



## VAT's new?

Current developments  
in Germany and the EU  
in the field of VAT



## Highlights

### **E-Invoicing for B2B supplies between domestic taxable persons from 1 January 2025 onwards**

By the Growth Opportunities Act, German invoicing rules were amended for supplies of goods and services after 31 December 2024. The amendment includes mandatory e-invoicing for domestic B2B supplies.

An e-invoice is an invoice that has been issued, transmitted, and received in a structured electronic format that allows it to be processed automatically and electronically (Sec. 14(1)(3) GVATA from 2025 onwards).

Mandatory e-invoicing does not apply to supplies that are exempt from VAT under Sec. 4 no. 8 – 29 GVATA, small amounts up to 250 euros (Sec. 33 of the German VAT Implementing Regulation) and travel tickets (Sec. 34 of the German VAT Implementing Regulation).

According to Sec. 27(38) GVATA, all taxable persons can submit invoices until 31 December 2026 for supplies of goods and services carried out before 1 January 2027 under the previous rules.

Taxable persons with an annual turnover not exceeding 800,000 euros can apply the previous rules until 31 December 2027. However, all taxable persons must be able to receive e-invoices from 2025 onwards. Two and a half months before the entry into force of the new e-invoicing rules, the German Federal Ministry of Finance commented on the upcoming regulatory framework.

*German Federal Ministry of Finance, letter of 15 October 2024, III C 2 - S 7287-a/23/10001:007*

#### **Links to further information:**

- [Webcast "e-invoicing"](#)
- [FAQ e-invoicing](#)
- [Deloitte website e-invoicing \(German\)](#)

### **Council agrees on VAT in the digital age package**

The Council reached an agreement on new measures that will bring the EU's value added tax (VAT) rules into the digital age. With new rules on electronic invoices and real-time data reporting, as well as business carried out through digital platforms, this package of legislation will fight tax fraud, support businesses and promote digitalisation.

The agreement covers three acts – a directive, a regulation and an implementing regulation – which taken together bring about changes to three different aspects of the VAT system. The new rules will:

- make VAT reporting obligations for cross-border transactions fully digital by 2030.
- require online platforms to pay VAT on short-term accommodation and passenger transport services in most cases where individual service providers do not charge VAT.
- improve and expand online VAT one-stop-shops so that businesses do not have to go through costly registrations for VAT in every member state in which they do business.

Chronological overview of the amendments concerning the 3 Pillars Digital Reporting Requirements (DRR), Platform Economy and Single VAT Registration:

#### **1. Digital VAT reporting and E-Invoicing**

Phase I – from the entry into force of the directive: no derogation required for the introduction of mandatory electronic invoicing.

Phase II – from July 2030: launch of DRR and new electronic invoicing for EU transactions.

Phase III – from January 2035: alignment of national systems for real-time reporting and, where appropriate, electronic invoicing.

## 2. Platform economy

Phase I – from January 2027 Adjustments to the e-commerce package, e.g. by including certain supplies of natural gas, electricity, heating and cooling in the OSS.

As well as an extension of the supply chain fiction for all supplies within the EU (B2C/B2B) carried out by traders established in third countries via online marketplaces.

Phase II – from July 2028 voluntary: fictitious supply chain in the area of short-term accommodation rental and passenger transport.

Phase III – from January 2030 Phase II is mandatory.

## 3. Single VAT registration

Phase I – from July 2028, expansion of the OSS to include further e-commerce deliveries and those made by non-resident traders; transfers of own goods; installation deliveries; sale of goods on board ships, trains and aircraft.

Voluntary, from July 2028, expansion and harmonization of the reverse charge mechanism.

Phase II – from June 2029, the consignment stock scheme will cease to apply (last application of the existing scheme for goods placed in storage up to and including June 2028).

For more detailed information please see [\(engl.\) GTLN](#) / [\(Deutsch\) DTN](#) and press release of the Council dated on **5. November 2024**. In our webcast VAT Insights on December 12, we will also discuss the practical consequences for businesses: [More information](#)

# News

## Legislation

### Annual Tax Act 2024 adopted by German Parliament

The German Parliament adopted the Annual Tax Act 2024 on 18 October 2024. The Act includes the following deviations from the government draft:

The new mandatory invoice detail relating to taxation based on received remuneration and the deferral of the time for deducting input tax to the time of payment if the supplier is subject to taxation based on received remuneration will apply from 2028 onwards.

