KPMG

VAT Newsletter

Hot topics and issues in indirect taxation

July 2024

NEWS IN LEGISLATION

Policy draft of a regulation on the awarding of a tax-related business identification number

The German Ministry of Finance (BMF) has published on 28 June the policy draft of a regulation on the awarding of a tax-related business number (W-IdNr).

Pursuant to § 139d of the German Fiscal Code (AO), the Federal Government may, with the approval of the Federal Council, determine the structure, allocation, deletion period and notification of the W-IdNr. (see also Art. 97 § 5 of the Introductory Act to the AO). It should be noted that the W-IdNr. will in future be stored in the register of basic company data, which will serve to identify companies uniquely and across registers.

The main content of this intended regulation focuses on the structure and assignment of the business identification number:

- The W-IdNr (§ 139c German Tax Code (AO)) shall be introduced on 30 September 2024; measures will be taken to ensure that an entity engaged in business shall not receive more than one W-IdNr, and that each W-IdNr is issued only once (a uniform and permanent element for tax purposes).
- It shall consist of the letters “DE” and nine digits. Its structure corresponds to that of the VAT identification number and shall, in the case that the requirements of § 27a (1) German VAT Law (UStG) are met, take on the functionality thereof. In addition, it shall also be used as a federally uniform business number in accordance with § 2 (1) Basic Business Data Registration Law.
- The administration of business identification numbers shall be undertaken by the Federal Central Tax Office.

The Federal Cabinet is expected to approve the draft ordinance in the near future; the Federal Council is expected to do so on 27 September 2024.
The initial allocation of the W-IdNr. is to begin on 1 November 2024.

Content

Listen in: VAT podcast "VAT to go"

Many sales are no longer made over the counter, but via the internet. There are many pitfalls lurking here, especially in VAT, as the new CJEU ruling on the marketing of vouchers in the supply chain and the new BMF circular on events in the B2C sector via live streaming or recording show.

Our tax expert Kathrin Feil and Rainer Weymüller, Of-Counsel at KPMG, talk about this in the new episode of our VAT podcast "VAT to go" - on Spotify and SoundCloud.

NEWS FROM THE CJEU

CJEU does not object to German provisions on VAT groupings

CJEU, ruling of 11 July 2024 – case C-184/23 – Finanzamt T II

On 11 July 2024, the CJEU published its ruling on the provision in the case of German VAT groupings (CJEU case C-184/23). This was based on a reference for a preliminary ruling from the German Federal Tax Court (BFH) (BFH resolution of 26 January 2023 (V R 20/22)):

BFH questions in the case C-184/23

1. Does the bringing together of several persons into a single taxable person in accordance with Art. 4 (4) (2) Directive 77/388/EEC lead to supplies for a consideration between those persons no longer falling within the scope of VAT in accordance with Art. 2 no. 1 of that Directive?

2. Do supplies for a consideration between those persons fall, in any event, within the scope of VAT if the recipient of the supply is not (or is only partially) entitled to deduct input tax, as there is otherwise a risk of a loss of VAT revenue?

In the BFH's view, several Advocates General reached different conclusions in their opinions with regard to the question of whether internal transactions between group members fall within the scope of VAT and are thus taxable.

Thus, on the one hand transactions for a consideration effected between the individual members of a VAT group count as "self-dealing" transactions of the group and consequently as non-existent for the purposes of VAT law (opinion of Advocate General Jääskinen in the cases Commission/Ireland of 27 November 2012 – C-85/11, ref. 42, and Commission/Sweden of 27 November 2012 – C-480/10, ref. 40; opinion of Advocate General Mengozzi in the cases Larentia + Minerva and Marenave Schiffahrt of 26 March 2015 – C-108/14 and C-109/14, ref. 49). They offer no opportunity for the levying or offsetting of VAT (opinion of Advocate General van Gerven in the case Polysar Investments Netherlands of 24 April 1991 – C-60/90, ref. 9).

On the other hand, internal transactions between the group members should lie within the scope of VAT and consequently be liable to VAT (opinion of the Advocate General Medina in the case Finanzamt T of 27 January 2022 – C-269/20, ref. 36 f., and in the case Norddeutsche Gesellschaft für Diakonie of 13 January 2022 – C-141/20, ref. 64 and 73 with sample calculations).

