



## VAT's new?

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

## Highlight

### **Purchase of administrative services provided within the same group**

Article 168 EU VAT Directive must be interpreted as precluding national legislation or a national practice under which the tax authority refuses the right to deduct input VAT paid by a taxable person when acquiring services from other taxable persons belonging to the same group on the grounds that those services were supplied at the same time to other group companies and that their purchase was not necessary or appropriate, where it is established that those services are used by that taxable person for the purposes of its own taxed output transactions.

*CJEU, judgment of 12 December 2024, C-527/23, Weatherford Atlas Gip*

### **Links to further information**

[Deloitte Tax News](#)

[Webcast VAT Insights \(German\)](#)

## News

### **No VAT on intragroup services provided for nonbusiness reasons**

Identifying the controlling entity as the VAT debtor is consistent with EU VAT law. Intra-group supplies made by a controlled entity to the controlling entity are not subject to VAT. If a controlled entity makes supplies to the controlling entity against remuneration, there is no taxable benefit in kind since a supply without remuneration does not occur. Insofar, the German Federal Fiscal Court judgment of 20 August 2009 (V R 30/06) is obsolete.

*German Federal Fiscal Court, judgment of 29 August 2024, V R 14/24*

### **Links to further information**

[Webcast VAT Insights \(German\)](#)

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

### **Management services**

A joint practice that operates with a common purpose can be considered a taxable person. However, a joint practice that receives services to manage its own operations does not necessarily provide management services to its members at the same time. If a joint practice provides services to its members, it can invoke the VAT exemption under Article 132(1)(f) EU VAT Directive for taxation periods that were prior to the implementation of Sec. 4 no. 29 GVATA. In the case at hand, the joint practice requested precise reimbursement for its share of the joint costs.

*German Federal Fiscal Court, decision of 4 September 2024, XI R 37/21*

### **Business continuation in favor of a third party**

A non-taxable transfer as a going concern is limited to the relation between the transferor and the transferee. The non-taxability does not cover supplies carried out to third parties. For these, a non-taxable transfer as a going concern can only exist if there is a further transfer.

*German Federal Fiscal Court, judgment of 29 August 2024, V R 41/21*

### **VAT exemption for hair root transplants**

The diagnosis of androgenetic alopecia does not justify the presumption that a medical treatment exists. Thus, a qualified medical certificate must be submitted to prove that the requirements of the VAT exemption are met.

*German Federal Fiscal Court, judgment of 25 September 2024, XI R 17/21*

### Direct claim in the event of a time-barred reclaim

The recipient has a direct claim against the German Tax Authorities for reimbursement of the incorrectly invoiced and paid VAT if the supplier is no longer existent. Such a direct claim also exists if the recipient's claim against the supplier is time-barred under German Civil law.

*Lower Saxony Fiscal Court, judgment of 15 August 2024, 5 K 40/22*

### Subsequent revocation of a VAT exemption waiver

Sec. 9(3)(2) GVATA addresses the waiver of VAT exemptions but does not cover the revocation of such a waiver. Therefore, both complete and partial revocations of VAT exemption waivers can be made retrospectively, outside of the notarized purchase contract, if the VAT assessment for the year in which the supply was made is still disputable or can be amended. This finding is supported by the Federal Fiscal Court (decision of 2 July 2021, XI R 22/19), which conflicts with Sec. 9.2(9) of the German VAT Application Decree.

*Bremen Fiscal Court, decision of 10 May 2023, 2 K 5/20*

### Business sale in the case of transfer to several purchasers

If the activities of a seller before a transfer are not like those of the acquiring entity after the transfer, the prerequisites of a non-taxable transfer of a going concern under Sec. 1(1a) GVATA are not met.

