



## VAT's new?

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

## Highlights

### Input tax deduction

"Article 167, Article 168(a) and Article 178(a) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax and the principles of value added tax (VAT) neutrality and of proportionality, must be interpreted as precluding national legislation under which a taxable person may not assert his or her right to deduct input tax in a return submitted for a period in which he or she satisfied the substantive conditions for exercising that right if, during that period, he or she had not yet received the corresponding invoice, even though he or she did receive the invoice before submitting the return."

*General Court, judgment of 11 February 2026 – T689/24, Dyrektor Krajowej Informacji Skarbowej*

### Links for further information

[Webcast | VAT Insights | 26 February 2026](#)

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### Transfer of a going concern | pass-through acquisition

According to the Federal Fiscal Court, the transfer of a going concern within the meaning of sec. 1(1a) GVATA does not require that the intermediate acquirer is a taxable person (Federal Fiscal Court, judgment of 25 September 2024, XI R 19/22). The German Federal Ministry of Finance adopted this ruling and amended the German VAT Application Decree accordingly. In addition, it specified that a long-term activity may also exist if there are considerable intervals between transactions, for example up to 20 years. The principles apply to all open cases.

*German Federal Ministry of Finance, letter of 20 January 2026 – III C 2 - S 7100-b/00011/009/045*

### Permanently loss-making institutions

In a letter dated 20 January 2026, the German Federal Ministry of Finance revised its guidelines on the VAT treatment of permanently loss-making institutions. Accordingly, there is no exchange of supplies if the remuneration does not represent the countervalue for the supply, e.g., in the case of symbolic payments. On this basis, the German Federal Ministry of Finance applies a two-staged assessment method. First, it must be determined whether there is a direct link between the supply and the remuneration. This presupposes that income is actually generated. Subsequently, an overall assessment must be made to determine whether the activity is sustainably aimed at generating income and corresponds to market conditions. Under a rebuttable presumption, there is no economic activity if the cost recovery ratio is 3% or less. Subsidies can reduce the costs. However, this assumption can be refuted, for example, if the institution actually participates in the market. In addition, the German Federal Ministry of Finance specified the conditions under which subsidies are to be offset against remuneration. The German VAT Application Decree has been amended correspondingly. These principles apply to open cases. However, until 31 December 2027, no objection will be raised if, despite an asymmetric cost-income ratio, an economic activity is still assumed to exist.

*German Federal Ministry of Finance, letter of 20 January 2026 – III C 2 - S 7106/00069/003/117*

### Distribution chains for multi-purpose vouchers

Voucher transfers continue to be considered non-taxable transactions. However, intermediaries regularly make taxable supplies. The basis of assessment is the difference between the voucher value and the purchase price. This applies to all stages of the distribution chain.

*Hamburg Tax Authorities, decree of 16 December 2025 – S 7100-2023/005-51*

### VAT-exempt services directly serving schooling and education

The Frankfurt am Main Higher Tax Directorate specified the procedure for issuing the required certificates for VAT-exempt educational services. Accordingly, educational institutions must designate eligible measures. Educational programs can be certified as a package, subject to notification requirements in the event of changes. Retroactive certificates remain possible. The competent authority shall also decide on the type and duration of the measures recognized as educational services and review curricula, teachers, and learning materials.

*Frankfurt am Main Higher Tax Directorate, order of 11 December 2025 – S 7179 A-00076-0357-St1-St 16*

### Discounts on medicinal products

The assessment basis for supplies of medicinal products made by pharmaceutical companies to pharmacies is to be reduced by the discounts subsequently paid to central billing offices of pharmacies or private health insurance companies. Furthermore, the discount must be divided into remuneration and VAT to determine the assessment basis for VAT purposes.

*Federal Fiscal Court, decision of 14 January 2026 – V B 71/24*

### Reimbursement of VAT in the event of fictitious damage settlement

The reimbursement of VAT incurred for damage repair measures cannot be demanded under sec. 249(2) of the German Civil Code when settling on the basis of an expert opinion. This also applies if the measures actually carried out serve partly to repair the accident damage, but it is not explained what proportion is attributable to the repair of the damage.

*Düsseldorf Higher Regional Court, judgment of 16 December 2025 – 1 U 234/24*

### Correction of input tax deduction in the event of finally non-redeemed trade credits

Non-transferable trade credits which can only be credited for future services do not represent vouchers. As the goods to be supplied or the services to be provided were not specified at the time the trade credits were issued, there is no barter-like transaction. If trade credits can no longer be redeemed due to the statute of limitations, the assessment basis changes. Accordingly, the input tax deduction must be corrected.

