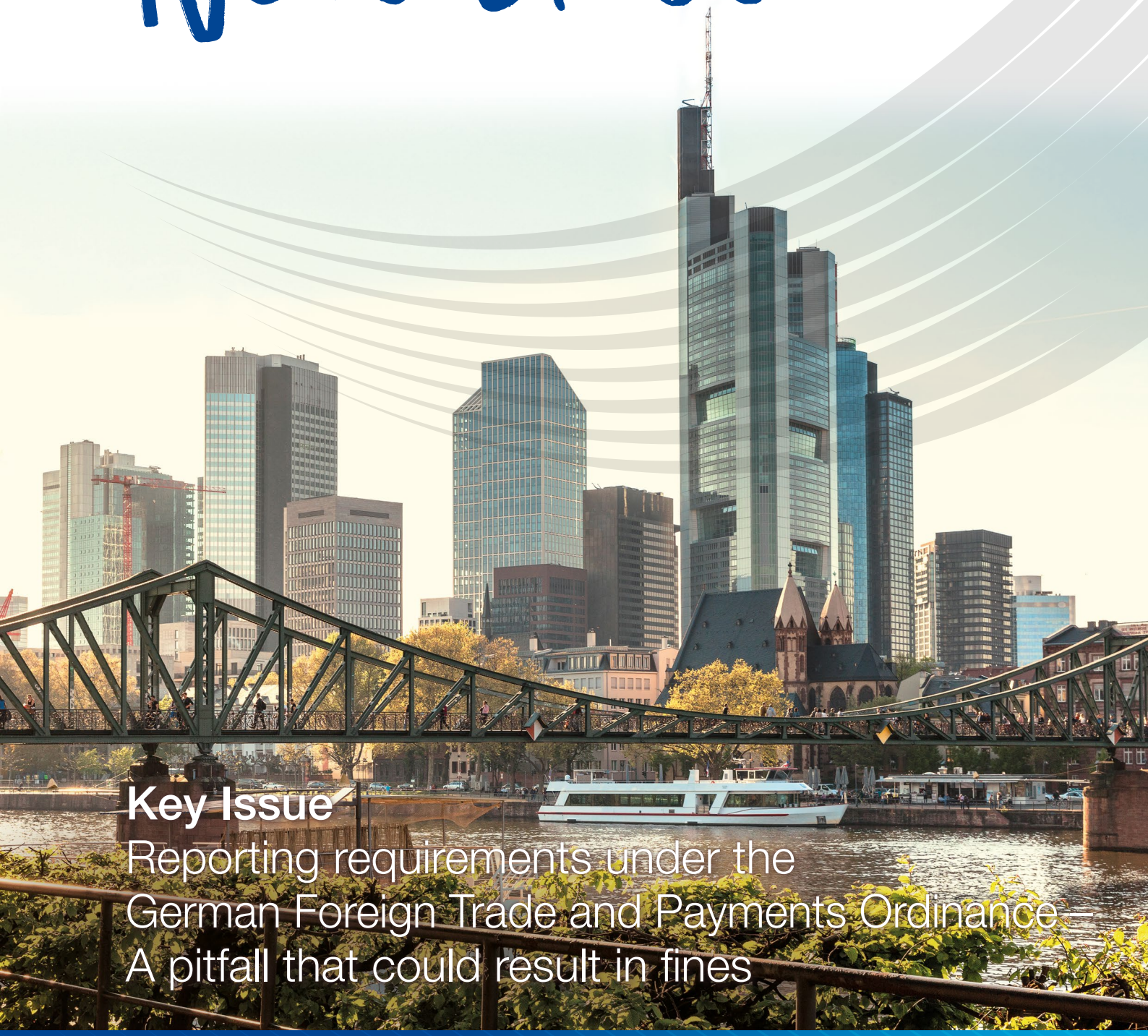
PKF

Newsletter



Key Issue

Reporting requirements under the German Foreign Trade and Payments Ordinance – A pitfall that could result in fines

07-08|22

Dear Readers,

We begin this double issue of our newsletter with the topic of the classification and **taxation of cryptocurrencies.** The main focus here is the question of defining them as assets; this is an issue that, up to now, has been hotly debated in specialist literature and court decisions and is now the subject of a Federal Ministry of Finance circular. Our second report in the Tax section is about the **international assignment of employees** to Germany and the question of the cases in which the hosting company has to withhold and transfer payroll tax. The tax relief in cases where business assets have been gifted or inherited depends on, among other things, the aggregate wages level remaining stable for years. In our third report, you can read about the conditions under which it would be possible to expect **coronavirus-induced equitable measures** from the fiscal administration here.

