White Collar Defense and Investigations

What a Criminal Tax Investigation Means for a Managing Director or Management Board Member of a German GmbH or German Aktiengesellschaft

Dr. Sebastian Korts

Rechtsanwalt
Fachanwalt für Steuerrecht
Fachanwalt für Handels- und Gesellschaftsrecht
Steuerstrafverteidiger
MBA – Master of Business Administration –
M.I.Tax – Master of International Taxation –

Client Briefing for International Executives

This memorandum is intended for an English-speaking director who is confronted with the opening of criminal tax proceedings in Germany. It explains the institutional setting, the ordinary procedural sequence, the particular role of BaFin in financial, capital-market and anti-money-laundering constellations, and the immediate need for independent personal defence counsel.

General information only. Case-specific legal advice requires individual assessment of the facts, files, authorities involved, tax periods, corporate role and expected criminal exposure.

Contents

1. Executive orientation 3
2. Why the investigation is personal for the director 5
3. The legal and institutional framework 6
4. How a German criminal tax investigation begins 8
5. The first contact with the authorities 10
6. Searches, seizures and digital evidence 11
7. The parallel tax assessment procedure 12
8. BaFin, FIU and financial-market supervision 14
9. Cross-border conduct and international cooperation 16
10. Defence counsel: why the company tax adviser cannot defend the director personally 17
11. Immediate conduct rules for the managing director 19
12. Internal investigations and corporate governance 21
13. Risk scenarios for GmbH and Aktiengesellschaft management 22
14. Procedural outcomes and strategic objectives 24
15. Practical checklist for the first days 26
16. Concluding observations 27

1. Executive orientation

A German criminal tax investigation (steuerstrafrechtliches Ermittlungsverfahren) against the managing director (Geschäftsführer) of a limited liability company (Gesellschaft mit beschränkter Haftung – GmbH) or against a member of the management board (Vorstandsmitglied) of a stock corporation (Aktiengesellschaft – AG) is not a routine tax matter. It is a criminal proceeding directed at an individual person. The company may be involved, documents may be located at the company, and the underlying tax returns may have been filed in the company's name. Nevertheless, once the director is treated as an accused person (Beschuldigter), the director's liberty, professional reputation, immigration position, financial exposure, future directorships and relationship with shareholders or supervisory bodies may be personally affected.

The starting point is simple but frequently underestimated by international executives. German law attributes tax duties to the legal representative (gesetzlicher Vertreter) of a legal entity. The director must ensure that the company's tax obligations are fulfilled and that taxes are paid from the funds under the director's management. In practice, this does not mean that every tax error is a criminal offence. It does mean, however, that the director is an obvious addressee of questions when the tax authorities believe that VAT, wage tax, corporate income tax, trade tax, withholding tax, customs duties or other tax positions may have been misstated, filed late, concealed or structured in a way that raises suspicion.

The criminal allegation most often discussed in this context is tax evasion (Steuerhinterziehung) under the Fiscal Code (Abgabenordnung – AO). The allegation may concern incorrect or incomplete information given to the tax authorities, a failure to inform the tax authorities of tax-relevant facts, or other conduct resulting in taxes not being assessed, not being assessed in full, or not being assessed in time. The criminal offence may be punished by a fine or imprisonment, and particularly serious cases carry substantially higher exposure. The attempted offence is also punishable.

A director with a common-law or Anglo-American background should not expect German proceedings to operate like an informal negotiation with a regulator. German criminal tax procedure is more formal, file-driven and statute-bound. Authorities are required to record procedural steps, to classify persons as witnesses or accused persons, to observe particular warning duties, to obtain judicial orders for certain coercive measures, and to manage the relationship between the tax assessment procedure (Besteuerungsverfahren) and the criminal procedure (Strafverfahren). Polite official communication may still be coercive in legal effect. A request that appears administrative may in substance be part of a criminal investigation.

The first strategic decision is therefore not whether the director should 'explain the misunderstanding'. The first strategic decision is who speaks for the director, when, and on the basis of what file knowledge. In a German criminal tax investigation, the director should personally appoint an independent criminal tax defence lawyer (Steuerstrafverteidiger). The defence lawyer must act for the director personally. The lawyer is not appointed by the company's finance department, the company's tax adviser, the auditor, the supervisory board or a shareholder unless the director expressly makes that personal choice after receiving conflict-sensitive advice.

The company's tax adviser (Steuerberater) cannot simply become the director's personal criminal defence counsel. The company's tax adviser owes duties to the company, may have prepared or reviewed the very tax returns under investigation, may be a witness, may hold relevant documents, and may face their own professional or factual exposure. The same is true, with different professional rules, for the company's auditor (Wirtschaftsprüfer). In serious criminal tax matters, and especially where a public prosecutor, criminal court or mandatory-defence situation is involved, neither a tax adviser nor an auditor is a substitute for a lawyer admitted and instructed as criminal defence counsel (Strafverteidiger).

The tax investigation unit (Steuerfahndung) is a central authority in such matters, but it is not the only authority. The office for fines and criminal tax matters (Bußgeld- und Strafsachenstelle – BuStra), the public prosecution office (Staatsanwaltschaft), customs investigation (Zollfahndung), the police, the Financial Intelligence Unit (Zentralstelle für Finanztransaktionsuntersuchungen – FIU) and the Federal Financial Supervisory Authority (Bundesanstalt für Finanzdienstleistungsaufsicht – BaFin) may all become relevant. BaFin is particularly important where the company is a bank, financial services provider, investment firm, payment institution, insurer, issuer, listed company, capital-market participant, or where the tax facts overlap with market abuse, anti-money-laundering obligations, suspicious transaction reports, disclosure duties, unauthorised financial business or deficient business organisation.

The director should assume from the outset that the matter may have multiple tracks. There may be a criminal track against individuals, a tax assessment track against the company, an administrative offence track against the company, a supervisory track involving BaFin, an anti-money-laundering track involving the FIU, and a corporate-governance track involving the supervisory board (Aufsichtsrat), shareholders or D&O insurers. These tracks must be coordinated, but they must not be collapsed into one undifferentiated corporate response. The director's personal defence has to remain independent.

2. Why the investigation is personal for the director

A GmbH and an AG are legal entities. Their tax returns, accounting records and tax payments are corporate matters. However, German tax law does not treat a company as an abstract machine without human responsibility. The managing director of a GmbH and the management board of an AG act for the company and are expected to organise compliance. When tax authorities suspect that the company's tax affairs were handled incorrectly, the first factual question is usually who had responsibility for the relevant tax process, who signed or approved returns, who instructed finance staff or external advisers, and who knew or should have known of the relevant facts.

For a GmbH, the managing director (Geschäftsführer) is the company's statutory management organ. For an AG, the management board (Vorstand) manages the company under its own responsibility. The tax authorities and prosecutors will look at formal responsibilities, internal allocation of departments, delegated compliance functions, reporting lines, board minutes, sign-off protocols, email correspondence, ERP-system permissions, tax-control-system documentation, audit reports and communications with advisers. The existence of a CFO, head of tax or external tax adviser does not automatically remove personal criminal risk from the director. Delegation may be relevant, but only if it was properly organised, monitored and escalated.

The central issue in criminal tax law is usually not merely whether a tax position was wrong. The decisive questions are whether incorrect or incomplete information was provided, whether tax-relevant facts were omitted, whether the omission caused a tax understatement or unjustified tax advantage, and whether the relevant individual acted intentionally or with the required mental element. German criminal tax practice often examines e-mails, draft returns, internal memoranda, board packs, tax opinions, audit findings and warning messages to reconstruct what the director knew at the time of filing, payment, disclosure or non-disclosure.

An international executive may instinctively view the matter as a dispute between the company and the tax authority. That view is too narrow. Once the investigation is formally directed against the director as an accused person (Beschuldigter), the director has procedural rights that differ fundamentally from the company's tax cooperation duties. The director may have a right to remain silent (Schweigerecht), a right to consult defence counsel (Recht auf Verteidigerkonsultation), a right to file inspection through defence counsel (Akteneinsicht durch den Verteidiger), and a right not to be forced to incriminate himself or herself in the criminal procedure. These rights must be exercised deliberately. They are not preserved by allowing the company to run the matter through its ordinary tax adviser.

