



Germany - Legal Framework

When considering an energy efficiency retrofit within your national housing market, a wide plethora of consideration needs to be made. Below, we list key findings to facilitate your analysis of the retrofit investment. More details and backgrounds can be found on the website www.rentalcal.eu.

The analysis of rent regulations and modernisation cost recovery in Germany show:

- Freedom of contract and initial rent setting
- Rent increases during the contract
- Modernisation based rent increase
- Rental table honoring energy efficiency "Green Value"
- Maintenance costs paid by the tenants impact landlord's investments "Split incentives"
- Maintenance costs prolong pay back periods for deep energy retrofits
- barriers beyond the law: energy efficiency of low priority
- lack of knowledge amongst the professionals
- shortage of professional staff

The analysis of taxation and depreciation rules in Germany show:

- If the landlord is a private individual, personal income tax rules apply. Tax rates are progressive and depend on the whole taxable income.
- If the landlord forms a corporation, rental income is subject to corporation tax which is (aside from few exceptions) 15% of the net revenues.
- Immediate write off is possible for all maintenance and repair and single modernisation measures that do not increase the overall building standard.
- If a package of modernisation measures leads to a substantial improvement of the residential building's quality or if major refurbishments (> 15% of acquisition costs) are performed within three years from the acquisition of the building (§6 EStG, Income Tax Act), the retrofit expenses are to be assessed as (purchase related) costs for subsequent construction work and depreciate according to the general building depreciation rules (generally fifty years depreciation period)
- The replacement or modernisation of removable building components (heating boilers, solar panels etc.) is also subject to depreciation. Generally, depreciation periods in Germany are derived from economic life spans of the respective component.
- A dichotomy between maintenance costs (Erhaltungsaufwand) und improvements (Verbesserung)- a sharp and clear- cut definition is missing
- There is no reflection of and distinction between different life cycles of different construction components
- Suggestion: depreciation of individual construction components
- Lack of harmonization of relevant phenomena (e.g. „modernisation“) within rental law definition and tax rules

The analysis of building requirements in Germany show:

- Outdated domestic heat generation equipment in existing residential buildings: must be replaced according to the regulations of the EnEV (Energieeinsparverordnung) and must be replaced or improved according to the 1. BImSchV (Bundesimmissionsschutzverordnung, Federal Ordinance of Emissions).
- Building envelope components of existing residential buildings must comply with minimum standards (component specific U-values or maximum energy demand for the whole building) of the EnEV whenever the building envelope is subject to non-trivial (i.e. more than 10% of the surface) modernisation or maintenance activities.
- During the past decades, the emphasis of the Energy efficiency regulatory regime shifted from basic health and safety issues to economic regulation and then to environmental issues.
- At present thermal improvements are only required within the context of repair or modernisation decisions concerning the building envelope.