The Key Issue report in our July/August newsletter appears under the Legal section. Frequently, the **reporting requirements under the German Foreign Trade and Payments Ordinance** are not known and, moreover, the processes for gathering and transmitting the requisite data have not been put in place. We have compiled an overview of what you should now bear in mind in this respect. Following on from that, we discuss the **return of food products** by retailers; since June 2022, it has no longer been possible to return products to smaller producers. Our next topic looks at how the way into a **community of heirs** can frequently be sudden and quick, but the **way out** often long, arduous and fraught with controversies. This was the motivation for us to review the possible courses of action if the necessary agreement of all the co-heirs cannot be achieved.

We again continue our journey around the PKF locations in Germany through the illustrations that break up the reports from our experts - this time we visit Frankfurt.

We hope that you will find the information in this edition to be interesting.

Your Team at PKF

Front cover photo: Frankfurt's skyline with the *Eiserner Steg* (iron footbridge)

Contents

Key Issue

Reporting requirements under the German Foreign Trade and Payments Ordinance - A pitfall that could result in fines

Tax

Cryptocurrencies – Classification and taxation 4

Intragroup international assignment of employees – Who has to withhold the payroll taxes? 6

Inheritance/gift tax – Equitable measures in the case of falling short of the minimum aggregate wage level due to the pandemic 7

Legal

Reporting in accordance with the German Foreign Trade and Payments Ordinance – A frequently unknown and underestimated pitfall that could result in fines 8

An end to the free return of products in the food supply chain..... 10

Community of heirs – Which paths offer a way out? ... 11

In Brief

Movement of goods – Clarification of the term 'consignment warehouse'..... 14

Lack of confidentiality in relation to an employer's private e-mails could result in dismissal 14

Hidden defects – No warranty claims will arise after a house purchase in the event of insulation defects 15

Terminating a tenancy for own use – Rejecting alternative accommodation could eliminate grounds for claiming hardship 15

Deadlines for submitting tax returns 2020 to 2024..... 15

TAX

Zahra Agin

Cryptocurrencies – Classification for tax purposes and taxation

In recent years, cryptocurrencies have acquired ever greater significance. There are nevertheless taxation issues that also need to be considered in relation to the gains arising from crypto trading. Currently, there are no specific statutory regulations for the taxation of cryptocurrencies and uncertainties thus exist in this respect both on the part of investors as well as the state.

On 10.5.2022, the Federal Ministry of Finance *(Bundesministerium der Finanzen, BMF)* published its long-awaited circular on the "income tax treatment of cryptocurrencies and other tokens" (reference: IV C 1 - S 2256/19/10003 :001). The first part explains technical terms and issues and this is followed, in the second part, by the classification for income tax purposes.

1. Cryptocurrencies are assets

Generally, when carrying out the taxability test for cryptocurrencies, two particular questions need to be discussed:

» Are cryptocurrencies assets?
» Is there a structural deficit in enforcement?

In specialist literature and court decisions, the prevailing opinion is that every crypto unit is an asset. This view is shared by the BMF and it has substantiated this by pointing out that virtual currencies can always be attributed to the holder on the basis of a private key and that the holder is solely able to initiate a transaction. The BMF is

East side with Fountain of Justice and Church of St Nicholas on the Römerberg Square

of the opinion that it does not matter here if the crypto units are managed via trading platforms such as, e.g., Bitpanda, even though in these cases the economic owner effectively does not have a private key. A further argument that is presented for cryptocurrencies having the characteristics of an asset is that it is possible to independently value the individual units. The valuation can be carried out on the basis of the market rates that can be viewed on platforms (e.g. Bitpanda) or on web-based lists (e.g. https://coinmarketcap.com).

2. Tax treatment of the disposal of cryptocurrencies held as private assets

When cryptocurrencies that are held as private assets are sold this could produce income from private disposals pursuant to Section 22 no. 2 in conjunction with Section 23(1) sentence 1 no. 2 of the Income Tax Act *(Einkommensteuergesetz, EStG).* It should be particularly noted that the exchange of one cryptocurrency into another (crypto) currency or the purchase of goods or services using cryptocurrencies constitute sales transactions. The disposals would be taxable if the sale had taken place prior to the expiry of the holding period and the tax-exemption limit of € 600 had been exceeded. The speculation period is one year and afterwards the units may be sold free of tax. If there has been an exchange then the speculation period for the newly acquired cryptocurrency would begin anew from the date of the exchange. To simplify matters, for the determination of the capital gains, taxpayers may apply the First-In, First-Out method (FIFO) as the sequence of usage, alternatively they can apply the average value method.

