THE FISCAL CODE OF GERMANY[1]

- As on 25 May 2018 -

[1] Note: This working translation of the *Abgabenordung* is provided by the Language Service of the Federal Ministry of Finance in collaboration with the Directorate-General for Taxes and is intended to serve communicative rather than legal purposes. Only the German text is authentic.

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Anfechtungsgesetz	Act on Contesting Transactions of a Debtor Not Included in Insolvency Proceedings
Arbeitnehmerüberlassungsgesetz	Temporary Employment Act
Aufstiegsfortbildungsförderungsgesetz	Upgrading Training Assistance Act
Außensteuergesetz	Foreign Tax Act
Bewertungsgesetz	Valuation Act
Bundesausbildungsförderungsgesetz	Federal Training Promotion Act
Bundesdatenschutzgesetz	Federal Data Protection Act
Bundesnaturschutzgesetz	Federal Nature Conservation Act
Bundespflegesatzverordnung	Federal Ordinance on Hospital and Nursing Charges
Bundesverfassungsgerichtsgesetz	Federal Constitutional Court Act
Bundesverfassungsschutzgesetz	Federal Constitution Protection Act
Bürgerliches Gesetzbuch	Civil Code
Depotgesetz	Securities Deposit Act
Deutsches Richtergesetz	German Judiciary Act
Drittes Buch Sozialgesetzbuch	Social Code, Book III
EG-Amtshilfe-Gesetz	EC Mutual Assistance Act
Einführungsgesetz zum Strafgesetzbuch	Introductory Act to the Criminal Code
Einführungsgesetz zur Abgabenordnung	Introductory Act to the Fiscal Code
Einigungsvertrag	Unification Treaty
Einigungsvertragsgesetz	Unification Treaty Act
Einkommensteuergesetz	Income Tax Act
Erbschaftsteuergesetz	Inheritance Tax Act
Finanzgerichtsordnung	Code of Procedure for Fiscal Courts
Geldwäschegesetz	Money Laundering Act
Gerichtskostengesetz	Court Fees Act
Gerichtsverfassungsgesetz	Act on the Constitution of Courts
Gesetz über das Verfahren in Familiensachen und in den Angelegenheiten der freiwilligen Gerichtsbarkeit	Act on the Procedure in Family Matters and in matters of Non-Contentious Jurisdiction
Gesetz über die Finanzverwaltung/Finanzverwaltungsgesetz	Fiscal Administration Act
Gesetz über Ordnungswidrigkeiten	Administrative Offences Act
Gesetz über Rechte an eingetragenen Schiffen und Schiffsbauwerken	Act on Rights in Registered Ships and Ships under Construction
Gesetz über Rechte an Luftfahrzeugen	Act Governing Rights in Aircraft
Gesetz über Steuerstatistiken	Tax Statistics Act
Gesetz über Zwangsversteigerung und Zwangsverwaltung	Act on Compulsory Sale by Public Auction and Compulsory Receivership
Gewinnabgrenzungsaufzeichnungsverordnung	Ordinance on Recording Profit Allocations
Grundbuchordnung	Land Register Code

Grundgesetz	Basic Law
Handelsgesetzbuch	Commercial Code
Insolvenzordnung	Insolvency Code
Justizvergütungs- und -entschädigungsgesetz	Judicial Remuneration and Compensation Act
Körperschaftsteuergesetz	Corporation Tax Act
Krankenhausentgeltgesetz	Hospital Fees Act
Kreditwesengesetz	Banking Act
Melderechtsrahmengesetz	Registration Law Framework Act
Neuntes Buch Sozialgesetzbuch	Social Code, Book IX
Schiffsregisterordnung	Code of the Register of Ships
Signaturgesetz	Electronic Signature Act
Steuerberatungsgesetz	Tax Consultancy Act
Strafgesetzbuch	Criminal Code
Strafvollzugsgesetz	Prison Act
Umsatzsteuer-Durchführungsverordnung	VAT Implementing Ordinance
Umsatzsteuergesetz	VAT Act
Vermögensteuergesetz	Capital Tax Act
Verordnung über die gesonderte Feststellung von Besteuerungsgrundlagen nach §180 Abs. 2 der Abgabenordnung vom 19. Dezember 1986	Ordinance of 19 December 1986 on the separate determination of tax bases pursuant to section 180(2) of the Fiscal Code
Verspätungsgeld	Late-filing fee
Verwaltungskostengesetz	Administrative Costs Act
Verwaltungszustellungsgesetz	Administrative Service of Documents Act
Wechselgesetz	Bills of Exchange Act
Wohngeldgesetz	Housing Benefit Act
Zinsinformationsverordnung	Interest Information Ordinance
Zivilprozessordnung	Code of Civil Procedure
Zollkodex	Customs Code
Zollverwaltungsgesetz	Customs Administration Act
Zwangsverwalterordnung	Ordinance on Official Receivers
Zweites Buch Sozialgesetzbuch	Social Code, Book II
Zwölftes Buch Sozialgesetzbuch	Social Code, Book XII

List of official institutions and authorities

Bundesagentur für Arbeit	Federal Employment Agency
Bundesfinanzdirektion	Federal Finance Office
Bundeskriminalamt - Zentralstelle für Verdachtsanzeigen	Federal Criminal Police Office – Financial Intelligence Unit
Bundesministerium der Finanzen	Federal Ministry of Finance
Bundesministerium des Innern	Federal Ministry of the Interior
Bundesmonopolverwaltung für Branntwein	Federal Spirits Monopoly Administration
Bundesrat	Bundesrat
Bundestag	Bundestag
Bundeszentralamt für Steuern	Federal Central Tax Office
Deutsche Bundesbank	Bundesbank
Deutsche Rentenversicherung Knappschaft-Bahn-See	German pension insurance system for miners, railway workers and maritime workers
Künstlersozialkasse	Artists' Social Fund
Zollkriminalamt	Customs Criminological Office

First Part – Introductory regulations

First Chapter – Scope of application

Section 1 – Scope

(1) This Code shall apply to all taxes, including the tax rebates governed by German federal law or the law of the European Union insofar as these are administered by the revenue authorities of the Federation or of the *Länder*. It may only be applied subject to the law of the European Union.

(2) The following provisions of this Code shall apply accordingly to non-personal taxes to the extent that their administration has been assigned to the municipalities:

1. the provisions of the First, Second, Fourth, Sixth and Seventh Chapters of the First Part (Scope of application; Tax definitions; Data processing and tax secrecy; Rights of data subjects; Data protection supervision, judicial protection in matters of data protection law),

2. the provisions of the Second Part (Legal provisions on tax liability),

3. the provisions of the Third Part except sections 82 to 84 (General rules of procedure),

4. the provisions of the Fourth Part (Executing the taxation procedure),

5. the provisions of the Fifth Part (Levy procedure),

6. sections 351, 361(1), second sentence, and 361(3),

7. the provisions of the Eighth Part (Provisions on criminal penalties and administrative fines, criminal and administrative fine proceedings).

(3) Subject to the law of the European Communities, the provisions of this Code shall apply *mutatis mutandis* to ancillary tax payments. However, the third to sixth chapters of the Fourth Part shall only apply to the extent that this is specifically provided for.

Section 2 – Primacy of international agreements

(1) Agreements on taxation concluded with other countries within the meaning of Article 59(2), first sentence of the Basic Law, shall take precedence over tax legislation insofar as they have become directly applicable domestic law.

(2) To ensure the equality of tax treatment and to avoid double taxation or double non-taxation, the Federal Ministry of Finance shall be authorised with the consent of the Bundesrat to issue ordinances on the implementation of arrangements reached by way of consultation. Arrangements reached by way of consultation under the first sentence above shall mean mutual agreements between the competent authorities of the contracting states to a double taxation agreement with the aim of determining the details of the implementation of such an agreement, and especially to resolve difficulties or doubts as to the interpretation or application of the respective agreement.

(3) The Federal Government shall be authorised to adopt, by way of ordinances issued with the consent of the Bundesrat, rules that:

1. specify income or assets or parts thereof for which the Federal Republic of Germany will allow a tax credit based on the application of a provision contained in an agreement for the avoidance of double taxation and notified via diplomatic channels, and

2. include within the scope of public service-related provisions contained in an agreement for the avoidance of double taxation those entities and institutions that are specified by competent authorities in an arrangement permitted under that agreement.

Section 2a – Scope of provisions on the processing of personal data

(1) The provisions in this Code and in other tax legislation that pertain to the processing of personal data within the scope of this Code shall apply to the processing of personal data by revenue authorities (section 6(2)), other public entities (section 6(1a) to (1c)) and non-public entities (section 6(1d) and (1e)). The Federal Data Protection Act, other federal data protection provisions and relevant *Land* legislation shall apply to revenue authorities only to the extent that this Code or other tax legislation provides stipulations to this effect.

(2) Data protection rules contained in this Code shall also apply to data that revenue authorities process as part of their functions in supervising the cross-border movement of goods. Such data shall be deemed data that have been processed within the context of a tax procedure.

(3) The provisions in this Code and in other tax legislation that pertain to the processing of personal data shall not apply to the extent that European Union law, in particular the applicable version of "Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation)" (OJ L 119, 4.5.2016, p. 1; OJ L 314, 22.11.2016, p. 72), applies directly or in accordance with subsection (5) below.

(4) Unless otherwise required by law, the provisions contained in the First and Third Parts of the Federal Data Protection Act shall apply to the processing of personal data for the purpose of preventing, investigating, detecting, prosecuting or punishing a tax crime or tax-related administrative offence.

(5) Unless otherwise required by law, the provisions in Regulation (EU) 2016/679, this Code and other tax legislation that pertain to the processing of natural persons' personal data shall apply accordingly to information relating to identified or identifiable

1. deceased natural persons and

2. corporations, associations with or without legal capacity, and pools of assets.

Second Chapter – Tax definitions

Section 3 – Taxes, ancillary tax payments

(1) "Taxes" shall mean payments of money, other than payments made in consideration of the performance of a particular activity, which are collected by a public body for the purpose of raising revenue and imposed by the body on all persons to whom the characteristics on which the law bases liability for payment apply; the raising of revenue may be a secondary objective.

(2) "Non-personal taxes" shall mean real property tax and trade tax.

(3) Import and export duties pursuant to Article 5 numbers 20 and 21 of the Union Customs Code shall be taxes within the meaning of this Code. The Union Customs Code is Regulation (EU) 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (OJ L 269, 10.10.2013, p. 1, OJ L 287, p. 90), as amended.

(4) "Ancillary tax payments" shall mean

1. fees for delay pursuant to section 146(2b),

2. late-filing penalties pursuant to section 152,

3. penalties pursuant to section 162(4),

4. interest pursuant to sections 233 to 237 as well as interest in accordance with tax legislation to which sections 238 and 239 apply,

5. late-payment penalties pursuant to section 240,

6. coercive fines pursuant to section 329,

7. costs pursuant to sections 89, 178, 178a and sections 337 to 345,

8. interest on import and export duties pursuant to Article 5 numbers 20 and 21 of the Union Customs Code and

9. late-filing fees pursuant to section 22a(5) of the Income Tax Act.

(5) Revenue from interest on import and export duties pursuant to Article 5 numbers 20 and 21 of the Union Customs Code shall accrue to the Federation. Revenue from all other interest shall accrue to the political subdivision authorised to levy the corresponding tax. Revenue from costs described in section 89 shall accrue to the political subdivision whose revenue authority is responsible for issuing the advance ruling. One half of the revenue from costs described in section 178a shall accrue to the Federation, the other half to the administering political subdivisions. All other ancillary tax payments shall accrue to the administering political subdivisions.

Section 4 – Law

"Law" shall mean every legal norm.

Section 5 – Discretion

Where the revenue authority is authorised to use its discretion it shall do so in compliance with the purpose of the authorisation and shall respect the statutory restrictions on such discretion.

Section 6 – Authorities, public and non-public entities, revenue authorities

(1) "Authority" shall mean any public entity performing public administration functions.

(1a) "Federal public entities" shall mean the authorities, the bodies responsible for the administration of justice, and the other public institutions of the Federation, of the federal corporations, of public agencies and foundations, and of the associations thereof, irrespective of their legal form.

(1b) "*Land* public entities" shall mean the authorities, the bodies responsible for the administration of justice, and the other public institutions of a *Land*, of a municipality, of an association of municipalities, of any other public law entity subject to the supervision of a *Land*, and of the associations thereof, irrespective of their legal form.

(1c) Associations under private law that belong to federal or *Land* public entities and that perform public administration functions shall be deemed federal public entities, irrespective of the involvement of non-public entities, if

1. their activities extend beyond a single *Land* or

2. the Federation holds the absolute majority of shares or is entitled to the absolute majority of votes.

Otherwise they shall be deemed *Land* public entities.

(1d) "Non-public entities" shall mean natural and legal persons, companies and other associations under private law that are not covered by subsections (1a) to (1c). If a non-public entity performs official functions of public administration, it shall to that extent be a public entity as defined by this Code.

(1e) Federal or *Land* public entities shall be deemed non-public entities within the meaning of this Code to the extent that they participate in competition as public enterprises.

(2) For the purposes of this Code, "revenue authorities" shall mean the following federal revenue authorities and *Land* revenue authorities referred to in the Fiscal Administration Act:

1. as highest authorities, the Federal Ministry of Finance and the highest *Land* authorities responsible for revenue administration,

2. as higher federal authorities, the Federal Spirits Monopoly Administration, the Federal Central Tax Office and the Central Customs Authority,

2. *as higher federal authorities, the Federal Central Tax Office and the Central Customs Authority,*[2]

3. as higher *Land* authorities, data processing centres as well as *Land* revenue authorities that have been given jurisdiction, throughout a given *Land*, over cash transactions and collection procedures, including enforcement, on the basis of an ordinance pursuant to section 17(2), third sentence, number 3 of the Fiscal Administration Act,

4. as intermediate authorities, regional finance offices,

4a. *Land* revenue authorities established in lieu of a regional finance office in accordance with the Fiscal Administration Act or *Land* legislation,

5. as local authorities, the main customs offices including their agencies, the customs investigation offices, the tax offices and the special revenue authorities of the *Länder*,

6. child benefit disbursement offices,

7. the central agency within the meaning of section 81 of the Income Tax Act, and

8. the German pension insurance system for miners, railway workers and maritime workers (section 40a(6) of the Income Tax Act).

Section 7 – Public officials

"Public official" shall mean any person who, under German law,

1. is a civil servant or judge (section 11(1) number 3 of the Criminal Code),

[2] Section 6(2) number 2 in the version of Article 3 of the Act of 10 March 2017 (Federal Law Gazette I, p. 420) in force from 1 January 2019.

2. holds any other office under public law, or

3. has otherwise been assigned to exercise public administration functions at an authority or other public entity, or on their behalf.

Section 8 – Residence

Persons shall be resident at the place at which they maintain a dwelling under circumstances from which it may be inferred that they will maintain and use such dwelling.

Section 9 – Habitual abode

Persons shall have their habitual abode at the place at which they are present under circumstances indicating that their stay at that place or in that area is not merely temporary. An unbroken stay of not less than six months' duration shall be invariably and from the beginning of such stay regarded as an habitual abode in the territory of application of this Code; brief interruptions shall be excepted. The second sentence shall not apply where the stay is undertaken exclusively for visiting, recuperation, curative or similar private purposes and does not last more than one year.

Section 10 – Business management

"Business management" shall mean the centre of commercial executive management.

Section 11 – Registered office

Corporations, associations or pools of assets shall have their registered office at the place which is determined by law, articles of partnership, statutes, acts of foundation or similar provisions.

Section 12 – Permanent establishment

"Permanent establishment" shall mean any fixed place of business or facility serving the business of an enterprise. In particular, the following shall be considered permanent establishments:

1. the place of business management,

2. branches,

3. offices,

4. factories or workshops,

5. warehouses,

6. purchasing offices or sales outlets,

7. mines, quarries or other stationary, moving or floating facilities for the exploitation of natural resources,

8. building sites or constructions or installation projects, including those moving or floating, where

   a) an individual building site or construction or installation project, or

   b) one of several coexistent building sites or constructions or installation projects, or

   c) a number of immediately successive building sites or constructions or installation projects

   last(s) more than six months.

Section 13 – Permanent representative

"Permanent representative" shall mean any person who conducts the business of an enterprise in a sustained manner and, in so doing, is subject to its instructions. In particular, "permanent representative" shall mean any person who, in a sustained manner, on behalf of an enterprise,

1. concludes or brokers contracts or solicits orders, or

2. maintains a stock of goods or merchandise and makes deliveries from this stock.

Section 14 – Economic activity

"Economic activity" shall mean an independent sustainable activity from which revenue or other economic benefits are derived and which comprises more than mere asset management. The intention to realise a profit shall not be required. As a rule, an activity shall be deemed to

constitute asset management where assets are utilised, e.g., by investing capital assets to earn interest or by renting or leasing immovable property.

Section 15 – Relatives

(1) "Relatives" shall mean:

1. fiancé(e)s, including within the meaning of the Civil Partnership Act,
2. spouses or civil partners,
3. relations by blood or by marriage in direct line,
4. siblings,
5. children of siblings,
6. spouses of siblings, and siblings of spouses,
7. siblings of the parents,
8. persons who are related to each other like parents and children through a permanent foster relationship involving a common household (foster parents and foster children).

(2) The persons referred to in subsection (1) above shall also be relatives where,

1. in the case of numbers 2, 3 and 6, the marriage or civil partnership establishing the relationship no longer exists;
2. in the case of numbers 3 to 7, the relationship by blood or by marriage has been terminated due to adoption as a child,
3. in the case of number 8, the common household no longer exists, provided that the persons continue to be related to each other like parents and children.

Third Chapter – Competence of the revenue authorities

Section 16 – Subject-matter jurisdiction

Unless otherwise stipulated, the subject-matter jurisdiction of the revenue authorities shall be determined pursuant to the Fiscal Administration Act.

Section 17 – Local jurisdiction

Unless otherwise stipulated, local jurisdiction shall be determined by the following provisions.

Section 18 – Separate determination

(1) The following shall have local jurisdiction with regard to separate determination pursuant to section 180:

1. in the case of agricultural and forestry undertakings, real property, business premises and mineral exploitation rights, the tax office in whose district the undertaking, real property, business premises or mineral exploitation right is located or, if the undertaking, real property, business premises or mineral exploitation right extends over the districts of several tax offices, the tax office in whose district the most valuable part is located (tax office of location),

2. in the case of commercial undertakings whose business management is located within the territory of application of this Code, the tax office in whose district the business management is located, in the case of commercial undertakings whose business management is not located within the territory of application of this Code, the tax office in whose district a permanent establishment – in the case of several permanent establishments, the economically most important one – is maintained (tax office of the undertaking),

3. in the case of income from independent personal services, the tax office from whose district the activity is predominantly performed,

4. in cases where income, other than income from agriculture and forestry, business or self-employment, is distributed among multiple persons and is determined separately in accordance with section 180(1), first sentence, number 2a,

    a) the tax office in whose district this income is managed, or,

b) if it is not possible to determine where this income is managed within this Code's territory of application, the tax office in whose district the most valuable part of the assets yielding the joint income is located.

This shall apply accordingly in cases of separate determination pursuant to section 180(1), first sentence, number 3 or section 180(2).

(2) Where separate determination is to be conducted with regard to several taxpayers and local jurisdiction cannot be determined pursuant to subsection (1) above, every tax office which, pursuant to sections 19 or 20, is responsible for taxes on income and on capital of a taxpayer to whom a share of the object of determination is attributable shall have local jurisdiction. Where because of an ordinance pursuant to section 17(2), third and fourth sentence, of the Fiscal Administration Act this tax office does not have subject-matter jurisdiction with regard to separate determination, the tax office with subject-matter jurisdiction shall take its place.

Section 19 – Taxes on the income and capital of natural persons

(1) The tax office in whose district a natural person is resident or, in the absence of a residence, has his habitual abode shall have local jurisdiction over the taxation of that person's income and capital (tax office of residence). In the case of multiple residences within the territory of application of this Code, the residence at which the taxpayer is predominantly present shall be decisive; in the case of multiple residences of a taxpayer who is married or in a civil partnership and is not permanently separated from his spouse or civil partner, the residence at which the family is predominantly present shall be decisive. With regard to persons subject to unlimited tax liability pursuant to section 1(2) of the Income Tax Act and section 1(2) of the Capital Tax Act, local jurisdiction shall lie with the tax office in whose district the paying public fund is located; the same shall apply in the cases referred to in section 1(3) of the Income Tax Act with regard to persons fulfilling the requirements of section 1(2), first sentence, numbers 1 and 2 of the Income Tax Act, as well as in the cases referred to in section 1a(2) of the Income Tax Act.

(2) Where the requirements referred to in subsection (1) above are not fulfilled, local jurisdiction shall lie with the tax office in whose district the assets of the taxpayer are located, and where this applies to several tax offices, the tax office in whose district the most valuable part of the assets is located. Where the taxpayer does not have any assets within the territory

of application of this Code, the tax office in whose district the activity is or has been predominantly performed or exploited within the territory of application of this Code shall have local jurisdiction.

(3) Notwithstanding the provisions of subsection (1) above, where there are several tax offices in the municipality of residence and where a taxpayer with income from agriculture and forestry, business or self-employment performs this activity within the municipality of residence but in the district of a tax office other than the tax office of residence, the first tax office shall be responsible where it would have been competent for the separate determination of this income pursuant to section 18(1) numbers 1, 2 or 3. In applying the first sentence of this subsection, income from profit shares shall be taken into account only where it is the sole income of the taxpayer within the meaning of the first sentence.

(4) In applying subsection (3) above, taxpayers who must be or may be assessed jointly shall be treated as if their income were derived by a single taxpayer.

(5) The governments of the *Länder* may stipulate by way of ordinance that an area comprising several municipalities shall be considered a municipality of residence within the meaning of subsection (3) above insofar as this seems appropriate considering the economic situation, transport infrastructure, the structure of administrative authorities or other local needs. The government of a *Land* may delegate these powers to the highest authority of this *Land* responsible for revenue administration.

(6) In order to guarantee the taxation of persons who are subject to limited tax liability under section 1(4) of the Income Tax Act and who receive income as defined in section 49(1) numbers 7 and 10 of the Income Tax Act, the Federal Ministry of Finance may issue ordinances with the consent of the Bundesrat that assign, to one revenue authority, local jurisdiction for this Code's territory of application. The first sentence above shall also apply where an application pursuant to section 1(3) of the Income Tax Act is submitted.

Section 20 – Taxes on the income and capital of corporations, associations and pools of assets

(1) Local jurisdiction over the taxation of the income and capital of corporations, associations and pools of assets shall lie with the tax office in whose district the business management is located.

(2) Where the business management is not located within the territory of application of this Code or where the place of business management cannot be determined, the tax office in whose district the taxpayer has its registered office shall have local jurisdiction.

(3) Where neither the business management nor the registered office is located within the territory of application of this Code, local jurisdiction shall lie with the tax office in whose district assets of the taxpayer are located and, if this applies to several tax offices, the tax office in whose district the most valuable part of the assets is located.

(4) Where neither the business management nor the registered office or assets of the taxpayer are located within the territory of application of this Code, the tax office in whose district the activity is or has been predominantly performed or exploited within the territory of application of this Code shall have local jurisdiction.

Section 20a – Taxes on income in the case of construction services

(1) Notwithstanding the provisions of sections 19 and 20, jurisdiction with regard to the taxation of enterprises providing construction services within the meaning of section 48(1), third sentence, of the Income Tax Act shall lie with the tax office responsible for the taxation of the corresponding turnover pursuant to section 21(1) if the trader's residence or the enterprise's business management or registered office is not located within the territory of application of this Code. Notwithstanding sections 38 to 42f of the Income Tax Act, this shall also apply to the withholding of taxes on wages.

(2) Where foreign suppliers under section 38(1), first sentence, number 2 of the Income Tax Act provide workers for temporary employment, the tax office responsible for the taxation of the corresponding turnover pursuant to section 21(1) shall be responsible for administering wages tax. The first sentence shall apply only in cases where the person hired out is employed in the construction industry.

(3) As regards the taxation of persons employed in Germany by enterprises referred to in subsections (1) and (2) above, the Federal Ministry of Finance may, in derogation of section 19, issue ordinances with the consent of the Bundesrat that assign local jurisdiction for this Code's territory of application to one tax office.

Section 21 – Valued-added tax

(1) The tax office in whose district the trader wholly or mainly operates his enterprise in the territory of application of this Code shall have jurisdiction over VAT, excluding import VAT. As regards traders whose residence, registered office or place of management is not located within the territory of application of this Code, the Federal Ministry of Finance may, in order to ensure taxation, issue ordinances with the consent of the Bundesrat that assign local jurisdiction for the this Code's territory of application to one revenue authority.

(2) For persons who are not traders, jurisdiction over VAT shall lie with the tax office responsible for the taxation of income in accordance with sections 19 or 20; in cases where section 180(1), first sentence, number 2a applies, jurisdiction over VAT shall lie with the tax office responsible for separate determination in accordance with section 18.

Section 22 – Non-personal taxes

(1) Local jurisdiction over the assessment and apportionment of base amounts of non-personal taxes[3] shall lie with the tax office of location (section 18(1) number 1) in the case of real property tax, and with the tax office of the undertaking (section 18(1) number 2) in the case of trade tax. Notwithstanding the provisions of the first sentence of this subsection, jurisdiction over the assessment and apportionment of base amounts of trade tax in the case of enterprises providing construction services within the meaning of section 48(1), third sentence, of the Income Tax Act shall lie with the tax office responsible for the taxation of the corresponding turnover pursuant to section 21(1), provided that the trader's residence or the enterprise's business management or registered office is located outside the territory of application of this Code.

(2) Where the tax offices are responsible for assessing, levying and recovering non-personal taxes, local jurisdiction shall lie with the tax office to whose district the municipality authorised to apply the municipal multiplier belongs. Where a municipality authorised to apply the municipal multiplier belongs to the districts of several tax offices, local jurisdiction shall lie with the tax office which is or would be responsible pursuant to subsection (1) above if only the parts of the enterprise, real property or business premises located in the municipality authorised to apply the municipal multiplier were present in the territory of application of this Code.

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[3] *Steuermessbetrag*, calculated by applying multiplier (*Steuermesszahl*) to value of object to be taxed (property-*Grundsteuer*; earnings-*Gewerbesteuer*). The base amount of non-personal tax is then multiplied by the municipal multiplier (*Hebesatz*) to give the *Grundsteuer* or *Gewerbesteuer*

(3) Subsection (2) above shall apply *mutatis mutandis* where a *Land* is entitled to the tax revenue from non-personal taxes pursuant to Article 106(6), third sentence, of the Basic Law.

Section 22a – Jurisdiction on the continental shelf and in the exclusive economic zone

In those parts of the continental shelf and the exclusive economic zone belonging to the Federal Republic of Germany, the jurisdiction of *Land* revenue authorities in accordance with sections 18 to 22 or in accordance with tax legislation shall be based on the equidistance principle.

Section 23 – Import and export duties, excise duties

(1) Local jurisdiction over import and export duties pursuant to Article 5 numbers 20 and 21 of the Union Customs Code and over excise duties shall lie with the main customs office in whose district the matter to which the respective law attaches the duty occurs.

(2) Local jurisdiction shall further lie with the main customs office from whose district the taxpayer operates his enterprise. Where the enterprise is operated from a location outside the territory of application of this Code, jurisdiction shall lie with the main customs office in whose district the trader wholly or mainly conducts his transactions in the territory of application of this Code.

(3) Where import and export duties pursuant to Article 5 numbers 20 and 21 of the Union Customs Code and excise duties are due in connection with a tax crime or tax-related administrative offence, local jurisdiction shall lie with the main customs office that has jurisdiction over the crime or offence.

Section 24 – Surrogate competence

Where local jurisdiction cannot be derived from other provisions, the revenue authority in whose district the matter requiring the official act arises shall be responsible.

Section 25 – Multiple local jurisdiction

Where several revenue authorities have jurisdiction, the revenue authority which was first charged with the matter shall decide unless the revenue authorities responsible agree on another revenue authority responsible or the common supervisory authority responsible determines that another revenue authority with local jurisdiction should decide. In the absence

of a common supervisory authority, the supervisory authorities responsible shall reach a joint decision.

Section 26 – Transfer of jurisdiction

Where local jurisdiction is transferred from one revenue authority to another due to a change in the circumstances establishing such jurisdiction, the transfer of jurisdiction shall occur as soon as one of the two revenue authorities becomes aware of this. The hitherto responsible revenue authority may continue with administrative proceedings where this serves to ensure that the proceedings are carried out simply and appropriately while protecting the interests of the participants, and provided that the newly responsible revenue authority agrees. There shall be no transfer of jurisdiction pursuant to the first sentence above as long as

1. a decision has not yet been taken on an insolvency petition,

2. open insolvency proceedings have not yet been cancelled, or

3. a partnership or a legal person is undergoing liquidation.

Section 27 – Agreed jurisdiction

In mutual agreement with the revenue authority which has local jurisdiction pursuant to the provisions of the tax laws, a different revenue authority may assume responsibility for taxation, provided that the person concerned agrees. One of the revenue authorities referred to in the first sentence of this section may ask the person concerned to declare his approval within a reasonable period of time. Approval shall be deemed to have been given if the person concerned does not object within this period of time. The person concerned shall be explicitly advised of the consequences of remaining silent.

Section 28 – Disputed jurisdiction

(1) Where several revenue authorities consider themselves to have jurisdiction or not to have jurisdiction, or where jurisdiction is doubtful for other reasons, the common supervisory authority responsible shall decide on local jurisdiction. Section 25, second sentence, shall apply accordingly.

(2) Section 5(1) number 7 of the Fiscal Administration Act shall remain unaffected.

Section 29 – Imminent danger

In the case of imminent danger, local jurisdiction for non-deferrable measures shall lie with any revenue authority in whose district the matter requiring the official act arises. The authority otherwise locally responsible shall be informed without undue delay.

Section 29a – Assistance for tax offices with local jurisdiction as ordered by superior revenue authorities

To ensure the timely and consistent execution of tax laws, the highest revenue authority of a *Land*, or the *Land* revenue authority it authorises, may direct that a tax office with local jurisdiction receive full or partial assistance from another tax office in fulfilling the tasks involved the taxation procedure. The assisting tax office shall act on behalf of the tax office with local jurisdiction; the administrative actions taken by the assisting tax office shall be ascribed to the tax office with local jurisdiction.

Section 29b – The processing of personal data by revenue authorities

(1) Revenue authorities shall be permitted to process personal data if such processing is necessary for them to fulfil the functions incumbent upon them or to exercise the official authority with which they have been vested.

(2) Notwithstanding the provisions of Article 9(1) of Regulation (EU) 2016/679, revenue authorities shall be permitted to process special categories of personal data as described in Article 9(1) of Regulation (EU) 2016/679 to the extent that such processing is necessary for reasons of substantial public interest and to the extent that the interests of the controller in processing the data override the interests of the data subject. In such cases, revenue authorities shall provide for suitable and specific measures to safeguard the data subject's interests; the second sentence of section 22(2) of the Federal Data Protection Act shall apply accordingly.

Section 29c – The processing of personal data for other purposes by revenue authorities

(1) In the course of performing their functions, revenue authorities shall be permitted to process personal data for a purpose other than that for which a revenue authority collected or recorded such data (further processing) if

1. such further processing serves to facilitate an administrative procedure, an auditing procedure, judicial proceedings in tax matters, criminal proceedings for a tax crime, or administrative fine proceedings for a tax-related administrative offence,

2. the legal conditions have been met that would permit the disclosure of such data in accordance with section 30(4) or (5) or if it is necessary to check whether such conditions have been met,

3. it is evident that such further processing is in the interest of the data subject and there is no reason to assume that the data subject would withhold his consent if he were aware of the other purpose,

4. such further processing is necessary for developing, reviewing or modifying the automated procedures of revenue authorities because

   a) unaltered data are needed or

   b) the anonymisation or pseudonymisation of such data is impossible or would require disproportionate effort.

In this connection, the use of personal data is necessary in particular if personal data from a number of different filing systems need to be unambiguously linked, and it is impossible or would require disproportionate effort to create suitable test cases.

5. such further processing is necessary for conducting regulatory impact assessments because

   a) unaltered data are needed or

   b) the anonymisation or pseudonymisation of such data is impossible or would require disproportionate effort,

or

6. such further processing is necessary for the exercise of supervisory, regulatory and disciplinary powers by revenue authorities. This shall also apply to the alteration or use of personal data by revenue authorities for purposes of training or testing, as long as the data subject has no overriding interests that merit protection.

In cases where number 4 of the first sentence above applies, the data may be processed only for the purpose of developing, reviewing or modifying automated procedures and must be deleted within one year after these measures have ended. In cases where number 6 of the first sentence above applies, the data may be processed only by persons who are required to observe tax secrecy in accordance with section 30.

(2) The further processing of special categories of personal data as described in Article 9(1) of Regulation (EU) 2016/679 shall be permissible if the conditions stipulated in subsection (1) above have been met and an exception under Article 9(2) of Regulation (EU) 2016/679 or under section 29b(2) applies.

Fourth Chapter – Tax secrecy

Section 30 – Tax secrecy

(1) Public officials shall be obliged to observe tax secrecy.

(2) Public officials shall be in breach of tax secrecy if they

1. disclose or make use of, without authorisation, a third person's personal data that they have gained access to

    a) in the course of an administrative procedure, an auditing procedure or judicial proceedings in tax matters,

    b) in the course of criminal proceedings for tax crimes or administrative fine proceedings for tax-related administrative offences,

    c) for other reasons, based on a notification from a revenue authority or based on the legally required submission of a tax assessment notice or of a certification of findings made during the taxation process

    or

2. disclose or make use of, without authorisation, a corporate or commercial secret that has become known to them in the course of procedures/proceedings specified under number 1 above,

(the data under numbers 1 and 2 above are hereinafter referred to as “protected data”) or

3. electronically retrieve, without authorisation, protected data that have been stored in an automated filing system for procedures/proceedings specified under number 1 above.

(3) The following shall be deemed to be of equivalent status to public officials:

1. persons under special obligations to the civil service (section 11(1) number 4 of the Criminal Code),

1a. the persons designated in section 193(2) of the Act on the Constitution of Courts,

2. officially consulted experts,

3. holders of offices of the churches and other religious communities being public-law entities.

(4) The disclosure or use of protected data shall be permissible insofar as 1. such disclosure or use facilitates procedures/proceedings within the meaning of subsection (2) number 1(a) and (b) above,

1a. such disclosure or use facilitates processing by revenue authorities in accordance with section 29c(1), first sentence, number 4 or 6,

1b. such disclosure or use facilitates administrative fine proceedings in accordance with Article 83 of Regulation (EU) 2016/679 within the scope of this Code,2. such disclosure or use is expressly permitted by federal law,

2a. such disclosure or use is prescribed or permitted by European Union law,

2b. such disclosure or use helps the Federal Statistical Office perform its statutory functions,

2c. such disclosure or use facilitates regulatory impact assessments, and the conditions for further processing under section 29c(1), first sentence, number 5 have been met,3. the persons concerned give their consent,

4. such disclosure or use facilitates criminal proceedings for a crime other than a tax crime, and such information

   a) was obtained in the course of proceedings for tax crimes or tax-related administrative offences; however, this shall not apply in relation to facts which a taxpayer has disclosed while unaware that criminal proceedings or administrative fine proceedings have commenced or which have already become known in the course of the taxation procedure before the commencement of such proceedings, or

   b) was obtained in the absence of any tax liability or by waiver of a right to withhold information,

5. there is a compelling public interest in such disclosure or use; such compelling public interest shall be deemed to exist in particular if

   a) such disclosure is necessary to prevent significant harm to the public interest, to avert threats to public security, defence or national security, or to prevent or prosecute crimes or deliberate serious offences that aim to cause human injury or loss of life or that aim to cause damage to the state and its institutions,

   b) economic crimes are being or are to be prosecuted, and which in view of the method of their perpetration or the extent of the damage caused by them are likely to substantially disrupt the economic order or to substantially undermine general confidence in the integrity of business dealings or the orderly functioning of authorities and public institutions, or

   c) such disclosure is necessary to correct publicly disseminated incorrect facts which are likely to substantially undermine confidence in the administration; such decision shall be taken by the highest revenue authority responsible in

mutual agreement with Federal Ministry of Finance; the taxpayer is to be consulted before correction of the facts.

(5) Wilfully false statements by the person concerned may be disclosed to the law enforcement authorities.

(6) The retrieval of protected data that have been stored in an automated filing system for one of the procedures/proceedings specified under subsection (2) number 1 above shall be permissible only insofar as such retrieval facilitates a procedure/proceedings described under subsection (2) number 1a or 1b above or facilitates the permissible transmission of protected data by a revenue authority to the data subject or to a third party. To protect tax secrecy, the Federal Ministry of Finance may stipulate, by way of ordinances issued with the consent of the Bundesrat, which technical and organisational measures must be adopted to prevent the unauthorised retrieval of data. In particular, the Federal Ministry of Finance may adopt more detailed rules on the type of data that are permissible to retrieve and on the set of public officials who are authorised to retrieve such data. Ordinances pertaining to motor vehicle tax, aviation tax, insurance tax, import and export duties, and excise duties with the exception of beer duty shall not require the consent of the Bundesrat.

(7) In the event that data subject to tax secrecy are transmitted in accordance with section 87a(4) or (7) by a public official or persons of equivalent status under subsection (3) above using DE-Mail services within the meaning of section 1 of the DE-Mail Act, no unauthorised disclosure or use and no unauthorised retrieval of data subject to tax secrecy shall be deemed to have occurred if during transmission a temporary automated decryption is performed by an accredited service provider for the purpose of checking for malware and for the purpose of forwarding the data to the addressee of the DE-Mail message.

(8) The establishment of an automated procedure that enables protected data to be cross-checked within a revenue authority or among various revenue authorities shall be permissible insofar as the further processing or the disclosure of such data is permissible and such procedure is suitable in light of the legitimate interests of the data subject and the functions to be performed by the participating revenue authorities.

(9) When personal data are to be processed, revenue authorities may use the services of a processor as defined in Article 4(8) of Regulation (EU) 2016/679 only if the data in question are processed exclusively by persons who are required to observe tax secrecy.

(10) Revenue authorities shall be permitted to disclose special categories of personal data as described in Article 9(1) of Regulation (EU) 2016/679 to public or non-public entities if the conditions stipulated in subsection (4) or (5) above have been met and an exception under Article 9(2) of Regulation (EU) 2016/679 or under section 31c applies.

(11) If protected data have been disclosed in accordance with subsections (4) or (5) above to

1. a person who is not required to observe tax secrecy,

2. a public entity that is not a revenue authority, or

3. a non-public entity,

the recipient may store, alter, use or transmit these data only for the purpose for which they were disclosed to him. In cases where such protected data become known to public officials or persons of equivalent status under subsection (3) above on the basis of such a disclosure, their obligation to observe tax secrecy shall remain unaffected.

Section 30a – rescinded)[4]

Section 31 – Disclosure of tax bases

(1) The revenue authorities shall be obliged to disclose to public-law entities, including religious communities which are public-law entities, tax bases, base amounts of non-personal taxes and other tax amounts for the purpose of assessing such levies connected with these tax bases, base amounts of non-personal taxes or other tax amounts. The obligation to disclose shall not apply insofar as this would involve a disproportionate amount of time and effort. Upon request, the revenue authorities may disclose to public-law entities the names and addresses of their members who are obliged, in principle, to pay levies within the meaning of the first sentence above as well as the duties assessed by the revenue authority with regard to the entity, insofar as knowledge of these data is necessary for the discharge of public tasks falling within the entity's responsibility and insofar as the data subject has no overriding interests that merit protection.

(2) Revenue authorities shall be obliged to disclose data subjects' data that are protected under section 30 to statutory social insurance providers, the Federal Employment Agency and

[4] Section 30a was rescinded with effect from 25 June 2017. In accordance with Article 97 paragraph 1(12) of the Introductory Act to the Fiscal Code, section 30a of the Fiscal Code shall no longer apply from 25 June 2017 onwards to facts and circumstances that occurred prior to this date.

the Artists' Social Security Fund, insofar as knowledge of such data is necessary to determine insurance requirements or to assess contributions, including artists' social security contributions, or insofar as the data subject submits an application for disclosure. This disclosure obligation shall not apply if carrying out such a disclosure would involve a disproportionate effort.

(3) The names and addresses of owners of real property which have become known through the administration of real property tax and which are protected under section 30 may be used by the authorities responsible for administering real property tax for the administration of other fiscal charges and for the discharge of other public tasks or may be disclosed by those authorities on request to the responsible courts, authorities or legal persons under public law, as long as the data subject has no overriding interests that merit protection.

Section 31a – Disclosure for the purpose of countering unlawful employment and the misappropriation of benefits

(1) The disclosure of a data subject's data that are protected under section 30 shall be permissible insofar as such disclosure is necessary

1. to conduct criminal proceedings, administrative fine proceedings or any other court or administrative proceedings with the aim of

    a) countering unlawful employment or undeclared work, or

    b) deciding whether

        aa) a licence under the Temporary Employment Act should be issued, withdrawn or revoked, or

        bb) benefits paid from public funds should be approved, granted, recovered, refunded, continued to be granted or allowed to be retained,

    or

2. to assert a claim for repayment of benefits paid from public funds.

(2) In the cases referred to in subsection (1) above, the revenue authorities shall be obliged to disclose to the competent body the facts required in each case. In the cases referred to in subsection (1) numbers 1(b) and 2 above, information shall also be disclosed upon application by the data subject. The obligation to disclose referred to in the first and second sentence of

this subsection shall not apply insofar as this would involve a disproportionate amount of time and effort.

Section 31b – Disclosure for the purposes of countering money laundering and terrorist financing

(1) The disclosure, to the respective competent body, of a data subject's data that are protected under section 30 shall be permissible, even in the absence of a request, insofar as such disclosure serves one of the following purposes:

1. conducting criminal proceedings for money laundering or terrorist financing in accordance with section 1(1) and (2) of the Money Laundering Act,

2. preventing, detecting and combating money laundering or terrorist financing in accordance with section 1(1) and (2) of the Money Laundering Act,

3. conducting administrative fine proceedings in accordance with section 56 of the Money Laundering Act against obligated parties under section 2(1) numbers 13 to 16 of the Money Laundering Act,

4. taking measures or issuing orders in accordance with section 51(2) of the Money Laundering Act against obligated parties under section 2(1) numbers 13 to 16 of the Money Laundering Act or

5. the performance of tasks by the Financial Intelligence Unit as specified in section 28(1) of the Money Laundering Act.

(2) Revenue authorities must report matters to the Financial Intelligence Unit without undue delay, and irrespective of the value involved, if there are facts indicating that

1. the assets connected to the reportable matter are the object of a crime under section 261 of the Criminal Code or

2. the assets are connected to terrorist financing.

Reports to the Financial Intelligence Unit shall be sent via electronic data transmission, using a secure method that guarantees the confidentiality and integrity of the data set. In exceptional cases, a report may be sent via regular mail if data transmission is disrupted. Section 45(3) and (4) of the Money Laundering Act shall apply accordingly.

(3) The revenue authorities shall notify the competent administrative authority, without delay, of facts indicating that

1. an obligated party under section 2(1) numbers 9 to 13 of the Money Laundering Act has committed or is committing an administrative offence under section 56 of the Money Laundering Act or

2. the conditions have been met to take measures or issue orders in accordance with section 51(2) of the Money Laundering Act against obligated parties under section 2(1) numbers 13 to 16 of the Money Laundering Act.

(4) Section 47(3) of the Money Laundering Act shall apply accordingly.

Section 31c – The processing of special categories of personal data for statistical purposes by revenue authorities

(1) Notwithstanding the provisions of Article 9(1) of Regulation (EU) 2016/679, revenue authorities shall be permitted to process special categories of personal data as described in Article 9(1) of Regulation (EU) 2016/679 for statistical purposes, even without the consent of the data subject, if such processing for statistical purposes is necessary and the interests of the controller in processing the data significantly override the data subject's interests in not having the data processed. The controller shall provide for suitable and specific measures to safeguard the data subject's interests; the second sentence of section 22(2) of the Federal Data Protection Act shall apply accordingly.

(2) The rights of data subjects laid down in Articles 15, 16, 18 and 21 of Regulation (EU) 2016/679 shall be restricted to the extent that (a) such rights are likely to render impossible, or to substantially impede, the achievement of these statistical purposes and (b) such restriction is necessary for the fulfilment of these statistical purposes.[5]

(3) In addition to the measures specified in the second sentence of section 22(2) of the Federal Data Protection Act, special categories of personal data as described in Article 9(1) of Regulation (EU) 2016/679 that are processed for statistical purposes shall be pseudonymised or anonymised as soon as possible after the statistical purpose has been achieved, unless such pseudonymisation or anonymisation runs counter to the legitimate interests of the data subject. Until such pseudonymisation or anonymisation occurs, those data items that enable

[5] Subdivision of sentence into (a) and (b) added to English translation for purposes of clarity.

specific details about personal or material circumstances to be attributed to an identified or identifiable person shall be stored separately. Such data items may be merged with such specific details only insofar as this is necessary to achieve the statistical purpose.

Fifth Chapter – Limited liability of public officials

Section 32 – Limited liability of public officials

Where a breach of official duty by a public official results in

1. a tax or ancillary tax payment not being assessed, levied or recovered at all or on time, or the amount assessed, levied or recovered being too low, or
2. a tax refund or tax rebate being incorrectly granted, or
3. a tax base or a tax share not being assessed at all or on time or the amount assessed being too low,

the public official may be held liable only if the breach of official duty is punishable by law.

Section 32a – Revenue authorities' obligation to provide information where data are collected from the data subject

(1) In addition to the exception specified in Article 13(4) of Regulation (EU) 2016/679, the obligation of revenue authorities to inform the data subject in accordance with Article 13(3) of Regulation (EU) 2016/679 shall not apply if the provision of information regarding the intended further processing or disclosure

1. would jeopardise the effective performance of the functions, as described in Article 23(1)(d) to (h) of Regulation (EU) 2016/679, that lie within the jurisdiction of revenue authorities and the revenue authorities' interest in not providing the information overrides the interests of the data subject,

2. would endanger public security or order or would be detrimental to the welfare of the Federation or a *Land* and the revenue authorities' interest in not providing the information overrides the interests of the data subject,

3. impede the ability of the Federation, a *Land* or a municipality – as the legal representative of a revenue authority – to establish, exercise or defend civil law claims or to defend itself against civil law claims within the meaning of Article 23(1)(j) of

Regulation (EU) 2016/679 and the revenue authority is not required under civil law to provide information, or

4. would jeopardise the confidential disclosure of protected data to public entities.

(2) The effective performance of the functions, as described in Article 23(1)(d) to (h) of Regulation (EU) 2016/679, that lie within the jurisdiction of revenue authorities shall be deemed jeopardised in particular if the provision of information

1. could enable the data subject or third parties

   a) to conceal facts or circumstances that are relevant for tax purposes,

   b) to cover up leads that are relevant for tax purposes,

   c) to tailor the manner and extent of their cooperation with revenue authorities to the level of information held by the revenue authorities,

or

2. makes it possible to draw inferences about the design of automated risk management systems or planned control/auditing measures

and would thereby seriously hinder the detection of facts or circumstances that are relevant for tax purposes.

(3) In cases where a data subject is not provided with information in accordance with subsection (1) above, the revenue authorities shall take suitable measures to protect the data subject's legitimate interests.

(4) If, in cases where subsection (1) applies, no notification is provided because of a reason that is temporary in nature, revenue authorities shall fulfil their obligation to provide information, taking into account the specific circumstances of the case, within a reasonable period, but no later than two weeks, after this reason ceases to apply.

(5) If the provision of information relates to the transmission of personal data by revenue authorities to authorities responsible for the protection of the constitution, the Federal Intelligence Service, the Military Counterintelligence Service or, insofar as the security of the

Federation is affected, other Federal Defence Ministry authorities, such provision of information shall be permissible only with the consent of these entities.

Section 32b – Revenue authorities' obligation to provide information where personal data have not been obtained from the data subject

(1) In addition to the exceptions specified in Article 14(5) of Regulation (EU) 2016/679 and section 31c(2), the obligation of revenue authorities to inform the data subject in accordance with Article 14(1), (2) and (4) of Regulation (EU) 2016/679 shall not apply

1. insofar as the provision of information

   a) would jeopardise the effective performance of the functions, as described in Article 23(1)(d) to (h) of Regulation (EU) 2016/679, that lie within the jurisdiction of revenue authorities or other public entities or

   b) would endanger public security or order or would be otherwise detrimental to the welfare of the Federation or a *Land*

or

2. if the data, their source, their recipients, or the fact that they have been processed in accordance with section 30 or another legislative provision, or if the data by their very nature, must be kept secret, in particular due to the overriding legitimate interests of a third party in accordance with Article 23(1)(i) of Regulation (EU) 2016/679

and the data subject's interest in the provision of information is overridden as a result. Section 32a(2) shall apply accordingly.

(2) If the provision of information relates to the transmission of personal data by revenue authorities to authorities responsible for the protection of the constitution, the Federal Intelligence Service, the Military Counterintelligence Service or, insofar as the security of the Federation is affected, other Federal Defence Ministry authorities, such provision of information shall be permissible only with the consent of these entities.

(3) In cases where a data subject is not provided with information in accordance with subsection (1) or (2) above, the revenue authorities shall take suitable measures to protect the data subject's legitimate interests.

Section 32c – Right of access by the data subject

(1) In their dealings with revenue authorities, data subjects shall not have a right of access as provided in Article 15 of Regulation (EU) 2016/679 insofar as

1. information is not to be provided to the data subject in accordance with section 32b(1) or (2),

2. the granting of access would impede the Federation, a *Land* or a municipality – as the legal representative of a revenue authority – in its ability to establish, exercise or defend civil law claims or to defend itself against civil law claims within the meaning of Article 23(1)(j) of Regulation (EU) 2016/679; revenue authorities' obligations to provide information under civil law shall remain unaffected,

3. personal data

    a) are stored only because, on the basis of legal provisions, their erasure is not permitted, or

    b) exclusively serve the purposes of backing up data or monitoring data protection

and the granting of access would require a disproportionate effort, and suitable technical and organisational measures rule out the possibility of processing for other purposes.

(2) In their requests for access under Article 15 of Regulation (EU) 2016/679, data subjects should specify the type of data for which access is to be granted.

(3) If the personal data are neither automated nor stored in automated filing systems, access shall be granted only to the extent that the data subject provides information that makes it possible to locate the data, and the effort required to grant access is not disproportionate to the data subject's stated interest in the information.

(4) If access is refused, the reason(s) for such refusal must be communicated to the data subject, as long as the disclosure of the factual and legal reasons underlying the decision does not jeopardise the purpose being pursued by refusing access. The data stored for the purpose of preparing and granting access to the data subject may be processed only for this purpose and for purposes of monitoring data protection; processing for other purposes shall be restricted in accordance with Article 18 of Regulation (EU) 2016/679.

(5) If a data subject is not granted access by a revenue authority, such access shall be granted to the Federal Commissioner for Data Protection and Freedom of Information upon request by the data subject, as long as the competent highest revenue authority does not find that, for the specific case in question, granting such access would endanger the security of the Federation or a *Land*. When the Federal Commissioner for Data Protection and Freedom of Information notifies the data subject of the findings of the data protection review, such notification shall not permit any inferences to be drawn about what the revenue authorities know, insofar as the revenue authorities have not consented to the granting of more extensive access.

Section 32d – Form of information or access

(1) To the extent that rules are not stipulated in Articles 12 to 15 of Regulation (EU) 2016/679, the revenue authorities shall determine at their discretion which procedures, and in particular which form, shall be used to provide information and grant access.

(2) Revenue authorities may also fulfil their obligation to provide information to data subjects in accordance with Article 13 or 14 of Regulation (EU) 2016/679 by making the information available to the public, as long as no personal data are published as a result.

(3) If revenue authorities use electronic means to provide data subjects with information on the collection or processing of personal data in accordance with Article 13 or 14 of Regulation (EU) 2016/679, or if they use electronic means to grant data subjects access in accordance with Article 15 of Regulation (EU) 2016/679, section 87a(7) or (8) shall apply accordingly.

Section 32e – Relation to other access and information rights

Insofar as a data subject or third party has a right of access to information from a revenue authority pursuant to the Freedom of Information Act of 5 September 2005 (Federal Law Gazette I, p. 2272), as amended, or pursuant to relevant *Land* legislation, Articles 12 to 15 of Regulation (EU) 2016/679 in conjunction with sections 32a to 32d shall apply accordingly. More extensive rights to information on tax data are thus ruled out. Section 30(4) number two shall not apply in this case.

Section 32f – Right to rectification and erasure, right to object

(1) As a supplement to the provision laid down in Article 18(1)(a) of Regulation (EU) 2016/679, if the accuracy of personal data is contested by the data subject and it cannot be determined whether the data are accurate or inaccurate, this shall not cause processing to be restricted if the data serve as the basis for an administrative act that can no longer be cancelled, amended or corrected. The unresolved matter shall be documented in a suitable manner. The contested data may be processed only with reference to the fact that the matter remains unresolved.

(2) If, in cases of non-automated data processing, erasure is impossible or would require disproportionate effort due to a particular manner of storage and the data subject's interest in such erasure is deemed low, then the data subject's right to obtain erasure and the revenue authorities' obligation to conduct erasure in accordance with Article 17(1) of Regulation (EU) 2016/679 shall not apply, in addition to the exceptions specified in Article 17(3) of Regulation (EU) 2016/679. In such cases, a processing restriction in accordance with Article 18 of Regulation (EU) 2016/679 shall apply in lieu of an erasure. The first and second sentences above shall not apply if the personal data were processed unlawfully.

(3) As a supplement to the provisions laid down in Article 18(1)(b) and (c) of Regulation (EU) 2016/679, the first and second sentences of subsection (1) above shall apply in the cases referred to in Article 17(1)(a) and (d) of Regulation (EU) 2016/679 as long as and to the extent that the revenue authorities have reason to believe that an erasure would be detrimental to the legitimate interests of the data subject. Revenue authorities shall notify the data subject of the processing restriction unless such notification is impossible or would require disproportionate effort.

(4) As a supplement to Article 17(3)(b) of Regulation (EU) 2016/679, subsection (1) above shall apply in the cases referred to in Article (17)(1)(a) of Regulation (EU) 2016/679 if erasure stands in conflict with contractual retention periods.

(5) The right to file an objection with financial authorities in accordance with Article 21(1) of Regulation (EU) 2016/679 shall not apply insofar as a compelling public interest in the processing of data overrides the interests of the data subject or insofar as such processing is required by law.

Section 32g – Data protection officers for revenue authorities

Section 5(2) to (5) and sections 6 and 7 of the Federal Data Protection Act shall apply accordingly to the data protection officers who are to be designated by revenue authorities in accordance with Article 37 of Regulation (EU) 2016/679.

Section 32h – Data protection supervision, data protection impact assessments

(1) The Federal Commissioner for Data Protection and Freedom of Information under section 8 of the Federal Data Protection Act shall be responsible for the supervision of revenue authorities as regards the processing of personal data within the scope of this Code. Sections 13 to 16 of the Federal Data Protection Act shall apply accordingly.

(2) If any revenue authority develops an automated procedure for the revenue authorities of other *Länder* or of the Federation for the purpose of processing personal data within the scope of this Code, it shall be incumbent upon that revenue authority to conduct a data protection impact assessment in accordance with Article 35 of Regulation (EU) 2016/679. Insofar as such procedures are adopted by *Land* and federal financial authorities without alteration to functions that are relevant for purposes of data protection, the data protection impact assessment shall likewise apply to the adopting revenue authorities.

(3) *Land* legislation may stipulate that the Federal Commissioner for Data Protection and Freedom of Information shall be responsible for supervising the processing of personal data within the framework of *Land* or municipal tax legislation, as long as (a) such data processing pertains to tax bases regulated by federal law or is based on specifications that are uniform nationwide and (b) the administrative costs incurred by the Federal Commissioner for Data Protection and Freedom of Information as a result of this conferral of responsibility are borne by the respective *Land*.[6]

Section 32i – Judicial protection

(1) Recourse to fiscal courts shall be possible in disputes over rights under Article 78(1) and (2) of Regulation (EU) 2016/679 between (a) an affected public entity under section 6(1) to (1c) and (2) or its legal representative, an affected non-public entity under section 6(1d)

[6] Subdivision of sentence into (a) and (b) added to English translation for purposes of clarity.

and (1e) or a data subject and (b) the competent federal or *Land* supervisory authority.[7] The first sentence above shall not apply in cases where section 2a(4) applies.

