VAT News: Hot topics and issues in indirect taxation

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From around the world

TaxNewsFlash Indirect Tax

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01 I Triangulation and subsequent indication that the customer is liable for the VAT

General Court, judgment of 7 October 2026, T-773/25, Finanzamt für Großbetriebe



The request for a preliminary ruling from Austria centred on whether an intermediary acquirer that omitted the wording "Reverse charge" and "intra-Community triangulation" from its original invoices may nevertheless trigger the legal effects of the simplification rule prospectively (ex nunc) by issuing appropriately supplemented invoices for the first time several years after the goods were sold. The General Court answered this question in the negative: under Article 42(a), read in conjunction with Article 197(1)(c), of the VAT Directive, the intermediary acquirer may not, in such a case, declare an adjustment amount for the current or a future tax period either. The decision follows the judgment of the Court of Justice of 8 December 2022 in Case C-247/21, Luxury Trust Automobil, in which the Court had already rejected retroactive invoice correction. It is relevant to all businesses participating in triangulation as intermediary acquirers.

Facts

F GmbH (F), an Austrian wholesaler of workwear, supplied businesses in other Member States between 2011 and 2014. Using its Austrian VAT identification number (VAT ID number), it ordered the goods from suppliers in Sweden and Denmark.

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Those suppliers used VAT ID numbers issued by their respective Member States of establishment and dispatched the goods directly to F's customers in Member States other than Austria. The customers used VAT ID numbers issued by the Member State of destination. In its VAT returns, recapitulative statements and invoices, F treated the transactions as intra-Community supplies. The invoices did not show VAT and contained neither a reference to intra-Community triangulation nor a reference to the transfer of the VAT liability. During a tax audit, the Tax Office for Large Businesses concluded that the conditions for the simplification rule were not met because the invoices lacked the required reference. It regarded the transactions as "failed triangulations" to which the general rules governing chain transactions applied. The tax office therefore assessed an intra-Community acquisition in Austria under Article 3(8), second sentence, of the Austrian VAT Act 1994 and denied deduction of the input VAT arising on the acquisition.

In 2015, F corrected or supplemented the invoices by adding a reference to triangulation and to the transfer of the VAT liability. It also corrected the recapitulative statements for the years 2011 to 2014. In its advance VAT return for March 2015, F declared an adjustment amount equal to the cumulative input VAT on the intra-Community acquisitions. The tax office disregarded that amount. The Austrian Federal Fiscal Court upheld F's appeal. On the basis of sample checks with customers and other indications, including a marked increase in postage costs in March 2015, it considered that the corrected invoices had been received by the final customers in 2015 and that the adjustment should be recognised in that year.

Following an appeal on a point of law by the tax office, the Austrian Supreme Administrative Court referred to the Court of Justice the question whether an invoice issued for the first time several years after the supplies and containing the required wording triggers the legal effects of the simplification rule prospectively (ex nunc). If so, it also asked whether this presupposed prior taxation in the Member State of destination and in what form receipt of the invoice by the final acquirer had to be demonstrated. For procedural reasons, the case was transferred to the General Court.

Grounds of the decision

The General Court first set out general observations on the conditions governing triangulation and then addressed the question referred. Where the wording "Reverse charge" was absent from the original invoice but a supplemented invoice containing that wording was issued subsequently, this did not constitute correction of an invoice. Rather, it was the first issuance of an invoice meeting the substantive condition laid down in Article 42(a), read in conjunction with Article 197(1)(c), of the VAT Directive.

The issue was therefore whether an invoice containing the required wording and issued several years after the supplies had been made could produce the effects of the simplification rule ex nunc. In answering that question, account had to be taken not only of the wording of Article 42(a) of the VAT Directive, but also of its context and the objectives pursued by the rules of which it forms part.

As regards the wording of Article 42(a) of the VAT Directive, it did not provide a clear answer to whether, after issuing for the first time and several years after the transactions concerned an invoice satisfying the conditions for application of the simplification rule, the intermediary acquirer could declare a VAT adjustment amount for the current or a future tax period. Article 42(a) of the VAT Directive did not lay down a time limit for relying on the simplification rule at issue. Nor did the use of a verb in the past tense ("has been designated") in Article 42(a) and Article 141(e) of the VAT Directive establish more than that an invoice bearing the wording "Reverse charge" had to be issued before that simplification rule could apply. The wording of those provisions did not, however, indicate the deadline by which that invoice had to be issued.

As regards the context of Article 42 of the VAT Directive, the case-law of the Court of Justice showed that this article specified and supplemented the conditions for applying the simplification measure provided for in Article 141 of the VAT Directive (judgment of 8 December 2022, Luxury Trust Automobil, C-247/21, paragraph 50). Article 42(a) of the VAT Directive nevertheless made application of that rule conditional on the recipient of the subsequent supply having been designated, in accordance with Article 197 of the VAT Directive, as the person liable for payment of VAT.

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As regards the objective pursued by Article 42 of the VAT Directive, this had to be examined in conjunction with that of Article 141 of the VAT Directive, since the two provisions together constituted the simplification rule at issue (see, to that effect, judgment of 3 December 2025, MS KLJUCAROVCI, T-646/24, paragraph 49).

While Article 141 of the VAT Directive was intended to prevent the intermediary acquirer from having to register for VAT and submit a tax return in the Member State of destination of the goods, Articles 41 and 42 of the VAT Directive were intended to ensure that the intra-Community acquisition in question was subject to VAT at the level of the final acquirer, as recipient of the subsequent supply, while at the same time preventing double taxation of that transaction.

As regards the first objective, namely preventing the intermediary acquirer from having to register for VAT and submit a tax return in the Member State of destination of the goods, it followed from the case-law of the Court of Justice that the subsequent issuance of an invoice containing the wording "Reverse charge" for the first time could not have retroactive effect (judgment of 8 December 2022, Luxury Trust Automobil, C-247/21, paragraph 61).



It could not be inferred from that case-law that, where an invoice had already been issued for a supply without that wording, the simplification rule became applicable to that same supply once, several years later, an invoice containing the wording was issued. For the period between the supplies concerned and the issuance of those invoices, the rules laid down in Articles 40 and 41 of the VAT Directive remained applicable in any event, and their application was not retroactively cancelled from the date on which the supplemented invoice was issued. Consequently, as the Republic of Austria had rightly pointed out in its observations on the request for a preliminary ruling, the VAT liability on the intra-Community acquisitions under Article 41(1) of the VAT Directive and the registration, reporting and tax obligations incumbent on the intermediary acquirer in the Member State of destination had already arisen and could not be extinguished retroactively. The objective of administrative simplification could therefore no longer be achieved subsequently.

Interpreting Article 42 of the VAT Directive in the light of the second objective, namely ensuring that the intra-Community acquisition in question was subject to VAT at the level of the acquirer, as recipient of the subsequent supply, while at the same time preventing double taxation of that transaction, likewise supported the interpretation that

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the effects of the simplification rule could not be triggered by issuing new invoices several years after the transactions concerned.

If the simplification rule were applied only years after the taxable transactions had taken place, factual changes could have occurred in the meantime, including the disappearance of the final acquirer. Subsequent application of that rule could therefore jeopardise the objective of ensuring correct taxation in the Member State of destination.

Nor could that risk be addressed by making subsequent application of the simplification rule conditional, as proposed by the Commission in its observations on the request for a preliminary ruling, on the intermediary acquirer having acted in good faith or taxation in the Member State of destination being secured, by analogy with the case-law on the correction of VAT invoiced incorrectly, as set out in paragraphs 26 and 27 of the judgment of 11 April 2013, Rusedespred (C-138/12). Assessing whether those conditions were met would require the taxable transactions to be examined individually and would therefore conflict with the objective of simplification pursued by the derogating rule.

Furthermore, Article 226(11a) of the VAT Directive required the invoice to contain the wording "Reverse charge" so that the recipient of the supply was in a position to recognise that it was liable for payment of VAT and to pay the VAT in the Member State of destination (see, to that effect, judgment of 8 December 2022, Luxury Trust Automobil, C-247/21, paragraph 54). Since the derogating rule laid down in Articles 42 and 141 of the VAT Directive was optional, the requirement in Article 226(11a) to include the wording "Reverse charge" ensured that the final recipient of a supply was aware of its tax obligations. A defining feature of the simplification rule was that no VAT payment took place between the supplier and the taxable recipient of a supply because the latter was liable to pay that VAT in respect of the supply. There could therefore be no uncertainty in that regard.

In addition, the principle of fiscal neutrality did not require that subsequent application of the simplification rule be possible on the basis of a new invoice supplemented by the wording "Reverse charge".

It was true that, according to the case-law, in order to ensure VAT neutrality, Member States had to provide in their domestic legal systems for the possibility of correcting any VAT improperly invoiced where the issuer of the invoice demonstrated that it had acted in good faith or had, in sufficient time and completely, eliminated the risk of any loss of tax revenue (see, to that effect, judgment of 11 April 2013, Rusedespred, C-138/12, EU:C:2013:233, paragraphs 26 and 27).

That case-law could not, however, be transposed to the present case. Correcting VAT improperly invoiced differed from the subsequent fulfilment of a substantive condition for the derogating rule under which the recipient was liable for payment of VAT, since in the latter case the tax had been properly collected by the tax authorities (see, to that effect, judgment of 8 December 2022, Luxury Trust Automobil, C-247/21, EU:C:2022:966, paragraph 61). Accordingly, the existence of national correction mechanisms available to an invoice issuer that demonstrated good faith or eliminated, in sufficient time and completely, the risk of any loss of tax revenue could not serve as a benchmark for interpreting the requirements of the rules on triangulation.