Contrary to expectations, it was the view of the BMF that the holding period should not be extended to ten years. This had still been in the draft circular and was planned for specific activities on the crypto market such as, for example, lending (crypto credit facilities) or staking (making crypto units available for the generation of a new block).

3. Block creation in the context of proof of work and proof of stake

In the opinion of the BMF, income that has been generated in the context of block creation using the proof of work mechanism (so-called mining) has to be classified as a commercial activity. The block reward for the newly generated block constitutes an acquisition and has to be recognised in the accounts accordingly.

Moreover, in the opinion of the BMF, block creation using the proof of stake mechanism (so-called forging) also leads to a commercial activity. Although, here, a distinction has to be made between forging and staking. Forging generally results in income from commercial operations, however, staking has to be allocated to income from other services.

The initial measurement has to be performed on the basis of the latest prices on a trading platform and not - as was still envisaged in the draft circular - the average price from three different trading platforms.

4. Private asset management or commercial crypto trading

The criteria that can be used to distinguish between private asset management and commercial crypto trading are the familiar ones used for defining commercial securities and currency trading. According to a Federal Fiscal Court *(Bundesfinanzhof, BFH)* ruling of 20.12.2000 (case reference: X R 1/97), the indicators of a commercial activity that have to be applied are:

- having a presence that is typical for a trading company or a bank,
- running a commercially organised business operation, and
- the use of a market that is subject to reliance upon professional experience.

However, it is not relevant whether or not the size is big or there is a high turnover rate. If it is deemed that there is no commercial trading but, instead, private asset management then such activity has to be allocated to other income pursuant to Section 22 no. 3 EStG. Accordingly, taxable income would then only arise if the tax exemption limit of €256 was exceeded.

5. Cooperation obligations and record-keeping requirements

The BMF did not express a view on any cooperation obligations and record-keeping requirements. It remains to be seen whether a further circular will be published.

Please note

Something that is especially important for the classification for tax purposes of cryptocurrencies and other tokens is the analysis of the characteristics of a cryptocurrency and/or a token. The technical and legal bases could, in some cases, deviate greatly from one another and will in any case have to be considered separately.

StBin [German tax consultant] Merle Schulte

Intragroup international assignment of employees – Who has to withhold the payroll taxes?

In the case of an intragroup international assignment of an employee it is possible that the domestic (German) hosting company would become the economic employer. This status as the economic employer would give rise to the obligation to withhold and transfer payroll tax under the following conditions, which are described below.

1. Economic employer as the employer for payroll tax purposes?

Normally, the payment of taxable remuneration is predicated on a civil law relationship between the employer and employee. Under payroll tax regulations, the employer is generally the one to whom employees owe their performance, under whose leadership they work or whose instructions they have to follow. This interpretation is consistent with the definition of an employee as set out under German civil law.

Companies deviate from this when they apply the provision under Section 38(1) sentence 2 of the Income Tax Act *(Einkommensteuergesetz, EStG)* in the case of the assignment of an employee. Under this provision, the relationship between employer and employee is replaced by a situation where another company financially bears the wages or salary for the work performed by the employee. Consequently, vis à vis the seconded employee's employer, the domestic (German) hosting company can become the economic employer within the meaning of the above-mentioned provision. However, this does not require the employee to receive their remuneration directly from the hosting company – the contractual employer can continue to pay this. The hosting company will merely have to financially bear the wages or salary for the work performed by the employee.

Whether or not the domestic (German) company, as the hosting company, will indeed financially bear the wages or salary has to be assessed on the basis of the agreements that have been concluded. What always matters here is the arrangement in the specific case. For the assessment it will always also be imperative to consult the seconded employees' employment agreements with the contractual employer (the assigning company). The agreements will

St Paul's Church

include, among things, information about the level of the remuneration. It is only once this amount is known that it will be possible to determine if and to what extent the remuneration can be replaced.

Please note: It would not be possible to identify the extent to which remuneration is being replaced from the mere payment of monthly lump sums by one company to another. That is why it would be necessary to compare these amounts with the contractually agreed wages or salary.

It is especially important to bear in mind that the apportionment of payments between affiliated companies – and, in particular, if an employee works alternately not just for one company but also for the other without being employed at either – has to stand up to an arm's length comparison. In the case that the wages or salary have not actually been taken over by the hosting company then, as an alternative, the situation will be reviewed to determine if unrelated third parties would have agreed to pay compensation. The company could potentially become the economic employer even if it does not actually take over the payment of the wages or salary.

However, a company will not become the economic employer solely by taking over the actual payment of the wages or salary. In fact, the seconded employee has to be regarded – in accordance with general principles – as an employee of the hosting company. Therefore, what matters is

- whether or not deploying the employee at the hosting company is in its interests,
- as well as whether or not the employee is integrated into the hosting company's work processes and is subject to instructions from it.

