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Newsletter for foreign investors in Germany October 2018



Dear Julia,

We are very pleased to present you today a tax and accounting update of interest to cross-border investors and especially foreign investors in Germany.

The first three sets of topics are from various tax-related publications of the independent association Geneva Group International (GGI) of which Benefitax has been a member for over 10 years. In those you will find numerous articles and from many countries with topics ranging from International (direct) Taxation via Indirect Taxes to Real Estate. All authors are members of GGI and experts in their respective fields. If you need tax or accounting advice in a specific country, Benefitax will be able to check that for you with the local experts or introduce you to one of the many GGI tax experts from 90 countries.

The other topics mainly address foreign investors in Germany. This time they cover new rules for shareholder lists of German companies, liability of internet marketplaces for German VAT of their dealers, the tax-treatment of cryptocurrencies in Germany, good news for letterbox companies in Germany, an update of automatic exchange of financial accounts, if a German subsidiary shall pay for a letter of comfort provided by parent company and how the private apartment of a managing director of a foreign corporation

may create a permanent establishment in Germany.

In the internal section we take a look-back at a Transfer Pricing seminar held in Zurich by two Benefitax experts, introduce a new Due Dilligence explainer video, present an award as "Best Tax Advisors 2018" we have recived and introduce some new staff members to you.

If you have found a topic for which you need further information, do not hesitate to contact us or the respective author. We will be happy to support you.



International Taxation

We are happy to present to you the latest edition of the GGI FYI International Taxation newsletter which was created by authors from my own GGI Practice Group. This is the topics covered in the autumn 2018 edition:



- Proactive Strategies for Maximizing the New 20% Deduction on Qualified Business Income (USA)
- Guidelines for the Application of the Transfer Pricing Provisions (Italy)
- Lessons from Chevron (Australia)
- LinkedIn Profile - A link for India to tax non-residents (India)
- US 2017 Tax Act Unsettles Tax Implications
- UK Moves Towards Making Tax Digital
- Segmentation of loss-making activities within a company (Germany)
- Recent Transfer Pricing Developments in the US
- Exclusion from new Tariffs on Chinese Goods (USA)
- Online traders without a physical presence are now liable

for local sales tax in the US

- Will the new US tax law affect your business?
- Offshore Voluntary Disclosure Programme Meets its Permanent End (USA)
- Hong Kong reduces profits tax rate to 8.25% for the first HKD 2 million of profits
- Automatic Exchange of Information an Tax Disclosures in Switzerland
- New Dutch rules on tax credits in force as of 1 January 2019 for non-resident tax payers

To view the individual articles, please click [here](#) or on the cover-photo above. Please note that the respective authors of an article are responsible for the correctness of the contents.



Indirect Taxes

This GGI newsletter covers all kinds of indirect tax topics, such as VAT, sales tax, Indian GST. Editor in chief is my friend Steve Mc Crindle from UK, who is one of the best VAT experts in Europe.



- Is the EU VAT system fit for purpose? (UK)
- New Potential Exposure for US Sales Taxes
- VAT-in-brief: Brexit "no deal" - some VAT highlights (The Netherlands)
- New Italian regulation for VAT Group
- Australian Government turns Property Purchasers into GST Collectors
- VAT-in-brief: Events, Exhibitions and Conferences (Denmark)
- New decisions of the ECJ regarding triangular operations (Germany)
- Immediate Supply of Information on VAT (SII) in Spain
- Proportional crediting of VAT amount in Georgia

- Agency requirements for importing goods into South Africa

To view the individual articles, please click [here](#) or on the cover-photo above. Please note that the respective authors of an article are responsible for the correctness of the contents.



