KPMG Law

German Transparency Register

Reporting obligation for foreign companies with existing properties

Initial position:

- The real estate market is considered particularly vulnerable to money laundering. The aim of the legislator is to ensure that it is comprehensible to whom real estate property is attributable.
- Against this background, notaries were obliged to check whether the acquiring company is registered in the transparency register in the case of purchase contracts for real estate. If this is not the case, the notary is not allowed to perform the notarisation (prohibition of notarisation).
- In order to also cover foreign structures, reporting obligations for foreign companies were successively introduced. Until now, these were obliged to report their beneficial owners to the transparency register if they acquired ownership of real estate located in Germany directly or by way of a "share deal".

New regulation:

With the Sanctions Enforcement Act II, reporting obligations for foreign companies to the transparency register have been further expanded as of 1 January 2023.

The reporting obligation now also applies to foreign companies with existing properties in Germany. The deadline for implementation is 30 June 2023.

This applies both to direct participation in real estate and to share deals in which shares in companies with real estate holdings were acquired in the past (acquisition transaction pursuant to Section 1 (3) or (3a) of the German Real Estate Transfer Tax Act – GrEStG).

As a relief, the legislator has provided that a reporting obligation does not apply if the companies concerned have already transmitted the relevant information on the beneficial owner to another register of a member state of the European Union.

Open questions:

The new regulation raises various questions in practice:

Firstly, in practice, foreign acquisition companies (e.g. Luxembourg PropCo) are often established shortly before the real estate transaction. In the short time available, no notification to the Luxembourg UBO-register is possible due to the lack of a commercial register entry in Luxembourg. The exceptions mentioned above (no notification to the German transparency register if notification is available in another EU country) do not help in this case. The solution in practice is often to report the company to the German transparency register. It has not been conclusively clarified whether the entry in the German transparency register can be deleted as soon as the company can be reported in the foreign transparency register.

The Sanctions Enforcement Act II also creates further uncertainties regarding the obligations for foreign companies:

- In addition to the PropCo (which directly holds the German real estate), must its foreign parent

company(ies) also report to the Transparency Register? In view of the wording, the question arises in particular as to whether only the company in which the acquisition transaction pursuant to Section 1 (3) or (3a) of the Real Estate Transfer Tax Act takes place or all foreign companies in the chain of ownership are subject to a reporting obligation.

- Furthermore, in the case of a multi-level chain of shareholdings, the question arises as to whether, in the case of successive acquisition transactions pursuant to Section 1 (3) or (3a) of the German Real Estate Transfer Tax Act, the acquisition companies involved in the first transactions could delete their notification to the transparency register again. I.e. does only the foreign legal entity currently qualified as the acquiring company have to be reported or does the history have to be maintained? Should the latter be the case, this would entail a considerable administrative burden. The sense and purpose of the standard argue against this – in our opinion, the decisive factor for the prevention of money laundering is who holds or wishes to acquire a property.
- What role does the chronological order of the acquisition of real estate play in relation to the acquisition transaction under Section 1 (3) or (3a) of the German Real Estate Transfer Tax Act? In our opinion, only PropCo is subject to a notification obligation, provided that the real property is acquired by PropCo after the acquisition of the holding Section 1 (3) or (3a) of the German Real Property Acquisition Tax Act.

Consequences of non-compliance:
In case of non-compliance with the above-mentioned reporting obligation, considerable fines are in the offing. According to the catalog of fines, these fines are mainly based on the turnover or the balance sheet total of the company and can amount up to EUR 150,000 in case of a first-time violation. In the case of serious, repeated or systematic violations, the fines can increase to up to EUR 1,000,000.

In addition, the law provides for "naming and shaming" in the case of final decisions imposing fines of EUR 200 or more (see the page of the Federal Administrative Office) – currently, more than 1,200 decisions have already been published.

From an economic perspective, it may be particularly critical that there is an explicit prohibition on notarization in real estate transactions. Thus, a transaction may fail or at any rate be considerably delayed in the event of missing or incorrect notification to the transparency register.

Well equipped to meet your needs:
KPMG Law has been providing support in relation to the Transparency Register since its introduction in 2017 and has extensive professional expertise in determining beneficial ownership and defencse advice in administrative fine proceedings.

For further information or if you have any questions, please get in touch.

Contact

KPMG Law Rechtsanwaltsgesellschaft mbH

Arndt Rodatz
Rechtsanwalt, Steuerberater
Partner
P +49 40 360994-5081
M +49 89 5997606-1042
arodatz@kpmg-law.com

Christian Judis
Rechtsanwalt,
Geldwäschebeauftragter (TÜV)
Senior Manager
P +49 89 5997606-1028
M +49 69 95119-5060
cjudis@kpmg-law.com

Stephanie Haslinger
Rechtsanwältin
Managerin
P +49 89 5997606-1029
stephaniehaslinger@kpmg-law.com

www.kpmg-law.de

KPMG Law on social networks