



KMLZ VAT NEWSLETTER

GoBD focus more on VAT

The VAT law obliges taxable persons to keep records and documentation (see sections 22 and 14b of the German VAT Act). In this regard, taxable persons are required to observe the rules contained in sections 145 to 148 of the German General Fiscal Code. In the new GoBD the fiscal authority sets out its view as to how these rules are to be interpreted where records and other documentation are retained by the use of data processing systems.

Generally speaking, the new GoBD does not contain any revolutionary innovations. The hitherto defined concepts are essentially the same, and continue to be strongly influenced by the income tax law. However, a noticeable number of references to VAT law related rules and matters have now been included. Apparently, the fiscal authority recognized that the GoBD has a significant impact on business operations in connection with VAT as these are mainly processed electronically. The new GoBD provides a good opportunity for companies to check if the previous requirements, with regard to VAT related processes, have been adequately considered and if they have indeed been practiced. The following is of special interest, from a VAT perspective:

GoBS and GDPdU updated by Federal Ministry of Finance

The Federal Ministry of Finance has comprehensively reviewed the 1995 GoBS and the 2001 GDPdU. Both have now been amended and merged into one document, namely the GoBD (principles of duly keeping and retaining books, records and documents in electronic form as well as regarding data access). The review was overdue. What is new here is that the GoBD noticeably refers to VAT. In light of the above and due to the growing significance of complete and effective tax compliance, companies should check the impact of the new GoBD on their internal VAT related processes.

1. Scope

Each taxable person is responsible for deciding what information has to be recorded and which documents have to be kept. The processes and policies should be reviewed regularly. The internal processes are constantly changing due to the rapid and continuous development of information technologies. Therefore, it should be reviewed, from time to time, if existing processes continue to comply with the GoBD.

2. Recording in due time

Basically, all processes have to be constantly recorded. The recording of all noncash processes within ten days is still deemed to be classified as acceptable. It is also permissible to record by the end of the month, if processes are applied which ensure that none of the documents get lost. This might be ensured by a specific filing system or by sequentially numbering of the incoming and outgoing invoices. In some EU countries, the latter is already known as a so-



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called VAT Register, which is subject to strict formal requirements including immediate processing of documents and consecutive sequential numbering. The processing of outgoing invoices should be automated and therefore unproblematic. However, manual processing of incoming invoices, from the point of receipt to scanning, preprocessing, approval and accounting, should be reviewed in order to determine that the processes comply with the GoBD.

3. Integrity of content

In certain cases, integrity of content is mandatory such as in the case of the content of incoming electronic invoices. In many cases, however, it must be possible to make changes. It is then important that the changes are recorded and that they can be reproduced. This could be achieved by a log which records the accessing person's identity and the changes made. As an example, the Federal Ministry of Finance mentions the changing of master data, like VAT rates or customer data, filed in the invoicing system. Also included are auxiliary and supporting systems used for saving documents, such as an EDI system, sometimes even with an interface to a bookkeeping system.

4. External processes

The taxable person is responsible for complying with the GoBD. This applies even if processes had been outsourced to third parties, e.g. scanning of documents, checking/storage of travel expense reports, processing of electronic invoices or customs clearance by a forwarding agent. It is irrelevant whether this third party is a group member or an external service provider. Therefore, at the beginning and subsequently on a regular basis, the taxable person has

to review and record the processes executed by the third party. This also applies to affiliated Shared Service Centers. Agreements with external service providers may even contain an indemnification clause for violation of the GoBD.

5. Storage

Electronic records and documents have to be stored electronically. The storage requirement depends on the function and purpose of the document. Emails, without any relevant content, which are merely used for forwarding attachments do not have to be stored. The occasionally reflected opinion that received emails, to which an electronic invoice has been attached, have to be stored, is therefore obsolete.

6. Documentation

One main focus of the GoBD is documentation. Procedural documentation requires that the organizational and intended technical process of recording and storing data has to be explained. In addition, the actual processing of the procedure has to be recorded, including the checks/examinations carried out by the Internal Control System and the results thereof. It is not deemed to be an important violation of the GoBD if the documentation is missing or incomplete provided that it still proves to be comprehensible and verifiable. A taxable person may, however, find himself in a situation where the due diligence of a prudent businessman becomes particularly relevant regarding the protection of legitimate expectation or so-called reasonable measures if he becomes involved in a tax fraud, through no fault of his own. Complete and up-to-date documentation of processes might therefore prove decisive in such a situation.