

How to carry out works in France

Traditionally, Germany and France have very close trade relations. The trade volume amounts to about 120 billion €. Very often, especially companies based near the border carry out construction and installation works in France.

However, to do so, apart from provisions of the tax and labour law as well as the social insurance, some special provisions of the building law and specific warranty provisions shall be complied with. In order to make these business relations a great success, this leaflet gives an overview of the most important legal and tax provisions which have to be fulfilled when carrying out construction and installation works in France.

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

1. Taxes

When carrying out works in France, some provisions regarding the payment of turnover tax shall be taken into account. In case of constant activities or frequently successive assignments, direct taxes may also be paid in France under certain circumstances.

1.1. Indirect taxes

Activities of German companies carrying out works in France (installation¹ or maintenance, construction works, many other services) are subject to the French VAT if the person/company to whom the services are supplied is not a company subject to turnover tax. The French VAT comes to 19,6%.

German companies which are not registered in France for turnover tax purposes can benefit from the so-called *reverse charge rule*. The tax liability is transferred to the French 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 *reverse charge rule* cannot be applied.

Companies which were registered in France through a tax representative remain registered at their corresponding tax authority. Since 1.1.2002, it is not required anymore to register through a tax representative. The companies can register for turnover tax and pay the same on their own, or alternatively they can also use a tax representative.

The registration for turnover tax as well as the assignment of a SIRET no. and a turnover tax ID is carried out centrally in Paris at the following authority:

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.

Centre des impôts des non-résidents (CINR)

Inspection TVA

9, rue d'Uzès

TSA 39203

F-75094 Paris cedex 02

Phone: 0033/1/ 44.76.19.07 (08, 09)

Fax : 0033/1/44.76.18.33

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To register for turnover tax, a description of the activities to be carried out in France is mandatory.

The turnover tax is filed centrally in Paris at the following authority:

Direction des résidents à l'étranger et des services généraux (DRESG)

9, rue d'Uzès

TSA 19201

F-75094 Paris cedex 02

Phone: 0033/1/44.76.19.35 (34)

Fax : 0033/1/44.76.18.31

Companies not wanting to register for turnover tax and pay the same on their own can assign this task to an external service provider. For this purpose, the best contact address is the Chamber of Industry and Commerce Abroad in Paris:

Deutsch-Französische Industrie- und Handelskammer

Abteilung Recht und Steuern, Inkasso

18, rue Balard

F-75015 Paris

Tel: 0033/1/ 40.58.35.67

Fax : 003/1/45.75.47.39

Internet : www.deutschfranzoesisch.com

Or contact one of the following service providers:

- www.eurodroit.com
- www.intergest.com
- www.intertax.org

While carrying out works in France, it is strongly recommended to always carry along a proof of the proper tax registration, since sample inspections are carried out from time to time. Further information on VAT in France is available on the following website: www.impots.gouv.fr

1.2. Direct taxes

The profit made in France by a company based in Germany as well as the wages paid to the posted workers for their works conducted in France are subject to direct taxes.

1.2.1. Taxation of companies

Generally, companies based in Germany are not subject to French income tax when performing services in France and making profit with these services. However, this principle does not apply in case of long-term business. As per the Double Taxation Treaty (DTT) between Germany and France, construction or installation works going on for longer than 12 months lead to a permanent establishment which again results in the fact that profit made with works carried out in France are subject to French income tax. Also several subsequent assignments exceeding the limit of 12 months can lead to a permanent establishment which is then subject to French accounting and taxes.

1.2.2. Taxation of employees

Following the Double Taxation Treaty between Germany and France, 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 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 and
- the remuneration is paid by or on behalf of an employer which is not based in the other country
- and 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 France for less than 183 days to work there, does not have to register its posted employees in France 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.

2. Obligation to Register

Before a German company is allowed to carry out works in France, some obligations to register need to be fulfilled.

2.1. Registration at the work inspection

As per article D 341-5-7 Code du Travail, companies posting workers to France to perform services there have to register the workers at the corresponding local work inspection (*Inspection du Travail*). It is mandatory to register prior to starting the works. Only employees carrying out a disassembly in France on their own account do not have to register.

The registration is not subject to any formal requirements. The local work inspection in charge provides corresponding forms. An overview of all local ITMs in France is available on the following website: www.travail.gouv.fr (path: *adresses utiles > vos interlocuteurs en régions*). The registration shall contain name and address of the company, start, location and assumed duration of the activity as well as personal data of the posted workers. The registration is done in French only. However, a sample for such a message on posting workers is available on the internet: www.travail.gouv.fr (path: *fiches pratiques > détachement de salariés > le détachement temporaire en France d'un salarié d'une entreprise étrangère*; paragraph: *déclaration préalable obligatoire*)

The registration can be sent to the *Inspection du Travail* by fax or registered letter. By sending the registration, the work permit is considered as granted. A special permission or confirmation of receipt by the work inspection is not required. As a proof, the worker shall always carry along the registration and the proof of having sent the same (fax report or advice of delivery), since inspections are carried out from time to time.

