

Legalities Reports

Austria Belgium Czech Republic **Germany** Hungary Italy Netherlands Poland Portugal Spain



1. What is the general status of student housing in your country?

Is there a shortage for student housing residentials? Are developers encouraged to develop student housing constructions? What is the position of the public authorities / municipalities towards student housing? Do many students live in PBSA's (Purpose Built Student Accommodation) or mostly in private buildings/apartments (e.g. of their parents)?

The number of students has been rising steadily. In the last ten years, the number of students in Germany grew by 40%. At the same time, the number of foreign students is steadily growing. 20% of students live in cities with at least 1 million inhabitants. However, in these cities the demand for small apartments is high since small flats are equally appealing for young professionals, commuters, and trainees. This creates high demand for one- or two-bedroom apartments. This demand can be met by student accommodations (PBSA). Around 12% of students live in PBSA. The majority of these are run by public institutions, while private institutions account for around 25% of the accommodations on offer. Even though private investors are building new accommodations, around 25,000 beds are still needed to meet present demand, according to the general secretary of DSW (German Organisation for public PBSA).

The creation of student housing is promoted by the federal states through subsidies. Therefore, the conditions vary from state to state. One condition might be a cap on rent prices to allow students with limited means to find accommodation as applicable in the federal state of Bavaria (acc. to "Bavarian Housing Promotion Act", BayWoFG).

2. What is the legal framework for student lease contracts in your country?

Is there special lease law for student tenants? Are there rent control regulations applicable to student housing? Are the student leases contracts flexible? Are the student lease contracts rather landlord or tenant friendly?

In principle, residential tenants are entitled to legal protection under German law. However, there are exceptions to PBSA (sec. 549 German Civil Code (BGB)) that allow a less strict regime. For example, the so-called "*Mietpreisbremse*" (rent control) is not applicable. This framework establishes rent caps in cities and towns in areas with high demand for housing. Rent increases are also limited. These do not apply to PBSA allowing private investors to freely fix rent prices. Additionally, residential lease agreements in Germany generally need to be put in written form and contracts need to have an unlimited term (i.e. of one year or less). Contracts for PBSA often do not have to fulfil these requirements and can be concluded online and with a limited term (i.e. of one year or less). Another advantage for PBSA is that an "all-in rent" (including electricity, internet, water, operating costs) can be concluded (sec. 556 para. 2 BGB, sec. 11 para. 1 no. 2 lit. a Heating Cost Statute – "*Heizkostenverordnung*"). Since the landlord does not have to prepare invoices for these costs, time and expenses can be saved.

To sum up: In the area of PBSA, rents and contracts are more flexible and, thus, more attractive for investors overall.



3. In which manner is student housing regulated from a zoning and planning perspective in your country?

Are there certain restrictions from a zoning and planning perspective for student housing in your country? Is it possible to develop student housing or use residences as a student house if the area is marked as a residential area under the zoning plan? Does zoning plans include regulations on rent levels which may have an effect on student housing? Is it possible to deviate from a zoning plan so that student housing can be developed.

In general, student housing qualifies as residential use under the German Land Use Ordinance ("Baunutzungsverordnung"). Therefore, it is permissible in every building area which allows residential use as far as – based on a case-by-case analysis – the object is not reckless towards neighbouring uses. Therefore, student housing is permissible in pure and general residential areas, in mixed areas, and urban areas, and it may be permissible in core areas under the Land Use Ordinance. Student housing is especially impermissible in commercial and industrial areas. The mean of deviations from stipulations exists under German law. However, in this context its granting is very unlikely.



There is no legal basis for stipulations on rent levels under German law. Zoning plans may reserve areas for residential uses with special needs, such as student housing. But they cannot limit rent levels in these areas.

4. Are there specific tax considerations to take into account for student housing in your country?

Which tax rules are relevant when engaging in student housing? For instance, what tax bases and rates apply for RETT and CIT? When financing investments, could one encounter (partial) non-deductibility of interest expenses? Are there any (specific) levies or benefits for developers and landlords engaged in student housing? What VAT consequences do student leases trigger? Are the prices of student housing or rents regulated? Are new tax rules expected that may affect student housing?

On 1 July, 2021, the reform of the German Real Estate Transfer Tax (RETT) Act came into force and the provisions regarding the taxation of share deal transactions were substantially extended. The RETT rates vary from 3.5% to 6.5% depending on the German federal state the property is located in (e. g. 3.5% in Bavaria or 6% in Berlin). The CIT is a flat tax rate of 15% (plus solidarity surcharge of 0.825%) and as of 1st January 2022, in addition to corporations also certain partnerships will be able to opt in to elect to be treated as 'opaque', i.e. regarded as corporate entities for income tax purposes (check-the-box-procedure). Investors from abroad can prevent being subject to German trade tax if a domestic permanent establishment ("*Betriebsstätte*") is avoided. Under certain conditions, investors based in Germany can also prevent their profits resulting from rental activities being subject to German trade tax. Short-term student leases with a time period of up to a maximum of six months are VATable in Germany and, as a rule, the VAT rate amounts to 7% at the moment. On the other hand, when engaging in student leases with a time period of more than six months (long-term) the rent is not VATable. For purposes of a long-term lease, it is considered harmless if it is terminated prematurely (e. g. after one month). This has to be considered in planning the investment, as developers or landlords may claim input taxes only to the extent the leases are executed on a VATable basis. Therefore, if a shift is made from VATable short-term leases to long-term leases (not VATable), there might be an input tax adjustment and claimed input taxes have to be repaid pro rata temporis. As a rule, net interest expenses of less than 3 million euros (exemption limit) are deductible each year.

5. Are there any other specific aspects in your country with respect to student housing?

Are there any recent or expected future changes with respect to student housing law? Have there been rent reductions granted during the Covid-19 crisis to students?

The Covid-19 crisis also affected many students who are dependent on part time jobs and support from their parents. While rent adjustments are possible in commercial tenancy law via sec. 313 BGB, this option is generally not open in residential tenancy law.

However, in the course of the Corona pandemic, the German state enacted several aid measures to support students financially. On the one hand, there are state subsidies in the case of economic hard-ship, and on the other, an interest-free student loan of up to EUR 650 per month.

To our knowledge rent reductions were not granted during the pandemic. However, tenants were protected from terminations of leases due to outstanding rent payments. The protection was limited to rent payments for the months April to June 2020.

Nevertheless, tenants are required to pay the outstanding rent until 30 June 2022 (Art. 240 sec. 2 EGBGB).

From a German tax law perspective there have been recent positive changes to the German trade tax law: As a rule, landlords being subject to German trade tax due to their legal form, e. g. corporations maintaining a German permanent establishment, may prevent their profits resulting from rental activities being subject to German trade tax under certain conditions. If those conditions are met, the new regulations now allow the simultaneous (besides the rental activities) generation of income resulting from special services provided to tenants (e. g. room cleaning) or the supply of electricity (e. g. through renewable energy systems or charging stations for electric vehicles or electric bicycles) up to specific thresholds of the income incurred from the rental activities. If these thresholds are complied with, it should be possible that only the profits resulting from such services, but not the profits resulting from the rental activities are subject to German trade tax. Therefore, the services must be accurately recorded and specific values have to be assigned to them so that the thresholds can be monitored in detail.