The extension of the VAT exemption for managing loans and collaterals by lenders was removed due to the strained budgetary situation.

The VAT exemption for educational services, that prepare for a job or an examination before a legal entity under public law, extends to school and university education, vocational training and related supplies. The restriction for private institutions, as included in the draft, was removed.

The planned VAT exemption for (club) sport was removed. It will be examined if this amendment will be implemented at a later stage.

It will be regulated that small taxable persons should not be obliged to issue e-invoices but can also issue other invoices (paper or unstructured format) beyond the transitional rules.

The Act is subject to the Federal Council's approval that is expected for 22 November 2024.

### Link to further information:

- [Annual Tax Act 2024: Bundestag passes law \(German\)](#)

### **German Federal Council's approval of the Fourth Bureaucracy Relief Act**

On 18 October 2024, the German Federal Council passed the Fourth Bureaucracy Relief Act. The Act includes an eight-year retention period instead of ten years. Further, the threshold for monthly preliminary VAT returns was increased from 7,500 euros to 9,000 euros. Moreover, a new version of Sec. 122a of the German Tax Code provides for the possibility of disclosing administrative acts by making them available for data retrieval. In addition, a power of attorney database for tax consultants will be established within the social security system.

*German Federal Council, decision of 18 October 2024, BR-Drs. 474/24*

#### **Links to further information:**

- [German Federal Council's approval of the Fourth Bureaucracy Relief Act](#)
- [Webcast \(German\)](#)

### **Payments to a telecommunications provider in the event of premature termination of a service contract with a minimum commitment period**

Amounts that a telecommunications provider receives as compensation after the customer's premature contract termination constitute remuneration for service. The German Ministry of Finance amended the German VAT Application Decree accordingly (Sec. 1.3(16c) of the German VAT Application Decree).

*German Federal Ministry of Finance, letter of 18 October 2024, III C 2 -S 7100/19/10004 :007*

### **VAT assessment of redispatch 2.0 measures**

In a recent letter to the German Association of Energy and Water Industries (BDEW), the German Federal Ministry of Finance commented on the VAT treatment of redispatch 2.0 measures. These measures involve changing the planned use of powerplants to avoid grid bottlenecks. They usually result in additional powerplants being activated or instructed to increase their output, e.g., in high-consumption regions. At the same time, other powerplants originally planned in the deployment plan are instructed to reduce their output against compensation.

*German Federal Ministry of Finance, letter of 26 August 2024 – III C 2 - S 7100/19/10004 :004*

### **Guideline collection for the calendar year 2023**

The German Federal Ministry of Finance published the guideline collection for the calendar year 2023. The collection is published in the Federal Tax Gazette I. It can be downloaded from the German Federal Ministry of Finance website.

*German Federal Ministry of Finance, letter of 17 September 2024, IV D 3 - S 1544/19/10001 :011*

### **VAT conversion rates for September 2024**

The German Federal Ministry of Finance added the exchange rates for September 2024 to its updated overview for 2024 of the monthly VAT conversion rates.

*German Federal Ministry of Finance, letter of 1 October 2024, III C 3 - S 7329/19/10001 :006*

## **Court decisions**

### **Input tax deduction for purchasing a super sports car**

Acquiring a super sports car as an item on display for a car dealership before generating output supplies can be an input supply, allowing for input tax deduction, if the intended use is evidenced. Input tax deduction is not excluded if the purpose is an activity carried out to generate a surplus. Nevertheless, purchasing such a car can be inappropriate if the achievement of supplies with the planned car dealership depends on circumstances over which the taxable person has no or limited influence.

*Lower Saxony Fiscal Court, judgment of 18 January 2024 - 5 K 148/23*

**Economic integration for VAT grouping**

Business premises renting is sufficient for economic integration if it is not only of minor importance for the controlled company because it forms the spatial and functional basis of the controlled company's business activities. Economic integration, therefore, exists if the operating company would not have been able to continue its activities without the rented premises or only after overcoming significant difficulties.