*Schleswig-Holstein Fiscal Court, judgment of 14 March 2024, 4 K 76/23*

### Amendments to the German VAT Application Decree as of 31 December 2024

The German Ministry of Finance revised the VAT Application Decree in December 2024 and supplemented it with Federal Fiscal Court rulings published in the Federal Law Gazette II. In particular, the following updates were made:

- The non-cash remuneration value 2024 has been updated (Sec. 1.8(11)(3) of the German VAT Application Decree).
- The Federal Ministry of Finance adheres to the ruling of the Federal Fiscal Court, which states that the purchase of a car for permanent use by a self-employed spouse may be considered a business activity (German Federal Fiscal Court, judgment of 29 September 2022, V R 29/20, Federal Tax Gazette 2023 II page 986; Sec. 2.3(7)(3) of the VAT Application Decree;)
- Sec. 3.5(7a) of the German VAT Application Decree addresses the VAT implications when a leasing company enters into a purchase contract. In these cases, the supplier provides goods to the leasing company, which is both entitled and obligated under the purchase agreement. The subsequent leasing arrangement with the customer may result in either a rental service or an additional supply of goods (Sec. 3.5 (7a)(7) no. 1 sentence 3 of the German VAT Application Decree).
- Following the CJEU (judgment of 8 December 2022, C-247/21, Luxury Trust Automobil) and Federal Fiscal Court (judgment of 17 July 2024, XI R 35/22, Federal Tax Gazette 2024 II page 810), the Federal Ministry of Finance clarified that retroactive invoice corrections will not apply when an invoice issued by the intermediate acquirer for an intra-Community triangular transaction under Sec. 25b(2) GVATA fails to include the necessary details outlined in Sec. 14a(7) GVATA (Sec. 15.2a(7)(12) of the German VAT Application Decree).
- The Federal Ministry of Finance stated that the statute of limitations under Sec. 195 of the German Civil Code does not apply to objections against self-billing invoices for VAT purposes (Sec. 14.3(4)(7) of the German VAT Application Decree).
- If suppliers include an excessively high VAT amount on an invoice, they are responsible for the overstated VAT. The German Federal Ministry of Finance clarified that an incorrect VAT statement within the meaning of Sec. 14c(1) GVATA can only occur for supplies that have been provided but are not taxable (Sec. 14c.1(1)(6) no. 4 of the German VAT Application Decree).

- The German Federal Ministry of Finance specified the administrative guidelines concerning incorrectly invoiced VAT in self-billing cases. This clarification aligns with the principles established by the Federal Fiscal Court (judgement of 15 December 2021, XI R 19/18, Federal Tax Gazette 2024 II page 495). Accordingly, the recipient of a self-billing invoice is liable for any incorrectly stated VAT (Sec. 14c.1(3)(2) of the German VAT Application Decree).
- Following the Federal Fiscal Court (judgment of 27 July 2021, V R 43/19, Federal Tax Gazette 2024 II page 237), the Federal Ministry of Finance specifies the time of correction in case of an unauthorized VAT statement. Accordingly, if the invoice recipient has claimed the input tax deduction, the VAT amount owed due to the unauthorized VAT statement must be corrected under Sec. 14c(2) GVATA for the period the invoice recipient repays the input tax to the German Tax Authorities (Sec. 14c.2(5)(6) of the German VAT Application Decree).
- If the landlord of residential property also owes the supply of heat and hot water, the landlord's costs for a new heating system are directly and immediately related to the VAT-exempt letting if these are not operating costs that the tenant must bear separately. In this respect, the German Federal Ministry of Finance follows the Federal Fiscal Court (judgment of 7 December 2023, V R 15/21, Federal Tax Gazette 2024 II page 503; Sec. 15.12(1)(5) no. 3 of the German VAT Application Decree).

*German Federal Ministry of Finance, letter of 20 December 2024, III C 3 - S 7015/22/10004 :001*

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

[Webcast VAT Insights \(German\)](#)

#### **Taxation of businesses established in the Grand Duchy of Luxembourg**

The German Federal Ministry of Finance determined that the tax office Saarbrücken Am Stadtgraben is no longer responsible for the taxation of taxable persons established in Luxembourg. Instead, the tax office Saarbrücken I is responsible.

*German Federal Ministry of Finance, letter of 12 December 2024, IV D 1 - S 0123/24/10001 :001*

#### **VAT-exempt supplies relating to aviation**

The Federal Ministry of Finance released an updated list of businesses established in Germany that mainly operate international air traffic, effective from 1 January 2025.

*German Federal Ministry of Finance, letter of 2 January 2025, III C 3 - S 7155-a/19/10001 :006*

#### **Free or reduced-price meals for employees from 2025 onwards**

The non-cash remuneration values for wage tax purposes can also be used for VAT purposes if meals are provided free of charge to employees by company-owned canteens. Meals that are provided to employees free of charge or at a reduced price every working day are to be valued at the pro rata official non-cash benefit value under the German Social Security Remuneration Ordinance. The non-cash benefit value was set for the calendar year 2025 as follows: EUR 4,40 for lunch or dinner and EUR 2,30 for breakfast. In the case of full meals, the meals are to be valued at EUR 11,10.

