

How to carry out works in Germany

For Luxemburg and France, Germany is not only a popular trade partner, but also offers an interesting market for construction and installation works or other services. Especially companies near the border make use of the constant demand from neighbouring countries.

However, foreign companies who want to carry out works or perform other services in Germany shall comply with some provisions of the industrial and fiscal law and even have to register in some cases. This leaflet gives some information about taxes for works carried out in Germany and also gives an overview of when a company needs to register.

The leaflet was created with reasonable care. However, no responsibility is taken for the correctness of this information.

1. Obligation to Register

Prior to performing construction works or craft activities (see list in the appendix) as well as in the case of long-term or frequently performed activities, some obligations to register shall be fulfilled.

1.1. Registration of a trade or business for activities taking longer than four weeks

Activities or construction works that go on for longer than four weeks or are performed on a regular basis have to be registered at the local Trade Office (*Gewerbeamt*). The membership at the local Chamber of Crafts

(*Handwerkskammer*) or Chamber of Industry and Commerce (*IHK*) is only required if a subsidiary is founded. If longer or frequent activities are planned, it is recommended to ask the local Trade Office prior to the start of the works, if a registration is required. Generally, the Trade Offices are located in the city halls (*Rathaus*) or the building of the city administration.

1.2. Application for authorization to take up skilled trades

Prior to taking up a skilled trade (see appendix), one has to apply for the corresponding authorization (*Ausübungsberechtigung*) at the local Chamber of Crafts. As proof of qualification, an EC-certificate shall be attached to the application for authorization. The authorization to take up a skilled trade is valid for Germany as a whole and is not limited in time.

Addresses of the local Chamber of Crafts:

HwK Trier
Loebstraße
54292 Trier
Phone: 0049 / 06 51/ 207-0
E-Mail: info@hwk-trier.de
Internet: www.hwk-trier.de

Handwerkskammer des Saarlandes
Hohenzollernstr. 47–49
66117 Saarbrücken
Phone: 06 81/ 58 09-0
Fax: 06 81/ 58 09-177
E-Mail: info@hwk-saarland.de
Internet: www.hwk-saarland.de

Handwerkskammer Pfalz
Am Altenhof 15
Postfach 2620
65614 Kaiserslautern
E-Mail: info@hwk-pfalz.de

Internet: www.hwk.pfalz.de

1.3. Registration of workers for companies of the building sector:

Following the Act on Posting of Workers, companies from the building sector shall register at the following authority, at least one day before starting the construction works:

Oberfinanzdirektion Köln, Abteilung
Finanzkontrolle Schwarzarbeit
Neusser Str. 159
50733 Köln
Phone: 02 21/ 96 48 70
Fax: 02 21/ 37 99 37 41
www.zoll.de

The registration shall contain the following: place of the construction site, duration of construction works, name of contact person responsible for the construction works, name of posted worker, proof of fulfilment of the collective agreement. A copy of the registration shall always be available at the construction site.

Furthermore, in case of construction works, it is mandatory to register the posted workers at the Leave and Wage Equalisation Fund of the Building Industry (*Urlaubs- und Lohnausgleichskasse der Bauwirtschaft, ULAK*). When registering, a proof shall be given for every posted worker that duties are paid regarding paid holidays in accordance with the provisions of the country of origin. Further information is available at the local Leave and Wage Equalisation Funds of the country of origin or on the website www.soka-bau.de.

2. Taxes

When carrying out works in Germany, some provisions regarding the turnover tax shall be taken into account on a regular basis. In case of constant activities or frequently successive jobs, direct taxes may also be paid in Germany under certain circumstances.

2.1. Indirect taxes

Activities of companies having their headquarters in another EU country and carrying out works in Germany (installation¹ or maintenance, construction works, many other services) are subject to the German VAT if the person/company to whom the services are supplied is not a company subject to turnover tax in Germany. The German VAT will come to 19% as of January 2007.

Companies based in another EU country which are not registered in Germany for turnover tax purposes can benefit from the so-called *reverse charge rule*. The tax liability is transferred to the German service recipient, i.e. the buyer is obliged to pay the turnover tax. The pre-requisite for this *reverse charge rule* is that the service recipient is a company subject to turnover tax which also has a turnover tax ID. If the recipient of the service is a private individual, an authority or a company not subject to turnover tax, the

¹ If the installation of a machine or facility is considered as an additional service of the delivery of the machine or facility, the service is not subject to the VAT in Luxemburg, but "is treated as part of the main service". Additional services always require the same service relations as in case of the main service; a service is considered to be an additional service if it is of minor importance compared to the main service, but is closely linked to the main service and performed as a consequence of the main service.

reverse charge rule cannot be applied. In this case, the company based in another EU country shall register in Germany for being able to pay turnover tax.

2.1.1. Turnover tax registration and payment of turnover tax

For being able to register for turnover tax, a tax representative is no longer required. Furthermore, the payment of turnover tax is not mandatory anymore. The company having its headquarters in another EU country can do this on its own. The authority responsible for turnover tax registration and payment is:

for companies from France:

Finanzamt Offenburg
Außenstelle Kehl
Ludwig-Trick-Str. 1
D-77 694 Kehl
Phone: 00 49/ 78 51/ 86 40 (-193)
Fax: 00 49/ 78 51/ 86 41 08

for companies from Luxemburg:

Finanzamt Saarbrücken
Am Stadtgraben 2-1
D-66 111 Saarbrücken
Phone: 00 49/ 6 81/ 30 00- 0
Fax: 00 49/ 6 81/ 30 00- 3 29

Basically, the declaration of turnover or income tax shall be filed on the internet. Further information on this issue is available on the website: www.elster.de. In some exceptional cases, the tax return can be filed on paper. The forms for paying VAT are also available on the internet: www.formblitz.de (click on *Steuerformulare*, then chose the

corresponding year and click on *Umsatzsteuer*).