If all these requirements are met – i.e. the hosting company financially bears the wages or salary, integrates the employee into its work processes and makes the employee subject to the company's instructions – then the economic employer will become the employer for payroll tax purposes. According to Section 38(3) EStG this would give rise to the obligation to withhold payroll tax and, according to Section 41a EStG, to the obligation to register the employee and then transfer the payroll tax. These consequences would also arise if, in accordance with arm's length principles, the company was obliged to take over the payment of the wages or salary. Consequently, a foreign employee would be subject to limited tax liability on their income from employment in accordance with Section 49(1) no. 4(c) EStG.

2. A seconded managing director – Not an exception

When assessing the work of a managing director of a GmbH [private limited company], a distinction has to be made between the managing director's executive position and their underlying employment relationship. The circumstances of the individual case are what always matter and not solely the executive position.

When considering an individual case, the crucial factor is whether or not the managing director has been integrated, as an employee, into the work processes of the hosting company and subject to instructions from it. Normally, it should however be assumed that a managing director would be deployed in the interests of the hosting company. Therefore, the above-mentioned general principles would apply when assessing whether or not the managing director should be allocated to an economic employer.

WP/StB [German public auditor /tax consultant] Dr Dietrich Jacobs

Inheritance/gift tax – Equitable measures in the case of falling short of the minimum aggregate wage level due to the pandemic

The inheritance/gift tax relief for business assets or shares in corporations depends on, among other things, the aggregate wages of the business reaching certain percentage thresholds, within a specific period following the acquisition, that represent the average of the aggregate wages during the last five years prior to the transfer (minimum aggregate wage level). However, at the end of 2021, the administration made clear that it wished to exercise leniency in cases where the failure to achieve the minimum aggregate wage level had been due solely to the pandemic.

The fiscal administration had restored a degree of calm with the identical decree of the federal states of 14.10.2020 (Federal Tax Gazette *[Bundessteuerblatt, BStBl.]* 2020 I p. 1163) where it stated that the short-time working allowance (although, if necessary only in connection with the list of accounts making up the income

statement) would be included in the aggregate wages. Nevertheless, if a business still fails to achieve the minimum aggregate wage level there would be the risk of, potentially, a considerable tax charge. Furthermore, according to the current administrative opinion pursuant to the decrees of 30.12.2021 (BStBl. 2022 I S. 156) the following will apply.

The authorities have made it possible to have a **reassessment for equitable reasons** or a **tax abatement** especially insofar as

- the aggregate wages for the period 1.3.2020 to 30.6.2022 are included when determining the minimum aggregate wage level,
- a tax charge arises under the German Inheritance Tax Act as a result of failing to achieve the minimum aggregate wage level and
- this falling short of the minimum aggregate wage level was caused **solely** by the coronavirus pandemic.

The above-mentioned **sole causation** of the pandemic would normally be present if

- during the period from 1.3.2020 to 30.6.2022 the calculated requisite average aggregate wage level was not achieved,
- during the above-mentioned period, only the short time working allowance was paid at the company due to the pandemic, and
- the company is part of a sector that was directly affected by an official order to close on account of the coronavirus pandemic.

This does not mean that in other cases there would be a lack of causality. In fact, the fiscal administration expressly accepts that a failure to achieve the minimum aggregate wage level solely because of the pandemic could also be the case, for example, even if the company itself did not have to close but indeed – as in the case of breweries – its important customers did.

Recommendation

If you, as a legal heir or beneficiary, are faced with the problem of meeting the aggregate wages requirement during the coronavirus times, if necessary, you should ensure that precautionary measures are taken in good time with respect to preparing evidence so as to be able to set out the requirements for a tax reassessment or a tax abatement for objective equitable reasons.

LEGAL

WPin [German public auditor] Julia Hörl / Dominik Römer

Reporting in accordance with the German Foreign Trade and Payments Ordinance – A frequently unknown and underestimated pitfall that could result in fines

In Germany, everyone can make payments to foreigners or receive payments from abroad without any restrictions or official authorisation. Nevertheless, the statistical reporting requirements that relate to external transactions have to be observed.

1. General information on foreign trade reporting

Reporting in accordance with the Foreign Trade and Payments Ordinance *(Außenwirtschaftsverordnung, AWV)* constitutes statistical reporting that serves to record cross-border payments, positions/stocks/holdings and assets for the purpose of compiling the balance of payments. These have to be reported periodically in accordance with the provisions of Section 63 ff. AWV to the *Deutsche Bundesbank* (German Federal Bank). To this end, the Bundesbank provides 14 different record sheets (reporting forms) that are intended for different target groups or represent different reporting purposes. A distinction is made between the following types of reports:

- Cross-border payments > €12,500 in the context of cross-border goods traffic that are not recorded in the Intrastat/Extrastat reports.