*German Federal Ministry of Finance, letter of 10 December 2024, IV C 5 - S 2334/19/10010 :006*

#### **Apportionment methods for credit institutions**

Input VAT amounts that are neither fully deductible nor fully non-deductible must be apportioned. In a recent letter, the German Federal of Finance commented on the input VAT apportionment methods for credit institutions.

*German Federal Ministry of Finance, letter of 9 December 2024, III C 2 - S 7306/19/10003 :004*

### Extension of relief measures

Due to the ongoing Russian aggression war against Ukraine, the German Federal Ministry of Finance extended the temporal scope of the administrative and enforcement relief measures to the year 2025.

*German Federal Ministry of Finance, letter of 4 December 2024, IV D 5 - S 2223/19/10003 :030*

### Legal remedy instructions in VAT forms

Due to the Post Modernization Act, the presumption of notification was extended from three to four calendar days. Generally, this new rule applies to all administrative acts that are submitted by post, electronically, or made available for retrieval after 31 December 2024. Accordingly, the German Federal Ministry of Finance revised the legal remedy instructions in the official VAT forms.

*German Federal Ministry of Finance, letter of 3 December 2024, III C 3 - S 7532/24/10002 :001*

### Reduced VAT rate for sales of collector coins

The reduced VAT rate is to be applied to taxable supplies of collector coins made of precious metals if the assessment basis is more than 250% of the metal value excluding VAT calculated based on the fine weight. In a recent letter, the German Federal Ministry of Finance announced the relevant gold and silver prices for 2025.

*German Federal Ministry of Finance, letter of 2 December 2024, III C 2 - S 7246/19/10002 :001*

### Activities of a public radio and television body financed by a compulsory fee

Article 2(1)(c) and Article 370 EU VAT Directive i.c.w. point 2 of Part A of Annex X, must be interpreted as not precluding a Member State which, on 1 January 1978, imposed value added tax on public broadcasting activities financed by a compulsory statutory fee paid by any owner of equipment capable of receiving broadcasting programs from continuing to tax those activities, irrespective of whether those activities are covered by the concept of 'supply of services for consideration'.

Article 370 EU VAT Directive i.c.w. point 2 of Part A of Annex X, must be interpreted as not precluding a Member State which, on 1 January 1978, imposed VAT on public broadcasting activities financed by a compulsory statutory fee paid by any person who owned a radio or television set, from continuing to tax those activities where the legislation relating to that fee was amended after that date so that that fee is levied for the possession of any device capable of receiving broadcasting programs, including a smartphone or computer.

Article 370 EU VAT Directive i.c.w. point 2 of Part A of Annex X, must be interpreted as not precluding a Member State which, on 1 January 1978, imposed VAT on public broadcasting activities financed by a compulsory statutory fee, from continuing to tax those activities where the legislation on that fee was amended after that date so as to allow a small part of the revenue from that fee to be used to finance, first, broadcasters which, despite not being public bodies, carry out public broadcasting activities and, second, media or film undertakings which are public bodies or have been set up by public broadcasting bodies and which contribute to broadcasting activities, without carrying out those activities themselves.

*CJEU, judgment of 19 December 2024, C-573/22, Foreningen C*

### Joint and several liability for VAT debts

Article 205 EU VAT Directive i.c.w. the principle of proportionality, must be interpreted as not precluding a national provision which provides for the strict joint and several liability of a taxable person other than the person who would normally be liable for VAT without, however, the court having jurisdiction being able to exercise a discretion on the basis of the contribution of the various persons involved in tax evasion, provided that that taxable person has the option of establishing that he or she took every measure which could reasonably be required to ensure that the transactions which he or she carried out were not part of that evasion.

Article 205 EU VAT Directive i.c.w. the principle of fiscal neutrality, must be interpreted as not precluding a national provision which imposes a joint and several obligation to pay VAT on a taxable person other than the person who would normally be liable for that VAT, without account being taken of the latter's right to deduct input VAT due or paid.