2.2. Other obligations to register

Employees who do not work in France for longer than twelve months do not have to have a social insurance there. An exemption can be granted for another year. However, a proof of having a proper social insurance² in the country of origin shall always be carried along and be presented

² EU template E 101, to be obtained of health insurance;
EU template E 102 in case of extension by another 12 months.

in case of inspections. Further information on social insurance when posting workers to France is available on the website of the Federal Insurance Office for Salaried Employees (*Bundesversicherungsanstalt für Angestellte*; www.bfa.de).

A work permit is not required for EU citizens. Following the “Loi Sarkozy” dated 26.11.2003, since 1.1.2004, EU citizens are not obliged anymore to apply for a *Carte de Séjour* (residence permit). Non-EU citizens, however, can not profit from this new provision. They have to apply for a work permit at the *Inspection du Travail* as well as for a residence permit at the local *Préfecture*.

3. Labour law

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

French administrative provisions and provisions of general collective agreements which are more advantageous for the employee shall always be complied with.

For this reason, the French 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 France come to 35 hours. This does not apply to executives (*cadres dirigeants*). The limit of overtime per employee amounts to 180 hours annually. It is not allowed to work more than 10 hours per working day or 48 hours per week or an average of 44 hours per week during a period of 12 weeks.

If there are no other agreements made within a company or in another collective agreement, overtime is paid as follows:

- A premium of 25% for the 36th to the 43rd working hour
- A premium of 50% after the 44th working hour.

The overtime premium shall never be less than 10%.

Since July 2006, the statutory minimum gross wage (*salaire minimum de croissance*, SMIC) in France amounts to 8,27 € per hour or 1254,28 € per month. The SMIC is always adapted on the 1st of July. Young people under the age of 18 with professional experience of less than six months get 90% of the SMIC, young people under the age of 17 with professional experience of less than six months get 80% of the SMIC. There are certain exceptions for disabled people and war-wounded veterans.

Public holidays in France shall be respected when carrying out works. Not all public holidays in France and Germany match. Public holidays in France:

- 1st of January (New Year's Day)
- Easter Monday
- 1st of May (Labour Day)
- 8th of May (Victory Day)
- Ascension Day
- 14th of July (National Holiday)
- 15th of August Assumption Day

- November (All Saints' Day)
- 11th of November (Armistice Day)
- 25th of December (Christmas)

In Alsace and Lorraine, Good Friday and the 26th of December are also public holidays.

Detailed information on the French labour law is available in French on the internet: <http://vosdroits.service-public.fr>

Furthermore, you can find more information on the French labour law on the website of the *Service Info-Emploi du Ministère de l'Emploi, du Travail et de la Cohésion sociale*: www.travail.gouv.fr

4. Liability and insurance

German companies are always liable for their services rendered in France. For this reason, it shall be verified prior to starting the works in France, if and to which amount the liability insurance of the company pays for damages in a foreign country.

There are some special provisions for building companies. The *Code Civil* mentions three liability variants for building companies.

The company is liable for the correct delivery of the service for one year. This also refers to the obligation to remedy a defect defined in the approval protocol made during the approval. Parts subject to wear and tear are not covered by this kind of liability.

The liability for equipment (moveable components or components which are not built in) amounts to two years after the approval of the construction. This is the so-called functional warranty.

The longest liability period – 10 years – applies to damages at the construction and load-bearing or built-in components. These include also solar plants, for instance. The liability covers defects affecting the solidity of the construction or impeding the proper utilization of the same. Purely aesthetic defects are not covered by this liability. The 10-year warranty claim is a non-fault liability. As legal remedy, the injured party can claim the removal of the defect, compensation or both.

An insurance to cover these warranty claims is mandatory in France (*assurance RC décennale*). The insurance covers the construction of buildings, but not the infrastructure and underground working. Insurance companies offering the *assurance RC décennale* in France are, for instance, the *Groupe CAMACTE*³ (www.camacte.com) or *MAAF Assurances* (www.maaf.fr).

In Germany, there is no insurance company so far offering this kind of insurance. French insurance companies, however, often only offer insurances for companies having a subsidiary in France. In case a German company has problems when trying to sign an insurance contract in France (insurance company refuses to insure a German company; no positive answer within 45 days), it can contact the *Bureau Central de Tarification* (BCT in Paris (Phone: 0033 /1/ 53.32.24.80; Fax: 0033 /1/ 53.32.24.80; Email: bct@agira.asso.fr) as mediator.

³ German-speaking contact person: Mrs. Hoffmann,
Phone: 00 33/ 3/ 88 37 69 54)