Personal exposure may also arise even where the director did not personally prepare the tax return. Prosecutors will ask whether the director accepted aggressive VAT structures, approved accounting treatments that concealed tax facts, allowed inaccurate transfer-pricing assumptions to continue, ignored payroll-tax risks, failed to correct known errors, or tolerated business models that depended on tax non-compliance. The investigation may also examine whether the director had sufficient organisational measures in place, including a tax compliance management system (Tax Compliance Management System), escalation channels, dual-control mechanisms, documentary sign-offs, and independent review of high-risk tax positions.

In an AG, the existence of a supervisory board (Aufsichtsrat) adds an additional governance dimension. The management board must consider whether and when the supervisory board must be informed. The supervisory board may have its own duties to investigate, assert claims, preserve evidence or appoint independent advisers. The director's personal defence must therefore be coordinated with corporate governance without becoming subordinate to it. A director should not allow supervisory-board reporting, investor-relations concerns or public-relations strategy to dictate the content of a personal criminal defence.

In a GmbH, shareholders may exercise closer practical influence, particularly in owner-managed or private-equity-backed companies. That can create pressure on a managing director to make early explanations, sign remediation documents or accept responsibility for historic tax positions. Such steps may have criminal consequences. A statement made to reassure shareholders, lenders or a tax auditor can later be used, directly or indirectly, in criminal proceedings. The personal defence lawyer should review any proposed statement before it is made.

The personal nature of the investigation is also relevant for insurance and indemnification. Directors' and officers' insurance (D&O-Versicherung), legal expenses insurance (Rechtsschutzversicherung), indemnity arrangements, service agreements and corporate reimbursement policies should be reviewed. However, insurance notification must be handled carefully. The director should not disclose more than is required, should avoid unnecessary admissions, and should ensure that communications with insurers do not undermine defence confidentiality.

3. The legal and institutional framework

The German framework combines tax law, criminal procedure, company law, administrative-offence law and, in regulated sectors, financial-supervisory law. The Fiscal Code (Abgabenordnung – AO) defines tax obligations and criminal tax offences. The Code of Criminal Procedure (Strafprozessordnung – StPO) governs the criminal investigation, including questioning, searches, seizures, file access and court proceedings. The Administrative Offences Act (Ordnungswidrigkeitengesetz – OWiG) is relevant where the company may face a corporate fine (Verbandsgeldbuße) or where regulatory breaches are pursued as administrative offences (Ordnungswidrigkeiten).

The Limited Liability Companies Act (GmbH-Gesetz – GmbHG) and the Stock Corporation Act (Aktiengesetz – AktG) set out corporate-management duties. For a GmbH, the managing directors must conduct the company's affairs with the due care of a prudent businessperson (Sorgfalt eines ordentlichen Geschäftsmannes). For an AG, members of the management board must apply the due care of a prudent and conscientious manager (Sorgfalt eines ordentlichen und gewissenhaften Geschäftsleiters). These civil-law duties are not identical to criminal liability, but they form the background against which investigators assess the director's organisational responsibility.

The office for fines and criminal tax matters (Bußgeld- und Strafsachenstelle – BuStra) is often the procedural hub within the tax administration. It may initiate and conduct criminal tax proceedings in cases in which the revenue authority conducts the matter independently. The tax investigation unit (Steuerfahndung) performs investigative work, including fact-finding, searches, document review, interviews and analysis of tax data. Tax investigation officers have

police-like rights and obligations in criminal tax proceedings. In more serious or broader matters, the public prosecution office (Staatsanwaltschaft) may take over or direct the investigation.

The public prosecution office is not a private litigant and not a commercial regulator. It is an organ of criminal justice. German law follows the principle of mandatory prosecution (Legalitätsprinzip), under which the public prosecution office is generally obliged to take action where sufficient factual indications of a prosecutable offence exist. This is one reason why German proceedings may feel more rigid than the director expects. Once the threshold of suspicion is crossed, the authorities cannot simply treat the matter as a purely commercial misunderstanding.

The criminal tax offence most relevant in this setting is tax evasion (Steuerhinterziehung). It can be committed by making incorrect or incomplete statements to the tax authorities, by failing to inform them of tax-relevant facts, or by failing to use revenue stamps or tax stamps where required, if this results in taxes being understated or tax advantages being obtained unlawfully. German law also treats taxes as understated when they are not assessed, not assessed in full or not assessed in time. This is especially relevant for late filings, delayed VAT declarations, payroll tax and withholding tax constellations.

The concept of a particularly serious case (besonders schwerer Fall) is of major practical relevance. It can increase the sentencing range and influence whether the matter remains within the tax administration or moves to the public prosecutor and court. Large-scale tax understatement, abuse of authority, forged or falsified documents, organised VAT or excise structures, and concealment through third-country companies are examples of factors that may aggravate the case. The director should not assume that repayment of tax automatically eliminates criminal exposure.

The company may face separate consequences. Under the Administrative Offences Act (Ordnungswidrigkeitengesetz – OWiG), a regulatory fine may be imposed on a legal entity or association if a representative, director or senior person commits a criminal offence or administrative offence through which duties of the entity were breached or the entity was enriched or intended to be enriched. In addition, tax assessments, interest, late-payment surcharges, confiscation (Einziehung), supervisory measures and reputational consequences may arise. The company’s interests and the director’s personal interests may overlap, but they are not identical.

In financial-sector matters, the Federal Financial Supervisory Authority (Bundesanstalt für Finanzdienstleistungsaufsicht – BaFin) may be integrated into the matter. BaFin is not a tax authority. It does not replace the tax investigation unit (Steuerfahndung) or the public prosecution office (Staatsanwaltschaft). Its relevance arises where the same facts touch financial supervision, market integrity, anti-money-laundering controls, reporting systems, risk management, issuer obligations, securities trading, market abuse or unauthorised financial services. In such cases, BaFin may conduct or coordinate supervisory investigations, impose administrative measures or fines, and transmit matters to the public prosecution office.

The Financial Intelligence Unit (Zentralstelle für Finanztransaktionsuntersuchungen – FIU) can also become relevant. Suspicious transaction reports under anti-money-laundering law may contain information that later becomes relevant to a tax investigation. Conversely, tax investigators may encounter facts that indicate money laundering or terrorist financing and may

transmit information through legally defined channels. A director should understand that modern white-collar investigations do not stay neatly inside one authority's file room. Information may move between tax authorities, prosecutors, supervisory authorities and foreign authorities if statutory requirements are met.

4. How a German criminal tax investigation begins

A criminal tax investigation may begin quietly. The director may first learn of it through a letter announcing that proceedings have been initiated, through a summons, through questions raised during a tax audit, through a request for documents, through a search of the company's offices, through contact with employees, or through the seizure of documents from the company's tax adviser, bank or business partners. In some cases, the director only learns of the investigation after authorities have already reviewed significant material.

The legal threshold is not proof of guilt. The threshold is an initial suspicion (Anfangsverdacht) sufficient to justify investigative measures. This may arise from an ordinary tax audit (Betriebsprüfung), VAT special audit (Umsatzsteuer-Sonderprüfung), wage tax audit (Lohnsteueraußenprüfung), customs audit, internal whistleblower report, external complaint, suspicious transaction report, BaFin referral, data leak, foreign mutual-assistance information, bank information, insolvency-related review, or discrepancy between corporate filings and third-party data.

In many cases, the investigation grows out of a tax audit. A tax auditor may begin by reviewing returns and documents in the ordinary tax assessment procedure. If the auditor encounters indications of intentional understatement, fabricated invoices, missing records, unexplained cash movements, false beneficial ownership information, improper VAT chain transactions, unreported payroll, hidden permanent establishments, or deliberate non-correction of prior errors, the matter may be transferred internally to the criminal tax unit. From the director's perspective, the important point is that a conversation which began as tax audit dialogue may turn into criminal evidence.

