

VAT News: Hot topics and issues in indirect taxation

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01 | Input VAT Deduction in Healthcare Institutions

CJEU, judgment of 19 March 2026 – C 513/24 – Oblastní nemocnice Kolín

The CJEU's ruling concerns the allocation of input VAT in hospitals that supply both VAT exempt healthcare services and taxable ancillary services. The focus lies on whether costs for the minimum technical and material equipment required under national law must automatically be regarded as overheads, thereby allowing a pro rata input VAT deduction pursuant to Article 173(1) of the VAT Directive.

Facts of the case

The Czech hospital Nemocnice Kolín (NK) provides predominantly VAT exempt healthcare services, but also taxable ancillary services, such as clinical trials, accommodation for accompanying persons, medical internships, sterilization services for third parties, and certain X ray, ultrasound and veterinary services. Under national law (Decree No. 92/2012 on minimum technical and material requirements for healthcare institutions), the hospital must maintain extensive equipment – ranging from premises and furniture to medical devices such as defibrillators and ultrasound machines – in order to obtain authorization to provide healthcare services.

In a supplementary tax return, NK claimed a proportionate input VAT deduction on these costs. The tax authorities allowed the deduction only in part and



denied it insofar as the supplies primarily served VAT exempt healthcare services. The court of first instance upheld this view, considering the minimum equipment not to constitute a cost component of taxable ancillary services and therefore not to qualify as deductible overheads. The referring Supreme Administrative Court (Nejvyšší správní soud) questioned that interpretation and referred to the CJEU whether the regulatory minimum equipment should be regarded as overheads of the overall economic activity due to its licensing function.

Grounds of the decision

The CJEU first sets out general principles regarding the right to deduct input VAT and then clarifies the following: As a general rule, a direct and immediate link must exist between a specific input transaction and one or more output transactions giving rise to the right to deduct input VAT, in order for the taxable person to be entitled to such deduction and for the scope of that right to be determined. The right to deduct VAT incurred on the acquisition of goods or services at the input stage is only granted where the related expenditure forms part of the cost components of the taxed output transactions that give rise to the right of deduction (CJEU judgments of 8 February 2007, C 435/05, para. 23, and of 14 September 2017, C 132/16, para. 28).

However, a right to deduct input VAT is also recognized in favor of the taxable person even in the absence of a direct and immediate link between a specific input transaction and one or more output transactions giving rise to the right of deduction,

where the costs of the services in question form part of the taxable person's general overheads and, as such, constitute cost components of the goods or services supplied by that taxable person. Such costs are, by their nature, directly and immediately linked to the taxable person's overall economic activity.

Conversely, where goods or services acquired by a taxable person are used for exempt transactions or fall outside the scope of VAT, no tax is chargeable on the subsequent stage and no right to deduct input VAT arises (CJEU judgments of 14 September 2017, C 132/16, para. 30, and of 8 September 2022, C 98/21, para. 48).

The CJEU has further consistently held that the existence of a link between transactions must be assessed by reference to the objective content of those transactions. Tax authorities and national courts are required to take into account all the circumstances in which the relevant transactions are carried out and to consider only those transactions that are objectively connected with the taxable person's economic activity subject to VAT. In this context, the CJEU has held that the actual use of the goods and services acquired by the taxable person at an earlier stage, as well as the exclusive reason for their acquisition, may be taken into account (see, to that effect, CJEU judgments of 14 September 2017, C 132/16, para. 31; of 25 November 2021, C 334/20, para. 34; and of 13 June 2024, C 696/22, para. 89).

In the present case, it is apparent from the documents before the Court that, under Regulation No. 92/2012, NK is required to have appropriate technical and material resources in order to obtain authorisation to provide healthcare services. Furthermore, NK must meet the conditions for the provision of such services in order to be able to supply additional services that are subject to VAT.

In light of paragraphs 20, 24 and 25 of the Advocate General's Opinion, it must be held that a regulatory obligation to acquire goods or services is not, in itself, sufficient to establish a direct and immediate link between such acquisitions and the output transactions giving rise to the right of deduction or the taxable person's overall economic activity. Furthermore, in view of the objective nature of the VAT system established by the common system of VAT, only the objective relationship between input transactions and output transactions, or the taxable person's overall economic activity, is relevant. Any other approach would seriously undermine the uniform application of the relevant provisions of EU law (see, to that effect, CJEU judgment of 21 February 2013, Becker, C 104/12, para. 32).

However, the existence of such a regulatory obligation may be taken into account when assessing all the relevant circumstances.

It is therefore for the referring court to assess, in the light of all those circumstances, for each item of technical and material equipment acquired at the input stage, whether it is directly and immediately

linked to an output transaction of NK giving rise to the right to deduct input VAT or, failing that, whether it forms part of its general overheads and is thus linked to its overall economic activity (see, to that effect, CJEU judgments of 25 November 2021, *Amper Metal*, C 334/20, para. 38, and of 8 September 2022, C 98/21, para. 51).

In that regard, it should be borne in mind that, in proceedings under Article 267 TFEU, which are based on a clear division of responsibilities between national courts and the Court of Justice, any assessment of the facts falls within the jurisdiction of the referring court. However, in order to provide the referring court with a useful answer, the Court of Justice may, in a spirit of cooperation with national courts, provide it with all the guidance it considers necessary.

In the present case, it is apparent from the documents before the Court that NK, on the one hand, provides healthcare services. According to the referring court, all of those services are exempt from VAT. However, NK has submitted before the Court that certain of those services, such as the termination of pregnancy, may also be subject to VAT. On the other hand, NK provides additional services that are subject to VAT.

First, it should be noted that it is for the referring court to examine, for each item of technical and material equipment at issue in the main proceedings, whether its acquisition has a direct and immediate link with one or more output transactions. For that purpose, the referring court may, *inter alia*, take into

account the actual use of that equipment as well as, as stated by the Advocate General in paragraph 25 of the Opinion, the allocation of that equipment.

In this regard, in line with the Advocate General's observations in paragraph 27 of the Opinion, it must be noted that, in view of the findings of the referring court and subject to its final assessment, the technical and material equipment at issue in the main proceedings appears, at first sight, to be allocated to the provision of healthcare services rather than to the supply of additional services.

If, upon examination, it is found that certain items of the technical and material equipment at issue are used exclusively for the provision of VAT exempt healthcare services, the transactions relating to the acquisition of that equipment do not give rise to a right to deduct input VAT.