Finally, in paragraph 61 of the judgment of 8 December 2022, Luxury Trust Automobil (C-247/21), the Court of Justice had already held that the subsequent fulfilment of a condition necessary for shifting liability for payment of VAT to the recipient of a supply could not have retroactive effect. As the referring court had rightly observed, however, accepting that invoices supplemented by the wording "Reverse charge" several years after the transactions concerned could change the applicable taxation regime would ultimately mean granting them retroactive effect, precisely because the regime applicable to those transactions up to the issuance of the new invoices would be altered after the event. The fact that the intermediary acquirer declared an adjustment amount only for the current or a future tax period did not alter that retroactive effect, in particular because the legal position of the final acquirer would be changed after the event.

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Please note:

Under the general rules, an intermediary acquirer would have to register for VAT in the Member State in which the transport ends (the final acquirer's Member State of destination) and submit VAT returns there. The national simplification rule for triangulation under section 25b of the German VAT Act (UStG) relieves the intermediary acquirer of this registration and filing obligation in the Member State of destination. This is because liability for VAT on the subsequent supply in the Member State of destination is shifted to the final customer (final acquirer). The intermediary acquirer is required neither to account for acquisition VAT nor to charge local VAT in the Member State of destination.

However, the simplification rule requires the intermediary acquirer to issue an appropriate invoice to its customer. The Austrian provision (section 25(4) UStG) uses wording similar to section 14a(7) of the German VAT Act. Under both provisions, the intermediary acquirer's invoice to its customer must contain not just one reference, but two additional particulars. Under the respective national law, these are references to the existence of intra-Community triangulation and to the transfer of liability for payment of VAT to the recipient.

It is noteworthy, and therefore also particularly important in practice, that EU law has so far required only one reference under Article 226(11a) of the VAT Directive, namely "Reverse charge". The second reference, concerning triangulation, will become a mandatory invoice particular only as a result of the amendment to the VAT Directive taking effect from 1 July 2030. Accordingly, where the intermediary acquirer's invoice includes the reverse-charge wording, the invoice complies with EU law. However, that wording was absent in the Austrian case brought before the Court of Justice (C-247/21) and in the case brought before the General Court.

In the present decision, the General Court consistently continues the strict approach adopted by the Court of Justice in Luxury Trust Automobil (C-247/21). Consequently, if the intermediary acquirer's invoice does not contain the wording "Reverse charge", the simplification rule for triangulation does not apply.

This error, although essentially only formal in nature, cannot be remedied by an invoice issued and supplemented at a later date, either retroactively or prospectively. The acquisition remains subject to VAT in the Member State of destination, and the registration, filing and tax obligations that have already arisen there also remain in place.

For German businesses participating in triangulation as intermediary acquirers, the decision is directly relevant. In particular, businesses should:

- check their invoice templates and ERP processes to ensure that, for triangulation, the wording "Reverse charge" and the reference to the existence of intra-Community triangulation required under German law are reliably included when the invoice is issued; and
- ensure that triangulation is identified as such and correctly reported in the recapitulative statements.

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02 I Good-faith protection for resellers applying the margin scheme

General Court, judgment of 14 October 2026, T-569/25, X-GmbH



The margin scheme for resellers of second-hand goods is of considerable practical importance as a special scheme under Article 313 et seq. of the VAT Directive and section 25a of the German VAT Act (UStG). The General Court has now had an opportunity to clarify the protection of legitimate expectations under EU law in relation to this scheme. The central question was whether Germany may require a reseller that relied on information concerning the margin scheme in its suppliers' invoices to raise its good faith in separate equitable-relief proceedings under sections 163 and 227 of the German Fiscal Code (AO), rather than in the tax assessment proceedings. The General Court answered this question in the negative and emphasised the principle of effectiveness under EU law.

Facts

X (the applicant in the main proceedings) sells jewellery and watches at retail and wholesale level, in particular via online platforms. In its VAT returns for 2013 and 2014, it applied the margin scheme implemented by section 25a of the German VAT Act (UStG) to certain goods.

During a tax audit, the tax office concluded that X had incorrectly applied the margin scheme when

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reselling certain watches. The sellers from which X had made its purchases had incorrectly applied the margin scheme because the goods in question were new rather than second-hand, which in turn precluded X from applying the margin scheme. By amended tax assessments dated 19 February 2020, the tax office therefore recalculated the VAT on some of those transactions under the standard taxation rules, based on the total consideration. The tax authorities rejected the objections lodged against those assessments as unfounded.

The action brought against those decisions was dismissed on the ground that the conditions for applying the margin scheme were not met. The suppliers from which the applicant in the main proceedings had purchased the watches in question for resale had not been entitled to apply the margin scheme. They had therefore incorrectly stated in their invoices to X that taxation was being applied under section 25a of the German VAT Act. Whether X had been entitled to rely on the information provided by those suppliers was irrelevant in the tax assessment proceedings because those proceedings did not provide for protection of the taxable person's good faith. Protection of legitimate expectations could be granted only by way of equitable relief under sections 163 and 227 of the German Fiscal Code (AO).

Following X's appeal on a point of law, the Federal Fiscal Court referred to the Court of Justice the question whether such a practice, under which a taxable person's good faith as regards fulfilment of the conditions for applying the margin scheme is examined only in equitable-relief proceedings, was compatible with Article 314 of the VAT Directive.



Grounds of the decision

Although the German Government had not formally raised an objection of inadmissibility, it argued that an answer to the question referred was unnecessary because the margin scheme was not applicable to the goods at issue in the main proceedings, as they were new rather than second-hand goods. In the German Government's view, the request for a preliminary ruling was therefore hypothetical.

The General Court nevertheless held the request to be admissible because it was not manifestly apparent that the interpretation of EU law sought bore no relation to the facts or purpose of the main proceedings or that the issue was hypothetical.

On the substance, the General Court first made general observations on the background to and significance of the margin scheme under Article 314 of the VAT Directive (paragraphs 25 to 28), before turning to the specific case.

According to the order for reference, the invoices X received from its suppliers contained references to section 25a of the German VAT Act concerning the margin scheme. Following an audit, however, the tax authorities took the view that those suppliers had not been entitled to apply that scheme to the goods in question. They concluded that X was not entitled to apply the scheme because its conditions were not met.

Where the conditions laid down in Article 314 of the VAT Directive are not met, it is in principle for

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the national authorities and courts to refuse the taxable person the benefit of the margin scheme, even where its supplier applied that scheme to a transaction with it, if objective evidence shows that the right is being relied on fraudulently or abusively. Such refusal reflects, in particular, the general principle that EU law cannot be relied on for fraudulent or abusive ends (see judgment of 18 May 2017, Litdana, C-624/15, paragraph 32).

That applies not only where the taxable person itself commits tax evasion, but also where it knew or ought to have known that, through the transaction concerned, it was participating in a transaction connected with VAT fraud committed by its supplier or by another trader acting at an earlier or later stage of the supply chain. However, the tax authorities may not, as a general rule, require a taxable person wishing to exercise the right to apply the margin scheme to verify, in particular, that the issuer of the invoice relating to the goods for which that right is claimed has complied with its VAT declaration and payment obligations or has satisfied other conditions governing application of the scheme, in order to ensure that there are no irregularities or VAT fraud at the level of traders operating at an earlier stage. Nor may they require that taxable person to hold corresponding documents (see judgment in C-624/15, paragraph 40).

In the absence of relevant EU rules, under the principle of procedural autonomy it is for the domestic legal order of each Member State to designate the authorities responsible for combating VAT fraud and to lay down the detailed procedural rules safeguarding rights which individuals derive from EU law, provided that those rules are no less favourable than those governing similar domestic situations (principle of equivalence) and do not make the exercise of those rights practically impossible or excessively difficult (principle of effectiveness; see also judgment of 12 February 2015, Surgicare, C-662/13, paragraphs 25 and 26).

It was for the referring court to assess, in the light of all the circumstances of the main proceedings, whether the national measures were compatible with the principles of equivalence and effectiveness. In preliminary-ruling proceedings, however, the EU judicature could provide the referring court with all useful guidance for that assessment.

As regards the principle of effectiveness, which alone was the subject of the referring court's questions, account had, where appropriate, to be taken of the principles underlying the national system of judicial protection, such as protection of the rights of the defence, legal certainty and the proper conduct of proceedings (judgment of 27 November 2025, Gryczara, C-746/24, paragraph 47).

In the present case, the referring court stated that requiring the taxable person to rely on its good faith concerning fulfilment of the conditions for applying the margin scheme outside the tax assessment proceedings, namely in separate equitable-relief proceedings, entailed procedural disadvantages, in particular as regards costs, duration and the rules governing the production of evidence.

According to the referring court, section 136(2) of the German Fiscal Code allowed the tax authority to combine tax assessment proceedings and equitable-relief proceedings, but did not require it to do so. The authority therefore frequently decided first on the tax assessment and only later, in a separate decision, on equitable-relief issues, not by virtue of national law but merely as a matter of administrative practice.

First, as regards the costs of the proceedings, where a taxable person engaged a tax adviser or lawyer, the costs of that assistance could potentially be incurred twice in the administrative and judicial proceedings challenging the tax assessment decision and the equitable-relief decision. This involved, on the one hand, two administrative objection proceedings and, on the other, two judicial actions against the resulting decisions, as well as possible appeal proceedings. According to the order for reference, costs incurred in such objection proceedings were reimbursable only if judicial proceedings followed in which the taxable person ultimately succeeded and the competent court found that engaging the tax adviser or lawyer had been necessary.

