KPMG

VAT Newsletter

Hot topics and issues in indirect taxation

October 2024

NEWS IN LEGISLATION

Fourth Bureaucracy Reduction Act

Federal Law Gazette 2024 I, No. 323, 29 October 2024

On 26 September 2024, the Bundestag (German Parliament) adopted the Fourth Bureaucracy Reduction Act, which is intended, inter alia, to reduce retention periods for documents and ease VAT-related obligations. The Bundesrat (German Federal Council) approved the Act on 18 October 2024.

Up to now, accounting records generally had to be retained for 10 years. The Fourth Bureaucracy Reduction Act stipulates that the retention period for these documents be reduced to 8 years (§ 147 (3) German Tax Code (AO), § 257 (4) Commercial Code (HGB)). This easing of the retention period shall apply to all documents for which the retention period has not yet ended on the day after the promulgation of the Fourth Bureaucracy Retention Act.

Accounting documents often means invoices within the meaning of § 14 German VAT Law (UStG). To achieve the intended reduction in bureaucracy, the VAT deadline for the retention of invoices set out in § 14b (1) sent. 1 UStG shall therefore be amended in line with the new deadline. In accordance with § 27 (40) UStG, the shortened deadline shall also apply for invoices that have already been issued and received when the law has been promulgated in the Federal Law Gazette.

Through the increase of the threshold in § 18 (2), (2a) UStG from EUR 7,500 to EUR 9,000 revenue in a calendar year applying from 1 January 2025, the number of advance VAT reports shall be reduced. In order to relieve entrepreneurs of the bureaucratic costs associated with the advance return, the threshold value has been raised to EUR 9,000 so that more entrepreneurs only have to submit a quarterly advance VAT return.
The increase of the de minimus limit in the case of margin taxation from EUR 500 to 750 in § 25a (4) UStG (from 1 January 2025) is intended to provide relief in determining the VAT basis of assessment. According to this provision, retailers can more easily calculate the basis of assessment using the total difference between all purchases and sales effected during one VAT period, to the extent that the purchase price does not exceed the de minimus limit.

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NEWS FROM THE CJEU

Charging stations for electric vehicles

CJEU, ruling of 17 October 2024 – case C-60/23 – Digital Charging Solutions

The dispute concerned e-charging in the classic three-person relationship and the question of whether this should be treated as a supply chain from the charging station operator to the e-mobility operator and then to the user.

Facts

The registered office of Digital Charging Solutions (DCS) is in Germany; the company has no permanent establishment in Sweden. DCS provides users of electric vehicles in Sweden with access to a network of charging points. Users receive real-time information on the prices and availability of the charging points belonging to this network. The service also includes functions for searching and locating charging stations as well as route planning.

The charging stations belonging to the network are not provided by DCS, but by operators with whom DCS has concluded contracts so that electric vehicle users can charge their vehicles. For this purpose, DCS equips users with a card and an authentication application. When the card or application is used, each charge is registered with the operator of the charging point network, who then invoices DCS for these transactions. Invoices are issued monthly at the end of each month with a payment period of 30 days.

On the basis of the invoices received from the charging point operators, DCS also issues invoices to the card or application users on a monthly basis, separately for the quantity of electricity supplied on the one hand and for access to the network and ancillary services on the other. The price for the electricity varies, but a fixed fee is charged for grid access and ancillary services. This fee is charged regardless of whether or not the user has actually purchased electricity during the period in question. It is not possible to purchase only electricity from DCS without paying for access to the grid and these services.

On April 14, 2021, DCS Solutions applied to Skatterättsnämnd (Tax Law Board, Sweden) for a tax ruling. On 8 April 2022, this committee issued a preliminary ruling in which it assessed DCS's supplies as complex transactions characterized mainly by the supply of electricity to users, with Sweden as the place of supply.

The tax authority appealed to the Högsta förvaltningsdomstol (Supreme Administrative Court, Sweden), the referring court, for confirmation of the advance tax ruling. DCS also appealed to that court, but it brought an action for amendment of the advance ruling, arguing before the referring court that there were two distinct supplies, namely the supply of electricity and the provision of a service of access to the network of charging points, so that only the supply of electricity was taxable in Sweden.

As can be seen from the request for a preliminary ruling, the majority of the members of the Tax Law Committee were of the opinion that the charging point operators supply electricity to DCS, which in turn supplies it to the users. It was therefore a chain of transactions in which there were no contractual obligations between the charging point operators and the users.

On the other hand, a minority of the members of the Committee took the view that DCS provided users with a service consisting, in particular, in the provision of a network of charging points and subsequent invoicing, from which it could be concluded that users were in a sense being granted credit for the purchase of electricity, as was stated, against a different factual background, in the judgments of 6 February 2003, Auto Lease Holland (C-185/01, EU:C:2003:73), and of May 15, 2019, Vega International Car Transport and Logistic (C-235/18, EU:C:2019:412). This approach takes particular account of the fact that users are free to choose circumstances such as the quality, quantity, time of purchase and type of use of the electricity.

From the reasons for the decision

By its first question, the referring court essentially asked, according to the CJEU, whether Article 14(1) of the VAT Directive, in conjunction with Article 15(1) thereof, must be interpreted as meaning that the supply of electricity for charging an electric vehicle at a charging point which is part of a public network of charging points constitutes a supply of goods within the meaning of Article 14(1) of that directive.

