



**SONNTAG | International News**  
**3/2022**

### **SONNTAG International Team**

International rules are constantly evolving. In times of increasing globalisation, companies that do not operate across borders have become rare. Those that are engaged internationally need to pay heed to internationally applicable regulations. The SONNTAG International Team comprises experts in the fields of tax and legal advice, auditing, financial services and IT consulting with a focus on cross-border matters.

We receive support from our international network – the MOORE GLOBAL NETWORK. This network is active in more than 110 countries worldwide. Our joint aim: Wherever you do business, we are there to support you.

With our newsletter, we would like to keep you in the loop of current developments in international and cross-border issues from a German perspective. It shall also serve you to act in time.



## I. EU Whistleblower Directive and Whistleblower Protection Act

### +++ Learn more +++

The Directive (EU) 2019/1937 of the European Parliament and European Council on the protection of persons who report infringements of Union law was adopted with effect from 23 October 2019 – widely known as the “EU Whistleblower Directive”. The German Cabinet approved the government draft of the transposing Whistleblower Protection Act on 27 July 2022, thereby initiating the legislative process.

**The law obliges legal entities in the private sector with more than 50 employees and municipalities exceeding 10,000 inhabitants to introduce reporting platforms for the confidential submission of information about infringements.**

The aim is to strengthen the protection of whistleblowers as well as persons that are subject to or affected by such reported information. In particular, whistleblowers shall be protected from disadvantages resulting from their action and provide legal certainty. Regardless of the upcoming regulatory obligations, a whistleblower system offers the following advantages for those implementing it:

- Supporting internal quality assurance through concrete indications of faulty processes or inadequate performance.
- Avoiding reputational damage, as indications can first be discussed and addressed internally before being made public.
- Achieving preventive effect to reduce breaches of duty in view of an increased risk that these may be reported.

When implementing the Whistleblower Protection Act it is imperative that the specific requirements of the EU Whistleblower Directive are observed. Inter alia, it must be ensured that the identity of the whistleblower and the contents of the submitted information are protected from disclosure to unauthorized third parties.

### +++ Actions recommended +++

The implementation of the Whistleblower Protection Act through an IT-supported reporting system enables confidential and encrypted communication between the whistleblower and the whistleblowing processor. A cloud-based solution facilitates the submission and processing of information at any time. The identity of the whistleblower is systematically protected by way of a technically secure communication channel.

**SONNTAG IT Solutions** can support you with professional know-how and a modern software solution for a secure and transparent implementation of the Whistleblower Protection Act. Here we would like to point out our upcoming webinar on **27 October 2022 at 10 a.m. CET**. Registration is possible at [seminare@sonntag-partner.de](mailto:seminare@sonntag-partner.de).



## II. News on the Corporate Sustainability Reporting Directive

### +++ Learn more +++

In 2014, the so-called CSR ("Corporate Social Responsibility") Directive was passed at EU level. This Directive expanded the scope of mandatory reporting by companies. Specifically, capital market-oriented companies with more than 500 employees have to include a non-financial statement in their annual report covering i.a. environmental aspects as well as social and employee concerns.

In April 2021, the EU Commission developed further requirements for non-financial reporting and published a draft Directive on sustainability reporting. In June 2022, the European Council and European Parliament reached political consensus on the Corporate Sustainability Reporting Directive.

Consequently, sustainability reporting needs to cover the environmental impact of the company. On the other hand, the effects of the company's environment on the company need to be described as well.

The European Financial Reporting Advisory Group is currently developing individual reporting standards.

### When do the new obligations come into effect?

The implementation of the regulations on sustainability reporting shall take place in three steps:

- As of 1 January 2024, the regulations will apply to companies that are already subject to non-financial reporting requirements – more precisely capital market-oriented companies with more than 500 employees.
- As of 1 January 2025, large companies that are currently not yet subject to non-financial reporting requirements will need to implement the regulations.
- From 1 January 2026, listed SMEs as well as small and non-complex credit institutions and captive insurance companies will need to follow.

Breaches of sustainability reporting will be sanctioned, including through public declarations and fines.

### +++ Actions recommended +++

Sustainability reporting is becoming increasingly important. We are monitoring developments and will keep you up to date in the next editions of this newsletter.



### **III. Relief for taxpayers – Federal Ministry of Finance responds to the energy crisis**

#### **+++ Learn more +++**

The Ukraine conflict and associated sanctions also affect businesses in Germany. They are suffering from the sharp rise in energy costs, which may strain their financial capacities. The Federal Ministry of Finance (“BMF”) is therefore promoting tax relief and has instructed tax offices to take account of the difficult economic situation of taxpayers.

Companies, self-employed persons, and freelancers regularly pay taxes in advance. These payments are calculated based on the previous year's profit. However, higher energy costs have a direct impact on the current profit situation, requiring an adjustment of the tax advances.

