KPMG

VAT Newsletter

Hot topics and issues in indirect taxation

March 2025

LEGISLATION

Council adopts "VAT in the Digital Age - ViDA" package

Council, press release of March 11, 2025; News announcement 11 March 2025, Directorate-General for Taxation and Customs Union

The "VAT in the Digital Age" (ViDA) package has been adopted by the Council on 11 March 2025 following reconsultation of the European Parliament and will be rolled out progressively until January 2035. The changes are based on a proposal by the EU Commission dated 8 December 2022.

"The EU's VAT rules need to keep track of the digital transformation of our economies. This package will give the EU a competitiveness boost, help combat VAT fraud and cut the administrative burden for business."

Andrzej Domanski, Polish Minister of Finance

The adopted package includes amendments to the Council directive, a Council regulation amending regulation (EU) No 904/2010 as regards the VAT administrative cooperation arrangements needed for the digital age and a Council implementing regulation amending implementing regulation (EU) No 282/2011 as regards information requirements for certain VAT schemes.

The changes to the Council directive concern the introduction of electronic invoicing at European level (so-called e-invoicing) and the associated digital reporting system, the deemed supplier model for digital platforms and the introduction of a Single VAT Registration.

Upon entry into force, Member States will be able to introduce mandatory e-invoicing under specific conditions, and improvements will be made to the Import One-Stop-Shop IOSS) framework for improved controls.

Effective **1 January 2027**, minor legislative clarifications will impact users of the One-Stop Shop (OSS) and IOSS schemes.

From **1 July 2028**, platforms in short-term accommodation rental and passenger transport must comply with new deemed supplier measures, while the Single VAT Registration reforms and mandatory reverse charge for non-identified suppliers will start. The consignment stock scheme will only apply to goods stored until 30 June 2028.

Digital Reporting Requirements will affect cross-border B2B transactions from **1 July 2030.**

By **1 January 2035**, Member States with a domestic digital real-time transaction reporting obligation must align their systems with the EU standards, marking the final phase of this comprehensive ViDA package.

Content

Next steps:

The directive, regulation and implementing regulation all enter into force on the twentieth day following their publication in the Official Journal of the EU. While the regulations are directly applicable, the directive will have to be transposed into national law.

NEWS FROM THE CJEU

Proceedings for input VAT deduction and separate direct claim against the tax authorities

CJEU, judgment of March 13, 2025 - Case C-640/23 -

The ruling concerns a request for a preliminary ruling from the High Court of Cassation and Justice of Romania in the context of proceedings relating to the deduction of input VAT from the transfer of goods to the recipient of the service there (Greentech). The request for a preliminary ruling raises questions on the issue of direct entitlement and refers them to the CJEU.

Facts of the case

Greentech had paid VAT on the purchase of equipment from Greenfiber International SA. The Romanian tax administration later qualified this transaction as a transfer of a partial asset not subject to VAT. In addition, a tax audit was also carried out at Greenfiber, in which the tax administration found that Greenfiber had duly paid VAT on the turnover in question to the tax authorities

The action brought by Greentech due to the disallowed input tax deduction and the ancillary claims was initially unsuccessful (judgment of November 23, 2021).

In a retrial before the Romanian Supreme Court, Greentech referred to the CJEU judgments of April 26, 2017, Farkas (C-564/15), and April 11, 2019, PORR Építési Kft (C-691/17), in which a direct claim was affirmed by the CJEU.

The Romanian Supreme Court then referred the dispute to the CJEU and pointed out that the statute of limitation for Greenfiber to correct the invoice had already expired in May 2021.

Furthermore, following the tax audit carried out at Greenfiber, the Romanian tax administration confirmed that Greenfiber had correctly invoiced and paid the relevant VAT.

The referring court also wonders whether it is relevant, for the purposes of interpreting the Council Directive, that the Romanian tax administration has treated the same commercial transaction concerning equipment for the transfer of which VAT was charged in two completely different ways, namely, first, as a transaction subject to VAT, as regards Greenfiber, from which that equipment was purchased and to which Greentech paid the VAT, and, second, as a transaction not subject to VAT, as regards Greentech.

From the reasons for the decision

The Court notes first of all that, according to the referring court, it is now effectively impossible for Greentech to recover the VAT which the seller, that is to say Greenfiber, wrongly invoiced to it and paid to the tax authorities.

In such a situation, the principle of effectiveness must be taken into account.

