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Tax CMS – How to Avoid Prison and Fine

The initiation of criminal tax proceedings by German tax offices, mostly as a result of innocent mistakes, according to the motto „shoot first, ask questions later“, is by now common practice, which some managing directors have already painfully experienced at first hand. The core question here is usually the demarcation between simple error correction on the one hand and (actually undesirable) punitive voluntary declaration on the other.

On 23 May 2016, the Federal Ministry of Finance issued a Decree on the Application of the Fiscal Code (AEAO) regarding Section 153 on the question of the delimitation of the declaration of rectification pursuant to Section 153 AO and voluntary disclosure pursuant to Section 371 AO. Paragraph 2.6 states: „If the taxpayer has set up an internal control system which serves to fulfil tax obligations, this may be an indication that there is no intention or negligence, but this does not exempt the taxpayer from examining the individual case in question“. The message to the legal representatives of companies is that a coherent tax compliance management system (CMS) serves to avoid allegations of organisational failure and thus significantly reduces the probability of the initiation of criminal tax investigations. Part I of the following paper will present the history and necessity of a tax CMS. Parts II and III will then present case studies from our daily consulting work. In Part IV, we share practical experiences in setting up tax compliance systems.

I. The background

Compliance management has long existed outside the field of tax law. In the area of criminal law, compliance management serves the prevention of corruption, e.g. against bribery agreements. But even beyond criminal law, German compa-



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nies need to comply with various compliance requirements, particularly under commercial and corporate law. Regulatory compliance requirements apply particularly in the regulated sectors, e.g. for banks, insurance companies and financial service providers, subject to supervision by the Federal Financial Supervisory Authority (BaFin). Compliance management is also used to prevent violations of antitrust and data protection laws. By now, auditors also want to see the GoBD documentation (German principles for proper keeping and storage of books, records and documents in electronic form and for data access) at the beginning of the audit as well as the transfer price documentation.

Companies outside Germany also know compliance management as a statutory requirement for avoiding liability or the possibility of reducing sanctions, e.g. in the USA in the context of sentencing (US Sentencing Guidelines) or in Great Britain in the context of corruption prevention (UK Bribery Act).

■ The “birth” of tax compliance management systems

As early as 2011, Germany took the first step in the right direction with the audit standard (PS) 980 of the Institute of Public Auditors in Germany (IDW), which was to comment on the principles of proper auditing of compliance management systems. On 23 May 2016, compliance management was also given a place in German tax law completely and finally, namely in the tax procedure law and tax criminal law, in which the Federal Ministry of Finance changed its Decree on the Application of the Fiscal Code (AEAO), an administrative regulation.

In its comments on Section 153 AO (correction) in no. 2.6 sentence 6, the AEAO for the first time explicitly mentions an “internal control system” (ICS) “which serves to fulfil tax obligations”. This is more commonly referred to as a tax compliance management system (tax CMS).

The background to this development was that, according to their own statements, policymakers had recognised on 1 January 2015, on the occasion of the



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renewed tightening of voluntary disclosure provisions, that there was a need for more legal certainty on the part of companies in Germany with regard to the delimitation of simple corrections (Section 153 AO) from voluntary disclosure of false or incomplete tax declarations (Section 371 AO). The Federal Ministry of Finance was then asked to formulate an administrative regulation regarding Section 153 AO.

■ **What advantages does a tax CMS offer?**

Criminal tax law is now more present for the management of companies than it was a few years ago. This is due to the considerable tightening of criminal tax law, especially since 2011. These efforts to strengthen criminal tax law are based on the highly public tax evasion cases of private individuals with untaxed foreign assets, which the German authorities processed with the so-called tax CDs. Over the years, these stricter laws have also penetrated the business sphere.

Today, members of the management board and executive management are more threatened than before by accusations of tax evasion (Section 370 AO) and breach of the duty of supervision (Section 130 AO). As the legal representatives of the company, they must fulfil the company's tax obligations, i.e. submit tax returns completely and truthfully to the best of their knowledge and belief and correct them later if necessary (Section 153 AO). In the event of violations of these tax obligations, they could face fines, penalties and also personal claims for damages under civil law if they do not intervene despite violations of the company's tax obligations and establish compliance management.