The CJEU affirmed this with reference to its judgment of April 20, 2023, Dyrektor Krajowej Informacji Skarbowej, C-282/22, EU:C:2023:312, para. 38).

By its second question, the referring court essentially sought to ascertain, according to the CJEU, whether Article 14 of the VAT Directive in conjunction with Article 15 para. 1 must be interpreted as meaning that the charging of an electric vehicle at a network of public charging points to which the user has access via a contract concluded with a company other than the network operator means that the electricity consumed is supplied, in a first step, by the network operator to

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the company providing access to that network and, in a second step, by that company to the user, even if the latter decides the quantity, time and place of charging and the way in which the electricity is used.

According to the ECJ, Art. 14 of the VAT Directive in conjunction with Art. 15 para. 1 must be interpreted as meaning that the charging of an electric vehicle at a network of public charging points to which the user has access by means of a contract concluded with a company other than the network operator means that the electricity consumed is deemed to be supplied in a first step by the network operator to the company providing access to that network and in a second step by that company to the user, even if the latter decides on the quantity, time and place of charging and on the method of use of the electricity, if that company has concluded a contract with the Commission within the meaning of Art. 14 para. 2 lit. c of the VAT Directive in its own name but on behalf of the user.

The main proceedings differ from the cases Auto Lease Holland (C-185/01, EU:C:2003:73) and Vega International Car Transport and Logistic of 15 May 2019 (C-235/18, EU:C:2019:412). With regard to the first of these cases, according to the CJEU, it should be noted that the turnover relating to the refueling of the vehicle at issue in this case was in the context of a leasing contract. In that context, taking into account, inter alia, the fact that, unlike the billing arrangements at issue in the main proceedings of the present case, the monthly instalments paid to the leasing company constituted only an advance, since the actual consumption was determined at the end of the year, the Court held that the fuel management agreement constituted a contract for the financing, even if only partial, of the purchase of fuel and that the leasing company in fact assumed the role of a lender vis-à-vis the lessee of the vehicle (cf. see, to that effect, judgment of February 6, 2003, Auto Lease Holland, C-185/01, EU:C:2003:73, paragraphs 35 and 36).

As regards the second case, it is sufficient to note that the circumstances at issue in the main proceedings in the present case are also not those in which a parent company decides to organize the supply of fuel to its subsidiaries by means of fuel cards issued by it, which can be used at petrol stations of suppliers designated by the parent company (judgment of 15 May 2019, Vega International Car Transport and Logistic, C-235/18, EU:C:2019:412, paragraphs 14 and 36).

According to the CJEU, the fact that there is no credit mechanism to pre-finance the purchase of electricity is confirmed by the circumstances in which the remuneration agreed between the charging point users and DCS was determined. As stated in this judgment, DCS does not charge a fee in the form of a percentage of the electricity consumption invoiced, but a fixed fee that is independent of the amount of electricity supplied to the user or the number of charging sessions.

It follows that, as in the two cases in which those judgments were delivered, it is for the user to decide when, where and how much electricity to purchase, but the findings resulting from those judgments cannot be applied to the main proceedings.

Please note:

1. It is noteworthy that neither the parties nor the referring court considered a commission contract under Article 14(2)(c) of the VAT Directive in respect of the chain transactions in question. c of the VAT Directive. The question posed by the Swedish court merely concerned the interpretation of Art. 14 and Art. 15 (1) of the VAT Directive. It was only in his Opinion of April 25, 2024 (para. 55 et seq.) that the Advocate General came up with the idea of proposing a Commission model to the CJEU as a third option for solving the VAT problems. He even suggested that two models were conceivable, namely a purchasing commission and a sales commission. The CJEU then followed the Advocate General's suggestion and added that it was in line with the nature of a commission contract for the purchase of electricity for charging a vehicle that the user of the charging point and not the commission agent decides on the quality, quantity, time of purchase and type of use of the electricity. Accordingly, DCS is a commission agent. Ultimately, however, the referring court must decide whether there is a buying or selling commission. As a result, however, the CJEU expresses itself very cautiously because it states that the conditions for the application of a commission business appear to be present here. This is presumably due to the fact that neither the parties involved nor the referring court had even begun to recognize this possibility. In this respect, there is a reason why the CJEU expresses itself so cautiously in its reasons for judgment. It should also be noted that the CJEU does not assume that the provision of access to the network for a monthly fee and the supply of electricity constitute a single transaction (para. 55, 56). As a result, the place of supply must also be determined separately.

2 The grounds of the judgment also make it clear that the

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judgments of 6 February 2003, Auto Lease Holland (C-185/01, EU:C:2003:73), and of 15 May 2019, Vega International Car Transport and Logistic (C-235/18, EU:C:2019:412), are based on special cases. In fact, it will be difficult to distinguish these judgments from the present case in practice. In any event, the findings made in Auto Lease Holland and Vega cannot be automatically transferred to other business models and transactions involving vehicle charging devices.

3. In the fuel card business, fuel can be supplied as part of a commission transaction in accordance with the guidelines of September 22, 2023 (see also the draft BMF letter of August 19, 2024, VAT Newsletter August/September 2024). It remains to be seen whether the principles of this ECJ ruling DCS will be included in the final BMF circular.

Abuse of the small company regulation

CJEU, ruling of 4 October 2024 – case C-171/23 – UP CAFFE

This case dealt with a restaurant business (SS-UGO d.o.o.) in Croatia, that ostensibly ceased trading and was taken over by a different operator (UP CAFFE). The Croatian tax authorities are of the opinion that the operation was in fact only notionally taken over in order to continue to benefit from the small company regulation.