If the taxable person was unsuccessful either in the action against the tax assessment decision or in the action against the decision on the application for equitable relief, it also had to bear court costs which, according to the referring court, were determined by reference to the value in dispute and thus to the financial significance of the action. The national practice at issue therefore resulted in the value in dispute being determined twice and, consequently,

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in the amount of tax in dispute being taken into account twice when calculating the court costs potentially payable by the taxable person.

The order for reference further stated that, if the taxable person brought an appeal on a point of law against a judgment concerning the tax assessment decision or the equitable-relief decision, or challenged a refusal to allow such an appeal, it incurred additional court costs if unsuccessful in those proceedings.

The independence of the tax assessment proceedings from the equitable-relief proceedings nevertheless meant that the courts were in principle required to dismiss the taxable person's actions in the former proceedings, even though it could have claimed the right to apply the margin scheme if its good faith had been examined and established. The taxable person could therefore ultimately have to bear the costs associated with the tax assessment proceedings, which, according to the referring court, could sometimes be substantial.

The referring court had to examine whether those procedural arrangements imposed disproportionate costs on the taxable person and could deter it from bringing proceedings in view of the relationship between the cost of an action and the amount of the disputed liability (see judgment of 7 April 2022, Caixabank, C-385/20, paragraph 55).

The national practice could also extend the overall duration of the tax assessment and equitable-relief proceedings by several years, causing a substantial delay in the provision of judicial protection. According to the referring court, the tax authorities could wait until the competent court had ruled on the tax assessment decision, following an appeal where applicable, before examining the taxable person's good faith in the equitable-relief proceedings. While the tax assessment proceedings remained pending at both administrative and judicial level, the taxable person could therefore be prevented from obtaining an examination of its good faith and from exercising the right to apply the margin scheme within a reasonable period.

Third, as regards the rules governing the production of evidence, the existing case-law showed that the taxable person was entitled to apply the margin scheme unless the national authorities proved that it had not acted in good faith or had failed to take every reasonable measure available to it to ensure that the transaction it carried out did not result in its participation in tax evasion.

However, according to the order for reference, equitable-relief proceedings generally examined only the matters put forward by the taxable person in support of its application. The national practice at issue in the main proceedings could therefore impair the taxable person's right to apply the margin scheme.

Subject to verification by the referring court, a national practice characterised by circumstances such as those described above could therefore make it excessively difficult for the taxable person to exercise the right to apply the margin scheme.

That conclusion was not called into question by the German Government's argument that the judgment of 19 September 2000, Schmeink & Cofreth and Strobel (C-454/98), showed that examining a taxable person's good faith in equitable-relief proceedings was compatible with EU law. In that judgment, the Court of Justice had clarified that it was for the Member States to determine the procedure for correcting VAT improperly invoiced, while such correction could not be left to the discretion of the tax authorities. It had merely stated that Member States could decide whether correction occurred during the tax assessment proceedings or in later proceedings. The Court had not addressed the extent of any procedural disadvantages arising from the characteristics of such later proceedings. In particular, it had not held that VAT could be corrected in proceedings which, like the equitable-relief proceedings at issue, took place after the tax assessment proceedings and displayed the characteristics examined above.



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Please note:

The question whether it is correct to examine good faith or the protection of legitimate expectations only in equitable-relief proceedings as part of the exercise of discretion has occupied the German courts for many years. The issue is particularly important in relation to input VAT deduction, as various circumstances may give rise to a discussion of good faith. This is demonstrated by the earlier case-law. In its judgments of 8 October 2008 (V R 63/07) and 30 April 2009 (V R 15/07), the Federal Fiscal Court expressly held that section 15 of the German VAT Act does not provide, in tax assessment proceedings, for protection of good faith as regards fulfilment of the conditions governing input VAT deduction and that taxpayers acting in good faith must instead pursue equitable-relief proceedings. Those cases concerned, among other matters, deficient invoice particulars or the absence of taxable-person status. In its judgment of 22 July 2015 (V R 23/14), the Federal Fiscal Court likewise refused input VAT deduction in the assessment proceedings because the invoice address or registered-office address was incorrect and referred the purchaser acting in good faith to equitable-relief proceedings.

The General Court's present judgment on good faith under the margin scheme is likely to have seriously called that assessment into question. At any rate, following this decision, a referral to equitable-relief proceedings is no longer readily permissible.

The judgment is likely to have undisputed and immediate implications for application of the margin scheme under section 25a of the German VAT Act.

Going forward, the tax authorities and tax courts will be required to take the reseller's good faith into account during the tax assessment proceedings. A blanket referral to equitable-relief proceedings under sections 163 and 227 of the German Fiscal Code is unlikely to be compatible with Article 314 of the VAT Directive.

Where suppliers have incorrectly applied the margin scheme, EU law requires an examination of whether the reseller was entitled to rely on the invoice particulars and whether reasonable verification measures were incumbent on it. The reseller should be denied application of the margin scheme only where its involvement in VAT fraud or a serious failure to carry out the requisite checks is established.

Businesses applying the margin scheme should review their internal control and documentation processes. It is important to retain verifiable documentation concerning plausibility checks on the purchasing circumstances, including the type and origin of the goods and the supplier's status, the handling of invoices referring to section 25a, and any enquiries made of suppliers.

In pending proceedings, including proceedings concerning input VAT deduction, businesses should rely on the General Court's decision and request a comprehensive examination of good faith in the tax assessment proceedings.

Overall, the decision strengthens the legal position of resellers acting in good faith and requires the German authorities and courts to apply the EU-law principles governing the protection of legitimate expectations effectively within the tax assessment procedure, including in relation to the margin scheme.

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03 I Reduced VAT rate in the hotel sector: parking, fitness/wellness facilities and Wi-Fi

Federal Fiscal Court, judgment of 21 May 2026, V R 11/26



This judgment is one of three follow-up decisions to the judgment of the Court of Justice in J-GmbH and Others of 5 March 2026 (C-409/24 to C-411/24), which held the German requirement to split supplies under section 12(2) no. 11 of the German VAT Act (UStG) to be lawful.

The decision concerns whether, and to what extent, parking, fitness and wellness facilities and Wi-Fi provided in connection with accommodation services are subject to the reduced VAT rate or the standard VAT rate, or whether they constitute taxable transactions at all.

Facts

In the year at issue, 2011, the applicant operated two hotels in Germany, each of which had vehicle parking spaces that could be used by overnight guests, other visitors to the hotels and the general public without a separately charged fee. The applicant also provided a wireless local area network (Wi-Fi) in both hotels without charging a separate fee. In addition, fitness and wellness facilities were available to guests at one of the hotels. The applicant did not charge separate fees for these facilities either.

In its VAT return for 2011, the applicant declared supplies subject to the standard VAT rate of 19%

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and supplies subject to the reduced VAT rate of 7%. It treated the provision of parking spaces as an ancillary service to the accommodation subject to the reduced VAT rate. During an external tax audit, the auditor further concluded that the provision of Wi-Fi and access to the fitness and wellness facilities were subject to the standard VAT rate. The applicant's action against that assessment was unsuccessful (see judgment of the Lower Saxony Fiscal Court of 19 August 2021, 5 K 174/19). The subsequent appeal on a point of law resulted in a request for a preliminary ruling from the Court of Justice on whether the German requirement to split supplies under section 12(2) no. 11 of the German VAT Act was compatible with EU law (order of 10 January 2024, XI R 14/23).

In its judgment of 5 March 2026 (C-409/24 to C-411/24), the Court of Justice essentially upheld the German requirement to split supplies. The Federal Fiscal Court implemented that judgment in the present decision and in the parallel decisions V R 10/26 and V R 8/26.

Grounds of the decision

The Fiscal Court had erred in holding that the provision of parking spaces constituted taxable transactions. By contrast, it had correctly assumed that, by providing hotel guests with access to fitness and wellness facilities, the applicant supplied services subject to the standard VAT rate. As regards access to Wi-Fi, the case was not ready for final judgment.

The provision of parking spaces that are freely available without charge not only to a hotel's overnight guests, but also to all other visitors to the hotel and to the general public, does not constitute a supply of services for consideration. To the extent that the Federal Fiscal Court's judgment of 1 March 2016 (XI R 11/14) indicated otherwise, the Senate now having sole jurisdiction for VAT matters no longer adhered to that view.

A supply for consideration exists where there is a direct link between a supply and the consideration received and that link arises from a legal relationship between the supplier and the recipient under which reciprocal performance is exchanged, with the remuneration constituting the consideration for an identifiable supply made to the recipient. The recipient must be identifiable and must receive a benefit capable of constituting consumption within the meaning of the common system of VAT.

By contrast, there is no supply for consideration where a payment, such as a visitor's tax, is linked to other circumstances, for example a stay within a municipality, and a facility, such as a spa park, is freely accessible to everyone without charge. In that case, the payment is not consideration for the opportunity to use the facility because persons liable for the visitor's tax receive no advantage over persons who use the spa facilities without being liable for that tax.

Accordingly, where a hotel facility is freely accessible to everyone without charge, there is no supply for consideration because no separate consumable benefit is provided. In the case at issue, the provision of the parking area therefore gave hotel guests no consumable benefit compared with the general public. According to the Fiscal Court's findings, the parking spaces were available free of charge not only to guests staying at the applicant's hotels, but also to all other visitors to the hotels and even to the general public. The possibility of using the parking spaces was therefore not dependent on payment of consideration for the letting of living rooms and bedrooms for short-term accommodation, since guests not staying at either of the applicant's hotels and local residents could also use the parking facilities. Hotel guests who used the parking area therefore received no advantage over persons who used the parking spaces provided by the applicant without paying any consideration.

