PKF DEUTSCHLAND

Newsletter 05|24

Key Issue
E-invoicing is coming

Dear Readers,

This May issue of our newsletter is characterised by the letter 'E' – first of all, you will find it in our Key Issue report about **E-invoicing**. From next year onwards already, only electronic invoicing will be permissible for B2B commercial transactions in Germany. This will require adjustments to processes being made still in this year. Transitional provisions will apply solely for invoice issuers because all companies will have to accept incoming electronic invoices.

After the tax changes is before the tax changes. While it took until March for the German Growth Opportunities Act to be finalised, there is now already a draft bill for the **2024 Annual Tax Act**, which is the subject of the second report in our Tax section. In this we discuss the wide range of changes to many different types of tax. Since it can be expected that various adaptations will be made before the Act is adopted, we have limited ourselves to providing a short preliminary overview. Subsequently, in our third article, we have put together a summary of what you should bear in mind when **relocating your production abroad.**

In our Accounting & Finance section you can read the third article in our series on **sustainability reporting.** In the last two issues of our newsletter, we provided an overview of the legal development and the requirements as well as the procedure for conducting the materiality assessment; in this month's issue, there now follows an introduction to another 'E', namely, environmental aspects. We discuss the **EU Taxonomy** that should be used for the quantitative reporting of environmental aspects. Another report in this series will follow in our next newsletter where the 'E' will refer to the ESRS; there we will discuss the application of these financial reporting standards that are of a qualitative nature.

Next up, in the Legal section we consider a very recent ruling by the Federal Court of Justice that clarified the process for dealing with the **heirs of a deceased shareholder** in the case of a **shareholders' meeting**.

Finally, in short reports, as always you can find current information; here, in order to stay with the letter 'E', we notably discuss the roll-out of E-prescription services and E-patient records in Germany.

Through the illustrations that break up the reports from our experts, this time, we visit our PKF colleagues in Ireland.

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

Your Team at PKF

Glenmacnass Valley, County Wicklow

Front cover photo: Samuel Becket Bridge over the Liffey, Dublin

Key Issue

E-invoicing is coming

Contents

StB [German tax consultant] Marco Herrmann / Andrea Stams

E-invoicing will be mandatory from 1.1.2025 – Urgent action is required by all companies

Ever since the promulgation of the German Growth Opportunities Act on 27.3.2024 it has been clear that e-invoicing will be mandatory in Germany - indeed, already from 1.1.2025. The long transitional periods that have been granted to invoice issuers should however not obscure the fact that a need for the requisite action will arise even before the end of the year because, as of 2025 already, incoming e-invoices in a specific format will have to be accepted.

1. What will change as of 1.1.2025?

Up to the end of 2024, the VAT Act (Umsatzsteuergesetz, UstG) will still give priority to paper invoices. The use of an electronic invoice (e-invoice) requires the consent of the recipient. As of 1.1.2025, there will be a requirement to submit e-invoices for payments between businesses that are resident in Germany for tax purposes. Consequently, the consent of the recipient will no longer be necessary in such cases. Only invoices that can be issued, transmitted and received in a structured electronic format that allows for electronic processing will be considered to be e-invoices.

Invoices will have to conform to the European Norm (EN) 16931 [developed and published by the European Committee for Standardization (CEN)]. It is possible for the invoice issuer and invoice recipient to agree on a different structured electronic format. However, this would be on condition that it would be possible to extract the necessary information in such a way so that the result would conform to the CEN norm EN 16931 or be compatible with it.

Dublin, Half Penny Bridge

The legislation has thus been formulated in a way that is open to all technologies so that, for example, certain adaptations could be made to the EDI process that would enable it to also satisfy the format specification. It is the view of the fiscal administration that invoicing using the XRechnung format standard or version 2.0.1 and later of the ZUGFeRD format [an e-invoicing format developed by the Electronic Invoice Forum Germany (FeRD)] already conform to the required CEN Norm.

Please note: By contrast, a PDF invoice would not comply with the future format requirement.

The obligation to submit an e-invoice will not apply to transactions that are exempt from VAT under Section 4 no. 8 to 29 UStG. Furthermore, invoices for small amounts (Section 33 of the VAT Implementing Ordinance [Umsatzsteuerurchführungsverordnung, UStDV]) and travel tickets (Section 34 UStDV) may continue to be submitted as so-called other invoices; these are ones that are submitted in paper form or in any form other than the electronic format described above.

Please note: The submission of other electronic invoices will still require the consent of the recipient.

