Forschungszulagengesetz

Germany's R&D Tax Incentive Program

Introduction

Germany is committed to investing around 3.5% of its national GDP in R&D until 2025. The government supports private investment in innovation through generous public funding programs. Among these, the Forschungszulagengesetz (FZulG) – introduced on January 1, 2020 – plays a pivotal role by offering a volume-based R&D tax credit to boost research and development across various sectors.

Key Program Details & Timeline

- Open to all taxable companies undertaking R&D projects (as defined by EU state aid rules) on a project basis – including internal, cooperative, and contract R&D.
- Excludes companies in financial difficulties or with outstanding state aid reclaims.

Program Timeline

Jan–Jun 2020	Jul 2020 – Mar 2024	Post Mar 27/28, 2024
€0.5 million	**€1 million**	**€2.5 million** **€3.5 million (SMEs)**
Initial phase of the program.	25% credit rate; covers personnel and social security costs.	Expanded contract R&D to 70% of contract value; includes depreciation on R&D assets

Note: The annual funding cap refers to the maximum tax credit a company can claim per year under the Forschungszulagengesetz (FZulG).

Funding Snapshot

2023	2024 (Pre-adjustment)	2025 (Projection)
€1.2 billion	**€1.5 billion**	**€1.7 billion**
Emphasis on digitalization, sustainability, and high-tech sectors.	Continued support for innovation in key sectors.	Strategic initiatives to incentivize collaborative R&D between industries and academia.

Compliance, Documentation & Strategic Insights

Compliance & Documentation Requirements

Rigorous Standards

- **Time Tracking:** Employers are required to maintain detailed, project-specific time records for all employees involved in R&D activities. These records must clearly document the actual hours worked on each R&D project, the tasks performed, and any absence days (e.g. vacation, sick leave). Timesheets must be updated regularly and reflect the proportion of time spent on eligible research tasks versus non-R&D duties. These logs serve as a core compliance component during audits by tax authorities.

- **Documentation:** Companies must provide comprehensive technical and financial documentation for each R&D project. This includes:
  - Clear definition of project objectives and expected outcomes
  - Project timelines and key milestones
  - Breakdown of expenditures (e.g. salaries, materials, external services)
  - Roles and responsibilities of involved personnel
  - Evidence of innovation or technological advancement pursued
  - Contracts or agreements for any collaborative or subcontracted work

All documents must be retained for review and submitted upon request during the certification and tax review phases.

- **Approval Process:** A two-step approval process is followed:
  - Secure a certificate from the Bescheinigungsstelle Forschungszulage (BSFZ).
  - Submit a formal tax application.

From 2024 onward, applications must adhere to annual deadlines based on project and company specifics.

Eligible Cost Categories

- **Internal R&D:** Direct personnel costs and social security contributions.
- **Contract R&D:**
  - Until March 27, 2024: 60% of the contract value qualifies.
  - After March 27/28, 2024: 70% of the contract value qualifies, plus depreciation costs for certain movable R&D assets.

These criteria apply across company groups as defined by Section 290 of the German Commercial Code (HGB).

Compliance Requirements as Compared to OECD Average

ASPECT	FZULG (GERMANY)	OECD AVERAGE
Record-Keeping	Must follow GoBD (electronic bookkeeping standards): separate project accounts, systemized timesheets, Procedural documentation for archives.	General tax-record rules, no R&D-specific archiving mandate; enterprises typically use standard ledgers.
Documentation	Detailed project plans, progress reports, cost-allocation schedules, self-evaluations under "Guidelines 2.0"	Varies by country - commonly: project descriptions, expense logs, and staff time records.
Retention Period	10 years (per GoBD)	Typically 5 – 7 years (e.g. US: 3 years; UK: 6 years).

