PKF

Newsletter

Key Issue

VAT in the Digital Age – Implications of digitalisation for the VAT system in the EU

04 | 23

Dear Readers,

The currently applicable VAT legislation is still heavily influenced by the 'old economy' and traditional relationships connected with the supply of goods and services. However, digitalisation and new business models mean that adjustments likewise need to be made to tax regulations. That is why our Key Issue in this newsletter edition is about the EU Commission's **'ViDA – VAT in the Digital Age'** initiative. Here, we discuss the main aspects of the **VAT system modernisation** that should be transposed into German national law by 2028. In the second report in our Tax section, we provide information about the options (and limits) available to corporations for **offsetting tax paid abroad against German tax**.

For some time now, it has been obvious that new requirements apply for cash registers, for example, every time you go into a bakery and see the receipts that (almost) nobody needs. In the Accounting and Finance section we discuss **other requirements** that **operators of cash register systems** have had to comply with since the start of the year.

Regulations related to corporate conversions are also being updated. In our Legal section, in the second report there, we have produced an overview of the EU Directive on Cross-Border Conversions that was transposed into German law already at the start of the year. The core elements are the rules for **cross-border mergers, divisions and changes of legal form**. Before that, we discuss a Federal Labour Court ruling on something that should actually be self-evident, namely, equal pay - a byword for the situation where there **cannot be pay gaps** between men and women **for equivalent work**.

In the brief reports section that follows at the end of the newsletter, employers should be aware of the obligation to bear costs that could result from a **ruling on spectacles in the workplace** and landlords should note the re-introduction of the **special depreciation allowance for new build rental apartments**.

We then continue our journey around the international PKF locations through the illustrations that break up the reports from our experts - this time we visit the Seychelles. This is where the first regional PKF meeting for the Africa region took place after COVID, last year.

We hope that you will find the information in this edition to be interesting.

Your Team at PKF

St. Pierre –
An island in the Curieuse Marine National Park, Seychelles

Front cover photo: Victoria, capital city of Seychelles, on Mahé

Key Issue

VAT in the Digital Age

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TAX

Katinka Kammerer

VAT in the Digital Age – Implications of digitalisation for the VAT system in the EU

On 8.12.2022, as part of its VAT in the Digital Age (ViDA) initiative, the EU Commission published a much-noted draft directive. The focus here was on the harmonisation of VAT systems in response to the changes in the business environment stemming from the accelerating digitalisation. The plan is to implement the amendments to the EU Directive on the VAT system between 2024 and 2028.

1. Need for reform

The current EU rules on value-added tax (VAT) are frequently no longer appropriate for today's supply relationships and business models in their global and digital forms. In 2020, a so-called Tax Action Plan was approved by the EU Commission with a view to rejuvenating the VAT system. The intention is for the package of changes set out in ViDA, which has now been published, to be implemented from 1.1.2025, although the further timescale for the implementation is still open-ended.

The planned changes are comprehensive so it can be said that the VAT reform will be thorough. The reform package provides for three core elements, namely:

- Single VAT Registration (SVR),
- Extension of applicability of the deemed supplier regime to services and
- Digital Reporting Requirements (DRR) / electronic invoicing.

Victoria – View over the Indian Ocean to Eden Island

2. Single VAT Registration (SVR) will usher in …

Businesses that provide cross-border services, frequently, have to register (several times) for VAT purposes in different EU Member States as a result. The aim of the new rules is to centralise the reporting in the supplying business' country of domicile of as many business transactions as possible that, currently, would be subject to a registration/reporting requirement in different EU Member States. This pooling should generate both cost and time savings for businesses subject to the reporting requirement and also reduce administrative expenses for the authorities.

As a result, there will be no EU identification number or EU registration. Instead, the centralised reporting will occur via registering in the supplying business' country of domicile. This system is reminiscent of the One-Stop-Shop scheme (OSS) and there are indeed plans to extend this in the course of the reform because SVR is supposed to cover many more business transactions that would originally have resulted in having to register for VAT in different EU Member States. At the same time, it should also be possible to make use of the so-called Import-One-Stop-Shop (IOSS).

… major procedural changes

The planned changes can be categorised according to the status of the recipient of the supply and we have set them out in the table below to provide an enhanced overview.