2. Transitional provisions

The following transitional provisions will apply for invoice issuers:

- up to the end of 2026, invoices for transactions executed in 2025 and 2026 may be submitted as previously, i.e., in paper form or - with the recipient's consent - in an electronic format that does not conform to the new format;
- up to the end of 2027, invoices for transactions executed in 2027 may be submitted as previously if the total revenues of the invoice issuer (pursuant to Section 19(3) UStG) in the preceding calendar year (2026) did not exceed €800,000;
- up to the end of 2027, invoices for transactions executed in 2026 and 2027 may be submitted - with the recipient's consent - via electronic data interchange (EDI process).

3. Action required in 2024

There are no transitional provisions for invoice recipients. Therefore, if an invoice issuer does not make use of the transitional provisions, then, in the absence of a requirement to obtain consent, the recipient of the goods or services would have to be able to receive, process and archive e-invoices in the new format already from 1.1.2025.

Recommendation: Companies should therefore urgently check if they are adequately prepared, from both organisational and technological perspectives, to receive e-invoices in the new format. Any necessary adjustments will already have to have been made by the end of 2024.

4. Outlook - A comprehensive digital transformation process

Once the mandatory use of e-invoicing has been implemented, the German federal government intends to subsequently introduce a requirement for timely reporting of each individual transaction to a national electronic reporting system (e-reporting). Notwithstanding this, within the scope of the ViDA reform proposal (VAT in the Digital Age), the EU Commission also wants to implement the EU-wide standardised use of e-invoicing and e-reporting. Within the next few years, it is therefore entirely possible that VAT will be fully digitalised.

Businesses would be well advised to address the resulting challenges and opportunities holistically and at an early stage. Here, the extensive technological and organisational needs of such a transformation process could be offset by the considerable potential cost savings from an electronic accounts payable and receivable process that could conceivably be fully automated.

Recommendation

We would recommend considering the necessary process adaptations in conjunction with the creation of process documentation, which has been a requirement already since 2015. This can be doubly helpful,

- firstly, in order to be able to identify the processes that need to be adapted and,
- secondly, when designing new processes that are not just effective and cost-efficient but, at the same time, also consistent with the German 'Principles of Proper Keeping and Retention of Accounts, Records and Documents in Electronic Form' (GoBD).

PKF

StBin [German tax consultant] Elena Müller

Draft bill for the 2024 Annual Tax Act

While it was only recently, in March 2024, that the German Growth Opportunities Act was passed, now already, there is an (unofficial) draft bill for the 2024 Annual Tax Act. The draft's 240 or so pages contain not solely adjustments to take account of court rulings, but also consequential amendments as well as the correction of errors and they relate to many types of tax. In the following section we discuss the most important planned changes; unless otherwise noted these will apply when the legislation is promulgated.

1. Income tax/payroll tax

(1) Tax exemption for PV systems - The permissible gross capacity according to the core energy market data register (Marktstammdatenregister) to which a tax exemption can be applied will be increased from 15 kW (peak) to 30 kW (peak) per residential or commercial unit. Furthermore, also in the case of buildings with several commercial units, PV systems with capacity of up to 30 kW (peak) per commercial unit (exemption limit) will be eligible for the tax benefit.

(2) Flat-rate taxation for so-called mobility budgets - If, in addition to remuneration that would in any case be due, an employer gives a benefit in kind or a subsidy for the private use of mobility services (such as, e.g., e-scooters or the occasional use of car sharing, bike sharing as well as other sharing offerings and travel services, irrespective of the means of transport) then the employer can tax these at a flat rate of 25% up to a maximum amount of €2,400 p.a. and assume these costs. In doing so, the aim is to encourage environmentally-friendly mobility. According to the draft bill, permanent use of cars and other vehicles is excluded.

(3) Addition of a corporate group clause in Section 19a of the Income Tax Act (Einkommenssteuergesetz, EStG) - The tax concession will be extended to cover the transfer of shares in group companies. It will accordingly be possible to defer the taxation of non-cash benefits from capital participations if shares in the employer's company are transferred or alternatively shares in affiliated companies. The application of the corporate group clause will however be linked to certain conditions. The planned date of entry into force has been backdated to 1.1.2024.

2. Trade Tax

(1) Income from foreign permanent establishments - All passive income from foreign permanent establishments will be deemed to have been generated in a (German) domestic permanent establishment and also as such income that Germany would have the right to tax if a DTA was in place. This provision will also be applicable for reporting periods prior to 2024.

(2) Trade tax liability in the case of indirect transfers - In the future, if a natural person transfers their assets to a partnership and if the shares in the acquiring partnership are directly or indirectly sold or relinquished then the gains from the sale or the relinquishment would be subject to trade tax.