Conversely, where particular items of technical and material equipment are used both for taxable and VAT exempt healthcare services, the deductible proportion must be determined in accordance with Article 173(1) of the VAT Directive.

This may, for example, be the case for a defibrillator, the acquisition of which would be required in order to obtain authorisation to provide healthcare services, regardless of whether those services are exempt from VAT or subject to VAT, and which is intended to be used, where necessary, in the provision of those services.

As regards the additional services, the fact that national legislation does not permit the automa-

tic establishment of a direct and immediate link between taxed input transactions and NK's output transactions giving rise to the right of deduction does not preclude the existence of such a link in a given case, in accordance with the principles set out above, as noted by the Advocate General in paragraph 28 of the Opinion.

Accordingly, where part of the technical and material equipment at issue in the main proceedings is also required for the provision of additional services, a direct and immediate link may be established between its acquisition at the input stage and those output transactions, with the result that a proportional right to deduct input VAT would be granted.

Moreover, the fact that a particular item of technical and material equipment at issue in the main proceedings may not actually be used in the provision of one of the aforementioned services is irrelevant for the purpose of assessing the existence of a direct and immediate link.

The common system of VAT is intended to ensure neutrality with regard to the tax burden on all economic activities, irrespective of their purpose or results, provided that those activities are, in principle, themselves subject to VAT. Accordingly, the right to deduct input VAT, once it has arisen, is retained even if the intended economic activity is subsequently not carried out and therefore does not give rise to taxable transactions, or where the taxable person is unable, for reasons beyond its control, to use the goods or services giving rise to the deduction in the context of taxable transactions

(CJEU judgment of 25 November 2021, *Amper Metal*, C 334/20, para. 35 and the case-law cited therein). As noted above, the allocation of goods and services acquired at an earlier stage may therefore be decisive.

Secondly, it is only where it is established that the acquisition of certain items of technical and material equipment has no direct and immediate link with one or more specific output transactions that it is necessary to examine whether such acquisition nevertheless has a direct and immediate link with the taxable person's overall economic activity, on the basis that it forms part of that person's general overheads. This may, for example, be the case where national legislation requires certain premises to be equipped in a specific manner for reasons of safety or comfort.

In the light of the foregoing, the answer to the question referred is that Article 173(1) of the VAT Directive must be interpreted as meaning that the costs of acquiring goods and services which are required under national legislation for the provision of healthcare services not giving rise to a right to deduct input VAT, but which are also used for transactions giving rise to such a right, do not, solely by reason of that regulatory requirement, constitute general overheads giving rise to a right to deduct input VAT on a proportional basis.



Please note:

It should be noted that the present CJEU judgment once again provides detailed guidance on how the right to deduct input VAT may be assessed in practice. This clarification comes at a time when, in the foreseeable future, the General Court is expected to assume sole jurisdiction in VAT matters.

A further important nuance arises from the fact that the claimant, NK, submitted for the first time before the CJEU that it also carries out taxable transactions (para. 27). It remains to be seen whether this argument can still be taken into account by the Supreme Administrative Court of the Czech Republic. Under German procedural law, such a submission would not be admissible at the level of the Federal Fiscal Court (BFH), as the facts of the case must be fully established before the lower tax court (see BFH judgment of 25 June 2025, XI R 14/24, according to which new factual submissions before the BFH are inadmissible).

According to the CJEU, the right to deduct input VAT exists where there is a direct and immediate link between the input transaction and the output transaction. A direct and immediate link between an input transaction and an exempt transaction giving rise to no right of deduction, or a non economic activity, precludes the right to deduct input

VAT. In such a case, the related costs generally do not form part of the general overheads of the taxable person's overall economic activity.

A direct and immediate link exists only where the expenditure incurred forms part of the cost components of the taxed output transactions giving rise to the right of deduction. In addition, the existence of such a link must be assessed by reference to the objective content of the services received and the underlying reason for incurring the input transaction (see CJEU judgment of 8 September 2022, C 98/21).

In practical terms, the CJEU distinguishes between three scenarios in the present case: where equipment is used exclusively for VAT exempt healthcare services, the right to deduct input VAT is excluded. Where equipment is used for both VAT exempt and taxable transactions (e.g. a defibrillator made available for all medical services), the input VAT must be apportioned in accordance with Articles 173 et seq. of the VAT Directive by applying a pro rata rate.

Finally, where the equipment cannot be attributed to specific output transactions, it may be treated as part of general overheads, provided that it is objectively linked to the taxable person's overall economic activity; in such cases, a proportional deduction of input VAT based on a pro rata calculation may likewise be granted.

The costs of the minimum technical equipment required for hospitals under national law do not, solely by virtue of such regulatory requirements, qualify as general overheads giving rise to a pro rata right to deduct input VAT. What is decisive is the actual use and allocation of the individual items of equipment. Other entities with mixed supplies – partly VAT exempt and partly taxable – should likewise ensure that investments in, and ongoing costs of, equipment are recorded in detail, that their use is properly documented, and that their allocation to exempt and taxable activities is substantiated in a transparent manner. This provides a sound basis for a robust pro rata calculation and can help to prevent disputes with the tax authorities.

02 | Determination of the Place of Supply for Services Between Head Office and Fixed Establishment

BFH, judgment of 4 December 2025 –
V R 37/23



The BFH had to decide on the deductibility of input VAT arising from marketing services obtained by a domestic liaison office on behalf of a hotel operator established in a third country (Mauritius). Due to a lack of reciprocity, the hotel operator had been denied input VAT recovery under the refund procedure (cf. Section 18(9) sentence 6 of the German VAT Act). The key issue was whether the place of supply of those marketing services should be attributed to the domestic liaison office or to the head office in the third country – and whether this would give rise to a right to deduct input VAT in Germany.

Facts of the case

The claimant operates hotels and resorts in a third country and maintained a liaison office in Germany with an average of five employees. The office's activities included, inter alia, negotiating contracts with domestic tour operators, maintaining travel catalogues, liaising with travel agencies and tour operators, as well as participating in trade fairs and roadshows. The actual supplies – namely, the provision of hotel rooms – were made exclusively by the head office in the third country.