(2) Data subjects shall be permitted to take recourse to fiscal courts for the purpose of bringing actions against revenue authorities or revenue authorities' processors regarding infringements of data protection provisions that fall within the scope of Regulation (EU) 2016/679 or regarding infringements of data subjects' rights specified therein.

(3) In cases where a supervisory authority responsible for supervising other public entities or non-public entities pursuant to the Federal Data Protection Act or *Land* legislation issues a legally binding decision that negates, in full or in part, the obligation of a non-public entity or other public entity to cooperate with revenue authorities under this Code or other tax legislation, the competent revenue authority may bring an action to determine whether an obligation to cooperate exists. The entity that the revenue authority claims has an obligation to cooperate shall be summoned.

(4) In cases where subsections (1) to (3) above apply, the Code of Procedure for Fiscal Courts shall apply in accordance with subsections (5) to (10) below.

(5) For proceedings under subsection (1), first sentence, and subsection (3) above, the fiscal court in whose district the relevant competent supervisory authority's head office is located shall have local jurisdiction. For proceedings under subsection (2) above, the fiscal court in whose district the respondent revenue authority or respondent processor is located shall have local jurisdiction.

(6) In proceedings under the first sentence of subsection (1) above, the participating parties shall include:

1. the public entity, non-public entity or data subject as plaintiff or claimant,

2. the competent federal or *Land* supervisory authority as defendant or respondent,

3. parties summoned in accordance with section 60 of the Code of Procedure for Fiscal Courts and

[7] Subdivision of sentence into (a) and (b) added to English translation for purposes of clarity.

4. the highest federal or *Land* revenue authority that has joined the proceedings in accordance with section 122(2) of the Code of Procedure for Fiscal Courts.

(7) In proceedings under subsection (2) above, the participating parties shall include:

1. the data subject as plaintiff or claimant,

2. the revenue authority or processor as defendant or respondent,

3. parties summoned in accordance with section 60 of the Code of Procedure for Fiscal Courts and

4. the highest federal or *Land* revenue authority that has joined the proceedings in accordance with section 122(2) of the Code of Procedure for Fiscal Courts.

(8) In proceedings under subsection (3) above, the participating parties shall include:

1. the competent revenue authority as plaintiff or claimant,

2. the federal or *Land* supervisory authority that issued the legally binding decision, as defendant or respondent,

3. the entity that the revenue authority claims has an obligation to cooperate, as summoned party, and

4. the highest federal or *Land* revenue authority that has joined the proceedings in accordance with section 122(2) of the Code of Procedure for Fiscal Courts.

(9) No preliminary proceedings shall take place.

(10) Actions or claims brought in proceedings under the first sentence of subsection (1) above shall have a suspensive effect. The competent supervisory authority may not issue an order of immediate enforcement to a revenue authority, its legal representative or its processor.

Section 32j – Request for court judgement in cases where an adequacy decision by the European Commission is presumed to be contrary to law

If the Federal Commissioner for Data Protection and Freedom of Information or an entity responsible for monitoring data protection under *Land* law believes that a European Commission adequacy decision, the validity of which will determine the decision over a data

subject's complaint concerning the processing of personal data, is contrary to law, then section 21 of the Federal Data Protection Act shall apply.

Second Part – Legal provisions on tax liability

First Chapter – Taxpayer

Section 33 – Taxpayer

(1) "Taxpayer" shall mean any person who owes a tax, who is liable for a tax, or who is obliged to withhold and remit to revenue authorities a tax which is due on behalf of a third party, to file a tax return, to provide collateral, to keep accounts and records or to discharge other obligations imposed by the tax laws.

(2) "Taxpayer" shall not mean a person who is obliged with regard to tax matters of a third person to furnish information, to produce documents, to submit an expert opinion or to authorise entry to properties, business premises and offices.

Section 34 – Obligations of legal representatives and asset managers

(1) The legal representatives of natural and legal persons, and the managing directors of associations and asset pools without legal capacity shall fulfil the tax obligations of these entities. In particular, they shall ensure that taxes are paid from the funds they manage.

(2) To the extent that associations without legal capacity do not have a managing director, their members or partners shall fulfil the duties within the meaning of subsection (1) above. Any member or partner may be held liable by the revenue authority. The first and second sentences above shall apply to pools of assets without legal capacity subject to the proviso that the persons entitled to the assets fulfil the tax obligations.

(3) Where persons other than the owners of the assets or their legal representatives are responsible for asset management, the asset managers shall, within their management competence, have the obligations referred to in subsection (1) above.

Section 35 – Obligations of persons with powers of disposal

Persons with powers of disposal acting on their own behalf or on behalf of a third party shall have the obligations of a legal representative (section 34(1)) to the extent that they are able to fulfil them *de jure* and *de facto*.

Section 36 – Termination of the authority to represent

Termination of the authority to represent or of the power of disposal shall not affect the obligations pursuant to sections 34 and 35 to the extent that these apply to the period in which the authority to represent or the power of disposal was valid and that the person obliged is able to fulfil them.

Second Chapter – Tax debtor-creditor relationship[8]

Section 37 – Claims arising from the tax debtor-creditor relationship

(1) Claims arising from the tax debtor-creditor relationship shall be the tax claim, the tax rebate claim, the liability claim, the claim to an ancillary tax payment, the refund claim pursuant to subsection (2) below and the tax refund claims set out in individual tax laws.

(2) Where a tax, a tax rebate, a liability amount or an ancillary tax payment was paid or repaid in the absence of legal grounds, the person on whose account the payment was made shall be entitled to a refund from the recipient of the amount paid or repaid. This shall also apply where the legal grounds for the payment or repayment are subsequently abolished. In the case of cession, pledging or seizure, the claim may also be asserted against the person ceding, the pledger or the execution debtor.

Section 38 – Arising of claims from the tax debtor-creditor relationship

Claims shall arise from the tax debtor-creditor relationship as soon as the matter to which the law attaches liability for payment has occurred.

Section 39 – Attribution

(1) Assets shall be attributable to their owner.

(2) Notwithstanding the provisions of subsection (1) above, the following provisions shall apply:

1. Where a person other than the owner exercises effective control over an asset in such a way that he can, as a rule, economically exclude the owner from affecting the asset

[8] *Steuerschuldverhältnis*, i.e., the legal relationship between the person owing the tax and the entity to which it accrues (state).

during the normal period of its useful life, the asset shall be attributable to this person. In the case of fiduciary relationships, assets shall be attributable to the beneficiary, in the case of transferred ownerships for security purposes to the security provider, and in the case of proprietary possessions to the proprietary possessor.

2. Assets to which several persons are jointly entitled shall be attributable proportionally to the participants insofar as taxation requires separate attribution.

Section 40 – Actions contrary to law or public policy

It shall be immaterial for taxation when an action that is completely or partly taxable violates a statutory regulation or prohibition or is contrary to public policy.

Section 41 – Invalid legal transactions

(1) Where a legal transaction is or becomes invalid this shall be immaterial for taxation to the extent that and as long as the persons involved nevertheless allow the economic outcome of this legal transaction to occur and to remain. This shall not apply where the tax laws provide otherwise.

(2) Fictitious transactions and actions shall be immaterial for taxation. Where a fictitious transaction conceals another legal transaction, the concealed legal transaction shall be decisive for taxation.

Section 42 – Abuse of tax planning schemes

(1) It shall not be possible to circumvent tax legislation by abusing legal options for tax planning schemes. Where the element of an individual tax law's provision to prevent circumventions of tax has been fulfilled, the legal consequences shall be determined pursuant to that provision. Where this is not the case, the tax claim shall in the event of an abuse within the meaning of subsection (2) below arise in the same manner as it arises through the use of legal options appropriate to the economic transactions concerned.

(2) An abuse shall be deemed to exist where an inappropriate legal option is selected which, in comparison with an appropriate option, leads to tax advantages unintended by law for the taxpayer or a third party. This shall not apply where the taxpayer provides evidence of non-tax reasons for the selected option which are relevant when viewed from an overall perspective.

Section 43 – Tax debtor, creditor of a tax rebate

Tax legislation shall stipulate the tax debtor or creditor of a tax rebate. It shall also stipulate whether a third party is to pay the tax on behalf of the tax debtor.

Section 44 – Joint and several debtors

(1) Persons who concurrently owe or are liable for the same obligation arising from the tax debtor-creditor relationship or who must be assessed jointly shall be joint and several debtors. Unless otherwise stipulated, each joint and several debtor shall owe the entire obligation.

(2) Fulfilment by a joint and several debtor shall also take effect for the other debtors. The same shall apply to the set-off and any securities provided. Other facts shall only take effect for and against the joint and several debtor personally affected by them. The provisions of sections 268 to 280 with regard to the limitation of enforcement in the case of joint assessment shall remain unaffected.

Section 45 – Universal succession

(1) In the case of universal succession the debts and receivables arising from the tax debtor-creditor relationship shall pass to the legal successor. However, in the case of succession by inheritance this shall not apply to coercive fines.

(2) Heirs shall be liable for debts payable from the estate pursuant to the provisions of civil law with regard to the heir's liability for obligations of the estate. Provisions creating a tax liability of the heirs shall remain unaffected.

Section 46 – Cession, pledging, seizure

(1) Entitlements to the refund of taxes, liability amounts, ancillary tax payments and tax rebates may be ceded, pledged and seized.

(2) However, the act of cession shall take effect only once the creditor declares it after the claim has arisen to the competent revenue authority in the form set out in subsection (3) below.

(3) The act of cession shall be notified to the competent revenue authority on an officially prescribed form, indicating the person ceding, the beneficiary of cession, the nature and

amount of the entitlement ceded and the reason for cession. The notification shall be signed by the person ceding and the beneficiary of cession.

(4) The commercial acquisition of claims to refunds or rebates for the purpose of collection or other liquidation for own account shall not be permissible. This shall not apply in the case of cession for security purposes. Only enterprises authorised to conduct bank business shall be entitled to commercially acquire or collect claims ceded for security purposes.

(5) Where the act of cession has been notified to the revenue authority, the person ceding and the beneficiary of cession shall be obliged to accept the validity of the notified cession in relation to the revenue authority even if such cession does not occur or is ineffective or is void due to contravention of subsection (4) above.

(6) An attachment and transfer order or an attachment and sequestration order may not be issued before the claim has arisen. Any attachment and transfer orders or attachment and sequestration orders obtained in breach of this prohibition shall be void. The provisions of subsections (2) to (5) above shall apply *mutatis mutandis* to pledging.

(7) In the case of attachments of claims to refunds or rebates, the revenue authority which decided or must decide on the claim shall be deemed to be the third party debtor within the meaning of sections 829 and 845 of the Code of Civil Procedure.

Section 47 – Expiration

Claims arising from the tax debtor-creditor relationship shall expire, in particular, through payment (sections 224, 224a and 225), set-off (section 226), remission (sections 163 and 227), termination of a limitation period (sections 169 to 171 and 228 to 232) and due to fulfilment of the condition where claims are subject to a condition subsequent.

Section 48 – Payment by third parties, liability of third parties

(1) Payments to the revenue authority arising from the tax debtor-creditor relationship may also be effected by third parties.

(2) Third parties may contractually agree to guarantee payments within the meaning of subsection (1) above.

Section 49 – Missing persons

When a person is missing and presumed dead, the date at the close of which the decision on the declaration of death of the missing person becomes final and binding shall be deemed the date of death for taxation purposes.

Section 50 – Expiration and unconditionality of excise duty, transfer of the conditional excise duty debt

(1) Where a tax privilege is granted pursuant to excise duty laws and subject to the condition that goods liable to excise duty must be used for a special purpose, the duty shall expire completely or partly in accordance with the relief as soon as the condition is fulfilled or where the goods perish without the tax having previously become unconditional.

(2) The conditional tax debt shall be transferred to the eligible acquirer if the goods are passed on to him for the intended purpose by the tax debtor before the condition has been fulfilled.

(3) The duty shall become unconditional

1. where the goods are used contrary to the intended purpose or cannot be used anymore for this purpose. Where it is impossible to determine the whereabouts of the goods, they shall be considered as not having been used for the intended purpose, unless the beneficiary provides evidence to the contrary,

2. in other cases stipulated by law.

Third Chapter – Tax-privileged purposes

Section 51 – General

(1) The following provisions shall apply where the Code grants tax privileges to a corporation on account of its serving directly and exclusively public-benefit, charitable or religious purposes (tax-privileged purposes). A corporation shall be understood to mean a corporation, an association or a pool of assets as defined in the Corporation Tax Act. Functional subdivisions (departments) of corporations shall not be treated as independent taxable entities.

(2) Where the tax-privileged purposes are achieved abroad, the tax privilege shall be conditional upon natural persons who have their residence or their habitual abode within the territory of the application of this Code being advanced or the activity of the corporation,

alongside achieving the tax-privileged purposes, also being able to contribute to the reputation of the Federal Republic of Germany abroad.

(3) A tax privilege shall furthermore require that the corporation does not, pursuant to its statutes and in its actual management, advance efforts within the meaning of section 4 of the Federal Constitution Protection Act and does not contravene the concept of international understanding. In the case of corporations which are listed in the Federation's or a *Land*'s report on the protection of the constitution as an extremist organisation, it shall be refutably assumed that the conditions of the first sentence above are not fulfilled. The revenue authority shall inform the authority responsible for the protection of the constitution of facts substantiating the suspicion of efforts within the meaning of section 4 of the Federal Constitution Protection Act or contraventions of the concept of international understanding.

Section 52 – Public-benefit purposes

(1) A corporation shall serve public-benefit purposes if its activity is dedicated to the altruistic advancement of the general public in material, spiritual or moral respects. It shall not be deemed an advancement of the general public if the group of persons benefiting from such advancement is circumscribed, for instance by membership of a family or the workforce of an enterprise, or can never be other than small as a result of its definition, especially in terms of geographical or professional attributes. Advancement of the general public may not be contended merely because a corporation allocates its funds to a public-law entity.

(2) Subject to the provisions of subsection (1) above, the following shall be recognised as advancement of the general public:

1. the advancement of science and research;

2. the advancement of religion;

3. the advancement of public health and of public hygiene, in particular the prevention and control of communicable diseases, also by hospitals within the meaning of section 67, and of epizootic diseases;

4. the advancement of assistance to young and old people;

5. the advancement of art and culture;

6. the advancement of the protection and preservation of historical monuments;

7. the advancement of upbringing, adult education and vocational training including assistance for students;

8. the advancement of nature conservation and of landscape management within the meaning of the Federal Nature Conservation Act and the nature conservation acts of the *Länder*, of environmental protection, of coastal defence and of flood defence;

9. the advancement of public welfare, in particular of the purposes of the officially recognised voluntary welfare associations (section 23 of the VAT Implementing Ordinance), their subsidiary associations and their affiliated organisations and institutions;

10. the advancement of relief for people persecuted on political, racial or religious grounds, for refugees, expellees, ethnic German repatriates who migrated to the Germany between 1950 and 1 January 1993, ethnic German repatriates migrating to Germany after 1 January 1993, war victims, dependents of deceased war victims, war disabled and prisoners of war, civilian war disabled and people with disabilities as well as relief for victims of crime; the advancement of the commemoration of persecutees, war and disaster victims; the advancement of the tracing service for missing persons;

11. the advancement of life saving;

12. the advancement of fire prevention, occupational health and safety, disaster control and civil defence as well as of accident prevention;

13. the advancement of internationalism, of tolerance in all areas of culture and of the concept of international understanding;

14. the advancement of the protection of animals;

15. the advancement of development cooperation;

16. the advancement of consumer counselling and consumer protection;

17. the advancement of welfare for prisoners and former prisoners;

18. the advancement of equal rights for women and men;

19. the advancement of the protection of marriage and the family;

20. the advancement of crime prevention;

21. the advancement of sport (chess shall be considered to be a sport);

22. the advancement of local heritage and traditions;

23. the advancement of animal husbandry, of plant cultivation, of allotment gardening, of traditional customs including regional carnival, of the welfare of servicemen and reservists, of amateur radio, of aeromodelling and of dog sports;

24. the general advancement of democratic government in the territory of application of this Code; this shall not include endeavours which are solely in pursuit of specific individual interests of a civic nature or which are restricted to the local-government level;

25. the advancement of active citizenship in support of public-benefit, charitable or religious purposes.

To the extent that the purpose pursued by the corporation does not fall under the first sentence above, but the general public is correspondingly advanced altruistically in material, spiritual or moral aspects, this purpose may be declared as being for the public benefit. The highest revenue authority of each *Land* shall designate a revenue authority within the meaning of the Fiscal Administration Act which is responsible for decisions pursuant to the second sentence above.

Section 53 – Charitable purposes

A corporation shall be deemed to serve charitable purposes if its activity is dedicated to altruistic support for persons

1. who on account of their physical, mental or emotional state are dependent upon the assistance of others, or
2. whose means are not greater than four times the standard rate of social assistance as defined in section 28 of the Social Code, Book XII; in the case of a single person or

single parent, five times the standard rate shall apply instead of four times. This shall not apply to persons whose assets are sufficient to effect a lasting improvement in their upkeep and who may reasonably be expected to use those assets for such purpose. In the case of persons whose financial circumstances have been transformed by special reasons into a state of need, the means or assets may exceed the stated limits. Means for the purposes of this provision shall be

a) income as defined in section 2(1) of the Income Tax Act, and

b) other means intended or suitable for the provision of subsistence

accruing to all household members. Maintenance payments, both paid and received, shall also be taken into account. As defined here, the need for economic assistance shall be deemed proven for persons who receive benefits pursuant to the Social Code, Book II or XII; the Housing Benefits Act; section 27a of the Federal War Victims' Relief Act; or section 6a of the Federal Child Benefits Act. The corporation may provide proof on the basis of the respective benefits notice applicable for the period of support or on the basis of a confirmation from the benefits provider. The requirement to provide proof of the need for economic assistance may be waived upon application by the corporation if, based on the particular type of support provided, it can be assured that support is provided only to persons in need of economic assistance as defined here; section 60a(3) to (5) shall apply accordingly with regard to notifications waiving the requirement to provide proof.

Section 54 – Religious purposes

(1) A corporation shall serve religious purposes if its activity is dedicated to the altruistic advancement of a religious community which is a public-law entity.

(2) These purposes shall include, in particular, building, decorating and maintaining houses of worship and religious community centres, conducting religious services, training priests, providing religious teaching, conducting burials and safeguarding the remembrance of the dead, also administering church assets, remunerating members of the clergy, church officials and servants of the church, and providing old-age and disability pensions for these persons and their dependants.

Section 55 – Altruistic activity

(1) Advancement or support shall be provided altruistically if it does not primarily serve the corporation's own economic purposes, for instance commercial or other gainful purposes, and the following requirements are met:

1. The funds of the corporation may be used only for the purposes set out in the statutes. Members or partners (members for the purposes of these provisions) may receive neither profit shares nor in their capacity as members any other allocations from the funds of the corporation. The corporation may use its funds neither for the direct nor for the indirect advancement or support of political parties.

2. On termination of their membership or on dissolution or liquidation of the corporation, members may not receive more than their paid-up capital shares and the fair market value of their contributions in kind.

3. The corporation may not provide a benefit for any person by means of expenditure unrelated to the purpose of the corporation or disproportionately high remuneration.

4. Where the corporation is dissolved or liquidated or where its former purpose ceases to apply, the assets of the corporation in excess of the members' paid-up capital shares and the fair market value of their contributions in kind may be used only for tax-privileged purposes (dedication of assets). This requirement shall also be met if the assets are to be assigned to another tax-privileged corporation or to a legal person under public law for tax-privileged purposes.

5. Subject to section 62, the corporation shall in principle use its funds promptly for the tax-privileged purposes set out in its statutes. The use of funds for the acquisition or creation of assets serving the purposes set out in the statutes shall also constitute an appropriate use. Funds shall be deemed to have been used promptly where they are used for the tax-privileged purposes set out in the statutes by no later than two calendar or financial years following their accrual.

(2) In calculating the fair market value (subsection (1) numbers 2 and 4 above) the circumstances prevailing at the time at which the contributions in kind were made shall apply.

(3) The provisions relating to the members of the corporation (subsection (1) numbers 1, 2 and 4 above) shall apply in the case of foundations to the donors and their heirs, and, in the case of undertakings of a commercial nature of legal persons under public law, shall apply *mutatis mutandis* to the corporation with the proviso that for assets withdrawn at book value from business capital pursuant to section 6(1) number 4, fourth sentence, of the Income Tax Act the book value of the withdrawal replaces the fair market value.

Section 56 – Exclusivity

Exclusivity shall be deemed to exist if the sole pursuit of a corporation is the tax-privileged purposes set out in the statutes.

Section 57 – Directness

(1) A corporation shall pursue the tax-privileged purposes set out in the statutes directly if the corporation itself achieves these purposes. This may also be achieved by aides if, in terms of the circumstances of the case, in particular in terms of the legal and actual relationship between the corporation and the aide, the activity of the aide is to be regarded as activity by the corporation itself.

(2) A corporation in which tax-privileged corporations are combined shall be deemed equivalent to a corporation directly pursuing tax-privileged purposes.

Section 58 – Activities having no detrimental effect on tax privilege

Tax-privileged status shall not be precluded in the event that

1. a corporation procures funds for the achievement of the tax-privileged purposes of another corporation or for the achievement of tax-privileged purposes by a legal person under public law; the procurement of funds for a private corporation subject to unlimited tax liability shall be conditional upon that corporation itself having tax-privileged status,

2. a corporation assigns part of its funds to another tax-privileged corporation or to a legal person under public law to be used for tax-privileged purposes,

3. a corporation assigns its surpluses (income over expenses) from asset management, all or part of its gains from economic activities, and a maximum of 15 percent of its other

funds destined for prompt use under section 55(1) number 5 to another tax-privileged corporation or to a legal person under public law for the purpose of asset endowment. The tax-privileged purposes to be achieved with the asset yields must be in line with the tax-privileged purposes of the assigning corporation as set out in its statutes. The funds assigned under this number and their yields may not be used for the further forwarding of funds within the meaning of the first sentence above,

4. a corporation makes available its workforce to other persons, enterprises, organisations or a legal person under public law for tax-privileged purposes,

5. a corporation makes available premises belonging to it to another tax-privileged corporation or to a legal person under public law to be used for tax-privileged purposes,

6. a foundation uses a part not exceeding one third of its income for the appropriate upkeep of the donor and his or her near relatives, to maintain their graves and to honour their memory,

7. a corporation holds social events which are of secondary significance in comparison with its tax-privileged activities,

8. a sports association promotes paid in addition to unpaid sporting activities,

9. a foundation set up by a political subdivision makes grants to commercial undertakings to achieve its tax-privileged purposes,

10. a corporation uses, in the year of accrual, funds to acquire shareholder rights to maintain the percentage share of holdings in incorporated companies. Such acquisition shall reduce the amount of reserves pursuant to section 62(1) number 3.

Section 59 – Preconditions for tax privileges

Tax privileges shall be granted if it is stated in the statutes, the act of foundation or other articles of association (statutes for the purposes of these provisions) the purpose the corporation pursues, that this purpose fulfils the requirements of sections 52 to 55 and that it is pursued exclusively and directly; actual management activity must conform to these statute provisions.

Section 60 – Requirements to be met by the statutes

(1) The purposes set out in the statutes and the means by which they are to be achieved shall be so precisely defined as to ensure that it can be ascertained on the basis of the statutes whether the preconditions for tax privileges have been fulfilled. The statutes shall contain the criteria referred to in Annex 1.

(2) The statutes shall conform to the prescribed requirements, in respect of corporation tax and trade tax, during the entire assessment period, and, in respect of other taxes, at the time the tax liability arises.

Section 60a – Determination of compliance with statute-related preconditions

(1) Compliance with statute-related preconditions pursuant to sections 51, 59, 60 and 61 shall be determined in a separate process. The determination of statute-related compliance shall be binding with regard to the taxation of the corporation and of taxpayers who give donations to the corporation in the form of gifts and membership contributions.

(2) Determination of statute-related compliance shall be carried out

1. upon application by the corporation or

2. as standard procedure during assessment of corporation tax if no such determination has yet been carried out.

(3) The binding effect of the determination shall cease from the date the legal provisions upon which the determination is based are rescinded or amended.

(4) In the event that circumstances relevant to the determination change, the determination shall be rescinded with effect from the date on which such circumstances change.

(5) Material errors in the notice of determination of statute-related compliance may be remedied with effect from the calendar year following the notification that the determination is to be rescinded. Section 176 shall apply accordingly, unless changes are to be made for calendar years that commence after the promulgation of an authoritative ruling by a highest federal court.

Section 61 – Dedication of assets in the statutes

(1) A sufficient dedication of assets for tax purposes (section 55(1) number 4) shall be deemed to exist if the purpose for which the assets are to be used if the corporation is dissolved or liquidated or if its former purpose ceases to apply is so precisely defined in the statutes as to ensure that it can be ascertained on the basis of the statutes whether such purpose is tax-privileged.

(2) (rescinded)

(3) If the provision on the dedication of assets is subsequently amended so that it no longer conforms to the requirements of section 55(1) number 4 it shall be deemed from the outset to have been insufficient for tax purposes. Section 175(1), first sentence, number 2 shall apply with the proviso that tax assessment notices may be issued, cancelled or amended insofar as they relate to taxes which have arisen within the ten calendar years preceding the amendment of the provision on the dedication of assets.

Section 62 – Reserves and asset accumulation

(1) A corporation may allocate all or part of its funds

1. to a reserve, insofar as this is necessary to sustainably fulfil the tax-privileged purposes set out in its statutes;

2. to a reserve for the intended replacement of fixed assets that are necessary for achieving the tax-privileged purposes set out in its statutes (replacement reserves). The amount of the allocation shall be calculated in accordance with the regular depreciation allowances for the fixed asset to be replaced. Evidence shall be provided for conditions justifying higher allocations;

3. to a general reserve, but this allocation may include no more than one third of its surpluses from asset management plus no more than 10 percent of its other funds destined for prompt use under section 55(1) number 5. If the maximum allocable amount is not allocated to the general reserve in a given year, the difference between the amount allocated and the maximum allocable amount may be made up over the following two years;

4. to a reserve for the purpose of acquiring shareholder rights to maintain the percentage share of holdings in incorporated companies, although the amount of this reserve shall reduce the amount of the reserve under number 3 above.

(2) The accumulation of reserves pursuant to subsection (1) above shall take place within the time limit stipulated in section 55(1) number 5, third sentence. Reserves under subsection 1 numbers 1, 2 and 4 above shall be dissolved without delay as soon as the reason for accumulating the reserve no longer applies. The decommitted funds shall be used within the time limit stipulated in section 55(1) number 5, third sentence.

(3) The following allocations of funds are not subject to the provisions on prompt use under section 55(1) number 5:

1. donations by reason of death if the decedent did not stipulate use for the current expenditure of the corporation;

2. donations which the donor expressly states are to be used to endow the corporation with assets or to increase the assets;

3. donations received in response to an appeal by the corporation if it is evident from the appeal that donations are solicited to increase the assets;

4. donations in kind which by their nature form part of the assets.

(4) A foundation may transfer to its assets, in whole or in part in the year of its establishment and in the three following calendar years, surpluses from the management of assets and gains from economic activities pursuant to section 14.

Section 63 – Requirements to be met by actual management activity

(1) The actual management of the corporation shall be directed towards the exclusive and direct achievement of the tax-privileged purposes and shall conform to the provisions on the requirements for tax privileges contained in the statutes.

(2) Section 60(2) shall apply *mutatis mutandis* in respect of the actual management activity and section 61(3) in respect of a breach of the stipulated dedication of assets.

(3) The corporation shall show by way of orderly records of its revenue and expenditure that the actual management activity conforms to the provisions of subsection (1) above.

(4) If the corporation has accumulated funds without meeting the requirements, the tax office may set the corporation a time limit for the use of the funds. The actual management activity shall be deemed to conform with the provisions of subsection (1) above if the corporation uses the funds for tax-privileged purposes within such time limit.

(5) Corporations within the meaning of section 10b(1), second sentence, number 2 of the Income Tax Act may issue donation receipts within the meaning of section 50(1) of the Income Tax Implementing Ordinance only if

1. no more than five years have elapsed since the date on the annex to the corporation tax assessment notice or exemption notice or

2. no more than three years have elapsed since the determination of statute-related compliance pursuant to section 60a(1) and no exemption notice or annex to the corporation tax assessment notice has yet been issued.

The time limit shall be calculated to the exact date.

Section 64 – Taxable economic activities

(1) If the law precludes tax privileges to the extent that an economic activity (section 14) is carried on, the corporation shall forfeit the tax privilege for the tax bases (income, turnover, assets) attributable to such economic activity insofar as the economic activity is not a dedicated activity (sections 65 to 68).

(2) If the corporation carries on several economic activities which are not dedicated activities (sections 65 to 68), these shall be treated as a single economic activity.

(3) Tax bases attributable to economic activities which are not dedicated activities shall not be subject to corporation tax and trade tax if the total annual income including VAT from these economic activities does not exceed 35,000 euros.

(4) The subdivision of a corporation into several independent corporations for the purpose of benefiting more than once from the tax privilege pursuant to subsection (3) above shall

constitute an abuse of legal options for tax planning schemes within the meaning of section 42.

(5) Surpluses subject to corporation tax and trade tax realised from the liquidation of used materials obtained free of charge, unless realised by a selling agency permanently maintained for that purpose, may be estimated up to the level of the conventional net profit in the respective branch of business.

(6) In the case of the following taxable economic activities, taxation may be based on a profit of 15 percent of income:

1. publicity for enterprises undertaken in connection with tax-privileged activity including dedicated activities,

2. totalisator operations,

3. second fractionation stage of the blood donor services.

Section 65 – Dedicated activity

A dedicated activity shall be deemed to exist where

1. the overall design of the economic activity is directed towards achieving the tax-privileged purposes of the corporation as set out in the statutes,

2. such purposes can be achieved only by way of such activities, and

3. the economic activity does not enter into competition with non-privileged activities of the same or similar type to a greater extent than necessary for achieving the tax-privileged purposes.

Section 66 –Welfare

(1) A welfare institution shall carry on a dedicated activity if it is especially directed towards serving the persons designated in section 53.

(2) Welfare shall be the organised care of distressed or endangered fellow humans undertaken not for gain but for the public benefit. Such care may extend to ensuring health, moral, educational or economic welfare and may serve preventive or remedial purposes.

(3) A welfare institution shall be especially directed towards serving the persons designated in section 53 if such persons benefit from at least two thirds of its disbursements and other services. Section 67 shall apply in the case of hospitals.

Section 67 – Hospitals

(1) A hospital covered by the Hospital Fees Act or the Federal Ordinance on Hospital and Nursing Charges shall carry on dedicated activity if not less than 40 percent of hospital days or calculation days each year is attributable to patients for whom only rates for general hospital services are charged (section 7 of the Hospital Fees Act, section 10 of the Federal Ordinance on Hospital and Nursing Charges).

(2) A hospital not covered by the Hospital Fees Act or the Federal Ordinance on Hospital and Nursing Charges shall carry on dedicated activity if not less than 40 percent of hospital days or calculation days each year is attributable to patients for whom no higher charge for hospital services is made than that referred to in subsection (1) above.

Section 67a – Sporting events

(1) Sporting events conducted by a sports association shall constitute dedicated activity if the total annual income including VAT does not exceed 45,000 euros. The sale of food and drinks and the publicity measures shall not form part of the sporting events.

(2) Up to the time at which the corporation tax assessment notice becomes unappealable, the sports association may declare to the tax office that it waives the application of the first sentence of subsection (1) above. This declaration shall be binding upon the sports association for not less than five assessment periods.

(3) Where the application of the first sentence of subsection (1) above is waived, sporting events conducted by a sports association shall constitute dedicated activity if

1. no members of the association taking part receive from the association or from a third party remuneration or other benefits for their sporting activity or for the use of their persons, their names, their pictures or their sporting activity for publicity purposes apart from an expense allowance, and

2. no other sportspersons taking part receive from the association or from a third party in collaboration with the association remuneration or other benefits for taking part in the event apart from an expense allowance.

Other sporting events shall constitute a taxable economic activity. This shall not preclude tax privileges if the remuneration or other benefits are paid exclusively from economic activities which are not dedicated activities, or by third parties.

Section 68 – Specific dedicated activities

The following shall also constitute dedicated activities:

1. a) old people's homes, old people's residential and nursing homes, convalescent homes and services for the provision of meals if especially directed towards serving the persons designated in section 53 (section 66(3)),

   b) kindergartens, residential homes for children, young persons and students, temporary hostels for schoolchildren in rural areas and youth hostels,

2. a) agricultural and horticultural undertakings serving to ensure the self-sufficiency of corporations and hence the proper nutrition of and adequate provision for institutional residents,

   b) other organisations necessary for the self-sufficiency of corporations such as joinery and metalworking shops,

   if the supplies and other services provided by such organisations to third parties do not exceed 20 percent of the total of supplies and other services provided by the undertaking, including those provided to the corporation itself,

3. a) workshops for the disabled which are eligible for aid in accordance with the provisions of the Social Code, Book III, and which provide employment for persons who on account of their disabilities are unable to obtain work in the general labour market;

   b) organisations providing employment and work therapy where disabled persons undergo treatment on account of a doctor's indication and without having an employment relationship with the supporting institution of the therapeutic

facility in order to rebuild basic physical or psychological functions with the aim of reintegrating such persons into everyday life or of developing, advancing and training the specific skills and abilities necessary for participating in working life, and

c) integrative projects within the meaning of section 132(1) of the Social Code, Book IX, if not less than 40 percent of the employees are particularly affected, severely disabled persons within the meaning of section 132(1) of the Social Code, Book IX,

4. organisations maintained to provide welfare for blind people and for physically disabled people,

5. Day and night facilities (residential care for children and young people) or other forms of assisted living,

6. lotteries and raffles approved by the authorities responsible if the net return is directly and exclusively used to advance public-benefit, charitable or religious purposes,

7. cultural institutions such as museums and theatres and cultural events such as concerts and art exhibitions; this shall not include the sale of food and drink,

8. adult education centres and other institutions insofar as they themselves conduct lectures, courses and other events of an academic or instructional nature; this shall also apply to the extent that the institutions themselves provide board and accommodation for persons attending such events,

9. scientific and research institutions whose supporting institution is funded predominantly by allocations from the public sector or from third parties or from asset management. Contract research shall also serve science and research purposes. Activities restricted to the application of established scientific knowledge, the assumption of project sponsoring and economic activities not linked to research shall not constitute dedicated activity.

Fourth Chapter – Liability

Section 69 – Liability of the representative

The persons referred to in sections 34 and 35 shall be liable where claims arising from the tax debtor-creditor relationship (section 37) are not determined or satisfied or not determined or satisfied in time due to a breach of the duties imposed on them, wilfully or through gross negligence, or where, as a result, tax rebates or refunds are paid in the absence of legal grounds. This liability shall also include any late-payment penalties payable as a result of the breach of duty.

Section 70 – Liability of the person represented

(1) Where, in fulfilling their duties, the persons referred to in sections 34 and 35 evade taxes or recklessly understate taxes or are involved in tax evasion and, as a result, owe taxes or become liable, the persons represented, unless they are tax debtors, shall be liable for the taxes understated due to the crime and for the tax advantages wrongfully granted.

(2) Subsection (1) above shall not apply to crimes committed by legal representatives of individuals if the individual's wealth has not increased as a result of the crime committed by the representative. The same shall apply where the persons represented carefully selected and supervised the person who evaded taxes or recklessly understated taxes.

Section 71 – Liability of tax evaders and persons receiving, holding or selling goods obtained by tax evasion

Any person who evades taxes or receives, holds or sells goods obtained by tax evasion or participates in such an act shall be liable for the taxes understated, the tax advantages wrongfully granted, the interest due under section 235 and the interest due under section 233a insofar as the latter has been credited against the interest due on evaded taxes pursuant to section 235(4).

Section 72 – Liability for breaches of the obligation on the authenticity of accounts

Whoever contravenes the provisions of section 154(3) wilfully or due to gross negligence shall be liable to the extent that this contravention is detrimental to the realisation of claims arising from the tax debtor-creditor relationship.

Section 72a – Third-party liability in connection with the transmission of data to revenue authorities

(1) Producers of programmes as defined in section 87c shall be liable if, due to a breach of their obligations under section 87c, data are processed incorrectly or incompletely and, as a result, taxes are understated or unwarranted tax benefits are obtained. Such liability shall be waived if the producer provides evidence that the breach of obligations was not due to gross negligence or intentional wrongdoing.

(2) Any person who, acting in their capacity as contractor (section 87d), uses programmes to process data as described in section 87c shall be liable if

1. as a result of incorrect or incomplete transmission, taxes are understated or unwarranted tax benefits are obtained or

2. he breaches his obligations under section 87(2) and, as a result of the data he transmits, taxes are understated or unwarranted tax benefits are obtained.

Such liability shall be waived if the contractor provides evidence that the incorrect or incomplete transmission of data or the breach of obligations under section 87(2) was not due to gross negligence or intentional wrongdoing.

(3) Subsections (1) and (2) shall not apply to recapitulative statements as defined in section 18a(1) of the VAT Act.

(4) Any person who must transmit data to the revenue authorities in accordance with section 93c and who, acting with intent or gross negligence,

1. transmits incorrect or incomplete data or

2. fails to transmit data in violation of his obligations

shall be liable for the forfeited tax.

Section 73 – Liability in the case of fiscal unity[9]

A controlled company shall be liable for such taxes payable by the controlling company for which their fiscal unity is of relevance with regard to tax purposes. Entitlements to the reimbursement of tax rebates shall be equivalent to these taxes.

Section 74 – Liability of the owner of objects

(1) Where objects serving the purposes of an enterprise are not owned by the trader but by a person holding a substantial interest in the enterprise, the owner of the objects shall be liable with such objects for those taxes payable by the enterprise where tax liability is based on operation of the enterprise. However, this liability shall only extend to those taxes which became chargeable while the substantial interest existed. Entitlements to the reimbursement of tax rebates shall be equivalent to these taxes.

(2) Persons shall be deemed to hold a substantial interest in the enterprise if they directly or indirectly hold an interest of more than a quarter of the share or nominal capital or of the assets of the enterprise. Persons exercising a controlling influence on the enterprise and contributing by their behaviour to the non-payment of taxes due within the meaning of the first sentence of subsection (1) above shall also be deemed to hold a substantial interest.

Section 75 – Liability of the acquirer of a business

(1) Where ownership of an enterprise or a business managed separately within an enterprise structure is transferred as a whole, the acquirer shall be liable for taxes where tax liability is based on operation of the enterprise, and for withholding taxes, provided that the taxes have arisen after the beginning of the last calendar year before the transfer and that they are assessed or declared before expiry of one year after registration of the business by the acquirer. Liability shall be limited to the assets acquired. Entitlements to the reimbursement of tax rebates shall be equivalent to taxes.

(2) Subsection (1) above shall not apply to acquisitions from an insolvency estate or to acquisitions in enforcement proceedings.

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[9] *Organschaft*, i.e., the German system under which a company with its own legal personality (*Organgesellschaft*) is controlled by another company (*Organträger*) and dependent upon the latter financially, economically and operationally. Both companies are treated as one for tax purposes.

Section 76 – Liability *in rem*

(1) Goods liable to excise, import or export duty shall serve as a guarantee for the taxes due on those goods (liability *in rem*), irrespective of any third-party rights.

(2) Unless otherwise stipulated, liability *in rem* shall arise for goods subject to excise, import or export duty upon their entry into the territory of application of this Code, for goods subject to excise duty also upon their production or manufacture.

(3) As long as the tax has not been paid, the revenue authority may seize the goods. Seizure of the goods may also be effected by prohibiting the person with custody of the goods from disposing of them.

(4) Liability *in rem* shall expire as soon as the tax debt expires. It shall also expire as soon as the seizure is lifted or the goods are released for home use with the consent of the revenue authority.

(5) The liability *in rem* shall not be enforced if the person with power to dispose of the goods has lost them, if the goods subject to excise duty are taken into a manufacturing business or if the goods subject to import or export duty are assigned a customs-approved treatment or use.

Section 77 – Obligation to tolerate

(1) Whoever is legally obliged to pay a tax out of funds they manage shall to this extent be obliged to tolerate enforcement against these assets.

(2) The owner of real property shall tolerate execution against this property on account of a tax based on real property as a public charge. Whoever is registered as owner in the Land Register shall be deemed to be the owner as far as the revenue authority is concerned. The right of the unregistered owner to raise the objections against the public charge to which he is entitled shall remain unaffected.

Third Part – General rules of procedure

First Chapter – Procedural principles

1st Subchapter – Participation in the proceedings

Section 78 – Participants

Participants shall be

1. those making and opposing an application,
2. those to whom the revenue authority intends to direct or has directed the administrative act,
3. those with whom the revenue authority intends to conclude or has concluded a contract under public law.

Section 79 – Capacity to act

(1) The following shall be capable of acting in administrative proceedings:

1. natural persons capable of contracting under civil law,
2. natural persons whose capacity to contract is limited under civil law, to the extent that they are recognised with regard to the subject matter of the proceedings as being capable of contracting under civil law or capable of acting under public law,
3. legal persons, associations and pools of assets represented by their legal representatives or specially appointed individuals,
4. authorities represented by their heads, or representatives or persons appointed by them.

(2) Where there is a reservation of consent pursuant to section 1903 of the Civil Code regarding the subject matter of the proceedings, a person with capacity to contract under the care of a custodian shall be deemed capable of acting in administrative proceedings only

insofar as he may act, under the provisions of civil law, without the consent of the custodian, or he is recognised as being capable of acting under the provisions of public law.

(3) Sections 53 and 55 of the Code of Civil Procedure shall apply accordingly.

Section 80 – Authorised representatives and advisers

(1) A participant may authorise another person to represent him. The authorised representative shall have the power to take all actions related to administrative proceedings except where the terms of the authorisation indicate otherwise; the authorised representative shall not have the power to receive tax refunds or tax rebates. The revocation of an authorisation shall not take effect with the revenue authorities until they receive such revocation; the same shall apply to the modification of an authorisation.

(2) There shall be a presumption that the persons and associations described in section 3 and section 4 number 11 of the Tax Consultancy Act, who act on behalf of taxpayers, are properly authorised. For the retrieval of data that pertain to the person who granted the authorisation (hereinafter the "principal") and that are stored at a *Land* revenue authority, proper authorisation shall be presumed only in accordance with the provisions of section 80a(2) and (3).

(3) Revenue authorities may demand proof of authorisation without cause.

(4) The death of the principal, a change in the principal's capacity to act or a change in the principal's legal representation shall not nullify the authorisation. However, when acting in administrative proceedings on behalf of the legal successor, the authorised representative shall upon request furnish proof of the successor's authorisation.

(5) If a person is appointed to act as authorised representative in proceedings, he shall be the contact person for the revenue authorities. The revenue authorities may contact the actual participant insofar as the latter is obliged to cooperate. If the revenue authorities do contact the participant, the authorised representative is to be notified accordingly. Section 122(1), third and fourth sentences, shall apply with respect to the disclosure of administrative acts.

(6) A participant may bring an adviser to negotiations and discussions. Statements by the adviser shall be deemed to have been made by the participant unless the latter states his disagreement without undue delay.

(7) If an authorised representative provides professional assistance in tax matters without having the authority to do so, he shall be barred from all pending and future administrative proceedings that pertain to the principal and that fall under the jurisdiction of the revenue authority. If an authorised representative is so barred, both he and the principal shall be notified accordingly. The revenue authority shall have the power to notify other revenue authorities that the authorised representative has been barred.

(8) An authorised representative may be barred from making a written, electronic or oral submission insofar as he is unqualified to do so. This shall not apply to the natural persons specified in section 3 number 1, section 4 numbers 1 and 2 and section 23(3) of the Tax Consultancy Act or to natural persons who work for an agricultural accountancy office (*Landwirtschaftliche Buchstelle*) and who are authorised under section 44 of the Tax Consultancy Act to hold the professional title of "agricultural accountancy officer". If an authorised representative is so barred, both he and the principal shall be notified accordingly.

(9) Advisers who provide professional assistance in tax matters without the authority to do so shall be barred from making oral submissions. Furthermore, they may be barred from making oral submissions if they are incapable of making or unwilling to make an appropriate submission; the second and third sentences of subsection (8) above shall apply accordingly.

(10) Any actions that authorised representatives or advisers take in administrative proceedings after being notified that they have been barred shall have no effect.

Section 80a – Electronic transmission to *Land* revenue authorities of data contained in authorisations granting powers of representation

(1) Data contained in authorisations granting powers of representation in tax proceedings and submitted using officially prescribed forms may be transmitted, using officially prescribed data sets and via officially designated interfaces, to *Land* revenue authorities. The data set shall also state whether the principal has empowered the authorised representative to receive administrative acts on the principal's behalf or to retrieve data stored by the revenue authorities and pertaining to the principal. The transmitted data must be commensurate with the authorisation granting powers of representation. If a principal revokes or modifies an authorisation that has been transmitted in accordance with the first sentence above, the authorised representative must notify the *Land* revenue authorities accordingly, without delay, using an officially prescribed data set.

(2) If the data contained in the authorisation are transmitted in accordance with subsection (1) above by an authorised representative who is licensed to provide professional assistance in tax matters in accordance with section 3 of the Tax Consultancy Act, it shall be presumed that powers of representation have been granted in the scope reported, under the condition that the competent chamber confirms that such data are transmitted only by such authorised representatives who have the authority to provide professional assistance in tax matters. In such cases, the chamber with jurisdiction over the authorised representative shall also notify the *Land* revenue authorities without delay, using an officially prescribed data set, if that person is no longer licensed.

(3) Subsection (2) above shall apply accordingly to data contained in an authorisation that are transmitted by an approved wages tax assistance association (*Lohnsteuerhilfeverein*) as defined in section 4 number 11 of the Tax Consultancy Act, as long as the competent supervisory body, using an automated procedure, confirms that the association is approved to provide assistance in tax matters.

Section 81 – Official appointment of a representative

(1) If no representative has been appointed, a custodianship court – and in the case of an underage participant, a family court – shall, at the request of the revenue authority, appoint a suitable representative

1. for a participant whose identity is unknown,

2. for an absent participant whose abode is unknown or who is prevented from looking after his affairs,

3. for participants without abode in

   a) Germany,

   b) another Member State of the European Union, or

   c) another state where the Agreement on the European Economic Area applies,

   if such participants fail to comply with the revenue authority's request to appoint a representative by the stipulated deadline,

4. for a participant who, as a result of mental illness or physical, mental or emotional disability, is not capable of taking part personally in the administrative process,

5. with respect to ownerless items to which the proceedings refer, in order to protect the rights and obligations arising in relation to such items.

(2) Competency over the appointment of the representative shall lie with the custodianship court in the cases referred to in subsection (1) number 4 above and, in the case of a participant not of full age, with the family court, in whose district the participant has his habitual abode (section 272(1) number 2 of the Act on the Procedure in Family Matters and in Matters of Non-Contentious Jurisdiction); in all other respects, the competent court shall be that in whose district the revenue authority making the request is located.

(3) The representative shall be entitled to claim from the legal entity of the revenue authority requesting his appointment a reasonable remuneration and refund of his cash outlay. The revenue authority may require the person represented to refund its expenses. It shall determine the amount of remuneration and ascertain the amount of expenditure and costs.

(4) In the cases referred to in subsection (1) number 4 above, the appointment and office of representative shall be governed by the provisions on custody; in all other respects, the provisions on tutelage shall apply accordingly.

2nd Subchapter – Exclusion and rejection of public officials and other persons

Section 82 – Persons excluded

(1) The following persons may not act on behalf of a revenue authority in administrative proceedings:

1. whoever is himself a participant,

2. whoever is a relative (section 15) of a participant,

3. whoever by virtue of a law or authorisation represents a participant in general or in the specific administrative proceedings,

4. whoever is a relative (section 15) of a person who provides assistance in tax matters to a participant in the proceedings,

5. whoever is employed by a participant and receives remuneration from him, or is active on his board of management, supervisory board or similar body; this shall not apply to a person whose employing body is a participant,

6. whoever, outside his official capacity, has furnished an opinion or otherwise been active in the matter.

Anyone who may benefit or suffer a disadvantage directly as a result of the action or the decision shall be deemed equal to the participant. This shall not apply when the benefit or disadvantage is based only on the fact that someone belongs to an occupational group or segment of the population whose joint interests are affected by the matter.

(2) Whoever is excluded under subsection (1) above may undertake non-deferrable measures in cases of imminent danger.

(3) Where a member of a committee considers himself to be excluded, or where there is doubt as to whether the provisions of subsection (1) above apply, the chairman of the committee shall be informed. The committee shall decide on the matter of exclusion. The person concerned shall not participate in the decision. The excluded member may not attend further discussions or be present when decisions are taken.

Section 83 – Fear of bias

(1) Where grounds exist to justify suspicions against the impartiality of the public official, or if a participant maintains that such grounds exist, the public official shall inform the head of the authority or the person appointed by him and shall at his request refrain from participating. Where the fear of bias relates to the head of the authority, the supervisory authority shall issue this order to the extent that the head of the authority does not refrain from participating of his own accord.

(2) Section 82(3) shall apply *mutatis mutandis* to members of a committee.

Section 84 – Rejection of members of a committee

Any participant may reject a member of a committee participating in administrative proceedings who is not entitled to take part in the administrative proceedings (section 82) or against whom there is a fear of bias (section 83). A rejection made before the oral hearing shall be explained in writing or for record. The explanation shall not be permissible if the participant has attended the oral hearing without asserting the reason for rejection known to him. The decision on the rejection shall be governed by section 82(3), second to fourth sentences. The decision on the motion for rejection may only be contested jointly with the decision concluding the proceedings before the committee.

3rd Subchapter – Taxation principles, evidence

I. General

Section 85 – Taxation principles

The revenue authorities shall assess and levy taxes in a uniform manner in accordance with applicable laws. In particular, they shall ensure that taxes are not understated, or levied unjustly, or that tax refunds and rebates are not granted or denied incorrectly.

Section 86 – Commencement of proceedings

The revenue authority shall exercise due discretion in deciding whether and when to commence administrative proceedings. This shall not apply when the revenue authority by law

1. must act *ex officio* or upon application,

2. may only act upon application and no such application is submitted.

Section 87 – Official language

(1) The official language shall be German.

(2) Where applications are made to a revenue authority in a foreign language, or petitions, records, documents, certificates or other documents are filed in a foreign language, the revenue authority may require that a translation be provided without undue delay. In justified cases, the revenue authority may require submission of a notarised translation or a translation

by a publicly authorised or sworn interpreter or translator. Where the required translation is not furnished without undue delay, the revenue authority may itself arrange for a translation at the expense of the participant. Where the revenue authority has availed itself of the services of interpreters or translators, these shall receive remuneration in corresponding application of the Judicial Remuneration and Compensation Act.

(3) Where a notice, application or statement of intent is made with the intention of fixing a period within which the revenue authority is to act in a certain manner, and where these are received in a foreign language, the period shall commence only at that point in time at which a translation is available to the revenue authority.

(4) Where a notice, application or statement of intent received in a foreign language is made with the intention of fixing a period for a participant vis-à-vis the revenue authority, of enforcing a claim under public law or requiring the fulfilment of an action, the notice, application or statement of intent shall be deemed to have been received on the date of their receipt by the revenue authority, where at the revenue authority's request a translation is provided within a suitable period to be fixed by the revenue authority. Otherwise, the moment of receipt of the translation shall be deemed definitive, unless international agreements provide otherwise. Reference shall be made to such legal consequence when the period is being fixed.

Section 87a – Electronic communication

(1) The transmission of electronic documents shall be permissible insofar as the recipient provides this possibility. An electronic document shall be deemed as having been received as soon as the intended receiving entity has recorded it in a format which is capable of being processed by the addressee; section 122(2a), section 122a and section 123, second and third sentences, shall remain unaffected. If the revenue authority transmits data that are subject to tax secrecy, the data shall be encrypted using an appropriate method. Temporary automated decryption that is performed by an accredited service provider during the transmission of a DE-Mail message for the purpose of checking for malware and for the purpose of forwarding the data to the addressee of the DE-Mail message does not violate the encryption requirement under the third sentence above. Electronic notifications stating that data are available for retrieval or that electronically transmitted data have been received by the revenue authorities may be sent unencrypted.

(2) Where an electronic document transmitted to the revenue authority is not suitable for processing by it, the revenue authority shall inform the sender without undue delay, stating the technical specifications that apply. Where a recipient claims that he is unable to process the electronic document transmitted by the revenue authority, the revenue authority shall resend it to him in a suitable electronic format or as a written document.

(3) Where it is stipulated by law that applications, declarations or notifications to the revenue authorities must be submitted in writing, such written communication may be replaced with electronic communication unless otherwise required by law. To qualify as electronic, it shall suffice for an electronic document to bear a qualified electronic signature. When signing, a person may use a pseudonym only if that person provides evidence of his or her identity to the revenue authorities. Written communication may also be replaced with

1. the direct submission of a declaration using an electronic form that the authorities make available via an input device or via publicly accessible networks;

2. the transmission of an electronic document to the authorities using the method of transmission specified in section 5(5) of the DE-Mail Act.

In cases under the fourth sentence number 1, input via publicly accessible networks shall take place using a secure proof of identity pursuant to section 18 of the Identity Card Act or section 78(5) of the Residence Act.

(4) Where it is stipulated by law that administrative acts or other measures of the revenue authorities must be in writing, such written communication may be replaced with electronic communication unless otherwise required by law. To qualify as electronic, it shall suffice for an electronic document to bear a qualified electronic signature. Written communication may also be replaced with the transmission of a DE-Mail message in accordance with section 5(5) of the DE-Mail Act where the confirmation by the accredited service provider indicates that the issuing revenue authority is the user of the DE-Mail account. For transcripts that must be recorded in writing by revenue authorities, the first and third sentences above shall apply only where expressly permitted by law.

(5) If an electronic document constitutes an item of evidence, the evidence shall be deemed supplied once the file has been submitted or transmitted; if neither the taxpayer nor the revenue authority is in possession of the file, section 97 shall apply accordingly. Section 371a

of the Code of Civil Procedure shall apply accordingly with regard to the probative value of electronic documents.

(6) Unless otherwise specified, electronic transmissions of officially prescribed data sets to revenue authorities shall be done using a secure method that authenticates the sender of the data and guarantees the confidentiality and integrity of the data set. If, for purposes of authentication, the sender of the data uses electronic identity verification in accordance with section 18 of the Identity Card Act or section 78(5) of the Residence Act, the data necessary for this purpose may be stored and used together with the other transmitted data.

(7) If an electronic administrative act is sent to the recipient in accordance with section 122(2a), a secure method shall be used that authenticates the transmitting office or entity within the revenue administration and that guarantees the confidentiality and integrity of the data set. A method shall be deemed secure if, in particular, the administrative act

1. bears a qualified electronic signature and is encrypted using an appropriate method or

2. is sent via a DE-Mail message in accordance with section 5(5) of the DE-Mail Act where the confirmation by the accredited service provider indicates that the issuing revenue authority is the user of the DE-Mail account.

(8) If an electronic administrative act is made available for retrieval in accordance with section 122a, a secure method shall be used that authenticates the revenue administration office or entity responsible for making the data available and that guarantees the confidentiality and integrity of the data set. The person who is authorised to retrieve the data shall authenticate himself. The second sentence of subsection (6) shall apply accordingly.

Section 87b – Conditions for transmitting data to revenue authorities via electronic means

(1) In consultation with the highest revenue authorities of the *Länder*, the Federal Ministry of Finance may make specifications pertaining to data sets as well as to further technical details in connection with the electronic transmission of tax returns, documents accompanying tax returns, data contained in authorisations as per section 80a, data as defined in section 93c and other data that need to be provided for the taxation procedure using officially prescribed data sets. It shall not be necessary for the Federal Ministry of Finance to consult with the highest

revenue authorities of the *Länder* if the data are transmitted solely to federal revenue authorities.

(2) Persons who electronically transmit officially prescribed data sets to revenue authorities shall make proper use of the interfaces officially designated for this purpose for the relevant tax period or tax date in accordance with subsection (1) above. The officially designated interfaces will be made available on the internet.