From the reasons for the decision

Ther CJEU ruled as follows: The VAT Directive must, according to the CJEU be interpreted, in light of the principle of preventing abusive practices, be interpreted to mean that, if it is certain that the formation of a company constitutes an abusive practice, with the purpose of continuing to benefit from the exemption limit in accordance with Art. 287 no. 19 of the VAT Directive for an activity, that was previously enjoyed by a different company as part of this provision, the VAT Directive demands that the company thus formed cannot make use of this provision, even if the national law contains no specific rules forbidding such abusive practices.

Please note:

The CJEU holds the opinion that it is the business of the presenting court to clarify if the formation of UP CAFFE constitutes an abusive practice with the purpose of continuing to apply the small company regulation in Croatia (cf. Art. 287 no. 19 of the VAT Directive). If this is the case, and if an abusive practice is assumed, Union law can intervene, even if Croatian law does not stipulate any provisions on abuse. Abusive activities are not covered according to Union law. In this respect, the CJEU refers to, inter alia, its case law of 18 December 2014 (C-131/13, Italmoda). National authorities and courts, in the case of an abusive practice with the purpose of benefitting from the exemption from VAT in accordance with Art. 287 no. 19 of the VAT Directive, had to deny the use of this provision, even if the national law did not contain any specific regulations in this respect. The CJEU principle could also apply to similar cases in Germany, if the small company regulation were to be abusively applied.

Input VAT deduction in the case where a sub-contractor is used

CJEU, ruling of 4 October 2024 – case C-475/23 - Voestalpine Giesserei Linz (VGL)

VGL, established in Austria, produces molded parts, which it processes in Romania (where it is also registered for VAT). For this purpose, VGL concluded a contract with Austrex (established in Austria), which used a sub-contractor (GEP from Romania) to carry out the work. VGL also provided, free of charge, GEP with a crane, purchased by and located on property belonging to VGL, to use in processing the molded parts. Following processing, the molded parts were sold by VGL in the EU.

The Romanian tax authorities took the view, that due to the passing on of the crane free of charge, there is no proof that the purchase of the crane took place for the purposes of VGL's economic activities, and therefore denied the deduction of input VAT on the purchase of the crane. The presenting court added that the VGL's processing activity in Romania only indirectly created income, while the directly benefiting companies were Austrex and GEP, as both of these companies would invoice VGL for activities for which the purchased crane will be used.

From the reasons for the decision

In this case the CJEU has ruled as follows: The processing of the molded parts, which weighed more than 10 tons, would not have been possible without the crane purchased by VGL, with the result that its acquisition was essential for completing that processing and that, consequently, in the absence of such an acquisition, VGL would not have been able to carry on its economic activity of selling molded parts (cf. CJEU ruling of

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14 September 2017, C- 132/16, Iberdrola). The fact that Austrex and GEP derive a direct benefit from the crane being provided free of charge cannot result in the denial of VGL‘s right to deduct VAT. It depends on whether the provision of the crane was limited to that which was necessary to facilitate the processing of the molded parts. In light of this, the CJEU answered the questions as follows:

According to the CJEU, Art. 168 (a) of the VAT Directive must be interpreted,

1. as precluding a national practice whereby, where a taxable person has acquired goods which that taxable person then makes available free of charge to a sub-contractor, in order for that sub-contractor to carry out work for that taxable person, that taxable person is denied the deduction of the VAT relating to the acquisition of those goods, in so far as the making available of those goods does not go beyond what is necessary to enable that taxable person to carry out one or more taxable output transactions or, failing that, to carry out its economic activity, and the cost of acquiring those goods is part of the cost components of either the transactions carried out by that taxable person or the goods or services which that taxable person supplies in the course of its economic activity.

2. as precluding a national practice whereby a taxable person is denied the deduction of input VAT on the ground that that taxable person has not kept separate accounts for its fixed establishment in the Member State in which the tax inspection is carried out where the tax authorities are in a position to determine whether the material conditions of the right to deduct input VAT are satisfied.

Please note:

1. The Romanian tax authorities did not prevail before the CJEU with their view that it was not proven that the acquisition of the crane was made for the purposes of VGL's economic activity because it was transferred free of charge and that the input VAT deduction for the acquisition of the crane should therefore be denied. The CJEU did not accept the referring court's argument that the processing activity carried out in Romania only indirectly generated income for VGL, whereas the direct beneficiaries were Austrex and GEP, as these two companies invoiced VGL for activities for the performance of which the acquired crane was used.

The processing of castings weighing more than 10 tons would not have been possible without the crane acquired by VGL. The purchase of the crane was essential for carrying out the processing. Without such an acquisition, VGL would not have been able to carry out its economic activity consisting in the sale of castings. The fact that Austrex and GEP could derive a direct benefit from the free provision of the crane could not mean that VGL could not claim an input tax deduction. It depends on whether the provision of the crane was limited to what was necessary to enable the processing of the castings.

2. The CJEU also makes it clear that the material requirements of the right to deduct input VAT means those governing the actual basis and scope of this right, such as those stipulated in Title X Chapter 1 (“Origin and Scope of Right of Deduction”) of the VAT Directive, while the formal requirements of this right govern the exercising and monitoring thereof as well as the smooth functioning of the VAT system, such as obligations accounts, invoicing and tax returns.