*Munich Fiscal Court, judgment of 14 November 2023, 5 K 1272/20*

**Direct claim**

The principles of neutrality and effectiveness are met if the supplier can demand reimbursement of the VAT wrongly paid to the German Tax Authorities, and the recipient can bring a civil action against the supplier for repayment. A direct claim can only be made if the VAT reimbursement is impossible or excessively difficult, e.g., in the event of the service provider's insolvency.

*Munich Fiscal Court, judgment of 18 July 2024, 14 K 247/23*

**Items serving a business as a requirement for the owner's liability for the business's taxes**

According to German Federal Fiscal Court, items serving the business are of essential importance for the management of the business and the generation of taxable supplies of goods or services. The Court confirmed that case law had not established further requirements, such as achieving profits, to determine importance.

*German Federal Fiscal Court, judgment of 6 August 2024 - VII R 25/21*

**Input tax deduction for the supply of tenant electricity**

According to the German Federal Fiscal Court, the supply of electricity that the landlord of residential property generates via a photovoltaic system and supplies to tenants against remuneration is an independent supply subject to VAT. The landlord is entitled to deduct input tax from the purchase of the photovoltaic system. In the case at hand, the tenant chose the electricity provider. Moreover, the electricity supply was billed separately based on individual consumption.

*German Federal Fiscal Court, judgment of 17 July 2024, XI R 8/21*

**Notice of compulsory tolerance after tax debtor's discharge of residual debt**

The German Federal Fiscal Court clarified that a notice of compulsory tolerance is discharged if the claims from the tax debt are fulfilled due to the payment by a third party. After the settlement, there is a legitimate interest in establishing the unlawfulness of the contested notice if a refund of the third party's payment is sought. The obligation to tolerate the enforcement against immovable assets is not waived by the fact that the debtor has been granted a discharge of residual debt.

*German Federal Fiscal Court, judgment of 6 August 2024 - VII R 32/22*

**Electric vehicle charging**

Article 14(1) of Council Directive 2006/112/EC of 28 November 2006 on the common system of VAT, as amended by Council Directive 2009/162/EU of 22 December 2009, read in conjunction with Article 15(1) of Directive 2006/112, must be interpreted as meaning that the supply of electricity for the purposes of charging an electric vehicle at a charging point forming part of a public network of such points constitutes a supply of goods within the meaning of the former provision.

Article 14 of Directive 2006/112, read in conjunction with Article 15(1) of Directive 2006/112, must be interpreted as meaning that the charging of an electric vehicle at a network of public charging points to which the user has access through a subscription concluded with a company other than the operator of that network entails that the electricity consumed is deemed to have been supplied, first, by the operator of that network to the company offering access thereto and, second, by that company to that user, even if the latter chooses the quantity, time

and place of that charging as well as the manner of use of the electricity, when that company acts in its own name but on behalf of the user under a commission contract within the meaning of Article 14(2)(c) of Directive 2006/112.

*CJEU, judgment of 17 October 2024, C-60/23, Digital Charging Solutions*

### **Right to deduct input VAT**

Article 168(a) of Council Directive 2006/112/EC of 28 November 2006 on the common system of VAT must be interpreted as precluding a national practice whereby, where a taxable person has acquired goods which that taxable person then makes available free of charge to a subcontractor, in order for that subcontractor to carry out work for that taxable person, that taxable person is denied the deduction of the VAT relating to the acquisition of those goods, in so far as the making available of those goods does not go beyond what is necessary to enable that taxable person to carry out one or more taxable output transactions or, failing that, to carry out its economic activity, and the cost of acquiring those goods is part of the cost components of either the transactions carried out by that taxable person or the goods or services which that taxable person supplies in the course of its economic activity.

Article 168(a) of Directive 2006/112 must be interpreted as precluding a national practice whereby a taxable person is denied the deduction of input VAT on the ground that that taxable person has not kept separate accounts for its fixed establishment in the Member State in which the tax inspection is carried out where the tax authorities are able to determine whether the substantive conditions of the right of deduction are satisfied.

*CJEU, judgment of 4 October 2024, C-475/23, Voestalpine Giesserei Linz*

### **Refusal of the tax authority to refund the VAT directly to the purchaser**

Council Directive 2006/112/EC of 28 November 2006 on the common system of VAT, read in the light of the principles of effectiveness and neutrality, must be interpreted as meaning that the recipient of a service may not request directly from the tax authority of the Member State in whose territory it is established, the refund of the VAT which it paid to the supplier of that service – which invoiced in error the national VAT of that Member State instead of the VAT legally due in another Member State and paid it to the tax authorities of the first Member State – where those tax authorities have already refunded the VAT to the supplier, which has gone into liquidation.

