

Germany's Ministry of Finance revises standards for proper management and storage of books, records and documents in electronic form

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The German Federal Ministry of Finance (BMF), in a letter dated 28 November 2019, fundamentally revised some points of its previous standards from 2014 for the proper management and storage of books, records and documents in electronic form and for data access (GoBD). Companies should review their relevant IT systems for tax and customs with regard to the revised "GoBD compliance" provisions.

Key changes

The previously granted exemptions with respect to the obligation to keep individual records are eliminated. In particular, the obligation to keep individual records shall also apply to the sale of goods to a large number of unknown individuals for cash payment, provided that an electronic record keeping system is used (irrespective of whether digital records are to be protected in accordance with Section 146a (3) in conjunction with the KassenSichV (German Regulation on Cash Payments)).

Further, the deadline for the periodic data collection of non-cash business transactions has been considerably shortened. Although the previous letter from 2014 provided a deadline of one month, the new letter only grants ten days until non-cash business transactions are to be recorded, even if accounting is performed non-periodically. Cash transactions must now be recorded on a daily basis under all circumstances.

Also, for the first time, regulations on electronic notifications (such as EDI) or data sets that are issued with originals documents are provided. For such identical multiple copies of the same document type, the storage of the formats being actually processed (accounting supporting documents) is sufficient, as long as they have the highest automated evaluability.

With regard to the regulatory scope of the GoBD, the revised letter dated 28 November 2019 on the recognition of cloud systems as announced earlier, states that it does not matter whether the systems are acquired and used by the taxpayer as his own hardware or software or whether the systems are cloud-based.

As already included in the draft letter issued in 2018, the new BMF letter explicitly permits the digital imaging of paper documents using various types of devices - especially smartphones - if the other GoBD requirements are fulfilled. Thereto, it is outlined in detail that Section 146 (2) of the AO (German Fiscal Code) does not preclude the digital imaging by smartphones abroad if the supporting documents were created or received abroad and were directly recorded there.

Also, the explanations regarding the digital imaging of supporting documents abroad are a positive development for taxpayers, especially as related to the engagement of Shared Service Centers abroad. The BMF letter - contrary to the administrative practice of some tax and regional customs offices - now clarifies that it is no longer objectionable to physically transfer supporting documents in paper format (documents of any kind and form) abroad for digital imaging in connection with a relocation of electronic bookkeeping aligned with Section 146 paragraph 2a AO.

However, digital imaging must be carried out promptly after the supporting documents in paper format have been transferred abroad. It should be noted that although certain customs documents can be digitized in the sense of digital accounting and deposited in the IT systems, the original documents, however, by law, shall not be destroyed afterwards and must be kept in their original format. Their storage in the tax area is to be ensured accordingly.

In the case of a conversion of documents subject to retention into a new company-internal format, the November BMF letter now specifies detailed requirements under which the retention of the converted version is sufficient (no changes in content or loss of information, existing procedural documentation ...). In addition, the retention period has been shortened for the event of a system change or an outsourcing of data

requiring recording and storage from the productive system. Now it is sufficient to only make the Z3 system access for auditors available after the expiration of the fifth calendar year following the conversion (ref. no. 164). The new letter also refers to supplementary information on the data media provision (available on the website of the Federal Ministry of Finance) and the possibility of downloading the digital interface of the financial administration for cash register systems (DSFinV-K) from the website of the Federal Central Tax Office (ref. no. 178 of the letter).

Practical considerations

In particular, - unchanged - the very broad definition of tax "supporting documents" or "other documents insofar as they are of significance for taxation" in Section 147 (1) No. 4, 5 AO should be considered. Thus, as a rule, the GoBD requirements are to be considered not only in view of the operational ERP-system or the financial accounting but for a variety of source and intermediate systems in which tax or customs relevant data are recorded, processed or stored. This includes, for example, manufacturing systems/materials management, other IT applications related to manufacturing, storage, supply chain, customs and tax processing, electronic cash registers, balances, etc.

Further, the definition of "taxes" in Section 3 AO should be noted. Accordingly, within the scope of the GoBD, "customs" are also included as a tax.

The GoBD formulate the opinion of the tax authorities on the tax and non-tax obligations of the tax person to keep books, records and documents on business transactions which are important in individual cases for understanding and reviewing the records for taxation prescribed by law. These are technology-neutral requirements that must be met irrespective of the technical implementation of the management and storage of tax-relevant records. Therefore, these are also to be fulfilled if tax-relevant data is recorded e.g. by means of Blockchain solutions.

The progressing digitalization and the electronically supported conduct of business processes were an occasion to release a new version of the GoBD. This goes along with a growing technical understanding and a growing motivation of the tax authorities to understand business and IT based processes in detail and the reviewing of IT system functionalities.

The implementation of improvement needs in IT systems in order to comply with tax requirements is usually technically complex and time-consuming. The non-acceptance of

systems or tax relevant data contained in IT systems can have significant consequences (estimation of tax bases leading to increased tax burden, non-granting or suspension/ withdrawal of business relevant customs simplifications and authorizations etc.). It is advisable to proactively identify tax or customs relevant IT systems in the company and to review them for “GoBD compliance” in order to keep the initiative and adequate time available for any necessary adaptation measures in the own hands. In addition, it is also necessary to document the relevant systems in use and the associated processes in accordance with the GoBD.

Accordingly, the GoBD requirements should also be considered when acquiring and integrating tax-relevant IT solutions into the existing IT landscape in order to avoid any subsequent need for change in terms of improvement.

In practice, a special challenge frequently seen is the compliant implementation of GoBD requirements in IT in-house developments as companies must already contribute considerable tax expertise to the solution design. Another frequently discussed problem is the use of IT applications (e.g. ERP systems, customs clearance systems, etc.) from foreign providers in jurisdictions in which there are no tax or commercial law regulations comparable to GoBD. Partially, this also applies to cloud-based solutions (Software as a Service) for record keeping and processing business transactions which are increasingly being offered on the market.

It is recommended to consider the specialty “fiscal GoBD” as an own workstream from the very beginning of corresponding IT projects.

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