Real Estate

The GGI FYI Real Estate Newsletter not only covers tax-related topics but all topics around real estate. In the autumn edition the following topics are covered:



- The preparation of annual accounts for a French SCI is required for tax reasons
- Buying Real Estate in the US
- Opportunities for developers and investors in re-vitalised



- Scottisch onshore wind market
- Investing in United States Opportunity Zones Delivers a Big Tax Benefit
 - Franchise Facts: Expanding Your Franchise Area Development Agreements (USA)
 - Mexico's Newly Elected President and his Impact on the Northern Border
 - The Housing Market in Berlin (Germany)
 - The Austrian tenancy law - latest news concerning Residential Homes
 - Can Foreigners Acquire Property in South Africa?
 - New GST obligations may affect foreign developers in Australia

To view the individual articles, please click [here](#) or on the cover-photo above. Please note that the respective authors of an article are responsible for the correctness of the contents..

Tax News from Germany



Our English tax and accounting news solely covers information that is of interest to foreign investors to Germany. This edition covers the following topics:

Ordinance on lists of shareholders came into force



For many, the new Ordinance on Shareholder Lists came into force unnoticed in Germany on 1 July 2018. Accordingly, the list of shareholders of limited liability companies must now comply with new formal requirements, e.g. be available electronically and contain further information. If this is not observed and the commercial register, for example, does not enter changes in the shareholder base, new shareholders, for example, cannot

effectively vote on company resolutions. Normally a notary takes care of this, but e.g. in the case of death and inheritance, the list must be corrected by the managing director(s). Shareholder lists, which are already electronically available at the commercial register before July 1, 2018, do not have to be adjusted to the new requirements as long as no change has taken place or is taking place after July 1, 2018. Further details can be found here (in German): www-notarin-rokuss.de/2018/08/29/neues-zur-gmbh/.

Operators of Internet marketplaces should be liable for VAT of their dealers!

The German Federal Government wants to prevent VAT losses in trade with goods on electronic marketplaces on the Internet (e.g. eBay). For this reason, it has introduced a law that is intended to make operators of Internet marketplaces more responsible.



Who is concerned?

An electronic marketplace in the sense of the proposed provision is "a website or any other means by which information is made available over the Internet which enables a third party not operating the marketplace to carry out transactions". The concept is therefore very broad.

Operator is "anyone who maintains an electronic marketplace and enables third parties to carry out sales on this marketplace".

A multi-stage system is planned to secure the VAT revenue from deliveries via these marketplaces. A distinction is made between professional traders and private providers.

Obligations of operators

Operators are obliged to provide information from companies whose turnover in Germany is subject to turnover tax. These are:

- Name and address of the entrepreneur,
- the tax number or VAT identification number of the entrepreneur,
- Start and end dates of validity of a certificate of tax registration of the trader,
- Place of commencement of transport or dispatch and place of destination,
- Time and amount of turnover.

The certificate must be applied by the respective entrepreneur at his tax office and is issued for a limited period of time. Entrepreneurs who are resident in a third country (e.g. China) must also nominate an authorized recipient in Germany.

Once an electronic certification procedure has been set up, the Federal Central Tax Office issues the operator with information on the certificates stored there by means of an electronic query. The Federal Ministry of Finance will inform the operator when electronic consultation will be possible by means of a letter to be published in the Federal Tax Gazette.

Please note: Until the introduction of the electronic enquiry procedure, the supplier must be issued with the certificate in paper form.

If persons register on the operator's electronic marketplace as private individuals, the date of birth must also be recorded. Not required: Tax number or VAT identification number as well as a certificate.

Upon request, the operator must electronically transmit the recorded data on entrepreneurs and private individuals to the tax office.

Liability of the operator

If a trader does not properly pay VAT, the operator of the marketplace may be held liable in case the supply subject to VAT was legally justified on the marketplace.

Operators can exclude liability if they can submit a certificate (or an electronic confirmation after the introduction of the query procedure).

Please note, that a certificate does not protect the operators to the extent that they should have known, after exercising the diligence of a prudent businessman, that the supplying company is not fulfilling its tax obligations or is not fulfilling them in full.

The tax office can inform the operator that an entrepreneur is not complying with his tax obligations if other measures do not promise immediate success. The operator is then liable after receipt of the notification if the legal transaction underlying the turnover was concluded after receipt of the notification. A present certificate does not protect then.