If investigative measures and charges against management and employees for potential tax evasion are to be prevented, then the rules of conduct prescribed by tax law must be observed. If the management is committed to the complete, formal and timely fulfilment of tax obligations, it creates such a Tax Compliance Management System. Legal and organisational measures taken within the company are set to prevent violations of tax regulations. Some measures may already

exist (e.g. deadline controls, representation regulations, internal guidelines or rules of conduct), which must then be documented and filed in a suitable place. Experience shows that in particular also medium-size enterprises already have systems in place for a tax-CMS. Often only the documentation or the information transfer to the employees is missing. A clean inventory is the first step for a new tax-CMS

In its ruling of 9 May 2017, the 1st Criminal Senate states for the first time that it is decisive for the assessment of the fine in accordance with Section 30 of the Act on Regulatory Offences (OWiG) to what extent a company fulfils its obligation to prevent infringements of the law and has installed an efficient compliance management system that must be designed to prevent infringements of the law. In specific terms, it states: *“For the assessment of the fine, it is also important to what extent the company fulfils its duty to prevent infringements from its sphere and has installed an efficient compliance management system which must be designed to prevent infringements. It can also play a role here whether the secondary party has optimised corresponding regulations as a result of the present criminal proceedings and designed its internal processes in such a way that comparable breaches of the laws will in any case be significantly more difficult in the future”.*

■ Designing a tax-CMS

The design of a tax-CMS can be carried out on the basis of the IDW Auditing Practice Statement 980 already mentioned above. It provides for seven basic elements to be documented: tax compliance culture, objectives, organisation, risks, programme, communication and monitoring. The scope of a tax CMS shall be subject to an adequacy review. Depending on the size of the company, the elements may vary in scope, or may even be omitted altogether. In any case, the tax-CMS should integrate well into the ongoing business and should not (negatively) influence the operative business.

The main content of the tax CMS is the analysis of (significant) tax risks. Tax risks are determined, among other things, on the basis of questions relating to specific subject areas (e.g. GoBD including process documentation, value added tax, wage tax/social security, international tax law and transfer prices, income taxes, cus-

toms duties). The risks identified are analysed to determine the extent to which controls and measures must be in place or introduced for the individual risks in order to reduce the extent of damage and the probability of its occurrence.

■ **Reviewing the tax-CMS**

An audit of the adequacy and, if necessary, the effectiveness of the measures taken by an auditor on the basis of IDW Auditing Practice Statement 980 can create even more legal certainty for the company. The certificate is issued for clearly definable sub-areas (e.g. individual tax types).

A tax CMS is considered adequate if it is capable of identifying or preventing risks of material legal infringements in good time. Effectiveness is given if the principles in the business processes are observed by the employees in accordance with their responsibility (random sampling).

II. Case study venture capital

■ **Importance of tax compliance for venture capital**

In the area of venture capital, tax compliance is particularly relevant in the context of M&A processes. In practice, it is regularly the case during the first tax due diligence carried out in a start-up that it is confronted with questions and topics which the young company had not or not fully considered to date. In larger M&A transactions, this can also have an influence on the transaction price, as investors take the risk from tax issues into account in the price.

■ **Tax compliance in start-up businesses**

Tax compliance is an extensive and difficult to grasp area, especially in Germany, for many start-ups that want to strengthen their growth by way of venture capital. We regularly observe, when accepting mandates from start-ups, that certain topics, especially income tax, but also neuralgic day-to-day taxes such as value added tax, are treated rather superficially.

In the case of a venture capital investment, the consultants commissioned by the investors meticulously examine these neuralgic tax types in particular. Historical errors can mean an unplanned later outflow of liquidity from the target for an investor, which can sometimes significantly reduce the calculated return.