The formal initiation of criminal tax proceedings (Einleitung des Steuerstrafverfahrens) is a procedural step. Once an authority takes a measure clearly aimed at criminal prosecution for a tax offence against a person, the initiation must be documented. The accused person must be informed no later than when he or she is asked to present facts or documents in connection with the suspected offence. This requirement is crucial because it marks the boundary between ordinary tax cooperation and criminal defence rights.

The director should not rely on informal labels. A meeting described as a 'clarification meeting' may still create criminal risk. A document request may be framed as administrative but relate to suspected criminal conduct. A questionnaire may be sent to the company but drafted to elicit answers from the director personally. The director must therefore treat any tax authority contact following signs of suspicion as potentially criminal until defence counsel has assessed the procedural status.

Once the director is an accused person (Beschuldigter), German criminal procedure requires that the director be informed of the accusation and of the right to respond or not to make a statement. The director is entitled to consult defence counsel of choice (Verteidiger der Wahl) at any stage, even before an examination. These rights should be used calmly and without drama. Exercising

the right to remain silent is not an admission. It is a standard defence measure designed to prevent inaccurate, incomplete or premature statements before the file is known.

The tax authority may still continue the tax assessment procedure (Besteuerungsverfahren). This creates a difficult parallelism. In the tax assessment procedure, the company and its representatives may have cooperation duties. In the criminal procedure, the accused has rights of defence and protection against self-incrimination. German law recognises this tension, but it does not make it disappear. The director’s personal defence counsel must manage the interface so that the company can address tax compliance without the director being forced into a personal criminal statement.

In the early stage, the authorities will usually try to preserve evidence before suspects can adapt their account. They may obtain accounting data, bank statements, e-mail archives, mobile devices, laptops, cloud data, tax adviser correspondence, board materials, invoices, contracts, transfer-pricing files, payroll records and audit documentation. In cross-border matters, they may also seek assistance from foreign tax or law-enforcement authorities. The first days are therefore often decisive for document preservation, privilege assessment and communication discipline.

5. The first contact with the authorities

The first contact with German authorities should be treated as a legal event. It may be polite, short and business-like, but it can still carry significant consequences. A telephone call from a tax investigator (Steuerfahnder), a visit by officers at reception, a written summons to an interview, or a request for a short statement should not be handled casually. The director should not improvise, should not speculate, should not attempt to explain complex tax positions from memory, and should not allow employees to speak without coordination.

The director should immediately identify in which capacity he or she is being addressed. German procedure distinguishes between an accused person (Beschuldigter), a witness (Zeuge), a person affected by a search (von der Durchsuchung Betroffener), a legal representative of the company (gesetzlicher Vertreter), and a person merely providing administrative assistance. These categories matter. The rights and duties are not the same. A person who is asked questions as a witness may later become an accused person if answers indicate personal involvement. A director should therefore request clarification of status and should involve defence counsel before any substantive answer is given.

If officers appear at the company's premises with a search warrant (Durchsuchungsbeschluss), the director or on-site management should ask to see the warrant, identify the authority, record the names of officers, ask for the alleged offences and tax periods, and contact the personally appointed criminal tax defence lawyer (Steuerstrafverteidiger) immediately. No one should obstruct the search. No one should destroy, conceal or alter documents. At the same time, no one should volunteer explanations, make assumptions or sign substantive statements without legal review.

If the director receives a summons to an examination as accused (Beschuldigtenvernehmung), the default defence position is that the director does not make a substantive statement before defence counsel has obtained and reviewed the files. This is not a tactic of non-cooperation. It is the ordinary way to protect accuracy and fairness. German files often contain tax audit notes, internal authority memoranda, witness statements, bank material, seized e-mails and legal classifications that are not known to the director at the time of the first summons. A statement given before file review may inadvertently confirm a false premise.

A director should also be careful with internal messages after first contact. E-mails such as 'we need to fix what we did', 'this must not come out', or 'tell the tax people it was handled by the adviser' may be read later as consciousness of guilt or an attempt to influence evidence. Even innocent language can be misunderstood when extracted from context. Communications should be disciplined, factual and coordinated through counsel. A legal hold (Beweissicherung / Dokumentensicherung) should be issued where appropriate, but it should be drafted so as not to create unnecessary admissions.

The director should avoid discussing the substance of the case with employees who may become witnesses. Employees should receive practical instructions about document preservation and authority contacts, but they should not be coached to give a particular account. Witness influence (Zeugenbeeinflussung) can create serious additional risk. Where employees need separate legal advice, the company should consider independent counsel arrangements. The director's personal defence lawyer must not act for multiple persons if conflicts exist.

The first contact also requires consideration of language. German is the language of the authorities and courts. An English-speaking director should not answer German-language questions if he or she is not fully comfortable with the precise legal and tax terminology. Misunderstandings in translation can be dangerous. If a statement is ever to be made, it should be carefully prepared, translated where necessary, and given in a manner that prevents ambiguity. The director should not allow conversational English explanations to be summarised in German by officers without careful review.

The first contact may also trigger notification obligations. Listed companies, regulated financial institutions, banks, investment firms, insurers, payment institutions and groups subject to loan covenants may need to assess ad hoc disclosure duties, supervisory notifications, internal escalation rules, audit-committee involvement, employment-law measures and insurance notifications. These obligations must be managed without sacrificing the director's personal defence. The company's corporate communications strategy must not speak on the director's behalf unless this has been agreed with personal defence counsel.

6. Searches, seizures and digital evidence

Searches (Durchsuchungen) are among the most stressful events in a German white-collar investigation. They are often executed early in the morning, simultaneously at the company's offices, private homes, tax adviser premises, storage locations and sometimes at the premises of related companies. The purpose is to secure evidence before it can be moved or altered. The atmosphere may be controlled and professional, but the legal consequences are serious.

A search of the accused person's premises or of rooms connected to the accused generally requires suspicion and the expectation that evidence may be found. In ordinary cases, searches are ordered by a judge (Richter), although urgent cases may allow orders by the public prosecution office or its investigators. The search warrant should state the suspected offence, the persons concerned, the locations, and the categories of evidence sought. The warrant may be broader than the director expects, particularly where investigators are looking for digital data, e-mail correspondence, accounting exports and mobile-device information.

During a search, the director should insist on procedural order but should remain calm. The correct response is not confrontation and not cooperation beyond what the law requires. The director should ask officers to wait briefly until defence counsel arrives, while understanding that officers may begin if they decide that delay would endanger the search. The director should designate a responsible contact person, ensure that officers are accompanied, separate privileged or potentially privileged materials, and request that disputed materials be sealed or specially noted where appropriate.

Digital evidence is central in modern criminal tax investigations. Investigators may image laptops, servers, mobile phones, external drives, cloud folders, ERP systems, document-management systems, chat platforms and e-mail accounts. They may search for key words, data trails, metadata, approval workflows, timestamps, deleted items and communications with foreign subsidiaries or advisers. The director should assume that informal messages, draft spreadsheets and early-stage tax discussions may be reviewed. Deleting data after becoming aware of an investigation can be highly damaging and may create separate allegations.

The company should maintain a search protocol (Durchsuchungsprotokoll) from the moment officers arrive. The protocol should record the time of arrival, authorities present, documents shown, rooms searched, devices taken or imaged, questions asked, answers given, objections raised, and copies or inventories received. The official list of seized or secured items should be reviewed carefully. Where the list is generic, the company should request additional specification. The director's personal defence counsel should receive the protocol immediately.

Employees should be instructed that they may provide access to rooms, identify storage locations and answer purely logistical questions. They should not provide legal assessments, motives, explanations of complex tax positions, or speculation about responsibility. If an employee is asked substantive questions, the employee should ask whether he or she is being examined as a witness or accused person and whether counsel may be consulted. The company may need to consider witness counsel (Zeugenbeistand) for key employees.

Materials involving the director's personal defence lawyer require particular attention. Communications with the personally appointed criminal defence lawyer (Strafverteidiger) should be segregated and protected. Communications with the company's tax adviser (Steuerberater) or auditor (Wirtschaftsprüfer) are not the same thing as personal defence communications. They may be relevant evidence, and the adviser or auditor may be a witness. The director should not place sensitive personal defence strategy into ordinary company e-mail systems or share it widely internally.