CJEU ruling of 11 July 2024

In **its ruling of 11 July 2024, the CJEU ruled** that Art. 2 no. 1 and Art. 4 (4) (2) Directive 77/388/EEC must be interpreted to mean that, **services provided for consideration between persons belonging to one and the same VAT group,** consisting in legally independent persons who are, however, closely bound to one another by financial, economic and organizational links and designated as a single taxable person by a Member State, **are not subject to VAT even where the VAT due or paid by the recipient of those services cannot be deducted as input VAT.**

Ultimately, the CJEU therefore does not object to the German provisions on VAT groupings.

Reasons in detail

The CJEU gives as its reasoning that the implementation of the provisions stipulated in Art. 4 (4) (2) Directive 77/388/EEC demands that national legislation adopted on the basis of that provision allows entities which have such links no longer to be treated as separate taxable persons for the purposes of VAT but to be treated as a single taxable person and that, where that provision is implemented by a Member State, the closely linked entity or entities within the meaning of that provision cannot be treated as a taxable person or persons within the meaning of Art. 4 (1) of the Sixth Directive.

Therefore, the treatment of a VAT group as a single taxable person as set out in Art. 4 (4) (2) Directive 77/388/EEC precludes members of the VAT group from continuing to submit VAT declarations separately and from continuing to be identified, within and outside their group, as individual taxable persons, since the single taxable person alone is authorized to submit such declarations. This provision therefore necessarily requires, where it is implemented by a Member State, the national implementing legislation to provide that the taxable person is a single taxable person and that only a single VAT number be allocated to the group

It follows that a supplier belonging to a VAT group cannot be treated, individually, as a separate taxable person from the VAT group, so that there is no need to determine whether that supplier meets the independence condition laid down in Art. 4 (1) Directive 77/388/EEC when it provides a service for consideration to another entity of that VAT group. Accordingly, such provision of service cannot fall within the scope of VAT Art. 2 no. 1 of that directive.

Finally, it must be noted that the VAT Committee, established in accordance with Art. 398 of the VAT Directive, in the guidelines resulting from its 119th meeting of 22 November 2021, held the same view regarding the VAT group referred to in Art. 11 of the Directive, stating that the treatment of a VAT group as a single taxable person precludes the members of that group from continuing to operate, within and outside their group, as individual taxable persons for VAT purposes. While such a document does not have a binding effect, it nevertheless constitutes an aid to the interpretation of the Sixth Directive.

Similarly, no. 3.4.3 of the communication from the Commission to the Council and the European Parliament on the VAT group option provided for in Art. 11 of Directive 2006/112/EC on the common system of value added tax (COM(2009) 325 final), relating to “Intra-group supplies of goods and services”, states that transactions between members of the same VAT group do not exist for VAT purposes.

With regard to the question of whether it is appropriate to distinguish the particular case where the provider of such a service cannot rely on the right to deduct input VAT due or paid, on the ground that there exists, in that case, a “risk of tax losses”, it must be noted that within the framework of a VAT group, the right to deduct input VAT due or paid is conferred on the group itself and not on its members.

Furthermore, in the rulings cited by the referring court in its order for reference, i.e. the rulings of 1 December 2022, Norddeutsche Gesellschaft für Diakonie (C-141/20), and of 1 December 2022, Finanzamt T (supplies within a VAT group) (C-269/20, the requirement concerning the need to avoid a risk of tax losses, to which the Court has referred, related to a different question from that examined in the present case.

As indicated in the rulings of 1 December 2022, Norddeutsche Gesellschaft für Diakonie (C-141/20), and of 1 December 2022, Finanzamt T (supplies within a VAT group) (C-269/20), that question concerned the possibility for a Member State to designate not the VAT group itself, but rather its controlling company as being the single taxable person. The CJEU considered that that could be the case if that designation led to the same result, as regards tax revenue, as the case where the VAT group were itself liable for that tax

In contrast, the “risk of tax losses” which the referring court mentions in its second question results primarily not from the application of requirements specific to the VAT group regime which are also specific to the law of a Member State but rather from the application of the common VAT system set down in the Sixth Directive and its provisions relating to the deduction of input VAT due or paid.