Tax compliance should therefore play an important role for all start-up founders. Tax compliance actually begins with the selection of the tax advisor. He often takes over the function of an outsourced accounting and tax department for young companies. Start-up founders should therefore attach particular importance to the tax advisor's experience with young companies seeking later financing with venture capital.

■ Case Study – Tax due diligence for start-ups

From the perspective of a tax due diligence auditor, as mentioned above, some neuralgic tax types are of particular importance. Start-ups often develop quite dynamically in the early stages, also in their corporate structures. From a tax point of view, this dynamic development raises matters which – if not correctly recognised and treated – can make it difficult for venture capital investors to join at a later date.

In the area of tax assessment, the question arises whether all the necessary tax returns have been submitted and assessed accordingly. Outstanding tax assessments or the absence of tax returns whose assessment periods have already passed several years ago are indicators of a lack of tax compliance understanding by the target. Regarding tax returns that have already been submitted, the accuracy and completeness of their content is becoming increasingly important. Whereas “in the past” – i.e. until around ten years ago – companies were required to record almost exclusively numbers, tax returns currently include a large catalogue of supplementary questions on content, which must also be recorded with the same accuracy and correctness as the numbers. In particular, the areas of “contracts with related parties” and “shareholders during the financial year” are often scrutinised by the tax office in the event of a tax audit and can increase the risk of back taxes having to be paid in the event of tax problems in these areas.

In addition to the classic tax returns, which must be submitted on an annual basis, there are also tax application and reporting obligations. These increasingly also concern the reporting of “tax arrangements” in the sense of the EU Directive 2011/16/EU, which is to be implemented in Germany from 2020 via the planned Sections 138d-138i AO. Companies are already required to report significant shareholdings abroad in accordance with Section 138 (2) AO. Non-compliance with such reporting and notification obligations can also be used as a formal “latching point” for additional tax payments in the context of external tax audits.

Tax compliance is also of considerable relevance for venture capital targets in a core area of many start-ups: the IT sector. Based on the provisions of Sections 140-148 AO, which are rather unspectacularly referred to as “regulations on the keeping of books and records”, the Federal Ministry of Finance drew up, for the first time in November 2014 and most recently in July 2019, the principles known as “GoBD” for the proper keeping and storage of books, records and documents in electronic form and for data access. From the point of view of the tax authorities, these define how digital accounting should be structured in order to comply with the tax regulations. Start-ups in particular are increasingly relying on cloud-based ERP, CRM and accounting systems that can be used via various apps or SaaS solutions. The clarification of whether these systems can be used for fiscal purposes according to the GoBD in Germany without further ado is often omitted. In particular, the application according to Section 146 (2a) AO that such systems may also store and process data outside Germany is often not made. Due to the possible formal deficiencies, the tax office has the possibility of adding estimated values in the case of a tax audit.

In addition to these rather tax-theoretical areas, companies, in which venture capital investors want to invest, rely on a wide range of employee incentives. In the fight for the best minds in the respective industries, it is common practice to offer employees a wide range of benefits in addition to a traditional salary. These benefits can range from simple discounts on or free provision of public transport tickets, bicycles and vehicles to retirement provision topics, health care, canteen solutions and multiple company events and up to participation in the start-up through stock option plans (these often take the form of SOPs or VSOPs). The multitude of possibilities and the possibly rapidly growing number

of employees benefiting from them increase the associated wage tax risk of the company. Not all benefits or incentives perceived as “common” in the start-up world are generally exempt from income tax. However, possible tax exemptions are in turn linked to documentation and recording obligations. In addition, benefits to non-employees may also be subject to flat-rate income tax in accordance with Section 37b EStG. Therefore, tax due diligence audits often reveal that target companies sometimes carry considerable financial risks from income tax. The above-mentioned benefit, incentive and employee participation regulations result in “hidden profit distributions” within the meaning of Section 8 (3) of the German Corporation Tax Act (KStG) for income tax purposes, if such payments are made to shareholders or their relatives and are not appropriate from a tax point of view.