- Position/stock in cross-border claims and liabilities as well as the traffic in goods and services
- Equity investment holdings
- Equity interests held in and by foreign companies, subsidiaries and permanent establishments

All natural persons and legal entities are required to report. The reports have to be submitted electronically via the *Deutsche Bundesbank* portal.

2. Checking of foreign trade reports

It now appears to be common practice for the *Bundesbank* to intensify its checking and monitoring of reporting requirements as well to focus increasingly on industrial companies. Furthermore, the *Bundesbank* routinely examines the reports that have been submitted and, in cases of uncertainty, will address questions to the submitting party.

The checks are carried out by *Bundesbank* inspectors who, in the course of on-site inspections, review and evaluate documents such as invoices, agreements and statements of account that are related to potentially reportable transactions. The aim is to ensure that companies have submitted reports that are complete, accurate and timely.

Please note: Preparing for such a *Bundesbank* inspection, including organising it, providing data, access to systems and documents as well as supplying the requisite explanations of systems, processes and business transactions frequently involves a great deal of time and effort for the company that is to be inspected.

3. Typical sources of error when fulfilling reporting requirements

The most frequent sources of error for companies can be roughly divided up into the following categories:

(1) Being unaware and uncertain about the applicable rules – The requirements of the AWV reporting system – which have been fleshed out and supplemented in numerous notices and explanatory notes by the *Deutsche Bundesbank* – are extensive and complex.

(2) No clearly defined responsibilities – A lack of guidelines or process descriptions means that there are uncertainties with respect to the record sheets that have to be prepared as well as with respect to the participating and responsible departments.

Goethe House in Frankfurt

(3) Process weaknesses as well as system-based sources of error – Compliance with regulatory requirements overextends those responsible in view of the large number of reportable transactions.

4. Consequences of violating the AWV reporting requirements

Submitting inaccurate, incomplete or late reports will be judged to be violations of the AWV and the competent customs authority could decide that these constitute administrative offences. Under the provisions on fines pursuant to Section 19(6) of the German Foreign Trade Act *(Außenwirtschaftsgesetz, AWG)* fines of up to €30,000 per violation are possible. Here, a violation is defined as any transaction that has not been reported or not completely, or reported with inaccurate attributes or late. Furthermore, liability for a fine towards the company and the persons acting for the company is possible for generally failing to provide proper organisational channels (failure to provide "proper supervision") pursuant to Section 130 of the Administrative Offences Act *(Gesetz über Ordnungswidrigkeiten, OWiG)* in conjunction with Sections 9 and 30 OWiG.

Recommendation: If an inspection has been announced, or if the sources of error listed above have already been identified then a voluntary self-disclosure could be a sensible course of action. Pursuant to the provisions under AWG, in cases of negligence, if the violation was discovered by way of self-inspection and the competent authority was notified then the prosecution of the violation as an administrative offence would not be pursued.

5. Special cases in the event of foreign payments

These days, payments via PayPal or Ebay are common practice. With PayPal, the country where the business partner in the transaction comes from also plays a role. Here, what is important is not where PayPal is based but, instead, solely if these payments have been made in Germany or in a foreign country.

Conclusion

In order to comply with the requirements prescribed by law it will be necessary to develop the appropriate processes, methods and systems. Please do not hesitate to contact us if you require support for the implementation of a regular AWV reporting process.

RAin StBin [German lawyer and tax consultant] Antje Ahlert / RA [German lawyer] Andy Weichler

An end to the free return of products in the food supply chain

The Agricultural Organisations and Supply Chains Act *(Agrarorganisationen-und-Lieferketten- Gesetz, AgrarOLkG)*, which was enacted by German lawmakers, has strengthened food suppliers and placed limits on the contractual autonomy of food retailers. Of particular importance is a new regulation according to which, in the future, food products may no longer be sent back free of charge.

1. Background

The AgrarOLkG, which has been in force since 9.6.2021, is intended to curb practices that take advantage of suppliers of agricultural, fishery and food products. The Act is based on EU Directive 2019/633 (UTP Directive). The ban on unfair trading practices aims to protect producers and suppliers of agricultural products and food from the market power of buyers such as, in particular, the retail groups. Suppliers with an annual turnover of no more than €350 m are covered by this protection. The prohibition applies to buyers that have an annual turnover of at least €2 m.