Thus, for the purposes of applying and monitoring VAT by the tax authorities, Title XI of the VAT Directive stipulates certain obligations incumbent, inter alia, on taxable persons liable to that tax, in particular the keeping of accounts in sufficient detail as set out in Art. 242 of the VAT Directive.

It follows that a taxable person cannot be prevented from exercising their right of deduction on the grounds that they did not keep sufficiently detailed accounts if the tax authorities are in a position to carry out a review and to verify that the material requirements have been met. In the case at hand, although the taxable person does not keep separate accounts for their fixed establishment in Romania, the tax authorities cannot deny that taxable person the ability to exercise their right to deduct input VAT paid if those authorities are in a position to carry out any checks necessary to establish the existence and the extent of that right, which it is for the referring court to determine.

Furthermore, the Court held that penalizing the failure on the part of the taxable person to comply with their obligations relating to accounts and tax returns by a denial of the right of deduction clearly goes beyond what is necessary to attain the objective of ensuring the correct application of those obligations, since EU law does not prevent Member States from imposing, where necessary, a fine or a financial penalty proportionate to the seriousness of an infringement of the formal requirements linked to the right of deduction (cf. in this respect ruling of 7 March 2018, Dobre, C

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159/17, ref. 34 and the jurisprudence contained therein).

3. According to the previous opinion of the administration and the case law, indirect purposes were not sufficient for the input tax deduction from input supplies. This opinion is likely to be outdated in its absoluteness.

4. For the application of EU law, it should be noted that the VAT Directive does not recognize the special cases of the supply of work (sec. 3 para. 4 of the German VAT Act) and the supply of salary (sec. 3 para. 5 of the German VAT Act) and they are not mentioned in Art. 14 of the VAT Directive. Therefore, the form of the "supply" (provision of the crane) did not play a decisive role in the CJEU case.

NEWS FROM THE BMF

Introduction of e-invoicing from 1 January 2025

BMF, guidance of 15 October 2024 - III C 2 - S 7287-a/23/10001 :007

The Growth Opportunities Act (Federal Law Gazette I 2024 no 108) has redrafted the provisions on issuing invoices in accordance with § 14 UStG for transactions carried out after 31 December 2024. The central issue of the provisions is the introduction of the obligatory use of electronic invoicing for transactions between domestic companies (domestic B2B transactions). An exception is made for invoices for supplies that are exempt from VAT in accordance with § 4 no. 8 to 29 UStG, as well as invoices for small amounts up to EUR 250 (§ 33 German VAT Operating Regulation (UStDV)) and travel tickets (§ 34 UStDV).

The new provision from 1 January 2025 is a significant cornerstone in the digitalization of business dealings. It will accelerate the digitalization of processes and procedures for the creation and processing of an electronic invoice (e-invoice) at the different levels. As a consequence, the previous VAT-related provisions must be amended in line with these changed conditions, although the meaning of an invoice in relation to VAT law remains unchanged. In an introductory phase accompanying the transition provisions (§ 27 (38) UStG), the tax authorities have taken the fact of the transformation process into consideration in an appropriate measure.

Types of invoices from 1 January 2025

Electronic invoice (e-invoice)

From 1 January 2025 the term electronic was newly defined by § 14 (1) UStG. In the future, an electronic invoice (e-invoice) will only exist if the invoice is created, transmitted, and received in a structure electronic format, and electronic processing of the invoice is facilitated (§ 14 (1) sent. 3 UStG). The structured electronic format of an electronic invoice

- must correspond to either the European norm for the creation of electronic invoices and the list of the corresponding syntaxes of Directive 2014/55/EU of the European Parliament and of the Council of 16 April 2014 on electronic invoicing in public procurement (EU OJ L 133 of 6 May 2014, p. 1) (§ 14 (1) sent. 6 no. 1 UStG) or
- could be agreed upon by the invoice issuer and the invoice recipient. The prerequisite for this type of agreement is that the format used allows the correct and complete extraction of the details required by the UStG from the e-invoice and meets or is interoperable with EN 16931 (cf. § 14 (1) sent. 6 no. 2 UStG).

As has been the case up to now, the authenticity of the source, the integrity of the contents, and the readability of the invoice must be guaranteed (§ 14 (3) UStG). In the transmission of an e-invoice a qualified electronic signature or a permitted EDI process can be used. In this case, the authenticity of the source and the integrity of the contents are deemed to have been provided. However, both could also be guaranteed by means of an internal company control procedure (cf. Section 14.4 (4) VAT Application Decree (UStAE)).

“Readability”, in this respect, means that the structured data set – e.g. the XML file in the case of an invoice corresponding to the EN 16931 standard – must be capable of being analyzed by a machine (machine readability). Therefore, the additional creation of a document that can be read by a person is not necessary. As the machine readability of a standardized file also allows for the file to, for example, be displayed using a visualization app. The additional transmission of a document capable of being read by a person (e.g. using a hybrid format or an additional PDF document) is therefore not necessary but is possible as an option.

Sundry invoices

Sundry invoices, from 1 January 2025, shall be all invoices on paper or in electronic formats that do not conform to the specifications of § 14 (1) sent. 6 UStG (other electronic format).

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This includes all non-structured electronic files, for example PDF files without integrated data sets, picture files or emails.

