

Client Briefing

May 2023

Foreign Entities holding Real Estate in Germany must register in the German Transparency Register by 30 June 2023

The reporting obligations to the German Transparency Register now include real estate in Germany held by foreign corporations and partnerships. The reporting deadline for these entities is ending on 30 June 2023.

Foreign entities must register in the German Transparency Register not only in case of new acquisitions of real estate in Germany but also when such foreign entity is already holding such real estate. The transitional period granted for such cases in order to comply with their new reporting obligation will end on 30 June 2023. Foreign entities affected should be entered in the German Transparency Register, if they are not already entered in a transparency register of an EU Member State. Due to the approaching deadline, we recommend that foreign entities holding real estate in Germany review whether the reporting obligations have been complied with.

I. Reporting Obligations in case of Real Estate Acquisitions

In recent years, Germany has strengthened reporting obligations for corporations and partnerships with their registered office abroad (foreign entities) acquiring and holding real estate in Germany. The obligation to notify the Transparency Register and to disclose the ultimate beneficial owner (UBO) has already existed for foreign entities in the following cases:

- Acquisition of real estate located in Germany since 1 January 2020;
- Merger or transfer of at least 90 percent of shares (directly or indirectly) in a corporation or partnership with real estate located in Germany (Section 1 para 3 of the German Real Estate Transfer Tax Act, Grunderwerbssteuergesetz - GrEStG) since 1 August 2021; and
- Acquisition of beneficial ownership of at least 90 percent (directly or indirectly) in a corporation or partnership with real estate located in Germany (Section 1 para 3a GrEStG) since 1 August 2021,

as set out in Section 20 para 1 sentence 2 of the German Money Laundering Act (Geldwäschegesetz – GWG).

II. New Reporting Obligations since 28 December 2022

In the course of an extension of Section 20 para. 1 sentence 2 GWG foreign entities must also report their UBOs to the German Transparency Register if they are merely holding real estate in Germany. As a result, in addition to new acquisitions, existing cases now also must be recorded. The law intends to ensure greater transparency in domestic real estate held property by foreign entities. The reporting obligation therefore applies to the following cases:

- (Direct) ownership of real estate located in Germany;
- Ownership of at least 90 percent (directly or indirectly) in a corporation or partnership owning real estate located in Germany.

III. Exemption from the Reporting Obligations

The reporting obligation shall not apply in the aforementioned cases only if the entity with its registered office abroad has already transmitted the information to another register of an EU Member State. However, the notification of beneficial owners to the transparency register of a non-EU member state (e.g. EEA state) is not sufficient.

IV. Transitional Period will end 30 June 2023

The transitional period granted for existing cases in order to comply with their new reporting obligation pursuant to Section 20 para. 1 GwG will end on 30 June 2023. **Hence, foreign entities affected by the above must be entered in the German Transparency Register on short term if they are not already entered in a transparency register of an EU Member State.**

V. Sanctions

Non-compliance with the reporting obligations can lead to fines of EUR 100,000 (negligent misconduct) up to EUR 5,000,000 or 10 percent of the total turnover achieved by the entity in the financial year preceding the decision by the authorities in severe cases. In addition, there is the sanction of "naming and shaming", allowing the imposed and legally binding fine to be published.

Key advice: Due to the approaching deadline on 30 June 2023, we recommend foreign entities holding real estate in Germany to review whether the reporting obligations under the German Money Laundering Act have been complied with and, if necessary, to fulfil them or catch up on them.

This client information contains only a non-binding overview of the subject area addressed in it. It does not replace legal advice. Please do not hesitate to contact us for this client information and for advice:



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