(3) For procedures that are conducted via the central agency as defined in section 81 of the Income Tax Act, the Federal Ministry of Finance may issue ordinances with the consent of the Bundesrat that lay down basic data transmission rules and that specify who is responsible for enforcing claims notices. Rules may be specified in particular for the following:

1. the process for identifying participants in the procedures,
2. details regarding the form, content, processing and storage of the data to be transmitted,
3. the method of data transmission,
4. the obligations of third parties to cooperate and
5. the testing of procedures.

In setting rules on the transmission of data, ordinances may make reference to publications by expert bodies. In such cases, the date of publication, the reference source and an official location where the publication is securely archived shall be indicated.

Section 87c – Use of unofficial data processing programmes in taxation procedures

(1) If unofficial data processing programmes are utilised in taxation procedures for the purpose of processing data, such programmes must ensure the correct and complete processing of such data within the scope of the programme size specified in the programme description.

(2) The size of a programme, together with a description of exceptional cases where the programme cannot process data correctly and completely, must be indicated prominently in programme descriptions.

(3) Before programmes are approved for operative use, and following each modification approved for operative use, manufacturers must test the programmes to determine whether they fulfil the requirements specified in subsection (1) above. As part of this process, a protocol of the most recently conducted test and a programme listing must be produced, and then retained for a period of five years. The retention period stipulated in the second sentence above shall begin with the expiration of the calendar year when the programme was first approved for operative use; in the case of modifications to a programme already approved for operative use, the retention period shall begin no earlier than the expiration of the calendar year when the modification was first approved for operative use. Electronic, magnetic or optical storage methods that enable the programme version currently in use to be reproduced in printed form at any time shall be equivalent to a programme listing.

(4) Revenue authorities have the right to review programmes and documentation. The obligations of taxpayers to cooperate pursuant to section 200 shall apply accordingly. In the event of a defective programme, revenue authorities shall contact the manufacturer or distributor without delay to request repair or replacement. If repair or replacement is not carried out without delay, revenue authorities shall have the right to ban the manufacturer's programmes from being used for the electronic transmission of data to revenue authorities. Revenue authorities shall not be obligated to test programmes. Section 30 shall apply accordingly.

(5) If a programme is intended for general sales and distribution, the manufacturer shall, upon request, provide revenue authorities with samples for the purpose of testing in accordance with subsection (4) above.

(6) The obligations of programme manufacturers under the foregoing provisions shall be based exclusively in public law.

Section 87d – Third-party transmission of data to revenue authorities

(1) Third parties (contractors) may be commissioned with transmitting to revenue authorities, for tax purposes, data that must be submitted using officially prescribed data sets and officially designated interfaces via remote data transmission, or data that are submitted voluntarily.

(2) Before transmitting the data, contractors must verify the identity and address of the contracting party (identification) and record the relevant information in suitable form. If a contractor has already identified the contracting party on a previous occasion and recorded the relevant information, he does not need to repeat the identification process unless external circumstances cause him to doubt whether the information gathered previously to identify the contracting party is still correct. Contractors shall ensure that they are able at any time to provide information on the identity of the party that commissioned the transmission of data. The information recorded pursuant to the first sentence above shall be retained for a period of five years; the retention period shall begin with the expiration of the year when the most recent transmission of data was carried out. The obligation to be ready to provide information under the third sentence above shall expire with the end of the retention period under the fourth sentence above.

(3) Contractors shall present the data, in a form that can be easily checked, to contracting parties for approval. Contracting parties shall check without delay whether the data presented to them by contractors are complete and correct.

Section 87e – Exceptions for import and export duties, excise duties and aviation tax

Unless otherwise specified, section 72a and sections 87b to 87d shall not apply to import and export duties, excise duties and aviation tax.

Section 88 – Principle of investigation

(1) The revenue authorities shall investigate the facts of a case by virtue of office. In doing so, they shall take all relevant circumstances into account, including those that are favourable to the participants.

(2) The revenue authorities shall determine the type and scope of investigations based on the circumstances of each individual case and based on the principles of consistency, lawfulness

and proportionality; they shall not be bound by motions for the submission of evidence or by submissions made by the participants. Decisions on the type and scope of investigations may take the general experience of revenue authorities, as well as cost-effectiveness and expedience, into account.

(3) To ensure the timely and consistent execution of tax laws, the highest revenue authorities may, for identified or identifiable categories of cases, issue instructions on the type and scope of investigations and the processing of data collected or recorded, unless otherwise required by law. Such instructions may take the general experience of revenue authorities, as well as cost-effectiveness and expedience, into account. Such instructions may not be made public if doing so could jeopardise the consistency and lawfulness of taxation. Instructions by the highest *Land* revenue authorities in accordance with the first sentence above shall require the agreement of the Federal Ministry of Finance if the *Land* revenue authorities administer taxes on behalf of the Federation.

(4) When they receive data meant for forwarding to *Land* revenue authorities, both the Federal Central Tax Office and the central agency as defined in section 81 of the Income Tax Act may refrain from forwarding such data to the *Land* revenue authorities if attributing or assigning the data to a specific taxpayer or tax office is impossible or requires unreasonable effort. Data attributed or assigned to a specific taxpayer or tax office in accordance with the first sentence above shall be forwarded to the *Länder*, taking into account any instructions issued by the Federal Ministry of Finance in accordance with subsection (3) above. Data not forwarded to *Land* revenue authorities shall be stored by the Federal Central Tax Office for the purpose of proceedings described in section 30(2) numbers 1a) and 1b), until the expiration of the 15th year following the year when the data were received. Data stored in accordance with the third sentence above may be processed only for use in proceedings described in section 30(2) numbers 1a) and 1b) and for purposes of monitoring data protection.

(5) Revenue authorities may use automated systems (risk management systems) to gauge whether further investigations and reviews are necessary to ensure the consistent and lawful assessment of taxes and tax rebates and the consistent and lawful crediting of withheld taxes and prepayments. The principle of cost-effective administration should be taken into account here. At a minimum, risk management systems must ensure that:

1. a sufficient number of cases are selected, on the basis of random selection, for comprehensive review by officials,

2. officials review those cases sorted out as requiring review,

3. officials are able to select cases for comprehensive review,

4. regular reviews are conducted to determine whether risk management systems are fulfilling their objectives.

The details of risk management systems must not be made public if doing so could jeopardise the consistency and lawfulness of taxation. For taxes administered by *Land* revenue authorities on behalf of the Federation, the highest *Land* revenue authorities shall, in consultation with the Federal Ministry of Finance, specify the details of risk management systems with a view towards ensuring that the execution of tax laws is consistent on a nationwide basis.

Section 88a – Collection of protected data

To the extent required to ensure the uniform assessment and levying of taxes, the revenue authorities may process data protected under section 30 in filing systems, including for future procedures/proceedings as described in section 30(2) numbers 1a and 1b, in particular to obtain comparable values. Processing of the data shall be permissible only for procedures/proceedings as described in section 30(2) numbers 1a and 1b.

Section 88b – Nationwide retrieval and use of data to prevent, investigate and prosecute understatements of tax

(1) Data stored by revenue authorities for the purpose of conducting administrative proceedings in tax matters, criminal proceedings for tax crimes or administrative proceedings for tax-related administrative offences may be made available for reciprocal retrieval and then, in order to prevent, investigate or prosecute

1. understatements of tax across more than one *Land*,

2. understatements of tax with international ramifications, or

3. understatements of tax with significant ramifications,

reciprocally retrieved, reviewed via automated data cross-checking, used and stored, even if such data are protected under section 30.

(2) The findings of data analyses under subsection (1) above shall be made available electronically to the relevant competent revenue authorities.

(3) The respective competent *Land* government shall stipulate by way of ordinance which *Land* revenue authorities are responsible for the activities referred to in subsections (1) and (2) above. The *Land* government may issue an ordinance delegating this duty to the highest *Land* authority responsible for the revenue administration.

Section 89 – Advice, information

(1) The revenue authority shall solicit the filing of statements, the submission of applications or the correction of statements or applications when it is clear that these were not filed or submitted, or filed or submitted incorrectly, due to an error or a lack of knowledge. It shall, where necessary, furnish information regarding the rights and duties of participants in the administrative proceedings.

(2) Tax offices and the Federal Central Tax Office may upon request provide advance rulings on the tax treatment of precisely defined, as yet unrealised circumstances if this is of particular interest due to the existence of significant tax implications. The revenue authority that would have local jurisdiction if the underlying circumstances specified in the request were to be realised shall be responsible for issuing an advance ruling. Where no revenue authority has jurisdiction under sections 18 to 21 for the applicant at the time the request is filed, jurisdiction shall lie with the Federal Central Tax Office for taxes administered by *Land* revenue authorities on behalf of the Federation, notwithstanding the second sentence above; in such cases, an advance ruling shall also bind the revenue authority that has jurisdiction upon realisation of the underlying circumstances specified in the ruling. The competent revenue authority should make a decision on a request for an advance ruling within six months after the request is received; if the revenue authority cannot make a decision on a request by this deadline, it shall notify the applicant accordingly, stating its reasons. The Federal Ministry of Finance shall be authorised to stipulate, by way of ordinances issued with the consent of the Bundesrat, more detailed provisions on the form, content and conditions of requests for advance rulings, and on the scope of the binding effect of such rulings. Ordinances may also specify the conditions under which single advance rulings are to be issued that apply to

multiple participants and which revenue authority is responsible for issuing advance rulings in such cases. Such ordinances above shall not require the consent of the Bundesrat where they concern insurance tax.

(3) A fee shall be charged for processing requests for advance rulings in accordance with subsection (2) above. In cases where a single advance ruling is issued that applies to multiple applicants, only one fee shall be charged; in such cases, all applicants are jointly liable for the fee. The fee shall be payable by the applicant within one month following notification that the fee has been set. The revenue authority may delay its decision on an application until the fee has been paid.

(4) Fees shall be calculated on the basis of the value the advance ruling represents for the applicant (object value). The applicant should state the object value and the circumstances relevant to its determination in his application for advance ruling. Fees are to be calculated by the revenue authority on the basis of the object value as declared by the applicant insofar as this does not lead to an obviously incorrect resultant amount. Where the value of the object cannot be determined even by way of estimate, a time-related fee shall be charged; this shall be 50 euros per half hour or portion thereof, the minimum charge being 100 euros.

(5) In corresponding application of section 34 of the Court Fees Act, the fee shall be levied at a rate of 1.0 percent. Section 39(2) of the Court Fees Act shall apply accordingly. If the object value is less than 10,000 euros, no fee shall be levied.

(6) If the object value is not determinable and cannot be determined by way of estimate, a time-related fee shall be charged; this shall be 50 euros for each half hour of processing time or portion thereof. If the processing time is less than two hours, no fee shall be levied.

(7) The fee may be waived in full or in part where its collection would be unreasonable in individual cases. In particular, the fee may be reduced where an application for advance ruling is withdrawn before the revenue authority's decision is issued.

Section 90 – Obligation of participants to cooperate

(1) Participants shall be obliged to cooperate with the authorities in establishing the facts of the case. They shall discharge this obligation in particular by the full and truthful disclosure of the facts relevant for taxation and by indicating any evidence known to them. The extent of this obligation shall be determined by the circumstances of the individual case.

(2) Where circumstances relating to transactions effected outside the territory of application of this Code are to be established and subjected to the provisions of tax law, the participants shall clarify these circumstances and procure the necessary evidence. In doing so, they shall exhaust all legal and practical means available to them. Where there are objectively recognisable indications to assume that the taxpayer has business relations with financial institutions in a state or territory with which there is no agreement to provide information in accordance with Article 26 of the OECD Model Tax Convention on Income and on Capital in the version of 2005, or the state or the territory does not provide information to a comparable extent or is not willing to engage in a corresponding provision of information, the taxpayer shall at the revenue authority's request make a sworn statement affirming the correctness and completeness of the details provided by him and authorise the revenue authority to assert on his behalf, both in and out of court, the possible entitlement to information against the credit institutions named by the revenue authority; the sworn statement may not be compelled pursuant to section 328. A participant may not plead inability to clarify circumstances or to submit evidence when he, depending on the case, could, in structuring his circumstances, have afforded himself or have himself given the opportunity to do so.

(3) Taxpayers shall keep records on the nature and content of their business relations that fall under the definition provided under section 1 subsection (4) of the External Tax Relations Act. The obligation to keep records shall encompass business transactions (documentation of facts); the economic and legal aspects of any arm's length agreement on terms of business, especially prices (transfer prices); and information on when the transfer prices were set, which transfer pricing method was used, and which comparability data were used (documentation of commensurateness). If a taxpayer is required to keep records as described in the first sentence above for an enterprise that forms part of a multinational enterprise group, such records shall include an overview of the type of business activities conducted by the enterprise group and of the transfer pricing method used by the group, unless the enterprise's revenue in the previous financial year totalled less than 100 million euros. A multinational enterprise group is any group comprised of at least two enterprises that are related within the meaning of section 1 subsection (2) of the External Tax Relations Act and that are resident in different countries, or any group comprised of at least one enterprise with at least one permanent establishment in another country. Revenue authorities should require the submission of records only for the purpose of conducting an external audit. Such submissions shall be governed by section 97. Submissions shall be made on request within a period of 60 days.

Records of exceptional business transactions shall be compiled as soon as possible and submitted within a period of 30 days upon request by the revenue authorities. The period for submission stipulated in the seventh and eighth sentences above may be extended in duly justified individual cases. Additional records shall be submitted upon request by the revenue authorities. In order to ensure the uniform application of the law, the Federal Ministry of Finance shall be authorised to stipulate, by way of ordinances issued with the consent of the Bundesrat, the type, content and extent of the records to be kept.

Section 91 – Participant consultation

(1) Before an administrative act affecting the rights of a participant may be issued, he should be given the opportunity to comment on the facts relevant to the decision. This shall apply particularly where there is to be a significant departure from the facts declared in the tax return to the detriment of the taxpayer.

(2) The consultation may be dispensed with when not required by the circumstances of an individual case, in particular when

1. an immediate decision appears necessary because of imminent danger or in the public interest,

2. such consultation would jeopardise the observance of a time limit material to the decision,

3. there is not to be a divergence to a participant's disadvantage from the actual details he provided in an application or statement,

4. the revenue authority intends to issue a general order or similar administrative acts in large numbers or administrative acts using automated systems,

5. measures of enforcement are to be taken.

(3) The consultation shall not take place if it conflicts with an overriding public interest.

Section 92 – Evidence

Exercising due discretion, the revenue authority shall use such evidence as it deems necessary to ascertain the facts of the case. In particular it may

1. gather information of all kinds from the participants and other persons,

2. consult experts,

3. procure certificates and files,

4. carry out inspections.

II. Evidence through information and expert opinion

Section 93 – Obligation of the participants and other persons to provide information[10]

(1) The participants and other persons shall provide the revenue authority with the information needed to ascertain facts which are of significance for taxation. This shall also apply to associations without legal capacity, pools of assets, authorities and commercial enterprises of public-law entities. Persons other than the participants should be required to provide information only if clarification of the matter by the participants does not or is not likely to produce any results.

(1a) Revenue authorities may issue to persons other than the participants information requests pertaining to an as yet unknown quantity of facts and circumstances involving persons who are identifiable in principle but not yet known to the revenue authorities (batch information requests). The preconditions for issuing a batch information request are (a) there must be sufficient grounds for conducting an investigation and (b) other feasible fact-finding measures are unlikely to produce results. The third sentence of subsection (1) above shall not apply.[11]

(2) Information requests shall specify which information is to be provided and whether the information is required for the taxation of the person obliged to provide information or for the taxation of other persons. Information requests shall be issued in writing if the person obliged to provide information so requests.

(3) Information shall be provided truthfully and to the best of the knowledge and belief of the person obliged to provide information. Persons obliged to provide information who are unable to do so from memory shall consult the accounts, records, business documents and other documentation available to them and shall where necessary take notes from such documentation.

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[10] For the purpose of applying the amendments, see Article 97 paragraph 26(2) and (3) of the Introductory Act to the Fiscal Code.
[11] Subdivision of sentence into (a) and (b) added to English translation for purposes of clarity.

(4) The person obliged to provide information may do so in writing, electronically, orally or by telephone. The revenue authority may require information to be provided in writing if this is expedient for the matter in question.

(5) The revenue authority may stipulate that the person obliged to provide information does so on official premises in the form of an oral statement. They shall be entitled to do so in particular if information in writing has been demanded but not provided or if information provided in writing has not served to clarify the matter. The first sentence of subsection (2) above shall apply accordingly.

(6) Upon application by the person obliged to provide information, a written record shall be prepared of the oral statement made on official premises. This record shall include the names of persons present, the place, the date and the essential content of the information. It should be signed by the public official to whom the oral statement is made and by the person obliged to provide information. A copy of the record shall be supplied to the participants.

(7) The automated retrieval of account information in accordance with section 93b shall be permissible only insofar as

1. the taxpayer applies for a tax assessment pursuant to section 32d(6) of the Income Tax Act, or

2. (rescinded)

and the retrieval in these cases is necessary for the assessment of income tax or is necessary

3. for determining income pursuant to sections 20 and 23(1) of the Income Tax Act in assessment periods up to and including 2008, or

4. for levying taxes regulated by federal law or for reclaiming tax refunds or tax rebates regulated by federal law or

4a. for identifying cases in which domestic taxpayers (as defined in the first sentence of section 138(2)) are authorised to dispose of, or are beneficial owners (as defined in the Money Laundering Act) of, an account held by a natural person, partnership, corporation, association or pool of assets whose residence, habitual abode, place of

management, main establishment or registered office is located outside the jurisdiction of this code,[12] or

4b. for determining tax bases in cases where section 208(1), first sentence, number 3 applies

or

5. the taxpayer consents.

In these cases, the revenue authority or, in cases where section 1(2) applies, the municipality may submit a request to the Federal Central Tax Office asking it to retrieve from credit institutions data items contained in the filing systems that are to be maintained under section 93b(1) and (1a); in cases where numbers 1 to 4b of the first sentence above apply, a request for retrieval may be made only if an information request issued to the taxpayer did not or is unlikely to produce results.

(8) Upon request, the Federal Central Tax Office shall provide information on the data specified in section 93b(1)

1. to the authorities responsible for administering

   a) the basic allowance for jobseekers under Book II of the Social Code,

   b) social assistance under Book XII of the Social Code,

   c) educational and training assistance under the Federal Education and Training Assistance Act,

   d) career advancement training assistance under the Upgrading Training Assistance Act and

   e) housing benefit under the Housing Benefit Act

insofar as this is necessary to verify fulfilment of eligibility conditions and a previous information request issued to the parties concerned did not or is unlikely to produce results.

[12] Parentheticals added to the English translation for purposes of clarity.

2. to the police authorities of the Federation and the *Länder*, insofar as this is necessary to avert a significant threat to public security, and

3. to *Land* authorities responsible for the protection of the constitution, insofar as this is necessary in order for such authorities to perform their functions and is expressly permitted by *Land* legislation.

In order to carry out enforcement, the authorities responsible for enforcement under the Federal Administrative Enforcement Act and the administrative enforcement acts of the *Länder* may submit a request to the Federal Central Tax Office asking it to retrieve from credit institutions the data specified in section 93b(1) if

1. the judgement debtor fails to comply with the obligation to file an asset disclosure or

2. the recovery of assets listed in the asset disclosure is unlikely to satisfy the claim that was the basis for demanding such asset disclosure.

Requests asking the Federal Central Tax Office to retrieve data specified in section 93b(1) for other purposes shall be permissible only to the extent that this is expressly permitted by federal law.

(9) Before a request for retrieval under subsections (7) or (8) above is submitted, the person concerned shall be instructed of the possibility that account data may be retrieved; this may also be done by including an explicit statement to this effect on official forms and in guidance notes. After the account data have been retrieved, the requesting party shall notify the person concerned that the retrieval has been conducted. Instructions under the first half-sentence of the first sentence above and notifications under the second sentence above shall not be provided insofar as the conditions specified in section 32b(1) apply or insofar as it is barred by law to inform the person concerned. Section 32c(5) shall apply accordingly. Unless otherwise required by law, the fourth sentence above shall apply in cases where subsection (8) applies. The first and second sentences above shall not apply to the cases referred to in subsection (8), first sentence, number 2 or 3 above or insofar as this is expressly stipulated by federal law.

(10) A request for retrieval under subsections (7) or (8) above and the result thereof shall be documented by the requesting party.

Section 93a – General obligation to disclose information

(1) To ensure taxation in accordance with section 85, the Federal Government may, by way of ordinances issued with the consent of the Bundesrat, require authorities, other public entities and public service broadcasters

1. to inform revenue authorities of the following:

    a) the recipient of payments made, together with the legal basis and the amount and timing of such payments,

    b) administrative acts that result in a denial or reduction of tax privileges for the persons affected or permit the persons affected to realise taxable income,

    c) subsidies and similar support measures provided, and

    d) indications of undeclared work, the unauthorised supply of temporary workers or the unauthorised employment of non-nationals;

2. to notify recipients under number 1a) above of the total amount of annual payments made and of the revenue authorities' opinion regarding the tax liabilities thus incurred.

Ordinances may also specify the extent to which notifications can or must be transmitted in accordance with section 93c; in such cases, section 72a(4) shall not apply. The obligations of authorities, other public entities and public service broadcasters regarding notifications, information, reporting and mutual assistance, as stipulated in other provisions, shall remain unaffected.

(2) Debt administrations, credit institutions, commercial enterprises of legal persons under public law within the meaning of the Corporation Tax Act, public joint ventures without sovereign jurisdiction, professional chambers and insurance companies shall be exempt from the obligation to disclose information.

(3) Such ordinances shall define more precisely the entities providing the information, the obligation to notify the persons concerned, the information to be provided and the revenue authorities responsible for receiving the communication and shall stipulate the scope, timing and procedure of the communication. Such ordinances may provide for exceptions to the obligation to disclose information, in particular in cases of minor tax importance.

Section 93b – Automated retrieval of account information[13]

(1) The filing systems that credit institutions are required to maintain under section 24c(1) of the Banking Act[14] must also be maintained for retrievals in accordance with section 93(7) and (8).

(1a) For the purpose of responding to requests for the retrieval of account data under section 93(7) or (8), credit institutions must store the data specified in section 24c(1) of the Banking Act and, for each person with power of disposal and each beneficial owner as defined in the Money Laundering Act, the address and the data specified in section 154(2a). Section 154(2d) and Article 97 paragraph 26(5) numbers 3 and 4 of the Introductory Act to the Fiscal Code shall remain unaffected.

(2) Upon request in cases where section 93(7) and (8) apply, the Federal Central Tax Office may, using automated procedures, retrieve from credit institutions data items contained in the filing systems that are to be maintained under subsections (1) and (1a) above and transmit such data to the requesting party. The Federal Central Tax Office may disclose the identification number (as defined in section 139b) of a person with power of disposal or a beneficial owner only to revenue authorities.[15]

Section 93c Transmission of data by third parties

(1) If legal provisions stipulate that a taxpayer's tax data are to be transmitted electronically to revenue authorities by a third party (notifying entity), the following shall apply, subject to any contrary provisions contained in tax legislation:

1. Following the end of the tax period, the notifying entity must transmit the data, using officially prescribed data sets and officially designated interfaces via remote transmission, by the last day of February in the following year; if the requirement to submit data is related to a specific tax date, the data must be transmitted by the end of the second calendar month following the end of the month in which the tax date fell.

2. The data set must contain the following information:

[13] For the purpose of applying the amendments, see Article 97 paragraph 26(3) of the Introductory Act to the Fiscal Code.
[14] The text of this provision is provided in Annex 22.
[15] Parentheticals added to the English translation for purposes of clarity.

a) the name, address, reference code and contact details of the notifying entity, as well as its identifier pursuant to sections 139a to 139c or, if such identifier has not been issued, its tax number;

b) if the notifying entity has commissioned a contractor as described in section 87d to transmit the data, then, in addition to the information under number 2a above, the contractor's name, address, contact details and identifier pursuant to sections 139a to 139c or, if such identifier has not been issued, tax number must be provided;

c) the taxpayer's first and last name, date of birth, address and identification number under section 139b;

d) if the taxpayer is not a natural person, then its name or trade name, address and business identification number under 139c or, if such identification number has not been issued, tax number must be provided;

e) the date and time when the data set was created or another event that allows the chronological order to be identified, the type of notification being submitted, the relevant tax period or tax date, and the indication as to whether the transmitted data set constitutes a first-time, corrected or cancelling notification.

3. The notifying entity shall let the taxpayer know which of his tax-relevant data it has transmitted or will transmit to the revenue authorities. This information shall be furnished in a suitable manner – electronically, if so approved by the taxpayer – and within a reasonable period of time. Obligations to furnish information pursuant to other legislation shall remain unaffected.

4. The notifying entity shall record the transmitted data and retain these records, together with the documents used as the basis of the data transmission, until the expiration of the seventh calendar year following the tax period or tax date; sections 146 and 147(2), (5) and (6) shall apply accordingly.

(2) If, after the expiration of the seventh calendar year following the tax period or tax date, the notifying entity discovers that the submission of certain data was obligatory, it should not transmit that data.

(3) If, prior to the expiration of the seventh calendar year following the tax period or tax date, the notifying entity discovers that

1. the data transmitted in accordance with subsection (1) above were incorrect or

2. a data set was transmitted even though it did not fulfil the criteria for transmission,

then the notifying entity shall correct or cancel the transmission without delay by submitting another data set, subject to any contrary provisions contained in tax legislation. Subsection (1) numbers 2 to 4 above shall apply accordingly.

(4) The revenue authority with jurisdiction pursuant to tax legislation may review whether the notifying entity has

1. satisfied its obligations under subsection (1) numbers 1, 2 and 4 and subsection (3) above and

2. determined the content of the data set in accordance with the provisions of the relevant tax legislation.

The rights and obligations of the revenue authority responsible for assessing the taxpayer's taxes, as such rights and obligations pertain to determining the facts of a case, shall remain unaffected.

(5) Unless otherwise required by law, the revenue authority responsible for receiving the data pursuant to applicable tax legislation shall also be responsible for applying subsection (4) above and section 72a(4).

(6) Revenue authorities may process the data referred to in subsections (1) and (3) above and transmitted to them by notifying entities if such processing is necessary in order for the revenue authorities to fulfil the functions incumbent upon them or to exercise the official authority with which they have been vested.

(7) Unless otherwise required by law, taxpayer data obtained and stored by the notifying entity exclusively for the purpose of transmitting them to revenue authorities may be used by the notifying entity solely for that purpose.

(8) Subsections (1) to (7) above shall not apply to

1. obligations to transmit data pursuant to section 51a(2c) or chapter XI of the Income Tax Act,

2. obligations to transmit data to the customs authorities,

3. transmissions of data between revenue authorities and

4. obligations to transmit data to foreign public authorities.

Section 93d – Authorisation to issue ordinances

The Federal Ministry of Finance may stipulate, by way of ordinances issued with the consent of the Bundesrat, that data as described in section 93c shall be collected for purposes of testing prior to the initial transmission, insofar as this is necessary in order to develop, review or modify automated procedures. In such cases, the data may be processed exclusively for purposes of testing and must be deleted within one year after the conclusion of such testing.

Section 94 – Examination under oath

(1) Where the revenue authority considers it advisable in view of the importance of the evidence, or in order to ensure that the truth is told, that a person other than one of the participants swear an oath, the revenue authority may issue a request for examination under oath to the fiscal court within whose jurisdiction the person who is to take the oath resides or has his abode. Where the person who is to take the oath does not reside or has no abode within the jurisdiction of a fiscal court or of an especially established senate, the request for examination under oath may also be made to the local court responsible.

(2) The revenue authority shall specify the subject matter of the examination and the names and addresses of the participants in its request. The court shall inform the participants and the requesting revenue authority of the relevant dates. The participants and the requesting revenue authority shall have the right to ask questions during the examination.

(3) The court shall decide as to the lawfulness of a refusal to give evidence or to take the oath.

Section 95 – Sworn statement

(1) The revenue authority may require the participant to make a sworn statement to confirm the correctness of his account. A sworn statement should only be required where other means of establishing the truth are not available, have failed to produce any results or would require a disproportionate effort. A sworn statement may not be required of persons who are incapable of taking an oath pursuant to section 393 of the Code of Civil Procedure.

(2) The sworn statement shall be recorded in writing by the revenue authority. Persons authorised to make such a recording shall be the head of the authority, his permanent deputy and members of the civil service qualified to exercise the functions of a judge or who fulfil the requirements of section 110, first sentence, of the German Judiciary Act. The head of the authority or his permanent deputy may authorise in writing other members of the civil service to act generally in this capacity or for individual cases.

(3) The details, the correctness of which is to be confirmed, shall be recorded in writing and notified to the participant at least one week prior to the recording of the statement. The sworn statement shall consist in the participant's repeating the facts previously stated by him and making the following declaration: "I do solemnly affirm that to the best of my knowledge I have told nothing but the truth and have concealed nothing." Authorised representatives and advisers of the participant shall be entitled take part in the recording of the sworn statement.

(4) Prior to the recording of the sworn statement, the participant shall be instructed of the meaning of the sworn statement and the consequences under criminal law of making an incorrect or incomplete statement. The fact that this has been done shall be included in the written record.

(5) The written record shall in addition contain the names of those present and the place and date of the record. The written record shall be read to the participant making the statement for his approval, or, upon request, shall be made available for him to inspect. The fact that this has been done shall be recorded and signed by the participant. The written record shall then be signed by the public official who received the sworn statement and by the recording clerk.

(6) Sworn statements may not be enforced pursuant to section 328 below.

Section 96 – Enlistment of experts

(1) The revenue authority shall determine whether an expert shall be enlisted. Except in cases of imminent danger, the revenue authority shall inform the participants beforehand of who it intends to enlist as expert.

(2) An expert may be rejected by the participants for fear of bias where grounds exist to justify doubts as to his impartiality, or where it is feared that his work may infringe trade or business secrets or be prejudicial to the business activities of a participant. Notification of the rejection shall be asserted to the revenue authority without undue delay after the appointment of the expert has been communicated, or, at the latest, within two weeks and shall be accompanied by substantiation of the reasons for rejection. After that date, rejection shall only be permissible where it can be established credibly that the grounds for rejection could not have been asserted previously. The revenue authority which has appointed or intends to appoint the expert shall decide on the rejection. The motion for rejection shall not have the effect of delaying proceedings.

(3) The person appointed as an expert shall comply with the appointment if he has been publicly appointed to render opinions of the required kind, or if he publicly and commercially practices the science, art, or trade, the knowledge of which is a prerequisite for rendering an opinion, or if he has been publicly appointed or authorised to practice such profession. Whoever has informed the revenue authority of his willingness to furnish an opinion shall also be obliged to do so.

(4) Experts may refuse to furnish an opinion for fear of bias, indicating the reasons.

(5) Members of the civil service shall be called in as experts only if they have received the authorisation required under civil service law.

(6) Experts shall be alerted to the provisions on the protection of tax secrecy.

(7) Opinions shall routinely be furnished in writing. Oral opinions may also be permitted. Expert opinions may only be required to be supported by an administration of oath if the revenue authority considers this advisable in view of the importance of the expert opinion. Where the expert has previously taken an oath regarding the rendering of opinions of the required kind, a reference to the oath previously taken shall be sufficient; such reference may

also be made in a written opinion. Otherwise, section 94 shall apply *mutatis mutandis* to the administration of the oath.

III. Documentary evidence and evidence by inspection

Section 97 – Submission/presentation of documents

(1) Participants and other persons must, upon request, submit/present accounts, records, business papers and other documents to the revenue authority for the purpose of inspection and audit. In this respect, the revenue authority shall indicate whether the documents are sought for the purpose of taxing the person required to submit/present the documentation or for the purpose of taxing other persons. Section 93(1), second and third sentences, shall apply accordingly.

(2) The revenue authority may demand that the documentation referred to in subsection (1) above be submitted to the offices of the authorities or may inspect it at the premises of the person obliged to submit/present the documentation if the latter has agreed to this or if the documents are unsuited for submission to the offices of the authorities. Section 147(5) shall apply accordingly.

Section 98 – Carrying out inspections

(1) Where the revenue authority carries out an inspection, the result shall be included in the records.

(2) Experts may be called in when the inspection is being carried out.

Section 99 – Entry onto property and premises

(1) Public officials entrusted by the revenue authority with carrying out the inspection and experts called in pursuant to sections 96 and 98 above shall be authorised to enter during regular business and working hours properties, premises, ships, enclosed operating facilities and similar facilities, to the extent necessary in order to reach findings in the interest of taxation. The persons affected should be given sufficient advance notice. Living quarters may only be entered against the wishes of the occupier where this serves to avert acute dangers to public security and order.

(2) Measures pursuant to subsection (1) above may not be imposed for the purpose of searching for unknown objects.

Section 100 – Presentation of valuables

(1) The participant and other persons shall on request present to the revenue authority valuables (money, securities, precious objects) to the extent necessary in the interest of taxation to establish their nature and value. Section 98(2) shall apply.

(2) Presentation of valuables may not be ordered for the purpose of searching for unknown objects.

IV. Right of refusal to furnish information and documents

Section 101 – Relatives' right of refusal to furnish information and to take an oath

(1) Relatives (section 15) of a participant may refuse to furnish information unless they are themselves obliged to furnish information on their personal tax affairs as participants or required to fulfil an obligation to furnish information for a participant. Relatives shall be instructed of their right to withhold information. It shall be mentioned in the record that such instruction was provided.

(2) The persons referred to in subsection (1) above shall also have the right to refuse to affirm information by oath. The second and third sentences of subsection (1) above shall apply accordingly.

Section 102 – Right to withhold information to protect certain professional secrets

(1) Other persons who may also refuse to furnish information shall be:

1. clergymen, with regard to information that was entrusted to them or became known to them in their capacity as spiritual advisors,

2. members of the Bundestag, of a parliament of a *Land* or a second chamber, with regard to persons who in their capacity as members of these bodies confided to them facts or to whom they confided facts in this capacity, as well as to the facts themselves.

3. a) defence counsels,

   b) solicitors, patent agents, notaries, tax consultants, auditors, tax representatives, certified accountants,

   c) doctors, dentists, psychological psychotherapists, psychotherapists specialising in the treatment of children and juveniles, pharmacists and midwives,

   with regard to information entrusted to them or which became known to them in their professional capacity,

4. persons who are or were professionally involved in the preparation, production or dissemination of periodically printed matter or radio broadcasts with regard to the author, contributor or source of contributions and documentation and with regard to information received by them in their professional capacity insofar as this concerns contributions, documentation and information for the editorial element of their activity; section 160 shall remain unaffected.

(2) The persons specified in subsection (1) numbers 1 to 3 above shall be deemed equal to their assistants and to persons who take part in the professional activity in preparation for the profession. The persons specified in subsection (1) numbers 1 to 3 above shall decide whether these assistants should exercise their right to refuse to furnish information, unless such a decision cannot be effected within a foreseeable period.

(3) The persons specified in subsection (1) number 3 above may not refuse to furnish information if they have been released from their obligation of secrecy. Such release from the obligation of secrecy shall also apply to the assistants.

(4) The statutory notification duties applying to notaries and the obligations to furnish information applying to the persons referred to in subsection (1) number 3(b) above pursuant to the Interest Information Ordinance of 26 January 2004 (Federal Law Gazette I, p. 128), which was most recently amended by Article 4(28) of the Act of 22 September 2005 (Federal Law Gazette I, p. 2809), in the respective applicable version, shall remain unaffected. Where notification duties apply, notaries shall also be obliged to furnish documents and further information.

Section 103 – Right to withhold information for fear of prosecution for a criminal or administrative offence

Persons who are neither participants nor obliged to furnish information for a participant may refuse to answer any questions to which a reply would expose them, or one of the relatives specified in section 15, to the risk of prosecution for a criminal or administrative offence. They shall be instructed of their right to withhold information. The provision of such instruction shall be noted in the records.

Section 104 – Refusal to render opinion and to submit/present documents

(1) To the extent that the disclosure of information may be refused, the rendering of opinion and the submission/presentation of documents or valuables may be refused as well. Section 102(4), second sentence, shall remain unaffected.

(2) The submission/presentation of documents and valuables which are kept for the participant may not be refused where the participant would be obliged to submit/present them, if held in his custody. Business records and other records kept for the participant shall also count as documents which are stored for him.

Section 105 – Relationship between duty of public entities to furnish information and documents and their duty of secrecy

(1) The duty of secrecy imposed on authorities and other public entities, including the Bundesbank, state banks and debt administrations, as well as the organs and officials thereof, shall not apply with respect to their duty to submit/present information and documents to the revenue authorities.

(2) Subsection (1) above shall not apply where authorities and the persons entrusted with postal services are obliged by law to respect the privacy of correspondence, posts and telecommunications.

Section 106 – Limitation on the duty to furnish information and documents in the case of adverse effects on the public interest

It shall not be permissible to request that information or documents be furnished where the competent highest federal authority or the competent highest authority of a *Land* has stated that furnishing such information or documents would result in serious disadvantages to the Federation or to a *Land*.

V. Compensation of persons obliged to furnish information and of experts

Section 107 – Compensation of persons obliged to furnish information and of experts

In the event that the revenue authority requires persons to furnish information, requires persons to make submissions, or consults experts for the purpose of evidence, such persons shall receive compensation or remuneration upon request under corresponding application of the Judicial Remuneration and Compensation Act. This shall not apply to participants or to persons required to furnish information or make submissions for a participant.

4th Subchapter – Time limits, deadlines, *restitutio in integrum*

Section 108 – Time limits and deadlines

(1) Sections 187 to 193 of the Civil Code shall apply accordingly to the calculation of time limits and the setting of deadlines inasmuch as subsections (2) to (5) below do not provide otherwise.

(2) A time period set by an authority shall commence on the date following disclosure of the period except where the person concerned is informed otherwise.

(3) Where the time limit would otherwise end on a Sunday, an official holiday or a Saturday, the time period shall end at the close of the next working day.

(4) Where an authority has to fulfil a task only for a given period, this period shall end at the close of the last day thereof, even where this is a Sunday, an official holiday or a Saturday.

(5) A deadline fixed by an authority shall be observed even if it falls on a Sunday, an official holiday or a Saturday.

(6) Where a time limit is expressed in hours, Sundays, official holidays and Saturdays shall be included.

Section 109 – Extension of time limits

Section 109 of the Fiscal Code in the version applicable from 1 January 2017 under the Taxation Procedures Modernisation Act[16]	Section 109 of the Fiscal Code in the version applicable until 31 December 2016[17]
(1) Subject to subsection (2) below, time limits for filing tax returns and time limits fixed by a revenue authority may be extended. Subject to subsection (2) below, time limits may be extended retroactively in cases where they have already expired, particularly if it would be unreasonable to allow the legal consequences resulting from the expiration of the time limit to stand.	(1) Time limits for filing tax returns and time limits fixed by a revenue authority may be extended. Time limits may be extended retroactively in cases where they have already expired, particularly if it would be unreasonable to allow the legal consequences resulting from the expiration of the time limit to stand.
(2) In cases 1. under section 149(3) involving periods after the last day of February in the second calendar year following the tax period and 2. under section 149(4) involving periods after the date designated in the tax office's order, subsection (1) shall apply only if the taxpayer is or was prevented from complying with the tax return filing deadline through no fault of his own. For taxpayers who calculate their profits from agricultural and forestry activities on the basis of a financial year that deviates from the calendar year, 31 July of the second calendar year following the tax period shall apply instead of the	(2) The revenue authority may make the extension of a time limit contingent upon the provision of collateral or otherwise attach conditions to such extension in accordance with section 120.

[16] Section 109 as amended by the Taxation Procedures Modernisation Act shall apply for the first time to tax periods that begin after 31 December 2017 and to tax dates that occur after 31 December 2017.

[17] Section 109 of the Fiscal Code in the version applicable until 31 December 2016 shall continue to apply to tax periods that begin before 1 January 2018 and to tax dates that occur before 1 January 2018.

last day of February. If the failure to meet the specified deadline is the fault of a representative or aide, the fault shall be attributed to the taxpayer.

(3) Revenue authorities may attach conditions to the extension of a deadline, in particular by making the extension contingent upon the provision of collateral.

Section 110 – *Restitutio in integrum*

(1) Where a person has through no fault of his own been prevented from observing a statutory time limit, he shall, upon application, be granted *restitutio in integrum*. The fault of a representative shall be deemed to be that of the person he represents.

(2) The application shall be made within one month of the removal of the obstacle. The facts justifying the application are to be established credibly when the application is made or during the proceedings connected with the application. The neglected action shall be subsequently effected within the application period. Where this is done, *restitutio in integrum* may be granted even without application.

(3) No application for *restitutio in integrum* may be filed and the neglected action cannot be subsequently effected following the expiration of one year from the end of the unobserved time limit, except where it was impossible for this to be done within the period of a year for reasons of *force majeure*.

(4) The application for *restitutio in integrum* shall be decided upon by the revenue authority responsible for deciding on the matter of the neglected action.

5th Subchapter – Legal and administrative assistance

Section 111 – Administrative assistance obligations

(1) All courts and authorities shall be obliged to provide such administrative assistance as is necessary to execute the taxation procedure. Section 102 shall remain unaffected.

(2) It shall not be deemed administrative assistance when

1. authorities assist each other in the context of a relationship in which one is bound by the instructions of the other,

2. assistance consists in actions which already fall under the remit of the requested authority.

(3) This provision shall not apply to debt administrations, credit institutions and commercial enterprises of public-law entities.

(4) With respect to customs administration, the obligation to provide administrative assistance shall also apply to those enterprises serving public transport or the public movement of goods which have been specially appointed as auxiliary customs bodies by the Federal Ministry of Finance, and to the staff thereof.

(5) Sections 105 and 106 shall apply accordingly.

Section 112 – Preconditions for and limitations to administrative assistance

(1) A revenue authority may request administrative assistance in particular when

1. for legal reasons, it cannot itself perform the official act,

2. for practical reasons, especially for lack of personnel or equipment needed to perform the official act, it cannot itself perform the official act,

3. to carry out its tasks, it requires knowledge of facts which are unknown to it and which it cannot itself establish,

4. to carry out its tasks, it requires documents or other evidence in the possession of the requested authority,

5. it could only perform the official act at substantially greater expense than the requested authority.

(2) The requested authority may not provide assistance when it is unable to do so for legal reasons.

(3) The requested authority need not provide assistance when

1. another authority can provide the same assistance with much greater ease or at much less expense,

2. it could only provide such assistance at disproportionately great expense,

3. taking into account the tasks of the requesting revenue authority, such assistance would, as a result of its scope, seriously endanger the requested authority's capacity to meet its own duties.

(4) The requested authority may not refuse assistance on the grounds that it considers the request inappropriate for reasons other than those given in subsection (3) above, or that it considers the measures to be realised by the administrative assistance inappropriate.

(5) Where the requested authority does not consider itself obliged to provide assistance, it shall inform the requesting revenue authority accordingly. If the latter insists that administrative assistance be provided, the decision as to whether or not an obligation to furnish such assistance exists shall be taken by the responsible common supervisory authority or, where no such authority exists, the supervisory authority with subject-matter jurisdiction over the requested authority.

Section 113 – Selecting an authority

Where there is more than one potential provider of administrative assistance, assistance shall where possible be requested of an authority of the lowest administrative level of the administrative branch to which the requesting revenue authority belongs.

Section 114 – Implementation of administrative assistance

(1) The permissibility of the measure to be realised by administrative assistance shall be governed by the laws applying to the requesting revenue authority, the implementation of administrative assistance by the laws applying to the requested authority.

(2) The requesting revenue authority shall bear responsibility vis-à-vis the requested authority for the legality of the measure to be taken. The requested authority shall be responsible for implementing the administrative assistance.

Section 115 – Costs of administrative assistance

(1) The requesting revenue authority shall not be required to pay the requested authority an administrative fee for the provision of assistance. Where, in individual cases, expenses exceed 25 euros, these shall be refunded to the requested authority upon request. Where authorities of the same legal entity assist each other, no expenses shall be reimbursed.

(2) Where in implementing administrative assistance the requested authority performs an official act for which a fee must be paid, it shall be entitled to any costs caused for this purpose by a third party (administrative fees, usage charges and expenses).

Section 116 – Reporting tax crimes

(1) Courts and the authorities of the Federation, the *Länder* and municipal institutions of public administrations which are not revenue authorities must notify the Federal Central Tax Office or, to the extent known, the revenue authorities responsible for the criminal tax proceedings, of facts that have become known to them in the course of exercise of their office and that suggest that a tax crime has been committed. Unless it is clear that the revenue authorities responsible for the criminal tax proceedings have already been informed directly, the Federal Central Tax Office shall inform them of these facts. The revenue authorities responsible for the criminal tax proceedings, excluding the authorities of the federal customs administration, shall transmit the notification to the Federal Central Tax Office unless it is clear that the latter has already been informed directly.

(2) Section 105(2) shall apply accordingly.

Section 117 – International legal and administrative assistance in tax matters

(1) The revenue authorities may avail themselves of international legal and administrative assistance subject to the provisions of German law.

(2) The revenue authorities may provide international legal and administrative assistance on the basis of nationally applicable international agreements, nationally applicable legal instruments of the European Union and the EU Mutual Assistance Act.

(3) Using due discretion, the revenue authorities may provide international legal and administrative assistance upon request in other cases where

1. reciprocity is assured,

2. the requesting state guarantees that the information and the documents supplied will be used only for the purposes of its taxation or criminal tax procedure (including procedures related to administrative offences) and that the information and the documents supplied will be disclosed only to such persons, authorities or courts as are concerned with the processing of the tax case or the prosecution of the tax crime;

3. the requesting state guarantees that it is prepared to avoid any double taxation on income, capital gains and assets by way of mutual agreement procedure through the appropriate adjustment of the tax base, and

4. compliance with the request is not detrimental to the sovereignty, security, public order or other essential interests of the Federation or its political subdivisions and there is no danger of the person concerned in Germany incurring damage incompatible with the purpose of the legal and administrative assistance in the event that a trade, industrial, commercial or professional secret or a business process which is to be communicated on the basis of the request is disclosed.

To the extent that international legal and administrative assistance pertains to taxes administered by *Land* revenue authorities, the Federal Ministry of Finance shall take a decision in mutual agreement with the competent highest authority of the *Land* concerned.

(4) When implementing legal and administrative assistance, the powers of the revenue authorities and the rights and obligations of the participants and other persons shall be based on the provisions applying to taxes as defined in section 1(1). Section 114 shall apply accordingly. Section 91 shall apply accordingly with regard to domestic participants where information and documents are transmitted; notwithstanding section 91(1), domestic participants shall invariably be consulted where legal and administrative assistance pertains to taxes administered by *Land* revenue authorities, unless VAT is concerned, an information exchange is taking place on the basis of the EU Mutual Assistance Act, or exceptional circumstances exist within the meaning of section 91(2) or (3).

(5) For the purposes of promoting international cooperation, the Federal Ministry of Finance shall be authorised, by way of ordinances issued with the consent of the Bundesrat, to enact international agreements on mutual legal and administrative assistance in customs matters if

the obligations thus assumed do not go beyond the scope of the international legal and administrative assistance permissible under this Code.

Section 117a – Transmission of personal data to Member States of the European Union

(1) At the request of a public agency of a Member State of the European Union responsible for the prevention and prosecution of crimes, the offices of the revenue authorities charged with tax investigation may transmit personal data in connection with the remit stipulated in section 208 for the purposes of preventing crimes. The provisions on data transmission in the domestic context shall apply accordingly for the transmission of this data.

(2) Transmission of personal data pursuant to subsection (1) above shall only be permissible if the request contains at least the following details:

1. the name and address of the requesting authority,

2. description of the crime for the prevention of which the data are required,

3. description of the facts of the case on which the request is based,

4. designation of the purpose for which the data are sought,

5. the connection between the purpose for which the information or intelligence are sought and the person who is the subject of the information,

6. details about the identity of the person concerned insofar as the request relates to a known person, and

7. reasons for believing the relevant information and intelligence are available in Germany.

(3) The offices of the revenue authorities charged with tax investigation may also spontaneously transmit personal data within the meaning of subsection (1) above to a public agency of a Member State of the European Union responsible for the prevention and prosecution of crimes where, in the individual case, there is a risk of the commission of a crime within the meaning of Article 2(2) of Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (OJ L 190, 18 July 2002, p. 1), most recently amended by Framework Decision

2009/299/JHA (OJ L 81, 27 February 2009, p. 24), and there are solid indications that the transmission of this personal data could contribute to preventing such a crime.

(4) The provisions on data transmission in the domestic context shall apply accordingly for the transmission of data pursuant to subsection (3) above. There shall be no data transmission insofar as, and with due regard to the specific public interest in the transmission of the data, the legitimate interests of the person concerned are overriding in the individual case. Legitimate interests shall also include the existence of an appropriate level of data protection in the receiving state. The legitimate interests of the person concerned may also be safeguarded by the receiving state or the receiving international or supranational agency guaranteeing, in the individual case, the protection of the transmitted data.

(5) There shall be no data transmission pursuant to subsections (1) and (3) above where

1. this would impair the essential security interests of the Federation or the *Länder*,

2. the transmission of data would contradict the principles contained in Article 6 of the Treaty on European Union,

3. the data to be transmitted are not held by the requested authority and can only be obtained by taking coercive measures, or

4. the transmission of the data would be disproportionate or the data are not required for the purposes for which they are to be transmitted.

(6) The data transmission pursuant to subsections (1) and (3) above may be refrained from where

1. the data to be transmitted are not held by the offices of the revenue authorities charged with tax investigation but can be obtained without the taking of coercive measures,

2. this would present a risk to the success of on-going investigations or to a person's body, life or freedom, or

3. the act, for the prevention of which the data are to be transmitted, is punishable under German law by means of imprisonment for a maximum one year or less.

(7) The public agency of a Member State of the European Union responsible for the prevention and prosecution of crimes within the meaning of subsections (1) and (3) above shall be any agency appointed by this state pursuant to Article 2(a) of Council Framework Decision 2006/960/JHA of 18 December 2006 on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States of the European Union (OJ L 386 of 29 December 2006, p. 89, OJ L 75 of 15 March 2007, p. 26).

(8) Subsections (1) to (7) above shall also apply to the transmission of personal data to public agencies of a Schengen associated state responsible for the prevention and prosecution of crimes within the meaning of section 91(3) of the Act on International Judicial Assistance in Criminal Matters.

Section 117b – Use of data to be supplied pursuant to Framework Decision 2006/960/JHA

(1) Data which have been transmitted pursuant to Framework Agreement 2006/960/JHA to the offices of the revenue authorities charged with tax investigation may only be used for the purposes for which they were transmitted or to avert a present and substantial threat to public security. The data may only be used for other purposes or as evidence in judicial proceedings if the transmitting state has given its consent. The conditions set for the use of the data by the transmitting state are to be observed.

(2) The offices of the revenues authorities charged with tax investigation shall furnish information to the transmitting state, at that state's request for the purposes of monitoring data protection, about how the transmitted data were used.

Section 117c – Implementation of nationally applicable international agreements to improve international tax compliance

(1) The Federal Ministry of Finance shall be authorised, for the purposes of fulfilling obligations under nationally applicable international agreements that serve to improve tax compliance by means of the systematic collection and transmission of relevant tax data, to adopt, by way of ordinances issued with the consent of the Bundesrat, rules on

1. the collection of the data required under these agreements by third parties who are specified in principle in these agreements,

2. the transmission of these data to the Federal Central Tax Office, using officially prescribed data sets sent via remote data transmission,

3. the forwarding of these data to the competent authorities of other contracting states and

4. the receipt of relevant data from other contracting states and the forwarding of such data to the competent *Land* revenue authority in accordance with section 88(3) and (4).

Ordinances issued in accordance with the first sentence above may grant the Federal Central Tax Office the right to analyse, for the purpose of fulfilling its legally assigned responsibilities, the data and reports it receives in accordance with section 9(1) and (2) of the FATCA Implementation Ordinance. This shall have no effect on analyses by competent *Land* revenue authorities of reports received in accordance with section 9(2) of the FATCA Implementation Ordinance.

(2) In cases where data are transmitted by the Federal Central Tax Office to the competent revenue authority of the other contracting state pursuant to an ordinance issued on the basis of the first sentence of subsection (1) above, no consultation of the participants shall be conducted.

(3) The Federal Central Tax Office shall be entitled to examine facts and circumstances that are of relevance for the fulfilment of obligations to collect and transmit data pursuant to an ordinance issued on the basis of subsection (1) above, or that require clarification, in relation to parties obliged to collect these data and transmit them to the Federal Central Tax Office. Articles 193 to 203 shall apply *mutatis mutandis*.

(4) The data collected by the Federal Central Tax Office on the basis of an ordinance pursuant to subsection (1) above or as part of an examination pursuant to subsection (3) above may be used only for the purposes specified in the underlying international agreements. Where country-by-country reports are transmitted by the Federal Central Tax Office in accordance with section 138a(7), first to third sentences, no consultation of the participants shall be conducted.

Second Chapter – Administrative acts

Section 118 – Definition of administrative act

An administrative act shall be any order, decision or other sovereign measure taken by an authority to regulate an individual case in the sphere of public law and intended to have a direct, external legal effect. A general order shall be an administrative act directed towards a group of people defined or definable on the basis of general characteristics or relating to the public law character of a matter or its use by the public at large.

Section 119 – Clarity and form of an administrative act

(1) An administrative act shall be sufficiently definite and precise in content.

(2) An administrative act may be issued in written, electronic, oral or other form. An oral administrative act shall be confirmed in writing when there is a legitimate interest that this should be done and the person concerned requests this without undue delay.

(3) A written or electronic administrative act shall indicate the issuing authority. Furthermore, it shall contain the signature or name of the head of the authority, his deputy or the person appointed by him; this provision shall not apply to administrative acts issued using a standard form or with the aid of automated mechanisms. Where the law requires that an administrative act be in writing, the issuing authority shall be indicated on the qualified certificate underlying the electronic signature or on an associated qualified attribute certificate in the case of electronic administrative acts. Where section 87a(4), third sentence, applies, the confirmation pursuant to section 5(5) of the DE-Mail Act must indicate the issuing revenue authority as user of the DE-Mail account.

Section 120 – Ancillary provisions to administrative acts

(1) An administrative act to which a claim exists may be accompanied by ancillary provisions only when this is permitted by law or when it is designed to ensure that the legal requirements for the administrative act are fulfilled.

(2) With due discretion, and notwithstanding the provisions of subsection (1) above, an administrative act may be issued with:

1. a provision to the effect that a privilege or burden shall begin or end on a certain date or shall apply for a certain period (time limit),

2. a provision to the effect that the commencement or ending of a privilege or burden shall depend upon a future occurrence which is uncertain (condition),

3. a reservation that the act is subject to revocation,

or be combined with

4. a provision requiring the beneficiary to perform, tolerate or omit to do a certain action (obligation),

5. a reservation to the effect that an obligation may be subsequently introduced, amended or supplemented.

(3) An ancillary provision may not counteract the purpose of the administrative act.

Section 121 – Reasons for an administrative act

(1) A written or electronic administrative act, as well as an administrative act confirmed in writing or electronically, shall be accompanied by a statement of reasons where this is necessary for its comprehension.

(2) No statement of reasons shall be required:

1. where the revenue authority grants an application or acts upon a declaration and the administrative act does not infringe upon the rights of another,

2. where the person for whom the administrative act is intended or who is affected by it is already acquainted with the opinion of the revenue authority as to the material and legal positions or is able to comprehend such without difficulty,

3. where the revenue authority issues similar administrative acts in large number or with the help of automated mechanisms and individual cases do not merit a statement of reasons,

4. where this derives from a legal provision,

5. where a general order is publicly disclosed.

Section 122 – Disclosure of an administrative act

(1) An administrative act shall be disclosed to the person for whom it is intended or who is affected thereby. Section 34(2) shall apply accordingly. The administrative act may also be disclosed to an authorised representative. The act should be disclosed to the authorised representative if the revenue authorities are in possession of a written authorisation or an authorisation transmitted electronically using an officially prescribed data set, as long as the authorised representative has not been barred pursuant to section 80(7).

(2) A written administrative act sent by post shall be deemed as disclosed

1. on the third day after posting if posted to an address within Germany,

2. one month after posting if posted to an address outside Germany,

except where it was not received or was received at a later date; in case of doubt the authority shall prove receipt of the administrative act and the date of receipt.

(2a) An administrative act sent electronically shall be deemed as disclosed on the third day after sending except where it was not received or was received at a later date; in case of doubt the authority shall prove receipt of the administrative act and the date of receipt.

