

Expansion of Transparency Register notification obligation – extensive (subsequent) reporting requirements for foreign legal entities

AS A RESULT OF THE SANCTIONS ENFORCEMENT ACT II¹, FOREIGN LEGAL ENTITIES HOLDING REAL ESTATE IN GERMANY ARE NOW ALSO REQUIRED TO NOTIFY THE TRANSPARENCY REGISTER UNDER ANTI-MONEY LAUNDERING LAW. WHO IS AFFECTED BY THIS CHANGE IN THE LAW, WHAT IS THE DEADLINE FOR SUBMITTING NOTIFICATIONS AND WHAT ARE THE CONSEQUENCES FOR ENTITIES THAT MISS THE DEADLINE FOR IMPLEMENTING THE NEW RULES?



Summary

- On 19 December 2022, the German Federal Parliament (*Bundestag*) passed the Second Act on the More Effective Enforcement of Sanctions (Sanctions Enforcement Act II), which came into force on 28 December 2022.
- Among other changes, the Sanctions Enforcement Act II extends the scope of the German Transparency Register notification obligation to include foreign legal entities that hold real estate located in Germany directly or through real estate holding companies (special purpose vehicles).
- Foreign legal entities were previously only required to report their ultimate beneficial owners to the

Transparency Register if they were acquiring real estate in Germany through asset deals (as of January 2020) or share deals (as of August 2021).

- Under the new legislation, foreign legal entities already holding real estate in Germany are now also required to notify the Transparency Register.
- The Transparency Register must be notified by the end of transitional period expiring on 30 June 2023.
- Entities that fail to notify the register or fail to do so before the deadline risk — in a standard case — a fine of up to EUR 150,000 and their name being published by the supervisory authority in a list of sanctioned legal entities.

¹ German Federal Law Gazette (*Bundesgesetzblatt*) I 2606.



Current situation and context

Despite the current adverse conditions on the real estate market — not least due to rising construction costs and interest rates — German real estate continues to be a sought-after investment, especially for foreign investors. However, the German legislator still considers the real estate industry in general as a high-risk sector for money laundering, particularly where foreign entities are involved in the acquisition of real estate. Share deals and complex corporate structures involving foreign shell companies are thought to provide ripe conditions for money laundering.² This has made the real estate sector a focus of anti-money laundering regulation in Germany for many years. The Sanctions Enforcement Act II further increases the already extensive requirements imposed under German anti-money laundering law.

The new anti-money laundering regulations resulting from the Sanctions Enforcement Act II include a requirement for many foreign legal entities (i.e. legal entities with their registered office outside Germany) that already own real estate located in Germany or hold shares in corresponding real estate holding companies to notify the German Transparency Register. However, this newly introduced requirement is merely the latest move in a successive tightening of the regulations in this area and is therefore not entirely unexpected.

Changes to the Transparency Register notification obligation for foreign legal entities

The German Money Laundering Act (GwG) originally only required legal entities based in Germany to report the information on their ultimate beneficial owners listed in Section 19 (1) GwG to the Transparency Register introduced in 2017.

As of 1 January 2020, this obligation was extended to legal entities with registered office outside Germany, provided they have committed to acquire ownership of a property

located in Germany and have not already submitted the information on their ultimate beneficial owners pursuant to Art. 1 No. 15 lit. c of Directive (EU) 2018/843 and according to Section 19 (1) GwG to another transparency register of an EU member state (Section 20 (1) sentence 2 GwG, superseded version). At this stage, the German Federal Council (*Bundesrat*) even proposed a regulation that also included the holding of real estate.³ This proposal was ultimately rejected, however, and the requirement to notify the Transparency Register remained restricted to entities acquiring real estate.⁴

The Transparency Register and Financial Information Act (*Transparenzregister- und Finanzinformationsgesetz*)⁵ extended the scope of the notification obligation of foreign legal entities as of 1 August 2021 to include entities acquiring real estate by way of certain types of share deal by adding the phrase “*if shares within the meaning of Section 1 (3) of the Real Estate Transfer Tax Act (Grunderwerbsteuergesetz) are merged with (the entity) or are transferred to it, or if it holds a ultimate beneficial interest within the meaning of Section 1 (3a) of the Real Estate Transfer Tax Act by virtue of a legal transaction*” to Section 20 (1) sentence 2 GwG.

