



VAT's new?

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

Highlight

German Federal Council approves Annual Tax Act 2024

On 22 November 2024, the German Federal Council approved the Annual Tax Act 2024, following consent by the German Federal Parliament on 18 October 2024. The Act will enter into force after being signed by the president and published in the federal law gazette.

BR-Drs. 529/24 (approval)

Links to further information:

- [Webcast Jahressteuergesetz 2024](#)
- [Webcast VAT Insights](#)

News

Updated communication manual – DAC7

The German Central Tax Office published the updated communication manual (version 1.4 of 19 November 2024) on the reporting obligations of digital platform operators under the German Platform Transparency Act implementing DAC7. It includes, inter alia, procedural descriptions, specifications on the data content and details on the correction process. Further, the German Central Tax Office, published notes on the data transmission for the 2024 reporting period. The reports must be submitted by 31 January 2025.

BZSt Manual

Link to further information:

- [Webcast VAT Insights](#)

VAT conversion rates for October 2024

The German Ministry of Finance updated its ongoing 2024 overview of the monthly VAT conversion rates under Sec. 16(6)(1) GVATA. The update includes the exchange rates for October 2024.

Federal Ministry of Finance, letter of 1 November 2024 - III C 3 - S 7329/19/10001 :006 (2024/0962673)

Heat supply as benefit in kind

Even if heat is supplied free of charge to other taxable persons for their business activities, it constitutes a benefit in kind. In this context, the German Federal Fiscal Court adopted CJEU principles (CJEU, judgment of 25 April 2024, C-207/23, Finanzamt X). The benefit in kind is subject to VAT even if the recipients use the heat for purposes that entitle them to input tax deduction. The self-cost principle for determining the taxable base includes production costs and indirectly attributable expenses such as financing costs.

German Federal Fiscal Court, judgment of September 4, 2024 - XI R 15/24 (XI R 17/20)

Brokerage

The brokerage of a service for which a voucher is issued requires that the broker either informs the organizer of the successful brokerage or provides the voucher purchaser with the organizer's contact details. If these prerequisites are not met, no advance payment taxation applies. Further, the expiry of the voucher does not lead to a VAT adjustment. However, the intermediary's right to deduct input tax is not restricted by the expiry of the voucher. These principles apply to the legal situation before the rules under Sec. 3(13-15) GVATA came into force. They are also relevant for intermediary services not covered by the voucher rules.

German Federal Fiscal Court, judgment of 5 September 2024 – V R 21/23

Cross-year shift in supplies

If a taxable person does not declare his supply for the period in which the supply was carried out but for the period in which the payment was subsequently received, he can invoke the illegality of the VAT assessment for the period in which the payment was received. The German Federal Fiscal Court rejected the analogous application of Sec. 20 sentence 3 GVATA, according to which supplies may not remain untaxed when switching between taxation based on agreed and received consideration.

German Federal Fiscal Court, judgment of 29 August 2024 – V R 19/22

Application for amendment to avoid conflicting VAT assessments in VAT grouping cases

If the VAT grouping prerequisites under Sec. 2(2) no. 2 GVATA with a limited partnership as controlled entity are met, the annulment of the VAT assessment for the limited partnership requires that the controlling entity requests for an amendment of the VAT assessment for the controlling entity (Sec. 176(1)(1) no. 3 of the German Tax Code). This requirement results from the prohibition of contradictory behavior (German Federal Fiscal Court, judgment of 16 March 2023 – V R 14/21 (V R 45/19) and decision of 16 July 2024, XI B 43/23). According to the Fifth Senate of the German Federal Fiscal Court, this prerequisite also applies in appeal proceedings for the limited partnership. Furthermore, the German Federal Fiscal Court held that a notification of a restructuring project under Sec. 31(1) of the German Corporate Stabilization and Restructuring Act does not have the same legal effect as an interruption due to insolvency proceedings under Sec. 240 of the German Code of Civil Procedure.

Link to further information:

- [German Federal Fiscal Court, judgment of 5 September 2024 – V R 5/23](#)

No retroactive reclassification of a transfer of a going concern after partial rescission

If all assets are transferred to the purchaser as part of a transfer of a going concern, the partial rescission from the purchase agreement does not result in a taxable supply subject to VAT. Article 90 VAT Directive provides a legal basis for changing the taxable amount but does not allow for the reclassification of a non-taxable supply as taxable.

Links to further information:

- [BFH: Necessary amendment to the tax group parent by the tax group subsidiary in the event of an appeal against a tax assessment](#)
- [Webcast VAT Insights](#)

Muenster Fiscal Court, judgment of 27 August 2024 – 15 K 2717/22 U

Remaining credit balances from prepaid contracts

Residual credit balances from prepaid contracts that ultimately remain with the provider constitute remuneration for the supply of services during the prepaid contract.