3. Value Added Tax

(1) Unauthorised VAT amounts stated on credit notes - According to the draft bill, the scope of the current provision that applies to invoices with an incorrect or an unauthorised statement of the VAT element will be extended to include credit notes. The recipient of the credit note would then thus be liable for the VAT even if it had been wrongly charged.

(2) Expansion of the scope of the VAT exemption for small businesses - The scope of the small business exemption that has hitherto applied only to businesses that are resident in Germany for tax purposes will now be expanded to also include companies resident elsewhere in the European Union. Furthermore, the thresholds will be adjusted to take account of general price developments so that the total revenues that are relevant for the application of the small business exemption will be increased in the preceding calendar year to €25,000 (previously: €22,000) and in the current calendar year to €100,000 (previously: €50,000). A special reporting procedure will be introduced at the Federal Central Tax Office (Bundeszentralamt für Steuern) for the implementation of the new rules. The planned date of entry into force is 1.1.2025.

(3) Input tax deduction where cash accounting is used for VAT purposes (Ist-Versteuerung) - Up to now, it has generally been possible to claim an input tax deduction on the date of performance (subject

to the other conditions) irrespective of whether or not payment has been made. In cases where cash accounting is used for VAT purposes, it will now only be possible to claim an input tax deduction once payment has been received. The planned date of entry into force is 1.1.2026.

4. Reorganisation Tax

(1) Deadline for submitting the closing balance sheet - A new paragraph 2a, which is to be added to Section 3 of the Reorganisation Tax Act (Umwandlungssteuergesetz, UmwStG), stipulates that, in the future, the closing tax balance sheet will have to be sent electronically to the local tax office within 14 months after the transfer cut-off date for tax purposes.

(2) Treatment of mergers at the shareholder level - In the case of mergers, shares in the transferring corporation should generally be recognised at book value at the shareholder level if the requirements have been satisfied. Recognition at fair market value pursuant to Section 13(1) UmwStG would now only be possible upon request (and potentially be irrevocable and time limited).

(3) Withdrawals during the retroactive period - Withdrawals and contributions made during the retroactive period should generally be taken into account when determining the contributed business assets. Recognising the contributed business assets at their book values would then only be possible if no negative acquisition costs arise as a result of taking into account the withdrawals and contributions made during the retroactive period. If this is the case, then the book values of the contributed assets would have to be increased. The aim is for this legislative amendment, which corrects a court ruling, to be applicable for the first time to contributions made as of 1.1.2024.

5. Inheritance tax

(1) Exemption for real estate worldwide that is rented out for residential purposes - In future, it will be possible to claim the tax exemption for real estate that is rented out for residential purposes (Section 13d of the Inheritance Tax Act [Erbschaftsteuergesetz, ErbStG]) irrespective of whether the real estate is in Germany, in an EU Member State or in a third country. The condition that is provided for this is that an exchange of information has to be ensured with

St. Colman's Cathedral in the picturesque town of Cobh, Co. Cork

this (third) country in respect of inheritance tax.

(2) Extension of deferral pursuant to Section 28(3) ErbStG – According to the draft bill, the option to defer inheritance/gift tax, which was hitherto only available for real estate used for specific purposes, will now be extended to all cases where the real estate is used for residential purposes.

6. Short overview of other planned changes

(1) EStG – Transfers at book values between partnerships that are identical in terms of participation.

(2) UStG – Determining the non-deductible part of input tax amounts, place of taxation for virtual events/activities, revision of the tax exemption rules for sporting events.

(3) Real Estate Transfer Tax Act (Grunderwerbsteuergesetz, GrEStG) – Provision on the attribution of real estate in the case of the realisation of supplementary facts pursuant to Section 1(2a) to (3a) GrEStG.

7. Next Steps

The draft bill was submitted for so-called early coordination within the government and has not yet been officially published; therefore, before the legislative procedure is completed, it can be expected that a number of changes will be made to the draft text that is currently available.

Comments by associations and the so-called interministerial consultation are still pending. The Federal Government still intends to adopt a resolution on the draft 2024 Annual Tax Act before the parliamentary summer recess. Consultations in the Bundestag and Bundesrat [lower and upper houses of German Parliament] are then likely to follow in autumn 2024. The legislative procedure is not expected to be completed until probably the end of the year.

RAin/StBin [German lawyer/tax consultant] Antje Ahlert

The relocation of production abroad – What are the tax implications that need to be considered?

