



When is distribution considered 'commercial' under the Verpackungsgesetz?

Anyone who has registered or has to register their self-employment as a business, or anyone who generates income from commercial activities, independent work or agriculture and forestry within the meaning of German income tax law, is always operating commercially within the meaning of the Verpackungsgesetz (Packaging Act).

Even an individual who claims losses against taxes owing to their activity or computes profit from agriculture and forestry on the basis of average rates (section 13a (6) EStG (Income Tax Act)) is operating commercially.

The Verpackungsgesetz does not set out any exceptions from the registration requirement, e.g. due to the small size of a company, small packaging quantities subject to system participation, or not having exceeded a 'de minimis threshold'. Only non-commercial initial distributors of packaging subject to system participation do not have to register or subject the packaging that they have placed on the German market to participation in a (dual) system.

An exception applies to anyone who distributes nothing but service packaging: they have the right to transfer their obligations to an upstream distributor. Since 3 July 2021, international producers under obligation without a branch within Germany can authorise a representative to fulfil their duties under the Verpackungsgesetz on their behalf (with the exception of the registration requirement).

For further information about authorised representatives, please refer to the respective explanatory film and the checklist on the [website of the Zentrale Stelle Verpackungsregister](#) (Central Agency Packaging Register – ZSVR).

The Verpackungsgesetz concerns practices that have an impact upon waste. It aims to set out the conditions necessary for high-quality recycling by assigning producer responsibility to those who, through their business or commercial activity, create packaging that accumulates as waste with private final consumers or comparable sources of waste generation.

A view to generating profit or actually generating income indicates a commercial activity within the meaning of the Verpackungsgesetz. However, an activity that is not gainful can also be commercial if it is related to an economic activity. One example is the distribution of promotional items free of charge as part of an economic activity.



Initial distribution is deemed to be commercial within the meaning of the Verpackungsgesetz if the following elements are satisfied:

- a) Independent work**
(among other things, not an employee)
- b) Economic activity on the market**
(generally with a view to making a profit; distinction from a hobby) **and**
- c) Planned practice and long-term focus**
(professionalism, a minimum degree of continuity and sustainability)

If one of these characteristics does not apply, initial distribution is to be considered non-commercial.



Please note:

Even government authorities and non-profit associations or other organisations benefiting from tax relief must shoulder producer responsibility if they place packaging on the German market in the context of an economic activity. Tax relief alone does not result in an exemption from producer responsibility and the obligations set forth in the Verpackungsgesetz. Producer responsibility also applies to small-scale ancillary occupation, but not to random one-time activities.

In borderline cases, particularly regarding economic activity on the market or planned practice and long-term focus, the objective standards of German income tax law may be applied in assessment. Activities considered pastimes or hobbies from a tax perspective – that therefore must not / do not have to be recognised in tax returns – are non-commercial within the meaning of the Verpackungsgesetz. However, anyone claiming or wanting to claim losses against taxes owing to their activity is always acting commercially within the meaning of the Verpackungsgesetz.

Guidance for agriculture and forestry

Anyone computing profit from agriculture and forestry on the basis of average rates (section 13a (6) EStG) is considered to be operating commercially.

However, an activity is considered to be irrelevant for tax purposes – and therefore does not need to be specified in tax returns – if use for agriculture and forestry does not exceed the thresholds set out in column 3, no. 2 of annex 1a under section 13a (6) EStG (see the table excerpt on page 3). Anyone not exceeding (up to and including) the thresholds under column 3, not showing an intention to make a profit and also not claiming any losses owing to the activity described, and not informed otherwise on their tax obligation by the tax authorities in their individual case, does not need to participate in a dual system for the packaging they place on the German market as part of their activity. Nor do they need to register with the ZSVR:



Example: A beekeeper with up to 30 colonies runs a beekeeping farm as a pastime from a tax perspective and therefore as a hobby. Their income is not subject to tax under income tax legislation, which means that they are also unable to claim any losses. In this case, the ZSVR does not expect registration and participation in a dual system as long as there is no classification to the contrary by the tax authorities.

From 31 colonies upwards, the beekeeping farm is always relevant from an income tax perspective and for this reason considered commercial under the Verpackungsgesetz, which means that the obligations regarding packaging placed on the German market are to be met – unless service packaging (incl. delegation) or reusable packaging (section 3 (3) VerpackG (Packaging Act)) is used.



Use	Thresh- old	Threshold
1	2	3
Viticultural use		0.16 ha
Area used for fruit cultivation		0.34 ha
Area used for vegetable cultivation		
Outdoor vegetables		0.17 ha
Glasshouse vegetables		0.015 ha
Area used for flowers / ornamental plant cultivation		
Outdoor ornamental plants	[not shown]	0.05 ha
Glasshouse ornamental plants		0.01 ha
Area used for nurseries		0.04 ha
Purpose-use for asparagus		0.1 ha
Purpose-use for hops		0.19 ha
Inland fishing		500 kg annual catch
Pond aquaculture		0.4 ha
Fish farming		0.05 ha
Beekeeping		30 colonies
Transhumance		30 ewes
Christmas trees		0.1 ha

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