A search also has psychological effects. Officers may ask apparently harmless questions while walking through the premises. The director may feel a strong urge to demonstrate transparency. That impulse must be controlled. A premature answer such as 'I approved it because our tax adviser said it was fine' may later become central to the file. Another answer such as 'I did not know anything' may be contradicted by e-mails or board minutes, even if the director meant only that he or she did not understand the tax consequences. Silence, through counsel, is often the more precise and safer course.

After the search, the defence team should reconstruct what occurred, obtain the warrant and inventory, identify all seized materials, notify insurers where appropriate, preserve all remaining data, assess business continuity needs, and prepare applications or correspondence concerning the return of materials, sealing, privilege, data copies or proportionality. The director's defence lawyer should also assess whether the search reveals the scope of suspicion more clearly than any previous notice.

7. The parallel tax assessment procedure

A German criminal tax investigation normally does not suspend the tax assessment procedure (Besteuerungsverfahren). The tax office may continue to determine tax bases, amend assessments, request documents, calculate tax, impose interest and pursue collection. This parallelism is one of the most difficult features for an English-speaking director. On the one hand, the company must address its tax position. On the other hand, the director personally must not be forced into self-incrimination in the criminal matter.

The Fiscal Code (Abgabenordnung – AO) recognises the relationship between the taxation procedure and the criminal procedure. In the tax procedure, taxpayers and legal representatives may have duties to cooperate in establishing the facts. In the criminal procedure, the accused has

defence rights. Coercive measures in the tax procedure may not be used to compel the accused to incriminate himself or herself in relation to a tax crime. However, findings from criminal proceedings may be used in the taxation procedure. The result is a practical tension that must be managed carefully, not ignored.

The company's tax adviser (Steuerberater) will often be needed to reconstruct returns, calculate exposure, prepare corrected figures, assist with amended assessments, communicate with the tax office on corporate tax questions and support remediation. That corporate tax work is different from the director's personal criminal defence. The tax adviser may produce calculations that are useful for both the company and the director, but the adviser should not decide defence strategy, make personal admissions for the director, or communicate with criminal authorities as if he or she were the director's defence lawyer in a serious case.

Payment of tax arrears can be strategically important. It may reduce interest, demonstrate remediation, and be relevant to sentencing or termination discussions. It is not, however, automatically a confession. Payment should be documented carefully. The wording accompanying payment matters. A letter that says 'we admit intentional evasion' has a different legal effect from a letter that says 'the payment is made to mitigate potential exposure and without prejudice to the legal assessment of intent and personal responsibility'. The exact wording must be case-specific.

The company may also face a duty to correct tax returns (Berichtigung von Steuererklärungen) where it later recognises that a tax return was incorrect or incomplete and this resulted or may result in an understatement of tax. Such correction duties must be analysed with precision because a correction may affect the criminal investigation. A correction can be evidence of good-faith remediation, but it can also reveal facts that the authorities use in the criminal file. The director's defence lawyer and the company's tax advisers should coordinate the sequence, content and legal framing of any correction.

Voluntary disclosure with exemptive effect (strafbefreiende Selbstanzeige) is a separate and highly technical instrument. It can, in principle, prevent punishment for tax evasion if all statutory requirements are met. However, it is subject to strict completeness requirements and important blocking events. If criminal proceedings have already been initiated and notified, if an audit order has been notified in relevant respects, if an official has appeared for a tax audit or criminal investigation, if the offence has already been detected and the taxpayer knew or should have expected detection, or if certain seriousness thresholds are met, the route may be blocked. The director should not attempt a 'self-disclosure' without specialist advice.

Tax calculations in criminal proceedings differ from ordinary tax planning. Investigators will often calculate a tax loss (Steuerschaden) period by period and tax type by tax type. They may treat late payment as tax understatement if the tax was not assessed or paid in time. They may add interest, surcharges or other consequences in the tax procedure while using the principal tax loss as a criminal measure. Disputes about the correct amount may be decisive for sentencing, limitation periods, jurisdiction and whether the case is considered particularly serious.

The tax assessment track can also create document-production issues. The company may have to provide records, but the director personally may choose not to provide self-incriminating explanations. Written submissions should therefore be separated. A corporate tax submission can state factual and technical positions without attributing personal intent. A personal defence

submission can address intent, knowledge, reliance, delegation and procedural issues from the director's perspective. Combining both in a single letter prepared by the company's tax adviser is often unsafe.

Where the company is solvent and operational, authorities may expect constructive tax clarification. Where the company is in crisis or insolvency, the risk picture changes. Insolvency administrators, former directors, tax offices, social-security authorities, customs, employees and auditors may all become sources of information. Historic failures to pay wage tax or VAT can be scrutinised intensely. The director's defence must be prepared for the fact that corporate distress often produces document trails showing who decided which creditors were paid and which tax liabilities were deferred.

8. BaFin, FIU and financial-market supervision

The Federal Financial Supervisory Authority (Bundesanstalt für Finanzdienstleistungsaufsicht – BaFin) must be considered whenever the company or its group operates in a regulated financial environment or participates in the capital markets. BaFin is not part of the tax administration. Its mandate is financial supervision, market integrity and enforcement of regulatory obligations within its remit. Nevertheless, BaFin may become integrated into a criminal tax matter because the same facts can have tax, criminal, supervisory and market implications.

A simple domestic tax error in an unregulated trading company will not automatically involve BaFin. By contrast, BaFin involvement becomes realistic where the company is a bank, securities institution, asset manager, payment service provider, e-money institution, insurer, listed issuer, capital-market participant, investment intermediary, or part of a regulated group. It also becomes realistic where the suspected tax facts overlap with market abuse, insider dealing, market manipulation, false or delayed public disclosures, misleading financial statements, unauthorised financial business, anti-money-laundering weaknesses or systematic failure to submit suspicious transaction reports.

The relevance of BaFin is particularly clear in market abuse scenarios. If suspicious trading, insider information, market manipulation or disclosure irregularities are connected to tax-sensitive events, BaFin may investigate within its competence and may refer confirmed suspicions to the competent public prosecution office (Staatsanwaltschaft) or pursue administrative-offence proceedings. A tax issue may therefore become part of a wider capital-market narrative: when did the management board know of the tax exposure, was the exposure price-sensitive, were financial statements affected, were investors informed correctly, and did insiders trade while knowing non-public information?

Anti-money-laundering issues can also connect tax, BaFin and the FIU. Regulated entities have extensive obligations under anti-money-laundering law, including customer due diligence, risk management and suspicious transaction reporting. If a tax investigation reveals suspicious flows, false invoices, circular payments, undeclared beneficial ownership, offshore structures or transactions without economic rationale, the matter may raise questions beyond tax evasion. The FIU may receive and analyse suspicious transaction reports, and supervisory authorities may examine whether the institution's systems functioned properly.

The director should understand that BaFin's involvement changes the tempo and complexity of the matter. BaFin may request information from the institution, examine organisational

deficiencies, interview responsible managers, review compliance systems, coordinate with auditors, impose administrative measures, publish certain measures, or impose fines. In parallel, the tax investigation unit (Steuerfahndung) and public prosecution office (Staatsanwaltschaft) may pursue criminal tax allegations. The same e-mail, board paper or internal report may therefore be relevant in more than one file.

The company's regulated status may also create special governance obligations. Management may need to notify BaFin of material compliance deficiencies, changes in fitness and propriety (Zuverlässigkeit und fachliche Eignung), significant risk events, internal-control weaknesses or external audit findings. If the director personally is under investigation, the question may arise whether the investigation affects the director's reliability as a manager of a regulated entity. That question must be handled with precision and without unnecessary admissions.

A common mistake is to separate tax and financial supervision too rigidly. In an international bank or regulated financial group, a tax offence allegation may suggest weaknesses in governance, data quality, transaction monitoring, outsourcing control, reporting lines, risk culture or senior management oversight. BaFin may be interested in those governance questions even if the tax offence itself is investigated by tax and criminal authorities. Conversely, BaFin findings may provide evidence that tax investigators use to assess intent or organisational failure.

