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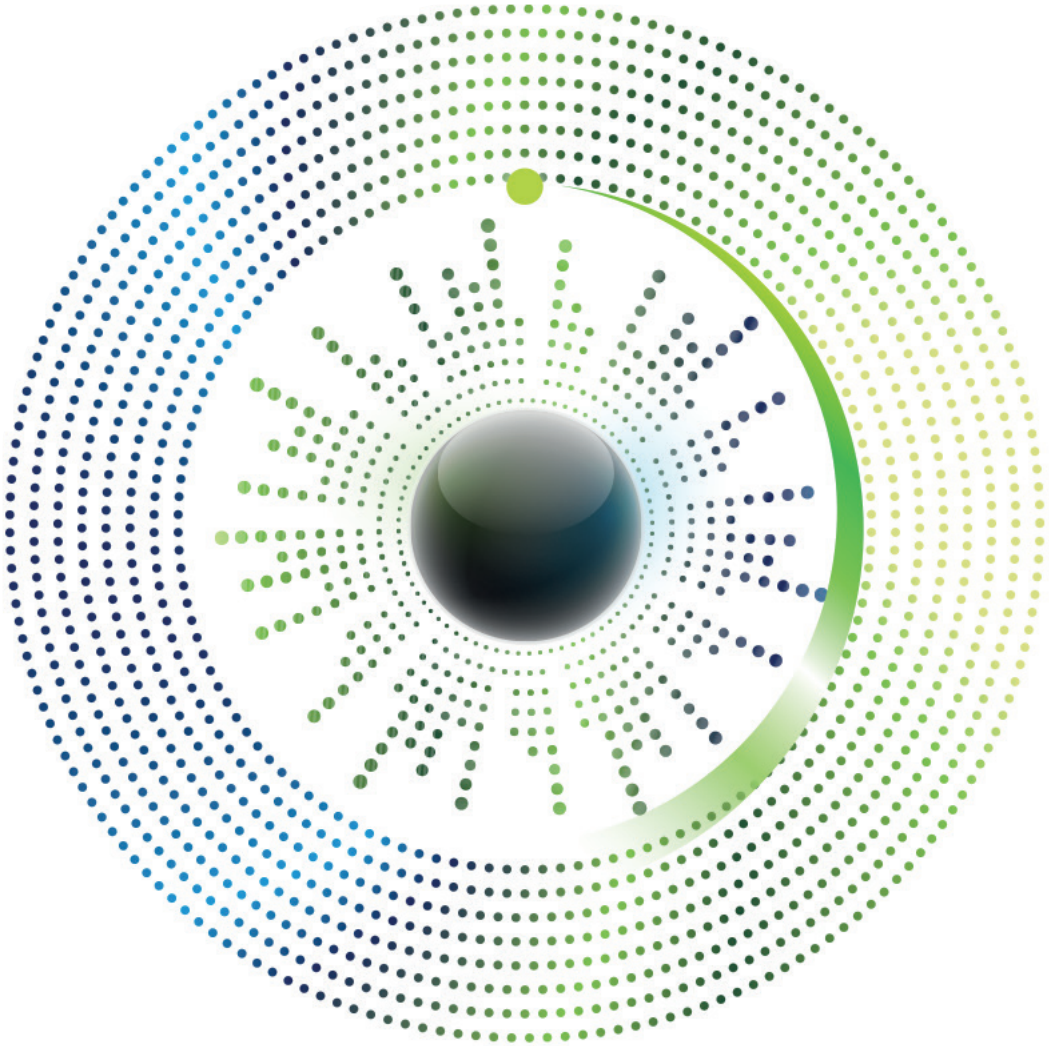

VAT's new?

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

Highlight

Intra-Community supplies of services between related companies

Article 2(1)(c) of Council Directive 2006/112/EC of 28 November 2006 on the common system of VAT, as amended by Council Directive 2010/45/EU of 13 July 2010, must be interpreted as meaning that remuneration for intra-group services supplied by a parent company to a subsidiary and set out contractually, which is calculated according to the transactional net margin method recommended by the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations, must be regarded as the consideration for a supply of services for consideration within the meaning of that provision and must be subject to VAT.

Articles 168 and 178 of Directive 2006/112, as amended by Directive 2010/45, must be interpreted as meaning that they do not preclude the tax administration from requiring a taxable person requesting deduction of VAT to produce documents other than the invoice in order to justify the use of the services purchased for the purposes of its taxable transactions, provided, first, that those documents are requested in compliance with the principle of proportionality and, second, that they are such as to prove the existence of the services at issue and their use for the purposes of the taxable person's taxed transactions.

