

German Transparency Register

UPDATE: Excessive reporting requirements for foreign companies



The Federal Administrative Office has clarified that foreign companies must be reported to the Transparency Register even if they only indirectly hold shares in German real estate. The reporting obligation applies to all companies in the chain of ownership. However, only if their shareholding reaches a threshold of at least 90 percent.

Experts have long considered the real estate market to be particularly susceptible to money laundering. For this reason, legislators are increasingly pursuing the goal of ensuring that it is comprehensible to whom real estate ownership is attributable.

Against this background, notaries were initially required to check, in the case of real estate purchase agreements, whether the acquiring company was registered in the transparency register in any case. If this was not the case, the notary was not allowed to perform the notarisation (prohibition of notarisation).

In order to also cover foreign structures, reporting obligations for foreign companies have been successively introduced. Until now, these companies 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.

Sanctions Enforcement Act II obliges foreign companies to report to the transparency register

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

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

This applies both to direct investments in real estate and to share deals in which shares in companies owning real estate were acquired in the past (acquisition transaction pursuant to Section 1 (3) or (3a) of the 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 information on the beneficial owner to a register of another EU member state.

Clarification by the Federal Office of Administration dated May 5, 2023 on reporting requirements for indirect holdings in German real estate:

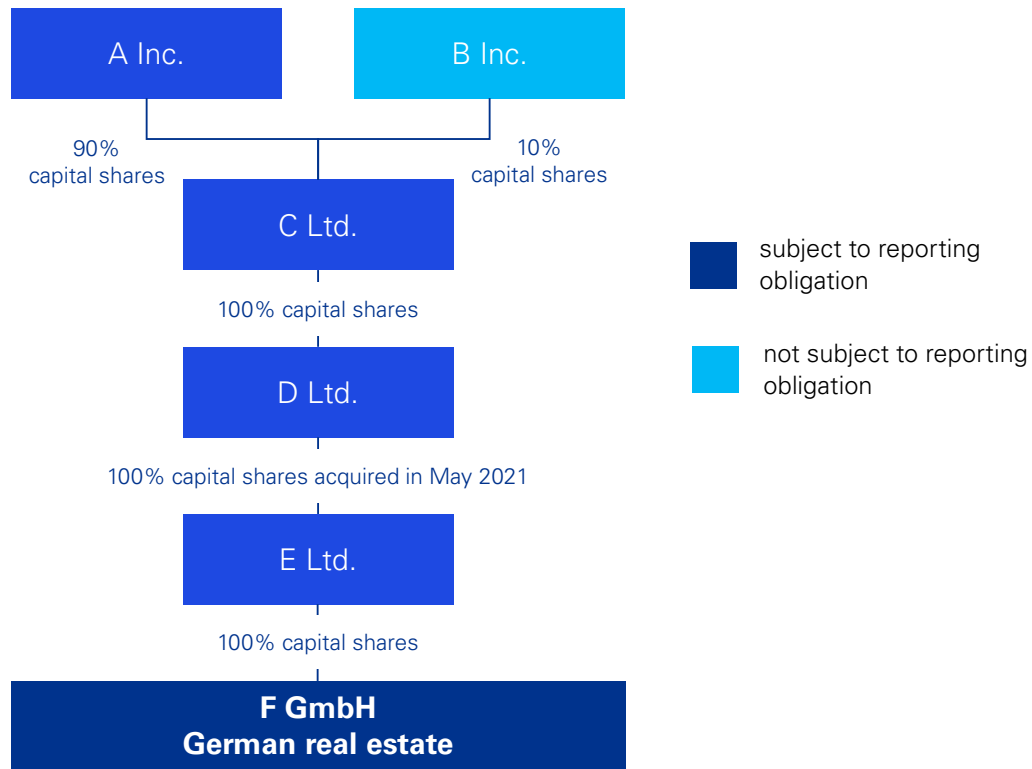
As is so often the case, the new regulation raised various questions in practice, in particular whether only the foreign company in which the acquisition transaction pursuant to Sec. 1 (3) or (3a) GrEStG is or has been realised must be reported or whether all foreign companies in the chain of ownership are subject to a reporting obligation.

The Federal Administrative Office responsible for the Transparency Register has provided guidance on this issue in the FAQ newly published on May 5, 2023:

- According to the Federal Administrative Office, the transparency obligation extends to all foreign legal entities to which shares in a company with domestic real property are or (in the past) were directly or indirectly transferred.
- In the opinion of the authority, this means that even in the case of existing real estate, all legal entities in the chain of shareholdings are subject to notification, insofar as they each individually meet the requirements of Section 1 (3) or (3a) GrEStG and reach the threshold of at least 90% of the shares.
- The principles of the Real Estate Transfer Tax Act apply to the determination of the directly or indirectly controlled shares in the company (i.e. in particular calculation of the 90% threshold at each shareholding level).
- In turn, this means that if foreign legal entities within the chain of shareholdings do not meet the requirements of Sec. 1 (3) or (3a) GrEStG – here, the threshold value of 90% is probably meant in particular - they are also not obliged to notify the transparency register.

What this means is illustrated by the following example:

In the example, all companies in the investment chain – with the exception of B Inc. – are subject to a reporting obligation to the German Transparency Register.



Source: KPMG Law in Germany, 2023

Consequences of an incorrect or missing report to the transparency register

Non-compliance with the above-mentioned reporting requirements can result in substantial fines. According to the list of fines, these fines are based primarily on the company's sales or total assets and can amount to up to EUR 150,000 for a first-time violation. In the case of serious, repeated or systematic violations, the fines can increase to up to EUR 1 million.

In addition, the law provides for „naming-and-shaming“ in the case of final decisions imposing fines of EUR 200 or more - currently, more than 1,200 decisions have already been published.

From an economic point of view, it may be particularly critical that, due to the prohibition of notarisation in real estate transactions, a transaction may fail or, in any case, be significantly delayed if it is not reported to the transparency register or is reported incorrectly.

Conclusion

While this provides a certain degree of clarity on the one hand, on the other hand the legal understanding of the Federal Administrative Office creates a considerable burden for foreign groups of companies with German real estate holdings.

Best positioned for you:

KPMG Law has been involved in the topic of the transparency register since its introduction in 2017 and has broad professional expertise in the identification of beneficial owners and defense advice in the context of fine proceedings.

Contact

KPMG Law
Rechtsanwaltsgesellschaft mbH



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



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



Constanze Hudelmaier
Rechtsanwältin
Senior Manager
T +49 761 769999-12
chudelmaier@kpmg-law.com



Marcello Toscani
Rechtsanwalt
Senior Manager
T +49 211 4155597-741
mtoscani@kpmg-law.com



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

www.kpmg-law.de



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