



VAT's new?

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

Highlight

Council agrees position on directive simplifying tax collection for imports

The Council reached agreement on the position of member states (the so-called 'general approach') on the directive on VAT rules for distance sales of imported goods and import VAT.

The directive seeks to improve the collection of VAT on imported goods by making suppliers liable for the VAT paid on imports, which is likely to encourage them to use the VAT import one-stop-shop (IOSS).

The directive is subject to a special legislative procedure and agreement on the draft law requires unanimity within the Council. The European Parliament will be consulted on the agreed text and asked to deliver its opinion. The text will then need to be formally adopted by the Council before being published in the EU's Official Journal and entering into force.

Links for further information

<https://data.consilium.europa.eu/doc/document/ST-8570-2025-INIT/en/pdf>

[Deloitte Tax-News](#) | Steuern – Indirekte Steuern/Zoll

[VAT Insights](#) | Webcast | 22 May 2025

News

Bestseller remuneration

The author's claim to payment of the bestseller remuneration arises from Sec. 32a (2) i.c.w. Sec. 32a(1) of the German Act on Copyright and Related Rights. If a production company transfers the rights of use to a third party, the latter must pay the author higher remuneration. These payments constitute a remuneration from a third party.

Directorate General of Finance Frankfurt am Main, guidance of 24 April 2025, S 7200 A – 272 – St 110

Guided mountain tours

If a mountain guide provides services against remuneration to non-taxable persons, the place of supply rule under Sec. 3a(3) no. 3 sentence 1 of the German VAT Act applies. If the tour includes sections in Germany and abroad, the service must be split. If additional services (e.g., accommodation) are provided, TOMS may apply (Sec. 25 of the German VAT Act). In this case, a distinction must be made between the guide's services, travel services and, if applicable, agency services.

Bavarian State Office for Taxation, letter of 8 April 2025, S 7117b.1.1-2/2 St33

Services for maritime shipping

Services provided for the immediate needs of vessels are VAT-exempt if the taxable person carries out the supply to the ship operator. A pre-stage service provided by a taxable person is only exempt from VAT if it is clearly intended for this use, without the need to introduce control and monitoring mechanisms.

German Federal Fiscal Court, judgment of 19 December 2024, V R 12/23

Link for further information

[Deloitte Tax-News](#) | Steuern – Indirekte Steuern/Zoll

VAT-exempt care and nursing services

The German Federal Fiscal Court held that care and nursing services can be exempt from VAT due to indirect cost coverage if they are paid from the personal budget and the approval of the budget indicates an explicit decision by the cost bearer. Accordingly, the recognition of the services already results from the approval of the personal budget.

German Federal Fiscal Court, judgment of 19 December 2024, V R 1 /22

No differential taxation

Based on CJEU principles (CJEU, judgment of 19 July 2012, C-160/11, Bawaria Motors), the supply of a vanity unit consisting of a commode purchased by a private individual without the right to deduct input tax and sanitary purchased with the right to deduct input tax is not subject to differential taxation.

German Federal Fiscal Court, judgment of 11 December 2014, XI R 9/23

Management of dependent foundations

Taxable management services may exist in connection with the assets owned by an asset manager if they qualify as special assets that are held separately from the manager's other assets and the manager receives consideration for these services. These principles also apply to a registered association which manages assets (dependent foundations) as a trustee. In the case of services provided free of charge, a benefit in kind may exist. If the services are provided against remuneration, the reduced VAT rate under Sec. 12(2) no. 8 letter a of the German VAT Act may apply.

German Federal Fiscal Court, judgment of 5 December 2024, V R 13/22

Supply as prerequisite of the direct claim

The German Federal Fiscal Court confirmed that the direct claim (CJEU, judgment of 15 March 2007, C-35/05, Reemtsma) requires that VAT is stated on an invoice for a supply (to be) made. If the invoice is not based on a supply, the prerequisites of the direct claim are not met.

German Federal Fiscal Court, decision of 5 December 2024, V R 11/23

Input tax denial

In a case recently decided by the Nuremberg Fiscal Court, the plaintiff was a sole proprietor. He was also the sole shareholder and managing director of a limited company. He sublet his rented business premises to the limited company. The limited company prepared the documentary evidence for another company. It got involved when a domestic seller and buyer established in another EU Member State had already agreed on the object of purchase and the purchase price. The plaintiff assumed a VAT group with the limited company as controlling entity. So, he claimed input tax as assumptive controlling entity.

The Fiscal Court held that the plaintiff was not entitled to deduct input tax based on the invoices issued by the seller. A VAT group did not exist as the subletting of the exchangeable office space by the plaintiff to the limited company does not justify economic integration. Further, the seller did not make any supplies to the plaintiff or the plaintiff's limited company because the power of disposal over the objects sold was transferred directly from the seller to the buyer. Instead, the limited company performed a service to the seller to relieve him from the documentation effort.

Nuremberg Fiscal Court, judgment of 18 March 2025, 2 K 1120/21, legally binding

Entrepreneurial status of a holding company

A holding company does not perform any entrepreneurial activity and is therefore not entitled to deduct input tax if it only purchases, holds or sells assets. This consequence does not apply if the holding company intervenes in the management of its subsidiaries by providing administrative, financial and technical services. In a case recently decided by the Münster Fiscal Court, the holding company was not entitled to deduct input tax as the required intended use for taxable output supplies was unjustified.

