



Relocation of electronic accounting and electronic records abroad



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Due to the global interdependence, the German subsidiaries of foreign corporations are increasingly required to relocate accounting and recording activities to the corporation's headquarters or central accounting departments abroad. As a side effect, such centralisation usually reduces the costs of accounting and recording activities. Subject to certain prerequisites under German law, it has been possible for quite some time now to relocate electronic accounting and electronic records abroad.

A. Legal changes with effect from 29 December 2020

When the German Annual Tax Code 2020 (*Jahressteuergesetz, JStG*) came into force on 29 December 2020, certain changes for the relocation of electronic accounting or electronic records abroad became applicable:

1. Relocation to other EU Member States

For the relocation of electronic accounting and electronic records abroad, it has so far in principle been required for the respective company to file an application to be approved by the German financial authorities. Such application for relocation to another EU Member State is no longer

required. It merely has to be ensured that the German financial authorities may still access data pursuant to the German laws.

2. Relocation to non-Member States of the EU

If activities are relocated to countries outside of the European Union, however, this must be approved by the German financial authorities and consequently a respective application is then required.

B. Relocation requirements

On 29 January 2021, the Regional Tax Authority of the German state of Bavaria (*Bayerisches Landesamt für Steuern*) issued an administrative order (file ref. S 0316.1.1-3/7 St 43) regarding the requirements for the relocation of electronic accounting and electronic records abroad. These requirements serve the purpose of ensuring that an efficient control by the German financial authorities is in place which thus serves equal taxation.

1. Content requirements for the relocation application

The application for the relocation of electronic accounting and electronic records

abroad can be filed in writing or electronically. It must include a detailed description of the electronic books to be relocated and any other required electronic records. The planned relocation measures have to be described in detail. If it is intended to relocate the electronic accounting of several German companies abroad, a separate application has to be filed for each company. This also applies to corporate structures.

2. Approval by the financial authorities

The relocation measure may only be approved for companies which have properly fulfilled their tax obligations in the past. In this context, the following criteria are particularly important:

- proper conduct of the company when it comes to filing tax returns or declaring taxes;
- any initiated criminal or administrative offences proceedings under tax law;
- necessity to instigate enforcement proceedings due to tax obligations; or
- failure to declare participations in foreign companies.

The financial authorities will only grant their approval if the future taxation of the company is not impaired by such relocation measure. The taxation process is deemed unimpaired if the German financial authorities are able to completely audit the assessment of profits in the same way as in case of companies with accounting activities in Germany.

Hence, the taxation process may already be deemed impaired if, due to the relocation measure, the company's duties to cooperate in the taxation procedure, compliance with the relevant ordering, recording and retention obligations as well as the duties to provide information and submit documents including granting access to data can no longer be sufficiently ensured. Access to data is then deemed ensured if the tax authority has direct access (granting of direct access to hardware and software). In the individual case, the tax authority may also decide at its equitable discretion that it is sufficient if the data is

provided on machine readable data carriers or through indirect access (assessment of data by the company itself or third parties). In general, however, data should be directly accessible on the server abroad.

Whether the double tax treaty between Germany and the country to which the activities are to be relocated contains a comprehensive data exchange provision pursuant to which the signatories will exchange any and all data required for the enforcement of the treaty and national tax law is another factor considered when assessing an impairment of the taxation process.

If, at a later point, the requirements are no longer applicable or it becomes apparent that the requirements had not been fulfilled in the first place, any approval granted has to be withdrawn.

In case of a withdrawal, the electronic accounting has to be relocated to Germany again. An approval will typically be withdrawn if the company does not grant complete access to its data vis-à-vis the financial authorities, thereby impairing the taxation process.

C. Relocation to the data cloud

If electronic books are to be stored in a data cloud, the location of the server becomes relevant. If the server is located outside the European Union, the offshoring of the electronic accounting requires approval by the tax authority. Where the servers are located is particularly important if they are operated by third-party providers. In this context, it should be verified whether the third-party provider is entitled to change the server location and to which extent this requires an involvement of the company. In addition, the third-party provider has to ensure continued access to data by the tax authority. Both aspects should already be taken into account when concluding the respective contracts.

D. Practical note

If a company plans to relocate its electronic accounting abroad - irrespective of whether to an EU country or a country outside the European Union - we recommend verifying in advance whether the relevant statutory requirements can be fulfilled. This in particular applies to the requirement that the financial authorities must still be able to access data without restrictions following the relocation measure.

As an application is required for the relocation of electronic accounting activities into a country outside the European Union, it should be verified in detail before filing such application whether the requirements for an approval of the relocation measure have been met in the first place. In this context, particular attention should be paid to describing the relocation process in detail. Failing that, approval might be denied.

Where electronic accounting activities or electronic records or parts thereof have already been relocated abroad in the past without a respective approval, the required application should be filed with retroactive effect in order to avoid that the authorities order for the relocation back to Germany.

The relocation of activities abroad does not release the company from observing the German principles for the proper management and storage of books, records and documents in electronic form as well as for data access (*Grundsätze zur ordnungsmäßigen Führung und Aufbewahrung von Büchern, Aufzeichnungen und Unterlagen in elektronischer Form sowie zum Datenzugriff, "GoBD"*).

Please note that only electronic books and electronic records can be relocated abroad. Physical books and other documents must still be stored in Germany.



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