



VAT NEWSLETTER

German Tax Accounting Standards (GoBD) on tax compliance and internal control

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1 Tax compliance and internal control

The purpose of tax compliance is to ensure that all tax requirements are fulfilled and to minimize the tax risks for all parties involved. Here, internal control is a core element of tax compliance. In its VAT Circular regarding sec 153 of the General Fiscal Code in para. 2.6 (Federal Ministry of Finance letter of 23.05.2016), the Federal Ministry of Finance stated, that *"the implementation of internal control which serves to fulfil tax obligations, may be considered an indication against the existence of intent or recklessness with regard to tax evasion"*. This is frequently relevant in practice for corrections carried out in accordance with sec 153 of the General Fiscal Code. If a managing director of a GmbH succeeds in proving that he properly supervises those tasks concerning the fulfilment of his tax obligations and actively takes measures to prevent errors, this action will generally be considered to constitute a satisfactory level of internal control indicating the absence of intent or recklessness with regard to tax evasion. Unfortunately, the Federal Ministry of Finance has not yet explained, in this context, which particular elements or minimum internal control requirements must be evident so as to arrive at a position where an act of tax evasion is not automatically assumed.

2 Basic elements of internal control

In order to determine the necessary elements of internal control, the Praxishinweis published by the Institut für Wirtschaftsprüfer - Institute of Public Auditors in Germany - (IDW) 1/2016: *Structuring and examination of a tax compliance management system in accordance with IDW PS 980* can be used.



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Further, the explanations issued by the Federal Ministry of Finance as regards the German Tax Accounting Standards (GoBD), the new version of which was published recently with its letter of 11.07.2019, must be taken into consideration. The comments made by the Federal Ministry of Finance concerning the GoBD are interesting because they contain, as in the previous version, some basic information on the requirements for internal control. Here, the Federal Ministry of Finance mentions the following monitoring options as examples of what needs to be done in order to ensure compliance with regulatory provision in accordance with sec 146 of the Fiscal Code: access authorization controls, separation of functions, recording controls, tuning controls during data input, processing controls, as well as protective measures against intentional and unintentional falsification. The controls must be set up, regularly carried out and their results must be recorded. The structuring of the internal control depends on the complexity and business activity, as well as the organisational structure of the IT system used. In addition, it must also be checked, on a case-by-case basis, whether the installed IT system actually corresponds to the documented system.

In summary, the following basic elements can be derived from this as regards the internal control that is to ensure compliance with all tax obligations: The taxable person must distribute the necessary tasks relating to tax law within the scope of his organization to positions which he designates in each case (**control**). In addition, the taxable person must not blindly rely on the fact that transferred tasks are performed in a correct and complete manner. In accordance with the principles of the duty of supervision, the violation of which is punished with a fine pursuant to sec 130 of the Administrative Offences Act, the taxable person must regularly monitor the performance of the tasks he has assigned (**supervision**). The taxable person must record the results of these inspections (**documentation**). If errors are found in the course of these inspections, the taxable person must take the appropriate measures to ensure that these errors are not repeated in the future (**prevention**).

3 Sample control measures for VAT

When it comes to VAT, we recommend carrying out the following checks before any monthly, quarterly or annual VAT return are submitted (process-related controls):

- checking the supplies entered by the accounting department and the supplies reported in the VAT return for plausibility and validation
- verification of the VAT claims against the tax office recorded by the accounting department with regard to plausibility and validation using the input VAT declared in the VAT return
- taking samples of individual business transactions in the booked supplies with a focus on zero-rated / VAT-exempt supplies, such as intra-Community supplies or export supplies, including the necessary documentation.
- taking samples of individual incoming invoices
- if necessary, IT-supported validation of the entered mass data relevant to VAT (e.g. with the help of the KMLZ TCMS Assistant).

In addition, so-called process-independent monitoring measures have to be carried-out. Here, for example, it is possible to check an annual VAT return for a previous reporting period that has already been submitted to the tax office. The exact number of separate business transactions to be checked depends on the size of the company and the volume of business in each individual case. If there have already been problems with certain facts in the past, checks must be carried out more frequently in this area and preventive measures will have to be taken.