The transaction was definitively classified by the Romanian tax administration as a transaction not subject to VAT with regard to Greentech and Greenfiber was prevented from correcting the invoice for this transaction and the VAT return, as the limitation period provided for this had expired.

However, such an assertion of a claim for reimbursement (direct claim against the tax office) must be distinguished from an application for input VAT deduction such as that at issue in the main proceedings.

Consequently, a taxable person cannot claim a right to deduct input VAT in connection with a transaction that is not subject to VAT.

However, since the transaction at issue in the main proceedings was definitively classified as a transaction not subject to VAT, the VAT paid by Greentech to the issuer of the invoice, Greenfiber, is not 'liable' within the meaning of the case-law of the Court of Justice.

Please note:
Unfortunately, the CJEU only indirectly dealt with a phenomenon that occasionally occurs in practice. The dispute also concerned how to deal with a situation where the two tax offices of the supplier and the recipient, which are responsible for the transaction, disagree. In this case, the tax office of the supplier believed that the transaction in question was subject to VAT, which the tax office of the recipient denied. The CJEU sided with the recipient of the service and stated that it had been definitively clarified that the transaction was not subject to VAT, albeit without directly addressing the existing contradiction and the Romanian court's question in this

regard. Otherwise, this CJEU ruling makes it clear that a claim for reimbursement (the so-called direct claim) must be submitted separately to the tax office and cannot be invoked within the tax assessment in the event that an input VAT deduction is denied. In this case, the tax office of the service recipient (Greentech) came to the conclusion that the invoiced VAT was not owed, but that a non-taxable transfer (under German law a sale of a business as a whole) had taken place. Such a VAT statement (§ 14c UStG) does not justify an input tax deduction. If the supplier refuses to correct the invoice with reference to the statute of limitations, a refund claim against the tax office can be considered according to the CJEU.

The direct claim is directed against the tax office as part of an equitable claim in accordance with Sections 163, 227 AO and pursues its claim against the tax office for repayment of VAT paid to a supplier without legal grounds if the supplier can no longer make a correction (see the restrictive BMF letter issued on this subject on April 14, 2022).

In summary, the following circumstances may give rise to a separate direct claim:

- The entrepreneur wrongly overpays the VAT shown in an invoice to the supplier;

- the supplier pays the excess VAT to the tax office;

- Many years later, there is often a tax audit that rightly criticizes the incorrectly reported VAT;

- the supplier does not correct his § 14c UStG invoice because he has collected the VAT and sees no reason to take action;

- The recipient of the service approaches the supplier and requests an invoice correction and a refund of the excess VAT paid;

- the supplier replies: "The claim for invoice correction is time-barred";

- then it may no longer be necessary to take legal action or even bring an action against the supplier, as this would make it unnecessarily difficult to pursue the claim.

Minimum taxable amount for value added tax

Advocate General, Opinion of March 6, 2025 - Case C-808/23 - Högkullen

Advocate General Kokott is dealing with a request for a preliminary ruling from the Högsta förvaltningsdomstol (Supreme Administrative Court, Sweden) on the interpretation of Articles 72 and 80 of the VAT Directive. It concerns the remunerated, taxable activity of a controlling holding company whose expenses exceeded the income from its activity for the subsidiaries many times over. In this context, the question is whether the minimum taxable amount between associated companies pursuant to Art. 80 (1) (a) of the VAT Directive can be applied in this respect or whether a normal value is to be determined on the basis of comparable prices for the individual supplies pursuant to Art. 72 (1) of the VAT Directive.

Facts of the case

Högkullen AB, a Swedish holding company and the controlling parent company of a group, provides paid services to its subsidiaries, some of which carry out tax-exempt activities. The Group's economic activity consists of the management of real estate by a total of 19 subsidiaries. The holding company's activities are limited to providing intragroup services to the subsidiaries under its control in return for payment and subject to tax. These are corporate management, financing, real estate, IT and personnel management services.

In 2016, the holding company invoiced its subsidiaries the equivalent of around EUR 210,000 for its services. It stated that it had calculated this amount by applying the so-called cost-plus method - a method developed for income tax law and, in particular, for transfer pricing. To this end, it had applied an allocation key, according to which a certain proportion of its costs for company management, premises, telephone, IT, representation and travel were allocated to the output turnover.

In the year in dispute, the holding company's total expenses amounted to the equivalent of around EUR 2.5 million. Around half of this was attributable to input services subject to VAT. The remaining amount was attributable to input services exempt from VAT and non-taxable transactions such as wage payments. The holding company deducted all input tax amounts incurred from its VAT liability. This also applied to input supplies that were not taken into account when calculating the consideration for the output supplies.