(3) An administrative act may be publicly disclosed where this is permitted by law. A general order may be publicly disclosed even where it is inappropriate to disclose it to those concerned.

(4) The public disclosure of an administrative act shall be effected by publicising the act's operative terms in accordance with standard local practice. Such disclosure shall state where the administrative act and its statement of reasons may be viewed. The administrative act shall be deemed disclosed two weeks after the date when the act is publicised in accordance with standard local practice. A general order may specify a different date for this purpose, but such date may be no earlier than the day after the act is publicised.

(5) An administrative act shall be served if so required by law or if so ordered by authorities. Subject to the third sentence above, the service of administrative acts shall be performed in accordance with the provisions of the Administrative Service of Documents Act. In derogation of section 7(1), second sentence, of the Administrative Service of Documents Act,

the fourth sentence of subsection (1) above shall apply to the service of an administrative act to an authorised representative.

(6) The disclosure of an administrative act to a participant with simultaneous effect for and against other participants shall be permissible to the extent that the participants have agreed to this; these participants may subsequently request to receive a copy of the administrative act.

(7) Where administrative acts concern

1. spouses or civil partners or

2. spouses and their children, civil partners and their children, or single parents and their children,

it shall suffice for disclosure to all concerned where one copy is served to their joint address. Administrative acts shall be disclosed separately to the participants if they so request or if the revenue authority has knowledge of serious differences of opinion between them.

Section 122a – Disclosure of administrative acts via electronic retrieval

(1) Administrative acts may, with the consent of the participant or his authorised representative, be disclosed by making them available for electronic retrieval via remote data transmission.

(2) Consent may be revoked at any time with effect for the future. Revocation of consent shall not take effect with the revenue authorities until they receive such revocation.

(3) The person who is authorised to retrieve the administrative act shall authenticate himself in accordance with section 87a(8).

(4) An administrative act made available for electronic retrieval shall be deemed disclosed on the third day after notification of the act's availability has been sent to the person authorised to retrieve the relevant data. In cases of doubt, the authorities must provide proof that the notification was received. If the revenue authorities cannot provide proof of the notification's receipt by the person who is authorised to retrieve the administrative act and who disputes receipt, the act shall be deemed disclosed on the date when the person authorised to retrieve the act carried out the retrieval. The same shall apply if the person authorised to retrieve the

act asserts irrefutably that he did not receive the notification within three days after it was sent.

Section 123 – Appointment of an authorised recipient

A participant with no residence or habitual abode, registered office or business management in Germany, in another Member State of the European Union, or in a country where the Agreement on the European Economic Area applies shall, upon request and within a reasonable period of time, provide the revenue authority with the name of an authorised recipient in Germany. Should he fail to do so, any document sent to him shall be deemed as having been received one month after its posting, and a document transmitted electronically shall be regarded as having been received on the third day after its transmission. This shall not apply if it is established that the document or the electronic document did not reach the recipient at all or reached him at a later date. The participant shall be informed of the legal consequences of the omission.

Section 124 – Validity of an administrative act

(1) An administrative act shall take effect vis-à-vis the person for whom it is intended or who is affected thereby at the moment it is disclosed to him. The administrative act shall apply in accordance with its content as disclosed.

(2) An administrative act shall remain in effect for as long as it is not withdrawn, revoked, otherwise cancelled or expires through the passage of time or for any other reason.

(3) An invalid administrative act shall have no effect.

Section 125 – Invalidity of an administrative act

(1) An administrative act shall be invalid where it is very gravely erroneous and this is apparent when all relevant circumstances are duly considered.

(2) Regardless of the conditions laid down in subsection (1) above, an administrative act shall be invalid if:

1. it is issued in written or electronic form but fails to indicate the issuing revenue authority,

2. no person can comply with it for practical reasons,

3. it requires an illegal act to be committed, by virtue of which the conditions for a criminal offence or an administrative offence are fulfilled,

4. it is contrary to public policy.

(3) An administrative act shall not be invalid merely because:

1. provisions on local jurisdiction have not been observed,

2. a person excluded under section 82(1), first sentence, numbers 2 to 6 and section 82(1), second sentence, is involved,

3. a committee required by law to cooperate in the issue of the administrative act did not or was unable to take the prescribed decision,

4. the cooperation required by law of another authority did not occur.

(4) Where the invalidity applies only to part of the administrative act, it shall be deemed invalid in its entirety if the invalid part is so essential that the revenue authority would not have issued the administrative act without it.

(5) The revenue authority may at any time ascertain invalidity *ex officio*; it must be ascertained upon application when the applicant has a legitimate interest in such.

Section 126 – Remedying errors in procedure and form

(1) An infringement of the regulations governing procedure or form which does not render the administrative act invalid under section 125 shall be disregarded in the event that

1. an application necessary to issue the administrative act is made subsequently,

2. a necessary statement of reasons is provided subsequently,

3. a necessary participant consultation is held subsequently,

4. a decision of a committee whose cooperation is required to issue the administrative act is taken subsequently,

5. the necessary participation of another authority is obtained subsequently.

(2) Actions referred to in subsection (1) numbers 2 to 5 above may be carried out subsequently up until the trial court proceedings of a fiscal court matter have been concluded.

(3) Where an administrative act lacks the necessary statement of reasons or has been issued without the necessary consultation of a participant so that the administrative act was unable to be contested in time, failure to observe the period for objection shall not be considered a fault. The decisive event for *restitutio in integrum* under section 110(2) shall be deemed to occur when the procedural action which was omitted is subsequently undertaken.

Section 127 – Consequences of errors in procedure and form

A claim for the cancellation of an administrative act which is not invalid under section 125 may not be made solely on the grounds that the act came into being in breach of provisions governing procedure, form or local jurisdiction if no other decision could have been taken in the matter.

Section 128 – Reinterpretation of an erroneous administrative act

(1) An erroneous administrative act may be reinterpreted into another administrative act where it has the same aim, could have been issued legitimately by the issuing revenue authority using the same procedures and forms, and where the requirements for its issue are fulfilled.

(2) Subsection (1) above shall not apply where the administrative act into which the erroneous administrative act is to be reinterpreted would contradict the clearly recognisable intention of the issuing revenue authority or where its legal consequences would be less favourable for the person affected than those of the erroneous administrative act. Furthermore, reinterpretation shall not be permissible where the withdrawal of the administrative act would not be allowable.

(3) A decision which can only be issued as being bound by law may not be reinterpreted into a discretionary decision.

(4) Section 91 shall apply accordingly.

Section 129 – Obvious errors in issuing an administrative act

The revenue authority may at any time correct typographical mistakes, errors in calculation and similar obvious errors which have occurred in issuing an administrative act. Corrections shall be made where the participant has a legitimate interest in such. Where adjustment to an administrative act issued in writing is sought, the revenue authority shall be entitled to request submission of the document which is to be corrected.

Section 130 – Withdrawal of an unlawful administrative act

(1) An unlawful administrative act may, even after it has become incontestable, be withdrawn wholly or in part with *ex nunc* or retroactive effect.

(2) An administrative act which gives rise to a right or a substantial advantage in legal terms or confirms such a right or advantage (beneficial administrative act) may only be withdrawn where

1. it has been issued by an authority without the requisite subject-matter jurisdiction,

2. it has been effected by improper means such as fraudulent misrepresentation, threat or bribery,

3. the beneficiary obtained the administrative act by providing information which was essentially incorrect or incomplete,

4. the beneficiary was aware of its illegality, or was unaware of this due to gross negligence.

(3) Where the revenue authority learns of facts which justify the withdrawal of an unlawful beneficial administrative act, the withdrawal shall be permissible only within one year of the date of gaining such knowledge. This shall not apply in the case of subsection (2) number 2 above.

(4) Once the administrative act has become incontestable, the decision concerning withdrawal shall be taken by the revenue authority responsible under the provisions regarding local jurisdiction; this shall also apply where the administrative act to be withdrawn has been issued by another revenue authority; section 26, second sentence, shall remain unaffected.

Section 131 – Revocation of a lawful administrative act

(1) A lawful, non-beneficial administrative act may, even after it has become incontestable, be revoked wholly or in part with *ex nunc* effect, except where an administrative act of like content would have to be issued or where revocation is impermissible for other reasons.

(2) A lawful, beneficial administrative act may, even when it has become incontestable, be revoked in whole or in part with *ex nunc* effect only when

1. revocation is permitted by law or a right of revocation is reserved in the administrative act itself,

2. the administrative act is combined with an obligation with which the beneficiary has not complied with at all or in time,

3. the revenue authority would be entitled, as a result of subsequent changes in circumstances, not to issue the administrative act and if failure to revoke it would endanger the public interest.

Section 130(3) shall apply accordingly.

(3) The revoked administrative act shall become null and void with the entry into force of the revocation, provided that the revenue authority has not determined a later date.

(4) Once the administrative act has become incontestable, decisions as to revocation shall be taken by the revenue authority responsible under the provisions regarding local jurisdiction; this shall also apply where the administrative act to be revoked has been issued by another revenue authority.

Section 132 – Withdrawal, revocation, cancellation and amendment in legal remedy proceedings

The provisions on withdrawal, revocation, cancellation and amendment of administrative acts shall also apply during objection proceedings and proceedings before the fiscal courts. Section 130(2) and (3) and section 131(2) and (3) shall not prevent withdrawal and revocation during the objection proceeding, or during the proceedings before a fiscal court, of a beneficial administrative act that has been contested by a third party to the extent that this remedies the objection or appeal.

Section 133 – Return of documents and other items

Where an administrative act has been incontestably revoked or withdrawn, or where it is not or no longer in effect for other reasons, the revenue authority may require such documents or items as have been distributed as a result of the administrative act, and which serve to prove the rights deriving from the administrative act or its exercise, to be returned. The holder and, where this person is not the owner, also the owner of these documents or items shall be obliged to return them. However, the holder or owner may require that the documents or items be handed back to him once the revenue authority has marked them as invalid; this shall not apply to items for which such a marking is impossible or cannot be made with the necessary degree of visibility or permanence.

Fourth Part – Executing the taxation procedure

First Chapter – Recording taxpayer data

1st Subchapter – Data relating to civil status and operations

Section 134 (rescinded)

Section 135 (rescinded)

Section 136 (rescinded)

2nd Subchapter – Duties of disclosure

Section 137 – The recording for tax purposes of corporations, associations and pools of assets

(1) Taxpayers who are not natural persons shall be obliged to notify the tax office responsible under section 20 and the municipalities responsible for levying non-personal taxes of the circumstances which have a bearing on registration for tax purposes, especially establishment, attainment of legal capacity, change of legal form, transfer of place of business management or registered office, and dissolution.

(2) Disclosure of these reportable events shall be made within one month of their occurrence.

Section 138 – Reporting commercial activity

(1) Whoever opens an agricultural and forestry undertaking, a commercial operation or a permanent establishment shall notify the municipality in which this business or permanent establishment is located of such on an officially prescribed form; the municipality shall inform without undue delay the tax office responsible under section 22(1) of the content of the notification. Where responsibility for determining the non-personal taxes has not been conferred on the municipalities, the tax office responsible under section 22(2) shall take the place of the municipality. Any person who takes up self-employment shall notify the tax

office with local jurisdiction under section 19 of such activity. The same shall apply for the relocation or discontinuation of a business, permanent establishment or self-employment.

(1a) Traders within the meaning of section 2 of the VAT Act may also fulfil their reporting obligations under subsection (1) above electronically at the revenue authority responsible for VAT.

(1b) In order to simplify the taxation procedure, the Federal Ministry of Finance may determine, by way of ordinances issued with the consent of the Bundesrat, that traders as defined in section 2 of the VAT Act must, when commencing a professional or commercial activity, in addition to the notifications under subsections (1) and (1a) above, provide the revenue authorities with information on the legal and actual circumstances relevant to taxation, using an officially prescribed data set sent via remote data transmission. The conditions under which an electronic transmission may be waived may be stipulated in such ordinances.

(2) Taxpayers whose residence, habitual abode, place of management or registered office is located within the jurisdiction of this Code (domestic taxpayers) shall notify the tax office with local jurisdiction under sections 18 to 20 of the following:

1. the founding and acquisition of businesses and permanent establishments abroad;

2. the acquisition, disposal or modification of holdings in foreign partnerships;

3. the purchase or sale of holdings in a corporation, association or pool of assets whose registered office and place of management are located outside the jurisdiction of this Code, if

    a) this leads to holdings amounting to least 10 percent of the capital or assets of the corporation, association or pool of assets or

    b) total costs for acquiring all of the holdings exceed 150,000 euros;

4. the fact that the domestic taxpayer can for the first time exercise controlling or decisive influence, directly or indirectly, over the financial, business or company law related affairs of a third-country company, alone or jointly with related parties as defined in section 1(2) of the External Tax Relations Act;

5. the type of economic activity conducted by the business, permanent establishment, partnership, corporation, association, asset pool or third-country company.

In cases where number 3 above applies, direct and indirect holdings shall be added together in one sum. (3) “Third-country company” shall mean a partnership, corporation, association or asset pool whose registered office or place of management is located in states or territories that are not members of the European Union or the European Free Trade Association.

(4) Notifications under subsections (1) and (1a) above shall be submitted within one month of the reportable event.

(5) Notifications under subsection (2) above shall be submitted together with the income tax return or corporation tax return for the tax period during which the reportable circumstances occurred, and no later than 14 months after such tax period ends, using officially prescribed data sets and officially designated interfaces. Domestic taxpayers who are not required to file their income tax returns or corporation tax returns using officially prescribed data sets and officially designated interfaces must submit the relevant notifications using an officially prescribed form unless they voluntarily file their income tax return or corporation tax return using an officially prescribed data set and the officially designated interface. Domestic taxpayers who are not required to file an income tax return or corporation tax return must submit the relevant notifications within 14 months after the end of the calendar year during which the reportable circumstances occurred, using an officially prescribed form.

Section 138a – Country-by-country reports by multinational enterprise groups

(1) After the end of a financial year, an enterprise with registered office or place of management in Germany (domestic enterprise) that prepares consolidated financial statements or that must prepare them pursuant to rules other than tax laws (domestic group parent) shall compile a group country-by-country report for that financial year and submit it to the Federal Central Tax Office if

1. the consolidated financial statements cover at least one enterprise with registered office and place of management in another country (foreign enterprise) or at least one foreign permanent establishment and

2. the previous financial year's consolidated revenue, as reported in the consolidated financial statements, totals at least 750 million euros.

Subject to subsections (3) and (4) below, the obligation under the first sentence above shall not apply if the domestic enterprise as defined in the first sentence above is included in the consolidated financial statements of another enterprise.

(2) The country-by-country report as defined in subsection (1) above shall contain:

1. an overview, broken down according to tax jurisdiction, of how the group's business activities are distributed throughout the tax jurisdictions in which its enterprises or permanent establishments are engaged in business activity; to this end, the overview shall state the following information, based on its consolidated financial statements:

   a) revenue and other income from business transactions with related parties,

   b) revenue and other income from business transactions with unrelated parties,

   c) total revenue and other income pursuant to letters a) and b) above,

   d) income taxes paid during the financial year,

   e) income taxes paid and accrued during the financial year for that financial year

   f) profit (loss) before income taxes

   g) stated capital,

   h) accumulated earnings,

   i) number of employees and

   j) tangible assets

2. a list of all enterprises and permanent establishments, broken down according to tax jurisdiction, which are covered by the information reported under number 1 above, together with the most important business activities they perform

3. any additional information that the domestic group parent considers necessary to understand the overview under number 1 above and the list under number 2 above.

(3) If the consolidated financial statements of a foreign enterprise, which under the provisions of subsection (1) above would be required to submit a country-by-country report if its registered office or place of management were located in Germany (foreign group parent), cover a domestic enterprise (constituent domestic entity), and if the foreign group parent tasks the constituent domestic entity with submitting a country-by-country report for the group (reporting entity), then the reporting entity shall submit the country-by-country report to the Federal Central Tax Office.

(4) A covered domestic group company shall be required to submit to the Federal Central Tax Office the country-by-country report for a group with a foreign group parent, which under the provisions of subsection (1) above would be required to submit a country-by-country report if its registered office or place of management were located in Germany, if the Federal Central Tax Office has not received a country-by-country report. If a constituent domestic entity submits the country-by-country report, all of the other constituent domestic entities shall be relieved of this requirement. If a constituent domestic entity is unable to submit the country-by-country report by the deadline stipulated in the first sentence of subsection (6) below, in particular because it cannot procure or produce the report, then it shall notify the Federal Central Tax Office accordingly by the deadline stipulated in the first sentence of subsection (6) below while at the same time providing all of the information listed in subsection (2) above that it has at its disposal or that it can procure. If a constituent domestic entity had reason to presume that the country-by-country report would be submitted on time and it subsequently turns out that, through no fault of the constituent domestic entity, this did not occur, then the constituent domestic entity shall fulfil its obligations under the first or third sentences above within one month after the non-submission became known. The first through fourth sentences above shall apply accordingly to a domestic permanent establishment of a foreign enterprise where such foreign enterprise is included in consolidated financial statements as a foreign group parent or as a constituent foreign entity.

(5) In its tax returns, a domestic enterprise shall state whether it is

1. a domestic group parent as defined in subsection (1) above,

2. a reporting entity, or

3. a constituent domestic entity in a group with a foreign group parent.

In cases where number 3 of the first sentence above applies, the domestic enterprise shall state which enterprise is submitting the country-by-country report and to which revenue authority the report is being submitted. If this information is not provided, the constituent domestic entity itself shall be required to submit the country-by-country report by the stipulated deadline. The first through third sentences above shall apply accordingly to a domestic permanent establishment of a foreign enterprise where such foreign enterprise is included in consolidated financial statements as a foreign group parent or as a constituent foreign entity.

(6) The country-by-country report shall be submitted to the Federal Central Tax Office no later than one year after the end of the financial year for which the country-by-country report is to be produced. In derogation of the first sentence above, cases to which the fourth sentence of subsection (4) above applies shall be subject to the deadline stipulated therein. The report shall be submitted using an officially prescribed data set via remote data transmission.

(7) The Federal Central Tax Office shall forward all of the country-by-country reports it has received to the respective competent revenue authorities. If a country-by-country report contains information, as defined in subsection (2) above, for a contracting state to international agreements, the Federal Central Tax Office shall forward the submitted country-by-country report to the competent authority of the respective contracting state, on the basis of such international agreements. The Federal Central Tax Office shall receive the country-by-country reports that are forwarded to it by the competent authorities of the contracting states referred to in the second sentence above, and shall forward such reports to the respective competent revenue authorities. The Federal Central Tax Office may review country-by-country reports as part of its legally assigned responsibilities. The Federal Central Tax Office shall store the country-by-country reports electronically and shall delete them upon the expiration of the 15th year following the year of submission.

Section 138b – Obligations of third parties to notify revenue authorities of relationships between domestic taxpayers and third-country companies

(1) Obligated parties as defined in section 2(1) numbers 1 to 3 and 6 of the Money Laundering Act (notifying entities) shall notify the tax office with local jurisdiction under sections 18 to 20 of any relationships they have established or facilitated between (a) domestic taxpayers

as defined in the first sentence of section 138(2) and (b) third-country companies as defined in section 138(3).[18] This shall apply to cases where

1. the notifying entity is aware that, on the basis of the relationship it has established or facilitated, the domestic taxpayer can for the first time exercise controlling or decisive influence, directly or indirectly, over the financial, business or company law related affairs of a third-country company, alone or jointly with related parties as defined in section 1(2) of the External Tax Relations Act, or

2. the domestic taxpayer obtains direct holdings totalling at least 30% of the third-country company's capital or assets on the basis of the relationship established or facilitated by the notifying entity; other acquisitions relating to the same third-country company shall be included in this calculation to the extent that the notifying entity is aware or should have been aware of such acquisitions.

(2) Separate notifications shall be submitted for each domestic taxpayer and each reportable circumstance.

(3) The following information shall be provided for each domestic taxpayer:

1. the identification number as per section 139b and

2. the business identification number as per section 139c or, if a business identification number has not yet been issued and if the taxpayer is not a natural person, the tax number that applies for the taxation of income.

If the notifying entity is unable to obtain (a) the identification number and (b) the business identification number or tax number, it shall instead provide a substitute form of identification that has been specified by the Federal Ministry of Finance in consultation with the highest revenue authorities of the *Länder*.[19]

(4) Notifications shall be submitted to the tax office by the end of February in the year following the calendar year during which the reportable circumstances occurred, using an officially prescribed form. Section 72a(4), section 93(1) no 3 and (4) to (7), section 171(10a), section 175b(1) and section 203a shall apply accordingly.

[18] Subdivision of sentence into (a) and (b) added to English translation for purposes of clarity.
[19] Subdivision of sentence into (a) and (b) added to English translation for purposes of clarity.

(5) The tax office with local jurisdiction over the notifying entity shall forward the notifications to the tax office with local jurisdiction over the domestic taxpayer in accordance with sections 18 and 20. Section 31b shall remain unaffected.

(6) The domestic taxpayer shall provide the notifying entity with

1. his identification number as per section 139b and

2. his business identification number as per section 139c or, if a business identification number has not yet been issued and if the taxpayer is not a natural person, the tax number that applies for the taxation of income.

Section 138c – Authorisation to issue ordinances

(1) The Federal Ministry of Finance may stipulate, by way of ordinances issued with the consent of the Bundesrat, that notifications under section 138b must be submitted using officially prescribed data sets and officially designated interfaces. Ordinances under the first sentence above may also stipulate that, notwithstanding the first sentence of section 138b(1), notifications must be transmitted to a different revenue authority, which must then forward such notifications to the tax office with local jurisdiction under sections 18 to 20.

(2) If the Federal Ministry of Finance has issued an ordinance in accordance with subsection (1) above, notifying entities may ask the Federal Central Tax Office for the taxpayer's identification number as per section 139b or the taxpayer's business identification number as per section 139c. Such requests may list only the domestic taxpayer's data specified in section 139b(3) or section 139c(3) to (5a), insofar as these data are known to the notifying entity. The Federal Central Tax Office shall disclose the identification number or business identification number to the notifying entity if the data transmitted by the notifying entity correspond to the data stored at the Federal Central Tax Office in accordance with section 139b(3) or section 139c(3) to (5a). The notifying entity may use these identifiers only to the extent that such use is required in order to fulfil tax obligations. The Federal Ministry of Finance may specify the details of this procedure in ordinances issued with the consent of the Bundesrat.**Section 139 – Registering operations in certain cases**

(1) Whoever seeks to acquire or manufacture goods, the acquisition, manufacture, removal from the manufacturing business or consumption within the manufacturing business of which entails a liability for tax on consumption, shall register this with the competent revenue authority before operations are commenced. The same shall apply to whoever wishes to operate an enterprise to which special taxes on transactions apply.

(2) Conditions with respect to the timing, form and content of the registration may be determined by way of ordinance. Such ordinances shall be issued by the Federal Government where transaction taxes are concerned, with the exception of aviation tax, and otherwise by the Federal Ministry of Finance. Ordinances issued by the Federal Ministry of Finance shall require the consent of the Bundesrat only where beer duty is concerned.

3rd Subchapter – Identifier

Section 139a – Identifier

(1) For the purposes of unambiguous identification in taxation procedures, the Federal Central Tax Office shall issue each taxpayer a uniform and permanent means of recognition (identifier); the taxpayer, or third parties who must submit that taxpayer's data to the revenue authorities, shall indicate this identifier on applications, declarations or notifications addressed to revenue authorities. The identifier shall consist of a series of digits that may not be constructed or derived from other data relating to the taxpayer; the final digit shall be a check digit. Natural persons shall receive an identification number, and economic actors shall receive a business identification number. The taxpayer shall be informed without undue delay that he or she has been assigned an identifier.

(2) "Taxpayer" for the purposes of this subchapter shall mean anyone who is liable for tax under a tax law.

(3) "Economic actors" for the purposes of this subchapter shall mean:

1. natural persons who are economically active,

2. legal persons,

3. associations.

Section 139b – Identification number

(1) A natural person may not receive more than one identification number. An identification number may only be issued once.

(2) Revenue authorities may process identification numbers if such processing is necessary in order for them to fulfil the functions incumbent upon them or if a legal provision expressly

permits or prescribes the processing of identification numbers. Other public entities and non-public entities may, without the consent of the data subject,

1. process the identification number only insofar as (a) such processing is necessary for the purpose of transmitting data between them and revenue authorities or (b) a legal provision expressly permits or prescribes the processing of identification numbers,[20]

2. organise or provide access to their filing systems on the basis of identification numbers only insofar as this is necessary for the regular transmission of data between them and revenue authorities,

3. use the legally collected identification number of a taxpayer to fulfil all of their reporting requirements vis-á-vis revenue authorities, as long as the respective reporting requirements relate to the same taxpayer and the processing of the identification number would be permissible under number 1 above,

4. use the identification number of a taxpayer, collected legally by an affiliated enterprise as defined in section 15 of the Stock Corporation Act or by a company in a bank group, to fulfil all of their obligations to cooperation with revenue authorities, as long as the respective obligation to cooperate relates to the same taxpayer, the entity using the identification number belongs to the same group of companies as the entity that collected the identification number, and the processing of the identification number would be permissible under number 1 above.

Contract terms and declarations of consent which are designed to enable the collection or use of the identification number which is impermissible under the above conditions shall be deemed invalid.

(3) The Federal Central Tax Office shall save with regard to natural persons the following data:

1. identification number,
2. business identification number,
3. surname,
4. previous names,

[20] Subdivision into (a) and (b) added to English translation for purposes of clarity.

5. first names,
6. doctor title,
7. (rescinded)
8. date and place of birth,
9. sex,
10. current or last known address,
11. competent revenue authorities,
12. bans on transmission pursuant to the Registration Law Framework Act and the *Länder* legislation on registration.
13. date of death.

(4) The data listed in subsection (3) above shall be saved in order to

1. ensure that a person has been issued with one identification number only, and that an identification number is not issued more than once,

2. determine the identification number of a taxpayer,

3. distinguish which revenue authorities are responsible for a taxpayer,

4. be able to transfer to the competent offices data which, pursuant to supranational or international law, are to be received,

5. enable the revenue authorities to discharge their statutory responsibilities.

(5) The data listed in subsection (3) above may be processed only for the purposes specified in subsection (4) above. Bans on the disclosure of information under the Federal Registration Act must be complied with and communicated to other parties in cases where the transmission of data is permissible. The third party to whom the data are transmitted shall likewise comply with such bans on the disclosure of information.

(6) When an identification number is to be issued for the first time, the registration authorities shall transmit to the Federal Central Tax Office the following data for each resident registered in the population register as having sole or main residence in their jurisdiction:

1. surname,

2. previous names,
3. first names,
4. doctor title,
5. (rescinded)
6. date and place of birth,
7. sex,
8. current address of the sole residence or main residence.
9. date of moving into and out of the residence,
10. bans on the disclosure of information under the Federal Registration Act.

For this purpose, the registration authorities shall issue a provisional identifier for each resident registered as having sole or main residence in their jurisdiction. They shall transmit this provisional identifier, together with the data under the first sentence above, to the Federal Central Tax Office. Referencing this provisional identifier, the Federal Central Tax Office shall then notify the competent registration authority of the identification number issued to the taxpayer, so that this identification number can be stored in the register, and shall subsequently delete the provisional identifier.

(7) Where data relating to a birth as well as data relating to a person for whom hitherto no identification number has been issued is saved, the registration authorities shall transmit to the Federal Central Tax Office the data pursuant to subsection (6), first sentence, above for the purposes of allocating the identification number. Subsection (6), second to sixth sentences, above shall apply accordingly.

(8) The registration authority shall notify the Federal Central Tax Office of changes to the data referred to in subsection (6), first sentence, numbers 1 to 10 above as well as the date of death in the event of a death, indicating the identification number or, where this has not yet been allocated, the provisional identifier.

(9) The Federal Central Tax Office shall inform the registration authorities where it has specific reason to suspect the incorrectness of the data transmitted to it by the registration authorities.

Section 139c – Business identification number

(1) The business identification number shall be issued upon request of the competent revenue authority. It shall begin with the letters “DE”. A business identification number may only be issued once.

(2) Revenue authorities may process business identification numbers if such processing is necessary in order for them to fulfil the functions incumbent upon them or if a legal provision expressly permits or prescribes such processing. Other public entities and non-public entities may process business identification numbers only insofar as such processing is necessary for the purpose of fulfilling their tasks or business purposes or transmitting data between them and revenue authorities. If a business identification number replaces other numbers, legal provisions regulating transmission by revenue authorities to other authorities shall remain unaffected.

(3) The Federal Central Tax Office shall save with regard to natural persons who are economically active the following data:

1. business identification number,
2. identification number,
3. company name(sections 17 *et seqq* of the Commercial Code) or name of the enterprise,
4. former company names or names of the enterprise,
5. legal form
6. industry branch number,
7. official municipal code,
8. address of the enterprise, registered office,
9. entry in the register of companies (court of registration, date and number of entry),
10. date on which operations were opened or time of commencement of activity,
11. date on which operations were terminated or time of ceasing of activity,
12. competent revenue authorities.
13. special identifiers in accordance with subsection (5a) below,
14. information on affiliated enterprises.

(4) The Federal Central Tax Office shall save with regard to legal persons the following data:

1. business identification number,
2. identifiers of the legal representatives,
3. company name(sections 17 *et seqq* of the Commercial Code),
4. former company names,
5. legal form
6. industry branch number,
7. official municipal code,
8. registered office pursuant to section 11, especially place of business management,
9. date of the act of foundation of enterprise,
10. entry in the register of companies, cooperatives or associations (court of registration, date and number of entry),
11. date on which operations were opened or time of commencement of activity,
12. date on which operations were terminated or time of ceasing of activity,
13. date of liquidation,
14. data of removal from register,
15. associated enterprises,
16. competent revenue authorities.
17. special identifiers in accordance with subsection (5a) below,

(5) The Federal Central Tax Office shall store the following data on associations:

1. business identification number,
2. identifiers of the legal representatives,
3. identifiers of the participants,
4. company name (sections 17 *et seqq* of the Commercial Code), or name of the association of persons,
5. former company names or names of the association,
6. legal form
7. industry branch number,
8. official municipal code,
9. registered office pursuant to section 11, especially place of business management,
10. date of the articles of partnership,
11. entry in the register of companies or partnerships (court of registration, date and number of entry),

12. date on which operations were opened or time of commencement of activity,
13. date on which operations were terminated or time of ceasing of activity,
14. date of liquidation,
15. date of termination,
16. data of removal from register,
17. associated enterprises,
18. competent revenue authorities.
19. special identifiers in accordance with subsection (5a) below,

(5a) The business identification number of every economic actor (cf. section 139a(3)) shall be supplemented with a five-digit special identifier for each of his economic activities, each of his businesses and each of his permanent establishments in order to enable the unambiguous identification of an economic actor's activities, businesses and permanent establishments in taxation procedures. The Federal Central Tax Office shall assign the special identifier 00001 to the first of an economic actor's economic activities, businesses or permanent establishments. Each of an economic actor's additional economic activities, businesses or permanent establishments shall be assigned a separate, consecutively numbered special identifier by the Federal Central Tax Office upon request by the competent revenue authority. The Federal Central Tax Office shall store the following data on each economic activity, each business or each permanent establishment of an economic actor:

1. the special identifier,
2. the economic actor's business identification number,
3. company name (cf. section 17 et seqq. of the Commercial Code) or name of the economic activity, business or permanent establishment,
4. former company names or former names of the economic activity, business or permanent establishment,
5. legal form,
6. industry branch number,
7. official municipal code,
8. address of the economic activity, business or permanent establishment,
9. register entry (court of registration, date and number of entry),
10. date on which the business or permanent establishment was opened or date on which the economic activity commenced,

11. date on which the business or permanent establishment was closed or date on which the economic activity was terminated,
12. date of removal from register,
13. competent revenue authorities.

(6) The data indicated in subsections (3) to (5a) above shall be saved in order to

1. ensure that a business identification number already issued is not used again for another economic actor,
2. determine the business identification number issued for an economic actor,
3. distinguish which revenue authorities are responsible,
4. allow the transfer to the competent offices of data which, pursuant to supranational or international law, are to be received,
5. enable the revenue authorities to discharge their statutory responsibilities.

(7) The data listed in subsection (3) above may be processed only for the purposes specified in subsection (6) above unless a legal provision expressly provides for other processing.

Section 139d – Authorisation to issue ordinances

The Federal Government shall specify, by way of ordinances issued with the consent of the Bundesrat:

1. organisational and technical measures to ensure tax secrecy, especially to prevent unauthorised access to data protected by section 30,

2. guidelines on the issue of identification numbers pursuant to section 139b and the business identification numbers pursuant to section 139c,

3. time limits upon whose expiration the data saved pursuant to sections 139b and 139c shall be deleted, and

4. the form of and the process of data transfer pursuant to section 139b(6) to (9).

Second Chapter – Obligations to cooperate

1st Subchapter – The keeping of accounts and records

Section 140 – Account-keeping and recording obligations deriving from other laws

Whoever is obliged under laws other than tax laws to keep accounts and records of relevance for taxation shall be obliged to fulfil the obligations imposed by such other laws in the interests of taxation as well.

Section 141 – The obligation of certain taxpayers to keep accounts

(1) Commercial traders as well as farmers and foresters who, according to the revenue authority's findings, have had for the respective business

1. transactions, including tax-free transactions but excluding transactions pursuant to section 4 numbers 8 to 10 of the VAT Act, exceeding 600,000 euros in the calendar year, or

2. (rescinded)

3. agricultural and forest land which they managed themselves and whose economic value (section 46 of the Valuation Act) exceeds 25,000 euros or

4. a profit from commercial operations of more than 60,000 euros in the financial year, or

5. a profit from agricultural and forestry undertakings of more than 60,000 euros in the calendar year

shall be obliged with respect to these operations to keep accounts and on the basis of annual inventories to draw up financial statements even if they are not required to keep accounts under section 140. Sections 238, 240, 241, 242(1) and sections 243 to 256 of the Commercial Code shall apply mutatis mutandis insofar as tax laws do not provide otherwise. In applying number 3 above, the economic value of all areas managed by the farmer or forester shall be decisive, irrespective of whether he owns them or not.

(2) The obligation under subsection (1) above shall be fulfilled from the beginning of the financial year following disclosure of the notice through which the revenue authority indicated the beginning of this obligation. The obligation shall end with the close of the financial year following the financial year in which the revenue authority determines that the conditions under subsection (1) above no longer exist.

(3) The obligation to keep accounts shall be transferred to any person who takes over management of the entire operations as owner or beneficial owner. An indication pursuant to subsection (2) above advertising the beginning of the obligation to keep accounts shall not be required.

(4) Subsection (1) number 5 above in its current version shall apply to profit beginning in the calendar year 1980.

Section 142 – Supplementary provisions for farmers and foresters

Farmers and foresters who are obliged under section 141(1) numbers 1, 3 or 5 to keep accounts shall maintain a list of crops in addition to their annual inventory and annual financial statement. The list of crops shall show the types of produce with which the self-managed land was cultivated in the foregoing financial year.

Section 143 – Recording the receipt of goods

(1) Commercial traders shall record the receipt of goods separately.

(2) All goods, including the raw materials, works-in-progress, auxiliary materials and ingredients that the trader acquires as part of his commercial operations for further sale or for consumption, whether for a charge or free of charge, for his own account of for the account of others, shall be recorded; this shall also apply where the goods are to be processed or treated before their further sale or consumption. Goods which in keeping with the nature of the business are usually acquired for the business for further sale of for consumption shall be recorded even where they are used for purposes other than those of the business.

(3) The records shall contain the following information:

1. the date of receipt of the goods or the date of the invoice,
2. the name or the company and the address of the supplier,
3. the usual trade description of the good,
4. the price of the good,
5. a reference to the receipt.

Section 144 – Recording the exit of goods

(1) Commercial traders who in keeping with the nature of their commercial business supply on a regular basis other commercial traders with goods for further sale or consumption as auxiliary material shall record separately the exit of goods recognisably destined for this purpose.

(2) The trader shall also record all goods which he

1. delivers on invoice (on credit, on account or by way of offset), by way of exchange or free of charge, or

2. against cash payment where, because of the amount ordered, the good is sold at a price below the normal price for consumers.

This shall not apply where the good is recognisably not destined for further commercial use.

(3) The records shall contain the following information:

1. the date of exit of the goods or the date of the invoice,
2. the name or the company and the address of the customer,
3. the usual trade description of the good,
4. the price of the good,
5. a reference to the receipt.

(4) The trader shall issue for the exit of every good named in subsections (1) and (2) above a receipt which contains the details listed in subsection (3) above as well as his name or the company and his address. This shall not apply to the extent that, pursuant to section 14(5) of the VAT Act, a credit note is used in place of an invoice or simplifications are granted in accordance with section 14(6) of the VAT Act.

(5) Subsections (1) to (4) above shall apply also with respect to farmers and foresters who are required by section 141 to keep accounts.

Section 145 – General specifications relating to the keeping of accounts and records

(1) The accounts shall be kept in such a manner as to allow a competent third party to gain an overview of the business transactions and the enterprise's state of affairs within a reasonable period of time. The business transactions shall be traceable with respect to their origin and course.

(2) Records shall be kept such that the taxation purpose which they are intended to serve can be met.

Section 146 – Formal rules on the keeping of accounts and records

(1) Accounting entries and other required records shall be made separately, completely, correctly, and in a timely and orderly manner. Cash receipts and payments shall be recorded on a daily basis. In the case of cash sales of goods to large numbers of unknown persons, there shall be no obligation to make separate account entries as stipulated in the first sentence above, on grounds of reasonableness. This shall not apply if the taxpayer uses an electronic record-keeping system as described in section 146a.

(2) Accounts and records otherwise required shall be kept and stored within the territory of application of this Code. This shall not apply to the extent that for permanent establishments outside the territory of application of this Code local provisions provide for an obligation to keep accounts and records and this obligation is met. In such a case, as well as in the case of controlled companies outside the territory of application of this Code, the results of the foreign accounts shall be incorporated into the accounts of the German enterprise insofar as they are of relevance for taxation. In this regard, any adjustments required in order to satisfy the tax provisions within the territory of application of this Code shall be undertaken and identified as such.

(2a) Notwithstanding the provisions of subsection (2), first sentence, above, the competent revenue authority may upon written application by the taxpayer authorise the keeping and storage of electronic accounts and other necessary electronic records or parts thereof outside the territory of application of this Code. The preconditions shall be that

1. the taxpayer informs the competent revenue authority of the location of the data-processing system and, where commissioning a third party, provides the name and address thereof,

2. the taxpayer has properly complied with his duties arising from sections 90, 93, 97, 140 to 147 and 200(1) and (2),

3. the access to data pursuant to section 147(6) is possible in full, and

4. taxation is not hampered hereby.

Where the revenue authority becomes aware of circumstances leading to the hampering of taxation, it shall revoke the authorisation and require the retransfer without undue delay of the electronic accounts and other necessary electronic records to the territory of application of this Code. The competent revenue authority shall be informed without undue delay of a change in the circumstances specified under the second sentence, number 1 above.

(2b) A fine for delay ranging from 2,500 euros to 250,000 euros may be set where the taxpayer fails to comply with the request to retransfer his electronic accounts or to fulfil his duties pursuant to subsection (2a), fourth sentence, above to afford access to data pursuant to section 147(6), to furnish information or to submit requested documents within the meaning of section 200(1) in the course of an external audit within a reasonable period of time allowed to him for that purpose following notification by the competent revenue authority or where he has transferred his electronic accounts abroad without authorisation from the competent revenue authority.

(3) The entries and records otherwise required shall be made in a modern language. Where a language other than German is used, the revenue authority may require translations. Where abbreviations, figures, letters or symbols are used, each of their meanings shall be clearly defined.

(4) An entry or record may not be changed in such a manner as to render the original content no longer determinable. Furthermore, changes may not be made if their nature renders it uncertain as to whether they were made at the time of original entry or at a later stage.

(5) The accounts and the records otherwise required may also consist in the orderly filing of vouchers or may be kept on data storage devices to the extent that these forms of book-keeping including the method used to this end are consistent with the principles of orderly accounting; with respect to records which are to be made solely on the basis of tax laws, the permissibility of the method employed shall be determined on the basis of the purpose which the records are intended to serve for taxation. Where accounts and the records otherwise required are kept on data storage devices, it shall be ensured, in particular, that, during the retention period, the data are accessible at any time and can be rendered readable without undue delay. This shall also apply with respect to the powers of the revenue authority pursuant to section 147(6). Subsections (1) to (4) above shall apply *mutatis mutandis*.

(6) These formal rules shall also apply where the trader keeps accounts and records of relevance for taxation without being obliged to do so.

Section 146a – Rules for accounting and record-keeping using electronic record-keeping systems; authorisation to issue ordinances[21]

(1) Any person who uses an electronic record-keeping system to log business transactions or other procedures that require documentation shall use an electronic record-keeping system that records each such business transaction or other procedure separately, completely, correctly and in a timely and orderly manner. The electronic record-keeping system and digital records referred to in the first sentence above shall be protected using a certified technical security system. Such certified technical security systems must consist of a security module, a storage medium and a standardised digital interface. The digital records must be saved on the storage medium and must be kept available in electronic form for inspections and external audits. The commercial advertisement or marketing of (a) electronic record-keeping systems, (b) software for such systems or (c) certified technical security systems that do not fulfil the requirements stipulated in the first to third sentences above, and that are meant to be used for the purposes referred to in the first to third sentences above, shall be prohibited within this Code's territory of application.[22]

(2) Any person who logs business transactions requiring documentation as described in the first sentence of subsection (1) above shall, at the time that the transaction occurs and without prejudice to other legal provisions, immediately issue a receipt for the transaction and make it available to the party involved in the transaction (obligation to issue receipts). In cases involving the sale of goods to large numbers of unknown persons, revenue authorities may use due discretion and, on grounds of reasonableness and in accordance with section 148, waive the obligation to issue receipts. This waiver may be revoked.

(3) The Federal Ministry of Finance shall be authorised to stipulate, by way of ordinances issued with the consent of the Bundestag and Bundesrat and in consultation with the Federal Ministry of the Interior and the Federal Ministry for Economic Affairs and Energy, rules on the following:

[21] For the purpose of applying section 146a of the Fiscal Code, see Article 97 paragraph 30(1) and (3) of the Act Introducing the Fiscal Code.
[22] Subdivision of sentence into (a), (b) and (c) added to English translation for purposes of clarity.

1. the electronic record-keeping systems that must include a certified technical security system, and

2. the requirements pertaining to

   a) the security module,

   b) the storage medium,

   c) the standardised digital interface,

   d) the electronic retention of records,

   e) protocols of basic digital records to ensure the integrity, authenticity and completeness of electronic records,

   f) receipts and

   g) the certification of the technical security system.

Fulfilment of the requirements under numbers 2a to 2c above shall be verified through certification by the Federal Office for Information Security, and such certification shall be maintained on a continuous basis. The Federal Office for Information Security may be tasked with specifying the technical security system requirements referred to in numbers 2a to 2c above. Ordinances issued in accordance with the first sentence above shall be sent to the Bundestag. Such ordinances shall be sent to the Bundestag before they are sent to the Bundesrat. The Bundestag can consent to or reject the ordinance by passing a resolution. The Bundestag's resolution shall be sent to the Federal Ministry of Finance. If the Bundestag has not deliberated on the ordinance following the expiration of three weeks of sittings after the ordinance was received, consent in accordance with the first sentence above shall be deemed granted and the ordinance shall be sent to the Bundesrat.

(4) Any person who uses an electronic record-keeping system as described in subsection (1) above to log business transactions or other procedures that require documentation shall notify the tax office with local jurisdiction under sections 18 to 20 of the following, using an officially prescribed form:

1. the taxpayer's name,

2. the taxpayer's tax number,

3. the type of certified technical security system,

4. the type of electronic record-keeping system used,

5. the number of electronic record-keeping systems used,

6. the serial number of the electronic record-keeping system used,

7. the date when the electronic record-keeping system was procured,

8. the date when the electronic record-keeping system was taken out of operation.

The notification in accordance with the first sentence above shall be provided within a period of one month after the electronic record-keeping system was procured or taken out of operation.

Section 146b – Cash inspections[23]

(1) To verify whether cash receipts and cash payments are being properly recorded and accounted for, public officials so assigned by the revenue authorities may – during regular business and working hours, without advance notice and outside the framework of an external audit – enter the business properties and business premises of taxpayers for the purpose of determining facts that may be relevant for taxation (cash inspection). Cash inspections may also include verifications of whether electronic record-keeping systems are being used in accordance with the provisions of section 146a(1). Living quarters may be entered against the will of the occupier only in cases where this serves to prevent imminent risks to public security and order. The inviolability of the home (Article 13 of the Basic Law) shall be limited to this extent.

(2) When requested to do so, taxpayers subject to cash inspections shall (a) furnish records, accounts and other cash management-related documents pertaining to the facts and time periods covered by the cash inspection, and (b) provide information, to the official assigned to conduct the cash inspection, to the extent that this is necessary to determine relevance in

[23] For the purpose of applying section 146b of the Fiscal Code, see Article 97 paragraph 30(2) and (3) of the Act Introducing the Fiscal Code.

accordance with subsection (1) above.[24] If the records or accounts referred to in the first sentence above exist in electronic form, the official shall be entitled to view them, to request that data be transmitted using the standardised digital interface, or to request that records and accounts be made available on a machine-readable data storage device in line with the specifications of the standardised digital interface. The costs shall be borne by the taxpayer.

(3) If the findings of a cash inspection provide grounds to do so, the cash inspection may be turned into an external audit in accordance with section 193 without the need for a prior audit order. Notification that a cash inspection is being turned into an external audit shall be provided in writing.

Section 147 – Formal rules on the retention of documents

(1) The following documents shall be kept in good order:

1. accounts and records, inventories, annual financial statements, situation reports, the opening balance sheet as well as the operating instructions and other organisational documents needed for their comprehension,

2. the trade or business letters received,

3. reproductions of trade or business letters sent,

4. accounting records,

4a. documents pursuant to Article 15(1) and Article 163 of the Union Customs Code;

5. other documents to the extent that these are of relevance for taxation.

(2) With the exception of annual financial statements, opening balance sheets and documents under subsection (1) number 4a above (insofar as such latter documents are official documents or informal preference documents that must be signed by hand), the documents listed under subsection (1) above may be kept as reproductions on picture storage devices or on other data storage devices if this is commensurate with the principles of orderly accounting and if it is ensured that the reproductions or the data

[24] Subdivision of sentence into (a) and (b) added to English translation for purposes of clarity.

1. correspond visually to the trade or business letters received as well as the accounting records, and correspond in terms of content to the other documents when they are rendered readable,

2. may, throughout the duration of the retention period, be accessed at any time, rendered readable without delay and analysed by automated means.

(3) The documents specified in subsection (1) numbers 1, 4 and 4a above shall be retained for ten years and the other documents specified in subsection (1) above for six years, unless other tax laws permit shorter retention periods. Shorter retention periods under non-tax laws shall not affect the periods specified in the first sentence above. In the case of incoming delivery notes that are not accounting records as per subsection (4) number 1 above, the retention period shall end upon receipt of the invoice. In the case of outgoing delivery notes that are not accounting records as per subsection (4) number 1 above, the retention period shall end upon shipment of the invoice. However, the retention period shall not expire if and as long as the documents are relevant for taxes whose assessment period has not yet expired; section 169(2), second sentence, shall not apply.

(4) The retention period shall begin upon the end of the calendar year in which the last entry was made in the accounts, the inventory, the opening balance sheet, the annual financial statement or the situation report drawn up, the trade or business letter received or sent, the accounting record created, the record made or the other documents created.

(5) Persons who submit retainable documents in the form of a reproduction on a picture storage device or other data storage devices shall be required, at their own expense, to make available any auxiliary aids needed to render the documents readable; if the revenue authority so requests, they shall at their own expense print out without undue delay all or part of the documents or furnish reproductions that are readable without auxiliary aids.

(6) If the documents under subsection (1) above have been created with the aid of a data processing system, the revenue authority shall have the right to view the stored data within the context of an external audit and to use the data processing system to examine these documents. The revenue authority may also request within the context of an external audit that the data be analysed by computer in accordance with the revenue authority's specifications or that the stored documents and records be made available on a machine-readable data storage device. If the taxpayer informs the revenue authority that the data

referred to in subsection (1) above are located at the premises of a third party, the third party shall

1. allow the revenue authority to view the data stored for the taxpayer or

2. analyse these data by computer in accordance with the revenue authority's specifications or

3. make the documents and records stored for the taxpayer available on a machine-readable data storage device.

The costs shall be borne by the taxpayer. In cases where the third sentence above applies, the official assigned to conduct the external audit shall give suitably advance notice of his arrival to persons specified in section 3 and section 4 numbers 1 and 2 of the Tax Consultancy Act.

Section 147a – Provisions for retaining the records and documents of certain taxpayers

(1) Taxpayers whose sum of positive income under section 2(1) numbers 4 to 7 of the Income Tax Act (surplus income) exceeds 500,000 euros in a particular calendar year shall retain for six years the records and documents that pertain to the income and income-related expenses underlying the surplus income. In cases of joint assessment, the sum of each spouse's or civil partner's positive income under the first sentence above shall be used to determine whether the amount of 500,000 euros has been exceeded. The obligation under the first sentence above must be fulfilled from the beginning of the calendar year following the calendar year in which the sum of positive income as described under the first sentence above exceeds 500,000 euros. The obligation under the first sentence above shall end with the expiration of the fifth consecutive year in which the conditions specified in the first sentence above have not been fulfilled. Section 147(2), 147(3), third sentence, and 147(4) to (6) shall apply accordingly. The first to third and fifth sentences above shall apply accordingly in cases where the competent revenue authority requires the taxpayer to, in the future, retain the records and documents referred to in the first sentence above because he has failed to comply with his obligation to cooperate under section 90(2), third sentence.

(2) Taxpayers who, alone or jointly with related parties as defined in section 1(2) of the External Tax Relations Act, can exercise controlling or decisive influence, directly or indirectly, over the financial, business or company law related affairs of a third-country company as defined in section 138(3), shall retain for six years the records and documents

that pertain to this relationship and all associated income and expenses. This retention requirement shall be complied with from the date when circumstances meeting the criteria specified in the first sentence above first occur. The fourth sentence of subsection (1) above and section 147(2), 147(3), third sentence, 147(5) and 147(6) shall apply accordingly.

Section 148 – The authorisation of simplifications

For individual cases or for certain categories of cases, revenue authorities may permit the accounting, recording and retention requirements laid down in tax laws to be eased if compliance with such requirements causes undue hardship and if easing the requirements does not have an adverse impact on taxation. The easing of requirements in accordance with the first sentence above may be authorised retroactively. Such authorisation may be revoked.

2nd Subchapter – Tax returns

Section 149 – <u>Filing tax returns</u>

Section 149 of the Fiscal Code in the version applicable from 1 January 2017 under the Taxation Procedures Modernisation Act[25]	Section 149 of the Fiscal Code in the version applicable until 31 December 2016[26]
(1) Tax laws shall specify the persons obliged to file a tax return. In addition, any person requested by the revenue authority to file a tax return shall be obliged to do so. The request may be made by way of public announcement. The obligation to file a tax return shall continue to apply even if the revenue	(1) Tax laws shall specify the persons obliged to file a tax return. In addition, any person requested by the revenue authority to file a tax return shall be obliged to do so. The request may be made by way of public announcement. The obligation to file a tax return shall continue to apply even if the revenue

[25] Section 149 of the Fiscal Code as amended by the Taxation Procedures Modernisation Act is to be applied for the first time to tax periods that begin after 31 December 2017 and to tax dates that occur after 31 December 2017.

[26] Section 149 of the Fiscal Code in the version applicable until 31 December 2016 shall continue to apply to tax periods that begin before 1 January 2018 and to tax dates that occur before 1 January 2018.

authority has estimated the tax base in accordance with section 162.

(2) Unless otherwise required under tax law, tax returns relating to a calendar year or to a legally specified period of time shall be filed no later than seven months after the end of the calendar year or seven months after the legally specified period of time. In the case of taxpayers who calculate their profits from agricultural and forestry activities on the basis of a financial year that deviates from the calendar year, the filing period shall not end before the expiration of the seventh month following the end of the financial year that began in the calendar year.

(3) Insofar as persons, companies, associations, authorities or corporations as described in sections 3 and 4 of the Tax Consultancy Act are commissioned with the preparation of

1. income tax returns in accordance with section 25(3) of the Income Tax Act, with the exception of income tax returns

authority has estimated the tax base (section 162).

(2) Unless otherwise required under tax law, tax returns relating to a calendar year or a legally specified period of time shall be filed no later than five months after such year or period ends. In the case of taxpayers who calculate their profits from agricultural and forestry activities on the basis of a financial year that deviates from the calendar year, the filing period shall not end before the expiration of the fifth month following the end of the financial year that began in the calendar year.

described in section 46(2) number 8 of the Income Tax Act,

2. corporation tax returns in accordance with section 31(1) and (1a) of the Corporation Tax Act, tax base determination returns in accordance with section 14(5), the fourth sentence of section 27(2), the fourth sentence of section 28(1) or the second sentence of section 38(1) of the Corporation Tax Act, corporation tax apportionment returns in accordance with section 6(7) of the Tax Revenue Reallocation Act,

3. returns to determine the base amount of trade tax or apportionment returns in accordance with section 14a of the Trade Tax Act,

4. VAT returns for the calendar year in accordance with section 18(3) of the VAT Act,

5. returns for the (a) separate or (b) separate and joint determination of income subject to corporation tax or income tax in accordance with section 180(1), first sentence, number 2 in conjunction with

section 181(1) and (2),[27]

6. returns for the separate determination of tax bases in accordance with the "Ordinance on the separate determination of tax bases" adopted in accordance with section 180(2) or

7. returns for the separate determination of tax bases in accordance with section 18 of the External Tax Relations Act,

such returns shall be filed no later than the last day of February or, in cases where the second sentence of subsection (2) above applies, 31 July of the second calendar year following the tax period, subject to the provisions of subsection (4) below.

(4) A tax office may order that the returns referred to in subsection (3) above must be filed prior to the last day of February in the second calendar year following the tax period if

1. with respect to the taxpayer in question,

[27] Subdivision into (a) and (b) added to English translation for purposes of clarity.

a) returns for the previous tax period were not filed or were filed late,

b) retroactive prepayments for the previous tax period were imposed for the previous tax period within a period of three months prior to the filing of the tax return or within a period of three months prior to the start of interest accrual under section 233a(2), first sentence,

c) prepayment amounts for the tax period were reduced outside of an assessment procedure,

d) the assessment for the previous tax period led to a final payment of at least 25 percent of the assessed tax or more than 10,000 euros,

e) the tax assessed on the basis of a tax return as described in subsection (3) numbers 1, 2 or 4 above is likely to lead to a final payment of

more than 10,000 euros or

f) an external audit is planned,

2. the taxpayer in question has established or discontinued a business during the tax period or

3. losses have been incurred by persons with holdings in companies or partnerships.

A deadline of four months following the issuance of the order shall be set for complying with the order. Furthermore, tax offices may, on the basis of automated random selection, order that the returns referred to in subsection (3) above must be filed prior to the last day of February in the second calendar year following the tax period, with a deadline of four months following issuance of the order. Orders issued in accordance with the third sentence above shall indicate that they are based on an automated random selection; no further explanation shall be required. In cases where the second sentence of subsection (2) above applies, 31 July of the second calendar year following

the tax period shall apply instead of the last day of February. An order issued in accordance with the first or third sentence above may not set a shorter deadline for filing the return than the deadline stipulated in subsection (2) above. In cases where the first or third sentence above applies, an order shall cover all returns referred to in subsection (3) that the taxpayer in question must file for the same tax period or tax date.

(5) Subsection (3) above shall not apply to VAT returns for the calendar year, if the commercial or professional activity ceased prior to or with the expiration of the tax period.

(6) The highest revenue authority of a *Land*, or the *Land* revenue authority it designates, may authorise persons, companies, associations, authorities or corporations as described in sections 3 and 4 of the Tax Consultancy Act to file by certain deadlines a certain percentage of returns as referred to in subsection (3) above. If returns as

described in subsection (3) above are included in a procedure under the first sentence above, the third sentence of subsection (4) shall not apply. The arrangement of procedures under the first sentence above shall lie within the discretionary power of the highest revenue authorities of the *Länder* and shall not be actionable.