By contrast, the Fiscal Court had correctly held that, by granting hotel guests access to fitness and wellness facilities, the applicant made taxable supplies subject to the standard VAT rate. To the extent described below, access to the fitness and wellness facilities was supplied for consideration.

According to the estimate made during the external tax audit and accepted by the Fiscal Court, the tax office determined an imputed share of the costs of the fitness and wellness facilities, plus an appropriate profit mark-up, and treated that amount as the taxable amount for a supply subject to the standard VAT rate. In doing so, the tax office had specifically

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not assumed that all overnight guests used the facilities. Rather, the calculation was based on costs and usage, reflecting the services actually supplied.

The Federal Fiscal Court regarded this as a permissible estimate that did not preclude the existence of consideration. It was immaterial that the consideration was collected as part of the flat-rate hotel price. The continuing readiness to grant guests access to the fitness and wellness areas, together with actual use of those areas, constituted a supply of services for consideration.

Since it conferred a separate consumable benefit, the applicant's taxable grant of access to the fitness and wellness facilities to hotel guests, as described above, did not fall within section 12(2) no. 11 of the German VAT Act.

That provision reduces VAT to 7% for the letting of living rooms and bedrooms made available by a business for the short-term accommodation of guests and for the short-term letting of camping spaces. Under section 12(2) no. 11 sentence 2 of the German VAT Act, the reduction does not apply to services that do not directly serve the letting, even where those services are covered by the consideration for the letting.

The services at issue did not fall within section 12(2) no. 11 of the German VAT Act. This applied both if the applicant had supplied a service independent of the letting of a hotel room, in which case the conditions in sentence 1 were already not met, and if the service was ancillary to the room letting, in which case sentence 2 excluded application of the reduced rate. Applying the standard VAT rate was also compatible with EU law (see judgment of the Court of Justice of 5 March 2026).

On the basis of the Fiscal Court's finding that the applicant provided hotel guests with "free" access to an "open" Wi-Fi network in its hotels, the Federal Fiscal Court was unable to determine whether access to Wi-Fi, as with the provision of parking spaces, was a non-taxable supply or whether the network could be used only by hotel guests. Further findings were required in subsequent proceedings. In particular, it had to be determined whether, in the circumstances of the year at issue, granting access to Wi-Fi conferred a consumable benefit.

For the sake of completeness, the Senate noted that non-taxability resulting from the absence of consideration for the provision of parking spaces, and potentially for Wi-Fi, resulted neither in taxation as a deemed supply nor in a restriction of input VAT deduction. Section 3(9a) no. 1 or no. 2 of the German VAT Act did not apply because those provisions require a supply for non-business purposes, which generally cannot be assumed where a measure is intended to promote supplies for consideration. A supply pursuing that objective likewise does not restrict input VAT deduction.



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Please note:

The requirement to split supplies (section 12(2) no. 11 sentence 2 of the German VAT Act) excludes the reduced VAT rate of 7% for all additional services that do not directly serve the accommodation itself.

In its judgment, the Federal Fiscal Court also clarified the VAT treatment of additional hotel services, namely parking, fitness/wellness facilities and Wi-Fi, where they are offered without a separately stated charge. Where parking spaces are freely available without charge not only to overnight guests but also to other visitors and the general public, there is no taxable supply for consideration. The Federal Fiscal Court thereby expressly abandoned its earlier contrary case-law (XI R 11/14).

Access to fitness and wellness facilities must generally be classified as a separate supply of services that confers a consumable benefit and does not directly serve the accommodation. These services are subject to the standard VAT rate even where they are included as a flat-rate component of the accommodation price. An appropriate calculation and a service charge or business package (see the guidance in section 12.17(12) of the German VAT Application Decree) may help substantiate the taxable amount vis-à-vis the tax authorities. As with parking, it must be established whether Wi-Fi is available only to guests or to everyone.

In its further judgments of 21 May 2026 (V R 8/26 and V R 10/26), the Federal Fiscal Court consequently held that breakfast supplied to hotel guests is also subject to the standard VAT rate of 19% and does not benefit from the reduced rate for accommodation of 7%. The catering constitutes a separate supply which is subject to the standard VAT rate under the requirement to split supplies in section 12(2) no. 11 sentence 2 of the German VAT Act, even where breakfast is included in a package price or credited only on request. Unlike in case V R 11/26, the Federal Fiscal Court was unable to determine whether use of the parking spaces was taxable in those cases. In the second round of proceedings, the Fiscal Court must now establish whether the parking area could also be used by the general public without controls or was available exclusively to guests. The Federal Fiscal Court also criticised the Fiscal Court's estimate: it had estimated that an average of 34.72 vehicles belonging to hotel guests used the parking area even though the hotel actually had only 33 parking spaces.

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04 I VAT group: financial integration

Federal Fiscal Court, judgment of 2 July 2026, V R 36/24



In this judgment, the Federal Fiscal Court addressed the conditions for a VAT group under section 2(2) no. 2 of the German VAT Act (UStG) and the consequences of a change in case-law in the light of section 176(1) sentence 1 no. 3 of the German Fiscal Code (AO). The dispute concerned whether a VAT group existed in 2012 between N-GmbH as the controlling company and O-GmbH as the controlled company and the conditions under which the tax assessment issued to the controlled company may be cancelled.

Facts

O-GmbH was incorporated in 2011, with N-GmbH registered as its sole shareholder from the outset. Mr P was the sole shareholder and sole managing director with individual power of representation of N-GmbH and, at the same time, the sole managing director of O-GmbH. Under O-GmbH's articles of association, shareholders' resolutions generally required a majority of two thirds of the votes cast. Also in 2011, N-GmbH entered into a notarised trust agreement with a third company, under which it held 40% of its shares in O-GmbH on behalf of the trustor and granted the trustor a proxy to exercise the voting rights. From 15 October 2011, N-GmbH let premises in an operating building owned by it to O-GmbH as a taxable transaction.

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For the year at issue, 2012, the VAT assessed against O-GmbH totalled EUR 149,398.65. With effect from 12 October 2012, N-GmbH reacquired all rights under the trust agreement from the trustor, thereby once again consolidating all shares and voting rights in its hands. Insolvency proceedings were opened over O-GmbH's assets in 2013, and the applicant was appointed insolvency administrator. On 24 January 2014, the tax office lodged, among other items, estimated VAT claims for 2012 in the insolvency schedule.

The insolvency administrator partially contested that claim on the ground that a VAT group had existed between N-GmbH as the controlling company and O-GmbH as the controlled company. The tax office subsequently conducted an external tax audit, denied financial integration because of the trust agreement and issued a notice determining the VAT claim for inclusion in the insolvency schedule. The applicant brought an action before the Munich Fiscal Court against the ensuing decision on the objection. The court largely upheld the action for the year at issue because it found that sufficient integration existed. The tax office appealed on a point of law to the Federal Fiscal Court and continued to seek determination of the VAT claims for 2012 for inclusion in the insolvency schedule.



Grounds of the decision

The tax office's appeal on a point of law was well founded. The Fiscal Court had correctly regarded the applicant as having standing to conduct the proceedings because the insolvency court had ordered a subsequent distribution, and it had also correctly held that it was unnecessary to join N-GmbH to the proceedings under section 60(3) of the Fiscal Court Code. It had likewise correctly found that a VAT group existed during the only period still in dispute in the appeal proceedings, namely the period before 12 October 2012. However, the Fiscal Court had incorrectly assessed the consequences arising from section 176 of the German Fiscal Code.

1. Financial integration within the meaning of section 2(2) no. 2 of the German VAT Act also exists where the controlled company's articles of association require a two-thirds majority for shareholders' resolutions, provided that the controlling company holds 60% of the shares and appoints the controlled company's sole managing director.

   Under the Federal Fiscal Court's earlier case-law, financial integration under section 2(2) no. 2 of the German VAT Act required the controlling company to hold a majority of the voting rights unless the controlled company's resolutions required a higher qualified majority (Federal Fiscal Court judgments of 12 October 2016, XI R 30/14, and 15 December 2016, V R 14/16, paragraph 29). A blocking minority was insufficient. In its judgment of 18 January 2023,

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XI R 29/22, the Federal Fiscal Court changed that case-law, holding that financial integration also exists where the shareholder does not hold the necessary voting-rights majority but does hold a majority interest in the controlled company's capital and appoints its sole managing director, thereby ensuring that its will can be enforced.

- N-GmbH's 60% interest in O-GmbH was sufficient to constitute a majority interest.
- Its position as sole managing director effectively ensured that its will could be enforced.

The Federal Fiscal Court did not take the trust arrangement into account in that assessment because disregarding it would have resulted in a 100% interest and would therefore have established financial integration all the more clearly. Organisational integration followed from the identity of the management personnel, while economic integration resulted from N-GmbH's letting of the operating building to O-GmbH from 15 October 2011.

A VAT group within the meaning of section 2(2) no. 2 of the German VAT Act therefore existed both before and after 12 October 2012, when the trust rights were acquired.

2. The Fiscal Court had, however, incorrectly assessed the legal consequences of the fact that the VAT group could be recognised only as a result of the Federal Fiscal Court's judgment of 18 January 2023, XI R 29/22. The lower-court judgment therefore had to be set aside insofar as it concerned determination of the 2012 VAT claim for inclusion in the insolvency schedule.