*CJEU, judgment of 5 September 2024, C-83/23, H GmbH*

### **Link to further information:**

- [Webcast \(German\)](#)

### **Betting and other forms of gambling**

Article 135(1)(i) of Council Directive 2006/112/EC of 28 November 2006 on the common system of VAT, read in conjunction with the principle of fiscal neutrality, must be interpreted as not precluding national legislation which differentiates between, on the one hand, the purchase of lottery tickets and participation in other forms of gambling offered offline and, on the other hand, participation in forms of gambling other than lotteries offered online, by excluding the latter from the VAT exemption applicable to the former, provided that the objective differences between those categories of gambling are liable to have a considerable influence on the decision of the average consumer to use one or other of those categories of games.

The principle of sincere cooperation and the principle of the primacy of EU law require the national court to disapply the national provisions held to be incompatible with Article 135(1)(i) of Directive 2006/112, read in conjunction with the principle of fiscal neutrality, the existence of a judgment of the national constitutional court deciding to maintain the effects of those national provisions being irrelevant in that regard.

The rules of EU law on the recovery of amounts wrongly paid must be interpreted as meaning that they confer on a taxable person a right to a refund of the amount of the value added tax collected in a Member State in breach of Article 135(1)(i) of Directive 2006/112, provided that that refund does not entail the unjust enrichment of that taxable person.

*CJEU, judgment of 12 September 2024, C-73/23, Chaudfontaine Loisirs*

### **Betting and other forms of gambling – Entitlement to refund**

Article 135(1)(i) of Council Directive 2006/112/EC of 28 November 2006 on the common system of VAT, read in conjunction with the principle of fiscal neutrality, must be interpreted as not precluding national legislation which differentiates between, on the one hand, the purchase of lottery tickets online and, on the other hand, participation in other forms of gambling offered online, by excluding the latter from the value added tax exemption applicable to the former, provided that the objective differences between those two categories of gambling are liable to have a considerable influence on the decision of the average consumer to use one or other of those categories.

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Article 108(3) TFEU must be interpreted as meaning that, where the VAT exemption from which certain operators have benefited constitutes unlawful State aid, a taxable person who has not benefited from such an exemption cannot receive, in the form of damages, an amount equivalent to the VAT that that taxable person paid.

*CJEU, judgment of 12 September 2024, C-741/22, Casino de Spa*

### **Extended adjustment period for immovable property acquired as capital goods**

Article 190 of Council Directive 2006/112/EC of 28 November 2006 on the common system of VAT, read in conjunction with Article 187 of that directive and in the light of the principle of fiscal neutrality must be interpreted as meaning that it precludes national legislation on the adjustment of deductions of VAT under which the extended adjustment period laid down in accordance with that Article 187 for immovable property acquired as capital goods does not apply to construction works, subject to VAT as a supply of services within the meaning of that directive, which involve a significant extension and/or substantial renovation of the building concerned by that work and the effects of which have a duration of an economic life which corresponds to that of a new building.

Article 190 of Directive 2006/112, read in conjunction with Article 187 of that directive and in the light of the principle of fiscal neutrality must be interpreted as meaning that it has direct effect with the result that the taxable person may rely on it before the national court against the competent tax authority in order to have the extended adjustment period laid down for immovable property acquired as capital goods applied to the construction works which were carried out for that taxable person, subject to VAT as a supply of services within the meaning of that directive, where that authority has refused to apply the extended adjustment period to those goods by relying on national legislation such as that referred to in the first question.

*CJEU, judgment of 12 September 2024, C-243/23, Drebers*

### **Time limits for filing and paying VAT**

Article 184 of Council Directive 2006/112/EC of 28 November 2006 on the common system of VAT and the principles of equivalence, effectiveness and neutrality must be interpreted as not precluding national legislation and administrative practice under which a taxable person is denied the right to deduct input VAT paid prior to that taxable person's registration for VAT, on the ground that that person requested that deduction after the expiry of the limitation period laid down by the applicable national legislation, by means of a return seeking to correct a VAT return filed before the expiry of that period, notwithstanding the fact that national measures linked to the COVID-19 pandemic were adopted in order to extend the time limits for the filing and payment of certain taxes, without including VAT among those taxes.