Legal Risks & Sanctions

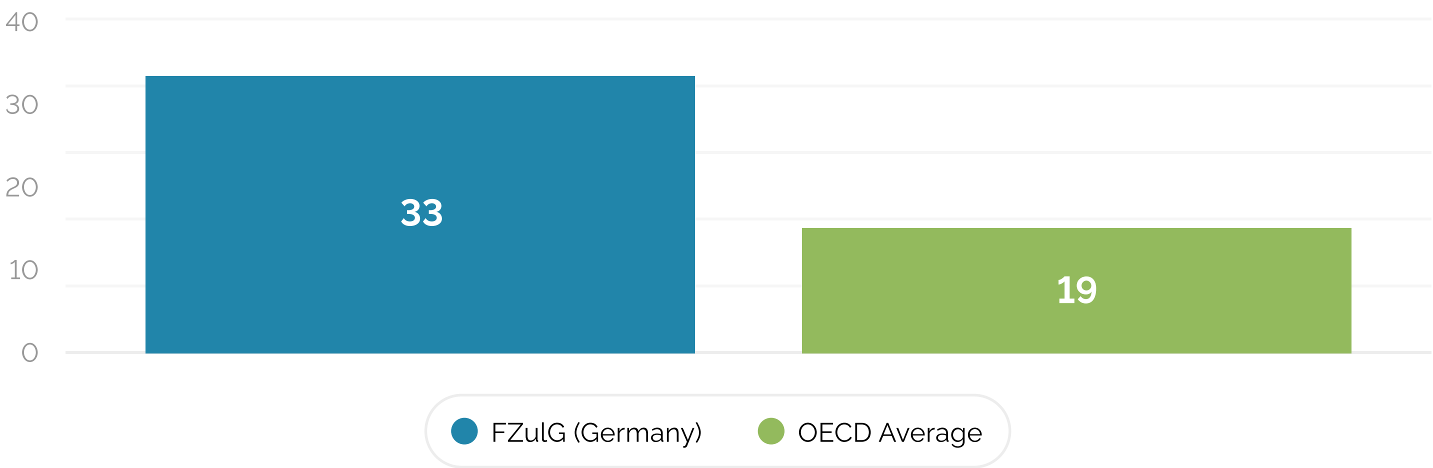
Failing to comply with documentation and eligibility rules may lead to severe consequences:

- Misreporting R&D claims is treated as a tax offence under German law
- Violations may result in penalties, interest charges, and legal proceedings, particularly if intentional misrepresentation is detected.

Penalties & Sanctions as Compared to OECD Average

ASPECT	FZULG (GERMANY)	OECD AVERAGE
Record-Keeping	Full or partial denial of the research allowance if documentation is incomplete or inaccurate	Disallowance of credit under general audit procedures.
Interest on Repayments	Interest on reclaimed credits at 0.5 % per month under the Fiscal Code (§ 233 AO).	Similar interest regimes—rates ~3–6% per annum in many OECD countries.
Administrative Fines	For GoBD violations, fines up to €25,000 under GoBD enforcement; misreporting R&D claims considered tax offences under § 370 AO, with fines or imprisonment.	Accuracy-related penalties typically 10–40 % of underpaid tax (e.g., US 20 %; UK up to 100 % of understatement).
Criminal Liability	Tax evasion (including fraudulent R&D claims) can lead to imprisonment up to five years.	Generally civil penalties; criminal prosecution reserved for deliberate fraud in most OECD jurisdictions.

Overall Penalty Severity: FZulG (Germany) vs OECD



Strategic & Financial Advantages

- **Generosity & Impact**
  - The scheme provides a legally-entitled, ex post tax credit that improves cash flow predictability relative to non-repayable cash grants.
  - Non-repayable grants remain available for specific project areas, with increased budgets for sustainability, decarbonization, and circular economy initiatives.
  - By enhancing EBIT via tax credit or cash refunds (if the credit exceeds tax liability), the incentive directly benefits the financial performance of eligible companies.

- **OECD Comparison**
  - The Forschungszulagengesetz offers a 25 % tax credit on qualifying R&D expenditures - well above the OECD's implied average subsidy rate of approximately 17 % for large, profitable firms.

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