In its assessment of the case, the Swedish Tax Agency came to the conclusion that the consideration paid by the subsidiaries should not be used as the tax base, but rather the normal value, which should be determined on the basis of the holding company's cost

price. As the holding company had deducted all input VAT incurred by it from its VAT liability, the tax office considered all of the holding company's expenses to be the tax base for its output sales. This issue was referred to the CJEU by the Swedish court as part of a preliminary ruling and a written opinion was obtained from the Advocate General in these proceedings.

Legal assessment of the Advocate General

This states that the holding company's services (corporate management, financing, real estate, IT and HR management) are to be assessed separately and should not be regarded as a single service. The normal value should be determined separately for each service on the basis of comparable prices. If no comparative prices can be determined, the expenses of the holding company for the provision of the service are decisive.

Articles 72 and 80 of the VAT Directive
Directive are to be interpreted as meaning that the various administrative services provided by a managing holding company to its subsidiaries do not always constitute uniform services for which it is impossible from the outset to determine a comparative value.

Please note:
According to the so-called holding company case law (see CJEU ruling of September 8, 2022, C-98/21 with further evidence), a parent company in the form of a holding company is a taxable person within the meaning of Art. 9 of the VAT Directive if it "manages its subsidiaries for consideration". According to this case law, "interventions by a holding company in the management of its subsidiary" should constitute an economic activity if they are carried out for consideration. This should include the provision of administrative, financial, commercial and technical services. In practice, care must be taken to ensure that corresponding invoices are written so that proof of the exchange of services can be provided.

NEWS FROM THE BFH

No "liability" of the property purchaser for incorrect tax statements in acquired rental agreements

BFH, judgment of December 5, 2024, V R 16/22

The BFH comes to the conclusion that a person can only be held liable for an incorrect tax statement in an invoice in accordance with sec. 14c para. 1 sentence 1 UStG if they have contributed to the creation of the invoice or if the issuance is attributable to them in accordance with the regulations applicable to legal transactions.

An incorrect tax statement caused by the previous owner cannot be attributed to the purchaser of the property in accordance with Section 566 (1) BGB.

Facts of the case

In 2013, the GmbH acquired a developed property in a foreclosure sale, most of which was rented out to various tenants. In each of the rental agreements taken over, an addition "plus 19% VAT" was used and a VAT amount was shown separately. The GmbH treated one of these rental agreements as VAT-exempt.

The tax office was of the opinion that the GmbH had realized a VAT liability under Section 14c (1) UStG from the rental agreement taken over due to the VAT statement. There had been no taxable letting, as the tenant had carried out tax-free transactions in the leased property that excluded input tax deduction to a detrimental extent (Section 9 (2) UStG). As a result, an amended VAT assessment was issued for 2013.

The action, which was allowed by the tax court, was successful. The tax court held that the plaintiff was responsible for the contracts it had not concluded itself. According to § 566 Para. 1 BGB in conjunction with § 578 Para. § Section 578 (1) and (2) BGB, the purchaser takes over the rights and obligations arising from the tenancy in place of the landlord if the landlord transfers ownership to a third party. The BFH did not follow this in the appeal proceedings.

From the reasons for the decision

The plaintiff's appeal is well-founded. The plaintiff was not liable to pay tax pursuant to Section 14c (1) sentence 1 UStG, as it had not incorrectly reported the tax amounts itself. The incorrect tax statement of the previous owner could not be attributed to it, as § 566 para. 1 BGB does not serve as an attribution standard for tax obligations. It is true that in forced sale proceedings, the purchaser takes the place of the landlord in the rights and obligations arising from the tenancy for the duration of his ownership. However, according to the case law of the BGH, the entry of the purchaser into an existing tenancy, which is applicable via Section 57 ZVG and regulated in Section 566

(1) BGB, serves to protect the tenant.

In view of this understanding of the standard, it is out of the question to understand Section 566 (1) BGB as an attribution standard that attributes an incorrect tax statement caused by the previous owner to the purchaser or transferor of the property.
-purchaser or transferor of the property.

The incurrence of a tax liability pursuant to sec. 14c para. 1 sentence 1 UStG neither serves to protect the tenant nor is an incorrect tax statement part of the landlord's rights and obligations, which this provision is intended to transfer.

