

## Accounting abroad for German companies and permanent establishments

**Are you a global player with a subsidiary or permanent establishment in Germany? Are you storing the electronic books and other necessary electronic records outside of Germany or using a cloud solution for the bookkeeping? If yes, the following information should be kept in mind:**

In principle, every German company is subject by tax law to the obligation to keep and store its books and other necessary electronic records in Germany. The purpose of keeping the books in Germany is to give the tax authorities access to data that is essential for taxation purposes at all times.

As companies increasingly operating on a global scale, larger groups in particular are seeking to centralize their accounting and recording activities for organizational or financial reasons. Already in 2008, the legislator had created the legal framework for companies to be able to relocate and store their electronic accounting worldwide, including countries such as the USA or Switzerland, under certain conditions. Since then, more and more internationally active companies have made use of this option.

### How to proceed?

Companies wishing to relocate their electronic accounting abroad must **apply in writing** to the local tax authority. The transfer of electronic books abroad **requires the prior approval** of the local tax authority.

### What is the minimum content of the application?

The application has to contain the following information in particular:

- A detailed description of the electronic books and other necessary electronic records to be transferred, the data processing system to be used and an explanation of the planned procedure (procedural documentation),
- The concrete time schedule for the relocation or the date of changeover,
- Notification of the location of the data processing system, including changes of location and
- The name and address of the third party responsible for keeping the accounts, if the service is outsourced.

The documents and data access options must be available immediately and in full upon request and the required information must be provided promptly. The GoBD (principles for the proper management and storage of books, records and documents in electronic form, as well as data access) must also be complied with after the relocation.

Furthermore, a procedural documentation has to be available. The concrete form of the documentation depends on the business activity and the structure of the company.

## Reasons the tax office may refuse to grant approval at its sole discretion:

- No proper fulfillment of the information and cooperation obligations in taxation proceedings and external audits, i.e. compliance in the past.
- No or only partially accessible data, i. e. no securing all data access options provided for in the GoBD.
- Impairment of taxation, meaning the tax office considers the fulfillment of all tax obligations, such as the taxpayer's proper filing behavior, criminal or administrative proceedings etc.

## What is the scope of relocation?

The relocation is limited to the **electronic** books and other **electronic** records.

The paper documents, such as in particular invoices in hardcopy within the meaning of section 14 of the VAT code, must in principle continue to be stored in Germany. Thus, only copies may be taken abroad permanently.

## What happens if a relocation was done without the tax office's authorization?

The tax authority may revoke the authorization and demand the relocation to Germany if they become aware of circumstances that lead to an impairment of domestic taxation.

The tax office is allowed to assess a **penalty payment** ranging from **€ 2,500 to € 250,000** in case the taxpayer does not comply with the request to relocate the bookkeeping or with the obligations to cooperate by granting access to data, providing information or submitting requested documents as part of an external audit within a reasonable period of time or if they have relocated the electronic bookkeeping abroad without authorization.

This also applies if the requirements for the transfer of electronic accounting are no longer fulfilled. In this case, the electronic books and other necessary electronic records must be transferred back to the scope of application of the German Tax Code (AO), i. e., they must be kept on a server located in Germany. The taxpayer must provide evidence of the completion of the relocation.

**Please note:** The tax authorities can, and normally do, verify the regularity of the accounting transfer in the course of a tax audit.

Thus, should the tax office find shortcomings in (foreign) accounting or determine that the accounting generally does not comply with the GoBD or is incorrectly kept, they can **reject the accounting** and make an **estimate**.

## Risk: Cloud-Computing

When using a cloud solution for parts of the accounting or for the accounting as a whole, it may involve moving the electronic accounting abroad. This is the case for systems in which data subject to recording and retention requirements within the meaning of the German Tax Code (AO) is stored, processed or archived and the servers for the cloud are operated exclusively abroad.

If the electronic accounting is carried out by using cloud computing, the taxpayer has to ensure through appropriate contractual agreements with the cloud provider that the storage media are

located within Germany or that advance information is provided if cross-border storage takes place and that retransfer of the electronic accounting is guaranteed at all times.

For this reason, cloud solutions have to be examined in detail before concluding the contract.

## **Conclusion**

According to our experience, it is highly recommended to reach out to the tax authorities at an early stage and align with them.

The responsibility for the correctness of the electronic books and other electronic records lies solely with the taxpayer. This is also applicable if the bookkeeping or storage is located outside of Germany.

Should you have any questions or concerns regarding this issue or in case you need advice or assistance, for example in filing the application for the relocation of your electronic books, please do not hesitate to contact us.

Please call [+49 69 971 231-0](tel:+49699712310) for our [Frankfurt office](#) or [+49 351 254 77-0](tel:+49351254770) for our [Dresden office](#). You can also send us your request by [e-mail](#).