Section 150 – Format and content of tax returns

(1) A tax return must be filed using an officially prescribed form if

1. an electronic tax return is not prescribed,

2. a legally or officially permitted electronic tax return is not filed,

3. an oral or implied tax return is not permitted and

4. the documentation of an oral tax return filing at a tax office in accordance with section 151 does not come into consideration.

Section 87a(1), first sentence, shall apply only if an electronic tax return is prescribed or permitted. The taxpayer shall calculate the tax in the tax return himself where this is required by law (self-assessed tax return).

(2) The information contained in the tax returns shall be the truth to the best of the declarant's knowledge and belief.

(3) Where the tax laws require the taxpayer to sign the tax return personally, signature by an authorised party shall be permissible only where the taxpayer's physical or mental health or his extended absence prevents him from signing. A personal signature may be subsequently required where such hindrance ceases to exist.

(4) The tax returns shall be accompanied by the documents required by the tax laws. Third parties shall be obliged to issue any certificates required for this purpose.

(5) Tax return forms may include questions that, in addition to tax-related documents, are necessary for statistical purposes under the Tax Statistics Act. Revenue authorities may also require information from taxpayers that is necessary to implement the Federal Training Assistance Act. In verifying the information, the revenue authorities shall have the same powers as those it has when clarifying matters relevant for taxation.

(6) In order to facilitate and simplify the automated taxation procedure, the Federal Ministry of Finance may, by way of ordinances issued with the consent of the Bundesrat, determine whether and under which conditions tax returns or other data necessary for the taxation procedure may be transmitted, wholly or partly, via remote data transfer or on machine-readable data storage devices. Ordinances may enact rules that differ from the provisions contained in section 72a and sections 87b to 87d. Ordinances shall not require the consent of the Bundesrat where they concern motor vehicle tax, aviation tax, insurance tax, or excise duties with the exception of beer duty.

(7) If tax returns that are filed using (a) officially prescribed forms, or (b) officially prescribed data sets via remote data transmission, can lead to a fully automated tax assessment in accordance with the first sentence of section 155(4), then the tax return shall include a section or data field that gives taxpayers the opportunity to provide information that in their view establishes cause for processing by officials.[28] Data transmitted to the revenue authorities by notifying entities in accordance with section 93c shall be deemed to have been provided by the taxpayer, insofar as the taxpayer provides no information to the contrary in a section or data field to be included for this purpose in the tax return.

(8) Where the tax laws require that the revenue authority may, upon application to avoid undue hardship, waive a transmission of the tax return using an officially prescribed data set via remote data transmission, such an application shall be complied with where a submission of the return using an officially prescribed data set via remote data transmission is economically or personally unreasonable for the taxpayer. This shall in particular be the case where the creation of the technical means for a remote data transmission of the officially prescribed data set would be possible only at considerable financial expense or where the

[28] Subdivision of sentence into (a) and (b) added to English translation for purposes of clarity.

taxpayer’s individual knowledge and skills mean he is unable or not fully able to use the means of remote data transmission.

Section 151 – Documentation of an oral tax return filing at a tax office

A tax return that is to be filed in writing or electronically may be filed orally and documented at the offices of the competent revenue authority in cases where, due to personal circumstances, the taxpayer cannot reasonably be expected to transmit the return electronically or file it in written form, and particularly in cases where the taxpayer is not able to complete a self-assessment on his own or have the self-assessment done by a third party.

Section 152 – Late-filing penalty

Section 152 of the Fiscal Code in the version applicable from 1 January 2017 under the Taxation Procedures Modernisation Act[29]	Section 152 of the Fiscal Code in the version applicable until 31 December 2016[30]
(1) Any person who fails to comply with the requirement to file a tax return, or who fails to do so on time, may be charged a late-filing penalty. No late-filing penalty shall be charged if the person required to file the return plausibly explains that the delay is excusable; if the failure to fulfil the requirement is the fault of a representative or aide, the fault shall be attributed to the person required to file the return.	(1) Any person who fails to comply with the requirement to file a tax return, or who fails to do so on time, may be charged a late-filing penalty. No late-filing penalty shall be charged if the failure to file a tax return appears to be excusable. Fault on the part of a legal representative or aide shall be deemed the fault of the taxpayer.
(2) Notwithstanding subsection (1) above, a late-filing	(2) Late-filing penalties may not exceed 10 percent of the assessed tax or of the assessed base tax amount and may not exceed

[29] Section 152 of the Fiscal Code in the version applicable from 1 January 2017 under the Taxation Procedures Modernisation Act shall apply for the first time to tax returns that must be filed after 31 December 2018. This shall not apply in cases involving extensions of tax return filing deadlines.

[30] Section 152 of the Fiscal Code in the version applicable until 31 December 2016 shall continue to apply to tax returns that must be filed prior to 1 January 2019, and to VAT returns for shorter tax periods under the first two sentences of section 18(3) of the VAT Act if the relevant commercial or professional activity ceases in 2018.

penalty shall be charged if a tax return relating to a calendar year or a legally specified period of time is not filed

1. within 14 months after the end of the relevant calendar year or within 14 months after the end of the tax period,

2. within 19 months after the end of the relevant calendar year or within 19 months after the end of the tax period in cases where the second sentence of section 149(2) applies or

3. by the deadline specified in an order issued in accordance with section 149(4).

(3) Subsection 2 shall not apply

1. if the revenue authority extends the deadline for filing the tax return in accordance with section 109 or extends this deadline retroactively,

2. if the assessed tax equals zero or a negative amount,

3. if the assessed tax does not exceed the sum of assessed prepayments and withheld taxes to be credited or

25,000 euros. In addition to inducing taxpayers to file their tax returns on time, assessments of late-filing penalties shall take into account the length of time by which the deadline has been missed, the amount of the payment claim resulting from the tax assessment, the benefits derived from filing the tax return late, the taxpayer's degree of fault and the taxpayer's ability to pay.

(3) As a rule, late-filing penalties are to be charged in conjunction with the tax or base tax amount in question.

(4) Subsections (1) to (3) above shall apply to tax returns for the separate determination of tax bases, subject to the proviso that the tax implications are to be taken into account when applying the first sentence of subsection (2) above.

(5) (rescinded)

4. to annual wages tax returns.

(4) If multiple persons are required to file a tax return, the revenue authority may decide, at its discretion, whether it will charge the late-filing penalty to one of the persons required to file the return, to some of the persons required to file the return or to all of the persons required to file the return. If the late-filing penalty is charged to some or all of the persons required to file the return, these persons shall be jointly liable for the penalty. In cases where section 180(1), first sentence, number 2a applies, the late-filing penalty is to be charged first and foremost to the persons required to file a return under section 181(2), second sentence, number 4.

(5) Subject to the second sentence below, subsection (8) below, and the second sentence of subsection (13) below, the late-filing penalty shall be 0.25 percent of the assessed tax for each month or part of a month that a return is late, and no less than 10 euros per month or part

of a month that a return is late. For tax returns relating to a calendar year or to a legally specified period of time, the late-filing penalty shall be 0.25 percent of the assessed tax, less the sum of assessed prepayments and withheld taxes to be credited, for each month or part of a month that a return is late, and no less than 25 euros for each month or part of a month that a return is late. If, after the statutory deadline has expired, revenue authorities request for the first time that a person submit a tax return by a deadline specified in the request, and if, up until he receives the request, the taxpayer can assume that he is not required to submit a tax return, then the late-filing penalty shall be calculated only for each month or part of a month that follows the expiration of the deadline specified in the request.

(6) Subsections (1) to (3) and the first two sentences of subsection (4) above shall apply accordingly to returns for the separate determination of tax bases, returns to determine the base amount of trade tax and

apportionment returns, subject to subsection (7) below. The late-filing penalty shall be 25 euros for every month or part of a month that a return is late.

(7) The late-filing penalty on returns for the separate determination of earnings subject to income tax or corporation tax shall be 0.0625 percent of the assessed sum of positive income for each month or part of a month that a return is late, and no less than 25 euros for each month or part of a month that a return is late.

(8) Subsection (5) above shall not apply to tax returns that must be filed on a quarterly or monthly basis or to wages tax returns that must be filed on an annual basis in accordance with the second half-sentence of the second sentence of section 41(2) of the Income Tax Act. In these cases, the frequency of missed deadlines, the length of time by which such deadlines were missed, and the amount of tax due shall be taken into account when assessing the amount of the late-filing penalty.

(9) In cases where a tax return is not filed, the late-filing penalty shall be calculated for a period of time that extends to the end of the date when the initial tax assessment takes effect. The same shall apply to the failure to file a return to determine the base amount of trade tax, an apportionment return and a return for the separate determination of tax bases.

(10) Late-filing penalties shall be rounded down to the nearest euro and shall not exceed 25,000 euros.

(11) Late-filing penalties shall be charged in conjunction with the issuance of a tax assessment notice, a notice specifying the base amount of trade tax or an apportionment notice; in cases where subsection (4) applies, they can be charged in conjunction with a notice of determination.

(12) If (a) an assessment of a tax or base amount of trade tax, (b) an apportionment notice or (c) a separate determination of tax bases is cancelled, then any

late-filing penalty charged in connection therewith shall also be cancelled. If (a) an assessment of a tax, (b) the crediting of prepayments or withheld taxes or (c) a separate determination of earnings subject to income tax or corporation tax (as referred to in subsection (7) above)[31] is amended, withdrawn or revoked, or corrected in accordance with section 129, then any late-filing penalty charged in connection therewith shall be reduced or increased accordingly insofar as the minimum penalty amounts do not apply following the amendment or correction.[32] This shall not apply to loss carry-backs as defined in section 10d(1) of the Income Tax Act or events with retroactive effect as described in section 175(1), first sentence, number 1 or section 175(2).

(13) Subsection (2), the second sentence of subsection (4), the second sentence of subsection (5) and subsection (8) above shall not apply to tax returns that must be filed with main customs

[31] Parenthetical added to English translation for purposes of clarity.
[32] Subdivision of this sentence and previous sentence into (a), (b) and (c) added to English translation for purposes of clarity.

offices, subject to the second sentence above. The second sentence of subsection (8) above shall apply accordingly to the assessment of late-filing penalties for aviation tax returns.

Section 153 – Correction of returns

(1) Where a taxpayer subsequently realises before the period for assessment has elapsed

1. that a return submitted by him or for him is incorrect or incomplete and that this can lead or has already led to an understatement of tax, or

2. that a tax amount payable by way of tax mark or tax stamp was not paid in the correct amount,

he shall be obliged to indicate such without undue delay, and to effect the necessary corrections. This obligation shall also concern the taxpayer's universal successor and the persons acting for the universal successor or the taxpayer pursuant to sections 34 and 35.

(2) The notification obligation shall further apply where the conditions for tax exemption, tax reduction or other tax privileges subsequently cease to exist, whether in full or in part.

(3) In the case of goods for which a tax privilege has been granted subject to specific conditions, any person who wishes to use such goods in a manner that does not comply with the specified conditions shall be obliged to notify the revenue authority accordingly in advance.

3rd Subchapter – Authenticity of accounts

Section 154 – Authenticity of accounts[33]

(1) No one may use a false or fictitious name, for themselves or for a third party, to open an account or cause entries to be made in an account, place in safe custody or pledge valuables (money, securities, precious items) or procure a safe deposit box.

For the purpose of applying the amendments, see Article 97 paragraph 26(4) and (5) of the Introductory Act to the Fiscal Code.

(2) Any person or entity that holds accounts, keeps valuables in safe custody or as a pledge, or issues safe deposit boxes (obligated party) shall

1. verify in advance the identity and address of each person with power of disposal and each beneficial owner as defined in the Money Laundering Act and

2. record the relevant information in suitable form, in the case of an account in the account itself.

If a person with power of disposal is a natural person, section 11(4) number 1 of the Money Laundering Act shall apply accordingly. Obligated parties shall ensure that they are able at all times to provide revenue authorities with information on the accounts or safe deposit boxes over which a person has power of disposal or on the valuables that a person has placed in safe custody or given as a pledge. Such business relations shall be monitored on a continuous basis and the data that are to be collected under the first sentence above shall be updated at appropriate intervals of time.

(2a) In addition, credit institutions shall collect and record the following data for each account holder, each other person with power of disposal and each beneficial owner as defined in the Money Laundering Act:

1. the identification number as per section 139b and

2. the business identification number as per section 139c or, if a business identification number has not yet been issued and if the taxpayer is not a natural person, the tax number that applies for the taxation of income.

Contracting parties and any persons acting on their behalf shall provide credit institutions with the data to be collected under the first sentence above and shall notify credit institutions without delay of any changes that occur during the period of the business relationship. The first and second sentences above shall not apply to credit accounts if the credit provided serves the sole purpose of financing private consumer goods and the credit line does not exceed the amount of 12,000 euros.

(2b) If, by the time the business relationship is established, the contracting party or any person acting on his behalf fails to provide the credit institution with a data subject's identification number that is to be collected under subsection (2a), first sentence, number 1 above and the

credit institution has not rightfully obtained such data subject's identification number on other grounds, the credit institution shall use an automated procedure to request the identification number from the Federal Central Tax Office within a period of three months following the establishment of the business relationship. Only the data subject's data specified in section 139b(3) may be included in the request. The Federal Central Tax Office shall provide the credit institution with the data subject's identification number insofar as the data submitted by the credit institution match the data stored by the Federal Central Tax Office in accordance with section 139b(3).

(2c) If, due to a lack of cooperation from the contracting party or any persons acting on his behalf, the credit institution cannot ascertain the data to be collected under the first sentence of subsection (2a) above, the credit institution shall record this fact on the account. In such cases, the credit institution shall notify the Federal Central Tax Office of the accounts concerned, together with the data it has collected for such accounts in accordance with subsection (2) above; these data are to be submitted, for all such accounts opened during a given calendar year, by February of the following year.

(2d) For individual cases or for certain categories of cases, revenue authorities may permit the requirements under subsections (2) to (2c) above to be eased if compliance with such requirements causes undue hardship and if easing the requirements does not have an adverse impact on taxation.

(3) In the event that subsection (1) above is contravened, credit balances, valuables and the contents of safe deposit boxes may be returned only with the consent of the tax office responsible for assessing the income and corporation tax of the person who has power of disposal.

Third Chapter – Assessment and determination procedures

1st Subchapter – Tax assessment

I. General provisions

Section 155 – Tax assessment

(1) Unless otherwise prescribed, the taxes shall be assessed by the revenue authority by way of tax assessment notice. The tax assessment notice shall be the administrative act disclosed pursuant to section 122(1). This shall also apply with respect to the complete or partial exemption from a tax and for the dismissal of an application for tax assessment.

(2) A tax assessment notice may be issued even where a basic assessment notice has not yet been issued.

(3) Where several taxpayers owe the tax as joint and several debtors, consolidated tax assessment notices may be issued against them. Administrative acts on ancillary tax payments or other claims to which this Code applies may be issued against one or more taxpayers in combination with consolidated tax assessment notices. This shall also apply where the legal relationship between the taxpayers is such that assessed taxes, ancillary tax payments or other claims are not to be borne by all participants.

(4) Based on the information at their disposal and the information furnished by the taxpayer, revenue authorities may use fully automated processes to conduct, correct, withdraw, revoke, cancel or amend (a) tax assessments as well as (b) credits of withheld taxes and prepayments, provided there is no cause for an individual case to be processed personally by an official.[34] This also applies to

1. the issuance, correction, withdrawal, revocation, cancellation or amendment of administrative acts associated with such (a) tax assessments or (b) credits of withheld taxes and prepayments and[35]

2. the attachment of ancillary provisions in accordance with section 120 to (a) tax assessments or (b) credits of withheld taxes and prepayments, provided that such ancillary provisions constitute a generalised order issued on the basis of administrative instructions from the Federal Ministry of Finance or the highest revenue authorities of the *Länder*.[36]

Cause for processing by an official shall exist in particular in cases where the taxpayer provides information in a section or data field included for this purpose in the tax return, as described in section 150(7). In cases where an administrative act is issued using a fully

[34] Subdivision of sentence into (a) and (b) added to English translation for purposes of clarity.
[35] Subdivision into (a) and (b) added to English translation for purposes of clarity.
[36] Subdivision into (a) and (b) added to English translation for purposes of clarity.

automated process, the decision-making process regarding its issuance and disclosure shall be deemed completed at that point in time when the automated processing is finished.

(5) The provisions that apply to tax assessments shall apply *mutatis mutandis* to the assessment of tax rebates.

Section 156 – Refraining from tax assessment

(1) In order to simplify administration, the Federal Ministry of Finance may prescribe by way of ordinance that a tax shall not be assessed if the actual amount to be assessed is unlikely to exceed a certain amount to be specified by the respective ordinance. The amount to be specified in accordance with the first sentence above may not exceed 25 euros. The same shall apply to the amendment of a tax assessment if the difference between an amended assessment and the previous assessment would not exceed the amount specified in the respective ordinance. Ordinances shall not require the consent of the Bundesrat where they concern motor vehicle tax, aviation tax, insurance tax, import and export duties, or excise duties with the exception of beer duty.

(2) The assessment of a tax and ancillary tax payments, and the amendment of such assessments, may be waived even for amounts exceeding 25 euros if it is expected that

1. the collection of the amount in question will be unsuccessful or

2. the costs of assessment and the costs of collection are disproportionate to the amount in question.

The highest revenue authorities may issue instructions for applying number 2 under the first sentence above to identified or identifiable categories of cases, with such instructions being uniform nationwide. Such instructions may not be made public if doing so could jeopardise the consistency and lawfulness of taxation. For taxes administered by *Land* revenue authorities on behalf of the Federation, the highest *Land* revenue authorities shall, in consultation with the Federal Ministry of Finance, devise these instructions with a view towards ensuring that the execution of tax laws is consistent on a nationwide basis.

Section 157 – Form and content of tax assessment notices

(1) Unless otherwise specified, tax assessment notices shall be issued in written or electronic form. They shall identify the type and amount of the assessed tax and indicate the person who owes the tax. Furthermore, they shall be accompanied by instructions on applicable legal remedies, the deadline for seeking remedies, and the authority to which a request for remedy is to be filed.

(2) The determination of the tax base shall constitute a part of the tax assessment notice not separately contestable by legal remedy where the tax base is not determined separately.

Section 158 – Validity of accounts

The accounts and records of the taxpayer which correspond to the provisions of sections 140 to 148 shall serve as the basis for taxation to the extent that the individual circumstances give no reason to object to their formal correctness.

Section 159 – Proof of fiduciary status

(1) Whoever claims to own or possess rights in his name or items in his possession merely as trustee, representative of a third party, or pledgee shall be required upon request to prove to whom the rights or items belong; failure to do so shall result in their being routinely attributed to him. This shall not have the effect of restricting the right of the revenue authority to investigate the matter.

(2) Section 102 shall remain unaffected.

Section 160 – Naming creditors and the recipients of payments

(1) Debts and other burdens, business expenditure, income-related expenses and other expenses shall as a matter of routine not be considered for tax purposes where the taxpayer does not meet the demands of the revenue authority to provide precise details of the names of the creditors or recipients. The right of the revenue authority to investigate the matter shall remain unaffected.

(2) Section 102 shall remain unaffected.

Section 161 – Inventory shortfalls

Where, within the context of a prescribed or officially conducted inventory, shortfalls are determined with respect to goods subject to excise duty, it shall be assumed that an excise duty has arisen with respect to the missing goods or that a conditional excise duty has become unconditional where it cannot be established credibly that the missing goods are the result of circumstances for which tax would not have to be paid and which do not cause a conditional tax to become unconditional. In case of doubt, the tax shall be deemed to have arisen or become unconditional at the point in time at which the inventory is carried out.

Section 162 – Estimating tax bases

(1) Where the revenue authority cannot determine or calculate the tax base, the revenue authority shall estimate it. All circumstances which have an impact on the estimate shall be taken into account.

(2) An estimate shall be undertaken in particular where the taxpayer is not willing to provide sufficient explanation regarding his details or refuses to give further information or a sworn

statement or breaches his obligation to cooperate pursuant to section 90(2). The same shall apply where the taxpayer cannot furnish accounts or records which he is obliged under tax laws to keep, where the accounts or the records cannot be used as a basis for taxation pursuant to section 158 or where there are factual indications of the incorrectness or incompleteness of the details provided by the taxpayer on taxable income or business asset increases and the taxpayer fails to give his consent pursuant to section 93(7), first sentence, number 5. Where the taxpayer breaches his obligation to cooperate under section 90(2), third sentence, it shall be refutably assumed that taxable income in states or territories within the meaning of section 90(2), third sentence exists or is higher than the income declared.

(3) If a taxpayer breaches his obligation to cooperate under section 90(3) by failing to submit records of a business transaction or if the business transaction records submitted are essentially of no use, or if it is determined that he has not compiled records as described in the eighth sentence of section 90(3) in a timely manner, it shall be rebuttably presumed that his taxable income in Germany – which the records described in section 90(3) serve to determine – is higher than the income he declared. If in such cases the revenue authority must conduct an estimate and if this income can be determined only within a certain range – and in particular only on the basis of a price band – then the unfavourable limit of that range may be selected to the detriment of the taxpayer. If, despite the submission of usable records by the taxpayer, there are indications that the application of the arm's length principle would cause the taxpayer's income to be higher than the income declared on the basis of the submitted records, and if corresponding doubts cannot be cleared up because a foreign related party fails to fulfil its obligation to cooperate under section 90(2) or its obligation to provide information under section 93(1), the second sentence above shall apply accordingly.

(4) If a taxpayer fails to submit records as described in section 90(3) for a business transaction, or if the records submitted for a business transaction are essentially of no use, a penalty of 5,000 euros shall be imposed. The penalty shall be at least 5 percent and at most 10 percent of the additional income that results from a correction carried out on the basis of subsection (3) above, if this leads to a penalty of more than 5,000 euros. In cases where usable records are submitted late, the penalty shall total up to 1,000,000 euros, and shall be at least 100 euros for each full day following the expiration of the deadline. Insofar as the revenue authorities are given discretion in determining the penalty amount, their decision shall take into account not only the objective of inducing taxpayers to compile and punctually submit

records as described in section 90(3), but also, and in particular, the benefits derived by the taxpayer and, in the case of late submission, the length of time by which the deadline has been missed. No penalty shall be imposed in cases where the non-fulfilment of obligations under section 90(3) appears to be excusable or the degree of fault is negligible. Fault on the part of a legal representative or aide shall be deemed the fault of the taxpayer. As a rule, the penalty shall be imposed after the completion of an external audit.

(5) In cases where section 155(2) applies, the tax bases to be specified in a basic assessment notice may be estimated.

Section 163 – Divergent assessment of taxes on grounds of equity

(1) Tax bills may be set at a lower amount, and individual tax bases that would increase taxes may be excluded from the tax assessment, if levying the tax would be inequitable under the circumstances of the individual case. In the case of income tax, it may be permissible, with the taxpayer's consent, for individual tax bases that would increase taxes to be included in a later assessment, and for individual tax bases that would reduce taxes to be included in an earlier assessment.

(2) Measures taken on grounds of equity in accordance with subsection (1) above may be carried out in conjunction with the relevant tax assessment.

(3) In cases where subsection (2) above applies, a measure taken on grounds of equity in accordance with subsection (1) above is always subject to revocation if it

1. is not explicitly issued as an autonomous decision by the revenue authority,

2. is taken in conjunction with a tax assessment subject to review in accordance with section 164

3. is taken in conjunction with a provisional tax assessment in accordance with section 165 and the reason for the provisional character of the assessment is also relevant for the decision taken under subsection (1) above.

In cases where number 1 above applies, a measure taken on grounds of equity shall no longer be subject to revocation once the deadline passes for assessing the tax to which the measure applies. In cases where number 2 above applies, a measure taken on grounds of equity shall

no longer be subject to revocation once the tax assessment to which the measure applies is no longer subject to review. In cases where number 3 above applies, a measure taken on grounds of equity shall no longer be subject to revocation once the tax assessment to which the measure applies becomes final.

(4) If a measure taken on grounds of equity under subsection (1) above and subject to revocation under subsection (3) above is unlawful, it shall be withdrawn with retroactive effect. Section 130(3), first sentence, shall not apply in this case.

Section 164 – Tax assessment subject to review

(1) As long as the tax case has not been subject to a final audit, taxes may be assessed generally, or in certain cases provisionally subject to review, without justification being required. Assessment of a prepayment shall always be a tax assessment subject to review.

(2) The tax assessment may be cancelled or amended for as long as the review proviso remains in effect. The taxpayer may apply for the cancellation or amendment of the tax assessment at any time. However, the relevant decision may be deferred until a final audit of the tax case, which shall be undertaken within a suitable timeframe.

(3) The review proviso may be cancelled at any time. Such cancellation shall be equivalent to a tax assessment not subject to review; section 157(1), first and third sentences, shall apply *mutatis mutandis*. The proviso shall be cancelled if, following an external audit, there are no changes to the tax assessment subject to review.

(4) The review proviso shall no longer apply in the event that the period for assessment expires. Section 169(2), second sentence, section 170(6) and section 171(7), (8) and (10) shall not apply.

Section 165 – <u>Provisional tax assessments, suspension of tax assessments</u>

(1) A tax may be assessed provisionally where there is uncertainty as to whether the prerequisites required for the tax to come into effect have been met. This provision shall also apply where

1. there is uncertainty as to whether and when agreements with other states on taxation (section 2) which have a positive effect for the taxpayer come into effect with respect to the assessment of taxes,

2. the Federal Constitutional Court has determined the incompatibility of a tax law with the Basic Law of Germany and the legislator is obliged to make new provisions,

2a. due to a decision by the Court of Justice of the European Union, there may be a need to adopt new legislative provisions,

3. the compatibility of a tax law with primary law is the subject of proceedings before the Court of Justice of the European Union, the Federal Constitutional Court or a highest federal court, or

4. the interpretation of a tax law is the subject of proceedings before the Federal Fiscal Court.

The scope of and reason for the provisional character shall be indicated. Given the preconditions of the first and second sentences above, the tax assessment can also be suspended against or without provision of collateral.

(2) The revenue authority may cancel or amend a tax assessment to the extent that it has assessed the tax on a provisional basis. When the uncertainty has been cleared up, a provisional tax assessment shall be cancelled, amended or declared final; any suspended tax assessment shall be subsequently continued. In the cases outlined in subsection (1), second sentence, number 4 above, the uncertainty shall cease as soon as it clear that the principles of the Federal Fiscal Court's ruling apply generally above and beyond the individual case ruled on. In the cases outlined in subsection (1), second sentence, above a provisional tax assessment pursuant to the second sentence above shall be declared final only upon application by the taxpayer when it cannot be cancelled or amended.

(3) A provisional tax assessment may be issued in conjunction with a tax assessment subject to review.

Section 166 – Third party effects of the tax assessment

Where the tax has been incontestably assessed with respect to the taxpayer, in addition to a universal successor, anyone who would have been in a position to contest the assessment notice issued against the taxpayer as his representative, authorised nominee or by virtue of his own rights shall also be obliged to accept the validity of this.

Section 167 – Self-assessed tax return, use of tax marks or tax stamps

(1) Where a tax has to be self-assessed as a result of a statutory obligation (section 150(1), third sentence), an assessment of the tax pursuant to section 155 shall be required only where the assessment leads to a divergent tax or the persons owing the tax or liability do not submit the self-assessed tax return. The first sentence above shall apply *mutatis mutandis* where because of a statutory obligation the tax is to be paid by applying tax marks or tax stamps. Where following an external audit within the meaning of section 193(2) number 1 the person owing the tax or liability recognises in writing his obligation to pay, such recognition shall be deemed equal to a self-assessed tax return.

(2) Self-assessed tax returns shall also be deemed to have been submitted on time when they are received by the responsible payments office with the time period allowed. This shall not apply to import/export duties and excise duties.

Section 168 – Effects of a self-assessed tax return

A self-assessed tax return is equal to a tax assessment subject to review. Where the self-assessed tax return results in a reduction in the tax payable up to that point or to a tax rebate, the first sentence above shall apply only if the revenue authority agrees. The agreement shall not require a particular form.

II. Period of limitation for the assessment

Section 169 – Period for assessment

(1) A tax assessment and its cancellation or amendment shall no longer be permissible once the period for assessment has expired. This shall also apply to corrections of obvious errors under section 129. The time limit for assessing a tax shall be deemed complied with if, before the period for assessment has expired,

1. the tax assessment notice or, in cases where section 122a applies, the electronic notification has left the domain of the revenue authority responsible for assessing the tax or

2. the assessment has been disclosed or published in cases of public notification pursuant to section 10 of the Administrative Service of Documents Act.

(2) The period for assessment shall be:

1. one year for excise duties and excise duty rebates,

2. four years for taxes and tax rebates that are not the taxes referred to under number 1 above or are not tax rebates under Article 5 numbers 20 and 21 of the Union Customs Code.

The period for assessment shall be ten years where taxes have been evaded and five years where they have been recklessly understated. This shall also apply where the tax evasion or reckless understatement of tax has not been committed by the tax debtor or a person of whose services he avails himself to meet his tax obligations, unless the tax debtor shows that his wealth has not increased as a result of the act and that this act was not brought about by his omission to take the due precautions necessary to prevent an understatement of tax.

Section 170 – Beginning of the period for assessment

(1) The period for assessment shall begin at the end of the calendar year in which the tax has arisen or a conditional tax has become unconditional.

(2) Notwithstanding the provisions of subsection (1) above, the period for assessment shall begin

1. where a tax return or a self-assessed tax return is to be submitted or a notice posted, at the end of the calendar year in which the tax return, the self-assessed tax return or the notice is submitted, at the latest however at the end of the third calendar year following the calendar year in which the tax has arisen, unless subsection (1) above prescribes that the period for assessment shall begin later,

2. where a tax that is to be paid by way of tax marks or tax stamps, at the end of the calendar year in which tax marks or tax stamps have been used for the tax case, at the

latest however at the end of the third calendar year following the calendar year in which the tax marks or tax stamps should have been used.

This shall not apply to excise duties, excluding energy tax on natural gas and electricity duty.

(3) Where a tax or tax rebate is assessed upon application only, the period for the cancellation or amendment of this assessment or its correction pursuant to section 129 shall not begin before the end of the calendar year in which the application is made.

(4) Where by application to capital tax or real property tax of subsection (2) number 1 above the date of commencement of the period for assessment is postponed, the date of commencement of the period for assessment for the subsequent calendar years of the main assessment period shall be postponed by the same amount of time.

(5) The period for assessment pursuant to subsection (1) or (2) above with respect to inheritance tax (gift tax) shall not begin

1. for acquisition by reason of death, before the end of the calendar year in which the transferee has become aware of the transfer,

2. for endowment, before the end of the calendar year in which the endower has died or the revenue authority has become aware of the endowment executed,

3. for transfer of property for particular purpose between living persons, before the end of the calendar year in which the obligation has been met.

(6) The period for assessing tax on income from capital that

1. is derived from states or territories that are not members of the European Union or the European Free Trade Association, and

2. is not automatically reported in accordance with agreements within the meaning of section 2(1) or arrangements based on such agreements,

shall begin no earlier than the end of the calendar year in which such income from capital was disclosed to the revenue authorities through a declaration by the taxpayer or by other means, but no later than ten years after the end of the calendar year in which the tax was incurred.

(7) For taxes on income or gains stemming from relationships with third-country companies as defined in section 138(3) over which a taxpayer can directly or indirectly exercise controlling or decisive influence, alone or jointly with related parties as defined in section 1(2) of the External Tax Relations Act, the period for assessment shall begin no earlier than the end of the calendar year in which these relationships were disclosed through a notification by the taxpayer or through other means, but no later than ten years after the end of the calendar year in which the tax was incurred.**Section 171 – Suspension of expiration**

(1) The period for assessment shall not expire for as long as the tax assessment cannot be undertaken within the last six months of the period as a result of *force majeure*.

(2) If an obvious error has occurred in the issuance of a tax assessment notice, the period for assessment shall not end before the expiration of one year following the disclosure of such tax assessment notice. The same shall apply in the cases referred to in section 173a.

(3) Where an application for tax assessment, or cancellation of or amendment to a tax assessment, or its correction pursuant to section 129, is made outside of objection proceedings or legal proceedings, the period for assessment shall not expire before an incontestable decision has been reached on the application.

(3a) Where a tax assessment notice is contested by way of objection proceedings or legal proceedings, the period for assessment shall not expire before an incontestable decision has been reached on the legal remedy; this shall also apply where the action is first brought when the period for assessment has expired. The expiration of the period for assessment shall be suspended with regard to the entire tax claim; this shall not apply where the legal remedy is impermissible. In the cases of sections 100(1), first sentence, 100(2), second sentence, 100(3), first sentence, and 101 of the Code of Procedure for Fiscal Courts, a decision on the legal remedy shall become incontestable only once a tax assessment notice issued on the basis of the aforementioned provisions has become incontestable.

(4) Where an external audit is commenced before the period for assessment has expired or where its commencement is postponed upon application by the taxpayer, the period for assessment of the taxes in relation to which the external audit has been initiated or, in the case of a postponed audit, is to be initiated, shall not expire before the tax assessment notices to be issued on the basis of the external audit have become incontestable or before three months have expired following disclosure of the notification pursuant to section 202(1), third sentence. This shall not apply where an external audit is interrupted immediately after its commencement for a period of more than six months for reasons for which the revenue

authority bears responsibility. The period for assessment shall end at the latest when the periods named in section 169(2) have ended since expiration of the calendar year in which the final meeting has taken place or, in the absence of such, since expiration of the calendar year in which the last investigations as part of the external audit have taken place; a suspension of expiration pursuant to other provisions shall remain unaffected.

(5) Where the customs investigation offices or the offices of the revenue authorities of a *Land* charged with tax investigations begin the process of calculating tax bases for the taxpayer before expiration of the period for assessment, the period for assessment shall not expire before the tax assessment notices to be issued on the basis of the calculations have become incontestable; subsection (4), second sentence, above shall apply *mutatis mutandis*. The same shall apply where the taxpayer has been informed before expiration of the period for assessment of the initiation of criminal tax proceedings or administrative fine proceedings as a result of a tax-related administrative offence; section 169(1), third sentence, shall apply *mutatis mutandis*.

(6) Where an external audit of the taxpayer cannot be carried out in the territory of application of this Code, the expiration of the period for assessment shall also be suspended by other investigative actions within the meaning of section 92 until the tax assessment notices issued on the basis of these investigations have become incontestable. The suspension of expiration shall only then become effective, however, where the taxpayer has been informed of the commencement of investigations under the first sentence above before the period for assessment has expired; section 169(1), third sentence, shall apply *mutatis mutandis*.

(7) In the cases mentioned in section 169(2), second sentence, the period for assessment shall not end before the period of limitation for prosecution of the tax crime or tax-related administrative offence has become time-barred.

(8) Where pursuant to section 165 the assessment of a tax has been suspended or the tax has been provisionally assessed, the period for assessment shall not end before expiration of one year after the uncertainty has been removed and the revenue authority has been informed of such. In the cases referred to in section 165(1), second sentence, the period for assessment shall not end before expiration of two years after the uncertainty has been removed and the revenue authority has been informed of such.

(9) Where the taxpayer posts notification pursuant to sections 153, 371 and 378(3) before the period for assessment has expired, the period for assessment shall not end before expiration of one year following receipt of the notification.

(10) To the extent that a notice of determination, a base tax amount notice or another administrative measure is binding (basic assessment notice) for the assessment of a tax, the period for assessment shall not end before the expiration of two years following the disclosure of such a basic assessment notice. If the authority responsible for issuing such a basic assessment notice is not a revenue authority as defined in section 6(2), the period for assessment shall not end before the expiration of two years following the date when the revenue authority responsible for issuing the follow-up notice obtained knowledge of the issuance of the basic assessment notice. For basic assessment notices to which section 181 does not apply, the first and second sentences above shall apply only if an application for such a basic assessment notice was submitted to the competent authority prior to the expiration of the assessment period for the follow-up notice. If the expiration of the assessment period is suspended pursuant to subsection (4) above for that part of the tax that is not bound by the basic assessment notice, the assessment period for that part of the tax that is bound by the basic assessment notice shall not end before the expiration of the period suspended pursuant to subsection (4) above.

(10a) If, as described in section 93c, taxpayer data are received by the revenue authorities within seven calendar years following the tax period or tax date, the period for assessment shall not end before the expiration of two years following receipt of such data.

(11) Where a person incapable of contracting or with limited ability to contract has no legal representative, the period for assessment shall not end before expiration of six months after the date on which the person acquires unlimited ability to contract or the lack of representation is remedied. The shall also apply to the extent that a custodian has been appointed for a person and reservation of consent pursuant to section 1903 of the Civil Code has been ordered, but the custodian has died or in some other manner is no longer available or is prevented from representing the person on legal grounds.

(12) Where a tax is imposed on an inheritance, the period for assessment shall not end before expiration of six months after the date on which the inheritance is assumed by the heir or

insolvency proceedings have been initiated with respect to the inheritance, or from which the tax can be assessed against a representative.

(13) Where, before expiration of the period for assessment, a tax which has not yet been assessed is registered in insolvency proceedings, the period for assessment shall not end before expiration of three months after the insolvency proceedings have been concluded.

(14) The period for assessment for a tax claim shall not end for as long as the period of limitations for an associated refund claim pursuant to section 37(2) has not become time-barred (section 228).

(15) In the event that a third party must withhold and remit taxes on behalf of a tax debtor or must pay taxes on behalf of a tax debtor, the assessment period that applies to the tax debtor shall not end prior to the expiration of the assessment period that applies to the party obliged to pay the tax.

III. Finality

Section 172 – Cancelling and amending tax assessment notices

(1) A tax assessment notice, to the extent that it has not been issued provisionally or subject to review, may be cancelled or amended only

1. where it concerns excise duties,

2. where it concerns taxes other than import and export duties pursuant to Article 5 numbers 20 and 21 of the Union Customs Code or excise duties,

    a) provided that the taxpayer agrees or the essence of his application is met; however, this shall apply to the benefit of the taxpayer only to the extent that he has agreed or submitted the application before the period for objection has expired or to the extent that the revenue authority remedies objection proceedings or legal proceedings,

    b) to the extent that it has been issued by an authority which is not responsible,

    c) to the extent that it has been effected by dishonest means such as fraudulent misrepresentation, threat or bribery,

d) to the extent that this is otherwise permitted by law; sections 130 and 131 shall not apply.

This shall also apply where the tax assessment notice has been confirmed or amended by a ruling on an objection. The first sentence of number 2(a) above shall likewise apply in the cases mentioned in the second sentence above where the taxpayer has agreed or submitted the application before the period for legal proceedings has expired; declarations and evidence which pursuant to section 364b(2) were not admitted in the objection ruling shall not be taken into account thereby.

(2) Subsection (1) above shall also apply to an administrative act with which an application for a tax assessment notice to be issued, cancelled or amended has been rejected in full or in part.

(3) Pending applications for the cancellation or amendment of a tax assessment that are made outside of objection proceedings or legal proceedings which concern a legal issue ruled on by the Court of Justice of the European Union, the Federal Constitutional Court or the Federal Fiscal Court and which cannot be granted following the conclusion of the proceedings before these courts may be rejected by way of a general order. Section 367(2b), second to sixth sentences, shall apply accordingly.

Section 173 – Cancelling or amending tax assessment notices as a result of new facts or evidence

(1) Tax assessment notices shall be cancelled or amended

1. where facts or evidence which lead to a higher tax are subsequently ascertained,

2. where facts or evidence which lead to a lower tax are subsequently ascertained and the fact that these facts or evidence are only ascertained subsequently is not due to grave negligence on the part of the taxpayer. Negligence shall be inconsequential where the facts or evidence have a direct or indirect connection to the facts or evidence within the meaning of number 1 above.

(2) Notwithstanding the provisions of subsection (1) above, tax assessment notices, to the extent that they have been issued on the basis of an external audit, may be cancelled or

amended only where taxes have been evaded or recklessly understated. This shall also apply where notification pursuant to section 202(1), third sentence, has been issued.

Section 174 – Conflicting tax assessments

(1) Where a particular circumstance has been taken into account to the detriment of one or more taxpayers in more than one tax assessment notice despite the fact that such circumstance should have been taken into account only once, the incorrect tax assessment notice shall be cancelled or amended upon application. Where the deadline for this tax assessment has already passed, an application may still be submitted for up to one year after the last of the tax assessments in question has become incontestable. Where the application is made on time, there shall be no deadline imposed for the cancellation or amendment of the tax assessment notice.

(2) Subsection (1) above shall apply *mutatis mutandis* where a particular circumstance has been taken into account more than once to the benefit of one or more taxpayers in an incompatible manner; an application shall not be required. However, it shall be possible to correct the incorrect tax assessment notice only where the circumstance was taken into account on the basis of an application or declaration by the taxpayer.

(3) Where it is obvious that a particular circumstance has not been taken into account in a tax assessment notice because it was assumed that it is to be taken into account in another tax assessment notice and where this assumption transpires to be incorrect, the tax assessment which did not take the circumstance into account may be subsequently carried out, cancelled or amended. The subsequent carrying out, cancellation or amendment shall be permissible only until the period for assessment which applies to the other tax assessment expires.

(4) Where as a result of incorrect appraisal of a particular circumstance a tax assessment notice has been issued which, as the result of an appeal or otherwise upon application by the taxpayer, is cancelled or amended by the revenue authority to his benefit, the proper taxation implications of the circumstance may subsequently be effected by issuing or amending a tax assessment notice. This shall also apply where the tax assessment notice is cancelled or amended by the court. The expiration of the period for assessment shall be inconsequential where the taxation implications are effected within one year following cancellation or amendment of the incorrect tax assessment notice. This shall apply solely under the conditions outlined in subsection (3), first sentence, above where the period for assessment had already expired when the tax assessment notice which has been subsequently cancelled or amended was issued.

(5) Subsection (4) above shall apply with respect to third parties where they were involved in the proceedings which led to the incorrect tax assessment notice being cancelled or amended. Their enlistment in or summons to these proceedings shall be permissible.

Section 175 – Amending tax assessment notices based on basic assessment notices and events with retroactive effect

(1) A tax assessment notice shall be issued, cancelled or amended

1. to the extent that a basic assessment notice (section 171(10)) which has a binding effect on this tax assessment notice is issued, cancelled or amended,

2. to the extent that an event which entails tax implications on periods already elapsed occurs (event with retroactive effect).

In the cases mentioned in the first sentence, number 2, above the period for assessment shall begin upon expiration of the calendar year in which the event occurs.

(2) The cessation of a precondition bestowing a tax privilege shall also be deemed to be an event with retroactive effect where it is legally determined that this precondition must be met for a certain amount of time or where an administrative act has determined that it forms the basis for granting the tax privilege. The subsequent issue or submission of a certification or confirmation shall not be deemed to be an event with retroactive effect.

Section 175a – The implementation of mutual agreement understandings

A tax assessment notice shall be issued, cancelled or amended where this is required in order to implement a mutual agreement understanding or an arbitral award pursuant to an agreement within the meaning of section 2. The period for assessment shall not end before expiration of one year after the mutual agreement understanding or arbitral award has come into effect.

Section 175b – Amending tax assessment notices based on transmissions of data from third parties

(1) A tax assessment notice shall be cancelled or amended if data transmitted to revenue authorities by notifying entities in accordance with section 93c were not accounted for or were accounted for incorrectly.

(2) If data transmitted to revenue authorities by notifying entities in accordance with section 93c are deemed to have been provided by the taxpayer as per the second sentence of section 150(7), tax assessment notices shall be cancelled or amended to the extent that such data are incorrect to the taxpayer's detriment.

(3) If data transmitted to revenue authorities in accordance with section 93c can be considered for tax purposes only if the taxpayer consents to the transmission of such data, then tax assessment notices shall be cancelled or amended to the extent that such consent has not been granted.

(4) Subsections (1) and (2) above shall not apply if subsequently transmitted data as described in section 93c subsections (1) and (3) have no legal relevance.**Section 176 – Protection of confidence in cancelling and amending tax notices of assessment**

(1) Where a tax assessment notice is cancelled or amended, the following may not be taken into account if it is to the taxpayer's disadvantage:

1. the Federal Constitutional Court determines the invalidity of a law upon which the tax assessment was based,

2. a highest federal court does not apply a provision, upon which the tax assessment was based, because it holds it to be unconstitutional,

3. a ruling of a highest federal court, which was applied by the revenue authority in the tax assessment, has changed.

Where the court rulings up to that point had already been taken into account in a tax return or self-assessed tax return without this having been recognisable by the revenue authority, number 3 above shall apply only where it can be assumed that the revenue authority would have applied the standing case law had they been aware of the circumstances.

(2) Where a tax assessment notice is cancelled or amended, it may not be taken into account if it is to the taxpayer's disadvantage that a general administrative provision of the Federal Government, a highest federal authority or a highest authority of a *Land* has been classified by a highest federal court as being incompatible with current law.

Section 177 – Correction of material errors

(1) Where the conditions for cancelling or amending a tax assessment notice to the taxpayer's disadvantage exist, those material errors which are not the cause of the cancellation or amendment shall be corrected to the taxpayer's advantage or disadvantage insofar as the amendment is sufficient.

(2) Where the conditions for cancelling or amending a tax assessment notice to the taxpayer's advantage exist, those material errors which are not the cause of the cancellation or amendment shall be corrected to taxpayer's advantage or disadvantage insofar as the amendment is sufficient.

(3) Material errors within the meaning of subsections (1) and (2) above shall be all errors, including obvious errors within the meaning of section 129, which lead to the assessment of a tax which deviates from the tax which arose by application of law.

(4) Section 164(2), section 165(2) and section 176 shall remain unaffected.

IV. Costs

Section 178 – Costs of making special use of the customs authorities

(1) The authorities of the federal customs administration and the authorities to whom execution of the tasks of the federal customs administration has been transferred may charge fees and demand that expenses are refunded in the case of a special use or service (official act for which fee must be paid).

(2) A special use or service within the meaning of subsection (1) above shall mean, in particular,

1. official acts carried out outside of the place of work and outside of office hours, to the extent that these are not fiscal supervision measures,

2. official acts which make the execution of duties more difficult because, according to the application, they are to be carried out at a specific time,

3. the inspection of goods where

a) this is the result of an application to have binding tariff information issued, or a tax rebate or other privileges granted, or

b) in the course of official inspections, details or objections of the person with power of disposal turn out to be incorrect or unfounded, or

c) the inspected goods do not meet the required standards,

4. monitoring measures in businesses and with regard to transactions, where such measures are in response to contraventions of the ordinances issued to secure the tax revenue,

5. official monitoring and accompaniment of means of transportation or goods,

6. the safekeeping of non-Community goods,

7. the preparation of written documents, electronic documents, transcripts and copies as well as the electronic transmission or printing of electronic documents and other files, if such tasks are performed upon request,

8. the destruction of goods carried out in an official capacity or upon application.

(3) The Federal Ministry of Finance shall be authorised to issue ordinances not requiring the consent of the Bundesrat that specify in detail the official acts for which a fee may be charged, that assess and set flat rates for the costs to be charged on the basis of the average administrative effort such acts require, and that define the conditions under which all or some of these costs may be waived due to negligibility, undue hardship or other similar reasons.

(4) The provisions which apply to excise duties shall apply accordingly to the assessment of the costs. The Administrative Costs Act, in the version in force until 14 August 2013, shall otherwise apply to these costs. Sections 18 to 22 of the Administrative Costs Act, in the version in force until 14 August 2013, shall not apply.

Section 178a – Costs of making special use of the revenue authorities

(1) The Federal Central Tax Office shall charge fees for processing applications for the implementation of a procedure of mutual understanding pursuant to an agreement within the meaning of section 2 with a view to the consensual taxation of as yet unrealised transactions

of the taxpayer with related persons within the meaning of section 1 of the Foreign Tax Act or with a view to the future consensual distribution of profits between a domestic enterprise and its foreign permanent establishment or with a view to the future consensual determination of profits of a domestic permanent establishment of a foreign enterprise (advance pricing agreement procedure), which fees shall be determined by the Federal Central Tax Office before the advance pricing agreement procedure is opened. This procedure shall be opened by the first written correspondence sent to the other country. Where an application has as its goal an advance pricing agreement procedure with several states, a fee shall be determined and charged for each procedure. The advanced pricing agreement procedure shall not be opened before the assessment of fees has become incontestable and the fee has been paid; where an application for a lower fee pursuant to subsection (4) below has been made, the decision relating to this must also first be incontestable.

(2) The fee shall be 20,000 euros (basic fee) for each application within the meaning of subsection (1) above; an application of a parent company within the meaning of section 14(1) of the Corporation Tax Act which includes the corresponding transactions of its controlled companies shall be deemed to be one application. Where a person who has already entered a mutual agreement understanding applies for an extension to the period of validity, the fee shall be 15,000 euros (extension fee). Where the applicant amends his application before a decision has been taken on the original application or where he applies for an amendment to the mutual agreement understanding while it is ongoing, an additional fee of 10,000 euros shall be levied for each amendment (amendment fee); this shall not apply where the amendment has been ordered by the Federal Central Tax Office or by the other state.

(3) Where the total value of the transactions covered by the advance pricing agreement procedure are not likely to exceed the amounts given in section 6(2), first sentence, of the Ordinance of 13 November 2003 on Recording Profit Allocations (Federal Law Gazette I, p. 2296), the basic fee shall be 10,000 euros, the extension fee 7,500 euros and the amendment fee 5,000 euros.

(4) The Federal Central Tax Office may reduce the fees under subsection (2) or (3) above upon application where their payment means unreasonable hardship for the taxpayer and the Federal Central Tax Office determines that the revenue authorities have a particular interest in the implementation of the advance pricing agreement procedure. The application shall be

submitted before the advance pricing agreement procedure is opened; any application submitted at a later stage shall not be permissible.

(5) Where the application is withdrawn or rejected, or where the advance pricing agreement procedure fails, the incontestable fee set shall not be refunded.

2nd Subchapter – Separate determination of tax bases, assessment of base amounts of non-personal taxes

I. Separate determination

Section 179 – Determination of tax bases

(1) Notwithstanding the provisions of section 157(2), tax bases shall be determined separately by way of notice of determination where this is stipulated in this Code or in other tax laws.

(2) A notice of determination shall be issued against the taxpayer to whom the object of the determination is attributable for taxation. Separate determination shall be undertaken uniformly against several participants where this is required by statute or where the object of the determination is attributable to several persons. Where one of these persons participates in the object of the determination solely via another person, a special separate determination may be undertaken.

(3) Where a determination which should have been made does not appear in a notice of determination, it shall be included in an additional notice.

Section 180 – Separate determination of tax bases

(1) The following, in particular, shall be determined separately:

1. the assessed values in accordance with the Valuation Act,

2. a) income which is subject to income tax and corporation tax, and other related tax bases where several persons have a share in the income and the income is attributable for tax purposes to these persons,

   b) in cases other than those mentioned in a) above, income from agriculture and forestry, business or self-employment where, given the situation at the end of

the period for determining profit, the tax office responsible for separate determination is not also responsible for taxes on income,

3. the value of assets subject to capital tax (sections 114 to 117a of the Valuation Act) and the value of debts and other deductions (section 118 of the Valuation Act), where the assets , debts and other deductions are attributable to several persons and such determination is relevant for taxation.

If, in cases where number 2(b) of the first sentence above applies, the circumstances establishing local jurisdiction have changed following expiration of the period for calculating profits, local jurisdiction shall be based on the provisions of section 18(1) numbers 1 to 3 in conjunction with section 26 also for determination periods that precede the change in such circumstances.

(2) In order to ensure that the law is applied uniformly to similar situations, and in order to simplify the taxation procedure, the Federal Ministry of Finance may stipulate, by way of ordinances issued with the consent of the Bundesrat, that tax bases are to be determined separately and, for several persons, jointly in cases other than those mentioned in subsection (1) above. In particular, such ordinances may specify the following:

1. the object and scope of the separate determination,

2. the conditions necessary for the determination procedure,

3. the local jurisdiction of the revenue authorities,
4. the participants in the determination procedure (procedure participants) and the scope of their obligations and rights for taxation purposes, including the representation of participants by other participants,

5. the disclosure of administrative acts to procedure participants and persons authorised to take receipt of such,

6. the permissibility, scope and implementation of external audits to calculate tax bases.

The Federal Ministry of Finance may stipulate, by way of ordinances issued with the consent of the Bundesrat, that tax bases which do not have effect until a later point in time are to be determined separately and, for several persons, jointly in order to ensure correct taxation at a

later date; the second sentence above shall apply accordingly. Such ordinances shall not require the consent of the Bundesrat where they concern import/export duties and excise duties, with the exception of beer duty.

(3) Subsection (1), first sentence, number 2a above shall not apply if

1. only one of the persons with a share of the income is subject to income tax or corporation tax in this Code's territory of application, or

2. the case is one of negligible importance, in particular because the amount and its allocation have been specified; this shall apply *mutatis mutandis* to the cases described in subsection (1), first sentence, numbers 2a and 3 above.

The tax office with local jurisdiction under section 18(1) number 4 may issue a notice stating that a separate determination is not to be carried out. This notice shall count as a tax assessment notice.

(4) Furthermore, subsection (1), first sentence, number 2a above shall not apply to consortia whose sole purpose is to fulfil a single contract for work and services or contract for work and materials.

(5) Subsection (1), first sentence, number 2, subsection (2) and subsection (3) above shall apply accordingly insofar as

1. the income excluded from the tax base pursuant to an agreement for the avoidance of double taxation is relevant in assessing the tax of the participants, or

2. withheld taxes and corporation tax are to be credited against the assessed tax.

Section 181 – <u>Procedural rules for separate determination, determination period, obligation to file returns</u>

(1) The provisions on executing the taxation procedure shall apply *mutatis mutandis* to separate determination. A return for the separate determination of tax bases shall be a tax return as described in section 170(2), first sentence, number 1. If a return for separate determination under section 180(2) is filed without a corresponding request by the revenue authority to do so, section 170(3) shall apply *mutatis mutandis*.

(2) Those persons to whom the object of the determination is wholly or partially attributable shall file a return for separate determination. The following persons in particular shall be required to file a return:

1. in cases referred to in section 180(1), first sentence, number 2a, every participant in the determination who has earned a share of the income subject to income tax or corporation tax,

2. in the cases referred to in section 180(1), first sentence, number 2b, the trader,

3. in the cases referred to in section 180(1), first sentence, number 3, every participant in the determination to whom a share of the assets, debts or other deductions is attributable,

4. in the cases referred to in section 180(1), first sentence, numbers 2a and 3, the persons specified in section 34.

If a person who is required to file a return for separate determination has already done so, other participants shall be exempt from the requirement to file a return.

(2a) The return for separate determination under section 180(1), first sentence, number 2 shall be transmitted using an officially prescribed data set via remote data transmission. To avoid undue hardship, the revenue authority may waive electronic transmission upon request; in such cases, the return for separate determination shall be filed using an officially prescribed form and personally signed by the person required to file a declaration.

(3) The period within which the separate determination of assessed values is to be undertaken (determination period) shall begin upon expiration of the calendar year at whose beginning the main determination, the updating, the subsequent determination or the cancellation of an assessed value is to be carried out. Where a return for the separate determination of the assessed value is to be filed, the determination period shall begin upon expiration of the calendar year in which the return is filed, but no later than upon expiration of the third calendar year following the calendar year at the beginning of which the determination of the assessed value is to be carried out or cancelled. Where the beginning of the determination period pursuant to the second sentence above is postponed, the beginning of the determination period shall be postponed by the same amount of time for the other determination dates of the main determination period.

(4) In the cases mentioned in subsection (3) above, the determination period shall not begin before expiration of the calendar year at the beginning of which the assessed value applies for tax purposes for the first time.

(5) Separate determination may also be undertaken following the expiration of the determination period to which it applies in as much as the separate determination is of relevance for a tax assessment for which the period of assessment has not yet expired at the time the separate determination is made; section 171(10) shall not be taken into account. Reference shall be made to such in the notice of determination. Section 169(1), third sentence, shall apply *mutatis mutandis*.

Section 182 – Effects of separate determination

(1) Notices of determination, even when they are not yet incontestable, shall be binding for other notices of determination, for base tax amount notices, for tax assessment notices and for self-assessed tax returns (follow-up notices) to the extent that the determinations made in the notices of determination are relevant for these follow-up notices. In the case of determinations pursuant to section 180(5) number 2, this shall apply accordingly to administrative acts affecting the realisation of claims from the tax debtor-creditor relationship. If a notice of determination pursuant to section 180(5) number 2 is issued, cancelled or amended, any administrative act for which such notice of determination has a binding effect shall be corrected, applying section 175(1), first sentence, number 1 accordingly.