CJEU, opinion of Advocate General de la Tour delivered on 3 April 2025, C 726/23, Arcomet Towercranes

Links to further information

Tax on Air | Podcast #24 | TP meets VAT
VAT Insights | Webcast | 24 April 2025
Deloitte Tax News | CJEU, opinion of Advocate General Kokott delivered on 6 March 2025, C-808/23, Högkullen
Deloitte Tax News | CJEU, judgment of 12 December 2024, C 527/23, Weatherford Atlas Gip

News

Factoring

Article 2(1)(c), Article 9(1) and Article 135(1)(b), (d) of Council Directive 2006/112/EC of 28 November 2006 on the common system of VAT must be interpreted as meaning that in the case of factoring taking the form of a sale of debts, by which the factor purchases from a client invoiced debts not yet due, while assuming the risk of default by that client's debtor, the commission charged by the factor to the client, which consists of a percentage of each invoiced debt covered by the agreement, that percentage being higher the longer the invoice payment period and the lower the rating of the debts concerned, and the fixed arrangement fee charged by the factor to the client for setting up and activating such a process, must be regarded as constituting the consideration for the provision of services falling within the scope of that directive.

Article 135(1)(d) of Directive 2006/112 must be interpreted as meaning that the factoring fee or the arrangement fee charged by a factor in connection with a factoring activity taking the form of a sale of debts, such as that referred to in the previous paragraph, or factoring taking the form of financing guaranteed by invoices, by which the factor grants credit to a customer in such a way that the invoiced debts of that client are used as collateral for the financing granted by the factor, constitute the consideration for a single and indivisible supply relating to 'debt collection', which is subject to VAT in accordance with the exception to the VAT exemption laid down in that provision.

The exception to the VAT exemption relating to the 'debt collection' laid down in Article 135(1)(d) of Directive 2006/112 is unconditional and sufficiently precise to be capable of having direct effect, so that it may be relied on before a national court to contest the application of a rule of national law contrary to it.

CJEU, opinion of Advocate General Rantos delivered on 3 April 2025, C 232/24, Kosmiro

Services by a developer of mobile applications

Article 28 of Council Directive 2006/112/EC of 28 November 2006 on the common system of VAT, as amended by Council Directive 2008/8/EC of 12 February 2008, is to be interpreted as applying to the situation of the supply, prior to 1 January 2015, by electronic means, of services consisting in making available computer programs (mobile applications) and additional services through a portal (app store), with the result that a taxable person operating an app store is treated as if it had received those services from an application developer and supplied them to end users.

Article 28 of Directive 2006/112, as amended by Directive 2008/8, is to be interpreted as meaning that the place of supply of a fictitious service supplied by another person to a taxable person who takes part, under the conditions set forth in Article 28 thereof, in the supply of services to non-taxable persons resident in a Member State, is to be determined on the basis of Article 44 of that directive.

Article 203 of Directive 2006/112, as amended by Directive 2008/8, is to be interpreted as meaning that another person on whose behalf a taxable person taking part in the supply of services under the conditions set forth in Article 28 of that directive acts is not liable to pay VAT on the ground that the taxable person has designated that other person, with his consent, as the supplier of services and stated the amount of VAT in the purchase confirmations transmitted electronically to non-taxable end users.

CJEU, opinion of Advocate General Szpunar delivered on 10 April 2025, C 101/24, XYRALITY

VAT exemption for hospital services

Sec. 4 no. 14 letter a sentence 1 GVATA applies to medical treatments provided by doctors in hospitals, regardless of the legal form. Specifically, this rule is not overridden by Sec. 14 no. 14 letter b GVATA if a doctor carries out healthcare services as a subcontractor for a hospital operator. This applies even if the doctor does not fulfill the entrepreneurial requirements or if a medical practitioner operates independently within a hospital and offers independent medical treatment services. However, if the services include patient hospitalization, the eligibility for VAT exemption must be assessed in that context.

German Federal Fiscal Court, judgment of 19 December 2024, V R 10/22

Fitness studio services during lockdown

The option to continue using a fitness studio after the initial contract term has expired (free additional months) is a consumable benefit even if it is not based on an agreement effective under civil law. The taxable exchange of service is based on the connection between the membership fees paid in advance by the members and the consumable benefit of receiving additional free months.

German Federal Fiscal Court, judgment of 13 November 2024, XI R 5/23

Taxable basis for benefits in kind from a biogas plant

If there are costs under Sec. 10(4)(1) no. 1 GVATA associated with electricity supplies and benefits in kind under Sec. 3(1b) GVATA related to heat from a biogas plant that does not have a district heating connection, these costs should be allocated under Sec. 15(4) GVATA based on the actual turnover or, if applicable, the fictious turnover (market value).

