

Principles of data access and auditing of digital documents (GDPdU)
(BMF notice of 16th July IV D 2 – S 0316 – 136/01 -)

With reference to the results of discussions with the senior financial authorities of the *Länder*, the following applies for the application of regulations to data access and to the auditing of digital documents (§ 146 paragraph 5, § 147 paragraph 2, 5, 6 § 200 paragraph 1 AO and § 14 paragraph 4 of the UStG, sales tax law):

I. Data access

According to § 147 paragraph 6 AO the finance authority is empowered to audit taxpayers' accounting records, created with the help of data processing systems, via data access. This new auditing method will be used in addition to conventional auditing processes. The finance authority is only empowered to access data in the context of external tax audits. The regulations on data access do not extend the factual content of external audits (§ 194 AO); this is determined by auditing regulation (§ 198 AO, § 5 BpO). The subject of the audit is still documents, which must be archived according to § 147 paragraph 1 AO. However, it is necessary that auditing methods are adapted to correspond to modern accounting techniques. This has particular relevance since increasingly businesses are taking advantage of paperless transaction methods and from 1st January 2002 it will be possible to file tax deductions from electronic billing systems with a qualified electronic signature and provider accreditation, according to the signature law.

The introduction of these new auditing methods allows external audits to be both more efficient and more up-to-date.

1. Scope and practice of right to data access according to § 147 paragraph 6 AO

The right to data access is exclusively limited to data, which are important for taxation (tax relevant data).

Data from financial accounting, fixed asset accounting and wage accounting must be kept available for data access.

Insofar as tax relevant data are to be found in other areas of the data processing system, taxpayers must specify these according to the stipulations of their tax recording and archiving obligations and store them using a suitable method.

Where incorrect data is specified, the finance authority, at their own legal discretion, may subsequently require the taxpayer to facilitate data access to these tax relevant data. The auditor's general right to information (§§ 88, 199 paragraph 1 AO) and the taxpayer's obligation to cooperate (§§ 90, 200 AO) are not affected.

In exercising this right to data access there are three legally acceptable options open to the finance authority. The decision as to which method of data access is used, will be made at the legal discretion of the finance authority; if necessary they may also use several options:

- a) The authority is empowered to directly access the data processing system in such a way that it has a read-only view of the saved data and uses the hardware and software of the taxpayer or an appointed third party to audit the saved data (direct data access) including source data and links (data). It may only access the electronically saved data with the help of this hardware and software. Thus excluding remote access (online access) to the taxpayer's data processing system by the finance authority.

Read-only access includes reading, filtering and sorting data according to the evaluation features available on the data processing system.

- b) The authority may also require the taxpayer to evaluate the data automatically on their behalf and according to their criteria, or to appoint a third party to evaluate the data automatically, in order to be able to implement read-only access (indirect data access). Automatic evaluation can only be required according to the evaluation options available on the data processing system of the taxpayer or the appointed third party.
- c) It can also demand that saved documents are transferred to them on an automatically usable data medium for evaluation (data medium transfer). The medium transferred for evaluation must be returned to the taxpayer or deleted, at the latest, after the issuance of assessment notices arising from the external audit.

2. Scope of obligation to cooperate according to §§ 147 paragraph 6 and 200 paragraph 1, clause 2 AO

The taxpayer must support the finance authority in the execution of their right to data access (§ 200 paragraph 1 AO). The following details apply:

- a) In the case of direct data access (paragraph 1, no. 1, letter a) the taxpayer must provide auditors with all the necessary aids for data access and instruct them how to attain read-only access to the data processing system. Access authorisation settings must afford the auditor access to all tax relevant data. This should also include use of the evaluation programme available on the data processing system. If the electronically saved data contains other databases, such as those containing data about tax non-relevant persons or commercial secrets (§ 102 AO), it is up to the taxpayer or the appointed third party to ensure that, using suitable access restrictions, the auditor can only access the tax relevant data of the taxpayer. Access authorisation must also include use of evaluation programmes available on the data processing system.

The data processing system must guarantee that the database cannot be altered (§ 146 paragraph 4 AO; section V of the Federal Ministry of Finance's notice regarding the principles of accurate data processing supported accounting systems (GoBS) from 7th November 1995, BStBl I p. 738). As a result, any alteration of databases or data processing systems by the finance authority is ruled out.

- b) In the case of indirect data access (paragraph 1, no. 1, letter b), taxpayers must assist in providing read-only access, making hardware and software available and also in providing persons versed in the use of the system. The scope of reasonable assistance depends on the commercial circumstances of the company. So, for example, according to the size of the company or number of employees.
- c) In the case of data medium transfer (paragraph 1, no. 1, letter c), the finance authority must be provided with saved documents, records and all information required to evaluate the data (e.g. about file structure, data fields as well as internal and external links) in an automatic, usable form. This also applies in cases where the data is kept by a third party.

3. Principle of proportionality

The finance authority must adhere to the principle of proportionality when applying regulations on data access. Among other things, this means:

- a) In the case of data archived before 1st January 2002, the authority may not require, either through direct data access (paragraph 1, no. 1, letter a, section 1) or indirect data access (paragraph 1, no. 1, letter b), that these data be re-fed (reactivated) into the data processing system for the purposes of their automatic evaluation, if this involves disproportionate expense for the taxpayer. This is relevant, for example, where there is a lack of memory available, where recapture of data is involved, where data archiving must take place outside the current data processing system or where a change of hardware or software is required. If the data does not have to be reactivated, as in such cases, the taxpayer does not need to make the hardware and software required for the automatic evaluation of relevant data available if it is no longer being used. This also applies when the storage period (§ 147 paragraph 3 AO) has not yet expired.