(2) A notice of determination for an assessed value pursuant to section 180(1), first sentence, number 1 shall also have effect for legal successors to whom, after the determination has been carried out, the object of the determination is transferred with corresponding tax implications. However, if legal succession takes place before the notice of determination has been issued, the notice shall have effect for the legal successor only if it is disclosed to him. The first and second sentences above shall apply accordingly to (a) separate and (b) separate and joint tax base determinations that do not have effect until a later point in time, in accordance with the "Ordinance on the separate determination of tax bases" adopted in accordance with section 180(2).[37]

(3) If a separate determination is carried out jointly for multiple participants in accordance with the second sentence of section 179(2), and if the notice of determination incorrectly

[37] Subdivision of sentence into (a) and (b) added to English translation for purposes of clarity.

identifies a participant because a legal successor has taken that participant's place, this may be rectified by issuing a special notice to the legal successor.

Section 183 – Authorised recipients in the case of joint determination

(1) Where a notice of determination is directed against several persons who are involved in the object of the determination as partners or co-owners (participant in the determination), these should appoint a common recipient authorised to take receipt of all administrative acts and notifications connected with the determination procedure and any subsequent objection proceedings. In the absence of a common authorised recipient, a person entitled to represent the partnership or participants in the determination or to manage the object of the determination shall be the authorised recipient. Where this is not the case, the revenue authority may demand that participants appoint an authorised recipient within a certain reasonable period. To this end, a participant shall be proposed and reference shall be made to the fact that he will be notified of the administrative acts and notifications named in the first sentence above with effect for and against all participants, to the extent that no other authorised recipient is appointed. In notifying the authorised recipient, reference shall be made to the fact that notification is done with effect for and against all participants in the determination.

(2) Subsection (1) above shall not apply where the revenue authority is aware that the partnership or association no longer exists, that a participant is no longer part of the partnership or association, or that serious differences of opinion exist between the participants. Where pursuant to the first sentence above individual notification is necessary, the participant shall be informed of the object of the determination, the tax bases concerning all participants, his share, the number of participants and the tax bases concerning him personally. Where he has a legitimate interest, the participant shall be informed of the entire contents of the notice of determination.

(3) Where an authorised recipient pursuant to subsection (1), first sentence, above exists, notices of determination may be made known to him even with effect for a participant named in subsection (2), first sentence, above to the extent that and provided that this participant or the authorised recipient has not objected. Any revocation of the authorisation shall take effect in relation to the revenue authority only once the revenue authority has received it.

(4) Where an economic entity is attributed to

1. spouses or civil partners or

2. spouses and their children, civil partners and their children, or single parents and their children,

and where the participants have not appointed a common authorised recipient, the provisions of section 122(7) on consolidated notices shall apply accordingly with regard to the disclosure of notices of determination on the assessed value.

II. Assessment of base amounts of non-personal taxes

Section 184 – Assessment of base amounts of non-personal taxes

(1) Base amounts of non-personal taxes which are to be calculated pursuant to the tax laws shall be assessed by way of base tax amount notice. The assessment of base amounts of non-personal taxes shall also constitute a decision on the personal and material tax liability. The provisions on executing the taxation procedure shall apply *mutatis mutandis*. In addition, section 182(1) and, for notices assessing the base amount of real property tax, section 182(2) and section 183 shall apply *mutatis mutandis*.

(2) The power to assess base amounts of non-personal taxes shall also include the power to take measures pursuant to section 163(1), first sentence, insofar as guidelines for such measures have been set out in a general administrative provision adopted by the Federal Government, the highest federal revenue authority or the highest revenue authority of a *Land*. To the extent that a measure taken pursuant to the second sentence of section 163(1) influences commercial revenue as a basis for assessing income tax, such measure shall also have effect for trade income as a basis for assessing the base amount of trade tax.

(3) The revenue authorities shall report the content of the base tax amount notice and the measures taken pursuant to subsection (2) above to the municipalities charged with assessing the tax (issuing the base tax amount notice).

3rd Subchapter – Apportionment and allocation

Section 185 – Validity of the general provisions

The provisions which apply to the base amounts of non-personal taxes shall apply accordingly to the apportionment of such base amounts as provided for in the tax laws unless otherwise stipulated in the following.

Section 186 – Participants

The following shall participate in the apportionment procedure:

1. the taxpayer,

2. the taxing entities to which a share of a base amount of non-personal tax has been allocated or which claim a share. Where the taxing entity is not obliged to assess the tax, the authority responsible for assessing the tax shall take its place.

Section 187 – Inspection of files

The participating taxing entities may demand from the competent revenue authority information regarding the basis of apportionment and may have its public officials inspect the records relating to the apportionment.

Section 188 – Notice of apportionment

(1) A notice on the apportionment (apportionment notice) shall be issued in writing and made known to the participants where it affects them.

(2) The apportionment notice shall specify the volume of the base amount of non-personal tax to be apportioned and shall determine the shares to be allocated to the participating taxing entities. Furthermore, it shall provide details of the basis of apportionment.

Section 189 – Amendment to the apportionment

Where a taxing entity's claim to a share of a base amount of non-personal tax has not been taken into account and has not been rejected, the apportionment shall be amended or subsequently undertaken *ex officio* or upon application. Where the existing apportionment notice relating to taxing entities that have already participated in the apportionment procedure

has become incontestable, only those amendments which result from the subsequent inclusion of the taxing entities that have hitherto been overlooked may be undertaken when amending the apportionment. The apportionment shall not be amended or subsequently undertaken where one year has passed since the base tax amount notice became incontestable unless the taxing entity overlooked had applied before the year has expired for the amendment to be subsequently undertaken or amended.

Section 190 – Allocation procedure

Where the full volume of a base amount of non-personal tax is to be allocated to one taxing entity but there is disagreement as to which taxing entity is entitled to such base amount, the revenue authority shall reach a decision by way of allocation notice upon application by a participant. The provisions which apply to the apportionment procedure shall apply accordingly.

4th Subchapter – Liability

Section 191 – Notices of liability, notices of compulsory tolerance

(1) A claim may be made by way of notice of liability against anyone who is legally liable for a tax (liable person) or by way of notice of compulsory tolerance against anyone who is legally obliged to tolerate enforcement. Contestations relating to claims from the tax debtor-creditor relationship which are not part of insolvency proceedings shall be made by way of notice of compulsory tolerance provided that they are not to be made by way of plea as provided for in section 9 of the Act on Contesting Transactions of a Debtor Not Included in Insolvency Proceedings; in calculating deadlines pursuant to sections 3 and 4 of said Act, the issue of a notice of compulsory tolerance shall be deemed equal to a judicial act allowing contestability pursuant to section 7(1) of the Act. The notices shall be issued in writing.

(2) Before a notice of liability is issued against a lawyer, a patent agent, a notary, a tax consultant, a tax representative, an auditor or a certified accountant on account of an action within the meaning of section 69 carried out in the exercise of his profession, the revenue authority shall allow the responsible professional organisation the opportunity to present aspects which from its perspective are of relevance to the decision.

(3) The provisions on the period for assessment shall apply accordingly to the issue of notices of liability. The period for assessment shall be four years in the cases referred to in section 70,

ten years in the case of tax evasion, five years in the case of reckless tax understatement, and ten years in the cases referred to in section 71. The period for assessment shall begin upon expiration of the calendar year in which the matter to which the law attaches the consequence of liability arose. Where the tax for which liability is borne has not yet been assessed, the period for assessment for the notice of liability shall not end before expiration of the period for assessment which applies to the assessment of taxes; where this is not the case, section 171(10) shall apply *mutatis mutandis*. In the cases referred to in sections 73 and 74, the period for assessment shall not end before the period of limitations for tax assessed against the tax debtor has become time-barred (section 228).

(4) Where the tax laws do not provide for the liability, a notice of liability may be issued as long as the liability claims are not yet time-barred pursuant to the laws relevant to them.

(5) A notice of liability may no longer be issued

1. insofar as the tax has not been assessed against the tax debtor and, because the period for assessment has expired, can no longer be assessed,

2. insofar as the tax assessed against the tax debtor is time-barred or the tax debt has been remitted.

This shall not apply where the liability is based on the fact that the person owing the liability has committed tax evasion or has received, held or sold property obtained by tax evasion.

Section 192 – Contractual liability

Whoever promises on the basis of a contract to assume responsibility for the tax of another may be required to do so only in accordance with the provisions of civil law.

Fourth Chapter – External audit

1st Subchapter – General provisions

Section 193 – Permissibility of an external audit

(1) It shall be permissible to conduct audits of taxpayers who operate a business or agricultural and forestry undertaking or who are self-employed, and of taxpayers within the meaning of section 147a.

(2) With respect to taxpayers other than those described in subsection (1) above, an external audit shall be permissible

1. to the extent that it concerns the obligation of these taxpayers on behalf of another to pay taxes or to withhold or remit to revenue authorities taxes which are due,

2. where there is a need to clarify the circumstances relevant for taxation and, due to the nature and scope of the circumstances to be examined, it is impractical to conduct an examination at the offices of the competent authority, or

3. where a taxpayer fails to comply with his obligation to cooperate under section 90(2), third sentence.

Section 194 – Scope of an external audit

(1) The external audit shall serve to identify the taxpayer's circumstances for tax purposes. It may cover one or more types of tax, one or more tax periods or be limited to certain aspects. The external audit of a partnership shall cover the partners' circumstances for tax purposes to the extent that these are of importance with respect to the joint determinations to be examined. The tax circumstances of other persons may also be audited to the extent that the taxpayer was or is obliged on behalf of these persons to pay taxes or withhold and remit to revenue authorities taxes which are due; this shall also apply where any tax deficiencies are to be enforced against the other persons.

(2) The tax circumstances of partners and members as well as of members of supervisory bodies may, in addition to the cases governed by subsection (1) above, be included in the external audit to be conducted at a partnership where this serves the purpose of the audit in individual cases.

(3) Where due to an external audit circumstances of persons other than those named in subsection (1) above are determined, the evaluation of these findings shall be permissible to the extent that knowledge of such is of relevance for the taxation of these other persons or the findings concern an impermissible provision of assistance in tax matters.

Section 195 – Jurisdiction

External audits shall be conducted by the revenue authorities responsible for the taxation. These may charge other revenue authorities with the external audit. The appointed revenue authority may undertake the tax assessment and issue binding commitments (sections 204 to 207) in the name of the competent revenue authority.

Section 196 – Audit order

Revenue authorities shall specify the scope of an external audit in an audit order that is issued in written or electronic form and that contains instructions on applicable legal remedies in accordance with section 356.

Section 197 – Disclosure of the audit order

(1) The audit order as well as the likely starting date of the audit and the names of the auditors shall be disclosed to the taxpayer in relation to whom the external audit is to be conducted a reasonable amount of time before the audit begins where this does not endanger the purpose of the audit. The taxpayer may elect not to have the deadline enforced. Where pursuant to section 194(2) the audit is to cover the tax circumstances of partners and members as well as members of supervisory bodies, the audit order shall also be disclosed to these persons.

(2) Upon application by the taxpayer, the starting date of the external audit shall be postponed to another date where important reasons for this can be established credibly.

Section 198 – Identification duty, start of external audit

The auditors shall identify themselves without undue delay upon arrival at the premises. The date and time of the commencement of the external audit shall be recorded.

Section 199 – Audit principles

(1) The external auditor shall examine the actual and legal circumstances which are decisive for the tax obligation and for measuring the tax (tax bases), regardless of whether these are to the taxpayer's advantage or disadvantage.

(2) The taxpayer shall be informed during the external audit of the facts determined and the possible tax implications where this does not impede the purpose and course of the audit.

Section 200 – Obligations of the taxpayer to cooperate

(1) The taxpayer shall be obliged to cooperate in determining the facts that may be relevant for taxation. In particular, he shall furnish information; submit records, accounts, business papers and other documents for inspection and audit; provide the explanations necessary to understand the records; and assist the revenue authority in executing its powers pursuant to section 147(6). Where the taxpayer or persons appointed by him are not able to furnish information, where the information is not sufficient to clarify the facts or where information furnished by the taxpayer is not likely to lead to results, the external auditor may request information from other persons belonging to the business. Section 93(2), second sentence, shall not apply.

(2) The taxpayer shall submit the documents named in subsection (1) above on his business premises or, where there is no office suitable for conducting the external audit available, on his living premises or at the offices of the competent authority. A room or workstation suitable for conducting the audit as well as the necessary aids shall be provided free of charge.

(3) The external audit shall be conducted during normal business or working hours. The auditors shall be entitled to enter and inspect sites and business premises. The owner of the business or his representative should be enlisted in the inspection of the premises.

Section 201 – Final meeting

(1) A meeting shall be held on the results of the external audit (final meeting) unless the external audit leads to no changes to the tax bases or the taxpayer elects to forgo such a meeting. During the final meeting, disputed issues in particular as well as a legal assessment of the audit findings and their tax implications shall be discussed.

(2) Where the possibility exists that, on the basis of the audit findings, criminal or administrative fine proceedings are to be conducted, the taxpayer should be advised that a separate procedure will be conducted to assess the possibility of criminal or administrative fine proceedings.

Section 202 – Content and disclosure of audit report

(1) A written report (audit report) shall be drawn up showing the result of the external audit. The audit report shall present in actual and legal terms the audit findings which are significant

for taxation as well as the changes to the bases for taxation. Where the external audit does not lead to any changes to the bases for taxation, it shall be sufficient to disclose this to the taxpayer in writing.

(2) The revenue authority shall, upon application, supply the taxpayer with a copy of the audit report before it is evaluated and allow him opportunity to comment on it within a reasonable period of time.

Section 203 – Shortened external audit

(1) The revenue authority may conduct a shortened external audit of taxpayers in respect of whom it regards an external audit in frequent intervals unnecessary in the particular circumstances. The audit shall be restricted to the essential tax bases.

(2) The taxpayer shall be informed before the audit is concluded of the extent of any likely deviations from the tax returns or tax assessments. The main audit findings of relevance for tax purposes shall be presented in writing to the taxpayer at the latest with the tax assessment notices. Sections 201(1) and 202(2) shall not apply.

Section 203a – External audits in cases where data is transmitted by third parties

(1) External audits of notifying entities as defined in section 93c(1) shall be permissible for the purpose of determining whether a notifying entity has

1. satisfied its obligations under section 93c(1) numbers 1, 2 and 4, section 93c(2) and section 93c(3) and

2. determined the content of the data set in accordance with the provisions of the relevant tax legislation.

(2) Such external audits shall be conducted by the revenue authority responsible for investigations under the first sentence of section 93c(4).

(3) Section 195, second sentence, and sections 196 to 203 shall apply accordingly.

2nd Subchapter – Binding commitments on the basis of an external audit

Section 204 – Preconditions for a binding commitment

Once an external audit has been concluded, the revenue authority should, upon application, make a binding commitment to the taxpayer as to how circumstances which were audited for the past and which are contained in the audit report shall be treated for tax purposes in future where knowledge of such future tax treatment is important for the business activity of the taxpayer.

Section 205 – Format of a binding commitment

(1) The binding commitment shall be issued in writing and shall be indicated as binding.

(2) The binding commitment shall contain:

1. the underlying circumstances for the binding commitment; in this regard, reference may be made to the circumstances described in the audit report,

2. the decision on the application and the main reasons for this,

3. information stating the taxes and period to which the binding commitment applies.

Section 206 – Binding effect

(1) The binding commitment shall be binding in terms of taxation where circumstances which match those underlying the binding commitment arise at a later date.

(2) Subsection (1) above shall not apply where, to the applicant's disadvantage, the binding commitment contravenes existing law.

Section 207 – Expiry, cancellation and amendment of the binding commitment

(1) The binding commitment shall expire when the legal provisions on which the decision is based are changed.

(2) The revenue authority may cancel or amend the binding commitment with *ex nunc* effect.

(3) The retroactive cancellation or amendment of a binding commitment shall only be permissible where the taxpayer agrees or where the conditions set out in section 130(2) numbers 1 or 2 are met.

Fifth Chapter – Tax investigation (customs investigation)

Section 208 – Tax investigation (customs investigation)

(1) Tax investigation (customs investigation) authorities shall be charged with

1. investigating tax crimes and tax-related administrative offences,

2. determining the tax bases in the cases named in number 1 above,

3. detecting and investigating unknown tax cases.

The offices of *Land* revenue authorities charged with tax investigations and the customs investigation offices shall have, in addition to the powers granted under section 404, second sentence, first half-sentence, the powers of investigation at the disposal of the tax offices (main customs offices). In the cases of numbers 2 and 3 above, the restrictions set out in section 93(1), third sentence, section 93(2), second sentence, and section 97(2) shall not apply; section 200(1), first and second sentences, section 200(2) and section 200(3), first and second sentences, shall apply mutatis mutandis, section 393(1) shall remain unaffected.

(2) Notwithstanding subsection (1) above, the offices of the revenue authorities of a *Land* charged with tax investigations and the customs investigations offices shall be responsible for

1. tax investigations, including external audits upon request by the competent revenue authority,

2. the other tasks entrusted to them within the scope of the jurisdiction of the revenue authorities.

(3) The tasks and powers of the tax offices (main customs offices) shall remain unaffected.

Sixth Chapter – Fiscal supervision in special cases

Section 209 – Object of fiscal supervision

(1) The movement of goods over the border and in the free zones and free warehouses as well as the production and manufacture, storage, transport and commercial use of goods subject to excise duty and the trade of goods subject to excise duty shall be subject to customs supervision (fiscal supervision).

(2) Also subject to fiscal supervision shall be:

1. the shipping, export, storage, use, destruction, refinement, conversion and other processing or treatment of goods in an excise duty procedure,

2. the manufacture and export of goods, for which a remission, refund or rebate of excise duty is claimed.

(3) Other activities shall be subject to fiscal supervision where this is required by law.

Section 210 – Powers of the revenue authorities

(1) The public officials charged by the revenue authority with fiscal supervision shall be entitled to enter during office and working hours property and premises of persons who exercise an independent commercial or professional activity, and to whom a matter subject to fiscal supervision is attributable, for the purpose of carrying out inspections or of reaching findings which could have a significant bearing on taxation (search).

(2) Furthermore, property and premises of persons to whom a matter subject to fiscal supervision is attributable shall be subject to search, without restriction as to time, where there is good reason based on facts to assume that smuggled goods or goods subject to excise duties but not properly taxed are located there or that provisions and orders, the observance of which is to be ensured by fiscal supervision, are being breached there. In cases of imminent danger the searching of living and business premises shall be permissible even without a court order.

(3) The public officials charged by the revenue authority with fiscal supervision shall be further entitled within the context of controls restricted by time and place to stop ships and other vehicles which seem to serve commercial purposes based on their outward appearance. The persons affected shall be obliged to provide proof of their identity and details of the goods being carried; they shall be obliged in particular to show consignment notes and other transport documents, including those of a non-tax nature. Where this or other facts give rise to the belief that goods subject to excise duties are being carried, the public officials may examine these goods and reach findings which may have a bearing on the taxation of these goods. The persons affected shall be obliged to provide details of the origin of the goods subject to excise duty, to tolerate the fact that samples may be taken without compensation and to provide the necessary assistance.

(4) An external audit pursuant to section 193 may be initiated without the need for a prior order (section 196) where reason to do so arises as a result of findings made when exercising fiscal supervision. The transition to an external audit shall be indicated in writing.

(5) Where it becomes necessary to carry out a search on the premises of the Federal Armed Forces or an institution or facility of the Federal Armed Forces not open to the public, a request shall be submitted to the commanding office of the Federal Armed Forces to carry it out. The revenue authority shall be entitled to participate. A request shall not be necessary where the search is to be carried out in quarters exclusively inhabited by persons other than soldiers.

Section 211 – Obligations of the persons affected

(1) Whoever is affected by fiscal supervision measures shall be obliged to provide the public officials on demand with records, accounts, business papers and other documents relating to the matter subject to fiscal supervision and to the procurement and sale of goods subject to excise duty, with information and with the assistance otherwise needed to exercise fiscal supervision. Section 200(2), second sentence, shall apply *mutatis mutandis*.

(2) The obligations pursuant to subsection (1) above shall also apply where, within the context of a legally prescribed *ex post* taxation of goods subject to excise duty, the persons to whom and the extent to which goods subject to *ex post* taxation were delivered is to be determined in a business or enterprise subject to the fiscal supervision.

(3) Measures which serve to prevent or hamper the exercise of fiscal supervision shall be impermissible.

Section 212 – Implementation provisions

(1) The Federal Ministry of Finance may, by way of ordinances specifying the duties to be fulfilled within the context of fiscal supervision, order that

1. certain actions may only be carried out on premises registered with the revenue authority or whose use for such purpose has been specially approved by the revenue authority,

2. premises, vehicles, equipment, vessels and conduits, which serve or may serve the manufacture, processing, refinement, storage, transport or measurement of taxable goods are to be set up, arranged, labelled or officially sealed in a particular manner at the cost of the owner of the business,

3. goods subject to monitoring are treated, labelled, stored, packaged, dispatched or used in a particular manner,

4. the trade of taxable goods is specially monitored where the trader is also the manufacturer of the goods,

5. records are to be kept in a particular manner and the inventory is to be determined for business processes and for taxable goods and for the input materials, production materials, auxiliary materials and intermediary products used to manufacture them,

6. accounts, records and other documents are to be stored in a particular manner,

7. processes and measures in businesses and enterprises which are of relevance for taxation are to be reported to the revenue authority,

8. gratuitous samples may be taken or gratuitous examples submitted of taxable goods, of goods in relation to which the remission, refund or rebate of excise duties is claimed, of material used in the manufacture these goods, and of their packaging.

(2) Such ordinances shall not require the consent of the Bundesrat, except where they concern beer duty.

Section 213 – Special supervisory measures

Businesses or enterprises whose owners or executives have been finally and incontestably convicted of tax evasion, attempted tax evasion or participation in such an act may be subjected at their own costs to special supervisory measure where this is needed to ensure effective fiscal supervision. In particular, additional records and disclosure obligations, measures to ensure that premises, containers and equipment are safely sealed and other similar measures may be prescribed.

Section 214 – Representatives

Any person who authorises a member of his business or undertaking to represent him for the purpose of fulfilling tax obligations arising from matters subject to fiscal supervision shall require the consent of the revenue authority.

Section 215 – Seizure during supervision

(1) The revenue authority may secure by way of removal, placement under seal or prohibition on disposal

1. goods subject to excise duty which a public official finds

    a) in manufacturing businesses or on other premises which should have been registered with the revenue authority but were not,

    b) in trade without the goods being packaged, denoted or labelled in accordance with the tax laws or without the prescribed tax marks,

2. goods which are found in proximity to the border or in regions subject to border surveillance, where these are neither obviously Community goods nor appear to have been released for free circulation,

3. the items and material used to enclose the goods named in numbers 1 and 2 above,

4. equipment which is designed to manufacture goods subject to excise duty and which is located in a manufacturing business not registered with the revenue authority.

It shall also be permissible to secure the items where they were initially confiscated in the course of criminal proceedings and then made available to the revenue authority.

(2) The act of securing the items shall be recorded in writing. The act of securing the items shall be disclosed to the persons affected (owners, possessors) to the extent that these are known.

Section 216 – Transfer to federal ownership

(1) Items secured pursuant to section 215 shall be transferred to federal ownership provided that they are not confiscated pursuant to section 375(2). This shall apply to found items only to the extent that no ownership claims are enforced.

(2) The persons affected shall be informed of the transfer of secured items to federal ownership. Where it is not known who the affected person is, section 10(2) of the Administrative Service of Documents Act shall apply *mutatis mutandis*.

(3) The transfer of ownership shall take effect as soon as the administrative act issued by the revenue authority has become incontestable. Subject to the first sentence above, ownership of items connected to the land shall be deemed transferred once they have been detached. Third-party rights relating to a secured item shall remain. However, the termination of these rights may be ordered where the third party has contributed recklessly to circumstances that led to the securing of the item transferred to federal ownership or where he has acquired his rights to the item while aware of the circumstances that led to the securing of the item.

(4) Secured items may be sold before they have been transferred to federal ownership where there is a danger of decay or considerable loss in value or where theirretention, maintenance or preservation is accompanied by disproportionately high costs or difficulties; to this end, items which are attached to the ground or land may be detached from these. The proceeds of sale shall take the place of the item. The emergency sale of these items shall be conducted in accordance with the provisions of this Code on the realisation of attached items. The persons concerned are to be consulted before the sale is ordered. They shall be informed of the order and the time and place of the sale where possible.

(5) Secured items or items already transferred to federal ownership shall be returned where the circumstances which led to their securing are not attributable to the owner or where transfer to federal ownership would seem to result in undue hardship for the persons affected. Third parties acting in good faith whose rights have been cancelled or impeded by the transfer to federal ownership shall be adequately compensated for such from the proceeds of the realisation of the item. In other respects, compensation may be granted where the refusal of such would mean undue hardship.

Section 217 – Tax aides

In order to determine facts which have a bearing on customs or excise duties, the revenue authority may appoint as tax aides persons who themselves are not affected by the outcome of such findings.

Fifth Part – Levy procedure

First Chapter – Realisation, maturity and expiration of claims arising from the tax debtor-creditor relationship

1st Subchapter – Realisation and maturity of claims arising from the tax debtor-creditor relationship

Section 218 – Realisation of claims from the tax debtor-creditor relationship

(1) Tax assessment notices, tax rebate notices, notices of liability and administrative acts through which ancillary tax payments are assessed shall form the basis for realising claims arising from the tax debtor-creditor relationship (section 37); where late-payment penalties are concerned, mere fulfilment of the legal stipulations shall be enough (section 240). Self-assessed tax returns (section 168) shall be deemed equivalent to tax assessment notices.

(2) Decisions by the revenue authorities regarding disputes over the realisation of claims within the meaning of subsection (1) above shall be rendered by way of settlement notice. This shall also apply where the dispute concerns a refund claim (section 37(2)).

(3) If a tax summary or settlement notice is rescinded on the basis of an appeal or upon application by the taxpayer or a third party and an administrative act is subsequently issued that is more beneficial for the taxpayer, any resulting tax consequences for the taxpayer or a third party may be effected retroactively. Section 174(4) and (5) shall apply accordingly.

Section 219 – Requirement to pay in the case of notices of liability

Unless otherwise stipulated, a person owing a liability may be required to pay only if enforcement against the tax debtor's movable property was not successful or it can be assumed that enforcement would not lead to the desired result. This restriction shall not apply if the liability is due to the fact that the person owing the liability has committed tax evasion

or has received, held or sold goods obtained by tax evasion or is legally obliged to withhold and remit to revenue authorities taxes which are due or to pay them at the expense of another.

Section 220 – Maturity

(1) The due date for payment of claims arising from the tax debtor-creditor relationship shall be based on the provisions of the tax laws.

(2) Where the due date is not governed by a particular legal provision, the claim shall be due on the date on which it arises unless a deadline for payment has been granted in the case of a demand for payment required pursuant to section 254. Where in the cases described in the first sentence above the claim results from the assessment of claims arising from the tax debtor-creditor relationship, the amount shall not fall due before the assessment has been disclosed.

Section 221 – Other maturity

Where a taxpayer has failed several times to pay an excise duty or VAT on time, the revenue authority may demand payment of the tax by a date before the legal due date but after the tax has arisen, to be determined by the revenue authority. The same shall apply where there is good reason to assume that the receipt of an excise duty or the VAT is at risk; collateral may also be demanded in lieu of bringing the due date forward. It shall be permissible to bring the due date forward in the cases described in the first sentence above only where the taxpayer has been informed of such in the event of his renewed failure to pay the tax on time.

Section 222 – Deferment

The revenue authorities may defer in full or in part claims from the tax debtor-creditor relationship where their collection at due date would result in considerable hardship for the debtor and the claim would not appear to be endangered by the deferment. As a rule, deferments may be granted only upon application and the provision of collateral. Tax claims against the tax debtor may not be deferred where a third party (party obliged to pay the tax) must pay the tax on behalf of the tax debtor, in particular by withholding and remitting the tax due to the revenue authorities. Deferments of liability claims against such third parties obliged to pay taxes shall be ruled out where such parties have withheld tax amounts or taken receipt of amounts which contain a tax.

Section 223 – (rescinded)

2nd Subchapter – Payment, set-off and remission

Section 224 – Place of payment, date of payment

(1) Payments to the revenue authorities shall be made to the cash office responsible. Payments beyond the premises of the cash office may be surrendered only to a public official who is specially authorised to accept such payment and who can provide identification to verify such.

(2) Payment shall be deemed as having been effected:

1. on the date it is received, where a means of payment is delivered or sent, or three days after the date it is received where a cheque is delivered or sent,

2. on the date the amount is credited to the revenue authority, where money is transferred or paid to an account of the revenue authority, and where payment is made via payment slip,

3. on the due date of payment, where direct debit is authorised.

(3) Revenue authority payments shall be made via non-cash instruments. The Federal Ministry of Finance and the highest authorities of the *Länder* responsible for the revenue administration may allow exceptions for their subordinate bodies. The date of payment shall be, in the case of bank transfer or payment order, the third day after the order is handed in or sent to the credit institution or, where the amount is not to be debited immediately, the third day after it is debited.

(4) The responsible cash office may be closed for the delivery of payment against receipt. Subsection (2) number 1 above shall apply accordingly where, in the event of closed premises pursuant to the first sentence above, one or more branch offices of the Bundesbank, or, where these do not exist where the cash office is located, one or more credit institutions, are authorised to accept payment against receipt for the cash office.

Section 224a – Objects of art in lieu of payment

(1) Where a taxpayer owes inheritance tax or capital tax, it shall be possible to transfer ownership of objects of art, art collections, scientific collections, libraries, manuscripts and archives in lieu of payment and by way of contract under public law to the *Land* which is

entitled to the tax revenue, provided that it is in the public interest to acquire such items due to their artistic, historical or academic importance. The transfer of ownership pursuant to the first sentence above shall not count as alienation within the meaning of section 13(1) number 2, second sentence, of the Inheritance Tax Act.

(2) Contracts pursuant to subsection (1) above shall be in written form; contracts in electronic form shall not be permitted. The taxpayer shall address the contractual offer to the revenue authority with local jurisdiction. Responsibility for concluding the contract shall rest with the highest revenue authority of the *Land* which is entitled to the tax revenue. The contract shall enter into force only after the highest authority of a *Land* responsible for cultural affairs has given its consent; this consent shall be secured by the highest revenue authority.

(3) Where a contract comes into effect, the tax debt shall be cancelled to the amount of the sum agreed in the contract on the date ownership is transferred to the *Land* which is entitled to the tax revenue.

(4) The tax claim may be deferred pursuant to section 222 for as long as it is uncertain whether a contract will come into force. Where a contract comes into force, there shall be no deferment interest rates levied for the period in which the claim was deferred.

Section 225 – Order of amortisation

(1) Where a taxpayer owes several amounts and, in the case of voluntary payment, the amount paid is not sufficient to amortise all debts, the debt which the taxpayer designates when making the payment shall be amortised.

(2) Where the taxpayer does not designate a debt, but makes voluntary payment which does not cover all debts, administrative penalties shall be paid first, followed, in this order, by coercive fines, withholding taxes, other taxes, costs, late-filing penalties, interest and late-payment penalties. Within this order, the individual debts shall be arranged according to their maturities; the revenue authority shall determine the order of amortisation for amounts falling due simultaneously and with regard to late-payment penalties.

(3) Where payment is forced by administrative decision (section 249) and the amount available is insufficient to amortise all debts for which enforcement was imposed or the collateral realised, the revenue authority shall determine the order of amortisation.

Section 226 – Set-off

(1) Unless otherwise stipulated, the provisions of civil law shall apply *mutatis mutandis* with regard to using both claims from the tax debtor-creditor relationship and counterclaims to set off claims.

(2) Claims arising from the tax debtor-creditor relationship may not be used as set-off where they have lapsed through limitation or the expiry of a period of exclusion.

(3) Taxpayers may set off claims arising from the tax debtor-creditor relationship only with counterclaims which are uncontested and have been established as final andbinding.

(4) The political subdivision that administers the tax shall also be deemed to be creditor or debtor of a claim from the tax debtor-creditor relationship with respect to any set-off.

Section 227 – Remission

The revenue authorities may remit in full or in part claims arising from the tax debtor-creditor relationship where their collection would be unreasonable given the circumstances; under the same conditions, amounts already paid may be refunded or credited.

3rd Subchapter – Lapse of right to enforce payment of overdue tax

Section 228 – Object of the limitation, limitation period

Claims arising from the tax debtor-creditor relationship shall be subject to a special limitation period on the payment of overdue tax. The limitation period shall be five years, or ten years in cases where section 370, 373 or 374 applies.

Section 229 – Beginning of limitation period

(1) The limitation period shall begin upon expiration of the calendar year in which the claim first fell due. However, it shall not begin before expiration of the calendar year in which the assessment, from which the claim arises, of a claim arising from the tax debtor-creditor relationship, or its cancellation, amendment or correction pursuant to section 129 has come into effect; a self-assessed tax return shall be deemed equal to a tax assessment.

(2) Where a notice of liability has been issued without an order to pay, the period of limitation shall begin upon expiration of the calendar year in which the notice of liability has come into effect.

Section 230 – Suspension of limitation period

The period of limitation shall be suspended as long as the claim cannot be pursued as a result of *force majeure* within the final six months of the period of limitation.

Section 231 – Interruption of limitation period

(1) The limitation period shall be interrupted in the event of:

1. postponement of payment, deferment, suspension of enforcement, suspension of a customs debtor's obligation to pay duties, or postponement of enforcement,
2. provision of collateral,
3. an enforcement measure,
4. filing of a claim in insolvency proceedings,
5. entry into force of a prohibition on enforcement in accordance with section 294(1) of the Insolvency Code,
6. inclusion in an insolvency plan or a judicial debt settlement plan,
7. revenue authority investigations to ascertain the taxpayer's place of residence or abode, or
8. enforcement of the claim in writing.

Section 169(1), third sentence, shall apply *mutatis mutandis*.

(2) The interruption of the limitation period shall last,

1. in cases where subsection (1), first sentence, number 1 above applies, until the end of the respective measure,

2. in cases where subsection (1), first sentence, number 2 above applies, until the collateral is released,

3. in cases where subsection (1), first sentence, number 3 above applies, until the attachment lien, judgement lien, or other preferential right expires,

4. in cases where subsection (1), first sentence, number 4 above applies, until the end of the insolvency proceedings,

5. in cases where subsection (1), first sentence, number 5 above applies, until the prohibition on enforcement ceases to apply,

6. in cases where subsection (1), first sentence, number 6 above applies, until the insolvency plan or judicial debt settlement plan is fulfilled or ceases to apply.

In cases where a claim is lodged against a revenue authority, the resulting interruption of the limitation period shall not end before a final and binding decision on the claim has been issued.

(3) A new limitation period shall begin upon expiration of the calendar year in which the interruption ends.

(4) The limitation period shall be interrupted only for the amount to which the interrupting measure pertains.

Section 232 – Effect of limitation period

The claim arising from the tax debtor-creditor relationship and the dependent interest shall be rescinded upon expiration of the limitation period.

Second Chapter – Interest accrual, late-payment penalties

1st Subchapter – Interest accrual

Section 233 – General

Interest shall be charged on claims arising from the tax debtor-creditor relationship (section 37) only to the extent that this is legally prescribed. Interest shall not be charged on claims to ancillary tax payments (section 3(4)) and the corresponding refund claims.

Section 233a – Interest accrual on tax deficiencies and tax refunds

(1) Where the assessment of income tax, corporation tax, capital tax, VAT or trade tax leads to a differential within the meaning of subsection (3) below, interest shall be charged on this differential. This shall not apply to the assessment of prepayments and withheld taxes.

(2) The period of interest accrual shall begin 15 months after expiration of the calendar year in which the tax has arisen. With respect to income tax and corporation tax, it shall begin 23 months after this date where the income from agricultural and forestry undertakings is more than other income when the tax is first assessed. It shall end on expiration of the date when the tax assessment comes into effect.

(2a) Notwithstanding subsection (2), first and second sentences, above, where the tax assessment is based on an event with retroactive effect (section 175(1), first sentence, number 2 and section 175(2)) or a loss deduction pursuant to section 10d(1) of the Income Tax Act, the period of interest accrual shall begin 15 months after expiration of the calendar year in which the event with retroactive effect occurred or the loss was incurred.

(3) The assessed tax minus the withheld taxes to be credited, the corporation tax to be credited and the prepayments assessed up to the beginning of the period of interest accrual (differential) shall form the basis for calculating the interest. With respect to capital tax, the assessed tax minus the assessed prepayments or the annual tax assessed to date shall form the basis of the differential for calculating the interest. Interest shall be charged on a differential in the taxpayer's favour only up to an amount equal to the amount to be refunded; interest shall begin to accrue at the earliest on the date of payment.

(4) The assessment of interest should be issued in conjunction with the tax assessment.

(5) Where the tax assessment is cancelled, amended or corrected pursuant to section 129, any previous assessment of interest shall be amended; the same shall apply where the crediting of tax amounts is withdrawn, revoked or corrected pursuant to section 129. The differential between the assessed tax and the previously assessed tax, both reduced by the amounts of withheld tax and corporation tax to be credited, shall form the basis for calculating interest. The resulting interest amount shall be supplemented by the assessable interest up to this point; where the differential is in the taxpayer's favour, assessed interest shall be added to this amount. In other respects, subsection (3), third sentence, above shall apply accordingly.

(6) Subsections (1) to (5) above shall apply accordingly to the annual adjustment of wages tax.

(7) In applying subsection (2a) above, subsections (3) and (5) above shall apply under the proviso that the differential is to be divided into sub-differentials, each sub-differential being comprised of sub-amounts with the same starting date for the accrual of interest; interest shall be calculated for each sub-differential separately and in the chronological order of the sub-differentials, beginning with the interest on the sub-differential with the earliest commencement date of interest accrual. Where a sub-differential in the taxpayer's favour results, assessed interest shall be charged on this amount at the earliest from the beginning of the decisive period of interest accrual for this sub-differential; interest for the period up to the beginning of this sub-differential's period of interest accrual shall remain permanently. This shall also apply where, previously within the same interest calculation, interest had been calculated on a sub-differential in the taxpayer's favour.

Section 234 – Interest during deferment

(1) Interest shall be levied for the period for which a deferment of claims arising from the tax debtor-creditor relationship is granted. Where upon expiration of the deferment the tax assessment notice is cancelled, amended or corrected pursuant to section 129, the interest accrued up to this time shall remain unaffected.

(2) Interest may be waived in full or in part where its collection would be unreasonable in individual cases.

(3) Interest amounts pursuant to section 233a which have been assessed for the same period shall be credited.

Section 235 – Interest accrual on evaded taxes

(1) Interest shall be charged on evaded taxes. The debtor of the interest shall be the person to whose advantage the taxes have been evaded. Where tax evasion is committed by a person other than the tax debtor failing to fulfil his obligation to remit withheld taxes to the revenue authority or to pay taxes imposed on another, this person shall be the debtor of the interest.

(2) The period of interest accrual shall begin upon occurrence of the understating of the taxes or attainment of the tax advantage unless the evaded amounts would have fallen due at a later date had the taxes not been evaded. In this case, the later point in time shall be decisive.

(3) The period of accrual of interest shall end upon payment of the evaded taxes. Interest pursuant to this provision shall not be levied in a period to which a late-payment penalty applies or for which the payment is deferred or implementation suspended. Where upon conclusion of the period of interest accrual the tax assessment notice is cancelled, amended or corrected pursuant to section 129, the interest accrued up to this time shall remain unaffected.

(4) Interest amounts pursuant to section 233a which have been assessed for the same period shall be credited.

Section 236 – Interest on refund amounts during legal proceedings

(1) Subject to the provisions of subsection (3) below, where an assessed tax is reduced or a tax rebate granted by final and binding judicial ruling or as a result of such a ruling, interest shall accrue on the amount to be refunded or rebated from the date proceedings commence to

the date of payment. Where the amount to be refunded is not paid until after legal proceedings have commenced, interest shall begin to accrue from the date of payment.

(2) Subsection (1) above shall apply accordingly where

1. the legal dispute is settled by cancellation of or amendment to the administrative act being disputed or by issue of the administrative act being requested, or

2. a final and binding judicial ruling or an incontestable administrative act through which the dispute is settled leads

   a) to the reduction of the tax assessed in a follow-up notice,

   b) to the reduction of trade tax following amendment to the base amount of trade tax.

(3) Interest shall not be charged on an amount to be refunded or rebated where the participant has been ordered to pay the costs of legal remedy pursuant to section 137, first sentence, of the Code of Procedure for Fiscal Courts.

(4) Interest amounts pursuant to section 233a which have been assessed for the same period shall be credited.

(5) A notice of interest amounts shall not be cancelled or amended when the tax assessment notice is cancelled, amended or corrected pursuant to section 129 following conclusion of the legal remedy proceedings.

Section 237 – Interest while implementation is suspended

(1) Where an objection or an action for rescission against a tax assessment notice, a self-assessed tax return or an administrative act which cancels or amends a tax rebate notice, or against an objection ruling on one of these administrative acts, has not led to the desired result and can no longer be appealed, interest shall be charged on the owed amount with respect to which implementation of the disputed administrative act was suspended. The first sentence above shall apply accordingly where implementation of a follow-up notice has been suspended following the submission of a formal out-of-court or court appeal against a basic assessment notice (section 171(10)) or an appeals ruling on a basic assessment notice.

(2) Interest shall be levied from the date when the authority whose administrative act is being challenged receives the out-of-court appeal or from the date when judicial proceedings commence to the date when the suspension of implementation ends. Where implementation is not suspended until after the out-of-court appeal has been received or the proceedings have commenced, interest shall be charged from the date when the suspension of implementation takes effect.

(3) Subsections (1) and (2) above shall apply accordingly where implementation of a notice specifying the base amount of trade tax or a trade tax assessment notice is suspended following suspension of the implementation of an income tax assessment notice, a corporation tax assessment notice or a notice of determination.

(4) Section 234(2) and (3) shall apply accordingly.

(5) A notice of interest amounts shall not be cancelled or amended when the tax assessment notice is cancelled, amended or corrected pursuant to section 129 following conclusion of the legal remedy proceedings.

Section 238 – Amount and calculation of interest

(1) The interest shall be one half percent for every month. It shall be payable only for full months from the date of commencement of the accrual period; uncompleted months shall not be included. Where the claim on which interest is chargeable is settled by set-off, the date on which the debt of the person seeking set-off becomes due shall be deemed to be the date of payment.

(2) In calculating interest, the amount on which interest is chargeable shall be rounded down for every type of tax to the next figure divisible by 50 euros.

Section 239 – Interest assessment

(1) The provisions applicable to taxes shall apply accordingly to interest, but the period for assessment shall consist of one year. The period for assessment shall begin:

1. in the cases described in section 233a, at the end of the calendar year in which the tax was assessed, cancelled, amended or corrected pursuant to section 129,

2. in the cases described in section 234, at the end of the calendar year in which the deferment has ended,

3. in the cases described in section 235, at the end of the calendar year in which the assessment of the evaded taxes has become final and binding, but not before the end of the calendar year in which criminal proceedings initiated have been closed and can no longer be appealed,

4. in the cases described in section 236, at the end of the calendar year in which the tax has been refunded or the tax rebate paid out,

5. in the cases described in section 237, at the end of the calendar year in which an objection or action for rescission has not led to the desired result and can no longer be appealed.

The period for assessment for the cases described in section 233a shall not expire for as long as the tax assessment, its cancellation, its amendment or its correction pursuant to section 129 is still permissible.

(2) Interest shall be rounded to the full euro in the taxpayer's favour. It shall be assessed only where it amounts to at least 10 euros.

(3) If tax bases are determined separately or if a base amount for a non-personal tax is assessed, the bases for assessing interest

1. under section 233a in cases where section 233a(2a) applies or

2. under section 235

are to be determined separately to the extent that they relate to matters that are the subject of the basic assessment notice.

(4) If interest in accordance with section 233a is assessed on a self-assessed tax return – which is deemed equivalent to a tax assessment subject to review under the first sentence of section 168 – such interest assessment shall likewise be subject to review.

2nd Subchapter – Late-payment penalties

Section 240 – Late-payment penalties

(1) Where a tax is not paid by the end of the due date, a late-payment penalty of 1 percent of the rounded tax amount in arrears shall be payable for each month of default; the amount shall be rounded down to the nearest amount divisible by 50 euros. The same shall apply to repayable tax rebates and debts from liability to the extent that the liability extends to taxes and repayable tax rebates. Default pursuant to the first sentence above shall not be deemed to have occurred before the tax has been assessed or declared. Where the assessment of a tax or tax rebate is cancelled, amended or corrected pursuant to section 129, the late-payment penalties effected up to this point shall remain unaffected; the same shall apply where a notice of liability is withdrawn, revoked or corrected pursuant to section 129. Where the claim is settled by set-off, the late-payment penalties which have accrued up to the due date of the debt of the person seeking set-off shall remain unaffected.

(2) Late-payment penalties shall not arise with regard to ancillary tax payments.

(3) No late-payment penalty shall be levied for defaults of up to three days. This shall not apply to payments pursuant to section 224(2) number 1.

(4) In cases of joint and several debt, late-payment penalties shall arise with respect to each joint and several debtor in default. However, the total value of the late-payment penalties to be paid shall not be higher than that had the default occurred on the part of one joint and several debtor only.

Third Chapter – Provision of collateral

Section 241 – Nature of collateral

(1) Whoever is required under the tax laws to provide collateral may do so:

1. by depositing with the competent revenue authority means of payment in circulation in the territory of application of this Code,

2. by pledging the securities named in subsection (2) below and which are entrusted for custody by the person obliged to provide the collateral to the Bundesbank or a credit institution which is licensed to operate a security deposit business, provided that no

other rights take priority over the pledgee's right. The liability of securities for amounts owing to the custodian for their custody and administration shall remain unaffected. The pledging of securities shall be deemed equivalent to the pledging of shares in a collective securities holding pursuant to section 6 of the Securities Deposit Act as published in the revised version in the Federal Law Gazette, Part III, number 4130-1, as amended by Article 1 of the Act of 17 July 1985 (Federal Law Gazette I, p. 1507),

3. by pledging savings, accompanied by the surrender of the savings bank book, in a credit institution which is licensed to operate a deposit-taking business within the territory of application of this Code, provided that no other rights take priority over the pledgee's right,

4. by pledging receivables which are entered in a debt register of the Federation, or a special fund of the Federation or a *Land*, provided that no other rights take priority over the pledgee's right,

5. by creating

   a) first mortgages, land charges or annuity charges on real property or hereditary building rights which are situated within the territory of application of this Code,

   b) first maritime mortgages on ships, ships under construction or floating docks which are entered in a register of ships or ship construction register kept within the territory of application of this Code,

6. by pledging receivables for which a first ordinary mortgage on real property or hereditary building rights situated within the territory of application of this Code exists, or by pledging first land charges or annuity charges on real property or hereditary building rights situated within the territory of application of this Code, where no priority rights to these receivables, land charges or annuity charges exist,

7. by way of debt commitment, guarantee or obligations under bills of exchange provided by a suitable tax guarantor (section 244).

(2) Securities within the meaning of subsection (1) number 2 above shall be

1. bonds issued by the Federation, a special fund of the Federation, a *Land*, a municipality or an association of municipalities,

2. bonds of international facilities to which the Federation has transferred sovereign rights, where they are licensed to trade on official bourses within the territory of application of this Code,

3. bonds issued by the Deutsche Genossenschaftsbank, the Deutsche Siedlungs- und Landesrentenbank, the Deutsche Ausgleichsbank, the Kreditanstalt für Wiederaufbau and the Landwirtschaftliche Rentenbank,

4. *Pfandbriefs*, municipal bonds and related bonds,

5. Bonds, the interest and redemption of which are guaranteed by the Federation or by a *Land*.

(3) A bonded warehouse of taxable goods shall be deemed to be adequate collateral for the tax imposed thereon.

Section 242 – The effect of depositing means of payment

Means of payment which are deposited pursuant to section 241(1) number 1 shall become the property of the political subdivision to which the revenue authority with which they were deposited belongs. No interest shall be charged on the claim for repayment. Upon deposit, the political subdivision whose claim is to be secured by the deposit shall acquire a lien on the claim to reimbursement of the deposited means of payment.

Section 243 – Pledging securities

The provision of collateral by pledging securities pursuant to section 241(1) number 2 shall be permissible only where the custodian assumes responsibility for guaranteeing the securities' marketability. Assuming this responsibility shall include liability for ensuring that

1. the right of reclaim of the depositor is not restricted by judicial bans and confiscation,

2. that the entrusted securities are not registered as stolen or lost in the collective lists of called-up securities and are neither subject to payment blocks nor have been called in for cancellation or cancelled.

3. that the securities are registered to the bearer, or, in the event that they are non-negotiable, bear a blank endorsement and are otherwise not blocked, and that the interest coupons and the renewal coupons are enclosed with the securities.

Section 244 – Suitable tax guarantors

(1) Debt commitments and guarantees pursuant to the Civil Code as well as obligations under bills of exchange set out in Articles 28 or 78 of the Bills of Exchange Act shall be deemed suitable as collateral only where these have been provided or entered into by persons who

1. possess sufficient assets to cover the extent of the collateral to be provided, and

2. have their general or an agreed jurisdiction within the territory of application of this Code.

Guarantees shall include the waiver of the defence of unexhausted remedies pursuant to section 771 of the Civil Code. Debt commitments and guarantee declarations shall be issued in writing; electronic versions shall not be permitted. The guarantor and the secured party may not provide reciprocal collateral for each other, nor may they be economically related. The Central Customs Authority shall decide on the acceptance of guarantee declarations in procedures pursuant to the ATA Convention of 6 December 1961 (Federal Law Gazette II 1965, p. 948) and the TIR Convention of 14 November 1975 (Federal Law Gazette II 1979, p. 445), as amended. The Central Customs Authority shall decide on the acceptance of declarations on individual guarantees in the form of guarantee vouchers pursuant to Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) 2913/92 establishing the Community Customs Code (OJ L 253, p. 1) and the Convention of 20 May 1987 on a common transit procedure (OJ L 226, p. 2), as amended.

(2) The Central Customs Authority may authorise credit institutions and insurance companies providing collateral for others on a commercial basis to act in general as tax guarantor where they are licensed to operate within the territory of application of this Code. A maximum amount (guarantee amount) shall be set when issuing authorisation. The total amount of liabilities assumed by the tax guarantor from debt commitments, guarantees and obligations under bills of exchange vis-à-vis the revenue administration may not exceed the guarantee amount.

(3) The Federal Ministry of Finance shall be authorised to issue ordinances with the consent of the Bundesrat that delegate the powers under subsection (1), sixth sentence, and section (2) to one or more main customs offices.

Section 245 – Other items as collateral

The revenue authority may at its own discretion accept as collateral items other than those described in section 241. Preference shall be given to assets which offer enhanced security or which upon the onset of even extraordinary circumstances can be realised without considerable difficulty and within a suitable timeframe.

Section 246 – Acceptance value

The revenue authority shall determine at its own discretion the values at which objects may be accepted as collateral. However, the acceptance value may not exceed the expected proceeds of realisation minus the costs of realisation. It may not be below the values named in section 234(3), section 236 and section 237, first sentence, of the Civil Code for objects described in section 241(1) numbers 2 and 4 and for movable items which are accepted as collateral pursuant to section 245.

Section 247 – The exchange of collateral

Whoever has provided collateral pursuant to sections 241 to 245 shall be entitled to replace the collateral or part of the collateral with other suitable collateral pursuant to sections 241 to 244.

Section 248 – Obligation to provide additional collateral

Collateral shall be supplemented, or other collateral provided, where collateral already provided becomes inadequate.

Sixth Part – Enforcement

First Chapter – General provisions

Section 249 – Enforcement authorities

(1) The revenue authorities may, by administrative decision, enforce administrative acts ordering a monetary payment, other performance, tolerance or omission of a particular action. This shall also apply to self-assessed tax returns (section 168). Enforcement authorities shall be the tax offices and main customs offices as well as *Land* revenue authorities that have been given jurisdiction, throughout a given *Land*, over cash transactions and collection procedures, including enforcement, on the basis of an ordinance pursuant to section 17(2), third sentence, number 3 of the Fiscal Administration Act; section 328(1), third sentence, shall remain unaffected.

(2) For the purposes of preparing enforcement, the revenue authorities may determine the financial circumstances and income of the judgement debtor. The revenue authority may use information known to it, protected pursuant to section 30, which they are entitled to utilise in enforcing taxes and ancillary tax payments, for enforcement owing to monetary payments other than taxes and ancillary tax payments.

Section 250 – Request for recovery

(1) Insofar as one enforcement authority carries out enforcement measures at the request of another enforcement authority, the requested enforcement authority shall take the place of the other enforcement authority. The requesting enforcement authority shall remain responsible for the enforceability of the claim.

(2) Where the requested enforcement authority does not believe it has jurisdiction or believes the action requested of it is impermissible, it shall inform the requesting enforcement authority of its reservations. Where the requesting authority insists that the request be carried out and the requested authority declines, the supervisory authority of the requested authority shall decide.

Section 251 – Enforceable administrative acts

(1) Administrative acts may be enforced insofar as their execution has not been suspended or their execution has not been blocked by the lodging of an appeal (section 361; section 69 of the Code of Procedure for Fiscal Courts). Furthermore, import and export duty assessment notices may be enforced only insofar as the customs debtor's obligation to pay duty has not been suspended (Article 108(3) of the Union Customs Code).

(2) The provisions of the Insolvency Code as well as section 79(2) of the Federal Constitutional Court Act shall remain unaffected. The revenue authority shall, in the cases referred to in section 201(2), sections 257 and 308(1) of the Insolvency Code, be entitled to carry out enforcement measures against the debtor by administrative decision.

(3) Where the revenue authority asserts a claim arising from the tax debtor-creditor relationship as a creditor's claim in insolvency proceedings, the revenue authority shall, where necessary, establish the creditor's claim by virtue of written administrative act.

Section 252 – Judgement creditor

In the enforcement proceedings, the body to which the enforcement authority belongs shall be the creditor for the claims to be enforced.

Section 253 – Judgement debtor

The judgement debtor shall be the person against whom enforcement proceedings are directed pursuant to section 249.

Section 254 – Preconditions for commencing with enforcement

(1) Unless otherwise stipulated, enforcement may only commence if payment is due and a demand for payment or tolerance or omission of an action (demand for payment) has been issued to the judgement debtor and at least one week has elapsed since issue of the request. The demand for payment may be issued in combination with the administrative act to be enforced. A demand for payment shall also be necessary where the administrative act also takes effect against the judgement debtor without him having been notified. Insofar as the judgement debtor has not made a payment owed by him on the basis of a self-assessed tax return, a demand for payment shall not be required.

(2) A demand for payment of a late-payment penalty and interest shall not be required where they are recovered together with the tax. This shall apply *mutatis mutandis* to the enforcement costs where they are recovered together with the principal claim.

Section 255 – Enforcement against legal persons under public law

(1) Enforcement against the Federation or a *Land* shall not be permissible. In other respects, enforcement against legal persons under public law who are subject to state supervision shall only be permissible with the approval of the relevant supervisory authority. The supervisory authority shall determine the time of the enforcement and the assets upon which enforcement may be levied.

(2) The limitations of subsection (1) above shall not apply to public credit institutions.

Section 256 – Objections to enforcement

Objections to the administrative act to be enforced shall be raised outside of the enforcement proceedings using the legal remedies permitted for this purpose.

Section 257 – Stay and limitation of enforcement

(1) Enforcement shall be stayed or limited as soon as

1. the preconditions for enforcement set out in section 251(1) no longer apply,

2. the administrative act which serves as the basis for enforcement is cancelled,

3. the claim to payment has expired,

4. the payment has been deferred.

(2) In the cases referred to in subsection (1) numbers 2 and 3 above enforcement measures that have already been undertaken shall be cancelled. Where the administrative act has been cancelled by a court decision, this shall only apply insofar as the decision has become incontestable and there is no need to issue a new administrative act as a result of the decision. In other respects, the enforcement measures shall remain in place insofar as their cancellation has not been expressly ordered.

Section 258 – Temporary stay or limitation of enforcement

Insofar as enforcement proves inequitable in individual cases, the enforcement authority may temporarily stay or limit enforcement or cancel an enforcement measure.