The operator is not liable, if the registration took place on the electronic marketplace as a private person and the operator has fulfilled his recording duties.

Please note, that this does not apply if it can be assumed from the nature, quantity or amount of the sales achieved that the operator was aware of this or should have been aware that the sales were generated within the framework of a company after exercising the diligence of a prudent businessman.

First-time application

In principle, the new regulations are to come into force from 1 January 2019. However, liability for third-country entrepreneurs is not to apply until 1 March 2019 and for domestic and EU/EEA entrepreneurs until 1 October 2019.

Source: Draft bill of the Federal Government: Act on the Avoidance of Value Added Tax Losses in Trade with Goods on the Internet and on the Amendment of Further Tax Regulations, BR-Drs. 372/18 of 10.8.2018

Tax treatment of cryptocurrencies such as Bitcoins & Co.



The rapid changes in the price of bitcoin and other cryptocurrencies such as Ethereum, Ripple, Litecoin or Dash has attracted a great deal of media attention. The blockchain technology is regarded by many as trend-setting. In recent years, more and more people have created (mined), traded, exchanged or paid with crypto currencies. Mining blocks is not only carried out by large investors but also by IT-affine private individuals. This raises

several tax questions. On the one hand, the question of whether a trading or private activity exists and, on the other hand, whether and if so, how profits and sales are taxed. We give answers for Germany. You will find them with one click on our [homepage](#).

German Federal Fiscal Court changes jurisdiction: input tax deduction even if letterbox address is given

An invoice must contain the full address of the supplier in order to be eligible for input tax deduction. According to the new case law of the Federal Fiscal Court, it is sufficient to indicate a place with



postal accessibility.

Facts

In the first case, a car dealer bought motor vehicles from a sole trader who was involved in online trading without running a car dealership. He issued invoices in which he indicated a place where he could be reached by post as his address.



In the second case, a GmbH indicated its registered office according to the entry in the commercial register. In fact, the premises of a law firm were located there. The fixed network and fax number used by the GmbH for correspondence belonged to the firm, which served as the domicile address for approximately 15 to 20 companies. Occasionally an employee of the GmbH used a desk in the office.

In both cases the Federal Fiscal Court affirmed the input tax deduction. According to new perception it is not necessary that the economic activities are exercised under the address, which is indicated in the calculation. Rather, it is sufficient to specify a location with postal accessibility.

Note: The change in case law is based on the decision of the European Court of Justice, which was issued on submission by the Federal Finance Court. Usually it will take a while until German tax authorities will adapt such new rules so don't be surprised if they don't accept your letterbox company.

Attention: The new rule only applies to VAT. If a newly established German company applies for a general tax number within the process of fiscal registration, the majority of tax offices still require to see their own place of work and office equipment, based on a rental contract.

Automatic exchange of financial information in tax matters: Jurisdictions Exchange List 2018 published



At the Berlin Tax Conference in October 2014, numerous countries signed the "Common Reporting Standard" (CRS). On the basis of the CRS, information on accounts and investments is automatically exchanged between the countries and territories participating in this exchange of information. The Federal Ministry of Finance has announced [the list of jurisdictions](#) which were included in the automatic data exchange 2018.

On 30.9.2017, the first automatic exchange of information on financial accounts started. However, an evaluation of these data has not yet been carried out. "The Federal Central Tax Office is currently preparing the allocation of the data records of German tax citizens abroad to the responsible local tax offices. The data can only be forwarded to the responsible state tax authorities once the technical and data protection requirements for sending and accepting the data have been met. As things stand at present, data should be sent to the responsible state tax authorities by 2019 at the latest."

Transfer Prices: Should a German subsidiary pay for a letter of comfort provided by parent company?



In the decided case a parent company provided a letter of comfort to its German subsidiary without asking for a compensation. The tax office assumed that a bank would have charged for doing so and increased the tax base by 37,500 Euros.