In the year at issue (2011), the claimant procured various marketing services from domestic service providers in order to increase bookings at its hotels

located in the third country. The liaison office acted externally as the contracting party and had its own budget. The claimant claimed input VAT deduction for these marketing services under the standard taxation procedure (Section 15(1) sentence 1 no. 1 of the German VAT Act), arguing that the place of supply was in Germany pursuant to Section 3a(2) sentence 2 of the German VAT Act, since the services had been supplied to a domestic fixed establishment. Both the objection proceedings and the action before the tax office and the Fiscal Court were unsuccessful, and the input VAT deduction was denied in each instance.

Grounds of the decision

The BFH reached the same conclusion.

The claimant is not entitled to deduct input VAT in respect of the marketing services received. The VAT amounts invoiced for those services do not constitute "tax legally owed" within the meaning of Section 15(1) sentence 1 no. 1 of the German VAT Act, as the place of supply is not located in Germany. Accordingly, the question of the procedural route for claiming input VAT deduction does not arise. The place of supply of marketing services falling under Section 3a(2) of the German VAT Act is not in Germany where such services are commissioned by a

domestic liaison office of a recipient whose place of business is in a third country, but are not supplied for the needs of that domestic liaison office, rather for the economic activity carried out at the recipient's head office in the third country.

Pursuant to Section 3a(2) sentence 1 of the German VAT Act, a supply of services to a taxable person acting as such is, subject to specific exceptions not relevant in the present case, deemed to be carried out at the place where the recipient has established its business. However, where the services are supplied to a fixed establishment of the taxable person, the place of that fixed establishment is decisive instead (Section 3a(2) sentence 2 of the German VAT Act).

These provisions are in line with EU law. Under the interpretative rules for applying Article 44 of the VAT Directive, Article 11(1) of the VAT Implementing Regulation defines a “fixed establishment” as any establishment, other than the place of establishment of a business, characterised by a sufficient degree of permanence and a suitable structure in terms of human and technical resources to enable it to receive and use services supplied for its own needs.

Where a supply of services to a taxable person falls within the scope of Article 44 of the VAT Directive and the taxable person is established in more than one country, such services are to be taxed in the country where the recipient has established its business (Article 21(1) of the VAT Implementing Regulation). By contrast, a service supplied to a fixed

establishment located in a place other than that of the recipient's business establishment is taxable at the place of that fixed establishment only if that establishment is the recipient of the service and uses it for its own needs (Article 21(2) of the VAT Implementing Regulation).

Further provisions do not concern the service recipient (see Article 22(2) of the VAT Implementing Regulation). It should, however, be noted that, pursuant to Article 65(1) of the VAT Implementing Regulation, these rules apply only as from 1 July 2011 and therefore do not cover services procured by the claimant prior to that date in the year at issue.

However, where the provisions of Implementing Regulation (EU) No. 282/2011 merely clarify a concept already contained in the VAT Directive and applicable since its entry into force, those provisions may also be taken into account for earlier periods, as expressly held by the CJEU with regard to Article 11 of the VAT Implementing Regulation (CJEU judgment *Welmory*, 16 October 2014, C 605/12).

The same applies to the criterion relevant in the present case, namely that the recipient's fixed establishment is determinative for the place of supply only if the taxable person has a fixed establishment with the necessary infrastructure to receive and use the services in question there for the purposes of its economic activity (CJEU judgment *Welmory*, 16 October 2014, C 605/12, paras. 62 et seq.).

Furthermore, it must be borne in mind that the most appropriate – and therefore primary – point of reference for determining the place of supply of

services is the place where the taxable person has established its business, as this constitutes an objective, simple and practical criterion ensuring a high degree of legal certainty. By contrast, reliance on a taxable person's fixed establishment is secondary in nature and constitutes an exception to the general rule, which applies only where specific conditions are fulfilled (see CJEU judgments *Welmory*, 16 October 2014, C 605/12; 7 April 2022, C 333/20; 29 June 2023, C 232/22; and 13 June 2024, C 533/22).

On that basis, in the present case – irrespective of whether the claimant's domestic liaison office qualified as a fixed establishment within the meaning of Section 3a(2) sentence 2 of the German VAT Act and Article 11(1) of the VAT Implementing Regulation, i.e. whether it had a sufficient degree of permanence and the necessary structure – the marketing services obtained by the claimant were not supplied at the place of its domestic liaison office pursuant to Article 21(2) of the VAT Implementing Regulation. Rather, they were supplied at the place of its economic activity in the third country in accordance with Article 21(1) of the VAT Implementing Regulation. Consequently, there was no VAT legally due in Germany for the purposes of input VAT deduction.

According to the findings of fact made by the Fiscal Court, which are binding pursuant to Section 118(2) of the Fiscal Court Code, the marketing services commissioned and invoiced to the domestic liaison office were neither supplied for its own needs nor used by it. Instead, they served to increase bookings for accommodation in the hotels and resorts

operated by the claimant in the third country. The travel bookings themselves were not arranged by the domestic liaison office but exclusively at the place where the claimant carried out its economic activity in the third country.

Please note:

The key takeaway from the judgment is that, for determining the place of supply under Section 3a(2) of the German VAT Act and Article 44 of the VAT Directive, the decisive factor is where the services received are actually consumed from an economic perspective. The mere existence of a domestic liaison office of a third country enterprise does not, in itself, establish the place of supply simply because that office commissions services and performs organisational marketing functions. What is critical is whether the services are used for the own needs of a fixed establishment or for the activities of the head office.

In practice, this means that third country businesses with a genuine fixed establishment in Germany must ensure that marketing and advertising services are in fact consumed domestically and do not primarily serve the activities of the head office abroad. In the case at hand, the liaison office's only remaining option is to seek a correction of the invoices to remove German VAT.

Where the services are effectively consumed by the head office in the third country, the place of supply must accordingly be located there; in such cases, an input VAT deduction in Germany is excluded.

A structured analysis and documentation evidencing for whose benefit the services are obtained can help to prevent future disputes with the tax authorities – particularly in cross border group structures with establishments in multiple jurisdictions.

Regrettably, the BFH did not address the question of the precise requirements for the existence of a fixed establishment, nor whether a liaison office such as the one at issue in the present case may suffice for this purpose.

