



Are there exemptions from packaging law obligations for small and micro distributors?

No, small and micro distributors of packaging that is filled with goods are also considered producers under the Verpackungsgesetz (Packaging Act). There is no 'de minimis threshold' or exemption for small companies. **The obligations under the Verpackungsgesetz apply to all distributors of packaging filled with goods operating on a commercial basis.**

The Verpackungsgesetz aims to hold those accountable whose business or commercial activity is responsible for packaging accumulating as waste. To ensure high-quality recycling, every company must assume financial producer responsibility for the packaging that it places on the German market with its goods.

When is something deemed to be 'commercially' placed on the German market?

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.

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 (see below).

The intention to generate a 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.



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 the intention to make 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, distribution is to be considered non-commercial.

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.



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.

Even small and micro businesses that act commercially must therefore register with the LUCID Packaging Register and provide details about their packaging types. Whoever places packaging subject to system participation (retail, grouped and/or shipment packaging) on the German market, must participate this packaging in a (dual) system and regularly report the packaging volumes by material type to their system operator and the LUCID Packaging Register.

Those who exclusively distribute service packaging may avoid undertaking system participation themselves if all their unfilled packaging has already been participated in a system by an upstream distributor (for example the supplier or wholesaler). However, the requirement to register with the LUCID Packaging Register still applies. For more information about the special provision regarding service packaging, please refer to this [graphic](#).

International producers under obligation without a branch within Germany can appoint an authorised representative to fulfil their duties under the Verpackungsgesetz on their behalf (with the exception of the registration requirement). For further information, see our [website](#).

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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). Accordingly, the activity is not considered to be commercial under the Verpackungsgesetz if the thresholds set out in column 3 are not exceeded, if there is no intention to make a profit and if losses owing to the activity described are not claimed against taxes. The activity is deemed to be commercial, however, if a tax authority has determined that the activity is taxable.



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 taxable for income tax purposes and for this reason considered commercial under the Verpackungsgesetz. This means that the obligations regarding packaging placed on the German market must be met – unless service packaging (incl. delegation) or reusable packaging (section 3 (3) VerpackG) 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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