In addition, there are commercial and tax balance sheet problems for start-up companies. Start-ups have business transactions that may be problematic with regard to their presentation on the balance sheet. This concerns the phase up to the achievement of the product’s maturity, where it concerns the correct disclosure of expenditures and, if necessary, tax balance sheet-obligatory capitalisation circumstances from a tax-compliance view. Differing accounting regulations, especially in the area of internally generated intangible assets, result in some cases in significantly different accounting standards for commercial and tax balance sheets. In the subsequent phase of the product sale, the partly complex regulations of the sales tax come to bear, which are controlled decisively by the correct posting in accounting. In addition, there are questions relating to revenue and profit recognition, especially with regard to so-called recurring revenues or SaaS products. Incorrect accruals and deferrals can lead to periodically incorrectly recorded profits, which result in an incorrect tax burden.

III. Case study real estate

■ Importance of tax compliance for real estate

In the real estate sector, tax compliance is an important issue both at the real estate transaction stage and in the ongoing property management phase. Especially

in the case of larger real estate properties or real estate portfolios, a large number of recurring processes (keyword: mass procedure) regularly occur. The fiscal devil here, however, is often in the detail, making it necessary and expedient to filter essential topics already at the interface to the operating cost accounting and to recognise fiscal pitfalls in time. This can also have an influence on the transaction price at the exit – be it in the asset or share deal – since investors take into account the risk from tax circumstances in the price.

■ Tax compliance in a real estate property company

Tax compliance is a comprehensive and often underestimated or even neglected area, especially for large real estate properties or real estate portfolios. Structurally, it is particularly important here to coordinate a large number of parties, such as the managing director and manager of the real estate company, often domiciled abroad, a domestic or foreign portfolio or asset manager, as well as the property manager domiciled at the location of the property and also external tax advisors, often differently for transactions and ongoing tax compliance. Tax-relevant information losses and problems often arise at the interfaces between the various parties involved. Here it is not uncommon to observe that the “transaction team” of the portfolio manager withdraws after the acquisition and the subsequent “asset management” is more focused on the administration of ongoing operating costs and the development of the property than on tax issues. The usually available tax due diligence report is often pushed into the background in the course of ongoing property management or is, in the worst case, not even known to the asset management team. This can quickly become the cause of mistakes with regard to taxation.

In addition to unexpected tax payments and the associated liquidity burdens in the course of later tax audits, tax issues become relevant again at the latest during an exit – often years later – and can then often no longer be viewed in detail, which regularly leads to negotiations in the transaction process about purchase price retentions to cover expected tax risks.

Tax compliance begins here with the selection of the respective service provider and coordination of the interfaces through to continuous monitoring.

■ Case Study – Tax due diligence for real estate property companies

Experience has shown that the following tax issues are particularly important in the context of ongoing real estate tax compliance as well as in the course of the tax due diligence carried out as part of the exit:

The central point of discussion in every transaction is the liability of the business transferee for tax debts according to Section 75 AO. Although the liability for real estate transactions is limited in particular to value-added tax and, in addition, mostly to deferred risks from trade tax and wage tax, the issue regularly leads to questions about the tax history of the purchaser and subsequent discussions of potential tax risks, particularly in the case of large properties and real estate portfolios, solely due to the regularly significant magnitudes involved. The discussion is undoubtedly justified, since according to the law the purchaser is liable for taxes incurred prior to the transfer of ownership, with both objective and temporal restrictions.

The liability applies to operating taxes incurred in the year of transfer and in the previous year. The liability period also depends on the purchaser's notification of the transfer of the business, since the relevant taxes must be assessed within one year of the purchaser's notification of the business. It is therefore strongly advisable to register the change of ownership with the relevant tax office as soon as possible. The problem here are situations in which the notification was simply forgotten which creates an ongoing liability risk for the purchaser even years after the transaction – e.g. as a result of tax assessments after a tax audit for previous years.

Another constant feature is the input tax correction in accordance with Section 15a UStG (German Value Added Tax Act); according to this, input tax amounts on so-called objects of correction (in practice, all input tax amounts from the acquisition and construction of land and buildings, often also from essential repairs and maintenance expenses that do not recur regularly as well as housing improvements) are to be subject to special observation within ten years of first use.