03 | No Transfer of a Going Concern in Case of Business Continuation by a Lessee

BFH, judgment of 13 November 2025 – V R 3/23



In its judgment of 13 November 2025, the German Federal Fiscal Court (BFH) addressed the concept of a transfer of a going concern (TOGC) within the meaning of Section 1(1a) of the German VAT Act. The case concerned the question of whether the transfer of business assets followed by their lease to an operating company qualifies as a non taxable transfer of a going concern – particularly where the actual operational continuation of the business is carried out by the lessee.

Facts of the case

The claimant (a GmbH & Co. KG) operated a fish processing business, a fish farm, a farm shop and a restaurant. In November 2016, it sold significant parts of its business assets (real estate, buildings, concrete basins, movable equipment as well as water law permits and ancillary rights) in equal shares to A and B. It was agreed between the claimant and the purchasers that the claimant would continue to be supplied with fish, which in fact occurred following the transfer of possession on 1 January 2017.

In May 2017, A and B leased – contractually with retroactive effect as of 1 January 2017 – the entire fish farming operation, including the associated rights, to a newly established GmbH in which both A and B held shares.

In its 2017 VAT return, the claimant took the view that the transfer of the assets constituted a non taxable transfer of a going concern.

However, following an inquiry, the tax office was informed by purchaser X that a third party (F GmbH) was intended to carry out fish farming and trading activities on the acquired properties and that neither the acquisition nor the continuation of a business or part of a business had been planned or implemented.

On this basis, the tax authorities concluded that the purchasers had neither carried on nor intended to carry on the business themselves. Consequently, the transfers of the equipment and fish farming installations were treated as taxable and subject to VAT, whereas the sale of the real estate, including the associated land, remained VAT exempt pursuant to Section 4 no. 9(a) of the German VAT Act.

The objection lodged against this decision was rejected by the tax authorities as unfounded. They took the view that the purchasers operated a business consisting of the letting and leasing of real estate and operational assets, whereas F GmbH carried on, as an independent business, fish farming, the trading of fish products of all kinds, and catering activities. According to the tax autho-

rities, the purchasers did not continue an activity sufficiently similar to that of the claimant by leasing the assets. Nor could any intention to continue the claimant's production business be inferred from objectively verifiable external circumstances.

Furthermore, the tax authorities denied the existence of a chain transfer, as the purchasers had merely leased the acquired assets to the GmbH rather than transferring or contributing them to it. Whether a separately operated business had existed could be left open; however, it was questionable whether the individual business segments (farm shop, catering, and fish farming) were viable on a stand-alone basis.

The Munich Fiscal Court (FG) followed the claimant's view and held that a non taxable transfer of a going concern had taken place. However, the tax authorities' appeal on points of law was successful. The BFH set aside the judgment of the Fiscal Court and remitted the case for a new hearing and decision (Section 126(3) sentence 1 no. 2 of the Fiscal Court Code).

Grounds of the decision

The BFH confirmed that the Fiscal Court had correctly held that, in the case of successive transfers, the intention to continue the business activity required for a transfer of a going concern within the meaning of Section 1(1a) sentence 1 of the German VAT Act must be assessed at the level of the final acquirer rather than the intermediate transferee. However, the BFH found that the Fiscal Court erred in concluding that, where the acquirer does not use

the transferred assets for its own business activity but instead leases them, the lessee cannot be taken into account for assessing the continuation of the business activity required for a transfer of a going concern. The case was not ready for final decision, as the necessary factual findings regarding the continuation of the activity as from 1 January 2017 were lacking.

Pursuant to Section 1(1a) sentence 1 of the German VAT Act, transactions carried out in the context of a transfer of a going concern to another taxable person for the purposes of that person's business are not subject to VAT. In such cases, the acquiring taxable person steps into the position of the transferor (Section 1(1a) sentence 3 of the German VAT Act). According to Section 1(1a) sentence 2 of the German VAT Act, a transfer of a going concern requires that a business or an independently operated part of a business is transferred as a whole, whether for consideration or free of charge, or contributed to a company.

The concept of a transfer of a going concern must, in accordance with EU law, cover the transfer of a business as well as of an autonomous part of a business comprising tangible and, where applicable, intangible components which, taken together, form a business or part of a business capable of being carried on as an independent economic activity. The transferred assets must, as a whole, be sufficient to enable the continuation of such an activity (CJEU judgment of 10 November 2011, C 444/10).

In addition, the acquirer must intend to operate the transferred business or part thereof; the immediate liquidation of the acquired activity is not covered by the relief. However, the acquirer may adapt or modernise the acquired business for commercial or economic reasons. It is not required that the beneficiary has carried out an economic activity of the same kind prior to the transfer (see CJEU judgment Zita Modes, 27 November 2003, C 497/01).

Against that background, the BFH held that the Fiscal Court had incorrectly affirmed the intention to continue the business on the grounds that F GmbH, as a third party, intended to continue the claimant's business using the assets made available to it by A and B.

While it is not detrimental that, in cases of successive transfers, the required intention to continue the business is not present at the level of an intermediate acquirer (BFH judgment of 25 November 2015, V R 66/14; see also BFH judgment of 25 September 2024, XI R 19/22), the application of Articles 19 and 29 of the VAT Directive nevertheless requires that the continuation be effected by a transferee – that is, a person who is in a position to carry on the business activity because, as a result of the transfer, it has at its disposal a substantial part of the assets necessary for that activity.

Accordingly, the intention to continue must exist at least at the level of the beneficiary of the transfer, i.e. the "final acquirer" (BFH judgment of 25 September 2024, XI R 19/22). An intention to continue the business on the part of a third party who is

not the beneficiary of the transfer is not sufficient. Consequently, the non-taxable treatment as a direct legal consequence of Section 1(1a) sentence 1 of the German VAT Act does not extend to transactions involving third parties (BFH judgment of 29 August 2024, V R 41/21).

Accordingly, a continuation of the claimant's activities attributable to the transferred assets – namely, fish farming and processing as well as the operation of a farm shop and a restaurant (as not specifically established by the Fiscal Court) – by way of leasing those assets by A and B to the GmbH must be ruled out.

According to the findings of the Fiscal Court, the lease agreement with the GmbH – established only on 31 January 2017, i.e. after the transfer to A and B – was concluded in May 2017. Nevertheless, the claimant had already been supplied with fish by the transferee as from 1 January 2017. As the “retroactive effect” agreed between the parties to the lease contract is not relevant for VAT purposes vis-à-vis the claimant as a third party, it remains unclear who continued the claimant's activities (fish farming and processing, as well as operation of a farm shop and a restaurant) in the period up to the establishment of the GmbH. This issue must still be clarified by the Fiscal Court.