Article 50 of the Charter of Fundamental Rights of the EU must be interpreted as not precluding national legislation which allows criminal penalties and administrative penalties of a criminal nature, resulting from different proceedings, to be combined in respect of offences which are of the same nature yet occurred over consecutive tax years, which are the subject of administrative proceedings of a criminal nature for one tax year and criminal proceedings for another tax year.

*CJEU, judgment of 12 December 2024, C-331/23, Dranken Van Eetvelde*

### **Carrying forward excess VAT**

The first paragraph of Article 183 EU VAT Directive must be interpreted as not precluding national legislation which provides that, where a taxable person ceases economic activity, that person may not carry excess the VAT, declared at the time of that cessation of activity, forward to a following period and may recover that amount only by requesting a refund within 12 months from the date on which that activity ceased, provided that the principles of equivalence and effectiveness are observed.

*CJEU, judgment of 5 December 2024 – C-680/23, Modexel*

### **Link to further information**

[Deloitte Tax News](#)

### **Identification of invoices posing a risk of loss of tax revenue**

A person is not liable for VAT under Article 203 EU VAT Directive for the incorrect invoices it has issued to non-taxable persons, even if it has issued further incorrect invoices to other taxable persons, for which it is then liable for the tax under that article. If necessary, the proportion of such invoices is to be determined by means of an estimate.

In that regard, the criteria for estimating the proportion of invoices that pose a risk of loss of tax revenue can be derived from the type of service and typical customers. Similarly, the circumstances giving rise to the error and the way in which the issuer of the invoice was involved in establishing the facts may be relevant criteria in that estimation.

*CJEU, opinion of Advocate General Kokott of 19 December 2024, C794/23, Finanzamt Österreich I*

### **Refund of amounts paid as a VAT advance to customers not resident in the EU**

Article 1(2) and Article 2(1)(c) EU VAT Directive must be interpreted as meaning that the seller's administrative procedure for refunding amounts paid as a VAT advance by customers not resident in the EU in the context of VAT-exempt transactions involving supplies of goods they subsequently export does not give rise to a specific and independent supply of service relating to the supply of such goods. Consequently, that procedure is not taxable, since it is simply a means of applying the exemption, rather than a specific economic activity separate from the one relating to the supply of the goods.

*CJEU, opinion of Advocate General Kokott, opinion of 19 December 2024, C-427/23, Határ Diszkont*

### EU VAT gap report 2024

The European Commission has published its annual EU VAT gap report, which is based on data from 2022. This report highlights the discrepancy between the VAT liability and the actual revenue collected. In 2022, the VAT gap in the EU amounted to €89.3 billion in uncollected revenue. Additionally, the report indicates that between 2018 and 2022, there has been significant progress in collecting VAT across EU Member States, demonstrating enhanced efforts to combat VAT evasion.

*European Commission: Directorate-General for Taxation and Customs Union, Bonch-Osmolovskiy, M., Poniatowski, G., Braniff, L., Harrison, G. et al., VAT gap in the EU – 2024 report, Poniatowski, G.(editor), Publications Office of the European Union, 2024*

### Electronic VAT exemption certificate

The Council of the EU reached a political agreement on introducing an electronic tax certificate for VAT exemptions. The electronic certificate will replace the existing paper certificate that is used when goods are exempt from VAT. The format and IT specifications will be discussed in expert groups.

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

### Link to further information

[Deloitte Tax News](#)

### Agenda of the 38th VEG meeting

The European Commission published the agenda of the 38th meeting of the VAT Expert Group (VEG) of 13 December 2024. It includes the report on VAT after ViDA and an update on the state of play of the ViDA package.

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

### VAT after ViDA

The European Commission has released a report titled VAT after ViDA - Reflections on the Future of VAT. The report, created by the VAT Expert Group, outlines a comprehensive strategy to modernize the EU VAT system.

*VAT Expert Group (VEG), VAT after ViDA – Reflections on the Future of VAT, report of 2 December 2024*

### Link to further information

[Deloitte Tax News](#)

### Bulgaria – Council of Ministers Proposes New Special VAT Regimes for Small Enterprises

On 2 December 2024, the Bulgarian Council of Ministers submitted to the parliament a proposal to amend the VAT Act. The main proposed changes to the VAT Act include provisions for special regimes for small enterprises both nationally and within the European Union in line with EU Directive 2020/285 and Regulation 904/2010.