The director should also be aware of public-facing implications. BaFin proceedings, public prosecutor actions, searches at a regulated institution, or substantial tax exposures can affect investors, counterparties, lenders, rating agencies, auditors and regulators in other jurisdictions. A statement made to calm the market or reassure a regulator must be consistent with criminal defence strategy. The personal defence lawyer, the company's regulatory counsel, the company's tax advisers and communications advisers must work within a controlled protocol. No one should issue a statement that implicitly attributes intent or responsibility to the director without the director's defence lawyer's approval.

Where BaFin and tax authorities are both involved, the director should expect document requests to be broader and more technical. The file may include suspicious transaction reports, internal AML escalations, compliance alerts, management information, audit findings, transaction-monitoring data, securities-trading records, employee communications and tax working papers. The defence must map these documents across legal regimes. A document that appears harmless in a tax audit may be sensitive under market abuse law, and a document produced to BaFin may later be relevant to the public prosecutor.

9. Cross-border conduct and international cooperation

Cross-border conduct is a recurrent feature of German criminal tax investigations involving international executives. The facts may involve foreign subsidiaries, permanent establishments, transfer-pricing structures, management fees, financing arrangements, IP migration, withholding tax, VAT chains, customs declarations, offshore accounts, foreign trusts, special purpose vehicles, cross-border payroll, expatriate compensation, employee stock plans, dividend flows or capital-market transactions. A director with an Anglo-American background should not assume that conduct planned abroad or documented in English falls outside German scrutiny.

German criminal tax law can apply to acts outside Germany in defined circumstances. For tax evasion, the Fiscal Code expressly addresses acts outside the territorial scope of German tax law and also covers certain duties and taxes administered in EU or EFTA contexts. The practical consequence is that a director cannot safely rely on the place where an e-mail was sent, where a board meeting was held, or where a tax structure was designed. If German tax interests are affected or if German law provides jurisdiction, German authorities may investigate.

International cooperation may occur through tax information exchange, mutual legal assistance, administrative assistance, cooperation between financial intelligence units, cooperation between supervisory authorities and European law-enforcement channels. The director may therefore face evidence gathered from more than one jurisdiction. Bank documents from one country, e-mails stored on servers in another country, invoices issued by a third country company, and tax-residence material from a fourth jurisdiction may all appear in a German file.

Cross-border cases are often more formal than businesspeople expect. Authorities may require certified translations, formal service, letters rogatory, mutual assistance requests, production orders and coordination with foreign prosecutors or regulators. The director should not assume that an informal call to a foreign colleague will solve the issue. Indeed, contacting foreign colleagues without a controlled legal protocol may create witness-contamination concerns or produce further discoverable communications.

Transfer-pricing and permanent-establishment cases deserve special caution. A position that was defensible in a tax controversy may still become criminally sensitive if investigators believe that facts were concealed or documents were created after the fact. The criminal issue is usually not whether the arm’s length range was debatable. The issue is whether the company disclosed the true functions, risks, assets, decision-making location, beneficial ownership, intercompany arrangements and factual performance. A director should avoid presenting retrospective tax rationalisations as if they were contemporaneous business decisions.

VAT and customs cases can escalate quickly because they often involve transaction chains, missing traders, false invoices, import values, origin declarations, excise duties or cross-border logistics. German investigators may examine whether management ignored red flags, accepted unrealistic margins, failed to verify counterparties, or allowed the company to participate in chains that generated unjustified input VAT deductions or customs advantages. In such cases, foreign counterparties and data from other EU Member States can become central evidence.

Cross-border employment and payroll matters also create risk. Expatriate directors, seconded employees, equity compensation, shadow payroll, social-security coordination and withholding obligations can generate complex filing duties. If the company failed to withhold wage tax or social-security contributions, investigators may ask who designed the compensation structure,

who knew where employees actually worked, and who decided not to disclose facts to German authorities. Personal reliance on a foreign payroll provider may not be sufficient if German management ignored obvious German tax obligations.

Foreign legal advice may be relevant but must be handled carefully. Advice from a UK, US or other foreign adviser does not automatically establish a German-law defence. It may help show that the director sought expert guidance, but German prosecutors will ask whether the advice covered the German tax issue, whether the facts provided to the adviser were complete, whether the adviser was qualified on German law, whether contrary indications existed, and whether management followed or selectively used the advice. The director's personal German criminal tax defence lawyer should review foreign advice before it is shown to German authorities.

Language and cultural assumptions can become evidence problems. English-language e-mails may use phrases such as 'aggressive', 'push the tax line', 'keep this off the radar', or 'audit risk' in a business sense. German investigators may read them literally. The defence must therefore reconstruct context, explain terminology and show contemporaneous legality if that is the case. The best defence is not a general cultural explanation. It is a precise documentary reconstruction showing what was known, what was disclosed, what advice was obtained and why the director acted lawfully or without intent.

In multi-jurisdictional matters, parallel defence coordination is essential. The director may need German criminal tax defence, foreign criminal counsel, tax controversy counsel, regulatory counsel, employment counsel and public-relations advice. Coordination must be disciplined. A privileged memorandum prepared in one jurisdiction may not enjoy the same protection in Germany. A settlement statement in one jurisdiction may be misunderstood in another. The director's German defence lawyer should therefore be involved before foreign submissions are made if they touch German tax or criminal facts.

10. Defence counsel: why the company tax adviser cannot defend the director personally

This point must be absolutely clear. The company's tax adviser (Steuerberater) is not the managing director's personal criminal tax defence lawyer (Steuerstrafverteidiger) merely because the adviser knows the company's tax affairs. The adviser's familiarity with the returns may make him or her an important source of information, a technical expert, a remediation adviser or even a witness. It does not make the adviser independent personal defence counsel for the director.

The first reason is conflict of interest. The company's tax adviser acts for the company unless a separate and conflict-free personal engagement exists. The company may wish to correct returns, pay tax, cooperate with authorities, preserve its licence, satisfy BaFin, protect investors or assert claims against former management. The director may need to challenge the company's narrative, rely on delegation, show that information was withheld from him or her, or argue that other persons controlled the tax process. These interests may diverge. A single adviser cannot ethically and safely serve all interests in a serious criminal tax investigation.

The second reason is evidential. The tax adviser may have prepared tax returns, drafted memoranda, communicated with the tax office, received incomplete information, warned management, or failed to warn management. The adviser may be asked what he or she was told, what assumptions were made, whether documents were missing, and whether the director

approved a particular position. In such circumstances the adviser is a potential witness. A potential witness should not control the personal defence of the accused director.

The third reason is procedural law. German tax procedure contains a limited rule under which tax advisers, tax representatives, auditors and certified accountants may be appointed as defence counsel while the revenue authority conducts the criminal tax proceedings independently. This is a limited procedural constellation. In all other cases, they may lead the defence only together with a lawyer or a qualified professor of law admitted under the relevant rules. Once the public prosecution office or court is involved, or once the case is serious enough to require mandatory defence, a lawyer is indispensable. A tax adviser or auditor is therefore not a complete substitute for a criminal defence lawyer in cases with higher expected penalties.

The fourth reason is protection of defence communications. The strongest defence relationship is the relationship between the accused and the personally instructed criminal defence lawyer (Strafverteidiger). Communications with the company's tax adviser or auditor may not be treated in the same way, particularly where the adviser acts for the company and holds company documents. The director should not discuss personal defence strategy through ordinary tax-adviser channels without advice from defence counsel.

The fifth reason is strategic independence. A criminal tax defence is not only a tax calculation exercise. It requires analysis of intent, knowledge, responsibility, evidence admissibility, search measures, witness statements, procedural status, limitation periods, sentencing exposure, possible termination, potential indictment, media risk, international coordination and the director's professional future. A tax adviser may provide indispensable technical input, but the defence strategy must be directed by a lawyer who is personally instructed to defend the director.

The same logic applies to the auditor (Wirtschaftsprüfer). The auditor's role is to audit or review financial statements, assess accounting evidence and report under applicable audit standards. The auditor may become a central witness in a tax or capital-market investigation. Audit files, management representation letters, impairment discussions, tax-provision papers and going-concern assessments may all become relevant. The auditor cannot be treated as the director's personal criminal defender. In serious matters, the auditor should communicate with the defence only under a carefully structured protocol.