2. Important new regulations

Particular attention should be paid to Section 12 AgrarOLkG. Previous arrangements that provided for the return of unsold agricultural, fishery and food products to the producers/suppliers against the reimbursement of the purchase price will no longer be possible.

Furthermore, payment terms later than 30 days may not be agreed for deliveries of perishable food products and, moreover, payment terms for all other agricultural and food products may be, at most, 60 days. Likewise, short-term terminations of contracts for perishable products may no longer be effectively agreed. A short-term termi-

nation will generally refer to a cancellation that occurs less than 30 days prior to a delivery.

3. Legal consequences

A contract that contains agreements that are not in conformity with the law will otherwise remain effective. The supplier can submit a complaint about this agreement to the Federal Agency for Agriculture and Food *(Bundesanstalt für Landwirtschaft und Ernährung, BLE)*. This Agency can punish the violation with a fine of up to €750,000 and publish the name of the sanctioned company on the Agency's website.

Recommendation

The new regulations have already been in force since 9.6.2021. For existing supply agreements concluded prior to 9.6.2021 the implementation deadline was 8.6.2022. If processes in the companies concerned have not yet been adjusted then urgent action will be needed. Any terms of delivery will have to be reviewed and adjusted. From now on, food retailers will have to define their requirements for perishable foods more precisely.

RA/StB [German lawyer/tax consultant] Frank Moormann

Community of heirs – Which paths offer a way out?

According to German law, a community of heirs is automatically formed after someone dies and if there are several heirs who have been determined by law or by testamentary disposition. The members of such a community thus become joint owners of assets without having consciously decided to do so. It is then not uncommon for there to be different ideas about how the inherited assets should be distributed or administered and, in some cases, there is considerable potential for conflicts. Experience shows that even family bonds do not protect against this, especially if the deceased individual was formerly able to unify the group. Therefore, in the following section, we have highlighted the options that exist for exiting this community shaped by fate.

The bull sculpture in front of Frankfurt Stock Exchange

Old Opera House

1. General principles

A community of heirs is a so-called community of joint owners, which is comparable with a partnership (GbR [company under German civil law], OHG [German ordinary partnership] or KG [German limited partnership]). This means that, in accordance with their share of the inheritance, the individual co-heirs have joint interests in the entire estate and they administer it jointly. A co-heir may not, on their own, dispose of or sell an individual estate asset or item or their share of it.

The legal model provides for two ways that a community of heirs can be divided up or dissolved:

- either by actually distributing the estate assets or items among the co-heirs (if necessary also by making compensatory payments), or
- by selling the estate and distributing the proceeds that remain after deducting the debts of the estate.

However, an inheritance tax liability will arise regardless of whether or not the parties concerned have agreed on the division of the estate. Nor will the tax affect the community of heirs as such, but only the individual co-heirs. Consequently, it is possible that inheritance tax will have to be paid, but the person concerned will not be able to 'get at' the assets that they have inherited because they are jointly held by the community of heirs.

Please note: This is thus not the only point at which the question to be considered is what are the possible courses of action if it is foreseeable that the necessary agreement of all the co-heirs cannot be achieved.

2. Renunciation of the inheritance

Every co-heir has the option of renouncing their inheritance by making a declaration to the probate court. The renunciation has to be made within a period of six weeks after learning of the inheritance. In the event of a renunciation, from the outset, the person concerned will not be regarded as an heir. They will not be a member of the community of heirs, they will not be liable for any debt of the testator and will not pay any inheritance tax. By the same token, they will lose all legal rights to claim the assets in the estate of the deceased, which will accrue proportionately to the other heirs. Moreover, it will generally no longer be possible to claim a compulsory portion.

Please note: The renunciation option would therefore only be considered in the case of a modest (or over-in-debted) estate.

3. Sale of the portion of the inheritance
3.1 The principle

While co-heirs are not able to dispose of individual estate assets or items, nevertheless, they are able to dispose of their share of the inheritance itself, in other words, their share in the community of heirs. A portion of the inheritance can be sold via an agreement that is authenticated by a notary to other co-heirs or even to third parties without the other heirs being able to prevent this.

3.2 Pre-emptive right to purchase

In the event of a sale to a third party, the co-heirs would however be entitled to exercise their pre-emptive rights to purchase – separately or collectively – by means of written notification to the vendor. The exercise period is two months from the date when the vendor provides notification of the contents of the purchase agreement. Those exercising their rights would then enter into a purchase agreement instead of the third party and would thus have to pay the vendor the purchase price that had been negotiated with the third party.