The relocation of production abroad is no longer a possible scenario solely for large corporate groups. Rising energy prices, skills shortages and high wage levels are issues of concern, in particular, for medium-sized enterprises in Germany with a view to ensuring their competitiveness. Consequently, the relocation of production, most notably to Eastern European states, is not an exception any more. Here, the cross-border processes that are necessary for this will require careful and thorough consideration of the tax law implications in order to avoid significant corrections to income within the framework of a tax audit.

1. Supplying materials and buying back finished products

When materials are supplied to a foreign production company and the finished products are bought back the transfer pricing has to comply with the arm's length principles.

1.1 Applicable methods

When calculating transfer prices within the framework of supply and performance relationships between affiliated companies you have to use the so-called standard transaction-based methods (comparable uncontrolled price method, resale price method, cost plus method). The most appropriate method will have to be determined for an actual individual case.

1.2 Functional and risk profiles

When assessing the cost base for the transfer pricing, the extent to which the production company itself has an active role in the strategic procurement processes for materials will be of importance. If the production company does not perform any function on the procurement side, then the material costs would have to be eliminated from the cost base. As a consequence, the materials obtained from the (German) domestic company would have to be allocated directly to the company by the production company without a mark-up. A profit mark-up may thus only be included in relation to the production company's other costs.

Criteria that can be used to determine whether or not a production company has a role in the procurement process include, among others, being involved in:

» selecting suppliers,
» negotiating prices,
» determining the quality,
» determining the quantity, and
» negotiating the terms of delivery.

1.3 Taking locational advantages into account

Within the framework of tax audits by fiscal authorities, the advantages that result from the relocation of the production (e.g., low wage and labour costs) are taken into account as part of the corrections to income. Here, the extent of the advantages is determined and, subsequently, allocated between the participating companies. Generally, the main beneficiary here is the (German) domestic company.

Please note: In order to avoid significant corrections, it is imperative to carry out a full analysis of the locational advantages and to take these into account when determining the transfer pricing.

1.4 Timing of the determination of transfer pricing

Standard transfer pricing rules that are used in practice generally provide for the setting of transfer prices that comply with the arm's length principles already during the budgeting phase. Accordingly, the information that is available at the time when the transfer prices are determined serves as a basis.

Under the administrative principles, actual developments in the underlying data should be compared with the forecasting data. If deviations are found then subsequent corrections would need to be made.

Recommendation: During tax audits, the transactions are routinely checked retroactively to see if they are consistent with the arm's length principle. In order to avoid conflicts, it would therefore be advisable to carry out reviews and to make any necessary forward-looking adjustments over the course of the year.

2. Shifting customers to the production company

If the (German) domestic company transfers an existing business relationship to the production company and thus waives future profits then this could be construed as being a constructive dividend. However, tax consequences would only arise if the situation constituted a 'specific business opportunity' to which the nature of a capital asset could be attributed. For that it would be important, among other things, that the company could indeed seize this business opportunity. This would be doubtful if, for the (Ger-


Cliffs of Moher

man) domestic company, continuing doing business would not be economically viable. Here, the details in each case would have to be closely checked and the tax implications examined.

3. Conclusion

While the relocation of production abroad may offer numerous advantages in relation to cost reductions, in practice, it is nevertheless essential to consider these advantages in terms of tax law, in particular, with respect to the determination of appropriate transfer pricing. Besides, the organisation of the relocation also has to be viewed from the perspective of tax law in order to ensure an optimum tax structure. Moreover, as always, tax alone should not be the decisive motive for relocating production in order to prevent having to reverse the transaction.

ACCOUNTING & FINANCE

Sarah Pachowsky / WP [German public auditor] Alexander Paul / Dennis Schöttinger

Sustainability reporting – A step-by-step guide

Part III – Environmental aspects – (1) The EU Taxonomy

The first two parts of our series of articles on sustainability reporting provided a comprehensive overview of the new regulations under the EU's Corporate Sustainability Reporting Directive (CSRD), the new mandatory reporting standards (ESRS) as well as the fundamentally important materiality assessment in the context of ESRS reporting; now, in two further parts, we discuss the environmental aspect ('E'). In this edition of our newsletter the focus is on the EU Taxonomy, which is quantitative in nature; in the next edition, the 'E' topic will be examined more closely from the perspective of the qualitatively-oriented ESRS.