Schleswig-Holstein Fiscal Court, judgment of 17 September 2024 – 4 K 26/22, appeal pending (Federal Fiscal Court: V R 20/24)

Incorrect final invoice in case of VAT grouping

If an invoice issuer fails to break down VAT amounts for partial payments on a final invoice, this incorrectness triggers the VAT liability under Sec. 14c(1)(1) GVATA regardless of whether the recipient claimed an input tax deduction. If a controlled entity within a VAT group issues an invoice with an excessive VAT amount, the controlling entity is liable for the excess. In this case, an invoice correction does not have a retroactive effect.

Link to further information:

- [FG Baden-Württemberg: Steuerschuld aus zu hohem Steuerausweis in einer nicht ausreichend berichtigten Schlussrechnung bei Organschaft](#)

Baden-Wuerttemberg Fiscal Court, judgment of 2 February 2023 - 1 K 147/20, appeal pending (German Federal Fiscal Court: XI R 25/23)

Input tax deduction from an advance invoice for a photovoltaic system not delivered

An advance invoice for a photovoltaic system that was not delivered must indicate that it pertains to a supply not yet carried out. This is necessary for determining the fulfillment of input tax requirements.

Munich Fiscal Court, judgment of 26 September 2023 - 5 K 1017/20, pending appeal (German Federal Fiscal Court: XI R 30/23)

Precluded right of deduction

Council Directive 2006/112/EC of 28 November 2006 on the common system of VAT must be interpreted as not precluding legislation of a Member State under which the recipient of a supply subject to VAT is denied the right to deduct input tax, where the supplier has failed to fulfil its obligation to submit an application for registration and issued invoices not stating VAT, and issued, during a tax inspection, a report stating that VAT and in which that supplier was put forward as also being the recipient of that supply.

Directive 2006/112 and the principle of neutrality must be interpreted as not precluding legislation of a Member State which excludes the possibility of correcting an invoice where the invoice which the supplier has provided to the recipient of a supply subject to VAT did not state that VAT and, during a tax inspection of that supplier, the supplier drew up a report stating the VAT and putting forward the supplier as also being the recipient of that supply.

CJEU, judgment of 21 November 2024, C-624/23, SEM Remont

Obligation to pay the total amount agreed after deduction of the costs saved by the supplier

Article 2(1)(c) of Council Directive 2006/112/EC of 28 November 2006 on the common system of VAT must be interpreted as meaning that the amount contractually due following the termination, by the recipient of a supply of services, of a contract validly concluded for that supply of services, subject to VAT, which the supplier had begun providing and which it was prepared to complete, must be regarded as constituting the remuneration for a supply of services for consideration.

CJEU, judgment of 28 November 2024, C-622/23, rhtb

Concept of building land

Article 12 of the VAT Directive must be interpreted as meaning that a supply of land that, at the date of that supply, has only the foundations of residential housing structures in place, constitutes a supply of 'building land' within the meaning of that article.

CJEU, judgment of 7 November 2024 - C-594/23, Lomoco

Presumption of director's liability in the absence of notification that the entity is unable to pay the VAT due

Article 273 of the VAT Directive, read in the light of the principle of proportionality, must be interpreted as not precluding national legislation under which a director of an entity which has not complied with the obligation to notify its inability to pay a VAT debt must, in order to be relieved of his or her joint and several liability for the payment of that debt, demonstrate that the failure to comply with that notification obligation is not attributable to him or her, in so far as the legislation in question does not limit the possibility of demonstrating that circumstance solely to cases of force majeure, but allows the director to raise any circumstance capable of showing that he or she is not responsible for the failure to comply with that notification obligation.

Article 273 of the VAT Directive, read in the light of the principle of proportionality, must be interpreted as not precluding national legislation which has the effect that the director of an entity which has failed to notify the latter's inability to pay remains jointly and severally liable for the payment of a VAT debt relating to a particular period, whereas he or she has been released from a debt on the same basis related to an immediately following

period after being able to demonstrate that he or she acted in good faith and exhibited, during the previous three years, all the due diligence required of a circumspect trader in order to prevent the entity from being unable to honor its obligations and his or her participation in abuse or fraud is excluded.

CJEU, judgment of 14 November 2024 - C-613/23, Herdijk

Gold coins under the special scheme for investment gold

The list of gold coins meeting the criteria of the special scheme for investment gold valid for the year 2025 was published in the Official Journal of the European Union.

Link to further information:

- [Guidelines for investment gold that has been released from customs](#)

Council of the EU agrees on VAT in the digital age package

The Council of the EU approved the VAT in the digital age package as the current VAT system does not allow for the full use of data generated by digitalisation. By this package, the VAT reporting obligation will be adapted to address the challenges faced by the platform economy. Further, the need for multiple VAT registrations in the EU will be reduced. The package includes, inter alia, new VAT rules on digital reporting requirements, e-invoicing, and the extension of the deemed supplier regime for the short-term accommodation rental and passenger transport sector. The ViDA package still requires approval by the European Parliament.

[europa.eu](#)

Link to further information:

- [Webcast VAT Insights](#)

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