3.3 Tax consequences

Inheritance tax is subject to the heir coming into possession of their portion of the inheritance. The tax would thus be incurred if the portion of the inheritance is subsequently sold. Furthermore, the sale could trigger an income tax liability if tax-relevant assets form part of the estate, for example, business assets, shareholdings or properties that the deceased had held for less than ten years. In addition, if properties are included in the estate then this may give rise to real estate transfer tax if the portion of the inheritance is not sold to co-heirs and no other exemptions are applicable (e.g., for a direct relation or spouse).

4. Waiving all rights and entitlements in the estate

Another option for leaving the community is to waive all rights and entitlements in the estate (in German this is referred to as *Abschichtung*); this does not involve the transfer of a portion of the inheritance but, instead, the co-heir waives their rights as a member of the community and leaves – normally in return for a financial settlement. In this respect, this variant thus also requires all the co-heirs to reach an agreement.

Please note: The tax consequences correspond to the issues discussed under section 3.3. Real estate transfer tax would not be incurred.

5. Application to a German court for the estate to be distributed

Ultimately, a co-heir can unilaterally demand the dissolution of the community of heirs at any time and can also assert this right in court. However, from a legal point of view, such proceedings would be very demanding and, accordingly, time consuming and expensive. Frequently, properties that are included in the estate first have to be auctioned off in a forced sale and lower proceeds have to be accepted. Moreover, there would be a number of possible ways for reluctant co-heirs to hinder and delay the proceedings.

Please note: Therefore, legal action can only be a last resort when all the other options for getting out or for an amicable settlement have failed to yield any results.

6. Concluding recommendations

The potential for disputes that is inherent in a community of heirs, as an involuntary association, can be avoided or lessened via testamentary arrangements. For example, an executor could be appointed to arrange the sale and distribution of the estate. Moreover, specific requirements for the partitioning of the estate could be set out in so-called testamentary provisions of distribution where certain assets can be designated to individual co-heirs.

Ultimately, consideration should be given to avoiding the formation of a community of heirs from the outset by appointing a sole heir who would become the legal successor of the deceased and would have every power of disposition. This would however not necessarily mean that they would be entitled to the entire estate. Other individuals can be remembered without further ado by bequeathing legacies to them. Following the testator's death, the beneficiaries would then be entitled to have those assets, which were designated to them in the will, transferred to them by the sole heir and it would be relatively easy to enforce this through a court.

Please note

Nevertheless, existing entitlements to a compulsory portion of the estate as well as supplements to the compulsory portion, for example, should always be borne in mind. In view of the complexity of the issues, it is generally advisable always to seek expert advice prior to making any testamentary arrangements. Please do not hesitate to contact your PKF consultant in this respect.

IN BRIEF

Movement of goods – Clarification of the term ‘consignment warehouse’

The Federal Ministry of Finance *(Bundesministerium der Finanzen, BMF)* published an introductory guideline on the consignment warehouse regulation under the VAT Act (*Umsatzsteuergesetz, UStG)*. The VAT application decree was amended in this regard.

The consignment warehouse regulation is a provision to simplify deliveries to warehouses for call-off purposes in the territory of the Community. This was introduced on 12.12.2019 together with the ‘Act to promote further tax incentives for electromobility and to amend other tax regulations’.

Since 1.1.2020, in the case of consignment warehouses, if certain conditions are met, it has to be assumed that a direct intra-Community supply by the foreign company occurs and that this is followed by an intra-Community purchase by the customer. The conditions of the consignment warehouse regulation were laid down in Section 6b UStG. The starting point is that an item from one EU Member State is transported to another EU Member State. This takes place for the purpose of selling the item only in the Member State of arrival.

Then the BMF, in its circular from 12.12.2021 (reference: III C 3 – S 7146/20/10001 :005) expressed its opinion on conditions listed in Section 6b UStG. According to this, a warehouse can be, for example, a consignment warehouse or a distribution depot. However, it does not necessarily have to be a warehouse in terms of a building. Furthermore, the item has to remain in the country of destination from the date on which it is placed in storage until it is removed by the purchaser. Transferring the item to another warehouse would not be harmful from a VAT point of view. Although, a warehouse owned or rented by the supplier and operated by using its own resources would be harmful. By contrast, merely being registered in the Member State of destination would not be harmful. If a different VAT identification number is used then the application of the consignment warehouse regulation would however be excluded.

Lack of confidentiality in relation to an employer’s private e-mails could result in dismissal

The unauthorised reading, saving and forwarding of an employer’s private e-mails could result in the dismissal of the employee even if there are reasonable grounds to suspect that the supervisor has committed criminal offences.