Second Chapter – Enforcement owing to monetary claims

1st Subchapter – General provisions

Section 259 – Formal reminder

In general, a formal reminder requesting payment within one week is to be sent to the judgement debtor before the commencement of enforcement. A formal reminder shall not be required where the judgement debtor receives a reminder of the payment before the due date. General payment reminders may also take the form of a public notice.

Section 260 – Statement of the reason for the indebtedness

The enforcement order or the attachment order shall state the reason for which the monetary amounts to be recovered are owed.

Section 261 – Write-off

Claims arising from the tax debtor-creditor relationship may be written off if it is expected that

1. the collection of the amount in question will be unsuccessful or

2. the costs of collection will be disproportionate to the amount to be collected.

Section 262 – Third party rights

(1) Where a third party asserts that he has a right blocking the sale of the object of enforcement or objections are raised pursuant to sections 772 to 774 of the Code of Civil Procedure, the objection to the enforcement shall, where necessary, be raised by bringing an action before the ordinary courts. A third party shall also be deemed to be a person who is obliged to tolerate enforcement against an asset managed by him where he asserts that objects belonging to him are affected by the enforcement. The rights blocking the sale shall be determined by civil law.

(2) Sections 769 and 770 of the Code of Civil Procedure shall apply with respect to the stay of enforcement and the cancellation of enforcement measures.

(3) The action shall only be brought before the court in whose district the enforcement takes place. Where the action is brought against the body to which the enforcement authority belongs and against the judgement debtor, they shall be deemed to be joined parties.

Section 263 – Enforcement against spouses

The provisions of sections 739, 740, 741, 743, 744a and 745 of the Code of Civil Procedure shall apply accordingly to enforcement against spouses or civil partners.

Section 264 – Enforcement against the usufructuary

The provision of section 737 of the Code of Civil Procedure shall apply accordingly to enforcement against properties subject to the usufruct of an asset.

Section 265 – Enforcement against heirs

The provisions of sections 1958, 1960(3) and section 1961 of the Civil Code and sections 747, 748, 778, 779, and 781 to 784 of the Code of Civil Procedure shall apply accordingly to enforcement against heirs.

Section 266 – Other cases of limited liability

The provisions of sections 781 to 784 of the Code of Civil Procedure shall apply accordingly to the limited liability arising pursuant to section 1489 of the Civil Code, and the provision of section 781 of the Code of Civil Procedure shall apply to the limited liability arising pursuant to sections 1480, 1504 and 2187 of the Civil Code.

Section 267 – Enforcement proceedings against associations without legal capacity

An enforceable administrative act against an association shall suffice for enforcement against its assets in the case of associations without legal capacity that are taxable as such. This shall apply accordingly to special-purpose funds and other taxable entities similar to a legal person.

2nd Subchapter – Apportionment of a joint and several obligation

Section 268 – General

Where persons are joint and several debtors because they have been jointly assessed for an income tax or capital tax, each of them may apply for enforcement of this tax to be limited respectively to the amount resulting in accordance with sections 269 to 278 where taxes are apportioned.

Section 269 – Application

(1) The application shall be submitted in written or electronic form to, or lodged orally at, the tax office that is responsible for the taxation of income or capital at the time the application is submitted.

(2) The application may be made at the earliest following notification of the demand for payment. An application shall be no longer permissible once tax arrears have been paid in full. The application shall contain all the information required to apportion the tax insofar as this information is not contained in the tax return.

Section 270 – General apportionment formula

Tax arrears shall be apportioned in proportion to the amounts which would result from individual assessment in accordance with section 26a of the Income Tax Act and sections 271 to 276. The actual and legal findings used for the tax assessment in the case of joint assessment shall be decisive insofar as the application of the provisions on individual assessment does not lead to deviations.

Section 271 – Apportionment formula for capital tax

Capital tax shall be apportioned as follows:

1. Subject to the deviations in numbers 2 and 3 below, the provisions of the Valuation Act and the Capital Tax Act as used as the basis for joint assessment shall be assumed in calculating the assets and the capital tax of the individual joint and several debtor.

2. A spouse's or civil partner's assets, which in the case of joint assessment were attributed to the other spouse or civil partner as agricultural and forestry assets or as

business assets, shall be treated as own agricultural and forestry assets or own business assets.

3. Debts which are not economically related to particular assets allocated to a joint and several debtor shall be deducted in equal shares from the individual joint and several debtors, insofar as it is not possible to establish a particular debtor.

Section 272 – Apportionment formula for prepayments

(1) Prepayments outstanding shall be apportioned in proportion to the amounts which would result from a separate assessment of the prepayments. An application for appointment of prepayments shall simultaneously be deemed to be an application for apportionment of additional prepayments falling due in the same assessment period and of any final payment. A final apportionment shall be conducted once the assessment has been performed. The total tax minus the amounts which have not been included in the apportionment of the prepayments shall be apportioned. In doing so, every joint and several debtor shall be credited with the amounts paid by him towards the apportioned prepayments. Where this results in overpayment compared to the amount of apportionment, the amount overpaid shall be refunded.

(2) Where the prepayments are apportioned only once assessment has taken place, the apportionment formula applicable for the assessed tax shall be used.

Section 273 – Apportionment formula for tax deficiencies

(1) Where the amendment of a tax assessment or its correction pursuant to section 129 leads to a tax deficiency, the tax arrears arising from the deficiency shall be apportioned in proportion to the excess amounts which result from a comparison of the corrected individual assessments with the earlier individual assessments.

(2) The apportionment formula referred to in subsection (1) above shall not apply where the tax hitherto assessed has not yet been repaid.

Section 274 – Special apportionment formula

Notwithstanding the provisions of sections 270 to 273, the tax arrears may be apportioned according to a formula jointly proposed by the joint and several debtors, if repayment is

guaranteed. The joint proposal shall be lodged in writing or declared for record; it shall be signed by all joint and several debtors.

Section 275 – (rescinded)

Section 276 – Tax arrears, commencement of enforcement

(1)Where the application is lodged with the revenue authority prior to the commencement of enforcement, the tax due at the time of receipt of the application for apportionment shall be apportioned.

(2) Where the application is lodged after enforcement commences, the tax that is due at the time enforcement commences, and that is the subject of enforcement proceedings, shall be apportioned.

(3) Withheld taxes and separately assessed prepayments shall also be included in the apportionment even if they were paid before the application was lodged.

(4) Tax arrears shall also include late-payment penalties, interest and late-filing penalties.

(5) Enforcement shall be deemed commenced when the notice of arrears is issued.

(6) Payments that have been made by a joint and several debtor after submission of an application under subsection (1) above or after enforcement commences under subsection (2) above, or that are to be included in an apportionment under subsection (3) above, shall be credited to the debtor who made the payments or for whom the payments have been made. Where, in doing so, this results in an overpayment compared with the amount of apportionment, the overpayment shall be refunded.

Section 277 – Enforcement

As long as no incontestable decision has been taken regarding the application for the limitation of the enforcement, enforcement measures may only be implemented to the extent that this is necessary to secure the claim.

Section 278 – Limitation of enforcement

(1) Following apportionment, the enforcement may only be implemented in accordance with the amounts attributable to the individual debtors.

(2) Where assets are given to a tax debtor free of charge by a person assessed with him during or after the assessment period for which tax arrears still exist, tax may, until the expiration of the tenth calendar month from the date of the issuance of the apportionment notice, be claimed from the recipient above and beyond the amount resulting pursuant to subsection (1) above up to the fair market value of this donation in kind. This shall not apply to common occasional gifts.

Section 279 – Form and content of the apportionment notice

(1) Once enforcement has commenced, a uniformly applicable decision on the application to limit enforcement shall be communicated to the parties involved in the form of an apportionment notice issued in writing or electronically. However, no decision shall be required if no enforcement measures are taken or if enforcement measures already taken are rescinded.

(2) The apportionment notice shall indicate the amount of the proportional tax payable by each joint and several debtor; it shall be accompanied by instructions indicating which legal remedy is permissible, and the time period within which and the authority to which this remedy must be submitted. The notice should further include:

1. the amount of the tax to be apportioned,

2. the point in time decisive for the calculation of the tax arrears,

3. the extent of the tax bases which have been attributed to the individual joint and several debtors where there is divergence from the information provided by the joint and several debtors,

4. the amount of the tax payable by the individual joint and several debtors in the case of individual assessment (section 270),

5. the amounts to be credited against the joint and several debtor’s apportioned tax.

Section 280 – Amendments to the apportionment notice

(1) Except in the cases referred to in section 129, the apportionment notice may only be amended where

1. it subsequently becomes known that the apportionment is based on incorrect information and the tax arrears could not be recovered in whole or in part as a result of incorrect apportionment,

2. the tax arrears increase or decrease through the cancellation or amendment of the tax assessment or its correction pursuant to section 129.

(2) After the termination of enforcement, an amendment to the apportionment notice or the correction thereof pursuant to section 129 shall no longer be permissible.

3rd Subchapter – Enforcement against movable assets

I. General

Section 281 – Attachment

(1) Enforcement against movable assets shall be effected by attachment.

(2) Attachment may not be expanded further than is necessary to cover the monetary amounts to be recovered and the costs of enforcement.

(3) The attachment shall not be made where an excess over the cost of the enforcement cannot be expected from the realisation of the attachable objects.

Section 282 – Effect of the attachment

(1) Attachment shall result in the body to which the enforcement authority belongs acquiring a lien on the attached object.

(2) The lien shall grant the body in proportion to other creditors the same rights as a lien within the meaning of the Civil Code; liens and preferential rights which are not treated as equivalent to this lien in insolvency proceedings shall have priority.

(3) A lien imposed on the basis of a previous attachment shall have priority other a lien imposed on the basis of a later attachment.

Section 283 – Exclusion of warranty claims

Where an object is sold as a result of the attachment, the buyer shall not be entitled to assert warranty claims for a defect of title or for a defect in the items sold.

Section 284 – Judgement debtor's asset disclosure

(1) For the enforcement of a receivable, the judgement debtor shall provide information about his assets to the enforcement authority in accordance with the following provisions where he fails to settle the claim within two weeks of the enforcement authority having called upon him to pay, making reference to the obligation to provide the asset disclosure. In addition he shall state his birth name, date of birth and place of birth. Where the judgement debtor is a legal person or an association, then he shall state his company name, the number of the page in the commercial register and his registered office.

(2) For the purpose of providing information, the judgement debtor shall state all of the assets belonging to him. In the case of receivables, the reason and evidence shall be specified. Furthermore, the following shall be indicated:

1. the disposals for a consideration by the judgement debtor to a related person (section 138 of the Insolvency Code) which he has provided in the last two years prior to the deadline pursuant to subsection (7) below and until provision of the asset disclosure;

2. the services provided free of charge by the judgement debtor which he has provided in the last four years prior to the deadline pursuant to subsection (7) below and until provision of asset disclosure, insofar as they were not related to common occasional gifts of a low value.

Items not subject to attachment pursuant to section 811(1), numbers 1 and 2 of the Code of Civil Procedure need not be included unless an attachment in exchange may be considered.

(3) The judgement debtor shall make a sworn statement to be recorded in writing to the effect that he has provided the details pursuant to subsections (1) and (2) above correctly and completely to the best of his knowledge and belief. Prior to administration of the sworn statement of assets, the judgement debtor shall be instructed of the meaning of the sworn

statement assets, especially the consequences under criminal law of making an incorrect or incomplete sworn statement of assets.

(4) A judgement debtor who has provided the asset disclosure described in this provision or in section 802c of the Code of Civil Procedure within the last two years shall be obliged to provide another only where it is to be presumed that his financial circumstances have changed substantially. The enforcement authority shall establish ex officio whether an inventory of assets produced on the basis of the debtor's asset disclosure has been deposited with the central court of enforcement pursuant to section 802k(1) of the Code of Civil Procedure within the last two years.

(5) The enforcement authority in whose district the judgement debtor's residence or abode is located shall be responsible for taking down the asset disclosure. Where these preconditions are not met at the enforcement authority which is pursuing the enforcement, the enforcement authority may take down the asset disclosure where the judgement debtor is prepared to provide it.

(6) The summons to the appointment to provide the asset disclosure shall be served on the judgement debtor himself; it may be tied to the deadline pursuant to subsection (1), first sentence, above. The appointment for providing the asset disclosure should not be set before the expiration of one month after service of the summons. An appeal against the order to provide the asset disclosure shall not have the effect of delaying proceedings. The judgement debtor shall provide the documents required for the asset disclosure at the appointment. Upon service of the summons, the judgement debtor shall be instructed about these rules, about his rights and obligations pursuant to subsections (2) and (3) above, about the consequences of failing to keep an appointment without giving notice or of a breach of his obligation to provide information, and about the possibility of entry into the register of debtors when providing the asset disclosure.

(7) At the appointment to provide the asset disclosure, the enforcement authority shall create an electronic document containing the details required pursuant to subsections (1) and (2) above (inventory of assets). These details shall be read out to the judgement debtor before the provision of the sworn statement pursuant to subsection (3) above or reproduced on a screen for inspection. He is to be given a printout on demand. The enforcement authority shall deposit the inventory of assets with the central court of enforcement pursuant to

section 802k(1) of the Code of Civil Procedure. The form, recording and transfer of the inventory of assets shall conform to the specifications of the ordinance pursuant to section 802k(4) of the Code of Civil Procedure.

(8) Where the judgement debtor fails to present himself without sufficient justification at the appointment scheduled for the provision of the asset disclosure before the enforcement authority described in subsection (5), first sentence, above or where he refuses without reason to provide the asset disclosure, the enforcement authority pursuing enforcement may apply for the ordering of arrest so as to force provision. The local court in whose district the judgement debtor has his residence or, in the absence of such, has his abode at the time the deadline is set, shall be responsible for the ordering of arrest. Sections 802g to 802j of the Code of Civil Procedure shall apply accordingly. A bailiff shall conduct the arrest of the judgement debtor. Section 292 of this Code shall apply accordingly. Following the arrest of the judgement debtor, the asset disclosure may be taken down by the bailiff responsible pursuant to section 802i of the Code of Civil Procedure where the seat of the enforcement authority described in subsection (5) above is not located in the district of the local court responsible for the bailiff or where it is not possible for the enforcement authority to take down the asset disclosure. The local court decision through which the application of the enforcement authority for an order for arrest is rejected shall be subject to the appeal procedure pursuant to sections 567 to 577 of the Code of Civil Procedure.

(9) The enforcement authority may order the entry of the judgement debtor into the register of debtors pursuant to section 882h(1) of the Code of Civil Procedure where

1. the judgement debtor has failed to meet his obligation to provide the asset disclosure,

2. enforcement pursuant to the content of the inventory of assets would not be suitable for achieving full payment of the receivable on account of which the asset disclosure was demanded or on account of which the enforcement authority, subject to the deadline pursuant to subsection (1), first sentence, above, and the blocking effect pursuant to subsection (4) above, could demand an asset disclosure, or

3. the judgement debtor fails within one month of providing the asset disclosure to pay the receivable on account of which the asset disclosure was demanded. The same shall apply where the enforcement authority, subject to the deadline pursuant to subsection (1), first sentence, above and the blocking effect pursuant to subsection (4) above, may

demand an asset disclosure insofar as the judgement debtor fails to pay the receivable within once month of him having being instructed of the possibility of entry into the register of debtors.

The order for entry should be briefly substantiated. It is to be served on the judgement debtor. Section 882c(3) of the Code of Civil Procedure shall apply accordingly.

(10) An appeal against the order for entry pursuant to subsection (9) above shall not have the effect of delaying proceedings. Following the expiry of one month from service, the enforcement authority shall electronically transmit the order for entry to the central court of enforcement pursuant to section 882h(1) of the Code of Civil Procedure together with the data designated in section 882b(2) and (3) of the Code of Civil Procedure. This shall not apply where applications for the granting of suspension of implementation of the order for entry pursuant to section 361 of this Code or section 69 of the Code of Procedure for Fiscal Courts are pending which have prospects of success.

(11) Where entry into the register of debtors pursuant to section 882h(1) of the Code of Civil Procedure has been made, the decisions about the appeals of the judgement debtor against the order for entry by the enforcement authority or by the central court of enforcement pursuant to section 882h(1) of the Code of Civil Procedure shall be transmitted electronically. The form and transfer of the order for entry pursuant to subsection (10), first and second sentences, above as well as the decision pursuant to the first sentence above shall conform to the specifications of the ordinance pursuant to section 882h(3) of the Code of Civil Procedure.

II. Enforcement against items

Section 285 – Enforcement officer

(1) The enforcement authority shall effect enforcement against movable items through enforcement officers.

(2) The enforcement officer shall be empowered to conduct enforcement against the judgement debtor and third parties by means of written or electronic order from the enforcement authority; the order shall be presented on demand.

Section 286 – Enforcement against items

(1) The enforcement officer shall attach items in the possession of the judgement debtor by seizing them.

(2) Items other than money, valuables and securities shall be left in the possession of the judgement debtor where this does not jeopardise satisfaction of the claim. Where the items remain in the possession of the judgement debtor, attachment shall only take effect where it is made apparent by affixing seals or some other means.

(3) The enforcement officer shall inform the judgement debtor of the attachment.

(4) These provisions shall also apply to the attachment of items in the possession of a third party who is prepared to return them.

Section 287 – Powers of the enforcement officer

(1) The enforcement officer shall have the power to search the judgement debtor's living quarters and business premises as well as containers where the purpose of the enforcement so requires.

(2) The enforcement officer shall be authorised to have locked doors and containers opened.

(3) Where the enforcement officer meets with resistance, he may use force and request the support of police officers for this purpose.

(4) Without his consent, the judgement debtor's living quarters and business premises may only be searched on the basis of a court order. This shall not apply where obtaining the order would jeopardise the success of the search. The local court in whose district the search is to be undertaken shall be responsible for the court order for the search.

(5) Where the judgement debtor agrees to the search or an order against the judgement debtor has been issued pursuant to subsection (4), first sentence, above or is unnecessary pursuant to subsection (4), second sentence, above, persons who share custody of the judgement debtor's living quarters of business premises shall tolerate the search. Undue hardship for the joint custodians shall be avoided.

(6) The order pursuant to subsection (4) above shall be presented during enforcement.

Section 288 – Enlistment of witnesses

Where an act of enforcement is met with resistance or where neither the judgement debtor nor an adult family member, adult permanent joint resident, or person employed by the judgement debtor is present during an act of enforcement in the living quarters or business premises of the judgement debtor, the enforcement officer shall enlist two adults or one municipal or police officer as witness(es).

Section 289 – Period of enforcement

(1) An act of enforcement may be conducted at night (section 758a(4), second sentence, of the Code of Civil Procedure) as well as on Sundays and officially recognised general public holidays only with the written or electronic permission of the enforcement authority.

(2) The permission shall be presented on demand during the act of enforcement.

Section 290 – Enforcement officer's requests and notifications

The requests and other notifications constituting part of the acts of enforcement shall be issued verbally by the enforcement officer and recorded in full; where they cannot be issued verbally, the enforcement authority shall send the person to whom the summons or notification is to be presented a copy of the written record.

Section 291 – Record

(1) The enforcement officer shall keep a record to every act of enforcement.

(2) The record shall contain:

1. the place and time of recording,
2. the object of the act of enforcement, with a brief description of the measures,
3. the names of the persons with whom negotiations have been held,
4. the signatures of the persons and the note that a signature was provided after the record was read out or presented for inspection and after approval,
5. the signature of the enforcement officer.

(3) Where it is not possible to satisfy one of the requirements pursuant to subsection (2) number 4 above, the reason shall be stated.

(4) The record may also be produced electronically. Subsection (2) numbers 4 and 5 above as well as section 87a(4), second sentence, shall not apply.

Section 292 – Averting attachment

(1) The judgement debtor may only avert attachment where he pays the due amount to the enforcement officer or demonstrates that he has been granted a period of grace for payment or that the debt has expired.

(2) Subsection (1) above shall apply accordingly where the judgement debtor furnishes a ruling demonstrating the impermissibility of the attachment to be undertaken or where he furnishes post office or bank receipts demonstrating that he has paid in the amount owed.

Section 293 – Liens and preferential rights of third parties

(1) A third party not in possession of the item may not raise an objection to the attachment of an item on the basis of a lien or preferential right. He may, however, demand preferential satisfaction from the proceeds, irrespective of whether his receivable is due or not.

(2) The ordinary court in whose district attachment has been made shall have sole responsibility for a claim for preferential satisfaction. Where the action is brought against a body to which the enforcement authority belongs and against the judgement debtor, they shall be deemed to be joined parties.

Section 294 – Unpicked crops

(1) Crops not yet separated from the ground may be attached as long as they have not been seized through enforcement against immovable assets. They may not be attached earlier than one month prior to the usual time of ripening.

(2) A creditor who has a right to satisfaction from the real property may appeal pursuant to section 262 against the attachment where a claim that has priority during enforcement against the real property is not being attached.

Section 295 – Exemption of items from attachment

Sections 811 to 812 and 813(1) to (3) of the Code of Civil Procedure as well as the prohibitions and restrictions under other statutory provisions on the attachment of items shall apply accordingly. The enforcement authority shall take the place of the court with jurisdiction over enforcement.

Section 296 – Realisation

(1) Upon written order of the enforcement authority, the attached items shall be sold at public auction. "Public auction" shall mean

1. an on-site auction, or

2. a universally accessible Internet auction via the platform www.zoll-auktion.de.

Such auction shall normally be conducted by the enforcement officer. Section 292 shall apply accordingly.

(2) In the case of the attachment of money, its removal shall count as payment by the debtor.

Section 297 – Suspension of realisation

The enforcement authority may temporarily suspend the realisation of attached items by decreeing payment deadlines where immediate realisation would be unreasonable.

Section 298 – Auction

(1) The attached items may not be auctioned before one week has expired since attachment insofar as the judgement debtor has not declared that he agrees to an earlier auction or this is necessary to avert the threat of a considerable loss in value or to avoid disproportionate costs of lengthy retention.

(2) The date and location of the auction shall be publicly announced; a general description of the items to be auctioned shall be provided in the process. At the request of the enforcement authority, an officer of the municipality or a police officer shall attend the auction. The first and second sentences above shall not apply to an auction pursuant to section 296(1), second sentence, number 2.

(3) Section 1239(1), first sentence, of the Civil Code shall apply accordingly; in the case of the on-site auction (section 296(1), second sentence, number 1), section 1239(2) of the Civil Code shall apply accordingly as well.

Section 299 – Knockdown

(1) In the case of an on-site auction (section 296(1), second sentence, number 1), the knock-down to the highest bidder should be preceded by three calls. In the case of an Internet auction (section 296(1), second sentence, number 2), the knockdown shall be awarded to the person who has made the highest bid at the end of the auction, unless the auction is terminated prematurely; this person shall be informed of the acceptance of the bid. Section 156 of the Civil Code shall apply accordingly.

(2) The called item may only be handed over against payment in cash. In the case of an Internet auction, the called item may also be handed over if the payment is credited to the account of the revenue authority. Where the called item is sent, the handing over shall be regarded as being effected upon surrender to the person designated to carry out the dispatch.

(3) Where the highest bidder has not demanded the handing over against payment of the sale price at the time specified in the auction rules or, in the absence of such a provision, before the end of the auction session, the item shall be otherwise auctioned. The highest bidder shall not be allowed to place another bid; he shall be liable for the shortfall in proceeds, he shall have no claim on the additional proceeds.

(4) Where the knockdown is awarded to the creditor, he shall be freed from the obligation to pay in cash insofar as the proceeds, following the deduction of the costs of enforcement, are to be used to satisfy his claim. Insofar as the creditor is freed from the obligation to make a payment in cash, the amount shall be deemed to be paid from the debtor to the creditor.

Section 300 – Lowest bid

(1) The knockdown may only be awarded for a bid of at least half of the usual sale value of the item (lowest bid). The usual sale value and the lowest bid should be published at the auction.

(2) Where no knockdown is awarded because a bid matching the lowest bid has not been offered, the lien shall remain. The enforcement authority may set a new auction date at any

time or order the realisation by other means pursuant to section 305 of the attached item. Where realisation by other means is ordered, subsection (1) above shall apply accordingly.

(3) Items made of gold or silver may not be knocked down at less than their gold or silver value. If no adequate bid for the knockdown is made, the item may be sold privately at the order of the enforcement authority. The sale price may not go below the gold or silver value and half of the usual sale value.

Section 301 – Ceasing the auction

(1) The auction shall be ceased as soon as the proceeds are sufficient to cover the amounts to be recovered including the costs of enforcement.

(2) Receipt of the proceeds by the auctioning official shall be deemed to be payment by the judgement debtor unless the proceeds are deposited (section 308(4)). In the case of an Internet auction, receipt of the proceeds on the account of the revenue authority shall be deemed to be payment within the meaning of the first sentence above.

Section 302 – Securities

Attached securities with a stock exchange or market price shall be sold privately at the daily price; other securities shall be auctioned according to the general provisions.

Section 303 – Registered securities

Where an attached security is registered, the enforcement authority shall be entitled to effect the transfer of the security to the name of the purchaser or, where a bearer security that has been transferred is involved, the re-conversion into a bearer security, and to submit the necessary declaration in place of the judgement debtor.

Section 304 – Auctioning unpicked crops

Attached crops which have not yet been separated from the ground may only be auctioned after they have ripened. The enforcement officer shall have the crops harvested if he does not auction them before they are picked.

Section 305 – Realisation in special circumstances

Upon application by the judgement debtor or for special reasons of expediency, the enforcement authority may order an attached item to be realised in a manner or at a place other than that set out in the sections above or that the item be auctioned by a person other than the enforcement officer.

Section 306 – Enforcement against spare aircraft parts

(1) Section 100 of the Act Governing Rights in Aircraft shall apply to enforcement against spare parts to which a registered lien on an aircraft extends pursuant to section 71 of the Act Governing Rights in Aircraft; the enforcement officer shall take the place of the bailiff.

(2) Subsection (1) above shall apply to enforcement against spare parts to which the right in a foreign aircraft extends, subject to the proviso that the provisions of section 106(1), number 2, and 106(4) of the Act Governing Rights in Aircraft shall be taken into account.

Section 307 – Subordinate attachment

(1) For the purposes of attaching items that have already been attached, it shall be sufficient for the enforcement officer to make a declaration, of which a written record is to be made, that he is attaching the item for the receivable to be described. The judgement debtor shall be informed of the additional attachment.

(2) Where the first attachment is effected for another enforcement authority or made by a bailiff, this enforcement authority or the bailiff shall be sent a copy of the written record. The same obligation shall apply to a bailiff who attaches items which have already been attached on behalf of an enforcement authority.

Section 308 – Realisation in the case of multiple attachment

(1) Where the item is subject to several attachments by enforcement officers or by enforcement officers and bailiffs, jurisdiction for the auction shall be based on the first attachment only.

(2) Where a creditor conducts the auction, the auction shall be conducted for all creditors involved.

(3) The proceeds shall be distributed according to the order of the attachments or according to an alternative agreement of the creditors involved.

(4) Where the proceeds are insufficient to cover the receivables, and a creditor for whom the second or a later attachment was effected demands, without the agreement of the other creditors involved, distribution other than according to the order of the attachments, the local court in whose district the attachment is effected shall be notified of the situation and the proceeds deposited. The notification shall be accompanied by the documentation relating to the proceedings. Sections 873 to 882 of the Code of Civil Procedure shall apply to the procedure for distribution.

(5) Where attachments are effected simultaneously for various creditors, the provisions of subsections (2) to (4) above shall apply subject to the proviso that the proceeds are distributed in proportion to the receivables.

III. Enforcement against receivables and other property rights

Section 309 – Attachment of a monetary claim

(1) Where a monetary claim is to be attached, the enforcement authority shall issue a written prohibition to the third party debtor against making payments to the judgement debtor, and shall order the judgement debtor in writing to refrain from every disposition over the receivable, especially the sequestration of the receivable (attachment order). This may not be done in electronic form.

(2) The attachment shall be effected where the attachment order is served on the third party debtor. The attachment order to be served on the third party debtor should describe the monetary amount to be recovered only by providing a figure without stating the types of tax and the periods for which it is owed. The debtor shall be informed of service.

(3) In the case of the attachment of a credit balance on the judgement debtor’s account at a credit institution, sections 833a and 850l of the Code of Civil Procedure shall apply accordingly. Section 850l of the Code of Civil Procedure shall apply subject to the proviso that applications are to be submitted to the competent court of enforcement pursuant to section 828(2) of the Code of Civil Procedure.

Section 310 – Attachment of a receivable secured by a mortgage

(1) In order to attach a receivable for which a mortgage exists, the mortgage certificate shall be handed over to the enforcement authority in addition to the attachment order. Surrender shall be deemed to have been effected when the enforcement officer removes the certificate. Where the mortgage certificate cannot be issued, the attachment shall be entered in the Land Register; the entry shall, by reason of the attachment order, be made at the request of the enforcement authority.

(2) Where the attachment order is served on the third party debtor prior to surrender of the mortgage certificate or entry of the attachment, the attachment shall be regarded as being effected against the third party debtor upon service.

(3) These provisions shall not apply insofar as claims to ancillary payments described in section 1159 of the Civil Code are being attached. The same shall apply for a debt-securing mortgage in the case of section 1187 of the Civil Code to the attachment of the main receivable.

Section 311 – Attachment of a receivable secured by a ship mortgage or registered lien on an aircraft

(1) The attachment of a receivable for which a ship mortgage exists shall be entered into the ship register or ship construction register.

(2) The attachment of a receivable for which a registered lien on an aircraft exists shall be entered into the register for liens on aircraft.

(3) The attachment pursuant to subsections (1) and (2) above shall, by reason of the attachment order, be entered at the request of the enforcement authority. Section 310(2) shall apply accordingly.

(4) Subsections (1) to (3) above shall not apply insofar as the attachment of claims for payments described in section 53 of the Act on Rights in Registered Ships and Ships under Construction and section 53 of the Act Governing Rights in Aircraft are involved. The same shall apply where, in the case of a ship mortgage, the main receivable is attached for a receivable from a debenture to the bearer, from a bill of exchange or on another instrument transferred by endorsement.

(5) Section 106(1), number 3, and 106(5) of the Act Governing Rights in Aircraft shall apply to the attachment of receivables for which a right in a foreign aircraft exists.

Section 312 – Attachment of a receivable from endorsable instruments

Receivables from bills of exchange and other instruments which can be transferred by endorsement shall be attached by the enforcement officer taking possession of them.

Section 313 – Attachment of regular earnings

(1) A lien which is acquired through the attachment of a salary claim or the attachment of a similar existent receivable against regular earnings shall also extend to amounts that fall due at a later point in time.

(2) The attachment of an official salary shall also cover the income which the judgement debtor draws when moved to another post, when awarded a new post or in the case of salary increase. This shall not apply in the case of a change of employer.

(3) Where the employment relationship ends and the judgement debtor and third party debtor establish such a relationship anew within nine months, the attachment shall extend to the receivable arising from the new employment relationship.

Section 314 – Sequestration order

(1) The enforcement authority shall order the sequestration of the attached receivable. Section 309(2) shall apply accordingly.

(2) The sequestration order may be issued in combination with the attachment order.

(3) Where the order is for the sequestration of an attached account balance, held at a financial institution, of the judgement debtor who is a natural person, section 835(3), second sentence, and 835(4) of the Code of Civil Procedure shall apply accordingly.

(4) Where the order is for the sequestration of attached non-recurring remuneration of a judgement debtor who is a natural person for personally rendered work or services or other income which is not wages, section 835(5) of the Code of Civil Procedure shall apply accordingly.

Section 315 – Effect of the sequestration order

(1) The sequestration order shall replace the judgement debtor's formal declarations upon which, under civil law, the entitlement to sequester depends. It shall also suffice in the case of a receivable for which a mortgage, ship mortgage, or a registered lien on an aircraft exists. To the benefit of a third party debtor, a sequestration order unjustly issued shall be considered legal vis-à-vis the judgement debtor until the order is cancelled and the third party debtor is informed hereof.

(2) The judgement debtor shall be obliged to provide the information required to enforce the receivable and to release the available documents regarding the receivable. Where the judgement debtor fails to provide information, he shall be obliged at the enforcement authority's request to have this information recorded and to make a sworn statement about the information he has provided. The enforcement authority may amend the sworn statement of assets according to the situation. Section 284(5), (6), and (8) shall apply accordingly. The enforcement authority may have the documents removed by the enforcement officer or force their return pursuant to sections 328 to 335.

(3) Where it is not possible to locate the documents, the judgement debtor shall, upon request by the enforcement authority, make a sworn statement, to be recorded in writing, that he is not in possession of the documents nor does he know where these documents are. Subsection (2), third and fourth sentences, above shall apply accordingly.

(4) Where a third party is in possession of the document, the enforcement authority may also assert the judgement debtor's claim for return.

Section 316 – Third party debtor's obligation to submit a declaration

(1) At the request of the enforcement authority, the third party debtor shall declare the following to the authority within two weeks, calculated from service of the attachment order:

1. whether and to what extent he recognises the receivable as justified and is prepared to pay,

2. whether other persons have claims against the receivable and what these claims are,

3. whether the receivable has already been attached for other creditors, and on account of which claims,

4. whether, with regard to the account of which the credit balance has been attached, the exemption of the credit balance from attachment has been ordered pursuant to section 850l of the Code of Civil Procedure within the last twelve months, and

5. whether the account of which the credit balance has been attached is an account with protection from attachment within the meaning of section 850k(7) of the Code of Civil Procedure.

The third party debtor's declaration regarding number 1 above shall not be considered an acknowledgement of debt.

(2) The request to submit this declaration may be included in the attachment order. The third party debtor shall be liable to the enforcement authority for the damage incurred from the failure to fulfil his obligation. The third party debtor may be enjoined to submit the declaration through a coercive fine; section 334 shall not apply.

(3) Sections 841 to 843 of the Code of Civil Procedure shall apply.

Section 317 – Other form of realisation

Where the attached receivable is conditional or aged or the sequestration thereof difficult, the enforcement authority may order that it be realised by other means; section 315(1) shall apply accordingly. The judgement debtor must be consulted beforehand insofar as an announcement outside the territory of application of the law or a public announcement is not required.

Section 318 – Claims for the return or transfer of items

(1) Apart from sections 309 to 317, the provisions below shall apply to the enforcement against claims for the return or transfer of items.

(2) When attaching a claim concerning a moveable item, the enforcement authority shall order that the item be returned to the enforcement officer. The item shall be disposed of in the same way as an attached item.

(3) When attaching a claim concerning rights to an immovable item, the enforcement authority shall order that the item be returned to a trustee which the local court *lex rei sitae* appoints upon application by the enforcement authority. Where the claim is directed towards the transfer of ownership, the item shall be conveyed to the trustee as representative of the

judgement debtor. Upon transfer of ownership to the judgement debtor, the body to which the enforcement authority belongs shall obtain a debt-securing mortgage for the receivable. The trustee shall approve the registration of the debt-securing mortgage. Enforcement against the item returned shall, according to the provisions on enforcement, be effected against the rights to an immovable item.

(4) Subsection (3) above shall apply accordingly where the claim concerns a ship registered in the ship register, a ship under construction or floating dock registered in the ship register or that may be registered in this register, or an aircraft registered in the aircraft register or, following deletion in the aircraft register, is still registered in the register for liens on aircraft.

(5) The trustee shall be granted compensation upon application. The compensation may not exceed the remuneration to be set according to the Ordinance on Official Receivers.

Section 319 – Exemption of receivables from attachment

Prohibitions and restrictions under sections 850 to 852 of the Code of Civil Procedure as well as other legal provisions on the attachment of receivables and claims shall apply *mutatis mutandis*.

Section 320 – Multiple attachment of a receivable

(1) Where a receivable is attached by multiple enforcement authorities or by an enforcement authority and a court, sections 853 to 856 of the Code of Civil Procedure and section 99(1), first sentence, of the Act Governing Rights in Aircraft shall apply accordingly.

(2) Where there is no local court with jurisdiction pursuant to sections 853 and 854 of the Code of Civil Procedure, deposit shall be lodged with the local court in whose district the enforcement authority to first have its attachment order served on the third party debtor is located.

Section 321 – Enforcement against other property rights

(1) The above provisions shall apply accordingly to enforcement against other property rights which are not the subject of enforcement against immovable assets.

(2) Where there is no third party debtor, attachment shall be effected where the order to refrain from every disposition over the right is served on the judgement debtor.

(3) An inalienable right, unless otherwise stipulated, shall be attachable to the extent that the exercise of the right may be entrusted to another person.

(4) The enforcement authority may, in the case of enforcement against inalienable rights, the exercise of which may be entrusted to another person, issue special orders and, in the case of enforcement against usufructs in particular, order administration; in this case, attachment shall be effected by surrendering the item to be used to the administrator insofar as it has not already been effected through service of the attachment order.

(5) Where disposal of the right is permissible, the enforcement authority may order the disposal.

(6) The provisions on enforcement against a receivable for which a mortgage exists shall apply to enforcement against land charges or an annuity charge.

(7) Sections 858 to 863 of the Code of Civil Procedure shall apply *mutatis mutandis*.

4th Subchapter – Enforcement against immovable assets

Section 322 – Procedure[38]

(1) Apart from real properties, enforcement against immovable assets shall also apply to the entitlements for which the provisions relating to real properties apply, to the ships registered in the ship register, to the ships under construction and floating docks registered in the ship register or which can be registered in this register, as well as to aircraft registered in the aircraft register or, following deletion in the aircraft register, are still registered in the register for liens on aircraft. The provisions in force for compulsory judicial execution, namely sections 864 to 871 of the Code of Civil Procedure and the Act on Compulsory Sale by Public Auction and Compulsory Receivership, shall apply with respect to the enforcement. In the case of deferral or suspension of implementation, a debt-securing mortgage registered by means of enforcement shall however only then pass to the owner pursuant to section 868 of the Code of Civil Procedure, and a ship's mortgage or a registered lien on an aircraft shall

[38] Note: With regard to the application of the provision in the acceding part of Germany, insofar as reference is made to the provisions in force and other provisions for judicial enforcement, the reservation provisions stipulated in the Unification Treaty in conjunction with Article 1 of the Unification Act (Federal Law Gazette II p. 885, Federal Tax Gazette I p. 654) must be observed (cf. in particular Annex I, Chapter III, A, Section III numbers 5 (on the Code of Civil Procedure), 15 (on the Act on Compulsory Sale by Public Auction and Compulsory Receivership), 28 (on general measures), B, section III numbers 1 (on the Land Register Code) and 6 (on the Code of the Register of Ships).

however only then expire pursuant to section 870a(3) of the Code of Civil Procedure as well as section 99(1) of the Act Governing Rights in Aircraft, where the cancellation of enforcement measures is ordered at the same time.

(2) Section 171 of the Act on Compulsory Sale by Public Auction and Compulsory Receivership shall apply to enforcement against foreign ships; section 106(1) and (2) of the Act Governing Rights in Aircraft as well as sections 171h to 171n of the Act on Compulsory Sale by Public Auction and Compulsory Receivership shall apply to enforcement against foreign aircraft.

(3) The enforcement authority shall submit the creditor's applications necessary for enforcement against the immovable assets. The enforcement authorities shall confirm in the process that the legal prerequisites for enforcement exist. These matters shall not be subject to the judgement of the enforcement court or the land registry office. Applications to register a debt-securing mortgage, a ship's mortgage or a registered lien on an aircraft shall be requests within the meaning of section 38 of the Land Register Code and section 45 of the Code of the Register of Ships.

(4) The enforcement authority should only apply for compulsory sale by public auction or compulsory receivership where it is determined that the monetary amount cannot be recovered through enforcement against the movable assets.

(5) Insofar as the claim to be enforced, in accordance with 10(1) number 3 of the Act on Compulsory Sale by Public Auction and Compulsory Receivership, takes priority over the rights to the real property, a debt-securing mortgage may be registered in the Land Register under the condition precedent that the preferential right ceases.

Section 323 – Enforcement against the legal successor

Where a debt-securing mortgage, a ship's mortgage or a registered lien on an aircraft has been registered pursuant to section 322, a notice of compulsory tolerance shall only then be required for the purposes of a compulsory sale by public auction on the basis of this right if, following registration of this right, there has been a change of ownership. The first sentence shall apply *mutatis mutandis* to the compulsory receivership of a debt-securing mortgage registered pursuant to section 322.

5th Subchapter – Freezing injunction/arrest of the debtor

Section 324 – Freezing injunction

(1) To safeguard the enforcement of monetary claims pursuant to sections 249 to 323, the revenue authority responsible for assessing tax may order movable or immovable assets to be frozen where there are reasons to fear that recovery will otherwise be thwarted or seriously hindered. The authorities may also order a freezing injunction where the receivable has not yet been determined in monetary terms or when it is provisory or aged. The freezing injunction order shall state a monetary amount, the deposit of which will have the effect of suspending the freezing injunction and cancelling any freezing injunction carried out.

(2) The freezing injunction order shall be served. It shall state its reasons and be signed by the ordering official. This may not be done in electronic form.

(3) The implementation of the freezing injunction order shall be impermissible where one month has passed since the date on which it was signed. Implementation shall also be permissible prior to the service on the debtor subject to the freezing injunction, however, it shall have no effect where the order is not served within one week of implementation and within one month of signature. Section 169(1), third sentence, shall apply accordingly in the case of service abroad and of public notification. Sections 930 to 932 of the Code of Civil Procedure as well as section 99(2) and section 106(1), 106(3) and 106(5) of the Act Governing Rights in Aircraft shall apply accordingly to the implementation of the freezing injunction; the enforcement authority shall take the place of the court ordering the freezing injunction and the court of enforcement, the enforcement officer shall take the place of the bailiff. Insofar as reference is made to the provisions on attachment, the corresponding provisions of this Code shall apply.

Section 325 – Cancellation of the freezing injunction

The freezing injunction order shall be cancelled where, after it has been issued, circumstances come to light suggesting that the freezing injunction order may no longer be justified.

Section 326 – Arrest of the debtor

(1) Upon application by the revenue authority responsible for the tax assessment, the local court may order the arrest of the debtor where this is necessary to secure enforcement against

the assets of the liable party. The local court in whose district the revenue authority has its seat or where the liable party is located shall be responsible.

(2) The revenue authority responsible for the tax assessment shall state in the application the nature and amount of the claim as well as the facts leading to the arrest.

(3) Sections 128(4) and sections 922 to 925, 927, 929, 933, 934(1), (3), and (4) of the Code of Civil Procedure shall apply *mutatis mutandis* to the order, implementation and cancellation of the arrest. Section 802j(2) of the Code of Civil Procedure shall not apply.

(4) The provisions of the Code of Civil Procedure shall apply to service of the order.

6th Subchapter – Realisation of collateral

Section 327 – Realisation of collateral

Where monetary claims enforceable through administrative proceedings (section 251) are not met at maturity, the enforcement authority may satisfy the claims from the collateral it has obtained to guarantee these claims. The collateral shall be realised according to the provisions of this chapter. Collateral may only then be realised where the judgement debtor has been informed of the intention of realising the collateral and at least one week has passed since this has been disclosed.

Third Chapter – Enforcement other than of monetary claims

1st Subchapter – Enforcement owing to actions, tolerance or omissions

Section 328 – Coercive measures

(1) An administrative act that is directed at the performance of an action or at the tolerance or omission of an action may be enforced using coercive measures (coercive fine, substitutive execution, direct enforcement). Section 336 shall apply to forcing the provision of collateral. The authority issuing the administrative act shall be the enforcement authority.

(2) The coercive measure least detrimental to the liable party and to the public shall be determined. The coercive measure shall be proportionate to its purpose.

Section 329 – Coercive fine

No individual coercive fine may exceed 25,000 euros.

Section 330 – Substitutive execution

Where the obligation to perform an action which may be undertaken by another party is not fulfilled, the enforcement authority may commission another party to undertake the action at the liable party's expense.

Section 331 – Direct enforcement

Where the coercive fine or substitutive execution do not attain the objective or where they are not appropriate, the revenue authority may force the liable party to perform, tolerate or omit to do an action, or to perform the action itself.

Section 332 – Giving warning of coercive measures

(1) Warning of the coercive measure shall be issued in writing. Where there are grounds to fear that, in so doing, the forced implementation of the administrative act to be implemented will be thwarted, it shall be sufficient to issue an oral warning of the coercive measure or issue a warning by other necessary means conducive to the situation. An appropriate deadline shall be set for the discharge of the obligation.

(2) The warning may be issued in combination with the administrative act instructing the performance, tolerance or omission of an action. The warning shall refer to a particular coercive measure and shall be issued separately for each obligation. Warning shall be given of the specific amount of the coercive fine.

(3) A renewed warning for the same obligation shall be permissible only then where the coercive measure first threatened is unsuccessful. Where the liable party is required to tolerate or omit to do an act, it shall be permissible to give warning of a coercive measure for each instance of an offence.

(4) Where the performance of an action is to be conducted by substitutive execution, the warning shall contain a provisional estimate of the amount of the cost.

Section 333 – Determining the coercive measures

Where the obligation is not fulfilled within the deadline set out in the warning or the liable party acts in breach of the obligation, the revenue authority shall determine the coercive measure.

Section 334 – Substitutive coercive detention

(1) Where a stipulated coercive fine cannot be recovered from a natural person, the local court may, upon application by the revenue authority, order substitute coercive detention after consulting the liable party if reference had been made to this in warning of the coercive fine. Where the local court orders substitutive coercive detention, the court shall issue an arrest warrant in which the applying authority, liable party and the reason for the arrest shall be stated.

(2) The local court shall rule by way of decision, exercising due discretion. The local court in whose district the liable party is resident or, in the absence of a residence, has his habitual abode, shall have local jurisdiction. The decision of the local court shall be subject to the appeal procedure pursuant to sections 567 to 577 of the Code of Civil Procedure.

(3) Substitutive coercive detention shall be for a minimum of one day and a maximum of two weeks. The implementation of the substitutive coercive detention shall be determined pursuant to sections 904 to 906, 909 and 910 of the Code of Civil Procedure and sections 171 to 175 of the Prison Act.

(4) Where the claim to the coercive fine becomes time-barred, the detention may no longer be enforced.

Section 335 – Termination of the coercive procedure

Where the obligation is fulfilled following determination of the coercive measure, enforcement shall be stayed.

2nd Subchapter – Forcing provision of collateral

Section 336 – Forcing provision of collateral

(1) Where the obligation to provide collateral is not fulfilled, the revenue authority may attach eligible collateral.

(2) The act of forcing provision of collateral shall be preceded by a written warning. Sections 262 to 323 shall apply accordingly.

Fourth Chapter – Costs

Section 337 – Costs of enforcement

(1) Costs (fees and expenses) shall be levied during the enforcement proceedings. The judgement debtor shall be liable for these costs.

(2) No costs shall be levied for the order for payment procedure.

Section 338 – Types of fees

Fees for attachment (section 339), confiscation (section 340) and realisation (section 341) shall be levied as part of the enforcement proceedings.

Section 339 – Attachment fee

(1) An attachment fee shall be levied for the attachment of movable items, for animals, for crops not yet separated from the ground, for receivables and for other property rights.

(2) The fee shall be incurred:

1. as soon as the enforcement officer has undertaken steps to carry out the enforcement order,

2. upon service of the order through which a receivable or another property right is to be attached.

(3) The fee shall be 26 euros.

(4) The fee shall also be levied where

1. attachment is averted by payment to the enforcement officer,

2. payment is made by some other means after the enforcement officer has been in situ,

3. an attempt at attachment has not led to the desired result because no attachable objects were uncovered, or

4. attachment in the cases of section 281(3) of this Code as well as sections 812 and 851b(1) of the Code of Civil Procedure does not occur.

Where the attachment is averted by other means, no fee shall be levied.

Section 340 – Confiscation fee

(1) A confiscation fee shall be charged for the confiscation of movable items including documents in the cases of sections 310, 315(2), fifth sentence, sections 318, 321, 331 and 336. This shall also apply where the judgement debtor voluntarily pays the enforcement officer present to undertake the enforcement.

(2) Section 339(2) number 1 shall apply accordingly.

(3) The amount of the confiscation fee shall be 26 euros. The fee shall also be levied where the items described in subsection (1) above cannot be uncovered.

Section 341 – Realisation fee

(1) A realisation fee shall be levied for auction by public sale and realisation by other means of objects.

(2) The fee shall be incurred as soon as the enforcement officer or another agent has undertaken steps to carry out the enforcement order.

(3) The fee shall be 52 euros.

(4) Where realisation is averted (section 296(1), fourth sentence), a fee of 26 euros shall be levied.

Section 342 – Plurality of debtors

(1) Where enforcement is undertaken against several debtors, the fees shall be levied on each judgement debtor, even where the enforcement officer performs several acts of enforcement on the same occasion.

(2) Where enforcement is undertaken against joint and several debtors for a joint debt on the same occasion, the fees for attachment, confiscation and realisation shall only be levied once.

The persons described in the first sentence above shall be liable for the fees as joint and several debtors.

Section 343 – (rescinded)

Section 344 – Expenses

(1) The following shall be charged as expenses:

1. clerical expenses for copies that are to be issued, or that are sent via fax, in a non-official capacity; irrespective of how such copies are produced, the amount of such clerical expenses shall be

   a) 0.50 euros per page for the first 50 pages,

   b) 0.15 euros for each additional page,

   c) 1.00 euro per page for the first 50 pages copied in colour,

   d) 0.30 euros for each additional page copied in colour.

Where electronically stored files are supplied in place of copies, expenses shall be 1.50 euros per file. A total of no more than 5 euros shall be charged for electronic documents supplied in one working step or for documents transferred to a data storage device in one working step. If, upon advance request, documents are converted from printed form to electronic form for the purpose of supplying electronically stored data, the fee for clerical expenses under the second sentence above shall not be less than the fee that would have been charged if the first sentence above were to have applied.

2. fees for postal and telecommunication services excluding fees for local area telephone services,

3. fees for service by the postal service with notice of receipt; where service is undertaken by the authority (section 5 of the Administrative Service of Documents Act), a fee of 7.50 euros shall be charged,

4. costs incurred through public notification,

5. the amounts to be paid to persons called upon to open doors and containers as well as to those called upon to search the judgement debtors,

6. costs for the movement, storage and supervision of attached items, costs of harvesting attached crops and costs for the storage, feeding, care and movement of attached animals,

7. amounts that, in corresponding application of the Judicial Remuneration and Compensation Act, are to be paid to court experts (section 107) as well as amounts to be paid to the trustees (section 318(5)),

7a. costs charged by a credit institution because a judgement debtor's cheque was not cashed,

7b. costs for transferring a registered security or for the reinstatement of a bearer instrument,

8. other amounts to be paid to third parties because of enforcement measures, especially amounts paid to agents and aides during substitutive execution or in the case of direct enforcement, and other costs incurred by carrying out direct enforcement or applying substitutive coercive detention.

(2) Taxes which the revenue authority owes because of enforcement measures shall be levied as expenses.

(3) Where items or animals which have been attached in the case of several judgement debtors are collected and realised in a single procedure, the expenses arising in this procedure shall be divided between the judgement debtors involved. The special circumstances involved in individual cases, above all the value, amount and weight of the objects, shall be taken into account in the process.

Section 345 – Travel expenses and expense allowances

In the enforcement proceedings, the judgement debtor shall not be required to refund the enforcement officer's travel expenses and the expenses which can be reimbursed through expense allowances.

Section 346 – Incorrect treatment of items, period for assessment

(1) Costs which would not have been incurred were items treated correctly shall not be levied.

(2) The period for the calculation of the costs and for the cancellation or amendment of the calculation of the costs shall be one year. It shall begin upon expiration of the calendar year in which the costs arose. An application for cancellation or amendment filed before the expiration of the period may also be met after the period has expired.

Seventh Part – Out-of-court proceedings for legal remedy

First Chapter – Permissibility

Section 347 – Permissibility of objections

(1) Objection to administrative acts

1. in fiscal matters to which this Code applies,

2. in procedures to enforce administrative acts in matters other than those described under number 1 above, insofar as the administrative acts are to be enforced by revenue authorities of the Federation or *Land* revenue authorities pursuant to the provisions of this Code,

3. in public law and occupational law matters to which this Code applies pursuant to section 164a of the Tax Consultancy Act,

4. in other matters administered by the revenue authorities, insofar as the provisions on out-of-court legal remedies have been or are declared applicable by law,

shall be permissible as a means of legal remedy. In addition, an objection shall be permissible where it is asserted that in the matters described in the first sentence above no ruling has been made on an application by the appellant for the issue of an administrative act without notification of a sufficient reason within an appropriate time limit.

(2) “Fiscal matters” shall mean all matters connected to the administration of taxes including tax refunds or matters otherwise connected with the application of tax and excise provisions

by the revenue authorities, including measures of the revenue authorities of the Federation to ensure adherence to prohibitions and restrictions in respect of the cross-border flow of goods; matters concerning the administration of fiscal monopolies shall be deemed equal to fiscal matters.

(3) The regulations of the Seventh Part shall not apply to criminal and administrative fine proceedings.

Section 348 –Impermissibility of objections

It shall not be permissible to object

1. to objection rulings (section 367),

2. to failure to rule on the objection,

3. to administrative acts of the highest revenue authorities of the Federation and the *Länder*, except for acts that provide for objection proceedings,

4. to rulings in matters contained in the second and sixth chapter of the second part of the Tax Consulting Act,

5. (rescinded)

6. in the cases described in section 172(3).

Section 349 – (rescinded)

Section 350 – Gravamen

Only the party asserting to have been aggrieved by an administrative act or the omission thereof shall be authorised to lodge an objection.

Section 351 – Binding effect of other administrative acts

(1) Unless the provisions on the cancellation or amendment of administrative acts provide otherwise, administrative acts amending incontestable administrative acts may be challenged only to the extent that the amendment suffices.

(2) Rulings on a basic assessment notice (section 171(10)) may be challenged only by contesting this notice and not by contesting the follow-up notice.

Section 352 – Authority to object in the case of joint determination

(1) The following may lodge an objection against notices on the joint and separate determination of tax bases:

1. managing directors appointed as representatives or, where such are not available, the agent authorised to object within the meaning of subsection (2) below,

2. where persons in number 1 above are not available, every partner, co-owners or persons jointly entitled against whom a notice of determination has been issued or would have to be issued,

3. even where persons in number 1 above are available, former partners, co-owners or persons jointly entitled against whom a notice of determination has been issued or would have to be issued,

4. insofar as it involves the question of who has a holding in the amount determined and how this amount is divided between the individual participants involved, everyone who is affected by the corresponding findings,

5. insofar as it involves a matter of personal concern to a participant, everyone who is affected by the corresponding findings.

(2) The person authorised to object within the meaning of subsection (1) number 1 above shall be the common authorised recipient within the meaning of section 183(1), first sentence, or section 6(1), first sentence, of the Ordinance of 19 December 1986 on the separate determination of tax bases pursuant to section 180(2) of the Fiscal Code (Federal Law Gazette I, p. 2663). Where the persons involved in the determination have not appointed a common authorised recipient, the person authorised to object within the meaning of subsection (1) number 1 above shall be the nominal authorised recipient pursuant to section 183(1), second sentence, or the authorised recipient appointed by the revenue authority pursuant to section 183(1), third to fifth sentences, or pursuant to section 6(1), third to fifth sentences, of the Ordinance on the separate determination of tax bases pursuant to section 180(2) of the Fiscal Code; this shall not apply to persons involved in the determination who raise an objection

with the revenue authority against the authorised recipient's authority to object. The first and second sentences above shall only apply where the participants in the determination declaration or in the call for the appointment of an authorised recipient have been instructed of the authorised recipient's authority to object.

Section 353 – Legal successor's authority to object

Where a notice of determination, a notice assessing the base amount of real property tax or an apportionment and allocation notice with respect to a base amount of real property tax has an impact on the legal successor without his having been informed of this (section 182(2), section 184(1), fourth sentence, sections 185 and 190), the legal successor may lodge an objection only within the relevant period for objection applicable to the legal predecessor.

Section 354 – Waiver of objection

(1) The submission of an objection may be waived following issue of the administrative act. The waiver may also be made when submitting a self-assessed tax return in the event that the tax assessed does not deviate from that in the self-assessed tax return. The waiver shall render objection impermissible.

(1a) Insofar as bases for taxation may be of significance for a mutual agreement procedure or arbitration pursuant to an agreement within the meaning of section 2, entitlement to lodge an objection may be waived. The tax base to which the waiver applies shall be described precisely.