*CJEU, judgment of 12 September 2024, C-429/23, NARE-BG*

### **Management of special investment funds**

Article 135(1)(g) of Council Directive 2006/112/EC of 28 November 2006 on the common system of VAT must be interpreted as meaning that the members of a pension fund performing, under a collective pension scheme, a pension agreement providing for pension entitlements and retirement benefits, the amount of which – albeit based on a standard pension or occupational income and the number of years of employment of each member – may vary under certain conditions as a result of the investments made by that pension fund, may be regarded as bearing the investment risk only where that amount depends primarily on the performance of those investments. For the purposes of that assessment, the number of years during which the pension entitlement of a member has accrued or the fact that the accrual of pension entitlements was interrupted at a certain point in time as far as a pension fund was concerned are irrelevant. The fact that the risk is borne individually or collectively, in the event of, inter alia, bankruptcy, or that an employer acted as a guarantor during a certain period for the targeted pension accrual, are relevant factors, without being decisive per se.

Article 135(1)(g) of Directive 2006/112, read in the light of the principle of fiscal neutrality, must be interpreted as meaning that, in order to determine whether a pension fund that is not an undertaking for collective investment in transferable securities may benefit from the exemption provided for under that provision, it is necessary not only to carry out a comparison with such an undertaking but also to assess whether, in the light of the legal and financial situation of the member in relation to the pension fund, that pension fund is comparable to other funds which, without being undertakings for collective investment in transferable securities, are regarded by the Member State concerned as being special investment funds for the purposes of that provision.

*CJEU, judgment of 5 September 2024, C-639/22 to C644/22*

### **Split payment mechanism**

Articles 273 and 395 of Council Directive 2006/112/EC of 28 November 2006 on the common system of VAT, and Council Implementing Decision (EU) 2019/310 of 18 February 2019 authorising Poland to introduce a special measure derogating from Article 226 of Directive 2006/112/EC on the common system of VAT, must be interpreted as not precluding national legislation which provides that the VAT amount deposited on a separate VAT account, which a supplier has with a banking institution, may be used only for limited purposes, namely, in particular, the payment of the VAT due to the tax authority or the payment of VAT on invoices received from suppliers of goods or services.

*CJEU, judgment of 12 September 2024, C-709/22, Syndyk Masy Upadłości A*

### **Reduction of the taxable amount consequent on a price reduction**

Article 90(1) of Council Directive 2006/112/EC of 28 November 2006 on the common system of VAT must be interpreted as precluding national legislation under which a pharmaceutical company, which is under an obligation to pay to the State health insurance agency a portion of its revenue obtained from its sales of publicly funded pharmaceutical products, is not entitled to a subsequent reduction in the taxable amount under those payments by reason of the fact that those payments are made ex lege, while its taxable amount can be reduced by deducting payments made under a price volume agreement and expenses incurred by the company in research and development in the health sector, and where the amounts due are collected by the tax authority, which immediately transfers them to the State health insurance agency.

*CJEU, judgement of 12 September 2024, C-248/23, Novo Nordisk*

### **EU and Norway strengthen cooperation for combating VAT fraud**

On 2 October, the EU and Norway signed an agreement to amend the existing cooperation agreement on aspects of administrative cooperation, fight against fraud and assistance on recovery of claims in the field of VAT. The new agreement will provide the partners with new cooperation tools. The Agreement lays down the legal framework for cooperation between EU Member States and Norway. In the area of VAT, this includes the automatic exchange of information, assistance on administrative notifications, participation in administrative enquiries, simultaneous controls and Eurofisc.

[europa.eu](https://europa.eu)

### **Austria seeks approval for measure extension, simplifying input tax deduction for private use**

The European Commission published a proposal for a Council implementing decision authorizing Austria to apply a measure derogation from Articles 168, 168a of the EU VAT Directive. The proposal is designed to simplify the procedure for collecting VAT by allowing Austria to entirely exclude from the right of deduction the VAT borne on goods and services that are used by a taxable person for more than 90% for private or non-business purposes, including non-economic activities.

*European Commission, proposal of 10 October 2024 for a Council Implementing decision, COM(2024) 448 final*

[eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52024PC0448](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52024PC0448)

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