Recent changes due to the new Sanctions Enforcement Act II

With the Sanctions Enforcement Act II, which has been in force since 28 December 2022, the German anti-money laundering law legislator has extended the Transparency Register notification obligation of foreign legal entities to include entities that merely hold real estate or shares in corresponding real estate holding companies. The current version of Section 20 (1) sentence 2 GwG reads (emphasis by the authors): “*The obligation under the first sentence shall also apply to associations with registered office outside Germany if they **hold** ownership of real estate situated in Germany or commit to acquiring such ownership, if shares within the meaning of Section 1 (3) of the Real Estate Transfer Tax Act are merged with or are transferred*

² German Federal Ministry of Finance, Sector-specific risk analysis 2020, Chapter 7.3 (p. 45).

³ Parliamentary publication of the *Bundestag* 19/13829 p. 132 (no. 19).

⁴ Parliamentary publication of the *Bundestag* 19/15196 p. 46 (re no. 19).

⁵ German Federal Law Gazette (*Bundesgesetzblatt*) I 2083.



to them, or if they hold a ultimate beneficial interest within the meaning of Section 1 (3a) of the Real Estate Transfer Tax Act by virtue of a legal transaction.”

The extended scope of circumstances requiring notification to the Transparency Register is accompanied by a transitional provision under Section 59 (13) GwG. This transitional provision sets a deadline of 30 June 2023 for foreign legal entities affected by the amendment of the law resulting from the Sanctions Enforcement Act II to submit the required information to the Transparency Register.

What do foreign companies need to do?

As of 30 June 2023, all legal entities domiciled outside Germany that hold real estate in Germany or shares in corresponding real estate holding companies within the meaning of Section 1 (3) and (3a) Real Estate Transfer Tax Act (*Grunderwerbsteuergesetz*) are required to submit the information on their ultimate beneficial owners listed under Section 19 (1) GwG to the German Transparency Register.

To this end, firstly the ultimate beneficial owners of the legal entity concerned must be identified in accordance with the provisions of German anti-money laundering law (Section 3 GwG) and, subsequently, the following information (cf. Section 19 (1) GwG) on the ultimate beneficial owners must be provided to the German Transparency Register:

- First and last name
- Date of birth
- Place of residence
- Nature and extent of ultimate beneficial interest
- All nationalities

However, this obligation to submit detailed information to the German Transparency Register does not apply to foreign legal entities that have already reported the above-mentioned information on their ultimate beneficial owners to a transparency register of another EU member state.

As a first step, foreign real estate investors should therefore promptly check whether the newly introduced transparency register notification obligation applies to them. If this is the case, it should be checked in a second step whether the obligation has already been fulfilled in connection with acquisitions of other German real estate properties since January 2020 (by way of an asset deal) or August 2021 (by way of a share deal). If this is not the case, the required information must be submitted to the German Transparency Register by 30 June 2023, unless the relevant information is already filed with a transparency register of another EU member state.

Foreign legal entities that have already reported the above-mentioned information on their ultimate beneficial owners to the German Transparency Register in connection with the acquisition of real estate are not required to issue a subsequent notification. However, such entities need to bear in mind that the reported data needs to be kept consistently up to date in accordance with Section 20 (1) GwG and that the Transparency Register must be notified of any changes immediately.

Consequences in the event of late (subsequent) reporting

If the notification deadline is missed or if changes to the information on ultimate beneficial owners subject to mandatory reporting to the Transparency Register are not reported, the parties concerned may be charged with an administrative offence and in some cases even face significant fines.

If legally required information on ultimate beneficial owners is intentionally or recklessly not reported, is reported inaccurately, not reported fully or not reported within the deadline to the Transparency Register, or if changes to such information are intentionally or recklessly not reported accordingly to the Transparency Register, this constitutes an administrative offence pursuant to Section 56 (1) sentence 1 no. 55 GwG, which in a standard case is punishable with a fine of up to EUR 150,000 in the case of intent and up to EUR 100,000 in the case of recklessness.



In addition, final rulings imposing fines pursuant to Section 57 GwG are published on the website of the German Federal Office of Administration (*Bundesverwaltungsamt* – competent supervisory authority for the Transparency Register) with the name of the sanctioned legal entity and the specific violation for a period of five years. This type of public “naming and shaming” could damage the reputation of the affected legal entities.

Conclusion

As a result of the amendment of Section 20 (1) sentence 2 GwG brought about by the Sanctions Enforcement Act II, many foreign companies holding real estate located in Germany are now faced with an extensive (subsequent) notification obligation and must submit information on their ultimate beneficial owners to the German Transparency Register. Particularly in light of the short transitional period, which expires on 30 June 2023, the considerable risk of fines and of the names of sanctioned legal entities being published by the competent supervisory authority, foreign legal entities need to check to what extent they are required to submit a (subsequent) notification as soon as possible.

Even if there a subsequent notification is not required, care should be taken to keep reported information up to date and to report any changes to the Transparency Register without delay.

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