1. The distinction between the EU Taxonomy and ESRS

In the context of the sustainability dimensions E, S and G, the 'E' for environmental refers to ecological sustainability. Its characteristics are manifold and include, among other things, the climate, the use of resources such as water and energy as well as biodiversity. In the context of sustainability reporting, the vital importance of this sustainability dimension is reflected in the more than 500 datapoints of the environmental ESRS standards E1 to E5 as well as through the comprehensive rules of the EU Taxonomy Regulation, which has ushered in a single classification system for environmentally sustainable economic activities for the first time.

While the topic-related ESRS standards E1 to E5 and the EU Taxonomy deal with conceptually identical topics via their respective underlying environmental objectives, nevertheless, the perspectives and thus the contents of the reporting differ from each other. The EU Taxonomy – which will be considered in more detail here – as an EU Regulation with its financial taxonomy KPIs has its own place alongside the reporting standards (ESRS) of the EU's Corporate Sustainability Reporting Directive (CSRD). The disclosure requirements of both the legal acts will however be fulfilled 'under one roof' within the scope of the sustainability report (cf. PKF newsletter 3|24, p. 9).

2. The EU Taxonomy as a system of rules for measuring economic activity in respect of 'E'

In 2018, the EU Commission published its Action Plan on 'Financing Sustainable Growth'. In this plan, the introduction of a unified classification system for sustainable activities was described as being the most important and urgent task. The background to this was the EU's environmental objectives that were supposed to be achieved via capital flows towards sustainable investments or companies with sustainable activities. From then on, the Technical Expert Group on Sustainable Finance (TEG), which was delegated by the EU Commission, developed a science-based classification system, the so-called EU Taxonomy, which was codified in the EU's Taxonomy Regulation (EU) 2020/852.

The Taxonomy is aligned with the realisation of six environmental objectives; in this respect, the economic activities from very different industries can

make a positive 'contribution' towards achieving the objectives of:

(1) climate change mitigation
(2) climate change adaptation
(3) sustainable use and protection of water and marine resources
(4) transition to a circular economy
(5) pollution prevention and control
(6) protection and restoration of biodiversity and ecosystems

Ultimately, the reporting takes place via the following financial KPIs:

» **sales revenue,**
» **capital expenditure (CapEx) and**
» **operating expenditure (OpEx).**

The intention behind reporting these three KPIs is an attempt to quantify the sustainability of 'relevant' economic activities.

impact for any of the other environmental objectives. For example, if in the course of constructing a wind park a protected moorland had had to be drained then this would go against the ideas behind the Taxonomy.

This principle is referred to in the Taxonomy as 'Do No Significant Harm'. Furthermore, when the activity is carried out, so-called minimum protection provisions (such as, for example, the OECD Guidelines for Multinational Enterprises) have to be taken into account. If all of the above criteria are met then the economic activity will be classified as being **Taxonomy aligned**.

The way the Taxonomy works or how a company's environmental sustainability performance is measured can be depicted in a simplified form using filters: If all the activities in a company have been identified then these are preselected using

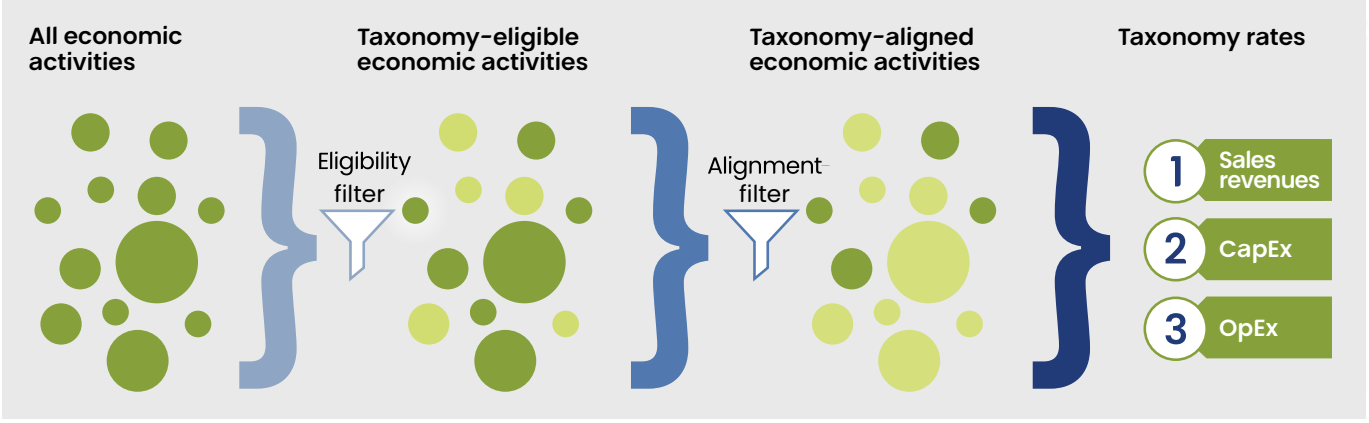

Fig. 1 Simplified depiction of the way the EU Taxonomy works (based on: IDW EU Taxonomy – A Regulated Accounting System for Sustainability Performance [IDW EU Taxonomie, Reguliertes Rechnungswesen für Nachhaltigkeitsperformance])