The director must personally choose and instruct the criminal tax defence lawyer. The company may pay or reimburse fees depending on law, insurance, articles of association, service agreements or corporate approvals, but payment does not determine the client. The client relationship must be clear in writing. The director should know who owes duties of loyalty and confidentiality to him or her personally. The company should know who acts for the company. Ambiguity at the beginning creates serious problems later.

There are circumstances in which a coordinated defence with the company is possible and beneficial. The director and company may share an interest in showing that the tax position was technically correct, that any error was negligent rather than intentional, that the tax loss is lower than alleged, or that systems have been remediated. But even in a joint-interest setting, the director should have independent counsel. Coordination is not identity. A joint defence agreement or common-interest protocol may be useful, but it does not replace separate mandates.

If the company proposes that its tax adviser, finance director, general counsel or auditor 'handle the matter' for the director, the director should politely refuse any arrangement that compromises independent defence. The correct formulation is that the director will cooperate with the company's advisers through his or her personal criminal tax defence lawyer. This protects the director, the company and the advisers. It prevents later disputes about who was represented, who authorised statements and whether conflicts were disclosed.

The practical rule is straightforward. The company's tax adviser may assist with corporate tax facts. The company's auditor may assist with audit and accounting facts. The company's regulatory counsel may assist with BaFin and supervisory facts. The director's personally chosen criminal tax defence lawyer controls the director's personal defence. No substantive statement on the director's knowledge, intent, responsibility or alleged guilt should be made without that lawyer's approval.

11. Immediate conduct rules for the managing director

The director's conduct during the first hours and days can materially affect the outcome. The following rules are not theatrical. They are practical protections against avoidable mistakes in a formal criminal tax environment. The director should apply them calmly and consistently.

First, the director should personally instruct independent criminal tax defence counsel (Steuerstrafverteidiger). The mandate should be clear, written and personal. The lawyer should be informed of all known authority contacts, tax periods, entities, advisers, searches, interviews, notices and internal concerns. The director should not wait for the company to organise a global response before protecting personal rights.

Second, the director should not make a substantive statement to tax investigators, prosecutors, police, BaFin or other authorities before defence counsel has assessed the file and procedural status. The director may provide identification details and may cooperate with logistical matters, but should not explain tax positions, motives, internal responsibilities, knowledge, reliance or chronology from memory. A premature statement is difficult to repair.

Third, the director should preserve all potentially relevant documents and data. This includes e-mails, calendars, chat messages, board papers, handwritten notes, tax memoranda, audit reports, spreadsheets, mobile devices, cloud folders and communications with foreign advisers. Preservation does not mean selecting favourable documents. It means preventing destruction and enabling counsel to review the full record. Any deletion after awareness of an investigation can be highly damaging.

Fourth, the director should separate personal defence communications from corporate operational communications. Personal defence communications should be sent through agreed secure channels, not through broad company distribution lists. The director should not forward defence advice to the company's tax adviser, auditor or internal finance team unless the defence lawyer approves. Uncontrolled forwarding may waive protections or create new witnesses.

Fifth, the director should avoid informal discussions with employees about the substance of the allegations. It is acceptable to issue preservation and process instructions. It is not acceptable to align stories, suggest what employees should say, or imply that employment consequences

depend on a particular account. Employees may be witnesses. Some may need their own counsel. The director should not create an impression of witness influence.

Sixth, the director should identify all potentially relevant tax types and periods. Criminal tax investigations may expand. A VAT issue may reveal wage tax issues. A corporate income tax issue may reveal withholding tax issues. A German domestic issue may reveal foreign permanent-establishment issues. Defence counsel should receive a map of affected legal entities, tax registrations, filing responsibilities, signatories, advisers and internal owners.

Seventh, the director should review insurance and indemnification but should do so with legal care. D&O insurance, legal-expenses insurance, indemnity agreements and service contracts may provide support. Notifications must be timely, but they should not include unnecessary admissions. Insurers may later request information. The director's personal defence lawyer should coordinate the wording.

Eighth, the director should maintain personal discipline in writing. No speculative e-mails. No sarcastic comments. No text messages about 'covering' issues. No private deletions. No broad apologies. No admissions drafted for morale purposes. All written communications should assume that a prosecutor, tax investigator, BaFin officer, supervisory board member, auditor or judge may read them later.

Ninth, the director should manage travel and availability. In serious cases, counsel should consider whether travel outside Germany creates practical risks or whether authorities may request appearance, service or measures. This does not mean that the director cannot travel. It means that travel should be planned with procedural awareness, particularly if the director is foreign-resident, has dual roles, or is subject to important upcoming authority deadlines.

Tenth, the director should demand clarity of mandate in every advisory relationship. Who acts for the company? Who acts for the director? Who acts for other board members? Who acts for employees? Who acts for shareholders? Who communicates with BaFin? Who communicates with the tax office? Without a mandate map, a complex investigation becomes chaotic and conflicts emerge too late.

Eleventh, the director should not confuse remediation with confession. It is often right to improve controls, correct processes, pay disputed amounts, enhance tax compliance, or notify regulators. But the language of remediation must be precise. The company can say that it is improving systems and cooperating within legal limits. It should not say, without careful analysis, that the director intentionally caused tax evasion or concealed facts.

Twelfth, the director should prepare emotionally for a slow process. German white-collar investigations can last months or years. Silence from the authority does not necessarily mean the matter is over. A lack of immediate accusation does not mean no accusation will follow. Conversely, the opening of proceedings does not mean conviction. The director's defence should be built methodically, based on the file, the tax analysis and the evidence of personal knowledge.

12. Internal investigations and corporate governance

An internal investigation (interne Untersuchung) may be necessary where the company needs to understand what happened, preserve evidence, correct tax positions, satisfy auditors, inform BaFin, address supervisory-board duties, or decide whether claims against current or former managers exist. Internal investigations can be extremely useful. They can also be dangerous if conducted without regard to the director's personal defence.

The first governance question is who commissions the internal investigation. In a GmbH, this may be management, shareholders or a special committee, depending on the facts and conflicts. In an AG, the supervisory board (Aufsichtsrat) may have to take control if the management board itself is implicated. Where the director is personally under investigation, the director should not assume that the company's internal investigation is designed to protect him or her. Its purpose may be to protect the company, identify responsible individuals and support remediation.

The scope of the internal investigation should be carefully defined. A vague mandate to 'find out what went wrong' can produce uncontrolled interviews, broad data collection, premature conclusions and privilege problems. A disciplined mandate identifies the relevant tax types, time periods, entities, transactions, decision-makers, documents, authorities and legal questions. It also defines how the investigation will interact with the criminal tax defence, external tax corrections, BaFin communications, auditor inquiries and employment-law measures.

Employee interviews require special care. Interviewees should be told who the interviewing lawyers act for. They should not be misled into believing that company counsel is their personal lawyer. The director, if interviewed by company counsel, should understand whether the interview is part of the company's investigation and whether statements may be shared with the company, auditors, BaFin, tax authorities or prosecutors. In many cases, the director should not participate in any internal interview before personal defence counsel has reviewed the situation.

Data collection should be legally structured. The company may need to collect e-mails, accounting records, board materials, chat messages and files. Employment-law, data-protection and works-council issues may arise. The company must also preserve business continuity. However, the director's personal defence should receive an opportunity, where appropriate and lawful, to understand what data has been collected and how it may be used. The company should avoid selective disclosure that creates an incomplete narrative against an individual before the full context is known.

Auditors will often ask questions once a criminal tax investigation becomes known. They may need to evaluate tax provisions, contingent liabilities, internal controls, management integrity and disclosure. The auditor's questions may be legitimate, but answers may have criminal implications. Management representation letters, audit-committee minutes and written explanations can later become evidence. The director should not sign audit statements that attribute personal knowledge or intent without personal legal review.

The supervisory board of an AG may face a difficult balance. It must supervise management and may need to investigate potential breaches of duty. At the same time, it should avoid prejudging criminal allegations before the defence has had access to the file. A well-governed response creates separate advisory channels, documents decisions carefully, avoids public speculation, and

ensures that the company can comply with its duties without interfering with personal defence rights.