Please note:

At the end of last year, sentence 8 of Section 1.5(1) of the German VAT Application Decree was revised with reference to the BFH judgment of 25 September 2024 (XI R 19/22). According to the revised guidance, the tax authorities now accept a transfer of a going concern also in cases involving an intermediate acquisition, even where the intermediate acquirer is not a taxable person. This may be particularly relevant in the context of intra-group restructurings, for example, where a special purpose vehicle is established – often for income tax reasons – to temporarily hold a (part of a) business before transferring it onward, e.g. by way of merger or accretion.

In the present judgment, the BFH confirms that, in multi-step transfer structures, it is sufficient for the intention to continue the business to exist at the level of the final acquirer; intermediate acquirers may act merely as “pass-through entities”. Consequently, the non-taxable transfer of a going concern does not require the immediate recipient of the supply to continue the business itself, but rather the acquirer who ultimately continues the transferred business

activity. However, where the acquirer merely uses the transferred assets for letting or leasing purposes and the operational business is continued by a lessee, this is not sufficient to qualify as a transfer of a going concern. According to the BFH, the intention of a third party (i.e. the lessee) to continue the business cannot replace the necessary intention of the acquirer.

04 | Transfer of Solar Park Assets to Multiple Acquirers – No Transfer of a Going Concern Despite Continued Electricity Feed-In

BFH, judgment of 13 November 2025 – V R 32/24



The German Federal Fiscal Court (BFH) had to decide whether the transfer of individual components of a solar park to several acquirers qualifies as a non taxable transfer of a going concern within the meaning of Section 1(1a) of the German VAT Act, where the original operator continues the electricity feed in under the German Renewable Energy Act (EEG) vis à vis third parties without any external changes. In its judgment of 13 November 2025, the BFH once again denied the existence of a transfer of a going concern and confirmed that the transfer of the installations is subject to VAT.

Facts of the case

The case concerned a GmbH & Co. KG which had operated a solar park on leased land since 2011. The installation comprised solar modules, inverters, cabling, as well as central infrastructure (transformer stations, transfer station, grid connection point, metering equipment, and safety and communication systems). Based on a grid connection and feed in agreement with a grid operator and a direct marketer, the claimant fed the generated electricity into the grid and received remuneration under the EEG (Sections 3 no. 2, 16, 19(1) EEG, old version).

At the end of 2014, the claimant sold the “individual infrastructure” in ten spatially separate sections to ten sub partnerships (Sub KGs). Each Sub KG acquired all modules, cabling and the allocated inverter string installed in its respective section, and entered into separate lease agreements for the corresponding land.

The “central infrastructure” (transformer stations, transfer station, grid connection point, metering and safety equipment, including fencing) remained with the claimant; its shared use was granted to the Sub KGs against reimbursement of costs.

The feed in rights as well as the existing grid connection and feed in agreement remained entirely with the claimant. As a result, the Sub KGs neither held their own feed in agreements nor had their own grid access points. In 2015, the claimant and the Sub KGs entered into feed in and settlement agreements. Under these arrangements, each Sub KG supplied the electricity it generated to the claimant, which continued to feed the entire electricity output into the grid as the sole plant operator and received the EEG remuneration. The claimant subsequently allocated this remuneration internally to the Sub KGs based on the volume of electricity supplied. The production capacity of each individual Sub KG accounted for only approximately 8.5% to 12.3% of the total capacity of the original solar park.

The tax authorities rejected the existence of a transfer of a going concern (Section 1(1a) of the German

VAT Act) and subjected the transfers of the individual infrastructure to VAT. The Fiscal Court upheld this view.

Grounds of the decision

The claimant’s appeal on points of law was unsuccessful before the BFH.

The BFH first sets out the general principles governing a transfer of a going concern. It then goes on to clarify that, while a transfer of a going concern within the meaning of Section 1(1a) of the German VAT Act does not require the transferor to cease its entrepreneurial activity, the acquirer may still continue the transferred business even if the transferor remains active.

However, a continuation of the transferor’s activity by the acquirer cannot be assumed where the transferor continues its economic activity unchanged after the transfer. Accordingly, a transfer of a going concern does not exist, for example, where a leased property is sold but the lease agreements are not transferred, and the transferor continues to lease the property – now acting as an intermediate lessee – after the transfer (BFH judgment of 3 July 2014, V R 12/13).

In such a case, the letting activity remains attributable to the transferor for VAT purposes, as it continues to act vis à vis the tenants in the external relationship, even after the transfer of possession, by way of an intermediate lease. For the continuation

of the business activity in relation to the tenants, it is irrelevant that the transferor no longer acts as owner but rather as an intermediate lessee. In these circumstances, the acquirer of the property does not continue the transferor’s letting activity but instead establishes its own separate letting business, while the transferor’s letting business continues to exist unchanged alongside it (see also BFH judgment of 24 February 2021, XI R 8/19).

In the present case, the BFH found that the claimant had itself continued its economic activity, which – given the specific circumstances – was essentially characterised by the value generating activity of feeding electricity into the grid. As a result, the classification as a transfer of a going concern within the meaning of Section 1(1a) of the German VAT Act failed due to the absence of a transfer of the business as such. The decisive factor was that the entitlement to remuneration under the Renewable Energy Act (EEG) rests solely with the plant operator and that the claimant’s economic activity was defined by the grid connection and feed in agreement it had concluded. On that basis, it was able to feed all electricity generated by the entire installation into the grid and to receive the EEG remuneration applicable at the time of entering into that agreement. That entitlement was intended to remain with the claimant.

Even after the transfer of the individual components of the installation, the claimant continued to feed

all electricity into the grid – irrespective of who produced it – and remained the recipient of the EEG remuneration.

In addition, the transferred assets did not, in themselves, constitute a sufficiently independent “whole”. The Sub KGs lacked both their own feed in rights and independent grid access, meaning that they were neither legally nor technically capable of independently continuing the claimant’s prior activity (i.e. feeding electricity into the grid in return for EEG remuneration). The mere transfer of production assets without the corresponding value defining rights and contractual arrangements is not sufficient to constitute a transfer of a going concern. Finally, the fragmentation of what was previously a single business across multiple acquirers also precludes the assumption of a transfer of a going concern.