Moreover, the open disclosure of VAT in the rental agreements does not give rise to any obligations under the rental agreement that could have been transferred to the plaintiff and lead to an attribution.

Furthermore, there is no obligation under civil law on the part of the supplier to disclose VAT that is not legally owed - in this case on an undisputedly tax-free rental service (see BGH ruling of June 26, 2014 - VII ZR 247/13), which could result in a tax liability in the amount of the incorrect tax disclosure in accordance with sec. 13a para. 1 no. 1, sec. 14c para. 1 sentence 1 UStG. An attribution in accordance with sec. 1 para. 1a UStG or due to a monitoring fault is also out of the question.

Please note:
It follows from the BFH ruling that the legal succession in the context of the transfer of business pursuant to sec. 1 para. 1a UStG does not result in an attribution with regard to the tax statement required by sec. 14c para. 1 sentence 1 UStG. A tax liability pursuant to sec. 14c of the German VAT Act requires that the tax statement can actually be attributed to the entrepreneur concerned. In 2024, the CJEU had to rule on a case in which an employee of a petrol station had issued invoices without any supplies having been made by the petrol station. The CJEU ruled in its judgment of 30. January 2024 (C-442/22), the CJEU summarized the issue as follows: If an employee uses her employer's data without the employer's knowledge and consent to issue false VAT invoices in which the employer was identified as the taxable person in order to unlawfully sell the invoices so that the purchasers could unjustifiably benefit from a right to deduct input VAT, the employer can be held responsible for the fraudulent actions of his employee if he did not exercise reasonable care to monitor the actions of his employee and thereby prevent her from using his VAT identification data to issue false invoices for fraudulent purposes. If this is the case, the employer may be regarded as the person liable to pay the tax in accordance with Section 14c UStG.

It must therefore be verified in each individual case to what extent control measures have been taken and exercised by the employer.

Input VAT refund procedure for final invoices with advance payment portions

BFH, judgment of December 12, 2024 - Ref. V R 6/23

If a timely input VAT refund application does not include advance payment invoices that were issued during the refund period and which entitle the taxable person to deduct input VAT, but only contains details of the corresponding final invoices, the BFH has ruled that input VAT can still be refunded from the advance payment invoices.

Facts of the case

In June 2018, the claimant, a corporation from Austria, submitted an application for input VAT refund for the period January to December 2017. With this application, it requested, among other things, the reimbursement of input VAT amounts that were shown in two final invoices for services provided to the claimant. In these final invoices, invoices issued and paid by the claimant in the refund period prior to the performance of the services and the VAT due on them were deducted as advance payments.

The remuneration applied for by the plaintiff comprised the total amount of input tax from the final invoices including the input tax amounts from the advance payment invoices. The itemized list of invoices included in the annex to the refund application only listed details of the two final invoices. The claimant also only submitted the final invoices, but not the advance payment invoices, to the Federal Central Tax Office (BZSt) with the refund application. The BZSt only granted the refund for the remaining payments from the final invoices, not for the input tax amounts from the down payment invoices. After submitting the down payment invoices and payment receipts in January 2019, the BZSt rejected the applicant's appeal as unfounded.

The tax court upheld the claim and ruled that the tax authorities

had to take the missing information from the invoices submitted if the information in the input tax refund application was insufficient. The plaintiff had submitted all the necessary information, meaning that the input VAT refund was also to be granted for the advance payment invoices.

From the reasons for the decision

The BFH ruled that the BZSt's appeal was unfounded. The tax court had correctly decided that the input VAT refund application was also deemed to have been submitted for the advance payment invoices if the final invoice deducted the VAT shown in the advance payment invoices and the refund applied for included the total amount of input VAT. The plaintiff had fulfilled the material requirements for the input tax deduction and the tax authorities must also consider the application as submitted with regard to the advance payment invoices and request additional information.

Please note:
The input VAT refund procedure is basically a very formal procedure in which preclusive periods must be observed. However, the ruling confirms that an input VAT refund application is also deemed to have been submitted for advance payment invoices if the final invoice deducts the VAT from the advance payment invoices and the refund applied for includes the total amount of input VAT. If there is insufficient information in the application, the tax authorities must take the missing information from the existing invoices and ask the applicant to supplement them. Nevertheless, as a precautionary measure, it is recommended that both the advance payment and final invoices be stated separately and digital copies submitted for new refund applications.

