

INTERNATIONAL TAXATION PRACTICE GROUP (ITPG)

GoBD Requirements Regarding Accounting Obligations and Annual Audits

By **Bernhard Schwechel**

The fact that corporate operations are increasingly recorded electronically and all records legally requiring preservation are in fact preserved prompted fiscal authorities to issue a letter from the Federal Ministry of Finance (BMF) on 14 November 2014, which articulates proper accounting requirements for IT-based accounting systems (principles regarding the proper keeping and preservation of books, records and documents in electronic format and regarding data access (GoBD)). This updated administrative directive combines the principles of proper DP-based accounting systems (GoBS) and the principles for data access and verifiability of digital records (GDPdU) and also adds some new principles.

The contents of the new additions included in the administrative directive are structured into requirements concerning record management, recording of transactions in chronological and



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thematic order, the requirement and format of an internal control system, data security, immutability and recording of changes, storage instructions and requirements of transparency, verifiability and data access.

The fiscal authorities define the scope of proper record keeping by means of a catalogue of information to be included in each transaction record. Meeting the requirements for timely accounting involves a distinction between cash and non-cash transactions. As a general rule, while non-cash transactions only require recording within 10 days, cash transactions must be recorded on the same day.

The fiscal authorities derive the necessity of an internal control system from Section 146 of the German Federal Tax Code [Abgabenordnung]. At the same time, the letter of the Ministry of

Finance does represent a tightening of the law in that the description of the internal control system is to be included as a component in procedural documents. The Ministry also calls for protecting data processing (DP) systems within the scope of GoBD against loss.

Furthermore, the fiscal authorities tightened requirements on storing DP-based records. Electronic documents have to be preserved in a transparent manner over the entire retention period. The ministry also specified the requirements for immutability or mandatory recording of changes, so that a DP procedure has to ensure that no information that ever contributed to the processing of those changes can be suppressed or otherwise disguised or deleted.

One of the fiscal authorities' major points of focus is the indispensable need for comprehensible structures in procedural documentation for each DP system. Procedural documentation not only comprises general documentation but also user documentation, technical documentation and operational documentation, and its chronological order should correspond to the actual one over the entire retention period. The significance assigned to procedural documentation by the administrative directive suggests that clients should prioritize creating and maintaining proper procedure documentation going forward.

However, the question as to whether GoBD compliance audits should be included in annual audits has not been finally settled. It will depend in particular

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on whether the GoBD should be regarded as principles of proper accounting. If we regard the GoBD as a more specific version of the GoB then it would come under the required scope of the audit and become a mandatory audit component. However, this interpretation is rejected by the Institute of Public Auditors in Germany (IDW), according to whom the GoBD is not a legislative provision pursuant

to Article 120 para. 1 of the German Federal Tax Code. Hence, they fail to be binding for taxpayers and courts. At the same time, directives from the fiscal authorities have always guided certain business practices. Yet, according to the position represented here, taxpayers meeting fiscal authorities' requirements in order to avoid possible legal action does not resemble business practices. Rather, the fiscal authorities' competence is merely that of an auditing body, while the definition of legal regulation is



a matter for lawmakers. Therefore, the GoBD is not to be regarded as a specification of proper accounting principles under trade law.

Regardless of the possibility that the GoBD might qualify as a specification of the GoB, thereby becoming a mandatory component of annual audits, the administrative directives may be regarded as a benefit for annual auditors. Due to the tightened documentation requirements from the GoBD, some control procedures in connection with accounting processes are already relegated to

the taxpayer, so that audit activities in this area can essentially be reduced to an acknowledgement of taxpayers' control procedures.

Furthermore, the GoBD requires auditors to advise their clients. Offering clients an audit simulation using the data analysis simulation software "IDEA" could therefore help to rectify possible inconsistencies or erroneous records ahead of an actual tax audit, and an external auditor's professional skills may be of great help for composing procedure documentation.