Please note:

In this case, the transfer of individual components of a solar park to multiple acquirers did not qualify as a non taxable transfer of a going concern within the meaning of Section 1(1a) of the German VAT Act, as the original operator continued its electricity feed in activity as plant operator, including the receipt of EEG remuneration, without any changes in its external relations. Consequently, the transfers of the individual assets constituted taxable supplies subject to VAT pursuant to Section 1(1) sentence 1 of the German VAT Act.

From a practical perspective, this decision highlights that taxpayers seeking to benefit from the transfer of a going concern treatment in the context of restructurings of photovoltaic or wind parks must ensure that a functioning economic unit is transferred to the acquirer. This includes, in particular, the transfer of key rights such as the feed in agreement and the entitlement to EEG remuneration. In addition, the transferor must not continue its activity in the external relationship in an unchanged manner. Otherwise, the transfer is likely to be treated as a standard taxable supply of assets. Careful contractual structuring is therefore essential to achieve the intended VAT treatment.

05 | Reduced VAT Rate for Sudoku Magazines

BMF letter dated 10 April 2026, III C 2 –
S 7225/00009/002/051



In its judgment of 1 August 2025 (C 375/24, *Keesing Deutschland*), the CJEU held that goods described under heading 4902 of the Combined Nomenclature as paper bound printed matter also include items that mainly contain printed Sudoku puzzles in which some numbers from 1 to 9 are already entered into a grid and the remaining numbers must be inserted in a specific sequence, and which are published every eight weeks. According to the BMF, Sudoku magazines are therefore subject to the reduced VAT rate pursuant to Section 12(2) no. 1 of the German VAT Act in conjunction with no. 49(b) of Annex 2 to the German VAT Act, provided that they meet the requirements of the product description and are classified under heading 4902 of the Combined Nomenclature.

By contrast, Sudoku books are generally to be classified under heading 4911 of the Combined Nomenclature (“other printed matter”). Accordingly, the reduced VAT rate does not apply.

If there is uncertainty in distinguishing between Sudoku magazines and Sudoku books, a non binding tariff information decision for VAT purposes (unverbindliche Zolltarifauskunft, uvZTA) may be obtained.

The provisions of this letter apply to all open cases. For supplies carried out before 1 August 2026, it will not be objected – also for purposes of input VAT deduction – if the supplier and the recipient consistently apply the standard VAT rate to supplies of Sudoku magazines and do not correct the invoice in this respect.

06 | Entrepreneurial Status of Co ownership Communities and Other Non Incorporated Economic Entities

BMF letter dated 9 April 2026, III C 2 –
S 7104/00030/006/041



As part of the Annual Tax Act 2022, the legislator amended Section 2(1) sentence 1, second half sentence, of the German VAT Act with effect from 1 January 2023 to provide that entrepreneurial status for VAT purposes may exist irrespective of whether the acting entity has legal capacity under other provisions. Accordingly, non incorporated associations of persons, such as co ownership communities (Bruchteilsgemeinschaften), may also qualify as taxable persons.

According to the explanatory memorandum, this amendment was introduced in order to override the case law of the Fifth Senate of the BFH (judgment of 22 November 2018 – V R 65/17) and to restore the previous legal position in the interest of legal certainty and clarity.

The new provision in Section 2(1) sentence 1 of the German VAT Act clarifies that entrepreneurial status for VAT purposes may exist independently of whether the acting entity has legal capacity under other legal provisions. Consequently, non incorporated associations of persons and partnerships may also be taxable persons where the requirements of Section 2 of the German VAT Act are met. This includes, in particular, the following non incorporated economic entities: co ownership communities (Bruchteilsge-

meinschaften) and British limited companies. The VAT Application Decree has been amended accordingly.

The principles set out in this BMF letter are to be applied as from the entry into force of the amendment to Section 2(1) sentence 1 of the German VAT Act on 1 January 2023. However, it will not be objected if these principles are also applied – consistent with the previous administrative view – to periods prior to 1 January 2023.

Where the BFH case law is applied to periods prior to 1 January 2023 and, accordingly, the co ownership community is not regarded as a taxable person, this will only be accepted provided that there is no inconsistent conduct and that the members of the co ownership community have submitted separate VAT returns accordingly.

07 | VAT Exemption for Supplies of Goods Preceding an Import

**BMF letter dated 9 April 2026, III C 3 –
S 7157-a/00005/001/052**

“Pursuant to Section 4 no. 4b of the German VAT Act, supplies of goods preceding an import and the supplies preceding such supplies are exempt from VAT. At the time of the supply, the goods must not yet have been imported into Germany within the meaning of Section 1(1) no. 4 of the German VAT Act. Such an import occurs where goods from a third country are released for free circulation in Germany for customs and tax purposes.

The exemption serves to simplify taxation in the case of supplies of goods that are brought into the European Union but, at that point in time, are not yet released for free circulation for customs and tax purposes, but are instead placed under a so called special customs procedure within the meaning of Article 5(16)(b) in conjunction with Article 210 of the Union Customs Code.”

In addition, the BMF letter contains extensive explanations and amendments to the VAT Application Decree regarding this provision in Section 4.4b.1 UStAE, including numerous examples. In particular, it distinguishes between Union goods and non Uni-

on goods and outlines the customs procedures and their termination in connection with the importation of goods. Special attention is given to the issues surrounding warehousing procedures, including the placement of goods into a customs warehouse and their withdrawal, particularly in relation to a subsequent VAT exempt supply under Section 4 no. 4b of the German VAT Act.

It is noteworthy that, according to the BMF, in the case of supplies of goods into or within a customs warehouse to a recipient who is a final consumer – where, as a rule, no importation or re exportation takes place (e.g. where goods are acquired for investment purposes) – the VAT exemption under Section 4 no. 4b of the German VAT Act applies only if the recipient or its representative discharges the customs warehousing procedure. Where such discharge of the customs warehousing procedure is evidenced, the VAT exemption for these supplies may be granted retroactively, provided that the relevant tax assessments are still open to amendment under procedural law (see Section 4.4b.1(6) sentences 1 and 2 UStAE).

The provisions of this BMF letter apply to all open cases.

For transactions carried out before the date of publication of this BMF letter involving supplies to final consumers, the tax authorities will not object if the supplier has treated such supplies as exempt from VAT in a manner deviating from the guidance set out in this letter.