The European Court of Justice (ECJ) has ruled on this case on 31 May 2018, dealing with the correction of the tax base within groups of companies. Following the decision, a rule that allows to adjust the tax base of affiliated companies in case business relations do not meet the arm's length principle, is in line with EU law. Nevertheless, the court says that business reasons, that are borne in the shareholding function of the taxpayer, may justify to deviate from the arm's length principle. The ECJ referred the proceedings back to the local court in order to have that checked.

This new decision provides new possibilities to argue against corrections of transfer prices demanded by the tax authorities. This decision may also have an influence on changes in the Foreign Tax Act which may come into effect in 2019.

Private apartment of the managing director may create a permanent establishment in Germany

According to German law (Sec. 12 AO General German Tax Code) a permanent establishment can be assumed if the place of management is in Germany. If the management of a foreign corporation is frequently in Germany (> 183 days p.a.) and carries out management duties on behalf of the corporation a fixed place of business can also be assumed in the private apartment of a managing director in Germany, if this is available on a regular base for such activities. In case of several managing directors an individual weighting must be carried out.



The relevant criteria is how many days the managing directors are physically staying in which country. Communicating from abroad via email, Skype etc. with German business partners does not count.



Benefitax News

Transfer pricing seminar held on 29 May 2018 in Zurich

As in previous years, my colleague Prof. Dr. Kay-Michael Wilke and I gave another one-day lecture in Switzerland again on "Transfer Prices and their documentation in Germany". The seminar was again organized by the Chamber of Commerce Germany-Switzerland. Participants were those responsible for finance and taxes in Swiss corporations with German subsidiaries, as well as Swiss and German tax consultants who would like to take a closer look at transfer pricing.



New Due Dilligence explainer video online



The [Benefitax Youtube channel](#) is one film richer. Recently there is a new English video online, which answers some basic questions about [Due Dilligence](#):

- What exactly is Due Diligence?
- What are the advantages of Due Diligence?
- Which areas are usually examined in a Due Diligence?
- Can I trust the sellers of a company and its consultants?
- Which criteria are decisive in the selection of a suitable expert to carry out a Due Diligence?
- Does the benefit of a Due Diligence exceed the costs?

You will find the video by clicking [here](#) or on the thumbnail above.

Benefitax receives another award: "Best Tax Advisors 2018"

The famous German business paper "Handelsblatt" published an exclusive ranking of the best tax advisors in Germany in 2018. Out of approx. 3,700 participants, a total of 592 accounting firms were honoured as top tax advisors.

We are very pleased to be honored again and to be among the top tax advisors in Germany.



Benefitax achieved the highest number of points in the overall evaluation as well as in the subject areas "International Tax Law" and "Trade companies" as clients.

The following criteria, among others, were included in the evaluation: training and additional qualification of employees, general skills as well as basic knowledge in the subject areas and business sectors. You can find the exact ranking (in German) [here](#).

Welcome new Benefitax colleagues!

We are very pleased to introduce three new colleagues at Benefitax:

After her very successfully completed general qualification for university entrance **Julia Bratusa** (left) decided for dual business management studies "Marketing Management" at the private university IUBH. During the practice phases she will support us 20 hours per week in average, starting with an update of our homepage and Social Media. Later she will also take over tasks in accounting and taxes.



After longer search we were able to fill the open space of the Benefitax video representative with a suitable person. **Marcel Giese** (right) takes over this function with immediate effect while continuing his studies at Frankfurt University. Marcel has relevant experience in the field of video production and has high-quality camera equipment. We are looking forward to continuing the production of explanatory and other videos on tax & accounting topics together with him and to publishing them on the Benefitax [YouTube Channel](#).

Since August **Rahwa Ghebrezghi** (3rd from left, front) belongs to the Benefitax team. She supports us in the area of bookkeeping. Previously, she gained both international and professional experience in the service sector, among others, as well as basic business and legal knowledge during her time at school and university. We are very pleased that she has decided to continue her career with us.