NEWS FROM THE BMF

Supplies of goods for equipping or maintaining a means of transport to private customers

BMF, letter dated March 12, 2025 - III C 3 - S 7133/00043/001/076

If, in the cases of sec. 6 para. 1 sentence 1 no. 2 and no. 3 UStG, the goods supplied are not acquired for business purposes and are exported by the customer in his personal luggage, this constitutes a tax-exempt export delivery in accordance with sec. 4 no. 1 letter a UStG (export delivery in non-commercial travel) under the conditions of sec. 6 para. 3a UStG.

If, in the cases of § 6 Para. 1 S. No. 2 and No. 3 UStG, the good supplied is intended to equip or maintaining a means of transport, a tax-exempt export delivery according to § 4 No. 1 letter a UStG only exists if the customer is a foreign entrepreneur and the means of transport serves the purpose of the business of the purchaser, § 6 Para. 3 UStG.

Therefore, the tax exemption for export deliveries in non-commercial travel (Section 6 (3a) UStG) does not apply to the supply of goods intended to equip or maintain non-commercial means of transport.

The BMF circular explains the scope of application of the tax exemption in connection with an export delivery with several examples. The principles are to be applied in all open cases.

Please note:
Further information can be found in the leaflet on VAT exemption for export deliveries in non-commercial travel, as of March 2025. In particular, the BMF has included the following new relief in the leaflet:

"As the entrepreneur generally issues invoices with final prices (including VAT) when exporting over the counter, he should ensure that only gross prices are stated, i.e. that VAT is not stated separately.

In cases where VAT is nevertheless stated on the invoice, but there is no doubt that the sale was made to a third-country purchaser in non-commercial travel, the entrepreneur is not liable for the VAT amount shown (in accordance with Section 14c UStG). No invoice correction is required in these cases."

Special regulation for small enterprises

BMF, letter dated March 18, 2025 – III C 3 - S 7360/00027/044/105

With the amendment to Section 19 UStG by the Annual Tax Act 2024, the special regulation for small enterprises was redesigned. The turnover of small enterprises is now exempt from VAT. The new regulation also enables entrepreneurs resident in the rest of the Community territory to apply the small enterprise regulation in Germany. The BMF has therefore amended the VAT application decree.

Please note:
According to Section 34a UStDV, small enterprises may continue to issue other invoices (including paper invoices) in the future, but

must be able to receive structured, electronic invoices from 1 January 2025 (like all other entrepreneurs).

MISCELLANEOUS

Intrastat: Increase in the reporting thresholds from 1 January 2025 onwards

The Amendment Act to the Foreign Trade Statistics Act (AHStatG-ÄndG) of 5 March 2025 and the Amendment Regulation to the Implementing Regulation of the Foreign Trade Statistics Law (AHStatDV-ÄndV) of 6 March 2025 result in a significant burden reduction for companies.

As a result, the registration thresholds for intra-EU trade statistics will be increased retroactively to 1 January 2025. The aim is to reduce the reporting burden for companies as early as possible.

Starting from reporting month January 2025, a company (within the meaning of § 2 UStG) is liable to submit Intrastat declarations

- for the direction of **dispatch** if its deliveries to other EU Member States exceed the value of **1 million euros** in the current or the previous calendar year (previously 500,000 euros).
- for **incoming** goods if its acquisitions from other EU Member States exceed the value of **EUR 3 million** in the current or the previous calendar year (previously EUR 800,000).

In case that its supplies to other EU Member States exceed the value of EUR 1 million in the current or previous calendar year and at the same time its acquisitions from other EU Member States exceed the value of EUR 3 million, the company is liable to submit Intrastat declarations for both directions of movement.

A company whose movement of goods exceeds the declaration threshold in the current calendar year is liable to submit Intrastat declarations for the respective direction of movement starting from the month during which the reporting threshold has been exceeded (Section 14 (5) of the Foreign Trade Statistics Law).

A company that has neither exceeded the new reporting thresholds during 2024 nor in 2025 to date is no longer liable to submit Intrastat declarations and can stop doing so with immediate effect. In the future, reporting only needs to be resumed when the company's intra-Community supplies or acquisitions exceed the new reporting thresholds. However, it is always possible to submit Intrastat declarations on a voluntary basis.

Please note:
Irrespective of the retroactive entry into force on 1 January 2025, the Federal Statistical Office stipulates that Intrastat declarations that have already been submitted for reporting month January 2025 are not subject to the legal changes. They will be regularly included in the foreign trade statistics and need to be corrected if necessary. It is not necessary to resubmit the declarations due to the changes.