Obligation to issue an e-invoice

In the case of transactions between **domestic traders** generally, according to § 14 (2) sent. 2 no. 1, 2nd half of the sentence UStG an e-invoice must be issued.

Transactions between domestic traders exist if both the supplying trader and the recipient of the supply are resident in Germany or in one of the areas set out in § 1 (3) UStG. Residency in Germany or one of the areas set out in § 1 (3) UStG exists, if the trader has, in one of these areas, its place of business, place of management, a – VAT relevant – subsidiary (cf. Section 3a.1 (3) UStAE), which is participating in the transaction, or, in the absence of a business residence, is personally resident or normally residing. An e-invoice for transactions that are zero-rated in accordance with § 4 no. 1 to 7 UStG, must also be issued, under the remaining requirement (e.g. intra-Community supply from Germany to the subsidiary of another domestic trader in the Community territory). In this respect, Section 13b.11 (1) sent. 7 and 13b.11 (2) sent. 2 UStAE must also be referred to.

In these cases, the issuance of an e-invoice no longer requires the agreement of the recipient; at the same time, there is a requirement that the recipient creates the technical conditions to receive e-invoices.

The issuer of an invoice can rely, while having due care to exercise proper commercial prudence, on the statement of the recipient of a supply as to whether they are a domestic trader or not, to the extent they do not have any contradictory information. In this respect, the use of the VAT identification number or the business number can be an indication that the recipient is acting as a trader.

If at least one of the participating traders is not resident in Germany or in one of the areas set out in § 1 (3) UStG, there is no requirement to issue an e-invoice in accordance with § 14 (2) sent. 2 no. 1, 2nd half of the sentence UStG. In these cases, in accordance with § 14 (2) sent. 2 no. 1, 1st half of the sentence UStG the invoices to be issued may be issued

- on paper or
- with the agreement of the recipient, as an e-invoice or a sundry invoice in another electronic format.

The provisions on the obligatory use of e-invoices would apply equally to the issuance of invoices in the form of a credit note (§ 14 (2) sent. 5 UStG) or for invoices

- for transactions for which the recipient of the supply owes the VAT (§ 13b UStG), if both supplier and recipient of the supply are resident in Germany,
- issued by small businesses (§ 19 UStG),
- for transactions for agricultural and forestry operations subject to taxation at an average rate (§ 24 UStG),
- for travel services (§ 25 UStG), and
- for transactions for which margin taxation is applied (§ 25a UStG).

They would also apply if the recipient of the invoice is a trader that is a small trader or farmer or forester, or solely carries out transactions exempt from VAT (e.g. renter of an apartment). Equally, the provisions would apply if one part of the invoiced supplies were subject to the obligation to use e-invoices (e.g. in the case of transactions partially subject to VAT, partially exempt from VAT in accordance with § 4 no. 8 to 29 UStG).

Possibility of issuing a sundry invoice

In the case of invoices

- for a transaction vis-à-vis a **legal person or entity that is not a trader** or
- for work supplies (§ 3 (4) sent. 1 UStG) or other supplies **in connection with a piece of land** vis-à-vis a non-trader or to a trader for their non-commercial area

a sundry invoice can be issued. This also applies for transactions for which, regardless of the lack of an obligation to issue an invoice (e.g. in the case of transactions that are exempt from VAT in accordance with § 4 no. 8 to 29 UStG, or to private end-users).

In these cases, the issuing and transmission of a paper invoice is always permitted from a VAT law perspective. Equally, in these cases an e-invoice or a sundry invoice in another electronic format may be issued and transmitted. The prerequisite for this is, however, agreement from the recipient (§ 14 (1) sent. 5 UStG). This agreement does not require any particular form and may also be implicitly given (e.g. through acceptance without opposition). The requirement to invoice an e-invoice in accordance with other regulations (e.g. in accordance with the German State E-Invoicing Regulation (ERechV)) must be considered separately from the VAT law related provisions.

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If a transaction is carried out for both the commercial and non-commercial area – e.g. the non-commercial area within the strict definition of a legal entity – the obligation to issue an e-invoice takes precedence.

Invoices for small amounts and travel tickets

Invoices that do not exceed a total amount of EUR 250 (invoices for small amounts), and tickets issued for the transportation of people may, deviating from the requirement in § 14 (2) sent. 2 no. 1, 2nd half of the sentence UStG, always be issued and transmitted as sundry invoices (§ 33 sent. 4, § 34 (1) sent. 2 UStDV). With the agreement of the recipient (§ 14 (1) sent. 5 UStG), which does not require any particular form and may also be implicitly given, these may, however, also be issued and transmitted as e-invoices.

The only significant factor for the simplification in accordance with § 33 sent. 4 UStDV is the total amount on the invoice, including to the extent that an invoice is issued for several supplies. If the total amount of the invoice exceeds EUR 250, an e-invoice must be issued, even if the total amount of the portion of the supplies invoiced subject to the obligation to issue an e-invoice amounts to less than EUR 250 (e.g. in the case of certain supplies also being invoiced that are exempt from or not subject to VAT).

Permitted formats for e-invoices

E-invoices may be created in a purely structured or in a hybrid format. A permitted electronic invoice format must especially guarantee that the details of the invoice in accordance with §§ 14, 14a UStG are capable of being electronically transmitted and read. The use of structured invoice formats corresponding to the standard EN 16931 (see ref. 28 to 32) is always permitted. In addition, under certain conditions, a structured electronic invoice format deviating from the EN 16931 standard, e.g. for EDI processes in accordance with Article 2 of the 94/820/EC Commission Recommendation of 19 October 1994 relating to the legal aspects of electronic data interchange, EU OJ L 338 of 28 December 1994, p. 98.