So-called Delegated Regulations, which flesh out the EU Taxonomy Regulation, govern whether or not an economic activity can be regarded as being relevant within the meaning of the Taxonomy and the circumstances under which it can make a positive contribution towards achieving one or more of the environmental objectives. For an activity to be relevant it would already be sufficient for it to be included in the Taxonomy Catalogue **(Taxonomy eligibility)**; however, technical screening criteria are the key for determining whether or not an activity can make a material (substantial) contribution. Yet, a substantial contribution alone would not be sufficient for it to be possible to classify an activity as being environmentally sustainable. In addition, the activity must not have a considerable adverse

the first filter, the so-called **'eligibility filter'**. In the next step, the remaining activities are assessed using technical screening criteria and with reference to so-called minimum social safeguards and, thus, generally narrowed down further through the so-called **'alignment filter'**. Ultimately, the activities that are left over will be those that actually make a positive contribution to environmental sustainability.

Please note: In the management report, besides the qualitative information on the determination of Taxonomy rates, it will also be necessary to disclose the proportion of sales revenue, CapEx and OpEx that is Taxonomy eligible as well as Taxonomy aligned in a machine-readable format (ESEF tagging).

SALES REVENUE 2023

Economic activities	SALES REVENUE € million	SALES REVENUE %[1]	SUBSTANTIAL CONTRIBUTION TO CLIMATE CHANGE MITIGATION € million	SUBSTANTIAL CONTRIBUTION TO CLIMATE CHANGE MITIGATION %[1]	COMPLIANCE WITH DNSH CRITERIA Y/N	COMPLIANCE WITH MINIMUM SAFEGUARDS Y/N	TAXONOMY-ALIGNED SALES REVENUE € million	TAXONOMY-ALIGNED SALES REVENUE %[1]
A. Taxonomy-eligible activities	**297,359**	**92.3**	**36,847**	**11.4**	**Y/N**	**Y**	**36,644**	**11.4**
Vehicle-related business								
3.3 Manufacture of low-carbon technologies for transport	294,049	91.2	36,586	11.4	Y/N	Y	36,383	11.3
of which taxonomy-aligned BEVs							27,759	8.6
3.18 Manufacture of automotive and mobility components	165	0.1	165	0.1	Y	Y	165	0.1
Power Engineering								
3.2 Manufacture of equipment for the production and use of hydrogen	28	0.0	28	0.0	Y	Y	28	0.0
3.6 Manufacture of other low-carbon technologies	3,059	0.9	68	0.0	Y	Y	68	0.0
9.1 Close to market research, development and innovation	58	0.0	-	-	-	-	-	-
B. Taxonomy-non-eligible activities	**24,925**	**7.7**						
Total (A + B)	**322,284**							

1 All percentages relate to the Group's total sales revenue.

Fig. 2 Taxonomy-eligible and Taxonomy-aligned sales revenues of the Volkswagen Group (excerpt from the 2023 Annual Report, p.206)

3. A practical example

The Volkswagen Group reported sales revenue in the amount of €322.3 bn in its 2023 annual report, Thereof €297.4 bn (92.3%) was attributed to Taxonomy-eligible economic activities - notably, the economic activities 3.3 "Manufacture of low-carbon technologies for transport" and 3.18 "Manufacture of automotive and mobility components" that Volkswagen attributes to its vehicle-related business. All the Taxonomy-eligible economic activities of the Volkswagen Group have to be attributed to the environmental objective of climate change mitigation (cf. 2023 VW Annual Report, p.197).

Overall, €36.6 bn of Taxonomy-eligible sales revenue complied with the relevant criteria for Taxonomy alignment. This corresponded to 11.4% of the Group's total sales revenue and notably related to the all-electric vehicles business and a large proportion of the plug-in hybrids (cf. 2023 VW Annual Report, p. 203).

Takeaways

- The 'E' (Environmental) in ESG refers to the ecological components of sustainability.
- Environmental aspects are the object of the EU Taxonomy (disclosure of sustainability performance via financial KPIs) and the ESRS (disclosure of sustainability information).
- The EU Taxonomy constitutes a classification system for environmentally sustainable economic activities.
- Reporting in accordance with the EU Taxonomy occurs in the management report by means of the financial KPIs: sales revenue, CapEx und OpEx.