Scope of the rules	Envisaged procedure	Comments
(1) Business-to-business transactions (B2B)	» If the recipient of the supply is registered for VAT in the recipient country and the supplier is not domiciled there then for all supplies (supplies of goods and services) the tax liability will be reversed (reverse charge). Until 2028, the supplying enterprise's report will be made via the RS and, from 2028 onwards, via the newly implemented DRR system. » At the turn of 2025/2026, the simplification rule for consignment warehouses will be abolished. The transitional arrangement being considered is that for goods that have been warehoused by 31.12.2024 there would be a grace period of 12 months during which this would not result in a requirement to register for VAT in the warehousing country. During the grace period, these warehoused goods would thus still fall under the original consignment warehouse rules. » In the event of an intra-Community transfer, in the future, the report would have to be submitted via the OSS procedure and no longer via the receiving Member State. The corresponding intra-Community acquisition will remain tax-exempt. Here, the proposal excludes capital goods as well as goods where VAT would not be fully deductible.	Exception – VAT margin scheme – in this case there will be no reversal of the tax liability and, moreover, the transactions would have to be reported via the OSS procedure.
(2) Business-to-consumer transactions (B2C)	» Extension of reporting via the OSS procedure: • Tax-exempt as well as taxable supplies of goods (also including the installation component) • Supply of gas, electricity, heating and cooling • Supply of goods on board various modes of transportation » Distance sales from third countries that fall under the deemed supplier regime will need to be filed online via the IOSS procedure.	In the case of distance sales via third countries, the intention is to keep the €150 threshold.
(3) Sales transactions, irrespective of recipient status, where the recipient of the supplies can be a business or also a consumer	As of 1.1.2025, all sales of goods within the EU that involve the use of an electronic interface (platform) will be subject to the deemed supplier regime. A chain transaction will be simulated here. This interface will be the recipient of the trader's tax-exempt supply to it and the supplying enterprise of its supply to the end customer taxed at the normal rate.	A delivery situation will also be presumed in the case of an intra-Community transfer by the trader to the interface as well as in the case of a return delivery by the interface to the trader

Table: Procedural changes under SVR

3. Extension of applicability of the deemed supplier regime to services

Electronic platforms are not just trading hubs for goods, but also contact points for service intermediaries. With a view to creating the same competitive conditions for this market in terms of VAT, the new rules aim to extend the applicability, as of 1.1.2025, of the previously described deemed supplier regime to specific services that are provided via electronic interfaces. The services that will then be included are:

- short-term accommodation rental (max. 45 days) via rental portals and
- passenger transport via taxi service portals that is provided by private individuals or small enterprises (that themselves do not charge VAT) and by companies and private individuals who are not domiciled in the EU (but in third countries).

Please note: The new rules should level the playing field here because, contrary to the rules for traditional providers (hotels, etc.), private individuals or even small enterprises that provide accommodation rental or passenger transport services via platforms do not charge VAT.

From a VAT perspective, a service will be deemed to have been provided to the platform. This service will be exempt from VAT without the right to deduct. The platform will be deemed to have sold the service to the customer and the service will fall within the scope of VAT and be liable for VAT (VAT shown on the invoice that is issued). Here, the service that the platform is deemed to have provided will not affect its right to deduct input tax.

4. Digital Reporting Requirements (DRR) / electronic invoicing

4.1 Background – Mandatory e-invoicing

The background to this new provision is the strategy to combat VAT fraud and it will speed up the detection of so-called missing traders in a carousel VAT fraud and, consequently, make it possible to catch them quickly. There will no longer be a requirement to file VAT recapitulative statements (RS) because these will be replaced with a system of digital reporting requirements (so-called DRR system) that will enable standardised and short-term reporting. This will be coupled with mandatory e-invoicing for certain services.

4.2 Implementation steps

As a first step in implementing this, as of 2024, there will be a new definition in the VAT System Directive as to what constitutes an electronic invoice. According to this, an electronic invoice has to be both issued and sent in a structured electronic format. In step 2, the aim is that, as of 1.1.2028, for all intra-Community supplies (B2B) as

Anse Source d'Argent on La Digue

well as services that result in a shift in the tax liability, the following will be introduced:

(1) Electronic invoicing obligation – The electronic invoice has to be issued within two working days after the taxable event occurs (i.e. the delivery/performance date is relevant). Then, in conjunction with this …

» **… collective invoices,** that cover several individual deliveries or services in a particular month will no longer be possible or permitted (please refer to reporting requirement in the DRR System),

» **… invoices in PDF format** will no longer be acceptable as electronic invoices for VAT purposes. Instead, an electronic invoice will be generated in a structured electronic format that allows for automatic and electronic processing.

Please note: Furthermore, more information will be needed than under the current invoice content requirements, e.g., bank details/IBAN of the supplying enterprise and the payment terms agreement.

The aim is for the individual Member States to allow e-invoices without prior central clearing. To this end, there is an intention to adapt the current EU-wide e-invoicing system to the new planned EU standard.

Please note: The new rules will initially not apply to services that are purely national or related to third countries. However, it remains to be seen whether or not, at the national level, the government will also resort to a structured electronic invoice format for national services. The provision envisaged in the German coalition agreement on invoicing in connection with combating VAT fraud would support this.

(2) Digital reporting obligation via the DRR system – The respective report in the DRR system has to be filed online no later than two working days after the e-invoice is issued. In view of the short reporting period, collective invoices will no longer be possible or permitted.

Please note: It will be possible for a third party to submit the data on behalf of the taxpayer. Another change will be the mandatory reporting of intra-Community acquisitions of goods and services.

5. Outlook

The next step for the implementation of the reform will require the unanimous approval of all 27 Member States. At this juncture, it remains to be seen how, when and in what form the implementation of the new rules will be carried out. For businesses that are affected by the new rules, the reform will give rise to advantages in terms of reporting requirements and, in particular, the smaller number of foreign VAT registrations

Recommendation

First and foremost, however, procedural and systemic adjustments will be necessary, in particular, in the area of e-invoicing. To prepare for this, we would recommend monitoring developments and carefully examining your own business transactions and processes with respect to any adjustments that might be needed.