The guide to foreign trade statistics has also been updated (see page 4 of the guide for information on the latest changes). We would particularly like to emphasize at this point that so-called zero declarations are now mandatory. This concerns cases in which the reporting thresholds have been exceeded but no reportable transactions have taken place in a reporting month.

Listen in now: VAT podcast "VAT to go" – Episode 9 – VAT on compensation payments

Whether and when VAT is due on compensation payments is often a contentious issue. This is shown by numerous rulings by various courts on this issue. In the latest episode of the "VAT to go" podcast, Kathrin Feil, Head of Indirect Tax at KPMG, and Rainer Weymüller, former presiding judge at the Munich Fiscal Court and VAT expert, discuss how the courts justify their rulings, what regulations there are in the German VAT Application Decree (UStAE) and what the definition of "exchange of services" has to do with the decision as to whether or not VAT is due on compensation payments. Listen now **VAT to go – der Umsatzsteuer-Podcast: Folge 9 - Umsatzsteuer bei Schadenersatzzahlungen – wann fällt sie an? - KPMG on air | Podcast on Spotify**

FROM ALL OVER THE WORLD

TaxNewsFlash Indirect Tax

KPMG articles on indirect taxes from around the world

You can find the following and other articles here.

12 Mar - Czech Republic: VAT registration guidance effective January 2025

12 Mar - KPMG report: Future of indirect taxes to 2030

6 Mar - Poland: Extension of reverse charge VAT on exchange transactions related to gas, energy, CO2 allowances

14 Feb - UK: Public consultation on e-invoicing

13 Feb - Czech Republic: Amendments in VAT law 2025 include changes to registration threshold, implementation of EU small business scheme for cross-border supplies

13 Feb - Belgium: Technical and legislative amendments for new small business VAT exemption regime

13 Feb - Czech Republic: Guidance on application of VAT to fuel cards

EVENTS

VAT 2025: Hybrid annual conference

on May 22, 2025

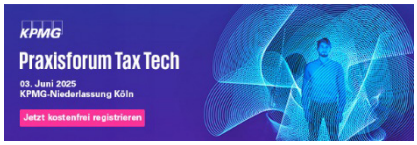
This year, we will once again focus on the impact of current case law on day-to-day practice, share our experience with you in relation to chain transactions and give you valuable insights into how the tax authorities assess this. The interfaces between wage/value added tax and customs/value added tax as well as the perennial issue of e-invoicing will of course not be neglected either. We will then discuss the implementation and digitalization of these and other topics in the company. As always, you can expect exciting speakers from tax authorities, academia and practice - and of course we have also planned plenty of time for you to actively network. Detailed information on the agenda and our speakers can be found on our event page, so take a look right now.

Basics of value added tax

Bring your knowledge of VAT up to date - with our three-part training series "Basics of VAT" - practical and clear.

With our experts Michaela Neumeyer, Bastian Liegmann and Christian Wotjak, you will learn how the VAT system works and the meaning of basic terms such as "taxability" and "tax liability", deepen your knowledge of VAT in the international movement of goods and deal with other VAT aspects such as the classification of supplies of services and the right to deduct input tax as well as correct invoicing.

Register now and watch it as a webcast on demand from anywhere and at any time - as a package with all three parts or bookable individually here.



Contacts

KPMG AG
Auditing
company

Head of Indirect Tax Services
Kathrin Feil
Munich
T +49 89 9282-1555
kfeil@kpmg.com

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

Bielefeld
Linda Barth
T +49 5219631-1035
lindabarth@kpmg.com

Düsseldorf
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 am 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 9587-1278
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

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

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

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

Minster
Jonathan Eßer*
T +49 25159684-8983
jonathanesser@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

International network from KPMG
On the website of KPMG International** you will find a lot of important information on VAT law in Germany and abroad. In particular, you can order the TaxNewsFlash Indirect Tax and the TaxNewsFlash Trade & Customs, which contain news on these topics from all over the world. We will be happy to advise you on international issues with the help of our network.

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Niklas Sattler
T +49 711-9060-41196
nsattler@kpmg.com

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Publisher

KPMG AG
Auditing company
THE SQUAIRE, At the airport
60549 Frankfurt am Main

Editorial office

Dr. Oliver Buttenhauser (V.i.S.d.P.)
T +49 911 5973-3176
obuttenhauser@kpmg.com

Rainer Weymüller
Of-Counsel

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

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