In a GmbH, shareholders may want rapid accountability. Private-equity sponsors or foreign parent companies may demand a report, a timeline and an assessment of management responsibility. The director should not be pressured into signing a report that has been prepared for corporate or investor purposes but contains criminally sensitive conclusions. Where shareholder reporting is necessary, the wording should be factual and coordinated through personal defence counsel.

Internal investigations in BaFin-relevant settings need additional care. BaFin may expect the regulated entity to identify control failures and remediate them. The company may therefore prepare a root-cause analysis. Such a document can be useful for supervision, but it can also be sensitive in criminal proceedings if it attributes fault to named managers. The company and the director should separate organisational root-cause analysis from personal criminal culpability. A system failure is not automatically intentional tax evasion by a director.

The best internal investigation is one that is evidence-based, conflict-aware and procedurally controlled. It should not be a search for a scapegoat. It should not be a public-relations exercise. It should not be conducted solely by the advisers whose own work is under review. It should produce facts, preserve records, support lawful remediation and allow personal defence counsel to protect the director’s rights.

13. Risk scenarios for GmbH and Aktiengesellschaft management

The risk profile differs by company type, governance structure and sector. A GmbH is often more closely managed, with fewer formal layers and more direct involvement of the managing director. Investigators may therefore focus on the managing director’s personal knowledge of transactions, payments, customer relationships, cash flows and tax filings. In owner-managed companies, the distinction between shareholder interest and management action may be blurred. In private-equity-backed or group subsidiaries, investigators may examine instructions from the shareholder, group tax department or foreign parent.

In a GmbH, common criminal tax scenarios include unreported cash sales, false input VAT deductions, missing or fabricated invoices, payments to related parties without economic substance, unreported benefits to shareholders, hidden profit distributions (verdeckte Gewinnausschüttungen), wage tax under-withholding, misclassification of workers, incorrect customs declarations, and failure to file or correct tax returns. The managing director is often the first person authorities examine because he or she has legal responsibility for the company’s affairs.

An AG usually has more formal governance, including a management board and supervisory board. This can help the defence if responsibilities were clearly allocated and monitored. It can also create a rich documentary record. Board minutes, committee materials, risk reports, internal audit reports, compliance reports, tax-control-system reports and supervisory-board communications may reveal what was known and when. A management board member responsible for finance or tax may face different exposure from a board member responsible for operations, but all board members may be examined if the matter was material enough to require collective attention.

Listed AGs and capital-market-oriented groups add further risk. A tax exposure may affect financial statements, profit forecasts, ad hoc disclosure, prospectuses, investor communications, insider lists, directors' dealings and market perception. If management knew of a material tax risk and failed to account for or disclose it properly, the matter may extend beyond tax evasion to accounting, market abuse or securities-law issues. BaFin's involvement becomes more likely in such cases.

Regulated financial companies have an additional layer. Banks, payment institutions, securities institutions and insurers are expected to maintain robust governance, risk management, compliance, anti-money-laundering systems and internal controls. A tax-criminal issue in such an entity may be interpreted as evidence of broader organisational weakness. BaFin may ask whether management was reliable, whether the institution had adequate controls, whether suspicious transaction reporting was timely, and whether audit or compliance findings were escalated properly.

Cross-border groups often present delegation issues. A German managing director may say that tax strategy was determined by the foreign parent, that transfer pricing was handled by group tax, or that VAT chain checks were performed centrally. These facts may be relevant. They do not automatically exonerate the German director. German law expects the legal representative of the German entity to ensure local tax compliance. Delegation to group functions must be clear, competent, monitored and responsive to red flags.

Reliance on professional advice is a recurrent defence theme. It may be powerful if the director gave the adviser complete facts, chose a competent adviser, disclosed uncertainties, received clear advice before acting, followed that advice, and had no obvious reason to doubt it. It is weak if the advice was vague, oral, based on incomplete facts, outside the adviser's competence, obtained after the event, contradicted by internal warnings, or used selectively. The defence should reconstruct advice chronologically rather than rely on general statements that 'the tax adviser approved everything'.

A further risk scenario is failure to correct. A director may not have caused the original error, but may have discovered it later. If the company then fails to correct tax returns or continues to file on the same basis, investigators may focus on the period after discovery. Board minutes, audit findings, tax memos and e-mails about prior years can become critical. The director should not assume that historic issues are only historic. Knowledge acquired today can create duties concerning yesterday's filings and tomorrow's returns.

In crisis situations, tax payment priorities become sensitive. If liquidity is limited, management decisions about paying suppliers, lenders, employees, wage tax, VAT or social-security contributions may be scrutinised. German authorities take wage tax and employee-related obligations particularly seriously. A director should ensure that liquidity decisions are documented, legally reviewed and not framed as deliberate tax non-payment to preserve other creditors.

Finally, personal conduct during the investigation can create or reduce risk. A director who preserves documents, appoints independent counsel, avoids improper witness contact, supports accurate tax calculation and communicates carefully is in a stronger position. A director who deletes data, pressures employees, blames advisers without evidence, makes inconsistent statements or allows the company to speak for him or her personally increases exposure.

14. Procedural outcomes and strategic objectives

A criminal tax investigation can end in several ways. The public prosecution office may terminate the proceedings if the investigations do not offer sufficient reason to prefer public charges. In less serious cases, proceedings may be terminated because guilt is minor or subject to conditions and directions, such as payment of a sum of money. In suitable less serious cases, the matter may be resolved by a written summary penalty order (Strafbefehl) without a full trial. In more serious cases, the public prosecution office may file an indictment (Anklage), and the court may decide whether to open main proceedings (Hauptverfahren).

The defence objective is not always the same. In some cases, the goal is complete termination because there was no tax understatement, no personal responsibility or no intent. In other cases, the goal is to reduce the tax loss, narrow the periods, exclude particular transactions, show reliance on advice, demonstrate proper delegation, negotiate termination against conditions, avoid a public trial, avoid imprisonment, protect professional licensing, protect immigration status, or prevent a public narrative that destroys the director’s career. Strategy must be tailored to evidence and exposure.

File inspection (Akteneinsicht) is central. Defence counsel is entitled to inspect the files and evidence under the rules of criminal procedure, subject to certain restrictions before the investigation has concluded. The file may reveal the actual accusation, the evidence relied upon, internal authority reasoning, witness statements, search results, tax calculations and procedural weaknesses. Without file inspection, the director is defending against shadows. A statement made before file review is rarely advisable in a serious criminal tax matter.

After file review, the defence may prepare a written statement (Schutzschrift or Verteidigungsschrift, depending on context), make legal submissions, challenge tax calculations, provide exculpatory documents, request further evidence, address intent, correct misunderstandings, negotiate procedural outcomes or advise continued silence. A good written defence statement is not a general denial. It is a structured submission tied to documents, tax law, chronology, responsibilities and the applicable criminal-law standard.

Termination without conditions is the strongest outcome where achievable. It may be based on lack of suspicion, insufficient evidence, absence of tax loss, absence of intent, limitation, procedural defects or other legal reasons. In practice, termination often requires proactive defence work, especially in complex cases where the authorities’ initial theory appears plausible but is incomplete. The defence must show why the file does not justify continuing against the director.

Termination subject to conditions and directions may be attractive where the risks of trial are material but the case can be resolved without conviction. The conditions may include payment of a sum to the Treasury or a non-profit institution, or other measures. Such termination is not the same as an acquittal, and it may have reputational and internal consequences. The director should understand how it will be recorded, whether it affects regulatory fitness, whether BaFin or foreign regulators must be informed, and whether the company or insurer will treat it as an admission.

A summary penalty order (Strafbefehl) can resolve certain less serious matters without a main hearing. It may impose fines and, where statutory conditions are met and the accused has defence counsel, even a suspended sentence of imprisonment within the legal limits. It becomes final if

no timely objection is lodged. A director must therefore treat service of a summary penalty order as urgent. The decision whether to object requires rapid assessment of evidence, sanction, collateral consequences and settlement alternatives.