Please note:
The CJEU ruling has no significant impact on practice because internal services were already not taxable in the case of a tax group and, according to the clear statements of the CJEU, can still be classified as such in the future. It remains to be seen whether the issue of application procedures will now come back into focus.

NEWS FROM THE BMF

Increase of tax exemption limit for gits from EUR 35 to EUR 50 as of 1 January 2024

BMF, guidance of 12 July 2024 – III C 3 - S 7015/23/10002 :001

The Law to Strengthen Chances for Growth, Investment and Innovation and Tax Simplification and Tax Fairness (Growth Opportunities Law) of 27 March 2024 (Federal Law Gazette I no. 108) increased the exemption limit for the deduction of business expenses for gifts in accordance with § 4 (5) sent. 1 no. 1 sent. 2 Income Tax Law (EStG) from EUR 35 to EUR 50 with effect from 1 January 2024.

Consequences for VAT

Section 3.3 (11) VAT Application Decree (UStAE): The presentation of gifts of negligible value is not subject to VAT according to § 3 (1b) sent. 1 no. 3 UStG. This type of gift exists if the purchase or production costs of the items given to the recipient in a calendar year does not exceed EUR 50 in total (net amount without VAT). This can be assumed in the case of low-value promotional items (e.g. pens, lighters, calendars, etc.).

Section 3.3. (12) UStAE: In the case of gifts over EUR 50, for which in accordance with § 15 (1a) UStG in conjunction with § 4 (5) sent. 1 no. 1 EStG no input VAT deduction can be carried out, a taxation of the gifts shall not apply, in line with § 3 (1b) sent. 2 UStG. Therefore, initially a review of the Regulation on Profit Tax (EStR) provisions (cf. Reg. 4.10 (2) to (4) EStR) must be undertaken to ascertain if the item given can conceptually be considered to be a “gift”. In particular, a gift requires a contribution to a third party that is free of charge. It cannot be assumed to be free of charge if the contribution can be viewed as payment in return for a specific service from the recipient (quid pro quo). If, on this basis, a gift does exist, it must further be examined if an input VAT deduction for it in accordance with § 15 (1a) UStG is precluded (cf. Section 15.6 (4) and (5) UStAE with the new exemption limit of EUR 50). Only if, on this basis, the item or its components confer an entitlement to a full or partial deduction of input VAT, will the taxation of the item as a benefit in kind come into question.

Finally, in Section 15.12 (3) Example 1 UStAE the reference to EUR 35 shall be replaced by a reference to EUR 50.

The principles of the BMF guidance apply for all transactions from 1 January 2024.

Please note:
If the entrepreneur gives a gift to his own employee and the gift is not part of the employee's wages, the input tax deduction is permitted in full. Gifts include occasional gifts (such as flowers, luxury foods, a book or a sound recording) up to a gross value of EUR 60, which are given to the employee or their relatives on the occasion of a special personal event (such as a birthday) (see sec. 1.8 para. 3 UStAE).

IN BRIEF

Transfer of ownership of agricultural acreage in return for a compensation payment

CJEU, ruling of 11 July 2024 – case C-182/23 – Makowit

This ruling concerns the transfer of ownership of agricultural acreage in Poland in return for the payment of compensation due to a municipal decision. At the time of the purchase of the acreage no VAT was levied on the farmer, nor were they entitled to claim an input VAT deduction.

The CJEU affirmed an activity liable for VAT with regard to the transfer of ownership for compensation, even if the farmer does not carry out any activities in the real estate trade.

Please note:
To date, it has been possible to infer from sec. 1 para. 1 no. 1 sentence 2 UStG that VAT liability does not apply if the transaction is carried out on the basis of a statutory or official order, i.e. a transfer by the entrepreneur in return for compensation is subject to VAT. The question of whether the taxable person must act in his capacity as a taxable person in these cases has not yet been discussed. The CJEU has answered this question in the negative, thereby once again defining the scope of VAT very broadly.

