

UBO reporting obligations for foreign entities with direct or indirect ownership in German real estate

German supervisory authority issued official guidance

Tax & Law

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Executive summary

On 5 May 2023, the German Federal Office of Administration (Bundesverwaltungsamt – “BVA”) issued new Frequently Asked Questions (“FAQs”) about various aspects of the German Transparency Register. The newly added FAQs mainly deal with the recently introduced obligations for non-German entities to report their Ultimate Beneficial Owner(s) (“UBO”) to the German Transparency Register in case of certain direct or indirect ownership in German real estate. In particular, the authorities’ statements on multi-tier structures and the scope of the escape clause should be highly relevant for German inbound structures.

Detailed discussion

New law since 28 December 2022

Since 28 December 2022, non-German entities are basically obliged to report their UBOs to the German Transparency Register, if they either directly or indirectly (via shares) own German real estate. However, there is one major exception to this rule: under the so-called “**escape clause**” a UBO reporting is not required, if the foreign entity already reported its UBO(s) to another UBO register in the European Union (EU) provided that certain requirements are met.

Due date and penalties

The respective reporting to the German Transparency Register is due by 30 June 2023 at the latest. Non-compliance with the reporting obligation can result in significant penalties of up to EUR 1 million, combined with a publication of the penalty assessment on the internet (“naming and shaming”).

For further details on the new reporting rules, also with regard to timing requirements, please refer to our [Tax & Law Alert dated 8 February 2023](#).

New FAQs

On 5 May 2023, the BVA issued answers to new FAQs with regard to the new reporting obligations. In this context, the BVA also responded to questions addressed by EY in connection with multi-tier structures as well as the scope of the escape clause:

Reporting of lower-tier entity does not provide relief

- **Multi-tier structures:**

Pursuant to the BVA, every entity in a multi-tier structure basically has a UBO reporting obligation, if it directly owns German real estate or if it – directly or indirectly – owns at least 90% of the shares in an (foreign or German) entity that owns German real estate. That is, a UBO reporting of a lower-tier entity (even of a German entity) to the German Transparency Register does not provide relief for a higher-tier entity.

- **Scope of the escape clause:**

Relief for EU entities

Under the escape clause, a foreign entity is not required to report its UBOs to the German Transparency Register, if it has already transmitted the “information pursuant to Article 1 number 15 letter c of the Directive (EU) 2018/843 and pursuant to Section 19 (1)” of the German AML Code to another UBO register in a Member State of the European Union.

When the new rules were issued it was not clear in this context, whether a UBO reporting to another EU UBO register also provides relief, if the UBO(s) reported by the foreign entity differ from the UBO(s) determined under German law.

The BVA now clarified in its FAQs, that it is not harmful for the application of the escape clause, if other, less or more UBO(s) were reported to another UBO register in the EU. Therefore, if a reporting was made by the foreign entity, it is not necessary to review whether the UBO(s) which have been reported match the UBO(s) which had to be reported under the German AML code. This view should provide a huge relief for many EU entities.

However, the escape clause only applies, if the information reported on the respective UBO(s) is complete and correct and in particular in line with Sec. 19 para. 1 of the German AML Code. Since there are differences in the reporting data required by the single Member States (e.g. reporting of business address instead of place of residence), it is still recommendable to check whether the reported UBO data satisfies the German requirements.

Recommendations

In view of the fact that the deadline for the new reporting obligations already ends on 30 June 2023 and the significant penalties in case of non-compliance, foreign entities that have German real estate in their structure should start reviewing as soon as possible, if and to what extent they are subject to the new reporting obligations.

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