LEGAL

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

The shareholders' meeting – It is imperative that the heirs are invited

When a shareholder dies many legal issues often arise. This applies to the holding of shareholders' meetings, especially when it is still unclear as to who will succeed the deceased. For such a case, company agreements frequently provide for the voting rights to be suspended. The Brandenburg court of appeals has now ruled on such a case and, in doing so, has significantly strengthened the rights of (unknown) heirs.

1. The appointment of a managing director with sole power of representation following a death

In the case in question, a GmbH [German private limited company] had two managing directors and one of them died suddenly. He was also a managing director with sole power of representation. For such a case, the bylaws provided that after the certificate of inheritance had been produced by the heirs the remaining managing director could request that the shares of the deceased be transferred to him. Until this could be clarified the shareholder's rights were supposed to be suspended with the exception of the right to draw profits. As the heirs were unknown, the remaining managing director himself held a shareholders' meeting where he appointed himself as managing director with sole power of representation and notified the Commercial Register of the respective change. The registration court however rejected the entry.

2. Ruling – Even unknown heirs need to be invited

The seised court of appeals in Brandenburg, in its ruling of 2.1.2024 (case reference: 7 W 66/23) sided with the registration court and declared the shareholders' resolution to be invalid because the heirs had not been invited to the meeting. The right to participate in a shareholders' meeting is one of the shareholder's inalienable rights and violating it results in the nullity of all the resolutions that were passed in the meeting. This will also be true if, according to the bylaws, the heirs have no shareholders' rights and thus also no voting rights.

Likewise, it did not matter that the heirs were unknown. In such a case, a request should be made to a probate court (Nachlassgericht) for a curator of the estate (Nachlasspfleger) to be appointed and they should then be invited to the shareholders' meeting. Prior to that, no effective resolutions can be passed.

3. Additional information

Normally, the managing directors convene the shareholders' meeting. However, if there is no managing director available then shareholders who together hold at least 10% of the share capital may convene the shareholders' meeting. In the case in question, the voting rights of the heirs would have been suspended even without the provision in the bylaws because their names had not been entered into the list of shareholders that is included in the Commercial Register. In relation to the GmbH, only those who are listed there are regarded as shareholders and are able to exercise shareholders' rights. This presents a dilemma especially when the sole shareholding managing director dies because then there is no managing director available who is able to submit an amended list (cf. PKF newsletter 05/23, p. 12). Frequently, the only option is then to request the appointment of a temporary managing director.

Conclusion

Even though, in the bylaws, it is not possible to exclude the right of the heirs to participate in the shareholders' meeting, it would nevertheless be advisable to include specific provisions in the bylaws on what should happen in the event of the death of a shareholder. For example, it would be legitimate and reasonable to mandate that the shareholders' rights of several heirs have to be exercised by a joint representative.
Processing problems can also be avoided by setting up appropriate powers of attorney for shareholders insofar as they remain in force even beyond death.

The Bundesrat has approved the German Digital Act - E-prescription & E-patient record

In the course of the digitalisation of the healthcare system, an electronic prescription service (in German: *E-Rezept*) and electronic patient records (in German: E-Akte) will be implemented as standard in the future. In this respect, on 2.2.2024, the *Bundesrat* approved two *Bundestag* resolutions on further digitalisation in the healthcare system. The legislation deals with changes to the usage of the *E-Akte* and the enhanced use of health data. The aim is to greatly widen the use of digital applications, and to make better use of the available health data for health care provision and research.

E-Rezept is already available and has replaced the pink paper prescription. Since July 2023, it has been possible to call up *E-Rezept* via the electronic health card. Since 1.1.2024, as a result of the Digital Act *(Digital-Gesetz, DigiG)*, it has been mandatory for physicians to issue prescriptions electronically. Patients get *E-Rezept* via their health card via a special app, or in the form of a printout with an *E-Rezept* code.

Another component of the Digital Act is the *E-Akte* that, from 2025, will generally be set up for all those covered by the statutory health insurance scheme. Those who do not wish to use this will have to opt out. Then, at the press of a button, it will be possible to view an entire medical history in the *E-Akte*. Findings, X-rays, test results and prescriptions for medications can all be stored there. The aim is to reduce bureaucracy and avoid multiple examinations.

'Ageing-in-place' home modifications as an extraordinary financial burden?