*Düsseldorf Fiscal Court, judgment of 19 February 2025 – 5 K 588/19 U, Federal Fiscal Court: V R 9/25*

### Link for further information

[Webcast | VAT Insights | 26 February 2026](#)

### Request for a preliminary ruling on the formal requirements in the input tax refund procedure

"1. Are Article 7 of Council Directive 2008/9/EC of 12 February 2008 laying down detailed rules for the refund of value added tax, provided for in Directive 2006/112/EC, to taxable persons not established in the Member State of refund but established in another Member State ('Directive 2008/9/EC'), read in conjunction with Article 8(2) thereof, and Article 15(1) of Directive 2008/9/EC, to be interpreted as meaning that, in order for an application submitted via the electronic application procedure to be valid, a specific dataset format prescribed by the Member State of refund is required for each individual invoice, all the invoice details required under Article 8(2) of Directive 2008/9/EC must be sent in that dataset format, and a summary of invoice details in one dataset is not permitted?"

"2. Is an electronic refund application under Article 7 of Directive 2008/9/EC which, instead of the information for each individual invoice in the dataset format prescribed by the Member State of refund, is accompanied by a table of the invoices in respect of which refund is sought, compiled by the applicant itself, containing all the details specified in Article 8(2) of Directive 2008/9/EC and sent to the administrative authorities of the Member State of refund by electronic means, to be regarded as formally complete and submitted before the deadline

within the meaning of the second sentence of Article 15(1) of Directive 2008/9/EC and to be examined by the tax authorities of the Member State of refund?"

*Cologne Fiscal Court, decision of 14 May 2025 – 2 K 227/23, General Court: T-880/25*

#### **Links for further information**

[Webcast | VAT Insights | 26 February 2026](#)

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#### **TOMS for non-EU established tour operators**

The tour operator margin scheme under sec. 25(1)(4) of the German VAT Act also applies to travel services provided by tour operators established outside the EU without any permanent establishment in the Community territory (contrary to sec. 25.1(1)(5) of the German VAT Application Decree).

*Lower Saxony Fiscal Court, judgment of 13 November 2025 – 5 K 42/25, Federal Fiscal Court: V R 1/26*

#### **Link for further information**

[Webcast | VAT Insights | 26 February 2026](#)

#### **VAT corrections in property development cases**

A correction under sec. 27(19)(1) of the German VAT Act is permissible if the recipient erroneously assumed to be the VAT debtor and retroactively pays the VAT to the supplier. For determining the time of the supply in the case of advance payments, the receipt of payment is relevant. The protection of legitimate expectations is ruled out provided that the other requirements for correction are met.

*Nuremberg Fiscal Court, judgment of 18 March 2025 – 2 K 1246/22, Federal Fiscal Court: V R 23/25*

#### **Installments for partial construction services provided before 15 February 2014**

The VAT liability under sec. 13b(2) no. 4 GVATA arises depending on whether the recipient uses the work delivery or supply of service, which serves the construction, repair, maintenance, alteration, or removal of buildings, to make such a supply. Sec. 27(19) GVATA concerns taxable supplies provided before 15 February 2014, where the supplier and the recipient assumed that the recipient owed the VAT under sec. 13b GVATA based on the former administrative opinion, but this assumption proved to be incorrect. The provision also covers installments for partial supplies provided before this date.

*Berlin-Brandenburg Fiscal Court, judgment of 18 June 2025 – 7 K 7039/22, Federal Fiscal Court: V R 36/25*

#### **Remuneration paid to a collective management organisation**

"Article 2(1)(c), Article 24(1), Article 25(a) and (c), Article 73 and point (a) of the first paragraph of Article 78 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as meaning that:

- holders of related rights supply services for consideration when their protected works are communicated to the public by a user who does not have a licence for that purpose, notwithstanding the fact that, first, they cannot oppose such communication and, secondly, their remuneration results from national law as well as the regulatory provisions to which that law refers;
- value added tax applies to the total remuneration due to holders of related rights for that supply of services, including the portion of that remuneration that exceeds the remuneration that that user would have been liable for if they had held a licence."

*General Court, judgment of 11 February 2026 – T643/24, Credidam*



### Podcast | Tax on Air - published in February

Episode #31 | "Deloitte meets MwStR" | CJEU, judgment of 11 December 2025, C-796/23, Česká síť

Episode #30 | TP meets VAT | CJEU, opinion of Advocate General Kokott delivered on 15 January 2026, C-603/24, Stellantis Portugal

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