08 | Input VAT Deduction and Deemed Supplies (Supplies without Consideration)

BMF letter dated 1 April 2026, III C 2 – S 7316/00022/007/023

Receipt of supplies for business and non business purposes

“For the purposes of input VAT deduction, a distinction must be made between the use of a supply for the business sphere (enterprise) and for non business activities. The latter include non economic activities in the strict sense and activities outside the enterprise (private use).

A taxable person may attribute a single asset that is used partly for business purposes and partly for non business (private) purposes in its entirety to the business and – subject to the other requirements – claim full input VAT deduction on the acquisition of that asset. In such cases, the subsequent non business (private) use must be examined to determine whether it constitutes a deemed supply without consideration.

By contrast, where a single asset is used both for business activities and for non economic activities in the strict sense, the taxable person does not have the option to allocate the asset fully to the business; instead, the input VAT must be apportioned. The right to deduct input VAT then exists only to the extent of the intended use for the business activity.



Supplies of fungible goods that do not qualify as single assets, and services that are obtained for both business and non business purposes, must always be apportioned in accordance with their intended use.”

Change in the Ratio of Use between the Business Sphere and Non Economic Activities in the Strict Sense

Previously, the tax authorities had taken the view that, where the proportion of use of a single asset for business purposes is subsequently reduced and, correspondingly, the proportion of use for non economic activities in the strict sense increases, the conditions for a deemed supply without consideration must be examined – analogous to use for non business (private) purposes.

Following coordination with the highest tax authorities of the German Länder, this administrative practice has been abandoned in light of developments in case law, and the following now applies:

The ratio of use of an asset at the time the supply is received is, as a rule, decisive for the input VAT apportionment required under case law. If, at a later point in time, the use between the business sphere and non economic activities in the strict sense changes (i.e. the usage ratio changes), this constitutes a change in circumstances which may – subject to the other conditions – trigger an input VAT adjustment within the meaning of Section 15a of the German VAT Act.

Where the use for non economic activities in the strict sense increases at a later stage, an input VAT adjustment to the detriment of the taxable person must be examined in accordance with Section 15a of the German VAT Act, taking into account Section 44 of the German VAT Implementing Regulation. In such cases, no deemed supply without consideration arises.

Where the use for the business sphere increases at a later stage, the following applies: insofar as the initial use for non economic activities in the strict sense was intended from the outset to be only temporary, the supply may nevertheless have been obtained for the purposes of the business. Otherwise, an input VAT adjustment in favour of the taxable person may – due to the absence of a right to allocate the part previously used for non economic activities in the strict sense to the business – only be granted within the framework of an equitable relief measure.

When determining whether, and to what extent, a supply is received for the purposes of the business in cases of partial use for non economic activities in the strict sense, the principles governing acting in the capacity of a taxable person and the intention of use in the case of exclusion transactions are to be applied accordingly. Where an apportionment of input VAT is required, the principles of Section 15(4) of the German VAT Act apply by analogy.

A supply made by a taxable person from its business sphere to the sphere of its non economic acti-

vities in the strict sense is not taxable. This applies both to supplies made without consideration and to those made for consideration. Accordingly, no right to deduct input VAT arises in connection with such supplies due to the absence of use for an economic activity. If the use for non economic activities in the strict sense is already determined at the time the supply is received, the supply is not considered to be received “for the purposes of the business” within the meaning of Section 15(1) sentence 1 of the German VAT Act. Where the supply was originally intended to be used for the business but is subsequently actually used for non economic activities in the strict sense, the initial input VAT deduction remains in place; however, an input VAT adjustment under Section 15a of the German VAT Act must be examined, taking into account Section 44 of the German VAT Implementing Regulation.

Contrary to paragraph 65 of the BMF letter dated 22 May 2023, in cases where a supply is made from the business sphere to the non business (sovereign/public) sphere of the same public body, no deemed supply without consideration is to be examined. Instead, the entitlement to deduct input VAT and, if applicable, its adjustment pursuant to Section 15a of the German VAT Act must be assessed.

Likewise, the secondment of personnel by a public law entity (juristische Person des öffentlichen Rechts) from a Betrieb gewerblicher Art (taxable business activity) to its own sovereign sphere does not – contrary to the previous administrative view –

constitute a deemed supply within the meaning of Section 3(9a) no. 2 of the German VAT Act, irrespective of any segregation of the areas of activity. Input VAT incurred in connection with such secondment is not deductible due to the absence of a link to the provision of taxable supplies for the business sphere.

In addition, a taxable person who, inter alia, carries out non economic activities in the strict sense may acquire and use a single asset partly for business purposes and partly for non business (private) purposes. In such cases, no special rules apply compared with other taxable persons. This means that the taxable person may allocate such an asset to its business only to the extent of its use for business purposes and non business (private) purposes, may – subject to the other requirements – deduct input VAT accordingly, and must account for the non business (private) use as a deemed supply without consideration.”

The explanations in the BMF letter result in numerous amendments to the VAT Application Decree (UStAE), as set out from paragraph 15 of the BMF letter dated 1 April 2026.

Application

The principles set out in this letter are to be applied in all open cases. Paragraph 65 of the BMF letter dated 22 May 2023 is to be applied with the modification that no deemed supply without consideration arises; instead, the entitlement to deduct input VAT and, where applicable, its adjustment under Section 15a of the German VAT Act, taking into account Section 44 of the German VAT Implementing Regulation, must be examined. However, it will not be objected if a taxable person applies the previous administrative practice consistently to all relevant situations – both with regard to input VAT deduction and the taxation of deemed supplies – for tax periods prior to 1 January 2027.

09 | VAT Group (Organschaft)

BMF letter dated 1 April 2026, III C 2 – S 7105/00035/008/056

The existing VAT treatment regarding the liability of the controlling entity (Organträger) for VAT and the non taxable nature of intra group supplies may, in principle, continue unchanged in light of recent CJEU and BFH case law. However, the effects of a VAT group with respect to the non taxability of intra group supplies are no longer to be limited to supplies used by the controlling entity or the controlled entities (Organgesellschaften) for business purposes. Rather, these effects must also be extended to supplies used by the controlling entity or the controlled entities for non economic activities in the strict sense.

