms of self-employment explicitly listed in the law, such as in the Income Tax Act (*Einkommensteuergesetz*). These professions are specifically defined and recognized under the law.

1. Health professions: **doctors, dentists, veterinarians, naturopaths, physiotherapists.**
2. Legal, tax and business consulting professions: **lawyers** (only as members of the bar association*), **patent attorneys, notaries, accountants, tax consultants, tax representatives, advising economists and business economists, sworn accountants** (sworn auditors).
3. The scientific / technical professions: **surveyor, engineers, commercial chemists, architects, full-time experts*.**
4. The information-providing professions / cultural professions: **journalists, picture reporters, interpreters, translators (and similar professions*), scientists*, artists*, writers*, teachers* and educators*.**

⁴ Grünewald, Benno (2000): Anerkennung als Freiberufler im Hinblick auf Gewerbesteuerpflicht und Betriebsprüfung, o.O., S. 16 further information: www.dr-grunewald.de
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What are similar professions?

Similar professions are forms of self-employment that resemble the catalogue professions according to § 18 (1) No. 1 of the German Income Tax Act (EStG), and are often referred to as analog professions. These professions may not be explicitly listed in the legal catalogue, but they can be seen as sufficiently similar to those listed, such as certain types of consultants or specialized technical experts.

The jurisprudence, primarily of the **Federal Finance Court (BFH)**, has included numerous professions within the scope of liberal professions, extending the definition to a variety of self-employed activities.

Because the requirements are high and vary based on specific circumstances, each case must typically be **evaluated on its own merits**, rather than applying a general rule.

What are occupational professions?

Occupational professions refer to self-employed activities that involve **scientific, artistic, literary, teaching, or educational work** (§ 18 Abs. 1 Nr. 1 EStG). These professions are typically defined by their intellectual or creative nature and the work is often independent and involves a high degree of personal responsibility. Examples might include freelance writers, artists or educators.

Scientific, artistic, literary, teaching and educational activities are listed as occupational professions in § 18 Abs. 1 Nr. 1 EStG. The affiliation to the liberal professions depends on individual circumstances. The IFB, your tax advisor or your lawyer can provide you more detailed information.

In the case of a company audit, brief explanations regarding education, further training, work experience, and previous employment should be provided to the tax office.

Please note: you can also get professional support from your lawyer or tax advisor!

Managerial and independent activity

Personal work performance is one of the main distinguishing features between a liberal profession and a trading company. If you work in a managerial and independent manner based on your own specialized knowledge, the involvement of professionally trained workers who may be self-employed does not automatically classify the activity as a commercial enterprise.

The managerial and independent activity must encompass the entire scope of the work, not just a partial aspect of the professional practice. Management should not only be understood as defining the basic framework for organizing and executing the activity, but also as making decisions and overseeing fundamental issues in line with defined core principles. This means taking full technical responsibility for each individual assignment.

Personal responsibility in various professional groups

The question of personal responsibility is defined differently across professional groups and also depends on specific professional regulations – ultimately, it is determined on a case-by-case basis. In particular, the extent of work delegation is interpreted differently.

A high number of professionally trained workers may indicate a commercial activity. However, the use of technical equipment, such as computers and automated analyzers, does not affect the classification as a liberal profession.

Mixed activities

It is also possible to engage in both a liberal profession and a trading company. The IFB, your tax advisor, or your lawyer can provide you with more detailed information on these and other questions.

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