Cooperation obligations of the performing contractor in the case of assignments in property development cases

BFH, ruling of 17 April 2024, XI R 16/22

The BFH comes to the following conclusion in the old cases of property developers and the resulting scope of application of § 27 (19) UStG:

1. within the scope of the obligations to cooperate incumbent on the supplier pursuant to § 27 (19) sentence 4 no. 4 UStG, the supplier must do everything reasonable to enable the tax office to realize the claim to be assigned against the recipient for payment of the legally owed value added tax.

2. there is no breach of these duties to cooperate, which prevents the assignment of these claims from having a fulfilling effect, if the tax office rejects an offer of assignment by the supplier in a manner that is an error of judgment.

FROM AROUND THE WORLD

TaxNewsFlash Indirect Tax

KPMG articles on indirect tax from around the world

You can find these and further articles here.

10 July – Chile: Updated invoice and document requirements for VAT

9 July – Vietnam: Reduced VAT rate for second half of 2024

8 July – Canada: Digital services tax now in effect

3 July – Malaysia: Updated e-invoice guidelines and FAQs

2 July – Italy: Changes to VAT penalties effective 1 September 2024

1 July – KPMG report: Impact of e-invoicing mandates on intercompany transactions

1 July – KPMG report: VAT remote-seller rules

25 June – Costa Rica: Guidance for VAT-exempt taxpayers

25 June – Romania: New regulation expands e-invoicing mandate to B2C transactions

17 June – EU: Toll manufacturer does not constitute a fixed establishment for VAT purposes (CJEU judgment)

Contacts

KPMG AG
Wirtschaftsprüfungs-
gesellschaft

Head of Indirect Tax Services
Dr. Stefan Böhler
Stuttgart
T +49 711 9060-41184
sboehler@kpmg.com

Berlin
Dr. Bastian Liegmann
T +49 30 2068-2160
bliegmann@kpmg.com

Duesseldorf
Olaf Beckmann*
T +49 211 475-7343
olafbeckmann@kpmg.com

Thorsten Glaubitz
T +49 211 475-6558
tglaubitz@kpmg.com

Franz Kirch
T +49 211 475-8694
franzkirch@kpmg.com

Frankfurt/Main
Prof. Dr. Gerhard Janott
T +49 69 9587-3330
gjanott@kpmg.com

Wendy Rodewald
T +49 69 9587-3011
wrodewald@kpmg.com

Nancy Schanda
T +49 69 9587-2330
nschanda@kpmg.com

Dr. Karsten Schuck
T +49 69 9587-2819
kschuck@kpmg.com

Hamburg
Gregor Dzieyk
T +49 40 32015-5843
gdzieyk@kpmg.com

Antje Müller
T +49 40 32015-5792
amueller@kpmg.com

Hanover
Michaela Neumeyer
T +49 511 8509-5061
mneumeyer@kpmg.com

Cologne
Peter Schalk
T +49 221 2073-1844
pschalk@kpmg.com

Leipzig
Christian Wotjak
T +49 341-5660-701
cwotjak@kpmg.com

Munich
Christopher-Ulrich Böcker
T +49 89 9282-4965
cboecker@kpmg.com

Kathrin Feil
T +49 89 9282-1555
kfeil@kpmg.com

Stephan Freismuth*
T +49 89-9282-6050
sfreismuth@kpmg.com

Mario Urso*
T +49 89 9282-1998
murso@kpmg.com

Nuremberg
Dr. Oliver Buttenhauser
T +49 911 5973-3176
obuttenhauser@kpmg.com

Stuttgart
Dr. Stefan Böhler
T +49 711 9060-41184
sboehler@kpmg.com

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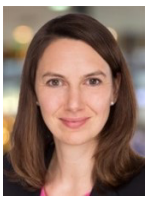
Editor



Kathrin Feil (V.i.S.d.P.)
T +49 89 9282-1555
kfeil@kpmg.com

Rainer Weymüller
Of-Counsel

Christoph Jünger
T + 49 69 9587-2036
cjuenger@kpmg.com

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