An indictment and trial require a different defence posture. The court will review whether there are sufficient grounds to open main proceedings. If proceedings are opened, public hearings may follow. In high-profile or regulated-company cases, this can create serious reputational, investor, employment and supervisory consequences. Trial strategy must address not only legal guilt but also the comprehensibility of complex tax facts to judges, lay judges and the public. Expert evidence may be necessary.

Sentencing exposure depends on many factors, including tax loss, duration, number of acts, role of the director, intent, cooperation, repayment, prior record, use of false documents, organised structures, conduct after discovery and personal circumstances. The tax-loss amount can be decisive. The defence must therefore scrutinise the authorities' calculations rather than treat them as neutral accounting. A reduction in alleged tax loss may change the entire procedural posture.

Collateral consequences are often as important as the formal sanction. A criminal tax conviction can affect reputation, future directorships, banking relationships, public procurement, immigration, professional licences, regulatory fitness, D&O coverage, employment termination, bonus clawback and shareholder claims. In BaFin-regulated environments, even an unresolved investigation may trigger reliability questions. Defence strategy should define the target outcome by reference to these collateral consequences, not merely by reference to the fine or sentence.

The director should also understand that criminal defence and tax settlement are connected but not identical. The company may settle tax assessments while the director continues to contest intent. The director may accept a procedural resolution while the company continues technical tax appeals. Coordination is necessary, but one track should not accidentally decide the other. Written reservations and careful wording are essential.

15. Practical checklist for the first days

The first step is to secure personal representation. The director should appoint an independent criminal tax defence lawyer (Steuerstrafverteidiger) personally and immediately. The mandate should cover criminal tax law, procedural defence, authority communications, coordination with company advisers, BaFin-related interfaces where relevant, and insurance or indemnification strategy. The company's tax adviser should not be allowed to act as the director's personal defender in a serious criminal tax matter.

The second step is to collect the procedural documents. These may include the notice of initiation (Einleitungsmitteilung), search warrant (Durchsuchungsbeschluss), seizure list (Sicherstellungs- oder Beschlagnahmeverzeichnis), summons (Ladung), tax audit correspondence, BaFin letters, FIU-related communications, auditor letters and any internal reports. Defence counsel should review originals or complete copies, not summaries prepared by non-lawyers.

The third step is to map the facts. The director and defence counsel should identify the relevant legal entities, tax registrations, tax types, return periods, filing dates, signatories, internal responsibilities, external advisers, board decisions, accounting systems, banks, counterparties and foreign jurisdictions. A chronological timeline should be built from documents rather than memory. The timeline should distinguish what was known at the time from what is known now.

The fourth step is to preserve evidence. The company should issue a legal hold where appropriate, suspend routine deletion for relevant data, secure personal and company devices, preserve accounting exports, and prevent loss of cloud data or messaging records. Preservation should be broad enough to protect the record and careful enough to avoid unnecessary business disruption. It should not be framed as an admission of wrongdoing.

The fifth step is to establish a communication protocol. The protocol should specify who may communicate with tax authorities, prosecutors, BaFin, auditors, employees, shareholders, lenders, insurers and the press. It should also specify who approves statements and how personal defence communications are protected. No one should speak for the director personally without the director's defence lawyer's approval.

The sixth step is to separate mandates. The company may need its own tax counsel, criminal counsel, regulatory counsel and communications adviser. The director needs personal criminal tax defence counsel. Other board members or employees may need separate counsel. The auditor and tax adviser may provide factual and technical assistance, but their roles must be defined. A written mandate map avoids confusion.

The seventh step is to assess tax-payment and correction issues. The company may need to calculate potential tax exposure, consider amended returns, make payments, or respond to assessments. These steps must be coordinated with the director's defence. The wording of correction letters, payment references and tax submissions can materially affect criminal interpretation.

The eighth step is to evaluate BaFin and FIU interfaces. If the company is regulated or capital-market active, counsel should assess whether supervisory notifications, suspicious transaction reports, ad hoc disclosures, market-abuse assessments, audit-committee briefings or management-reliability issues arise. These questions should be handled by regulatory counsel in

coordination with criminal tax defence. They should not be left to ordinary tax compliance teams alone.

The ninth step is to manage internal investigation risk. If the company starts an internal investigation, the director should understand who commissioned it, who the lawyers represent, whether the director will be interviewed, whether interview notes may be shared, and whether the report will be disclosed to authorities. Personal defence counsel should review interview participation and document-sharing arrangements.

The tenth step is to avoid avoidable conduct risk. The director should not delete documents, should not influence witnesses, should not make informal explanations, should not blame others without evidence, should not sign broad admissions, should not send speculative e-mails, and should not allow the company's tax adviser to submit statements on the director's personal intent. Careful silence is often more professional than premature explanation.

The eleventh step is to prepare for file inspection and defence analysis. Defence counsel should request file access where procedurally appropriate and should analyse both the criminal file and the tax file. The director should expect that the file may initially be incomplete or partially withheld if disclosure would jeopardise the investigation. Strategy may need to evolve as access improves.

The twelfth step is to define success. The director should decide, with counsel, what outcomes matter most: no personal charge, no public trial, no conviction, no imprisonment, reduced tax-loss finding, protection of regulatory fitness, preservation of board position, controlled settlement, insurance coverage or coordinated resolution across jurisdictions. A defence without defined objectives risks reacting to authority pressure rather than shaping the outcome.

16. Concluding observations

A German criminal tax investigation against a managing director or management board member is a formal criminal matter with personal consequences. It should not be treated as a routine extension of a tax audit. The director's first protection is clarity: clarity about procedural status, clarity about rights, clarity about authority roles, clarity about the separation between company and personal interests, and clarity about who is authorised to speak.

The German system is more statute-bound and formalised than many common-law executives expect. The rules may appear rigid, but they also create rights. The director has a right to remain silent, a right to consult defence counsel, a right to defence file inspection through counsel, and a right to challenge evidence and legal classifications. These rights are effective only if used in time. They are weakened if the director gives premature statements or allows corporate advisers to speak on personal matters.

The tax investigation unit (Steuerfahndung) is important, but the authority landscape is broader. The office for fines and criminal tax matters (Bußgeld- und Strafsachenstelle – BuStra), the public prosecution office (Staatsanwaltschaft), customs investigation (Zollfahndung), BaFin, the FIU, auditors, supervisory boards and foreign authorities may all influence the case. A modern white-collar tax investigation is rarely confined to one authority and one tax return.

BaFin must be taken seriously where the company is regulated, listed, active in financial markets or exposed to anti-money-laundering obligations. BaFin's involvement may transform a tax

matter into a wider governance, market-integrity and regulatory-fitness issue. The director's defence strategy must therefore be integrated across criminal tax law, financial supervision, corporate governance and communications.

Cross-border conduct does not protect the director from German scrutiny. International structures, foreign advice, offshore entities, English-language documents and group-level tax planning may all be examined if German tax interests or regulated German entities are affected. The defence must reconstruct the true chronology, the advice received, the facts disclosed, the director's role, and the reasons why criminal intent is absent or why the authorities' theory is incomplete.

Above all, the company's tax adviser and auditor cannot be allowed to replace the director's personal criminal tax defence lawyer. They may be helpful. They may be essential for calculations and factual reconstruction. But in serious criminal tax matters they are not the director's independent personal defenders. The director must personally select a qualified criminal tax defence lawyer and ensure that all substantive communications concerning personal knowledge, intent and responsibility are controlled through that lawyer.

A disciplined response does not mean hostility toward authorities. It means lawful, precise and structured defence. The director can cooperate through counsel, support accurate tax clarification, preserve documents and assist corporate remediation while still protecting personal rights. The objective is not to obstruct the investigation. The objective is to ensure that the investigation does not proceed on misunderstandings, incomplete tax calculations, uncontrolled statements or conflicts of interest.

The decisive message for an international director is therefore this: take the matter personally, because the law does. Do not panic, because the opening of proceedings is not a conviction. Do not improvise, because informal explanations can become evidence. Do not rely on the company's tax adviser as personal defender, because the roles are different and the conflict is real. Appoint independent criminal tax defence counsel, preserve the record, control communications, and build the defence from the file and the facts.