We wish our new colleagues a lot of fun, a good learning curve and success at Benefitax. Your motto should be: learn to swim quickly as we will throw you into cold water over and over again in order to make you very soon a valuable member of the Benefitax team.

We wish you a pleasant autumn and a good and succesfull time.

Best regards from Frankfurt

Oliver Biernat,
Managing Director



- German Chartered Accountant
- German Certified Tax Advisor
- Specialist Advisor in International Taxation

You can count on us – from A as in application to Z as in free tax zone.

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The brand "Benefitax" has been registered as brandname with the registration number 30622634 at the German patent and brandoffice (Deutsches Patent- und Markenamt).

Notes to auditing services

Competent chamber:

Wirtschaftsprüferkammer (WPK = Chamber of Chartered Accountants), Corporation under Public Law,

Rauchstr. 26, 10787 Berlin

The following provisions of law apply to the auditing work:

Wirtschaftsprüferordnung (WPO),

Berufssatzung für Wirtschaftsprüfer/vereidigte Buchprüfer ([BS WP/vBP](#)),

[Satzung für Qualitätskontrolle](#),

Wirtschaftsprüfer-Berufshaftpflichtversicherung ([WPBHV](#)).

All these can be found on the homepage of the German Chamber of Public

Accountants (Wirtschaftsprüferkammer) on www.wpk.de.

The legal title "Wirtschaftsprüfungsgesellschaft" has been granted to Benefitax GmbH in the Federal Republic of Germany.

Notes to tax consultancy services

Competent chamber: Steuerberaterkammer Hessen (StBK = Chamber of Tax Consultants), Gutleutstr. 175, 60327 Frankfurt am Main.

The following provisions of law apply to the tax consultancy work:

Steuerberatergebührenverordnung,
Steuerberatungsgesetz,
Durchführungsverordnung,
Berufsordnung.

These regulations can be found on the homepage of the German Chamber of Certified Tax Advisors (Steuerberaterkammer) on www.bstbk.de/de/steuerberater/berufsrecht/

The legal title "Steuerberatungsgesellschaft" has been granted to Benefitax GmbH in Germany in the federal state of Hesse.

Engagement Terms:

In case of an engagement the "General Engagement Terms for Wirtschaftsprüfer and Wirtschaftsprüfungsgesellschaften" in the latest version are applicable, unless other agreements have been taken in writing. "[General Engagement Terms](#)"

Professional Liability Insurance has been contracted with HDI Versicherung AG HDI-Platz 1, 30659 Hannover. All information referring the area and scope covered by the insurance are at our clients' disposal at our premises.

Applicable law and place of jurisdiction: Place of execution for all mutual obligations resulting from contracts concluded with Benefitax GmbH is the seat of Benefitax GmbH which is also deemed place of jurisdiction.

Disclaimer regarding our international alliance

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We do legally and economically not depend in any kind from the other members of the GGI alliance. Benefitax GmbH assumes all liability for the mandates assigned to us; in no case any other company, study or consultant will be liable although it might bear the name "GGI", "Geneva Group" or "Geneva Group International". In the same manner, Benefitax GmbH does not assume any liability for mandates assigned to other companies, studies or consultants although they might bear the name "GGI", "Geneva Group" or "Geneva Group International".

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Collection and processing of personal data: Personal data is collected and processed by us only if you provide it voluntarily, e.g. for processing a contract or a survey or for registration for personalized services. If you do not object, data collected in the process of registration for personalized services of Benefitax GmbH is processed for customer management and marketing purposes as well as for the customer-orientated development of electronic services.

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No data is forwarded to states outside the European Economic Area. Personal data collected by us on our web sites are used without your consent only for processing your enquiries and requests. Moreover, if you do not object, your data is used only for customer management and marketing purposes as well as for the customer-orientated development of our electronic services. Beyond that no data is forwarded to other third parties.

You can express your objection at any time with an effect towards the future.

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