2.2. Direct taxes

The profit made in Germany by a company with headquarters in another EU country as well as the wages paid to the posted workers for their works conducted in Belgium are subject to direct taxes.

2.2.1. Taxation of companies

Generally, companies based in another EU country that make profit in Germany by offering some services are not subject to German income tax. However, this principle does not apply in case of long-term business. Following the Franco-German Double Taxation Treaty², a permanent establishment is created if construction works and installations go on for longer than 12 months. The same applies to construction works and installations going on for longer than six months, following the Double Taxation Treaty between Germany and Luxemburg. The result is a limited tax liability in Germany, i.e. companies based in another EU country have to pay local taxes for the profit made in Germany and shall provide corresponding accounting data.

2.2.2. Taxation of employees

Following the Double Taxation Treaty between Germany and France /

²The exact wording of the Double Taxation Treaties between Germany and France and Germany and Luxemburg is available on the following website: www.bundesfinanzministerium.de (please click on Steuern > Veröffentlichungen zu Steuerarten > Internationales Steuerrecht > DBA)

Luxemburg, income from employment (salaries and wages) is only subject to taxes of the member state in which the activity leading to the income is performed. This means, taxes are always paid in the country where the work is carried out.

This principle, however, does not apply if the so-called 183-days-rule applies. This is the case if:

- The employee stays less than 183 days in the other country during the fiscal year
- The remuneration is paid by or on behalf of an employer³ which is not based in the other country
- The remuneration is not borne as such by a permanent establishment or a fixed base of the employer in the other country.

I.e., a company based in Germany posting its employees to Belgium for less than 183 days to work there, does not have to register its posted employees on the target market for tax reasons and does not have to pay income tax.

The conditions of the 183-days-rule accumulate, i.e. for reaching 183 days, the number of days stayed in the country is relevant, not the number of working days.

The tax return shall always be filed on the internet. Further information on this issue is available on the following website: www.elster.de.

³ Definition of the term employer in the country of activity
the company is economically responsible for paying for the work done
The remuneration is not part of the price paid for the delivery or an advance performance
Employee is bound by the instructions of the company and is an integral part of the company

3. Labour law

Provisions of the German labour law shall also be fulfilled when carrying out works in Germany. In case of short-term, temporary activities abroad, still the labour law of the country of origin applies. The reason is that the customary place of abode of the employee remains with the posting company. However, in case of a permanent (long-term) work, German labour law applies.

German administrative provisions and provisions of general collective agreements which are more advantageous for the employee shall always be adhered to. For this reason, the German provisions of the areas of work permit, remuneration, night and Sunday work as well as public holidays, paid holidays, protection for pregnant women and young people as well as employment protection and hygiene shall be fulfilled.

- The legal weekly working hours in Germany come to 40 hours. Paid holidays prescribed by law amount to 24 working days.

Public holidays in Germany shall be respected when carrying out works. Public holidays in Germany and France and Luxemburg do not always match. Furthermore, there are special holidays in some Federal States of Germany.

Public holidays in Germany:

- 1st of January (New Year's Day)
- Good Friday
- Easter Sunday
- Easter Monday
- 1st of May (Labour Day)
- Ascension Day
- Whit Sunday
- Whit Monday

- 3rd of October (Unification Day)
- 25th of December (Christmas)
- 26th of December (Christmas)

Public holidays in some Federal States:

- Corpus Christi (Rhineland-Palatinate, Saarland, amongst others)
- August: Assumption Day (Saarland, but not Rhineland-Palatinate)
- November: All Saints' Day (Rhineland-Palatinate and Saarland, amongst others)

Appendix:

Skilled trades needing an official registration as per appendix A of the Handicraft Regulations Act (*Handwerksordnung*)

1. Mason and concrete worker
2. Stove and air heating fitters
3. Carpenter
4. Roofer / Tiler
5. Highway and road engineer
6. Thermal and sound insulator
7. Well sinker
8. Stone mason and sculptor
9. Plasterer
10. Painter and lacquerer
11. Scaffolder
12. Chimney sweep
13. Metalworker
14. Surgical instrument maker
15. Car body and vehicle maker
16. Precision mechanic
17. Bicycle and motorcycle mechanic
18. Refrigeration plant mechanic
19. Information technician
20. Automobile technician
21. Agricultural machines mechanic
22. Gunsmith
23. Plumber

24. Installer and heating fitter
25. Electrician
26. Electrical engineer
27. Joiner
28. Boat and ship builder
29. Rope maker
30. Baker
31. Confectioner
32. Butcher
33. Optician
34. Hearing aid acoustician
35. Orthopaedic technician
36. Orthopaedic shoemaker
37. Dental technician
38. Hairdresser
39. Glazier
40. Glass blower and glass apparatus maker
41. Vulcaniser and tyre mechanic