

# What's Going on in Germany?!

Issue 02/08 page 1 of 7

## TOPICS IN THIS ISSUE:

### POLITICS

- \* German Tax-Evasion Scandal Widens

### LEGAL

- \* ~~Draft Bill on International Private Company Law~~
- \* ~~European Commission Plans "Small Business Act"~~

### BUSINESS

- \* ~~SolarWorld 48% Profit Increase~~
- \* ~~Daimler Financial Figures: Optimistic Despite Difficult Conditions~~
- \* ~~German Economy Unimpressed by US Subprime Crisis and Economic Slowdown~~

### TAX

- \* ~~German Federal Fiscal Court: Cutback of Commuter Tax Allowance Unconstitutional?~~
- \* ~~German Tax Revenues Increase~~

### GOVERNANCE & COMPLIANCE

- \* ~~Cabinet to pass new "Volkswagen Law" by the end of April 2008~~

### **POLITICS**

#### **German Tax-Evasion Scandal Widens**

For many years now, the German tax authorities have made great efforts to fight tax flight to the Principality of Lichtenstein, one of Europe's last tax havens. But since Lichtenstein's economy largely depends on its financial sector and a favourable bank secrecy tradition, Lichtenstein has refused to support the German government in its efforts and, therefore, the German tax authorities have not been particularly successful.

The regional tax authorities of the

Federal State of Northrhine Westfalia, with the support of the BND – the German secret service -- recently obtained a DVD containing relevant data of at least 750 German taxpayers holding bank accounts at Lichtenstein's biggest bank, LGT. The DVD was purchased from an informer for an amount of up to EUR 4 million (approx. USD 5.5 million) which, according to a spokesman, was considered a fair price. Tax investigators and prosecutors have already launched a number of investigations on the basis of the information contained on the DVD.

The first prominent victim of the German tax probe was Klaus Zumwinkel,

# What's Going on in Germany?!

Issue 02/08 page 2 of 7

the highly admired CEO of the German postal company Deutsche Post AG as well as the chairman of Deutsche Telekom. He is suspected of having failed to pay taxes totaling EUR 1 million (approx. USD 1.37 million). The scandal became public on 15 February 2008, when prosecution authorities searched Zumwinkel's private house and office; Zumwinkel resigned as Deutsche Post CEO on 18 February.

For some, the tax-evasion scandal has a different aftertaste with criticism being addressed to the German tax authorities' use of "stolen material". Several lawsuits have already been filed against the German government and the BND by law firms in Berlin, Munich and Düsseldorf. The Berlin firm has cited the German Criminal Code claiming that the government's actions fulfil the criteria of a criminal breach of trust, since it used state funds to pay a thief, concealed stolen goods (while it negotiated the purchase price of the DVD) and breached data secrecy laws in that it knew that the material could not have been obtained legally. An interesting side aspect is that the German Ministry of Justice has declared that it was not involved in any proceedings leading up to the scandal.

Although the German government was willing to pay a great deal for the information, the usability of the DVD for criminal proceedings is more than questionable. The "fruit of the poisonous tree doctrine," as known in the United States, is not fully applicable in German Criminal Law. Rather, a distinction must be made between the DVD itself and the documents or information ob-

tained on the basis of the DVD. This would mean that, although the DVD itself may not be used in criminal proceedings, the documents found at Zumwinkel's office or in his house could be, even though they may never have been discovered without the information contained on the DVD.

Another issue involved is the applicability of Art. 8 of the European Convention on Human Rights which could lead to a prohibition of the use of the information contained on the DVD. Also problematic is the role of the BND, which managed the DVD's purchase, since it is generally only allowed to provide information to prosecutors or tax authorities if capital crimes or a danger to public security are involved, which is normally not the case with regard to tax evasion. In a comparable tax-evasion case in Belgium, where prosecution authorities obtained information regarding a Dutch bank, the Belgian court finally rejected the usability of the data.

Regardless of how these various issues are decided, what is already clear is that the current tax scandal is the largest ever in Germany's history and its further developments will be interesting to follow.

A further interesting aspect of this scandal is that many taxpayers have come forward to report their own involvement in tax evasion schemes, rather than wait for prosecutors to approach them, in order to take advantage of a German law granting clemency from criminal prosecution to taxpayers who report themselves. In such cases, the taxpayer need only pay the evaded tax but can generally avoid criminal penalties.



# ~~What's Going on in Germany?!~~

~~Issue 02/08 page 7 of 7~~

~~tung, that "it is not the state's job to build cars" and that the federal government should use the opportunity to ban the VW Law and make Volkswagen an ordinary company. Since, at the federal level, the FDP is an opposition party without any serious influence on the legislative process, the its position will have little to no influence on the draft bill. In the State of Lower Saxony, however, the FDP is the junior partner in the state government and therefore could exert influence in Porsche's favour. This is currently unlikely though, since the State Secretary of Economy, Walter Hirche, a member of the FDP, who is also a member of the Volkswagen supervisory board, has declared that a sale of the state owned Volkswagen stake is "beyond all question".~~

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