Lower Saxony Fiscal Court, judgment of 28 November 2024, 5 K 19/24, legally binding

Special taxation scheme for resellers

A reseller is someone who trades in movable tangible goods on a commercial basis or auctions off these goods in their own name. The key factor is that the sale is part of the regular business activities and was intended from the outset. Applying differential taxation to goods purchased based on invoices from upstream suppliers requires that these suppliers have correctly applied differential taxation.

Saxony Fiscal Court, judgment of 24 October 2023, 2 K 92/21, appeal pending (Federal Fiscal Court: XI R 23/24)

Input tax refund procedure

In the input tax refund procedure for entrepreneurs not established in the EU, it is essential to provide proof of input tax amounts by submitting invoices and import documents. E-invoices can be submitted on a storage medium, such as a USB stick, or uploaded to the BOP portal. The German VAT Application Decree has been amended accordingly.

German Federal Ministry of Finance, letter of 27 March 2025 – III C 3 – S 7359/00050/005/073

Direct consumption from the operation of power generation plants

The CHP surcharge for electricity that is not supplied into the grid does not involve a supply under Sec. 3(1) GVATA (Federal Fiscal Court, judgements of 29 November 2022 - XI R 18/21 and 11 May 2023 - V R 22/21). If heat is supplied from a combined heat and power plant or a biogas plant, using the average district heating price instead of the pro rata cost price as the taxable basis violates Sec. 10(4)(1) no. 1 GVATA (Federal Fiscal Court, judgments of 15 March 2022 - V R 34/20 and 9 November 2022, XI R 31/19). Therefore, the taxable basis is to be determined by the cost price if a purchase price cannot be established on the market. The German Federal Ministry of Finance has amended the German VAT Application Decree correspondingly.

German Federal Ministry of Finance, letter of 31 March 2025 – III C 2 – S 7124/00010/002/109

Monthly updated overview of VAT exchange rates for 2025

The German Federal Ministry of Finance has published the exchange rates for March 2025 in its updated overview.

German Federal Ministry of Finance, letter of 1 April 2025 – III C 3 – S 7329/0014/007/038

Reduced VAT rate for wood chip supplies

Wood chips are eligible for the reduced VAT rate if they qualify as firewood under annex 2, no. 28, letter a GVATA (Federal Fiscal Court, judgment of 21 April 2022, V R 2/22 (V R 6/18)). According to the Federal Ministry of Finance letter dated 4 April 2023 (Federal Tax Gazette I 2023, 733), the reduced VAT rate does not apply if the type of packaging or the quantity indicates that wood chips are not intended for burning. By the Annual Tax Act 2024, annex 2, no. 48 letter a GVATA was amended. Consequently, wood chips are also subject to the reduced VAT rate as firewood if they fall under item 4401 of the customs tariff. The Federal Ministry of Finance letter of 4 April 2024 will be repealed for all supplies from 6 December 2024.

Federal Ministry of Finance, letter of 17 April 2025, III C 2 – S 7221/00019/005/013

Simplified proof for exports in non-commercial travel at airports

The scanning procedure serves as valid proof for VAT exemption on exports when used at airports where customs administration is not present. This procedure is also acceptable at airports where there is no continuous customs presence, spatially and temporally. A continuous customs presence is maintained in the transit and security areas of the Frankfurt am Main, Hamburg, Berlin, and Leipzig/Halle airports.

Schleswig-Holstein Ministry of Finance, information of 10 January 2025, VI 358-S 7510-126

New judges to the General Court

The representatives of the governments of the EU Member States have appointed 13 judges to the General Court. This appointment process aims to fill vacancies as the terms of 26 judges will end on 31 August 2025. The newly appointed judges will serve from 1 September 2025 to 31 August 2031.

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39th meeting of the VAT Expert Group (VEG)

The agenda for the 39th VEG meeting, held on 26 March 2025, included a study on the VAT challenges post-ViDA, updates on ViDA Implementation (VEG N° 125, 126, 127), and details on the new SME scheme.

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Links to further information

Deloitte Tax News | ECOFIN: Adoption of the VAT in the Digital Age package
Deloitte Tax News | VEG – VAT Expert Group: VAT after ViDA

48th meeting of the Group on the Future of VAT

The 48th meeting of the Group on the Future of VAT, held on 28 March 2025, addressed several key topics. These were the VEG's report on VAT after ViDA, a study addressing VAT challenges beyond ViDA, a follow-up on the implementation of ViDA, and an update on the progress of the SME scheme implementation.

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Lower threshold for mandatory VAT registration under Bulgarian VAT rules

The Bulgarian Parliament adopted new rules to lower the threshold for mandatory VAT registration from 166, 000 BGN to 100,000 BGN. The new threshold applies from 1 April 2025 onwards.

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