When a home is remodelled by older adults the question that arises with respect to the tax deductibility of the costs is whether or not the modifications that have been carried out on account of an illness or disability are necessary and, therefore, extraordinary. The Nuremberg tax court recently ruled on a case where it deemed that "proactive action" was not a sufficient argument.

Expenses that are induced by illness or disability are generally tax deductible as extraordinary financial burdens if they are necessary, thus inescapable, and extraordinary when compared with the majority of people with similar levels of income and assets.

The Nuremberg tax court, in its ruling of 6.9.2023 (case reference: 3 K 988/21), produced its decision in the case of a 70-year-old claimant who, in 2016, had been diagnosed with a serious lung disease that, over time, could get so much worse that he would become wheelchair-bound. As of September 2019, his level of disability was assessed to be 60% with the attribute 'G' (for Gehbehindert, or mobility impaired). In 2018, the costs incurred for the home modifications came to approximately €142,000. After deducting 30% for the superior standard as well as a grant from the KfW (a German government-owned development bank) the remaining amount came to €95,000; the married couple claimed a deduction for half this amount (to spread it over two years) in their 2018 income tax return.

In addition, the couple submitted a doctor's certificate that, from a medical perspective, recommended adapting the home to take account of the needs of old age and disability stemming from the multiple conditions diagnosed by internists and orthopaedists. While the medical service (of the insurance company) had been on site it had not however issued a certificate about the necessity of the measures that had been carried out because, in 2018, the disease had not yet progressed to the point where the remodelling would have been absolutely essential. In particular, the claimant did not yet have to rely on a wheelchair or rollator, although the high remodelling costs had however arisen on account of measures to provide wheelchair access, among other things.

After the local tax office rejected the claim for an extraordinary financial burden following an on-site assessment, the challenge before the Nuremberg tax court has now also been dismissed. In order for remodelling costs to be considered as an extraordinary financial burden they have to be induced on the basis of a disease or a disability. The expenses have to serve the purpose of restoring health or, at least, be appropriate for making a disease more bearable or to "satisfy a vital housing requirement". This had not been the case because, in 2018, the married couple still had the freedom to choose if the modifications should be carried out then or later - this was in any case the view of the judges in their statement that: "it is not unusual for health to deteriorate as you age, particularly in the case of older people". While it could be entirely reasonable to argue that the remodelling constituted "proactive action" in view of the worsening health situation, nevertheless, this was countered by the fact that a special expense deduction has to be of an inescapable nature.

Please note: The claimants had withdrawn their request to spread the costs over two assessment periods. The Federal Fiscal Court, in its ruling of 12.7.2017 (case reference: VI R 36/15) had already decided that a tax reassessment for equitable reasons in the case of high extraordinary costs that do not have an effect for tax purposes in one assessment period cannot be considered.

Request for information - A violation of the GDPR would not already constitute a basis for claiming compensation

Thanks to the General Data Protection Regulation (GDPR), employees have the right to seek information from their employer as to whether their personal data is being processed by the employer and, if so, then for what purpose and to what extent. If the employer fails to provide the appropriate information, then the employee can claim compensation.

The Düsseldorf Regional Labour Court (Landesarbeitsgericht, LAG) recently stated this in its ruling of 28.11.2023 (case reference: 3 Sa 285/23). The court's decision related to an employee who had been employed at a company for one month up to the end of 2016. Some four years later, he demanded information from his former employer about his personal data in the context of the GDPR. He was provided with the appropriate information. A good two years later, in October 2022 he then again requested information and asked for a data copy. The employer allowed several deadlines to expire and their initial reply was incomplete. It was only after several more requests that the employer provided complete information. The employee brought a legal action and demanded financial compensation of admittedly no less than €2,000. To substantiate this, the employee pointed out that their right to request information had been infringed several times. While the LAG dismissed the claim, nevertheless, it also clarified that the employer had violated the GDPR. However, this had not resulted in the former employee being able to claim financial compensation. The judges believed that a mere infringement of GDPR requirements was not sufficient grounds for triggering eligibility to financial compensation for non-material damages (such as, e.g., information that is not provided). This compensation is based on the assumption that the employees concerned are able to demonstrate that they have suffered damages.

Recommendation: If they are able to do so then the respective employer will normally have to pay up. Companies should thus always take seriously any claims asserted under the GDPR.

Limerick - King John's Castle und River Shannon

AND FINALLY...

"Competing on values will become more important than competing on price."

Caspar Coppetti, co-founder and co-Chairman of On AG, Zürich, which he founded in 2010 together with David Allemann and Oliver Bernhard. In Switzerland, On AG is already the market leader for running shoes.

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