If the real estate transaction takes place in the form of a so-called transfer of going concern – which is regularly the case for leased real estate and continued let-

ting – the seller’s input tax documentation must be handed over to the purchaser accordingly and continued by the purchaser (Section 15a (10) UStG). Any incorrect or incomplete recording of a relevant correction object would cause problems here, especially with large properties or complex real estate portfolios. Therefore, both the takeover of the so-called Section 15a documentation from the seller as well as the continuation of the documentation should be done with the utmost care, since consequential errors would otherwise be possible, which, moreover, can often only be remedied in later tax audits in a time-consuming and cost-intensive manner, sometimes even not at all. Any resulting adjustments, to the extent that corresponding tax clauses exist, will then be charged to the purchaser at least for the period after the transfer of ownership, benefits and burdens.

In the operative business, the question of ongoing input tax deduction is often underestimated. On the one hand, in the case of newly built buildings, which may even have been successively completed over a period of years, as well as in the case of old buildings which are to undergo a comprehensive renovation following the purchase and move-out of the previous tenants, the question arises as to the applicable input tax deduction, especially at this stage of a later use. This concerns the decisive question as to whether and to what extent the property will in the future be let to tenants with turnover exempt from VAT, for whom no option for VAT and thus no input tax deduction is possible (e.g. doctors, public authorities, banks, insurance companies) or to tenants with exclusively turnover subject to VAT, where an option for VAT is possible and where the right to complete input tax deduction exists (e.g. industry, law firms, auditors and tax consultants, trade, hotels). In all cases of vacancy – for whatever reason – the intention of later use is decisive. The intended use must be decided at an early stage in the procurement of services, for example, when the first planning and construction invoices are received. The intended use must be objectively proven and declared in good faith. Examples for such evidence for intended use are, e.g. rental contracts, rental advertisements, broker commissions, correspondence with prospective tenants but also sales concepts and calculation documents. The “ideal tax case” would thus be a brokerage order issued in advance in writing with the condition that talks are to be held only with tenants in whose case VAT can be opted for; unfortunately, this case is rather rare in everyday practice – for whatever reasons. The decisive factor for the tax office is the overall picture of the situation; pure assertions are in any case insuf-

ficient. Instead, concrete evidence is required that is subject to a strict standard of review. Any uncertainties in this area are therefore regularly to the detriment of the entrepreneur and then lead to a proportional or complete refusal of the input tax deduction. Thus, utmost care is urgently recommended in this area right from the very beginning, also with regard to the documentation of the future intention to let. In everyday tax consulting practice, however, this is unfortunately often an underestimated problem with corresponding surprises in later tax audits.

No less important is the question of the deduction of input tax from invoices. As VAT has become extremely formal in this respect on the basis of the law and case law of the Federal Fiscal Court and the European Court of Justice, the verification of invoice details such as the name and address of the company providing the service and of the recipient of the service as well as the description of the service etc. must be done with particular care (for details see Section 14 (4) UStG). In practice, invoice receipts and reviews are mass procedures, which unfortunately do not receive the necessary attention in day-to-day business. In our experience, weak points here are not only the lack of necessary VAT know-how but also ambiguities regarding personnel responsibility or the assignment of inputs to specific tenants or parts of buildings. The VAT principle “complete input tax deduction or not at all” and only in the remaining special cases, in particular incoming invoices relating to the entire building (e.g. roof, heating, elevator), application of the area-related average rate is occasionally applied in such a way that “in case of doubt” the average rate is often always applied; correspondingly incorrect input tax deductions on inputs actually allocated to specific tenants or parts of buildings are thus practically unavoidable. Even though the focus of property accounting, which is regularly carried out by the external property manager, is on the accounting of operating costs, appropriate processes and controls should ensure the correct treatment of all incoming and outgoing VAT-relevant invoices at this early stage. Owing to the mass procedure, errors in this area often accumulate over years and can therefore – discovered in later audits – lead to considerable administrative effort and costs in the course of processing and correction, in the worst case to considerable tax arrears payments.