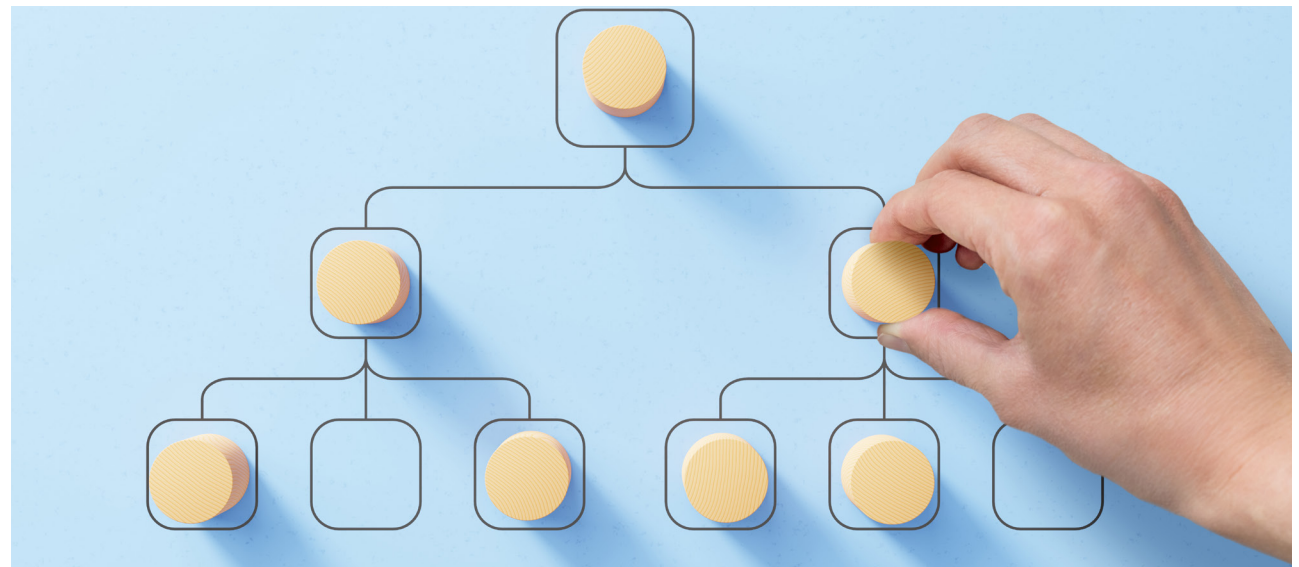
A separate BMF letter will address the specific issues relating to cross border VAT groups and the relevant CJEU judgments of 17 September 2014 (C 7/13, Skandia America (USA)) and 11 March 2021 (C 812/19, Danske Bank).

With regard to input VAT deduction on supplies used for non economic activities in the strict sense, the BMF refers to its letter dated 1 April 2026 on changes in the ratio of use between the business

sphere and non economic activities in the strict sense (see the previous article in this newsletter). These principles are also to apply where a VAT group exists.

The VAT Application Decree (UStAE) has been supplemented accordingly, in particular by three illustrative examples, including a scenario involving a deemed supply in the context of lawn mowing services performed by a landscaping company for its staff.

The amendments to Section 2.8 paragraphs 1 to 3c of the UStAE are to be applied in all open cases. However, it will not be objected if taxable persons continue to apply the previous administrative practice until 31 December 2026.



Events

NEW – Our VAT News Talk

Rainer Weymüller, former presiding judge at the Munich Finance Court and Of Counsel at KPMG, and Dr. Oliver Buttenhauser, partner at KPMG, will take the topics covered in the newsletter “one step further” and discuss the implications for daily VAT practice with you. Make a note of the following dates now: April 23, 2026, June 11, 2026, September 17, 2026, November 19, 2026, and February 18, 2027 (each from 11:00 a.m. to 12:00 p.m.).

You can register directly here:

<https://www.events.kpmg.de/vat-news-talk>

We look forward to the discussion!

VAT Podcast “VAT to go” – Episode 11 – New EU Case Law from February 2026: Early Exercise and Errors in Input VAT Deduction

[VAT to go – der Umsatzsteuer-Podcast: Folge 11 – Vorsteuerabzug neu gedacht – Was zwei aktuelle EuG-Urteile für Unternehmen bedeuten](#)

TaxNewsFlash Indirect Tax

KPMG articles on indirect taxes from around the world

You can find the following and other articles [here](#).

29 April – Africa:

VAT implementation in Liberia starts in 2027; other recent tax developments

29 April – EU:

Commission refers Hungary to CJEU over retail tax regime

29 April – UAE:

Voluntary e-invoicing model enables direct exchanges between sellers and customers

27 April – Germany:

Application of reduced VAT rate to short-term accommodations, but not ancillary services, allowed (CJEU judgment); other VAT developments

24 April – Colombia:

Proposed new customs regimes for assembly of electric and hybrid vehicles

24 April – Hungary:

Advertisement tax regime temporarily suspended



Contact

KPMG AG Wirtschaftsprüfungsgesellschaft

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
bliemann@kpmg.com

Bielefeld

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

Düsseldorf

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

Franz Kirch

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

Essen

Astrid Ras
T +49 201 455-6781
astridras@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

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

Martin Weigand
T +49 69 9587-6663
martinweigand@kpmg.com

Hamburg

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

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

Hannover

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 +49 341 566-0701
cwotjak@kpmg.com

Munich

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

Stephan Freismuth¹
T +49 89 9282-6050
sfreismuth@kpmg.com

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

Anastasia Podolak
T +49 89 9282-3241
apodolak@kpmg.com

Mario Urso¹
T +49 89 9282-1998
murso@kpmg.com

Münster

Jonathan Eßer¹
T +49 251 59684-8983
jonathannesser@kpmg.com

Nuernberg

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

Stuttgart

Dr. Stefan Böhler
T +49 711 90604-1184
sboehler@kpmg.com

Niklas Sattler
T +49 711 90604-1196
nsattler@kpmg.com

Freiburg

Thomas Soehner
T +49 761-60047-9461
tsoehner@kpmg.com

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KPMG AG
Wirtschaftsprüfungsgesellschaft
The Squire, Am Flughafen
60549 Frankfurt am Main



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



Rainer Weymüller
Of-Counsel



Christoph Jünger
Manager, Indirect Tax Services
T +49 69 9587-2036
cjuenger@kpmg.com

www.kpmg.de

www.kpmg.de/socialmedia



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