(2) The waiver shall be made to the revenue authority responsible in writing or declared for record; it may not contain any further declarations. Where the invalidity of the waiver is subsequently asserted, section 110(3) shall apply *mutatis mutandis*.

Second Chapter – Procedural rules

Section 355 – Period for objection

(1) Objection pursuant to section 347(1), first sentence, shall be lodged within one month of notice of the administrative act. An objection against a self-assessed tax return shall be lodged within one month of the revenue authority receiving the self-assessed tax return, in the cases of section 168, second sentence, within one month of disclosure of the agreement.

(2) No time period shall apply to the objection pursuant to section 347(1), second sentence.

Section 356 – Instructions on applicable legal remedies

(1) Where an administrative act is issued in writing or in electronic form, the time period for lodging an objection shall begin only if the participant has been instructed, in line with the manner used for that act, about the possibility to object, the revenue authority where such an objection must be lodged, the location of the revenue authority, and the deadline for lodging an objection.

(2) Where such instructions have not been given or have been given incorrectly, the lodging of an objection shall be permissible only within one year following disclosure of the administrative act, unless lodging an objection before such one-year period expires is not possible due to *force majeure* or unless instructions are provided in writing or electronically that it is not possible to lodge an objection. Section 110(2) shall apply *mutatis mutandis* for the instance of *force majeure*.

Section 357 – Submission of the objection

(1) The objection shall be submitted in written or electronic form or lodged orally. For the purpose of identifying the appellant, it shall suffice for the appellant to be indicated in the objection. The objection shall not be adversely affected if it is designated incorrectly.

(2) The objection shall be lodged with the authority whose administrative act is being disputed or to which an application for an administrative act was submitted. An objection against the determination of tax bases or against the assessment of a base amount of non-personal tax may also be entered with the authority responsible for issuing the tax assessment notice. An objection directed against an administrative act that an authority issued for the responsible revenue authority on the basis of a legal provision may also be lodged with the responsible revenue authority. Lodging a written or electronic objection with another authority shall have no adverse effects if the objection is transmitted, prior to the deadline for objection, to one of the authorities where an objection may be lodged in accordance with the first to third sentences above.

(3) The administrative act against which the objection is directed should be stated when submitting the objection. The extent to which an administrative act is being challenged and its

cancellation applied for should be indicated. Furthermore, both the facts justifying the objection and the evidence should be cited.

Section 358 – Verification of the requirements for permissibility

The revenue authority appointed to rule on the objection shall verify whether the objection is permissible and, in particular, has been submitted in the prescribed form and within the prescribed deadline. Where any one of these requirements is not meet, the objection shall be rejected as impermissible.

Section 359 – Participants

The participants in the proceedings shall be:

1. whoever has submitted the objection (appellant),

2. whoever has been enlisted in the proceedings.

Section 360 – Enlistment of others in the proceedings

(1) The revenue authority appointed to rule on the objection may enlist other persons, ex officio or upon application, whose legal interests, pursuant to the tax laws, will be affected by the ruling, including, in particular, those who, pursuant to the tax laws, are also liable in addition to the taxpayer. Prior to the enlistment of others, the person who submitted the objection shall be consulted.

(2) Where a fiscal charge is administered for another entity entitled to the fiscal charge, this entity may not be enlisted merely because its interests, as the entity entitled to the fiscal charge, will be affected by the ruling.

(3) Where third parties are involved in the contentious legal relationship in such a way that a ruling can only be taken in a uniform manner in relation to them as well, they shall be enlisted in the proceedings. This shall not apply for persons jointly entitled who, pursuant to section 352, are not authorised to submit an objection.

(4) Whoever is enlisted in the proceedings may assert the same rights as the person who has submitted the objection.

(5) Where pursuant to subsection (3) above more than 50 persons are candidates for enlistment, the revenue authority may decree that only those persons who apply for enlistment within a particular period shall be enlisted. Individual notification of the decree may be waived where the decree is published in the Federal Gazette and is furthermore published in the daily newspapers which are disseminated in the area in which the ruling is likely to have an effect. The deadline shall be at least three months from the date of publication in the Federal Gazette. The publication in the daily newspapers shall state the date upon which the deadline expires. Section 110 shall apply accordingly with respect to restitutio in integrum where a time limit has not been complied with. The revenue authority should enlist persons who will be evidently affected to a particular degree by the ruling including, even without an application being made for such.

Section 361 – Suspension of implementation

(1) Subject to the provisions of subsection (4) below, the submission of an objection shall not have the effect of blocking implementation of the disputed administrative act, especially where the levy of a fiscal charge is concerned. The same shall apply when contesting basic assessment notices for the follow-up notices based thereon.

(2) The revenue authority which issued the disputed administrative act may suspend implementation in whole or in part; section 367(1), second sentence, shall apply *mutatis mutandis*. Upon application, suspension should be granted where serious doubts exist as to the legality of the administrative act being disputed or where implementation would result for the person affected in unreasonable hardship not required by overriding public interests. Where the administrative act has already been implemented, the suspension of implementation shall be replaced by the cancellation of the implementation. In the case of tax assessment notices, the suspension and the cancellation of implementation shall be limited to the assessed tax minus the withheld taxes to be credited, the corporation tax to be credited and the assessed prepayments; this shall not apply where the suspension or the cancellation of implementation appears to be necessary in order to prevent substantial disadvantages. Suspension may be made dependent upon provision of collateral.

(3) Insofar as the implementation of a basic assessment notice is suspended, the implementation of a follow-up notice shall also be suspended. The issue of a follow-up notice shall remain permissible. In the case of the suspension of a follow-up notice, a ruling shall be

made on the provision of collateral, unless the provision of collateral was specifically excluded when suspending the implementation of the basic assessment notice.

(4) The submission of an objection against the prohibition of the operation of a trade or business or the exercise of an occupation or profession shall have the effect of blocking implementation of the disputed administrative act. The revenue authority which issued the administrative act may eliminate the blocking effect in whole or in part by specific order where the revenue authority deems this necessary in the public interest; the revenue authority shall substantiate the argument for the public interest in writing. Section 367(1), second sentence, shall apply *mutatis mutandis*.

(5) Rejection of the suspension of the implementation may only be referred to the court pursuant to section 69(3) and (5), third sentence, of Code of Procedure for Fiscal Courts.

Section 362 – Withdrawal of the objection

(1) An objection may be withdrawn up until the point at which notification is given of the ruling. Section 357(1) and (2) shall apply *mutatis mutandis*.

(1a) Insofar as tax bases may be of significance for a mutual agreement procedure or arbitration pursuant to an agreement within the meaning of section 2, the objection against this may be withdrawn subject to limitations. Section 354(1a), second sentence, shall apply accordingly.

(2) The withdrawal shall result in the forfeiture of the objection submitted. Where the invalidity of the withdrawal is subsequently asserted, section 110(3) shall apply *mutatis mutandis*.

Section 363 – Suspending and adjourning the proceedings

(1) Where the ruling depends in whole or in part on the existence or non-existence of a legal relationship which is the object of a pending legal dispute or which must be determined by a court or an administrative authority, the revenue authority may suspend the ruling until the other legal dispute is resolved or until the court or administrative authority has ruled.

(2) The revenue authority may, with the consent of the appellant, adjourn the proceedings where this appears appropriate on important grounds. Where proceedings are pending at the

Court of Justice of the European Union, the Federal Constitutional Court or a highest federal court with respect to the constitutionality of a legal norm or to a legal question, and where the objection is based upon this, the objection proceedings shall be adjourned to this extent; this shall not apply if tax has been provisionally assessed pursuant to section 165(1), second sentence, number 3 or 4. With the consent of the highest revenue authority, it may be decreed, through a general order to be publicly disclosed, for groups of similar cases that objection proceedings are also adjourned to this extent in cases other than those contained in the first and second sentences above. The objection proceedings shall be resumed upon application by the appellant or where the revenue authority informs the appellant accordingly.

(3) Where an application for the suspension or adjournment of proceedings is rejected or the suspension or adjournment of proceedings revoked, the unlawfulness of the rejection or revocation may only be asserted by court action against the objection ruling.

Section 364 – Disclosure of the taxation documents

The participants shall, insofar as this has not yet occurred, be informed of the taxation documents upon application or, where the grounds of the objection give cause for such, *ex officio*.

Section 364a – Discussion of the current and legal status

(1) Upon application by the appellant, the revenue authority should discuss the current and legal status before issuing an objection ruling. Further participants may be invited where the revenue authority believes this to be expedient. The revenue authority may invite the appellant and other participants to a discussion even in the absence of an application by the appellant.

(2) The revenue authority may elect not to hold a discussion with more than ten participants. Where the participants appoint a common representative within an appropriate deadline set by the revenue authority, the current and legal status should be discussed with him.

(3) The participants may elect to be represented by an authorised representative. They may also be invited to the discussion in person where the revenue authority believes this to be expedient.

(4) Attendance may not be forced pursuant to section 328.

Section 364b – Determination of deadlines

(1) The revenue authority may set deadlines for the appellant

1. to state the facts through the consideration or non-consideration of which he feels aggrieved,

2. to clarify specific matters requiring clarification,

3. to specify evidence or to present documents insofar he is obliged to do this.

(2) Declarations and evidence provided only after the deadline set pursuant to subsection (1) above has expired shall not be taken into consideration. Section 367(2), second sentence, shall remain unaffected. Section 110 shall apply accordingly where the deadline is exceeded.

(3) Upon setting the deadline, the appellant shall be instructed of the legal consequences pursuant to subsection (2) above.

Section 365 – Application of procedural rules

(1) The provisions applying to the issue of the disputed or desired administrative act shall furthermore apply *mutatis mutandis* to the proceedings regarding the objection.

(2) In the cases described in section 93(5), 96(7), second sentence, and sections 98 to 100, the participants and their authorised representatives and advisors (section 80) shall be given the opportunity to participate in the taking of evidence.

(3) Where the contested administrative act is amended or replaced, the new administrative act shall become the subject matter of the objection proceedings. The first sentence above shall apply accordingly where

1. an administrative act is corrected pursuant to section 129, or

2. an administrative act replaces a disputed, invalid administrative act.

Section 366 – <u>Form, content and issuance of the objection ruling</u>

Objection rulings shall be substantiated, shall contain instructions on applicable legal remedies and shall be issued to the participants in written or electronic form.

Section 367 – Objection ruling

(1) The revenue authority which has issued the administrative act shall take a decision on the objection by means of an objection ruling. Where another revenue authority has subsequently become responsible for a tax case, this revenue authority shall make the ruling; section 26, second sentence, shall remain unaffected.

(2) The revenue authority ruling on the objection shall re-examine the matter in its entirety. The administrative act may also be amended to the detriment of the appellant where he has been instructed of the possibility of a detrimental ruling stating the reasons and he has been given the opportunity to comment on this. An objection ruling shall only be required to the extent that the revenue authority does not remedy the objection.

(2a) The revenue authority may rule on parts of the objection in advance where this is expedient. In this ruling, the revenue authority shall determine which parts are not to become final and binding.

(2b) Pending objections which concern a legal issue ruled on by the Court of Justice of the European Union, the Federal Constitutional Court, or the Federal Fiscal Court and which cannot be remedied before these courts following the outcome of the proceedings may be rejected by way of a general order. The highest revenue authority shall have subject-matter jurisdiction over the issue of the general order. The general order shall be published in the Federal Tax Gazette and on the website of the Federal Ministry of Finance. The general order shall be deemed disclosed on the date following the issuance of the Federal Tax Gazette in which such order is published. Notwithstanding section 47(1) of the Code of Procedure for Fiscal Courts, the deadline for court action shall end after the expiry of one year following the date of disclosure. Section 63(1) number 1 of the Code of Procedure for Fiscal Courts shall also apply insofar as an objection is rejected by a general order pursuant to the first sentence above.

(3) Where the objection is directed against an administrative act which an authority issued for the revenue authority responsible on the basis of a legal provision, the revenue authority responsible shall rule on the objection. The authority acting for the revenue authority responsible shall also be authorised to remedy the objection.

Section 368 – (rescinded)

Eighth Part – Provisions relating to crimes and administrative fines, criminal and administrative fine proceedings

First Chapter – Provisions on crimes

Section 369 – Tax crimes

(1) The following shall be tax crimes (customs crimes):

1. acts which are punishable under the tax laws,

2. the illegal import, export or transit of goods,

3. the forging of revenue stamps or acts preparatory thereto, insofar as the act relates to tax stamps,

4. aiding and abetting a person who has committed an act under numbers 1 to 3 above.

(2) Tax crimes shall be subject to the general provisions of criminal law unless otherwise provided for by the tax laws' provisions on crime.[39]

Section 370 – Tax evasion

(1) A penalty of up to five years' imprisonment or a monetary fine shall be imposed on any person who

1. furnishes the revenue authorities or other authorities with incorrect or incomplete particulars concerning matters that are relevant for tax purposes,

2. fails to inform the revenue authorities of facts that are relevant for tax purposes when obliged to do so, or

3. fails to use revenue stamps or revenue stamping machines when obliged to do so

and as a result understates taxes or derives unwarranted tax advantages for himself or for another person.

(2) Attempted perpetration shall be punishable.

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[39] Cf. Annex I, Chapter III C of the Unification Treaty in conjunction with Article 1 of the Unification Treaty Act (Federal Law Gazette II, p. 885, 954; Federal Tax Gazette I, p. 654).

(3) In particularly serious cases, a penalty of between six months and ten years' imprisonment shall be imposed.

In general, a particularly serious case is one in which the perpetrator

1. deliberately understates taxes on a large scale or derives unwarranted tax advantages,

2. abuses his authority or position as a public official or European public official (section 11(1) number 2a of the Criminal Code),

3. solicits the assistance of a public official or European public official (section 11(1) number 2a of the Criminal Code) who abuses his authority or position,

4. repeatedly understates taxes or derives unwarranted tax advantages by using falsified or forged documents, or

5. as a member of a group formed for the purpose of repeatedly committing acts pursuant to subsection (1) above, understates value-added taxes or excise duties or derives unwarranted VAT or excise duty advantages.

6. uses a third-country company (as defined in section 138(3)) over which he can directly or indirectly exercise controlling or decisive influence alone or jointly with related parties (as defined in section 1(2) of the External Tax Relations Act), where such use is for the purpose of concealing facts that are relevant for tax purposes and in this way understating his taxes or obtaining unwarranted tax benefits on an ongoing basis.[40]

(4) Taxes shall be deemed to have been understated in particular where they are not assessed at all, in full or in time; this shall also apply even where the tax has been assessed provisionally or assessed subject to review or where a self-assessed tax return is deemed to be equal to a tax assessment subject to review. Tax advantages shall also include tax rebates; unwarranted tax advantages shall be deemed derived to the extent that these are wrongfully granted or retained. The conditions of the first and second sentences above shall also be fulfilled where the tax to which the act relates could have been reduced for other reasons or the tax advantage could have been claimed for other reasons.

[40] Parentheticals added for purposes of clarity.

(5) The act may also be committed in relation to goods whose importation, exportation or transit is banned.

(6) Subsections (1) to (5) above shall apply even where the act relates to import or export duties which are administered by another Member State of the European Communities or to which a Member State of the European Free Trade Association or a country associated therewith is entitled. The same shall apply where the act relates to value-added taxes or harmonised excise duties on goods designated in Article 3(1) of Council Directive 92/12/EEC of 25 February 1992 (OJ L 76, p. 1) which are administered by another Member State of the European Communities.

(7) Irrespective of the *lex loci delicti*, the provisions of subsections (1) to (6) above shall also apply to acts committed outside the territory of application of this Code.

Section 370a – (rescinded)

Section 371 – Voluntary disclosure of tax evasion

(1) Whoever, in relation to all tax crimes for a type of tax, fully corrects the incorrect particulars submitted to the revenue authority, supplements the incomplete particulars submitted to the revenue authority or furnishes the revenue authority with the previously omitted particulars shall not be punished pursuant to section 370 on account of these tax crimes. The information provided must cover all tax crimes for one type of tax that have not become time-barred, and at least all tax crimes for one type of tax within the last 10 calendar years.

(2) Exemption from punishment shall not apply if,

1. prior to the correction, supplementation or subsequent furnishing of particulars in connection with voluntarily disclosed tax crimes that have not become time-barred,

    a) the person involved in the act, his representative, the beneficiary as referred to in section 370(1), or the beneficiary's representative has been notified of an audit order in accordance with section 196, limited to the material and temporal scope of the ordered external audit, or

b) the person involved in the act or his representative has been notified of the initiation of criminal proceedings or administrative fine proceedings, or

c) a public official from the revenue authority has already appeared for the purpose of carrying out a tax audit, limited to the material and temporal scope of the external audit, or

d) a public official has already appeared for the purpose of investigating a tax crime or tax-related administrative offence, or

e) a public official from the revenue authority has already appeared and provided proof of identity for the purpose of conducting a VAT inspection in accordance with section 27b of the VAT Act, a wages tax inspection in accordance with section 42g of the Income Tax Act or an inspection in accordance with other tax law provisions, or

2. one of the tax crimes had already been fully or partially detected at the time of the correction, supplementation or subsequent furnishing of particulars and the perpetrator knew this or should have expected this upon due consideration of the facts of the case,

3. the tax understated pursuant to section 370(1) or the unwarranted tax advantage derived by someone for himself or for another person exceeds the amount of 25,000 euros per act, or

4. a particularly serious case exists as specified in section 370(3), second sentence, numbers 2 to 6.

In the event that exemption from punishment is ruled out in accordance with the first sentence, numbers 1a) and 1c) above, this shall not preclude the submission of a correction in accordance with subsection (1) above in connection with tax crimes for one type of tax that do not fall under the scope of the first sentence, numbers 1a) and 1c) above.

(2a) Insofar as tax evasion has been committed by breaching the obligation to submit a complete and accurate provisional VAT return or wages tax return on time, exemption from punishment shall apply, notwithstanding subsection (1) and subsection (2), first sentence, number 3 above, if the perpetrator corrects the incorrect particulars submitted to the competent revenue authority, supplements the incomplete particulars submitted to the

competent revenue authority, or furnishes the competent revenue authority with the previously omitted particulars. Subsection (2), first sentence, number 2 above shall not apply if the act was detected upon the discovery that a provisional VAT return or wages tax return was corrected or submitted late. The first and second sentences above shall not apply to tax returns relating to the calendar year. In order for a voluntary disclosure relating to a tax return for a particular calendar year to be deemed complete, it shall not be compulsory to correct, supplement or subsequently furnish particulars for provisional returns concerning time periods following that calendar year.

(3) Where tax has already been understated or tax advantages have already been derived, exemption from punishment shall be granted to the person involved in the act only if he pays, within the reasonable period of time allowed to him, the taxes which were evaded to his benefit through the perpetration of the act, the interest payable on the evaded taxes in accordance with section 235, and the interest payable under section 233a insofar as such interest is charged on the interest payable on the evaded taxes in accordance with section 235(4). In cases covered by the first sentence of subsection (2a) above, the first sentence above shall apply with the proviso that the timely payment of interest in accordance with section 233a or section 235 is immaterial.

(4) Where the notification provided for in section 153 is punctually and duly filed, a third party who failed to make the statements referred to in section 153 or who made such statements incorrectly or incompletely shall not be prosecuted unless he or his representative was previously notified of the initiation of criminal or administrative fine proceedings resulting from the act. Subsection (3) above shall apply accordingly where the third party has acted for his own benefit.

Section 372 – Illegal import, export, or transit of goods

(1) Whoever imports, exports or transports goods in violation of a prohibition shall be deemed to have illegally imported, exported or transported goods.

(2) The perpetrator shall be punished pursuant to section 370(1) and (2) where the act is not subject to punishment or a monetary fine as a violation of import, export, or transit prohibitions pursuant to other provisions.

Section 373 – Professional, violent or organised smuggling

(1) Whoever evades import or export duties on a commercial basis or who illegally imports, exports or transports goods on a commercial basis in contravention of monopoly regulations shall be subject to imprisonment for a period of six months to 10 years. In less serious cases, the penalty shall be imprisonment for up to five years or a monetary fine.

(2) Punishment shall also be imposed on any person who

1. evades import or export duties or illegally imports, exports or transports goods, and in committing these acts he or another participant carries a firearm,

2. evades import or export duties or illegally imports, exports or transports goods, and in committing these acts he or another participant carries with him a weapon or some other tool or means to prevent or overcome the resistance of another person by violence or by the threat of violence, or

3. as a member of a group formed for the purpose of repeatedly evading import or export duties or of illegally importing, exporting or transporting goods, commits such an act.

(3) Attempted perpetration shall be punishable.

(4) Section 370(6), first sentence, and (7) shall apply accordingly.

Section 374 – Receiving, holding or selling goods obtained by tax evasion

(1) Imprisonment for up to five years or a monetary fine shall be imposed upon any person who purchases or otherwise acquires for himself or for a third party, sells or helps to sell products or goods in connection with which (a) excise duties or import and export duties pursuant to Article 5 numbers 20 and 21 of the Union Customs Code have been evaded or (b) the illegal import, export or transit of goods pursuant to section 372(2) and section 373 has been committed, with the aim of enriching himself or a third party.[41]

(2) Where the perpetrator acts commercially or as a member of a group formed for the purpose of repeatedly committing crimes pursuant to subsection (1) above, a penalty of between six months and ten year's imprisonment shall be imposed. In less serious cases, the penalty shall be imprisonment for up to five years or a monetary fine.

(3) Attempted perpetration shall be punishable.

[41] Subdivision of sentence into (a) and (b) added to English translation for purposes of clarity.

(4) Section 370(6) and (7) shall apply accordingly.

Section 375 – Incidental consequences

(1) In addition to at least one year's imprisonment for

1. tax evasion,

2. illegally importing, exporting or transporting goods pursuant to section 372(2), section 373,

3. receiving, holding or selling goods obtained by tax evasion, or

4. aiding and abetting a person who has committed an act under numbers 1 to 3 above,

the court may disqualify someone from holding public office and acquiring rights from public elections (section 45(2) of the Criminal Code).

(2) In cases where tax has been evaded, goods have been illegally imported, exported or transported pursuant to section 372(2) and section 373, or goods acquired by tax evasion have been received, held or sold,

1. the products, goods and other items in connection with which (a) excise duties or import and export duties pursuant to Article 5 numbers 20 and 21 of the Union Customs Code have been evaded or (b) the illegal import, export or transport of goods or the receiving, holding or selling of goods obtained by tax evasion has been committed, and[42]

2. the means of transport used in the act,

may be confiscated. Section 74a of the Criminal Code shall apply.

Section 376 – Limitation period for prosecution[43]

(1) In particularly serious cases of tax evasion as specified in section 370(3), second sentence, numbers 1 to 6, the limitation period is 10 years.

[42] Subdivision into (a) and (b) added to English translation for purposes of clarity.
[43] See sections 78, 78a, 78b and 78c of the Criminal Code and Article 315a of the Introductory Act to the Criminal Code; text provided in Annex 30.

(2) The limitation period for the prosecution of a tax crime shall also be interrupted where the accused is notified of the initiation of administrative fine proceedings or this notification is ordered.

Second Chapter – Provisions on administrative fines

Section 377 – Tax-related administrative offences

(1) Tax-related administrative offences (customs-related administrative offences) are offences that may be punished by monetary fine in accordance with this Code or other tax legislation.

(2) The provisions of the first part of the Administrative Offences Act shall apply to tax-related administrative offences insofar as the administrative fine provisions in this Code or in other tax legislation do not specify otherwise.

Section 378 – Reckless understatement of tax

(1) Whoever as a taxpayer or a person looking after the affairs of a taxpayer recklessly commits one of the acts described in section 370(1) shall be deemed to have committed an administrative offence. Section 370(4) to (7) shall apply accordingly.

(2) The administrative offence may be punished with a monetary fine of up to 50,000 euros.

(3) A monetary fine shall not be set insofar as the perpetrator corrects the incorrect particulars submitted to the revenue authority, supplements the incomplete particulars submitted to the revenue authority, or furnishes the revenue authority with the previously omitted particulars before he or his representative has been notified of the initiation of criminal or administrative fine proceedings resulting from the act. Where tax has already been understated or tax advantages have already been derived, a monetary fine shall not be set if the perpetrator pays, within the reasonable period of time allowed to him, the taxes that were understated to his benefit on the basis of this act. Section 371(4) shall apply accordingly.

Section 379 – General minor tax fraud

(1) An administrative offence shall be deemed to have been committed by any person who intentionally or recklessly

1. issues documents that are factually incorrect,

2. places documents into circulation for a fee,

3. fails to record or to have recorded, records or has recorded in a factually incorrect manner, fails to enter or have entered in the accounts, or enters or has entered in the accounts in a factually incorrect manner, transactions or business activity that according to the law must be entered in the accounts or otherwise recorded,

4. fails to use a system as prescribed in the first sentence of section 146(1) or uses such a system incorrectly,

5. fails to protect a system as prescribed in the second sentence of section 146(1) or protects such a system incorrectly or

6. advertises or markets a system or software for commercial purposes in violation of the fifth sentence of section 146a(1)

and in so doing enables taxes to be understated or unwarranted tax advantages to be derived. The first sentence, number 1 above shall also apply where import or export duties that are administered by another Member State of the European Union or to which a State, which on the basis of an association agreement or preferential agreement grants preferential treatment to goods deriving from the European Union, is entitled can be understated; section 370(7) shall apply accordingly. The same shall apply where the act relates to valued-added taxes that are administered by another Member State of the European Union.

(2) An administrative offence shall be deemed to be committed by any person who intentionally or recklessly

1. fails to comply at all, in full or on time with the notification requirements under the first sentence of section 138(2),

1a. fails to prepare a record at all, correctly, or completely, in violation of section 144(1) or (2), first sentence, in conjunction with section 144(5),

1b. contravenes an ordinance pursuant to section 177c(1) or an enforceable order based on such an ordinance, insofar as the ordinance refers to this provision on fines for a specified offence,

1c. fails to submit a country-by-country report fully or on time (section 138a(6)) in violation of section 138a(1), (3) or (4) or fails to provide notification fully or on time (section 138a(6)) in violation of the third sentence of section 138a(4).

1d. fails to comply at all, in full or on time with the notification requirements under section 138b(1) to (3),

2. breaches the obligations under section 154(1) to (2c).

(3) An administrative offence shall be deemed to be committed by any person who intentionally or negligently contravenes a condition pursuant to section 120(2) number 4 to which an administrative act has been attached for the purposes of special fiscal supervision (sections 209 to 217).

(4) In cases where the relevant actions cannot be punished pursuant to section 378, administrative offences under subsection (1), first sentence, numbers 1 and 2, subsection (2) numbers 1 to 1b and number 2 and subsection (3) may be punished with a fine of up to 5,000 euros, administrative offences under subsection 2 number 1c may be punished with a fine of up to 10,000 euros, and administrative offences under subsection 1, first sentence, numbers 3 to 6 may be punished with a fine of up to 25,000 euros.

Section 380 – Endangerment of withholding taxes

(1) An administrative offence shall be deemed to be committed by any person who intentionally or recklessly fails to comply at all, in full or in time with his obligation to withhold or remit to revenue authorities tax amounts which are due.

(2) The administrative offence may be punished with a monetary fine of up to 25,000 euros where the action cannot be punished pursuant to section 378.

Section 381 – Endangerment of excise tax

(1) An administrative offence shall be deemed to be committed by any person who intentionally or recklessly contravenes the provisions of excise laws or the ordinances issued in connection therewith

1. on the obligations regarding the preparation, safeguarding or subsequent auditing of taxation,

2. on the packaging and labelling of products subject to excise duty or goods containing such products, or on the restrictions on trade or use for such products or goods, or

3. on the use of untaxed goods in free ports

insofar as excise laws or the ordinances issued in connection therewith refer to this provision on fines for a specified offence.

(2) The administrative offence may be punished with a monetary fine of up to 5,000 euros where the action cannot be punished pursuant to section 378.

Section 382 – Endangerment of import and export duties

(1) An administrative offence shall be deemed to be committed by any person who, as the liable party or the person looking after the affairs of a liable party, intentionally or negligently contravenes customs regulations, ordinances issued in connection therewith or Regulations of the Council of the European Union or the European Commission which apply

1. to the recording by customs of the movement of goods across the frontiers of the customs territory of the European Communities as well as across the free zone borders,

2. to the placement of goods under a customs procedure and the implementation thereof or to obtaining another customs-approved treatment or use of goods,

3. to the free zones, border areas and territories subject to border surveillance

insofar as such customs regulations or ordinances issued in connection therewith or issued on the basis of subsection (4) below refer to this provision on fines for a specified offence.

(2) Subsection (1) above shall also apply where the customs regulations and the ordinances issued in connection therewith apply *mutatis mutandis* to excise duties.

(3) The administrative offence may be punished with a monetary fine of up to 5,000 euros where the action cannot be punished pursuant to section 378.

(4) The Federal Ministry of Finance may issue ordinances specifying the elements of offences contained in Regulations of the Council of the European Union or the European Commission which may be punished pursuant to subsections (1) to (3) above as administrative offences subject to a monetary fine insofar as this is necessary for the implementation of these laws and insofar as such elements concern obligations regarding the presentation, storage or treatment of goods, the submission of declarations or notifications, the keeping of written records, or the completion or submission of customs documents or the inclusion of notes in such documents.

Section 383 – Unauthorised acquisition of claims to a tax refund and rebate

(1) An administrative offence shall be deemed to be committed by any person who, in breach of section 46(4), first sentence, acquires claims to refunds or rebates.

(2) The administrative offence may be punished with a monetary fine of up to 50,000 euros.

Section 383a – (rescinded)

Section 383b – Breach of obligations in transmitting data contained in authorisations granting powers of representation

(1) An administrative offence shall be deemed to be committed by any person who intentionally or recklessly

1. transmits to the revenue authorities authorisations granting powers of representation that contain incorrect data, in violation of the third sentence of section 80a(1) or

2. fails, in violation of the fourth sentence of section 80a(1), to notify the revenue authorities without delay if a principal revokes or modifies an authorisation transmitted in accordance with section 80a(1).

(2) The administrative offence may be punished with a fine of up to 10,000 euros.

Section 384 – Limitation period for prosecution

The period of limitation for the prosecution of tax-related administrative offences pursuant to sections 378 to 380 shall become time-barred after five years.

Section 384a – Infringements under Article 83(4) to (6) of Regulation (EU) 2016/679

(1) The provisions in this Code and in other tax legislation that pertain to tax-related administrative offences shall not apply to the extent that Article 83 of Regulation (EU) 2016/679 simultaneously applies, directly or in accordance with section 2a(5), to an offence.

(2) Section 41 of the Federal Data Protection Act shall apply accordingly to infringements under Article 83(4) to (6) of Regulation (EU) 2016/679 that fall within the scope of this Code.

(3) A notification as per Article 33 of Regulation (EU) 2016/679 or a communication as per Article 34(1) of Regulation (EU) 2016/679 may be used in criminal proceedings or administrative fine proceedings against a reportable person or one of that person's relatives as specified in section 52(1) of the Code of Criminal Procedure only with the consent of the reportable person.

(4) Within the scope of this Code, no administrative fines as per Article 83(4) to (6) of Regulation (EU) 2016/679 may be imposed against revenue authorities and other public entities.

Third Chapter – Criminal proceedings

1st Subchapter – General provisions

Section 385 – Validity of procedural rules

(1) Unless otherwise specified in the following provisions, criminal proceedings for tax crimes shall be governed by the general laws on criminal proceedings, namely the Code of Criminal Procedure, the Act on the Constitution of Courts and the Juvenile Courts Act.

(2) With the exception of section 386(2) as well as sections 399 to 401, the provisions of this chapter applicable to tax crimes shall apply accordingly where there is suspicion of a crime aimed at obtaining pecuniary benefits by misrepresenting facts of significance for taxation to the revenue authority or another authority and no law regarding tax crimes is infringed.

Section 386 – Jurisdiction of the revenue authority in the case of tax crimes[44]

(1) Where a tax crime is suspected, the revenue authority shall investigate the facts of the case. The revenue authority within the meaning of this chapter shall be the main customs office, the tax office, the Federal Central Tax Office and the child benefits disbursement office.

(2) The revenue authority shall conduct the investigation independently within the limits laid down in sections 399(1), 400 and 401 where the act

1. is exclusively a tax crime or

2. simultaneously violates other criminal laws, and such violation involves church taxes or other public-law levies linked to tax bases , base amounts of non-personal taxes or tax amounts.

(3) Subsection (2) above shall not apply as soon as an arrest warrant or a remand to a psychiatric hospital centre is issued against the accused for the act.

(4) The revenue authority may hand the criminal matter over to the public prosecutor's office at any time. The public prosecutor's office may take over the criminal matter at any time. In

[44] For subsidy fraud, see section 264 of the Criminal Code.

both cases, the public prosecutor's office may, with the mutual agreement of the revenue authority, return the criminal matter to the revenue authority.

Section 387 – Revenue authority with subject-matter jurisdiction

(1) The revenue authority administering the tax concerned shall have subject-matter jurisdiction.

(2) Jurisdiction pursuant to subsection (1) above may be assigned by way of ordinance to one revenue authority for an area covered by several revenue authorities, insofar as this appears appropriate considering the economic situation or transport infrastructure, the structure of the administrative authorities and other local needs. Such ordinances shall be issued by the government of a *Land* insofar as the revenue authority is an authority of that *Land*, and in all other cases by the Federal Ministry of Finance. An ordinance issued by the Federal Ministry of Finance shall not require the consent of the Bundesrat. The Federal Ministry of Finance may delegate the powers under the first sentence above to a higher federal authority by way of an ordinance that shall not require the consent of the Bundesrat. The government of a *Land* may delegate these powers to the highest authority of the *Land* responsible for the revenue administration.

Section 388 – Revenue authority with local jurisdiction

(1) The revenue authority with local jurisdiction shall be the revenue authority

1. in whose district the tax crime was committed or detected,

2. which is responsible for the fiscal matters at the time of initiating the criminal proceedings, or

3. in whose district the accused has his residence at the time of initiating the criminal proceedings.

(2) Where the residence of the accused changes following the initiation of criminal proceedings, the revenue authority in whose district the new residence is located shall also have local jurisdiction. The same shall apply where the revenue authority's jurisdiction for fiscal matters changes.

(3) Where the accused does not have his residence within the territory of application of this Code, jurisdiction shall be determined by the habitual abode as well.

Section 389 – Related criminal matters

In the case of related criminal matters, which would, pursuant to section 388, individually fall within the jurisdiction of several revenue authorities, each of these revenue authorities shall be competent. Section 3 of the Code of Civil Procedure shall apply accordingly.

Section 390 – Multiple jurisdiction

(1) Where, pursuant to sections 387 to 389, several revenue authorities have jurisdiction, the revenue authority which first initiated criminal proceedings regarding the act shall be given precedence.

(2) At the request of this revenue authority, another revenue authority responsible shall take over the criminal matter where this appears expedient for the investigations. In cases of doubt, the authority to which the requested revenue authority is subordinate shall decide.

Section 391 – Competent court

(1) Where the local court has subject-matter jurisdiction, the local court in whose district the *Land* court has its seat shall have local jurisdiction. Irrespective of a wider provision pursuant to section 58(1) of the Act on the Constitution of Courts, this shall apply in preparatory proceedings only with regard to the consent of the court pursuant to section 153(1) and section 153a(1) of the Code of Criminal Procedure.

(2) Notwithstanding the first sentence of subsection (1) above, the government of a *Land* may issue ordinances specifying jurisdiction insofar as this appears appropriate considering the economic situation or transport infrastructure, the structure of the administrative authorities and other local needs. The government of a *Land* may transfer this power to the justice authorities of the *Land*.

(3) Criminal proceedings for tax crimes should be allocated to a particular department at a local court.

(4) Subsections (1) to (3) above shall also apply where the proceedings concern not only tax crimes; they shall not apply, however, where the same action constitutes a crime pursuant to the Narcotics Act or where a tax crime concerns motor vehicle tax.

Section 392 – Defence

(1) Notwithstanding section 138(1) of the Code of Criminal Procedure, tax consultants, tax representatives, auditors and certified accountants may also be appointed to the defence insofar as the revenue authority conducts the criminal proceedings independently; in all other cases, they may lead the defence only together with lawyer or teacher of law at a German institution of higher education within the meaning of the Framework Act for Higher Education who is qualified to exercise the functions of a judge.

(2) Section 138(2) of the Code of Criminal Procedure shall remain unaffected.

Section 393 – Relationship between criminal proceedings and the taxation procedure

(1) The rights and obligations of the taxpayers and of the revenue authority in the taxation procedure and in criminal proceedings shall be determined by the regulations which apply to the proceedings in the particular case. In the taxation procedure, however, coercive measures (section 328) against the taxpayer shall be impermissible where this would force him to incriminate himself in a tax crime or tax-related administrative offence which he committed. This shall invariably apply where criminal proceedings have been initiated against him for such an act. The taxpayer shall be instructed accordingly as necessary.

(2) Where during criminal proceedings the public prosecutor's office or the court learns from the tax records of facts or evidence which the taxpayer, in compliance with his obligations under tax law, revealed to the revenue authority before the initiation of criminal proceedings or in ignorance of the initiation of criminal proceedings, this knowledge may not be used against him for the prosecution of an act that is not a tax crime. This shall not apply to crimes for the prosecution of which there is a compelling public interest (section 30(4) number 5).

(3) Findings which the revenue authority or the public prosecutor's office lawfully gained in the course of criminal investigations may be used in the taxation procedure. This shall also apply with respect to findings subject to the privacy of correspondence, posts and telecommunications to the extent that the revenue authority legally obtained them within in

the course of their own criminal investigations or to the extent that information may be issued to the revenue authorities pursuant to the provisions of the Code of Criminal Procedure.

Section 394 – Transfer of ownership

Where an unknown person, who was caught in the act of committing a tax crime but escaped, has left items behind and these items are seized or otherwise secured because it is possible to confiscate them, they shall become the property of the State after one year has elapsed if the owner of the items is unknown and the revenue authority has announced the impending loss of the property by means of a public notice. Section 10(2), first sentence, of the Administrative Service of Documents Act shall apply subject to the condition that an announcement of the notice pursuant to the first sentence above has been published. The period shall begin with the displaying of the announcement.

Section 395 – Revenue authority's power to inspect files

The revenue authority shall be authorised to inspect the files which are available to the court or which would have to be presented to the court in the case of charges being brought, as well as inspect confiscated or secured objects. The files shall be sent to the revenue authority upon application for inspection.

Section 396 – Suspending proceedings

(1) Where whether the act can be adjudged to constitute tax evasion depends on whether a tax claim exists, whether taxes have been understated or whether unwarranted tax advantages have been derived, the criminal proceedings shall be suspended until the taxation procedure is concluded and can no longer be appealed.

(2) During investigations, the public prosecutor's office shall rule on the suspension; in the proceedings once public charges have been brought, the court dealing with the matter shall rule on the suspension.

(3) The limitation shall be adjourned while the proceedings are suspended.

2nd Subchapter – Investigation

I. General

Section 397 – Initiating criminal proceedings

(1) Criminal proceedings shall be deemed to have been initiated as soon as the revenue authority, the police, the public prosecutor's office, one of its investigators or the judge in a criminal court adopts a measure, the purpose of which is identifiably to institute criminal action against somebody for a tax crime.

(2) The measure and the time at which it was taken shall be entered in the records without undue delay.

(3) The accused shall be informed of the initiation of criminal proceedings at the latest when he is called upon to reveal facts or supply documents which are related to the crime of which he is suspected.

Section 398 – Stay on the grounds of insignificance

The public prosecutor's office may refrain, even without the consent of the court responsible for opening the main proceedings, from prosecuting tax evasion where only a minor understatement of tax has occurred or where only minor tax advantages have been derived, if the perpetrator's degree of guilt is slight and there is no public interest in the prosecution. This shall apply accordingly to proceedings brought for the receipt, holding or sale of goods obtained by tax evasion pursuant to section 374 and for aiding and abetting a person who has committed one of the acts under section 375(1) numbers 1 to 3.

Section 398a – Refraining from prosecution in certain cases

(1) In cases where exemption from punishment is denied solely on the basis of section 371(2), first sentence, numbers 3 or 4, prosecution shall not occur if, within the reasonable period of time allowed to him, the person involved in the act

1. pays the taxes which were evaded to his benefit through the perpetration of the act, the interest payable on the evaded taxes in accordance with section 235, and the interest payable under section 233a insofar as such interest is charged on the interest payable on the evaded taxes in accordance with section 235(4), and

2. pays to the Treasury a sum of money in the following amount:

   a) 10 percent of the evaded tax where the amount evaded does not exceed 100,000 euros,

   b) 15 percent of the evaded tax where the amount evaded exceeds 100,000 euros but does not exceed 1,000,000 euros,

   c) 20 percent of the evaded tax where the amount evaded exceeds 1,000,000 euros.

(2) The calculation of the amount evaded shall be based on the principles set forth in section 370(4).

(3) The resumption of a procedure concluded in accordance with subsection (1) above shall be permissible if the revenue authority finds that the information provided as part of a voluntary disclosure was incomplete or incorrect.

(4) The sum of money paid in accordance with subsection (1) number 2 above shall not be reimbursed if the legal consequence of subsection (1) fails to materialise. However, the court may credit this amount to a monetary fine imposed for tax evasion.

II. Revenue authority procedure in the case of tax crimes

Section 399 – Revenue authority's rights and obligations

(1) Where the revenue authority conducts the investigation independently pursuant to section 386(2), the revenue authority shall have the same rights and obligations as the public prosecutor's office has in an investigation.

(2) Where a revenue authority has been given jurisdiction pursuant to section 387(2) for an area covered by several revenue authorities, the right and obligation of these revenue authorities to investigate the facts where a tax crime is suspected and to issue all non-deferrable orders to avoid obfuscation of the case shall remain unaffected. They may order confiscation, emergency sales, searches, inspections and other measures in accordance with the regulations of the Code of Criminal Procedure applying to the public prosecution office's investigators.

Section 400 – Application for the order of summary punishment

Where the results of the investigations provide sufficient grounds to bring a public charge, the revenue authority shall apply to the judge to issue an order of summary punishment where the criminal matter appears suited to treatment in summary proceedings without trial; where this is not so, the revenue authority shall give the files to the public prosecutor's office.

Section 401 – Application to order incidental consequences in autonomous proceedings

Revenue authorities may file an application for the authorisation to order sequestration autonomously or to set a fine against a legal person or association autonomously (sections 435 and 444(3) of the Code of Criminal Procedure).

III. Role of the revenue authority in procedures carried out by the public prosecutor

Section 402 – General rights and obligations of the revenue authority

(1) Where the public prosecutor's office conducts the investigation, the revenue authority which would otherwise have had jurisdiction shall have the same rights and obligations as the police authorities under the Code of Criminal Procedure as well as the powers pursuant to section 399(2), second sentence.

(2) Where a revenue authority has been transferred pursuant to section 387(2) jurisdiction for an area covered by several revenue authorities, subsection (1) above shall apply for each of these revenue authorities.

Section 403 – Participation of the revenue authority

(1) Where the public prosecutor's office or the police authorities conduct investigations concerning tax crimes, the revenue authority which would otherwise have had jurisdiction shall be entitled to participate. The revenue authority should be informed in good time of the place and time of the investigative actions. The representative of the revenue authority shall be permitted to pose questions to the accused persons, witnesses and experts.

(2) Subsection (1) above shall apply *mutatis mutandis* to court hearings at which the public prosecutor's officer is also permitted to attend.

(3) The revenue authority which would otherwise have had jurisdiction shall be informed of the charge and the application for the order of summary punishment.

(4) Where the public prosecutor's office considers staying the proceedings, it shall consult the revenue authority that would otherwise have had jurisdiction.

IV. Tax and customs investigation

Section 404 – Tax and customs investigation

The Customs Investigation Offices and the agencies of *Land* revenue authorities which are responsible for tax investigation as well as their officials shall, in criminal proceedings for tax crimes, have the same rights and obligations as the police authorities and officers according to the regulations of the Code of Criminal Procedure. The agencies described in the first sentence above shall have the powers pursuant to section 399(2), second sentence, as well as the power to examine the papers of those affected by the search (section 110(1) of the Code of Criminal Procedure); their officers shall be investigators of the public prosecutor's office.

V. Reimbursement for witnesses and experts

Section 405 – Reimbursement for witnesses and experts

Where the revenue authority consults witnesses and experts for the purposes of evidence, these shall be compensated or remunerated in corresponding application of the Judicial Remuneration and Compensation Act. This shall also apply in the cases set out in section 404.

3rd Subchapter – Judicial proceedings

Section 406 – Revenue authorities' role in summary proceedings and autonomous proceedings (1) Where the revenue authority has applied for an order of summary punishment to be issued, the revenue authority shall have the rights and obligations of the public prosecutor's office as long as no date for a trial is appointed pursuant to section 408(3), second sentence, of the Code of Criminal Procedure, and no objection has been lodged against the order of summary punishment.

(2) In cases where revenue authorities have filed an application for the authorisation to order sequestration autonomously or to set a fine against a legal person or association autonomously (section 401), the revenue authorities shall exercise the rights and obligations of the public

prosecutor's office as long as no application for oral hearings has been filed and no oral hearings have been ordered by a court.

Section 407 – Participation of the revenue authority in other cases

(1) The court shall allow the revenue authority opportunity to present aspects which, from its perspective, are of relevance to the decision. This shall also apply where the court considers staying the proceedings. The revenue authority shall be informed of the date of the trial and the date of the hearing by a commissioned or requested judge (sections 223 and 233 of the Code of Criminal Procedure). Upon request, the revenue authority's representative shall be allowed to speak during the trial. The representative shall be allowed to pose questions to the defendants, witnesses and experts.

(2) The revenue authority shall be informed of the ruling and other decisions concluding the proceedings.

4th Subchapter – Costs of the proceedings

Section 408 – Costs of the proceedings[45]

In criminal proceedings for a tax crime, necessary expenses of a participant within the meaning of section 464a(2) number 2 of the Code of Criminal Procedure shall include the legal fees and expenses for a tax consultant, tax representative, auditor or certified accountant. Where there are no legal provisions on fees and expenses, they may be reimbursed up to the amount of the legal fees and expenses of a lawyer.

Fourth Chapter – Administrative fine proceedings

Section 409 – Competent administrative authority

In the case of tax-related administrative offences, the competent administrative authority within the meaning of section 36(1) number 1 of the Administrative Offences Act shall be the revenue authority with subject-matter jurisdiction pursuant to section 387(1). Section 387(2) shall apply accordingly.

Section 410 – Supplementary provisions on administrative fine proceedings

[45] See section 91(2) of the Code of Civil Procedure.

(1) Apart from the procedural provisions, the provisions of the Administrative Offences Act shall apply accordingly to administrative fine proceedings:

1. sections 388 to 390 on the jurisdiction of the revenue authority,
2. section 391 on the jurisdiction of the court,
3. section 392 on the defence,
4. section 393 on the relationship between criminal proceedings and the taxation procedure,
5. section 396 on the suspension of proceedings,
6. section 397 on the initiation of criminal proceedings,
7. section 399(2) on the rights and obligations of the revenue authority,
8. sections 402, 403(1), (3) and (4) on the role of the revenue authority in procedures carried out by the public prosecutor,
9. section 404, first sentence and the first half-sentence of the second sentence on tax and customs investigation,
10. section 405 on compensation for witnesses and experts,
11. section 407 on the participation of the revenue authorities and
12. section 408 on the costs of proceedings.

(2) Where the revenue authority prosecutes a tax crime connected with a tax-related administrative offence (section 42(1), second sentence, of the Administrative Offences Act), the revenue authority may, in the cases of section 400, apply to extend the order of summary punishment to the tax-related administrative offence.

Section 411 – Administrative fine proceedings against lawyers, tax consultants, tax representatives, auditors or certified accountants

Before an administrative fine notice is issued against a lawyer, tax consultant, tax representative, auditor or certified accountant for a tax-related administrative offence which he committed in the exercise of his profession in advising on tax matters, the revenue authority shall allow the competent professional organisation the opportunity to present aspects which, from its perspective, are of relevance to the decision.

Section 412 – Service, enforcement, costs

(1) Notwithstanding section 51(1), first sentence, of the Administrative Offences Act, the provisions of the Administrative Service of Documents Act shall also apply to the method of

service of documents even where a *Land* revenue authority has issued the notice. Section 51(1), second sentence, and section 51(2) to (5) of the Administrative Offences Act shall remain unaffected.

(2) Notwithstanding section 90(1) and (4), section 108(2) of the Administrative Offences Act, the provisions of the Sixth Part of this Code shall apply to the enforcement of revenue authority notices in administrative fine proceedings. The remaining provisions of the ninth chapter of the Second Part of the Administrative Offences Act shall remain unaffected.

(3) Section 107(4) of the Administrative Offences Act shall also apply to the costs of administrative fine proceedings even where a Land revenue authority has issued the administrative fine notice; section 227 and section 261 of this Code shall apply in place of section 19 of the Administrative Costs Act, in the version in force until 14 August 2013.

Ninth Part – Final provisions

Section 413 – Restriction of basic rights

The basic rights to physical integrity and freedom of the person (Article 2(2) of the Basic Law), the privacy of correspondence, posts and telecommunications (Article 10 of the Basic Law) and the inviolability of the home (Article 13 of the Basic Law) shall be restricted in accordance with this Code.

Section 414 – (obsolete)

Section 415 – Entry into force[46]

(1) This Code shall enter into force on 1 January 1977 unless the following subsections stipulate otherwise.

(2) Section 19(5), section 117(5), section 134(3), section 139(2), section 150(6), section 156(1), section 178(3), section 212, section 382(4), section 387(2) and section 391(2) shall enter into force on the date after its promulgation.[47]

(3) Sections 52 and 55 shall apply for the first time from 1 January 1984.

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[46] The Introductory Act to the Fiscal Code contains further provisions.
[47] Day of promulgation: 23 March 1976.

List of terms used

Account with protection from attachment	*Pfändungsschutzkonto*
Advance ruling	*verbindliche Auskunft*
Alienation	*Veräußerung*
Amendment	*Änderung*
Amortisation	*Tilgung*
Ancillary tax payment	*steuerliche Nebenleistung*
Appeal	*Rechtsbehelf*
Appeals ruling	*Rechtsbehelfsentscheidung*
Asset(s)	*Wirtschaftsgut/-güter*
Assets	*Vermögen*
Attachment and sequestration order	*Pfändungs- und Einziehungsverfügung*
Attachment and transfer order	*Pfändungs- und Überweisungsbeschluss*
Base amount of non-personal tax	*Steuermessbetrag*
Base tax amount notice	*Steuermessbescheid*
Base amount of trade tax	*Gewerbesteuermessbetrag*
Basic assessment notice	*Grundlagenbescheid*
Beneficiary of cession	*Abtretungsempfänger*
Binding commitment	*verbindliche Zusage*
Business expenditure	*Betriebsausgaben*
Business management	*Geschäftsleitung*
Cancellation	*Aufhebung*
Capable of acting	*Handlungsfähig*
Capable of contracting	*Geschäftsfähig*
Capital tax	*Vermögensteuer*
Cession	*Abtretung (von Rechten, Ansprüche, usw.)*
Claim	*Anspruch*
Coercive fine	*Zwangsgeld*
Collateral	*Sicherheit*
Collection	*Einziehung*
Common supervisory authority responsible	*gemeinsame fachlich zuständige Aufsichtsbehörde*
Contrary to public policy	*Verstoß gegen die guten Sitten*
Corporation	*Körperschaft*
Corporations, associations and pools of assets	*Körperschaften, (Personen-)Vereinigungen und Vermögensmasse*
Custodianship court	*Betreuungsgericht*
District	*Bezirk*
Enterprise	*Unternehmen*
Entitlement	*Anspruch*
Examination under oath	*Eidliche Vernehmung*
Expiration	*Erlöschen*
Family court	*Familiengericht*

Fear of bias	*Besorgnis der Befangenheit*
Federal Armed Forces	*Bundeswehr*
Federal Government	*Bundesregierung*
Federal Law Gazette	*Bundesgesetzblatt (BGBl)*
Federal Tax Gazette	*Bundessteuerblatt (BStBl)*
Final and binding	*rechtskräftig*
Financial year	*Wirtschaftsjahr*
Follow-up notice	*Folgebescheid*
General order	*Allgemeinverfügung*
Government of a *Land*	*Landesregierung*
Habitual abode	*gewöhnlicher Aufenthalt*
Having legal capacity	*rechtsfähig*
Highest authority of a *Land*	*oberste Landesbehörde*
Highest federal authority	*oberste Bundesbehörde*
Income-related expenses	*Werbungskosten*
Incontestable	*unanfechtbar*
Incorporated company	*Körperschaft*
Land revenue authorities	*Länderfinanzbehörden*
Late-payment penalty	*Säumniszuschlag*
Late-filing fee	*Verspätungsgeld*
Late-filing penalty	*Verspätungszuschlag*
Legal entity	*Rechtsträger*
Legal person	*juristische Person*
Legal person under public law	*juristische Person des öffentlichen Rechts*
Legal proceedings	*Klageverfahren*
Legal remedy	*Rechtsbehelf*
Limitation period	*Verjährung*
Local-government institutions of public administration	*kommunalen Trägern der öffentlichen Verwaltung*
Local jurisdiction	*örtliche Zuständigkeit*
Moveable items	*bewegliche Sachen*
Moveable property	*bewegliches Vermögen*
Municipalities	*Gemeinden*
Negligently, negligence	*fahrlässig*
Non-personal tax	*Realsteuer*
Notice assessing the base amount of real property tax	*Grundsteuermessbescheid*
Notice of compulsory tolerance	*Duldungsbescheid*
Notice of determination	*Feststellungsbescheid*
Object	*Gegenstand*
Objection	*Einspruch*
Objection ruling	*Einspruchsentscheidung*
Obligation to disclose	*Mitteilungspflicht*
Obvious error	*offenbare Unrichtigkeit*
Official municipal code	*amtlicher Gemeindeschlüssel*

Ordinance	*Rechtsverordnung*
Parliament of a *Land*	*Landtag*
Participant consultation	*Anhörung Beteiligter*
Participants	*Beteiligte*
Partnership	*Personengesellschaft*
Period of limitation	*Verjährung*
Person ceding	*Abtretender*
Political subdivision	*Körperschaft*
Political subdivisions	*Gebietskörperschaften*
Provisional identifier	*vorläufiges Bearbeitungsmerkmal*
Public official	*Amtsträger*
Public-law entity	*Körperschaft des öffentlichen Rechts*
Realisation	*Verwirklichung*
Realisation	*Verwertung*
Receivable	*Forderung*
Receiving, holding or selling goods obtained by tax evasion	*Steuerhehlerei*
Reckless	*leichtfertig*
Refund claim	*Erstattungsanspruch*
Registered office	*Sitz*
Residence	*Wohnsitz*
Revenue authorities	*Finanzbehörden*
Revenue authorities of the Federation	*Bundesfinanzbehörden*
Review	*Nachprüfung*
Revocation	*Widerruf*
Securities tax	*Wechselsteuer*
Self-assessed tax return	*Steueranmeldung*
Self-employment	*Freiberufliche Tätigkeit*
Statutory social insurance institutions	*Träger der gesetzlichen Sozialversicherung*
Subject-matter jurisdiction	*sachliche Zuständigkeit*
Sworn statement	*Versicherung an Eides statt*
Tax advantage	*Steuervorteil*
Tax assessment notice	*Steuerbescheid*
Tax base	*Besteuerungsgrundlage*
Tax crime	*Steuerstraftat*
Tax debtor	*Steuerschuldner*
Tax debtor-creditor relationship	*Steuerschuldverhältnis*
Tax deficiencies	*Steuernachforderungen*
Tax evasion	*Steuerhinterziehung*
Tax mark	*Steuerzeichen*
Tax-related administrative offence	*Steuerordnungswidrigkeit*
Tax privilege	*Steuervergünstigung*
Tax rebate	*Steuervergütung*

Tax rebate notice	*Steuervergütungsbescheid*
Tax refund	*Steuererstattung*
Tax return	*Steuererklärung*
Tax stamp	*Steuerstempler*
Tax understatement	*Steuerverkürzung*
Taxpayer	*Steuerpflichtiger*
To become time-barred	*verjähren*
To cede	*Abtreten*
To levy	*Erhebung*
To remit (debt)	*Erlass (Schuld)*
To tolerate	*Dulden*
Trader	*Unternehmer*
Withdrawal	*Rücknahme*
Withheld/withholding taxes	*Steuerabzugsbeträge*
Without legal capacity	*nicht rechtsfähig*