Examples for all nationally permitted electronic invoice formats

In particular invoices in line with the XRechnung standard and the ZUGFeRD format from Version 2.0.1, excluding the profiles MINIMUM and BASIC-WL, fundamentally constitute an invoice in a structured electronic format that corresponds to the European standard for electronic invoicing and the list of the corresponding syntaxes in accordance with the Directive 2014/55/EU. Invoices in both of these formats could also satisfy the new VAT law related requirements for e-invoices after 31 December 2024.

Examples for permitted European electronic invoice formats

The use of electronic invoice formats is not limited to national format, to the extent that these correspond to the European standard for electronic invoicing and the list of the corresponding syntaxes in accordance with the Directive 2014/55/EU. For the electronic invoicing of domestic B2B transactions, the use of other European invoice formats in line with the aforementioned standard may be considered, e.g. Factur-X (France) or Peppol-BIS Billing.

Which – permitted – format will be used is a civil law question that is only to be agreed between the parties to the contract.

E-invoicing in accordance with the specification of the Directive 2014/55/EU of 16 April 2014 in a purely structured electronic format

An e-invoice in line with § 14 (1) sent. 6 no. 1 UStG exists in particular if it satisfies the requirements of Directive 2014/55/EU of the European Parliament and of the Council of 16 April 2014 on electronic invoicing in public procurement. The BMF clarifies this in detail.

Hybrid formats

Besides purely structured e-invoices, hybrid invoice formats may also fulfill the requirements for an e-invoice. The BMF clarifies this in detail. For example, the ZUGFeRD format from version 2.0.1 falls under permitted hybrid invoice formats.

Other e-invoice formats

The structured electronic format of an e-invoice may also be agreed between the issuer of an invoice and the recipient of the invoice (§ 14 (1) sent. 6 no. 2 UStG) and thus deviate from the requirements of the EN 16931 standard. The prerequisite for this is that the format facilitates the correct and complete extraction of the details required under the UStG from the e-invoice into a format that does correspond to the EN 16931 standard or is interoperable with it. To the extent that these requirements are satisfied, this provision also facilitates the continued use of established electronic invoice formats (e.g. EDI processes such as EDIFACT), even beyond the transition limits set out in ref. 63 and 65.

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In this respect, interoperable means that the information required under VAT law can be processed from the originally utilized e-invoice format without any loss of information, equivalent to the corresponding extraction of the information from an e-invoice that the EN 16931 standard would allow. A loss of information would exist if the contents or the meaning of any piece of information changes or is no longer discernible.

Special question in connection with an e-invoice

The BMF also delves into special questions in connection with an e-invoice, that is, the scope of an e-invoice, transmission and receipt of e-invoices, contracts as invoices, final or residual invoices in the case of invoices issued for advance or preliminary payments, correction of invoices, legal entities under public law.

From 1 January 2025 domestic traders will find it necessary to be able to receive an e-invoice. For this it is sufficient if the recipient of the invoice provides an email inbox. It is not absolutely necessary that this email inbox is a separate one set up solely to receive e-invoices. The parties could, deviating from this, also agree on other permitted methods of transmission.

E-invoicing and input VAT deductions

To the extent that, in accordance with § 14 (2) sent. 2 in conjunction with § 27 (38) UStG there is an obligation to issue an e-invoice, only one issued in line with the requirements of §§ 14, 14a UStG will in principle suffice. In these cases, another invoice would not satisfy the legal requirements for a proper invoice.

If there were an obligation to issue an e-invoice and instead a sundry invoice within the meaning of § 14 (1) sent. 4 UStG is issued, this is not a proper invoice within the meaning of §§ 14, 14a UStG. Consequently, in principle the invoice issued does not provide an entitlement to deduct input VAT in accordance with § 15 (1) sent. 1 no. 1 UStG.

If the issuer of the invoice was obligated to issue an e-invoice, a sundry invoice that was issued instead (e.g. an invoice created by a cash register system) can be corrected in accordance with Section 15.2a (7) UStAE by the issuance of an e-invoice. The e-invoice must make clear that it is a corrected invoice by containing a specific and unambiguous reference to the original invoice. This type of correction is retroactively effected under the requirements valid at the time the sundry invoice was issued, even if the input VAT deduction was not initially possible.

If no correction of the invoice is carried out by means of an e-invoice being later issued, the details contained in a sundry invoice must be taken into consideration with regard to the input VAT deduction as potential objective proof within the meaning of Section 15.2a (1a) UStAE. In applying this provision, using a strict benchmark, an input VAT deduction may be possible to the extent that the tax authorities have all the details to examine the material requirements for an input VAT deduction (a trader provides a supply to another trader that serves as a transaction subject to VAT and for which the VAT is in fact remitted). In the case of a sundry invoice that contains the correct and complete details, the requirements mentioned would be generally satisfied.

Apart from that, an input VAT deduction will not be objected to just because an invoice is issued in the wrong format, as long as the recipient of the invoice can assume, on the basis of the information available to them, the issuer of the invoice could make use of the transition provisions in accordance with § 27 (38) UStG. The recipient of the invoice does not need to do any due diligence beyond that of a prudent businessperson. Facts such as, for example, the volume of transactions carried out with this invoice issuer in the previous year, the known size of the invoice issuer or knowledge due to related company structures must, however, be taken into consideration.