In this respect, the national threshold for mandatory VAT registration is proposed to be set at EUR 85,000, and the EU-wide threshold at EUR 100,000.

Other proposed changes include:

- new reporting obligation for VAT-registered persons to provide quarterly data on available fixed assets and material stocks;
- introducing an obligation for mandatory VAT registration before performing a taxable supply related to land and buildings (regardless of the transaction);

- clarifications regarding place of supply of electronically supplied services;
- amendments on the special procedure for charging VAT on imports for investment projects; and
- calculation of the taxable turnover for second-hand goods and travel services.

<https://www.parliament.bg/bg/bills/ID/165823>

### **Italy – Council of the EU authorizes Italy to continue applying mandatory electronic invoicing**

According to the relevant decision, Italy will continue to apply the electronic invoicing obligation to all taxable persons established in Italy, with exception of those benefiting from the exemption for small enterprises under article 282 of the VAT Directive (2006/112). Any request for an extension of the authorization provided for in the decision must be submitted to the European Commission by 31 March 2027 and accompanied by a report assessing the effectiveness of the national measures referred to in article 3 of the VAT Directive (2006/112) in combating VAT fraud and evasion, and in simplifying the collection of VAT. This report shall also include an assessment of the impact of those measures on taxable persons, other than those benefiting from the exemption for small enterprises provided for in Article 282 of the VAT Directive (2006/112), and an assessment of whether those measures increase the administrative burdens and costs for those taxable persons.

The derogation applies until 31 December 2027.

<https://data.consilium.europa.eu/doc/document/ST-15740-2024-INIT/en/pdf>

### **Latvia – Council of the EU authorizes Latvia to extend restriction on right to deduct input VAT for passenger cars**

On 29 November 2024, the Council of the European Union authorized Latvia to continue to limit the VAT deduction right relating to the expenditure on certain passenger cars not wholly used for business purposes, derogating from articles 26(1)(a) and 168 and 168(a) of the VAT Directive (2006/112). Any request for an extension of the authorization provided for in the decision must be submitted to the European Commission by 31 March 2027. That request must be accompanied by a report on the application of the special measure, including a review of the percentage applied.

The derogation applies until 31 December 2027.

<https://data.consilium.europa.eu/doc/document/ST-15717-2024-INIT/en/pdf>

### **Austria – Council of the EU approves extension of Austria's authorization to exclude the right to deduct VAT on business goods and services used for private purposes**

On 4 December 2024, Council Implementing Decision 2024/3013, which authorizes Austria to extend a special measure derogating of articles 168 and 168(a) of the VAT Directive (2006/112) was published in the Official Journal of the European Union. The decision allows Austria to continue to exclude the right to deduct VAT on business goods and services when more than 90% of the goods and services are used for the private purposes of a taxable person or of his employees (non-business purposes or non-economic activities). If Austria considers that an extension of this special measure beyond 2027 is necessary, it should submit a request for an extension to the European Commission by 31 March 2027. This request should be accompanied by a report on the application of the derogation, including a review of the levy rate applied.

The decision shall expire on 31 December 2027.

[https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=OJ:L\\_202403013](https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=OJ:L_202403013)

### **Netherlands – Government gazettes amended regulation on VAT groups**

On 10 December 2024, the government published an amended regulation on VAT groups in the Official Gazette. The main changes to the regulation arise from the introduction of the Management and Supervision of Legal Entities Act, policy rules on the fiscal unity and the tax liability of holding companies.

<https://zoek.officielebekendmakingen.nl/stcrt-2024-38545.html>

### Brazilian VAT reform – Senate approves VAT reform regulation

On 17 December 2024, Brazil's Senate (upper house of Congress) approved legislation (PLP No. 68/2024) that further regulates the VAT reform that was passed in December 2023. Under the reform, a dual VAT will be implemented starting in 2026, with a transition period that will last seven years, and will be comprised of a federal VAT (CBS) and a state and municipal VAT (IBS), in addition to a new federal excise tax (IS). The draft legislation was submitted to Congress by the Ministry of Finance on 25 April 2024, after which an internal committee was created to analyze the proposal and host public hearings with various industry sectors, tax specialists, and civilians. The Chamber of Deputies (lower house of Congress) approved the draft legislation on 10 July 2024.

The legislation approved by the Senate includes the important developments set forth below.

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