thus to trade tax being levied on the entire income of the property company, represents a major challenge when using real estate property companies domiciled in Germany in the legal form of an asset management partnership (classic: GmbH & Co. KG). In practice, these are regularly cases of the provision of (commercial) additional services; cleaning and security service, reception service/concierge, but also the co-leasing of air conditioning systems for IT server rooms, refrigeration systems, freight elevators or the operation of canteens in the building are cited here as (non-exhaustive) examples. All these constellations are at great risk from a trade tax point of view and require careful examination and, if necessary, structuring in each individual case as part of the fund structuring process. Fortunately, in the so-called “shopping centre judgement” of 2016, the Federal Fiscal Court has in the meantime helped establish a certain legal certainty for the areas of centre management and advertising association to the effect that these activities are usually carried out in the interest of the landlord and are therefore to be attributed to the trade tax-free letting. However, the corresponding questions and investigations within the scope of a real estate tax due diligence are obvious.

If real estate corporations domiciled in Germany are used (as “a propco”), trade tax exemption exists as a result of the so-called extended reduction (Section 9 No. 1 Sentence 2 of the German Trade Tax Act (GewStG)), insofar as the company’s activities are limited exclusively to the leasing or letting of real estate. This, at first sight inconspicuous prerequisite, causes problems in practice – as already mentioned above for the trade tax exemption of companies of the GmbH & Co. KG legal form – if so-called operating equipment, in particular air-conditioning systems for server rooms, refrigeration systems, freight elevators, grease separators etc. is also rented out within the scope of the rental. The Federal Fiscal Court has issued new guidelines and eliminated previous uncertainties in current judgements (case number III R 36/15 and III R 5/18). The judgments concerned, on the one hand, the co-leasing of paint booths at a car dealership and, on the other, the co-leasing of equipment such as beer refrigeration systems, cold storage rooms, refrigerated counters and buffet systems), which were leased together with a hotel building. The Federal Fiscal Court has now clarified that the requirement of the exclusivity of pure building letting is meant literally and that no *de minimis* limit is granted; thus even the smallest and seemingly insignificant co-leasing of operating equipment, insofar as it serves the operation of

the tenant and is not absolutely necessary for the general use of a building, e.g. escalators or passenger lifts (here instead of staircases), is subject to taxation. Fortunately, however, the Federal Fiscal Court also expressly referred in its rulings to possible arrangements, in particular the spin-off of trade tax activities to a sister company. Corresponding circumstances will therefore continue to lead to corresponding questions and risk assessments in tax due diligence scenarios; forward-looking design is therefore more important than ever.

In tax structuring practice, both the above-mentioned trade tax risks unfortunately also represent a reason for avoiding the establishment or operation of property companies domiciled in Germany and switching to propcos domiciled abroad, in practice often Luxembourg, because this enables the actors to avoid the establishment of a permanent place of business in Germany required for the creation of the trade tax liability.

Last but not least, it should be noted that real estate purchase agreements often provide for purchase price adjustment clauses, usually in the event of fulfilment or non-fulfilment of conditions in the future. With regard to real estate transfer tax, care must be taken to ensure that the corresponding real estate transfer tax assessments are made provisionally in accordance with Section 165 AO with a view to the final determination of the purchase price. If this is not the case, the abolition or amendment of real estate transfer tax assessments is only possible under very restrictive conditions (Section 16 of the German Real Estate Transfer Tax Act (GrEStG)), which will not be discussed in more detail here.

The task of a functioning tax CMS is to identify the tax risks mentioned above by way of example and – depending on the structure of the real estate or the real estate portfolio – other tax risks in good time so that the management can meet its tax declaration obligations, avoid mistakes and counteract problems in good time.