Münster Fiscal Court, judgment of 11 March 2025, 15 K 133/22 U, legally binding

VAT liability of a managing director for the failure to correct input tax

The entry of a VAT claim in the insolvency table without contradiction is deemed to be an incontestable VAT assessment for the managing director of an insolvent limited company. If no supply is carried out for an advance payment, there is an obligation to correct the input tax deduction made. An implicit set-off is not sufficient. A managing director acts with gross negligence if he fails to make the necessary corrections and does not inform the tax office, although he should have been aware of the consequence under VAT law.

Berlin-Brandenburg Fiscal Court, judgment of 27 February 2025, 9 K 9146/21, pending appeal

VAT rate in case for drinking water

The supply of drinking water is subject to the reduced VAT rate under Sec. 12(2) no. 1 of the German VAT Act i.c.w. annex 2 no. 34. However, the standard VAT rate applies to supplies of drinking water in pre-packages intended for consumers. The term "pre-packaging" under calibration rules requires that the filling quantity cannot be changed without opening or noticeably altering the packaging. For the VAT assessment, it is not decisive whether the packaging is classified as pre-packaging according to calibration rules. In line with EU VAT rules, the reduced VAT rate applies to supplies that are open packs according to their content and presentation, even if they are pre-filled and are not filled in front of the consumer.

Nuremberg Fiscal Court, decision of 13 January 2025, 2 K 208/21

Subsidies for public transport services

"Article 73 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as meaning that the flat-rate compensation paid by a local authority to an undertaking providing collective public transport services and intended to cover losses incurred in connection with the supply of those services is not included in the taxable amount of that undertaking."

CJEU, judgment of 8 May 2025, C615/23, Dyrektor Krajowej Informacji Skarbowej

Small consignments

"Article 143(1)(b) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, as amended by Council Directive 2009/69/EC of 25 June 2009, and Article 1 of Council Directive 2006/79/EC of 5 October 2006 on the exemption from taxes of imports of small consignments of goods of a non-commercial character from third countries must be interpreted as precluding legislation of a Member State which excludes from the exemption from VAT provided for in those provisions small consignments of a non-commercial character sent from a third country by private persons to private persons residing in another Member State."

CJEU, judgment of 8 May 2025, C405/24, L (Petits envois non commerciaux)

Joint and several VAT liability

"Article 273 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, as amended by Council Directive (EU) 2018/1695 of 6 November 2018, read in conjunction with Article 325 TFEU, as well as the right to property and the principles of equal treatment, proportionality and legal certainty, must be interpreted as not precluding a national system under which:

- a member or former member of the board of directors of a company with a value added tax debt is held jointly and severally liable with that company for tax arrears arising during his or her term of office,
- that liability is limited to tax arrears, enforcement of which against that company has proved unsuccessful in whole or in part,
- exemption from that liability depends, in particular, on proof adduced by the member or former member of the board of directors that an application for a declaration of insolvency in respect of that company has been filed in due time or that the failure to file that application is not due to fault on his or her part,

in so far as that member or former member, in order to demonstrate that there was no such fault, may validly claim that he or she exercised all due diligence in the conduct of the affairs of the company concerned, it being specified that, for that purpose, that member or former member cannot merely claim that that company had the public exchequer as its sole creditor when its permanent insolvency was established."

CJEU, judgment of 30 April 2025, C-278/23, Genzyński

Pro bono services

"Article 2(1)(c) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as meaning that a service provided by a law firm to its clients free of charge, but in respect of which a statutory fee is payable by the unsuccessful party in the event of success, is provided for consideration and therefore constitutes a taxable transaction. Neither the uncertainty as to whether a fee will be paid, and the amount thereof, nor the fact that the fee is payable by operation of law, nor the fact that a third party is required to pay the fee, preclude the service provided by the law firm from being subject to VAT based on the amount of the fee actually received."

CJEU, opinion of Advocate General Kokott of 8 May 2025, C744/23, Zlakov

126th meeting of the EU VAT Committee

The EU VAT Committee published the minutes of its 126th meeting, held on 21 March 2025. It dealt with the implementation of the ViDA package, focusing on e-invoicing and IOSS.

Links for further information

europa.eu

[Deloitte Tax News](#) | ECOFIN: Adoption of the VAT in the Digital Age package

VAT rules for small enterprises

As from 1 January 2025, the EU will introduce a special VAT scheme for small enterprises conducting business activities which are taxable for VAT purposes in other EU Member States. The SME scheme is an optional scheme for taxable persons affected by the new VAT rules which aims to reduce the administrative burden of small enterprises and helps create a level playing field as well as the economic conditions to enable their growth and the development of cross-border trade across the EU.

The SME scheme will allow small enterprises under certain conditions to:

- sell goods and services without charging VAT to their customers (VAT exemption) and,
- alleviate their VAT compliance obligations.

Small enterprises choosing the VAT exemption will not have the right to deduct the input VAT on purchases of goods and services related to these exempt supplies.

Taxable persons may only benefit from the exemption if the following conditions are met:

- The taxable person is established in an EU Member State;
- The total annual turnover in all EU Member States in the current and previous calendar year does not exceed EUR 100.000 (or the equivalent in national currency); and
- The total annual turnover in the EU Member State in which the taxable person is not established and wants to avail themselves of the exemption does not exceed the national threshold of that EU Member State.

Non-EU small enterprises cannot apply the SME scheme.

Link for further information

https://sme-vat-rules.ec.europa.eu/index_en

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