In the case in question, which was brought before the Higher Labour Court in Cologne, an administrative employee, who had worked at a protestant church parish for 23 years, had access to the minister’s business computer. On this computer, she read an e-mail that was about the suspected sexual assaults on a woman who been granted asylum by the church and who lived in the parish. In the e-mail account, the employee found a chat history of exchanges between the minister and the woman concerned in the form of an attachment to a private e-mail – the employee saved this on a USB stick. She subsequently passed on the data anonymously to a woman who worked in the parish on a voluntary basis in order to protect the woman who been granted asylum by the church and to secure the evidence. Once it became known that this information had been forwarded, the church parish terminated the employment relationship without notice and the administrative employee took legal action against this – but without success.

On 2.11.2021 (case ref.: 4 Sa 290/2), the judges found that the termination without notice had been legitimate because the requisite relationship of trust had been irreversibly destroyed. The v iolation of personality rights that is concomitant with the unauthorised inspection and forwarding of third-party data constitutes a serious breach of the duty of due consideration under a contract of employment.

Please note: In the view of the court, the reasons for forwarding the data were insignificant because the approach taken by the woman would not have enabled her to achieve any of the objectives that were provided.

Hidden defects – No warranty claims will arise after a house purchase in the event of insulation defects

Warranty rights are generally excluded in house purchase agreements. In the case of so-called hidden defects, which the vendor is aware of, other regulations have to be taken into account.

The Regional Court *(Landgericht, LG)* in Frankenthal, in its ruling of 24.11.2021 (case reference: 6 O 129/21), had to decide how such hidden defects should be treated from a legal point of view. In 2016, a married couple had bought a residential house in which they themselves wanted to live. Prior to that, the vendors had themselves lived in the house for a number of years. Five years after moving into the property, the married couple then claimed that the roof insulation was defective because unsuitable insulation boards had been installed. Moreover, a so-called vapour barrier was lacking. Therefore, the married couple brought a claim before the LG for an advance payment to cover the cost of the proper installation of insulation in the house – their claim however was not successful.

Outcome: The person who is selling a house does indeed have to point out any hidden deficiencies. That is still true even if the contract excludes a defects warranty. However, in such cases, the buyer would have to prove that the vendor was indeed aware of the issue. Arguing that the vendor should really have recognised the defect is not sufficient. After all, the roof did not leak and nor was it damp.

Terminating a tenancy for own use

Rejecting alternative accommodation could eliminate grounds for claiming hardship

In many cases where tenancies are terminated for own use, the courts rule in favour of the tenants. However, if the landlady provides alternative accommodation then this improves the prospects in a recovery of possession case.

In a case that was decided by the local court *(Amtsgericht, AG)* in Munich (ruling from 27.10.2020, case reference: 473 C 2138/20), the tenant lived in a three-room flat on the third floor and paid almost €400 in rent prior to the termination of her tenancy because the landlady wished to have the flat for her own use. As an alternative, the landlady offered the tenant a flat on the fourth floor that was going to become vacant and where the rent would come to almost €650.

Contrary to the request for a reply within one month, the tenant allowed this deadline to expire and that was why the alternative flat was then rented out to other potential tenants. With help from the Mieterverein [an association that represents the interests of tenants], the tenant rejected the termination citing hardship and her severe disability. Subsequently, the landlady launched recovery of possession proceedings.

The AG found in favour of the landlady and based its decision on the grounds that by refusing the alternative flat without stating a reason the tenant had lost the possibility of appealing on any hardship arguments.

Deadlines for submitting tax returns for 2020 to 2024

Taxable period	Taxpayers without consultants	Taxpayers with consultants	Land farmers and forest managers without consultants	Land farmers and forest managers with consultants
2020	1.11.2021	31.8.2022	2.5.2022	31.1.2023
2021	31.10.2022	31.8.2023	2.5.2023	31.1.2024
2022	2.10.2023	31.7.2024	2.4.2024	31.12.2024
2023	2.9.2024	2.6.2025	28.4.2025	31.10.2025
2024	31.7.2025	30.4.2026	2.2.2026	30.9. 2026

The 4th Coronavirus Tax-Related Assistance Act was promulgated on 19.6.2022. This specified the new deadlines for submitting tax returns for the years up to 2024. The deadlines ensue from Section 149 of the German Fiscal Code in conjunction with Art. 97 Section 36(3) of the Introductory Act of the Fiscal Code.

AND FINALLY...

"I often say to entrepreneurs, if Lehman Brothers were Lehman Brothers & Sisters, it wouldn't have gone into bankruptcy."

Shinzo Abe, 21.9.1954 – 8.7.2022, was Prime Minister of Japan from 2012 to 2020 and was thus the longest serving one in Japanese history.

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