   Cancellation of the tax assessment issued to O-GmbH for the period before 12 October 2012, on the basis of its status as a controlled company resulting only from the Federal Fiscal Court's judgment of 18 January 2023, XI R 29/22, was possible only if N-GmbH had applied, under section 172(1) sentence 1 no. 2(a) of the German Fiscal Code and before expiry of the assessment period applicable to it, for O-GmbH's transactions as controlled company before 12 October 2012 to be included in N-GmbH's own tax assessment, thereby waiving the protection of legitimate expectations available to it under section 176 of the German Fiscal Code (see Federal Fiscal Court judgment of 16 March 2023, V R 14/21, paragraph 25).

Please note:

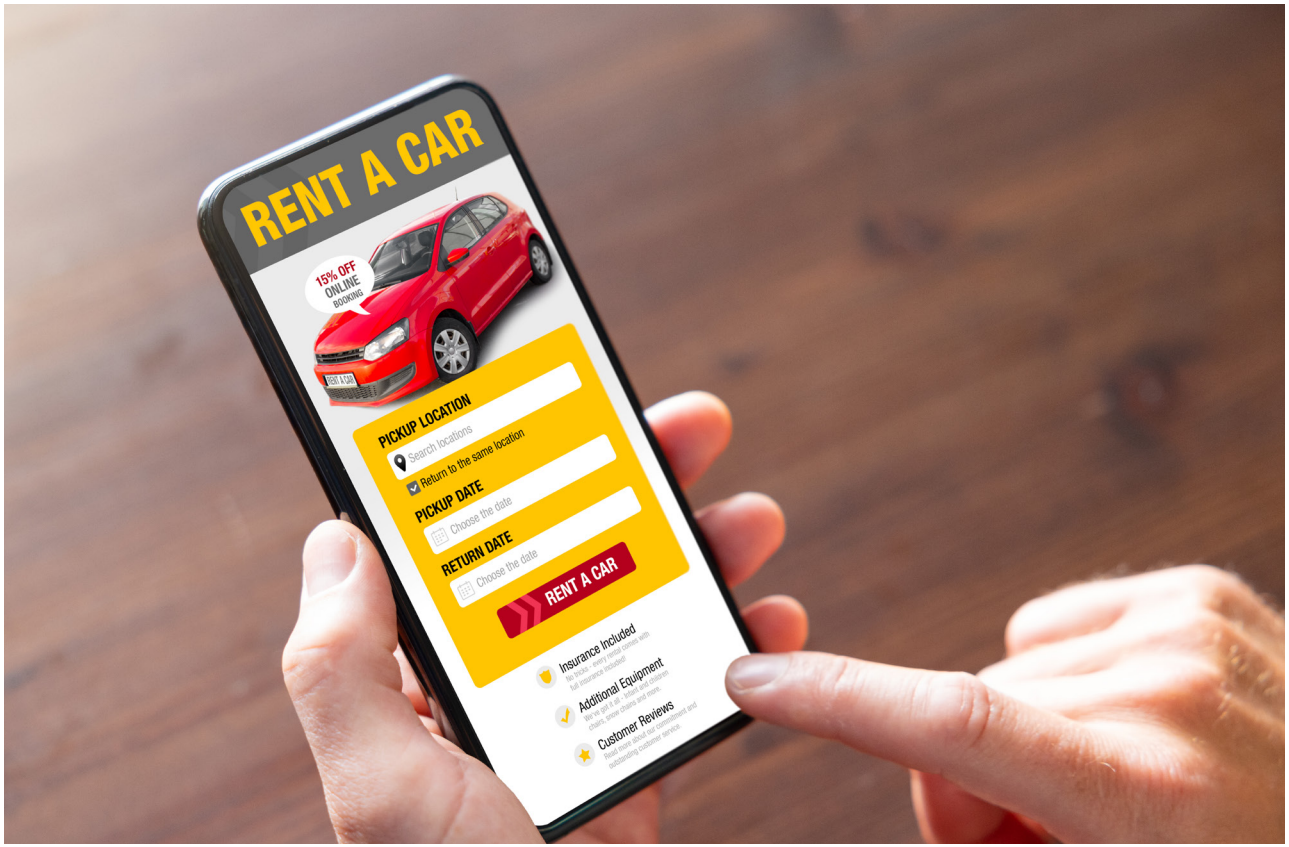
A VAT group may exist even where the articles of association impose qualified-majority requirements, provided that the controlling company holds a majority interest and appoints the sole managing director. A provision in the articles requiring a two-thirds majority does not necessarily preclude a VAT group.

Where the existence of a VAT group results only from a change in the Federal Fiscal Court's case-law, the existing tax treatment benefits from the protection of legitimate expectations under section 176(1) sentence 1 no. 3 of the German Fiscal Code. Cancellation of the tax assessment issued to the controlled company, O-GmbH, requires the controlling company, in this case N-GmbH or its insolvency administrator, to apply for amendment of its own tax assessment under section 172(1) sentence 1 no. 2(a) of the German Fiscal Code, in order to avoid inconsistent conduct and to account for the controlled company's transactions in its own assessment. Without such an application, the assessment issued to the controlled company remains in force.

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05 | Intermediary services distinguished from transactions carried out on one's own account

Federal Fiscal Court, judgment of 21 May 2026, V R 17/24



In this judgment, the Federal Fiscal Court further clarified the distinction between intermediary services and transactions carried out on one's own account in the context of cross-border rental-car bookings made through online platforms. The central question was whether a rental-car platform established in a third country, which connected German customers with German car-rental companies and collected the total price, itself supplied vehicle-rental services in Germany through a chain of successive lettings, or merely supplied intermediary services to which the reverse-charge mechanism under section 13b of the German VAT Act (UStG) applied.

Facts

In the year at issue, 2009, the applicant, which was established in a third country, operated an online platform for booking vehicles from international car-rental providers. To process the bookings, the applicant entered into a framework agreement with the joined party, a German car-rental company, covering the net rates to be made available and flexible allocation ranges. End customers booked vehicles using an online input form and were informed, both on the website and in the general terms and conditions, that the applicant acted solely as an intermediary. Once the customer had paid the

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full price to the applicant, the customer received a voucher to present when collecting the vehicle, and the applicant transferred the agreed net rate to the joined party. On collection of the rental vehicle, the customers signed a separate rental agreement directly with the joined party.

On 21 December 2016, the tax office issued a VAT assessment attributing to the applicant taxable vehicle-rental services of its own by way of a chain of successive lettings. On 25 July 2023, the Cologne Fiscal Court dismissed the action against that assessment, holding that the applicant had conducted a concealed transaction on its own account because it set the prices itself. On appeal by the applicant, the Federal Fiscal Court set aside the Fiscal Court's judgment.

Grounds of the decision

The Federal Fiscal Court set aside the judgment of the Cologne Fiscal Court, the VAT assessment and the decision on the objection, and upheld the action. The applicant had not supplied vehicle-rental services of its own in Germany, but had supplied intermediary services to the joined party. There was no concealed transaction carried out on its own account.

The Federal Fiscal Court first set out general principles governing an exchange of supplies. Where the legal relationship arose from contractual arrangements, those arrangements determined both the supplier and the recipient. The position was different, however, where contractual provisions did not fully reflect the economic and commercial reality of the transactions because they constituted a purely artificial arrangement inconsistent with that reality. On that basis, the applicant had supplied intermediary services to the joined party under the framework agreement concluded between them.



An intermediary service exists where an intermediary that does not occupy the position of either party to the contract to be arranged, and whose activity differs from the contractual supplies made by those parties, does what is necessary for two parties to enter into a contract without having any interest of its own in the content of that contract. Intermediation is a service supplied to, and remunerated by, one party to the contract as a distinct act of mediation. It may consist of identifying opportunities for one party to enter into a contract, contacting the other party, or negotiating the details of their reciprocal performance. This follows from the Court of Justice's case-law on exempt credit intermediation (judgment of 21 June 2007, Ludwig, C-453/05), and that definition of intermediation must also be applied for taxation in other areas (see Federal Fiscal Court judgment of 8 September 2011, V R 42/10).

In the case at issue, the applicant's status as intermediary was clear from the way it presented itself externally: during the booking process on the website and in the general terms and conditions, customers were clearly informed that the applicant acted solely as an intermediary. The voucher issued after payment also demonstrated that status, while the fact that payments flowed through the applicant was irrelevant when identifying the supplier.

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Contrary to the Fiscal Court's view, the applicant had not acquired the vehicles from the German car-rental company before making them available to customers. The rental volumes agreed in the framework agreement were merely adjustable ranges and did not amount to the applicant purchasing services on its own account. The actual rental agreement was concluded directly between the customer and the German car-rental company only when the vehicle was collected, so the voucher served merely as evidence of entitlement and of the payment already made.

Since the applicant established in a third country had therefore supplied a pure intermediary service to the German vehicle-rental company, it was not itself liable for the VAT. Under section 13b of the German VAT Act, the VAT on that intermediary service was payable by the German rental company as recipient. The taxable amount for the intermediary service was the difference between the total price paid by the customer and the agreed net rate, while the total price paid by the customer constituted, in full, the consideration for the vehicle-rental service supplied by the joined party.