Retention

The structured portion of an e-invoice must be stored such that it exists in its original form and requirements relating to unchangeability can be met. Machine readability on the part of the tax authorities must be ensured. To the extent that documents that were sent additionally (e.g. picture portion of a hybrid invoice) contain records that are of relevance for taxation, e.g. booking references, these must also be stored such that they exist in their original form and satisfy the requirements relating to unchangeability. With regard to details in this respect see the BMF guidance of 28 November 2019, Federal Tax Gazette I p. 1269, ref. 131 and 133.

With regard to the requirement to retain records for other invoices, please refer to the BMF guidance of 28 November 2019, Federal Tax Gazette I p. 1269, ref. 130 et seq.

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Transition provisions

With regard to the obligation to issue e-invoices standardized in § 14 (1) and 2 UStG, different transition provisions apply in accordance with § 27 (38) UStG, under which the **issuer of the invoice**, under certain conditions can still issue another invoice. With regard to the receipt of an e-invoice, there are no transition provisions, this must therefore be guaranteed by the **recipient of the invoice** from 1 January 2025.

Up to the end of the calendar year 2026, an invoice for a transaction carried out by then may also be issued and transmitted as a sundry invoice. The issuing and transmission of paper invoices is, until then, always permissible from a VAT law perspective. The agreement of the recipient to be issued invoices in other electronic formats does not require any particular form. The issuer of the invoice and the recipient of the invoice must simply have reached a consensus on the format to be used. The agreement could, for example, take the form of a framework agreement (e.g. in the general conditions of business) or be implied.

If the invoice issuing trader's total revenue within the meaning of § 19 UStG was not more than EUR 800,000 in the previous calendar year, an invoice for a transaction carried out after 31 December 2026 can also still be issued and transmitted as a sundry invoice up to the end of 2027. In the case of VAT groups, the revenue of the entire group must be included. If the invoice issued is in the form of a credit note (§ 14 (2) sent. 5 UStG), the total revenue of the issuer of the credit note must be used. If the invoice is issued by a third-party that is not involved in the exchange of supplies, the total revenue of the customer is the relevant criterion.

Up to the end of the calendar year 2027, the issuing and transmission of an invoice – subject to the agreement of the recipient – for a transaction carried out up to then may also take place by means of an electronic data interchange (EDI) in accordance with Artikel 2 der Commission Recommendation of 19 October 1994 relating to the legal aspects of electronic data interchange (EU OJ L 338 of 28 December 1994, p. 98), if the invoice does not otherwise already meet the requirements of § 14 (1) sent. 6 no. 1 or no. 2 UStG. Invoice formats that satisfy the requirements of § 14 (1) sent. 6 no. 1 or no. 2, can also be used after this deadline.

Changes to the VAT Application Decree

The VAT Application Decree will be amended in line with the details set out above in a separate BMF guidance.

Application provision

The principles of this guidance must be applied to all transactions carried out after 31 December 2024. UStAE provisions in the version valid as of 31 December 2024 contradicting this guidance must not be applied from the 2025 tax period. The BMF guidance of 2 July 2012, Federal Tax Gazette I p. 726, will be set aside after 31 December 2024.

Please note:
We have also summarized the core contents of the BMF letter in a compact video. Watch it now free of charge at the following link.

MISCELLANEOUS

Transfer of parking spaces as a rental supply subject to VAT

Lower Tax Court Munich, ruling of 30 January 2024, 5 K1078/23, appeal lodged, BFH ref.: V R 4/24

This ruling deals with the question of whether the rental of a parking space for a motor vehicle, if it were offered for sale, is subject to VAT or not.

The case
In the years under dispute, 2013-2017, the plaintiff held so-called "automobile markets" at the locations B, E, F, K, M and S, which, with the exception of S, took place on the grounds of drive-in cinemas. The spaces for selling cars were provided to private and commercials sellers. As documentary proof of what the plaintiff called "rental contracts", those interested in selling received, upon payment of the fee demanded by the plaintiff, "for sale" signs that served as proof of the fee paid for the duration of the automobile market and entitled the sellers to offer their cars within the sales area and further permitted them to leave the ground on the date of the market for the purposes of test drives, and to return to the grounds and return to their previously designated parking space.

Employees of the plaintiff were present at these markets but did not provide any support with regard to the sales, providing neither support in determining prices nor through specific measures to promote sales. These employees were merely cashiers and security staff who organized and monitored the running of the markets. At the markets, the cashiers had access to a machine to check cash (bills), which the sellers were also allowed to use.

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In the case of automobile markets operating at locations at which drive-in cinemas were also operated, there were so-called Snack Bars, at which sellers and visitors could make purchases; the sellers had to pay the same price as everyone else. These locations (E, F, K, M and S) were establishments at which, due to the regular and frequent showings of movies, the Snack Bars were located in permanent structures.

At the location of the automobile market B, which was not a drive-in cinema, there was no corresponding possibility to buy food and drink. At least at Location E, a temporary admissions service was provided by a third-party provider, which the plaintiff had no influence on or access to and to which the plaintiff had to pay rent. In some cases, third parties offered services to make license plates for a fee; they rented these areas from the plaintiff.

Whether the income from the sellers' fees is subject to VAT is disputed.

