General Information on the Implementation of the Data Protection Regulations of the German Federal Data Protection Act (BDSG) and Other Laws [1] Relating to Data Protection Regulations in the Offices for Administrative Fines and Criminal Matters as well as Tax Investigation Units of the Tax Administration

Foreword

The German tax authorities[2] are active in both tax administration procedures as well as in the field of criminal prosecution and prosecution of administrative offenses. In the area of criminal prosecution and prosecution of administrative offenses, they are the competent authorities for the prevention, investigation, detection, prosecution, or punishment of tax crimes and tax administrative offenses. In terms of data protection law, this activity is subject to the scope of Directive (EU) 2016/680. Accordingly, the General Data Protection Regulation (GDPR) is not applicable in this respect (Art. 2 (2) letter d GDPR). The provisions of the First and Third Parts of the German Federal Data Protection Act (BDSG) and, if applicable, more specific provisions, e.g. the German Fiscal Code (AO), the German Code of Criminal Procedure (StPO), and the German Introductory Act to the Courts Constitution Act (EGGVG), apply.

At the German tax authorities, the offices for administrative fines and criminal matters and the tax investigation units are responsible for investigating matters relevant to administrative fines and criminal matters in connection with tax crimes and tax administrative offenses. If the German tax authorities independently conduct criminal tax investigation proceedings on the basis of Section 386 (2) AO, the office for administrative fines and criminal matters assumes the rights and obligations that the public prosecutor's office is entitled to in the investigation proceedings (Section 399 (1) AO).

The tax investigation units may act either independently or at the request of the offices for administrative fines and criminal matters or the public prosecutor's office. In criminal proceedings due to tax crimes, they have the same rights and obligations as the authorities and officials of the police department in accordance with the regulations of the German Code of Criminal Procedure (Section 404 sentence 1 AO).

The following information relates to the processing of personal data by the above bodies, insofar as the processing is carried out for the purpose of prevention, investigation, detection,

[1]The laws referred to in these notes can be found on the Internet at http://www.gesetze-im-internet.de (German Federal Law) and http://eur-lex.europa.eu (European Union law).

[2]German tax authorities within the meaning of this information letter are the German Federal Central Tax Office and the tax offices (cf. Section 386 (1) sentence 2 AO; Section 1 number 2 first case of the German Tax Administration Act (FVG).

prosecution, or punishment of tax crimes and administrative offenses. Examples of personal data are information on a person but also facts connected with a person.

The following information is intended to inform you regarding:

- the purposes for which your personal data are processed,
- what rights you have under the data protection law, and
- whom to contact to enforce your rights or if you have questions about data protection.

1. For what purposes do we process your personal data?

Personal data are processed insofar as this is necessary for the performance of legally standardized tasks of the offices for administrative fines and criminal matters and the tax investigation units or if the data subject has consented to the processing.

This data processing covers in particular collecting, storing, using, transferring, retrieving, or deleting data.

The legally standardized tasks of the **offices for administrative fines and criminal matters** include:

- the apprehension, prosecution, and punishment of tax crimes, equivalent crimes, crimes within the meaning of Section 386 (2) number 2 AO, and tax administrative offenses including, where applicable, the associated effect of confiscation of the proceeds of the crime or the value of the proceeds of the crime, and
- if necessary, filing an application for confiscation of proceeds of crime or the value of proceeds of crime in independent proceedings.

The legally standardized tasks of the **tax investigation units** include:

- the investigation of tax crimes, crimes equivalent to these, crimes within the meaning of Section 386 (2) number 2 AO, and tax administrative offenses,
- the investigation of the related bases of taxation or bases of charge, and
- the detection and investigation of unknown tax cases.

The legal basis for the processing of personal data can be found in:

- the German Fiscal Code (AO),
- the German Code of Criminal Procedure (StPO),
- the German Act on Administrative Offenses (OWiG),
- the German Introductory Act to the Courts Constitution Act (EGGVG), and
- the First and Third Parts of the German Federal Data Protection Act (BDSG).

Personal data may be processed – also after the conclusion of the respective proceedings – for the fulfillment of other statutory tasks, such as for other criminal proceedings, for matters of

international legal assistance in criminal matters, for clemency matters, in order to comply with statutory retention obligations with regard to the case files, or to fulfill statutory notification obligations.

2. What rights do you have?

Insofar as personal data are affected that are processed for the purpose of prevention, investigation, detection, prosecution, or punishment for the above-mentioned tax crimes and tax administrative offenses, you are entitled to the following rights in accordance with the BDSG:

- **Right of access (§ 57 BDSG)**

  You have the right to request information about whether your personal data are being processed. If this is the case, you are entitled to further information, for example regarding the origin or the recipient of the data and the applicable storage period. However, the German tax authority may refrain from providing information or restrict the provision of information in part or in full if the information would jeopardize the investigative activities of the aforementioned bodies or other law enforcement authorities or if the identity of natural persons or confidential information would have to be disclosed.

  Moreover, the tax authority determines the form in which the information is provided. This does not imply a right to inspect files. Only if the German tax authority deems it expedient can the information also be provided by way of file inspection. Otherwise, the right to information under data protection law does not serve the defense in criminal or administrative fine proceedings and does not include the information required for this purpose. However, a right to inspect files in criminal or administrative fine proceedings may arise from other provisions, in particular the StPO.

- **Right to rectification (§ 58 Absatz 1 BDSG)**

  If the information concerning you is not or no longer accurate, you may request that it be corrected. However, this does not apply to the content of a statement (e.g. of witnesses or parties to proceedings) or to the legal assessment of facts by law enforcement agencies.

  If the accuracy or inaccuracy of the data cannot be established in a specific case, the right to correction is replaced by a right to restriction of processing.

- **Right to deletion as well as restriction of processing (§ 58 Absatz 2 BDSG)**

  You have a right to erasure of personal data in particular if the processing of your personal data is not or no longer permissible. This is the case, for example, if the retention periods for the relevant procedural files have expired. The monitoring of segregation periods and the destruction of case files are carried out ex officio.

  If deletion would impair your interests worthy of protection, or if your personal data cannot be deleted due to conflicting legal reasons, you may have a right under the legal requirements to have your data processed only in a restricted manner.

If necessary, you should assert these rights in writing.

3. Whom can you contact?

Your personal data are processed by the offices for administrative fines and criminal matters and tax investigation units of the respective tax offices Halle (Saale) and Magdeburg. The tax offices concerned are responsible for data processing in this respect.

In matters of data protection, please contact the competent tax office responsible for you. In addition, you may consult with the data protection officer there. The contact details, i.e., the functional email address, address, phone and fax number of the tax office, are published on the websites of the tax offices Halle (Saale) and Magdeburg at www.finanzamt.de.

The data protection officer is responsible for data protection issues only. He or she cannot provide any information on the content or course of proceedings conducted at the relevant offices of the tax office. Furthermore, he or she does not provide legal advice.

4. Right of appeal

If you believe that your request has not been met or has not been met in full, you can lodge a complaint with the competent data protection supervisory authority. The competent authority in proceedings concerning tax crimes and tax administrative offenses is the state commissioner for data protection of the state of Saxony-Anhalt., whose contact details you can find at the following website https://datenschutz.sachsen-anhalt.de/landesbeauftragte/kontakt.