These technical, organisational and temporal restrictions on automatic evaluation of data do not refer to the taxpayer's obligation to provide legible data (§ 147 paragraph 2, no. 2 AO, § 147 section 5 AO). The legibility of data must be ensured for the entire duration of the storage period.

- b) In the case of data archived after 31st December 2002, automatic evaluation (§ 147 paragraph 2, no. 2 and paragraph 6 AO) in the form of read-only access (paragraph 1, no. 1, letter a, section 2) must be secured with direct access (paragraph 1, no. 1, letter a, section 1) and indirect data access (paragraph 1, no. 1, letter b). Where a system has been replaced, it is not necessary to retain the original hardware and software, if automatic evaluation is guaranteed for data archived after 31st December 2001 but before the system was replaced with a new or different system.
- c) In the case of data medium transfer (section 1, no. 1, letter c), the finance authority may not require that data archived before 1st January 2002 on non-automatic evaluation data media (e.g. microfilm) be recorded on automatic evaluation data media.

II. Auditing of digital documents

1. Electronic invoicing according to § 14 paragraph 4, clause 2 UStG (sales tax law)

The qualified electronic signature with provider accreditation as defined in § 15, paragraph 1 of the signature law is a component of electronic invoicing*. The original state of the transferred or encoded document must be auditable at any time. In addition to the requirements laid down in section VIII, letter b) no. 2 of the GoBS (a.a.O.), this presupposes, in particular, that

- before any further processing of electronic invoicing take place, the qualified electronic signature is checked with regard to the integrity of the data and the legitimacy of the signature and that the results are documented;
- electronic invoicing is saved on the data medium in such a way as to ensure that no alterations can be made. In the case of temporary storage on another data medium, the data processing system must ensure that alterations are not possible; where electronic invoicing is converted into an in-house format, both versions are archived and are administered according to the GoBS with the same index and that the converted version is identified as such;
- the signature auditing code is retained;
- where cryptographic technology is used, the encoded and decoded invoicing system is retained along with the encryption code for the electronic invoicing system;
- receipt of the electronic invoicing, its archiving and, where applicable, conversion as well as further processing must be recorded;
- the transfer, archiving and conversion systems conform to the requirements defined in GoBS, in particular with regard to documentation, the internal control system, the security concept and storage;
- the qualified certificate of the recipient is retained.

* Adaptation of § 14 paragraph 4, clause 2 of UStG 1999 for the signature law of 16th May 2001 (BGBl.I p.876) will be included in a white paper on the 2001 taxation amendment law.

2. Other retainable documents

- In the case of other documents which must be retained according to § 147 paragraph 1 AO, that are digitised and not in paper form, the procedure must conform to the GoBS.
- The original state of transferred or, where applicable, encoded data must be recognisable (§ 146 paragraph 4 AO). Where a data medium is used, it must be ensured that no alterations to the data can be made. In the case of temporary storage on an alterable data medium, the data processing system must ensure that alterations are not possible.
- Where cryptographic technology is used, both the encoded and decoded documents must be retained.
- Where other documents, which must be retained, are converted into an in-house format, both versions must be archived and administered according to the GoBS with the same index and the converted version must be identified as such.
- Where signature auditing codes or cryptographic procedures have been used, the applied code must be retained.
- In the case of other documents, which must be retained, their receipt, archiving and, where applicable, conversion as well as further processing must be recorded.

III. Archiving of digital documents

1. Original digital documents as defined by § 146 paragraph 5 AO must be archived on an automatic usable data medium. Original digital documents are data, which is entered into the data processing system in electronic form and which are created by the data processing system; an automatically usable data medium is an automatically legible, evaluation data medium. The original digital documents may not be retained on microfilm or in printed form exclusively. Consequently, recording data according to the computer output microfilm procedure is no longer sufficient. This restriction does not apply, when the available data, retained before it is transferred onto microfilm, guarantees automatic evaluation through the data processing system. It is also insufficient to exclusively use archiving formats, which do not permit automatic evaluation (e.g. pdf files).

No obligation to archive documents in an automatic evaluation form (§ 147, paragraph 2, no. 2, AO), according to § 147, paragraph 1 AO, exists when these documents were created using data processing systems, which are not suitable for further processing by a data processing supported accounting system (e.g. text documents).

2. Resulting original documents in paper form, such as incoming invoices, may continue to be archived on microfilm.
3. Where a financial year deviates from the fiscal year and archives from 1st January 2002 cannot be stored on automatic evaluation data media, due to demonstrable technical reasons, this will not be rejected if the taxpayer adheres to archiving obligations according § 147, paragraph 2, no. 2 AO, at the latest by the beginning of the following, deviating financial year.

IV. Application

1. The regulations on data access (section I) must be applied in the case of external tax audits, beginning after 31st December 2001.
2. Regulations on the auditing of digital documents (section II) apply
 - a) to electronic invoicing when § 14, paragraph 4, clause 2 of the UStG comes into force (1st January 2002) and
 - b) to other documents, which must be stored, created after the 31st December 2001.

Otherwise, regulations from the BMF notice on principles for accurate, data processing supported accounting systems (GoBS) from 7th November 1995 (BStBl I p. 738) remain unaffected.

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