Please note:

The Federal Fiscal Court's decision is of far-reaching significance for platform models and intermediary structures. The judgment provides sufficient guidance for practice on whether, not only in the context of rental-car intermediation, a transaction arranged by an intermediary may be attributed to that intermediary as a concealed transaction carried out on its own account even though, under civil law, it presents itself to customers as an intermediary. Put simply, the Federal Fiscal Court proceeds on the basis that the identity of the supplier cannot be determined in a manner that departs from the legal relationships existing between the parties. Accordingly, where agreements have been entered into genuinely and not merely as a sham, a departure from those legal relationships is generally unlikely still to be considered (see Wäger, DStR 2026, p. 2225).

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06 I Federal Court of Justice, order of 5 August 2026, 1 StR 197/26



Since the Federal Ministry of Finance issued its guidance of 20 May 2022 (Federal Tax Gazette I 2022, p. 738), the late submission of a recapitulative statement has become somewhat less significant in tax practice. In that guidance and the subsequent amendment to the German VAT Application Decree, the Ministry accepted that a late-submitted or corrected recapitulative statement may have retroactive effect for VAT purposes. The criminal-law consequences are different, however. The First Criminal Panel of the Federal Court of Justice has now clarified that late submission does not retroactively eliminate completed VAT evasion.

Facts

The defendant was a member of the management board of a stock corporation established in H. that traded in beverages. After being released from custody in earlier tax-criminal proceedings, he resumed the company's business activities in October 2022. In order to conduct those activities on a supposedly "tax-neutral" basis and without interference from the tax authorities, he deliberately failed to meet the company's tax obligations.

From October 2022 to September 2024, he supplied beverages to customers in France and Luxembourg and generated revenue of EUR 3,845,175.59.

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The invoices described the supplies as "tax free intra-community delivery". However, he submitted neither the annual VAT returns for 2022 and 2023 nor the advance VAT returns for Q1 to Q3 2024, and he failed to submit any recapitulative statements under section 18a of the German VAT Act to the Federal Central Tax Office (BZSt). As a result, VAT of EUR 635,694.47 was evaded.

Only shortly before the main hearing began on 8 October 2025 did the defendant submit the omitted recapitulative statements, seeking to obtain the VAT exemption retroactively and thereby avoid criminal liability. The Mannheim Regional Court convicted him of tax evasion in five cases and imposed an aggregate custodial sentence. His appeal on points of law was unsuccessful.



Grounds of the decision

The First Criminal Panel clarified that, since the Annual Tax Act 2019 implemented Article 138(1a) of the VAT Directive, the proper and timely submission of the recapitulative statement has been a substantive condition for the VAT exemption. If the recapitulative statement is missing when the annual VAT return or advance VAT return becomes due, the supply is fully taxable. Because the amounts were neither declared nor assessed when the respective returns became due, the offence of tax evasion by omission under section 370(1) no. 2 and section 370(4) sentence 1, third alternative, of the German Fiscal Code was completed, and at the same time terminated, upon expiry of the filing deadlines.

Section 370 of the German Fiscal Code is an endangerment offence protecting the public interest in the timely and complete assessment of taxes. The criminal wrong lies in the information deficit suffered by the tax authorities. Retroactive effect for tax purposes, for example under the German VAT Application Decree, merely creates a tax-law fiction and does not remove the historically established criminal wrong.

Subsequent fulfilment of tax or reporting obligations outside a voluntary disclosure that complies with the applicable form and time limits under section 371 of the German Fiscal Code does not result in immunity from prosecution. Neither legislative materials nor administrative instructions issued by the tax authorities, such as the German VAT Application Decree, can create extra-statutory grounds for extinguishing criminal liability.

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Please note:

Under Article 138(1a) of the VAT Directive, the exemption for intra-Community supplies does not apply where the supplier has failed to comply with the obligation to submit a recapitulative statement under Articles 262 and 263 of the VAT Directive, or where the statement does not contain the correct information concerning the supply required under Article 264, unless the supplier can duly justify its failure to the satisfaction of the competent authorities. The fact that Article 138(1a) itself permits the failure to be explained and remedied actually indicates that the absence of the recapitulative statement cannot constitute a definitive substantive defect. By excluding the possibility of justification provided for under EU law in tax-criminal proceedings and classifying it as a mere "fiction", the Federal Court of Justice treats conduct as completed tax evasion even though the EU VAT system regards the supply as exempt once the omission has been duly justified. Since the Federal Court of Justice considers it clear even under EU law that the recapitulative statement is a substantive condition, failures relating to that statement are effectively brought directly within the offence under section 370 of the German Fiscal Code. In cases of intentional non-reporting, this displaces the administrative-offence provision in section 26a of the German VAT Act, even though the legislature specifically provided that provision to sanction failures concerning recapitulative statements (see section 26a(2) no. 5 of the German VAT Act).

The Federal Court of Justice did not consider whether its assumption that a late or incorrect recapitulative statement constitutes a substantive defect affecting an intra-Community supply would in fact have persuaded the Court of Justice, or whether overriding principles of EU law might point in the opposite direction. This is notable because the undisputed facts established that the defendant had supplied non-alcoholic beverages to B2B customers in France and Luxembourg. There was therefore no doubt that the goods had actually reached business customers in other Member States.

Even if one follows the Federal Court of Justice's interpretation, which is not entirely beyond doubt, not every late or incorrect entry in a recapitulative statement should automatically give rise to criminal-law consequences. A mere oversight or other conduct that is not culpable for the purposes of section 370 of the German Fiscal Code should not be equated with the case decided by the Federal Court of Justice.

In the specific case, the defendant had intentionally failed to submit tax returns or recapitulative statements in order to conceal his activities from the tax authorities. His submission of the statements after the indictment and the opening of the main proceedings could no longer absolve him from liability for tax evasion that had already been completed. According to the Federal Court of Justice, that step merely constituted significant positive post-offence conduct to be taken into account in mitigation when determining the applicable sentencing ranges and the individual sentences.

Businesses should nevertheless ensure that recapitulative statements under section 18a of the German VAT Act are submitted to the Federal Central Tax Office strictly on time and without substantive errors. The Federal Central Tax Office may impose a fine under section 26a of the German VAT Act for late submission. In practice, businesses currently cannot rely on administrative guidance in the German VAT Application Decree as having an exculpatory effect under criminal law. According to the Federal Court of Justice, remedying the position for tax purposes does not protect against criminal consequences. Once the filing deadlines have expired, immunity from prosecution can be obtained only through a complete voluntary disclosure under section 371 of the German Fiscal Code that complies with the applicable form and time limits, provided that no statutory blocking grounds apply.

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07 I Input VAT deduction for site-development measures

Schleswig-Holstein Fiscal Court, judgment of 23 April 2026, 4 K 13/25



The Schleswig-Holstein Fiscal Court had to rule on the input VAT deduction of a project company controlled by public-sector shareholders that developed commercial properties and subsequently sold them subject to VAT. The issue was whether input VAT could be deducted from the development expenditure even though the development infrastructure itself and parts of the land were transferred to the municipality free of charge. The tax authorities had relied on the Federal Ministry of Finance guidance dated 24 January 2024 (Federal Tax Gazette I 2024, p. 213) and denied the input VAT deduction.

Facts

The applicant, a limited liability company in which the rural district held a majority interest, acquired and developed land in commercial areas and subsequently sold it predominantly to small and medium-sized enterprises. Development was based on agreements with the municipalities under section 11(1) no. 1 of the German Building Code. Under those agreements, the applicant carried out, in its own name and for its own account, all development measures at its own expense, including roads, paths, public spaces, lighting, water supply, wastewater disposal and firefighting-water supply. Once the measures had been completed, the public development facilities and the corresponding parts

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of the land were transferred free of charge to the municipality or the relevant special-purpose associations.

The commercially usable plots were sold as taxable supplies after waiving the exemption under section 4 no. 9(a) of the German VAT Act in accordance with section 9(1) of that Act, with the purchaser liable for the VAT under section 13b. The applicant included all development costs as cost components in the price per square metre of the commercial land sold. Where development expenditure directly benefited individual neighbouring owners, it was charged to them separately subject to VAT; the remaining development expenditure was incorporated into the general selling price.

During a special VAT audit, the tax office reduced the input VAT claimed on the development services, arguing that those services were directly connected with the transfer of the development infrastructure to the municipality free of charge. Since no option to tax under section 9 of the German VAT Act was available for supplies of land to a public-law entity for its public sphere, the tax office considered the transfer free of charge comparable to an exempt supply and therefore took the view that section 15(2) no. 1 of the German VAT Act excluded the input VAT deduction.

Grounds of the decision

The Fiscal Court based its contrary view on Articles 168 and 16 of the VAT Directive and on the case-law of the Court of Justice (judgments of 16 September 2020, C-528/19, Mitteldeutsche Hartstein-Industrie, and 1 October 2020, C-405/19, Vos Aannemingen) and of the Federal Fiscal Court (judgment of 16 December 2020, XI R 26/20).

Under section 15(1) sentence 1 no. 1 of the German VAT Act, interpreted in conformity with the VAT Directive, a taxable person may deduct input VAT to the extent that it uses supplies for its business and thus for its taxed economic activities. This requires a direct and immediate link or, where there is no link to a specific output transaction, the input supplies must form part of the general cost components of the economic activity. The court found that the site-development measures were an indispensable prerequisite for marketing the commercial plots as developed land at the calculated prices. The development expenditure was fully incorporated into the selling prices of the taxable supplies of land and did not exceed what was necessary for the purposes of the business.

As regards the transfer of the development infrastructure to the municipality free of charge, the Fiscal Court denied that there was a taxable exchange of supplies under section 1(1) sentence 1 of the German VAT Act. In the absence of consideration, there was no supply for consideration; consequently, neither an exemption under section 4 of the German VAT Act nor a related exclusion from input VAT deduction under section 15(2) no. 1 applied.