IV. Practical experience in setting up tax compliance systems

The topic of tax compliance is – as this article also shows – currently on everyone's lips. As already discussed in the beginning of this paper, the topic has gained in

practical relevance in particular by the amendment of the Decree on the Application of the Fiscal Code (AEAO) regarding Section 153 AO of 23/05/2016, Paragraph 2.6 of the AEAO regarding Section 153 AO reads: *“From the different forms of intentional misconduct, already conditional intention shall be deemed sufficient in the case of tax evasion. (...) If the taxpayer has set up an internal control system which serves to fulfil tax obligations, this may be an indication that there is no intention or negligence, but this does not exempt the taxpayer from examining the individual case in question“.*

The “internal control system” mentioned here has since been equated with the term tax compliance or tax compliance management system (TCMS). The GoBD, already mentioned in section 2 of this paper, has also significantly improved the standing of the systematic documentation of internal processes for fiscal purposes.

The objective of a tax compliance management system is therefore to identify and document the processes and bodies responsible for compliance with tax regulations. In cases of doubt, the documentation is intended to exonerate the company and its management of the accusation of reckless trading in case errors that have led to reduced taxes. Beyond this objective, however, there is no recipe book on how such a tax compliance management system should be designed, or which concrete contents it must absolutely have.

The pronouncements of the Institute of Public Auditors in Germany (IDW) serve as orientation in this matter. With their publication of the Auditing Practice Statement 1/2019 with reference to IDW PS 980, the IDW has created a guideline (“Principles of proper examination of Compliance Management Systems”) on the contents that a TCMS should ideally have.

In our experience, however, the practical implementation of a complete TCMS depends on the respective circumstances of the individual case. There is often a great deal of heterogeneity in existing management, compliance and control systems, particularly in medium-sized companies, but also in special-purpose entities established by large global players, which play a decisive role in the real estate, private equity and venture capital sectors.

■ Challenge of project management

In addition to the practical challenges described below, the implementation of a TCMS in medium-sized companies poses particular challenges in the areas of project management and change management.

The commercial management is often responsible for project management at the client level. However, a consultant commissioned by the company is particularly suitable to play the role of an external project manager. The challenge lies in designing a stringent timeline within which the TCMS is to be introduced in the company. The various practical challenges – especially the IT landscape – are often added as special, time-consuming components, so that the implementation plan needs to be adapted on an ongoing basis.

In the area of change management, it is necessary, especially as an external consultant, to carry out the process recording of the actual system and the subsequent implementation of the target system, which may deviate from the previous practice in the company, taking into account the change processes associated with this in the company and with the employees involved. A TCMS which is implemented and documented, but is not accepted and lived in the company, does not fulfil the requirements of paragraph 2.6 of the AEAO regarding Section 153 AO.

■ Practical implementation challenges

The practical challenge in the first stage is to analyse the existing structures and systems and to assess their suitability for incorporation in the TCMS. Many companies, even medium-sized businesses, already have a broad structure of individual instructions and processes which, taken together, already represent important building blocks of the later TCMS.

The second stage is the analysis of the IT landscape used in the area of accounting. Tax compliance is closely linked to the requirements of the GoBD, which require a complete, retrograde and prospective verification of figures from the source into the tax return. The IT systems used must also ensure that the data is audit-proof and can be evaluated within the statutory retention period of ten years. In many

cases, the IT landscape therefore represents the most intensive area of TCMS, since especially in medium-sized companies no document management systems are yet in use and interfaces between programs (for example, between ERP and accounting or CRM and ERP) are not sufficiently audit-proof. At this point, the implementation of TCMS is often difficult, as IT projects or the introduction of new software may run parallel to the further process and influence it at various points.

In the third stage, the challenge is to document and analyse the results and processes of the TCMS in a meaningful way. Here, too, it makes sense to build on existing systems or representations in the company. Employees who work on essential compliance processes – usually the processing of documents – should be made familiar with the regulations by means of training courses and/or manuals.

TCMS are living systems. As stated above, they can be effective against the background of the prevailing tax provisions only if their compliance can be verified. In practice – after the introduction of TCMS – annual check-up appointments and, if necessary, adjustments to the existing regulations have proven to be useful. This review permit the regulations to be kept up to date and, if necessary, adjustments to legal changes to be made.

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