From the reasons for the decision

The plaintiff's supplies from the holding of the automobile markets are, in the view of Lower Tax Court Munich (passive) rental supplies to the plaintiff's customers – the sellers of the vehicles – because besides the provision of pitches, the additional supplies carried out by the plaintiff to the potential car sellers are not defining for the supplies, as they were immaterial. The plaintiff's supply of rental services therefore falls per se under the provisions of § 4 no. 12 sent. 1 (a) UStG (VAT-exempt rental of a piece of a lot).

According to § 4 no. 12 sent. 2 UStG, however, the plaintiff's supplies are precluded from this exemption. This regulation states that, inter alia, the rental of places for parking vehicles is not exempt. § 4 no. 12 sent. 2 UStG must be interpreted in compliance with the directive to mean that the renting of spaces to park vehicles intended to be sold in any case is not precluded from the VAT exemption in accordance with § 4 no. 12 sent. 1 (a) UStG if it is closely tied to the VAT-exempt rental of other lots used for different purposes (German Federal Tax Court (BFH) of 29 March 2017 – XI R 20/15). Up to now, the BFH has left open the issue of whether § 4 no. 12 sent. 2 UStG must be narrowly interpreted to mean that it does not cover the rental of spaces to park vehicles intended to be sold (BFH of 29 March 2017 – XI R 20/15).

In the Lower Tax Court's view, this is not the case. Counter-exceptions to VAT exemptions must not be narrowly interpreted. The purpose of the exemption of rental services had social reasons; these social reasons were not present in the case of boat berths so that these were covered by the counter-exception (CJEU of 3 March 2005 – C-428/02, Fonden Marselisborg Lystbadehavn). According to the CJEU, the counter-exception applies generally for the rental of spaces to park means of transportation; this therefore also includes the rental of spaces to park vehicles intended for sale. In addition, in the case of this supply the social reasons for the exemption of rental supplies also did not exist.

Please note:

1. The "rental of spaces for the parking of vehicles" is, as a (counter) exception to the VAT-exempt rental of a plot fundamentally subject to VAT (§ 4 no. 12 sent. 2 UStG, Art. 135 (2) (b) of the VAT Directive), unless the rental for the car parking is an ancillary supply to a VAT-exempt rental of a plot of land. This is the case, for example, if a trader rents an undeveloped area to a commercial automobile retailer to operate a car dealership and the rental spaces to park the vehicles on, relative to the simultaneous transfer of space to place temporary shelters, RVs or office containers, is less significant (cf. BFH of 29 March 2017 – XI R 20/15). In the ruling, however, the BFH explicitly left open the question of whether, in the case of a rental contract exclusively containing spaces to park cars intended to be sold, § 4 no. 12 sent. 2 UStG must be narrowly interpreted.

2 The tax court also pointed out the following circumstances: Under EU law, this rule is based on Article 135(2)(b) of the VAT Directive, according to which the rental of parking spaces for the parking of vehicles is excluded from the exemption under Article 135(1)(l) of the VAT Directive. Other language versions - such as the English (for the parking) or French (pour le stationnement) - possibly indicate a restrictive understanding in the sense of "parking". However, if there are different language versions of a Union provision, they must be interpreted and applied uniformly in the light of all language versions of the Community. In principle, the same value should be attached to all language versions. If the versions differ from each other, the meaning of the expression in question should not be determined on the basis of an exclusively literal interpretation, but on the basis of the meaning and purpose of the regulation to which it belongs (BFH ruling of March 29, 2017 XI R 20/15, UR 2017, 669, para. 30). As a result, the rental of stand space on the car market is subject to VAT.

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FROM AROUND THE WORLD

TaxNewsFlash Indirect Tax

KPMG articles on indirect tax from around the world

You can find these and further articles here.

11 Oct – Ireland: Tax measures in Finance Bill 2024

11 Oct – New reporting and VAT obligations for digital platforms, remote resellers

10 Oct – UK: Summary of tax matters

9 Oct – Poland: Whether deductibility of VAT may be conditioned on receiving invoice (CJEU referral)

2 Oct – Poland: Laws introducing VAT exemption in EU, optional cash method for small enterprises passed by Lower House of Parliament

24 Sept – Austria: Increased small business VAT exemption threshold; other recent direct and indirect tax developments

18 Sept – Poland: Right to deduct input VAT on vehicles; correcting sales when supply at overstated VAT rate (Supreme Administrative Court decisions)

18 Sept – Serbia: Updates on electronic recording of input VAT

16 Sept – Netherlands: Extension of default penalty waiver for non-compliance with OSS mechanisms of VAT e-commerce package

16 Sept: – Ghana: Second phase of implementation of e-invoicing announced

EVENTS

Cologne VAT Congress

on 5 and 6 December 2024 in Cologne

Topics:

- Current developments in VAT groups
- Electronic interfaces for those owing VAT - VAT law and criminal tax law related risks
- Impacts of customs law on (import) VAT - news from CJEU and BFH case law
- News in legislation and from the tax authorities
- Introduction of eInvoicing from 1 January 2025 in German and a look at the EU

You can find additional information and the registration form for this event here.

Webcast: Transfer pricing in interaction with customs and VAT?

on 6 November 2024

Further information and the registration form for the event can be found here.

Safe the Date Hybrid VAT annual conference 2025

on 22 May 2025

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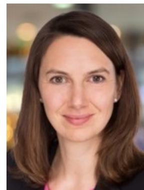

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