A deemed supply free of charge under section 3(1b) sentence 1 no. 3 or section 3(9a) no. 2 of the German VAT Act, consistently with Article 16 of the VAT Directive, arises only where there is a risk of untaxed final consumption. According to the Court of Justice and the Federal Fiscal Court, that is not the case where:

- the input supply is used primarily for the taxable person's own needs;
- the supply is necessary for the business and does not go beyond what is required;
- the costs are included, as a matter of calculation, in the prices of the output transactions; and
- the advantage obtained by the third party, in this case the general public, is merely incidental.

The Fiscal Court considered those criteria to be met in the case at issue. The development services essentially served to market the commercial land in the applicant's interests; the advantages accruing to the municipality and the general public were merely a consequence of the infrastructure measures required for the business. Consumption of the input supplies was fully captured by taxation of the developed plots as the end product, so additional taxation as a deemed supply free of charge would result in a double charge contrary to the system.

In the Senate's view, the Federal Ministry of Finance guidance of 24 January 2024 did not conflict with that assessment. In particular, paragraphs 5 to 9 incorporated the principles developed by the EU courts on an "indirect" basis for input VAT deduction and clarified that an advantage to a third party is harmless provided that it remains merely incidental and the input supplies do not exceed what is necessary for taxing the output transactions.

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Please note:

The Federal Ministry of Finance guidance of 24 January 2024 cited by the Fiscal Court addresses the VAT consequences arising from the Federal Fiscal Court's judgment of 16 December 2020. Under that case-law, input VAT deduction in respect of an input supply is permissible even where the supply is subsequently provided to a third party free of charge, provided that this indirectly enables the taxable person's own business activity. The conditions are that the input supply does not exceed what is necessary or indispensable, its costs are included in the calculation of the prices of the taxable person's own taxable output transactions, and the advantage to the third party is at most incidental. Where those conditions are met, there is no risk of untaxed final consumption and no deemed supply free of charge is taxed.

Those principles were newly inserted or adjusted at several points in the German VAT Application Decree. Section 3.2(4) clarifies that sections 3(1b) and 3(9a) of the German VAT Act must be interpreted restrictively in conformity with EU law, with the result that a deemed supply free of charge is not taxed where there is no risk of untaxed final consumption.

As regards the transfer of development infrastructure or development measures, the guidance states that, in principle, there is no need to amend the earlier Federal Ministry of Finance guidance of 7 June 2012. This is because the transfer of development services free of charge will generally result in untaxed final consumption. Input VAT deduction for development measures is possible only under the principles developed by the Federal Fiscal Court. Authorisation to improve a municipal road does not give rise to a transaction equivalent to a barter transaction because the improvement measure is not consideration for the authorisation. If the development infrastructure is transferred to the municipality free of charge after completion, no deemed supply free of charge is taxed where the stated conditions are met.

The Fiscal Court considered that its judgment did not conflict with the Federal Ministry of Finance guidance because the guidance clarified that an indirect basis is sufficient for input VAT deduction. It remains to be seen whether, in the pending appeal proceedings V R 19/26, the Federal Fiscal Court will follow the applicant or the tax authorities. The latter contend that the development services received are directly linked to supplies of land to the municipality that are exempt from VAT and therefore preclude input VAT deduction.

For practical purposes, irrespective of the outcome of the appeal proceedings, businesses should carefully document the calculation of land prices including development costs and the relevant contractual basis, in particular development agreements and land-purchase agreements containing an option under section 9 of the German VAT Act and a reference to section 13b of that Act.

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08 I Transfer of an electricity and gas network

Düsseldorf Fiscal Court, judgment of 21 August 2026, 1 K 1124/21 U



The Düsseldorf Fiscal Court ruled on the VAT treatment of an energy utility's transfer of its network to a subsidiary. The central issue was whether the hive-down of the electricity and gas networks completed in 2010 constituted a non-taxable transfer of a business as a going concern.

Facts

The applicant operates an energy-supply business that supplies end customers with electricity, gas and water. To comply with the statutory requirement under section 6 et seq. of the German Energy Industry Act (EnWG) to separate network operation from distribution, the applicant established M. GmbH as a subsidiary in 2004. With effect from 1 January 2006, the applicant leased its electricity and gas network to M. GmbH for five years. Civil-law ownership and personnel remained with the applicant, which ensured technical operation under a separate operating-management agreement using a so-called "small network company" model. By a hive-down and transfer agreement dated 17 August 2010, the applicant transferred its electricity and gas network business unit, including operating management and personnel, to M. GmbH by way of partial universal succession with retroactive effect from 1 January 2010. In return, it received an interest in M. GmbH through an increase in the share capital.

Grounds of the decision

The Düsseldorf Fiscal Court dismissed the action. It held that the contribution was taxable as a transaction equivalent to a barter transaction and rejected the existence of a transfer of a business as a going concern under section 1(1a) of the German VAT Act. The taxable amount corresponded to the carrying amounts of the networks without any reduction for construction-cost contributions.

A contribution to a corporation in return for the grant or increase of shareholder rights constituted a transaction equivalent to a barter transaction involving two reciprocal supplies for consideration, namely the contribution of the networks and the grant of shares. The supply was made on the basis of a separate contractual arrangement, the hive-down and transfer agreement, and was not remunerated by the applicant's existing participation in the profits and losses of M. GmbH. It was therefore not a non-taxable shareholder contribution, but an exchange of supplies.

At the time of the transfer, M. GmbH was an independent taxable person within the meaning of section 2(1) of the German VAT Act. No VAT group existed under section 2(2) no. 2 because organisational integration was lacking. Although M. GmbH

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was financially and economically integrated into the applicant, there were no overlapping members of management. The sole managing director of M. GmbH was neither a member of the applicant's management board nor an authorised signatory of the applicant. In addition, section 6 of the German Energy Industry Act required the network operator to be independent of the energy supplier's other areas of activity. A VAT group was therefore excluded.

There was no non-taxable transfer of a business as a going concern under section 1(1a) of the German VAT Act because this would have required the acquirer to continue the transferor's business activity. The applicant continued its principal activity of supplying end customers with electricity and gas unchanged. M. GmbH did not continue the applicant's network-leasing business; instead, as owner, it thereafter operated the networks for its own operational purposes.

The contribution of the networks in return for shareholder rights was a transaction equivalent to a barter transaction. The taxable amount was determined under sections 10(1) and (2) of the German VAT Act and Article 73 of the VAT Directive. Since the parties had agreed no quantified cash amount and had not performed a business valuation of the assets contributed, the value of the consideration was difficult to determine. It was therefore permissible to use the subjective value, namely the expenditure incurred by the supplier to obtain the consideration. The Fiscal Court treated the networks' tax carrying amounts at the time of contribution as the applicant's relevant expenditure and thus as the taxable amount for VAT purposes.

The Fiscal Court rejected the applicant's argument that the taxable amount should be reduced by the liabilities for construction-cost contributions shown in the transfer balance sheet, specifically special items and deferred-income items. Construction-cost contributions were financing contributions made by third parties, namely connection users, in return for more favourable electricity prices; they did not reduce the network owner's actual production costs. Recognition as liabilities was based on a tax-law option to spread the income over time and did not represent an impairment in the value of the transferred networks. Allowing individual liability items to be deducted in isolation would conflict with the principles governing the subjective concept of consideration.

Accordingly, the taxable amount for the contribution corresponded to the carrying amounts of the networks without deduction of the construction-cost contributions.

Please note:

The Düsseldorf Fiscal Court's judgment is of considerable practical importance for energy utilities and other infrastructure operators that transfer business areas between network and distribution companies in response to regulatory requirements.

Where utility networks are initially leased and ownership is transferred only years later, the acquirer, as lessee, will generally not be continuing the transferor's leasing activity. The transfer of ownership is subject to VAT and does not constitute a transfer of a business as a going concern under section 1(1a) of the German VAT Act.

Because section 6 of the German Energy Industry Act requires the network operation to be independent in personnel and functional terms, organisational integration is frequently absent in energy-sector group structures. Transactions between the parent company and the network company therefore cannot be treated as non-taxable intra-group transactions.

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09 I Supplementary rules on mandatory e-invoicing

Federal Ministry of Finance, guidance dated 15 October 2026, ref. III C 5 – S 7287-a/00019/021/017



The Federal Ministry of Finance has now published a third guidance document on the introduction of mandatory e-invoicing for domestic B2B transactions. The current guidance supplements its two predecessors, each dated 15 October 2024 and 2025, with clarifications relevant to practice and amends several sections of the German VAT Application Decree.

Key changes:

- Invoices for down payments, advance payments and progress payments issued before 1 January 2027, or before 1 January 2028 for businesses with revenue below EUR 800,000, do not have to be transmitted as e-invoices (paragraph 2), even if the supply or payment does not take place until 2027 or 2028.
- Non-objection rule until 30 June 2030: partial consideration already received may be deducted in final invoices either by combining BT-113 and BT-22, with the amount already paid entered as a total in BT-113 and details of the partial consideration included in BT-22, or, alternatively, by continuing to show the consideration already received in an embedded attachment that is expressly referenced in the structured part of the e-invoice.