As a further measure, deferral interest payments can be waived in individual cases. For this waiver to be granted, the taxpayer must have responsibly fulfilled his/her taxpayment obligations to date and not repeatedly benefited from deferrals and deferrals of enforcement in the past - deferrals and deferrals of enforcement related to the Corona crisis are not considered in this assessment. An individual waiver may be granted for a period not exceeding three months.

#### **+++ Actions recommended +++**

To be able to benefit from the above-mentioned measures, taxpayers must submit respective applications to the tax offices. The Ministry ordered the tax offices not to impose strict requirements on these applications.

The measures described are a critical step towards securing the financial stability of taxpayers. Our SONNTAG International Team is following the effects of the energy crisis and will keep you abreast of further relief plans of the Federal Government by way of this newsletter. We will be happy to provide you with comprehensive advice on your tax financial planning and support you in applying for your personal tax relief.



#### **IV. Reduction of VAT rate on gas supplies and district heating as of 1 October 2022**

##### **+++ Learn more +++**

Gas prices in Germany have been rising significantly over the past months, in particular due to the war in Ukraine and the resulting reduction of gas supplies by Russia. To help counter this development, the VAT rate on gas deliveries and district heating deliveries has been reduced from currently 19 % to 7 %.

##### **Reduction of the VAT rate from 19 % to 7 %**

- Takes effect on 1 October 2022 until (presumably) 31 March 2024.
- Applies exclusively to supplies from the natural gas/district heating network, not to other distribution channels.
- Applies irrespective of the type of production, i.e. also to gas from biogas plants.

##### **+++ Actions recommended +++**

There is an acute need for action. The reduction of the VAT rate requires energy suppliers to update their ERP system – if not yet implemented. This is the only way to avoid incorrect invoicing with the higher tax rate and associated consequences.

Customers of gas/district heating supplies entitled to deduct input tax, are required to carefully check their incoming invoices, as invoices still reflecting 19 % VAT for supplies as of 1 October 2022 will bar an input tax deduction of the difference of 12 % taking into account that the end of the meter reading period is decisive.

However, the Federal Ministry of Finance already published a drafted implementation guidance including a simplification measure for invoices for the period as of end of October.

As a landlord, you are not directly affected by the tax rate reduction. The supply of heat constitutes an ancillary service to the main letting service and is therefore treated as such, i.e. VAT exempt or, if the option is permitted, at a VAT rate of 19 %. From a purely economic perspective, however, an adjustment of the monthly advance payments for ancillary costs to be made by the tenant may be reasonably considered in individual cases, in view of the expected higher costs.



## V. Obligation to record working hours

### +++ Learn more +++

In a significant decision, the Federal Labour Court (“Bundesarbeitsgericht”, BAG) has recently ruled that all employers are legally obliged to record the working hours of their employees.

### Review

In May 2019, the Court of Justice of the European Union (CJEU) already issued a decision on the recording of working hours. According to this judgement, Member States are required to legally oblige employers to introduce a working time recording system that is objective, reliable and accessible, so that the working time of each employee can be recorded (CJEU, Judgment of 14 May 2019 – C55/18).

### Recording of working time in Germany

In Germany, it was subsequently discussed whether German law already contained such an obligation or is at least open to an interpretation in conformity with EU law. According to the Working Hours Act (“Arbeitszeitgesetz”, ArbZG), the employer is only obliged to record overtime working hours, which does likely not satisfy the requirements of the CJEU case law. Employers were therefore waiting for the implementation of the CJEU ruling by the German legislator, which has not yet happened.

In the meantime, the Federal Labour Court (1 ABR 22/21) has now clarified that employers are already required to record the working time of their employees. The BAG's detailed reasons for this decision are not yet available.

In sum, it is now established that all employers in Germany have the duty to provide an appropriate working time recording system. This applies in particular to employment relationships for which so-called trust-based working time has been agreed.

It remains to be seen whether the German legislator will react promptly to the BAG's judgement and introduce corresponding requirements or restrictions for the time recording system as also required under the CJEU ruling.

### +++ Actions recommended +++

The BAG's judgement presumably already influences current case law - for example regarding working time, overtime and co-determination. Employers should therefore already consider their reaction to this decision.

We would be happy to support you in your considerations and a legally conform implementation of the new requirements.



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## **SONNTAG | many talents come together.**

At our locations in southern Germany, we are active throughout Germany as well as internationally and, with over 400 employees, provide holistic support to our clients from the upper medium-sized business sector in the areas of auditing, tax and legal consulting.

The respective project-related team composition as well as the interdisciplinary and integrated consulting approach aim at a precise solution development and solution implementation - depending on the individual needs of the clients.

Our firm's profile is rounded off by family office services, wealth management, IT consulting and digital tax consulting.

### Concluding remarks

For more information about our firm and our consulting services, please visit

[www.sonntag.group](http://www.sonntag.group)