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- Protection of legitimate expectations in mass-market business: where the customer base is mixed, for example B2B and B2C customers, it is sufficient to establish the customer's status as a taxable person when the contract is entered into or amended; ongoing enquiries are not required (paragraphs 5 to 7).
- The description of the supply must fulfil its control function but need not be exhaustive. Not every detail has to be included in the structured part; additional information may be provided in an embedded attachment. Whether a description is sufficient for VAT purposes nevertheless continues to depend on the circumstances of the individual case (paragraphs 10 to 12).
- Construction services: it is sufficient for the structured part to list the individual trades and the aggregate amounts; a detailed specification of services may be attached. Alternatively, the parties may agree on other suitable methods under civil law, such as use of an extension (paragraphs 13 and 14).
- Where reductions in consideration, such as bonuses, cash discounts or rebates, are agreed in advance and are not already included in the consideration, the invoice must clearly refer to the agreement. A merely general reference, for example to a written agreement, will not be challenged if the agreement can be produced promptly and reviewed easily and unambiguously (paragraphs 15 and 16).
- Gross-price invoices, for example for fixed-price books: until 31 December 2027, a simplification applies to XRechnung and ZUGFeRD because no gross-invoice format is currently available (paragraphs 17 to 19).
- Invoice correction: the guidance clarifies that no particular Invoice Type Code (BT-3) is prescribed for a specific type of correction and that the overall circumstances are decisive (paragraphs 20 and 21). In practice, various approaches are therefore conceivable, particularly using codes 380, 381 and 384.
- Important clarification on the consequences of errors: unlike a content error, a business-rule error does not automatically mean that an invoice is improper for VAT purposes. The purely technical classification under EN 16931 is not decisive for the VAT assessment (paragraphs 22 and 23). A technically defective invoice may therefore still be a proper invoice for VAT purposes and may entitle the recipient to deduct input VAT. The mandatory particulars under sections 14 and 14a of the German VAT Act remain decisive.
- A transitional rule also applies to assessments of public-law charges until 30 June 2030, allowing them to continue to be issued as other invoices (paragraphs 26 and 27).
- Important clarification: issuing another type of invoice despite an existing e-invoicing obligation does not constitute an administrative offence under section 26a(2) no. 1 of the German VAT Act (paragraph 28).



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Please note:

The guidance provides greater legal certainty and flexibility on several points relevant to practice, particularly for down-payment processes, construction services, gross-price transactions and invoicing to public authorities. It is also now clear that there is no single correct method for corrections. Rather, as is already the case today, various methods are available for correcting an invoice.

The clarification regarding business-rule errors is particularly important. It reduces the risk that minor technical defects in an e-invoice will automatically result in the loss of input VAT deduction. However, the mandatory particulars required under sections 14 and 14a of the German VAT Act must still be complete.

The clarification on descriptions of supplies also provides meaningful practical relief. It is sufficient for the nature, scope, content and, where applicable, place of the supply to be stated clearly enough in the structured part to fulfil the tax control function. An exhaustive description covering every detail is expressly not required. Additional information, such as time records, may be moved to an embedded attachment. This reduces the effort involved in converting invoice templates and the risk of formal objections based on an allegedly insufficient description.

What needs to be done?

- Review your invoicing and validation processes in light of the new clarifications.
- Where appropriate, use the transitional rules for down-payment invoices, construction services and gross-price transactions.
- Determine which department or role will review format, business-rule and content errors in e-invoices and who will initiate corrections and, where necessary, correction by e-invoice in response to objections, for example those generated by validation tools.
- Align your internal approval and escalation procedures for invoice corrections so that, where required, the correction is again issued as an e-invoice.
- Ensure that the new processes are properly documented and reflected in your work instructions.

Watch now: **Drittes BMF-Schreiben zur E-Rechnung – KPMG Video Insights**

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10 I VAT exemption for the letting and leasing of operating equipment

Federal Ministry of Finance, guidance dated 19 October 2026, ref. III C 3 – S 7168/00035/001/102



The guidance concerns the Federal Fiscal Court order V R 7/23 of 17 August 2023, which followed the judgment of the Court of Justice of 4 May 2023 in Case C-516/21, Finanzamt X.

Departing from its previous case-law, the Federal Fiscal Court adopted the view, for the purposes of interpreting section 4 no. 12 sentence 2 of the German VAT Act, that where a single economic supply consists of a VAT-exempt principal supply in the form of the letting or leasing of immovable property and an ancillary supply inseparably linked to that principal supply, the ancillary supply must receive the same VAT treatment as the principal supply.

Following the Federal Fiscal Court's decision, the previous view can no longer be maintained that section 4 no. 12 sentence 2 of the German VAT Act is inapplicable to the letting or leasing of operating equipment where that letting or leasing is ancillary to the leasing of immovable property as the principal supply. Under the previous administrative position, the letting and leasing of operating equipment had always been regarded as subject to VAT. The revised approach also applies to intermediate lettings of sports facilities and to the granting of rights to use other facilities containing operating equipment.

The opening sentence of section 4.12.10 of the German VAT Application Decree, stating that the letting and leasing of operating equipment is subject to VAT under section 4 no. 12 sentence 2 of the German VAT Act even where that equipment forms an integral part of the immovable property, is therefore deleted and replaced by the following principles.

The letting and leasing of buildings together with operating equipment may constitute a single supply. Whether the letting and leasing of a building together with operating equipment, for example a sports facility, constitutes a single supply characterised either by the letting and leasing of the building or by the letting and leasing of the operating equipment must be assessed under the general rules governing single supplies set out in section 3.10 of the German VAT Application Decree. The essential features of the transaction must be identified in order to determine the single supply made by the business to the recipient. According to the case-law, this assessment must be made from the perspective of the average consumer. The economic substance of the supply is decisive.

Where the letting and leasing of operating equipment is ancillary to the letting and leasing of immovable property, it is not taxable under section 4 no.

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12 sentence 2 of the German VAT Act. Instead, the single supply as a whole qualifies for the exemption under section 4 no. 12 of that Act.

The letting and leasing of a building together with a rooftop photovoltaic system constitutes two separate supplies.

Amendment to section 4.12.11 of the German VAT Application Decree: granting rights to use sports facilities and other facilities

As regards the granting of rights to use sports facilities and other facilities, paragraph 2 of section 4.12.11 of the German VAT Application Decree is revised for intermediate-letting arrangements. Where a business makes an entire sports facility, including operating equipment, available to another business as operator for onward supply to third parties, the general rules governing single supplies apply when determining whether a single supply exists. An intermediate letting is not precluded where the operator, in addition to making the facility available to third parties, also uses the sports facility itself as final consumer, for example as part of its non-economic activities in the strict sense.

Where there is a single supply, the grant of the immovable property is the principal supply if making the operating equipment available is merely a means of enjoying the supplier's principal supply under optimum conditions, as described in section 3.10(5) of the German VAT Application Decree. This applies in particular to multipurpose halls where the possibility of practising sport protected from the weather and the use of changing and sanitary facilities are predominant; see Federal Fiscal Court judgment of 17 December 2008, XI R 23/08, Federal Tax Gazette II 2010, p. 208.

However, where the complex operating equipment is what enables the facility to be used for its intended purpose, for example in swimming pools, climbing halls or golf courses, the making available of that operating equipment must generally be regarded as the principal supply. The grant of the right to use the facility is then taxable in its entirety under section 4 no. 12 sentence 2 of the German VAT Act.

In the exceptional case where there is no single supply, the grant of the right to use the facility to the operator must be split into a VAT-exempt grant of immovable property and a taxable letting and leasing of operating equipment. Immovable property components and operating equipment are distinguished in accordance with valuation-law principles.

Paragraphs 13 and 18 of the Federal Ministry of Finance guidance dated 17 April 2003, IV B 7-S 7100-77/03, Federal Tax Gazette I, p. 279, are repealed. The principles set out in the new guidance apply in all open cases. For transactions carried out before 1 January 2027, including for input VAT deduction purposes, no objection will be raised where the parties consistently apply the version of the German VAT Application Decree that remained in force until 19 October 2026.

Please note:

With the new guidance, the tax authorities implement the case-law of the Court of Justice and the Federal Fiscal Court under which there is no longer an automatic requirement to carve out operating equipment as a taxable supply; in other words, there is no longer a general requirement to split the supply. Where the provision of operating equipment is absorbed into a VAT-exempt letting of immovable property as a subordinate ancillary supply, the overall supply is exempt under section 4 no. 12 of the German VAT Act.

The decisive factor is the economic substance from the tenant's perspective, namely whether use of the premises, which is exempt, or provision of equipment, which is taxable, predominates. For long-term contracts, it should be noted that the transitional rule expires at the end of 2026, meaning that such contracts may need to be amended.

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Events

NEW – Our VAT News Talk

Following the successful launch on 23 April 2026, Rainer Weymüller, former Presiding Judge at the Munich Fiscal Court and Of Counsel at KPMG, and Dr. Oliver Buttenhauser, Partner at KPMG, will continue to provide further insights into the topics covered in this newsletter and discuss their practical implications together with participants.

Please save the following dates:

19 November 2026

18 February 2027

(11:00 a.m. – 12:00 p.m. CET in each case)

You can register directly here:

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

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TaxNewsFlash Indirect Tax

KPMG articles on indirect taxes from around the world



You can find the following and other articles here.

29 October – Brazil:
Federal Court of Accounts approves 11.3% reference rate for CBS

29 October – UK:
Tax measures in Autumn Budget 2026

28 October – Ireland:
Proposed mandatory e-invoicing and real-time VAT reporting from November 2028

28 October – KPMG report:
Shipping and offshore tax update (November 2026)

28 October – Philippines:
Application of creditable withholding tax (CWT) on invoices and transition rules for invoicing systems

28 October – UK:
HMRC publishes B2B e-invoicing implementation roadmap from April 2029

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[1] Trade & Customs

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