StBin [German tax consultant] Saskia Weber

Per country limitation when claiming foreign tax credit

Under German tax law, the crediting of foreign taxes against German corporation tax constitutes one of the standard methods for avoiding double taxation. However, given that there are maximum amounts restricted by law that may be credited (per country limitation), it is not always possible to entirely avoid double taxation.

1. Basic principles for crediting foreign taxes

Corporations with unlimited tax liability in Germany also have to pay tax in Germany on their foreign income (Section 1(2) of the Corporation Tax Act [Körperschaftsteuergesetz, KStG], so-called worldwide income principle). In Section 34d of the Income Tax Act [Einkommenssteuergesetz, EStG] (Section 26(1) KStG in conjunction with Section 34c EStG) German legislators have definitively set out what income is considered to be foreign income. Under German tax law, foreign income has to be defined and determined.

Germany has concluded double taxation agreements (DTA) with many foreign states. These agreements govern which country has the right to collect tax on the foreign


Hindu-Temple in Victoria, Mahé

income and provide the appropriate method for avoiding potential double taxation. It is not uncommon for the credit method to come into play.

Even if there is no such DTA, Section 26 KStG likewise governs how double taxation of foreign income can be avoided or reduced (not possible with the exemption method, cf. Section 34c(6) sentence 2 in conjunction with (1) EStG).

Please note: As an alternative to crediting, it is possible, upon request, to claim a deduction of the foreign tax when determining domestic income (business expenses); this follows from Section 26(1) KStG in conjunction with Section 34c(2) EStG.

2. Determining the maximum amount of the tax credit (per country limitation)

Foreign taxes can be credited against German corporation tax, subject to the conditions of Section 34c EStG, up to a maximum amount of the German tax applicable to such foreign income. The calculation is based on the following formula:

$$\text{Maximum amount} = \frac{\text{corporation tax x foreign income}}{\text{taxable income}}$$

This calculation has to be performed separately for each individual foreign state. Here, only the foreign tax assessed and paid on income from a foreign state and minus any reduction entitlement that arose there may be credited (Section 26(1) KStG in conjunction with Section 34c(7) No.1 EStG, Section 68a of the Income Tax Implementing Regulation [Einkommensteuer-Durchführungsverordnung, EStDV]). It is not possible to carry forward or carry back unused portions of the maximum amount that can be credited, nor can these be offset between different countries.

A particular condition for the foreign income to be included is that this income has to have been taxed in accordance with the laws in force in the foreign state. It is not important here whether or not the income would also have been tax-exempt under German law. Foreign income does not include such income that would be tax-exempt as a result of the DTA (exemption method).

Please note: When determining the respective country-specific maximum amounts that can be credited it should be taken into account that business expenses have to be deducted from the foreign income if there is an economic connection (direct and indirect) between the two. Here, this connection to the specific taxed

income abroad has to have been in place during the assessment year, i.e. foreign operations are not sufficient.

3. Effects of per country limitation

The point and purpose behind the per country limitation regulations consist in preventing German corporations from being able to use the portion of a country's foreign tax that exceeds German tax as a credit against income from a different foreign country where the tax rate is low. Furthermore, the limitation means that incomes that have been variously taxed at low and high rates will be added together if they originate from the same country.

Please note

The German Trade Tax Act basically does not have any corresponding foreign tax credit rules. However, the Hesse tax court, in its ruling of 26.8.2020, decided that a trade tax offset could indeed be possible. A precondition for this is that the DTA has to include a clause to the effect that foreign tax may be offset against "German tax (on income)" (Hesse tax court ruling of 26.8.2020, case reference: 8 K 1860/16, EFG 2021 p. 779). In this case, it was thus possible for the foreign withholding tax that had been deducted on taxable capital gains to be offset against German trade tax.

ACCOUNTING & FINANCE

Katharina Geschke

New standards for cash register systems – What operators of cash register systems will have to consider in the future

Since 1.1.2020, businesses have had to comply with the new legal provisions of the Cash Register Anti-Tampering Ordinance *(Kassensicherungsverordnung, KassenSichV)* when running their cash register systems. Here, in particular, the new DSFinV-K format [an acronym for *Digitale Schnittstelle der Finanzverwaltung* für Kassensysteme, or interface of the tax authorities for cash register systems] plays an important role for businesses. Any exemptions for cash registers that could not be retrofitted expired on 31.12.2022. Therefore, since 1.1.2023 at the latest, all operators of cash register systems have been obliged to provide cash register data in KassenSichV-compliant DSFinV-K format.

1. The new standard

1.1 The main features of the Cash Register Anti-Tampering Ordinance *(KassenSichV)*

The 'Principles of Proper Keeping and Retention of Accounts, Records and Documents in Electronic Form' *(Grundsätze zur ordnungsmäßigen Führung und Aufbewahrung von Büchern, Aufzeichnungen und Unterlagen in elektronischer Form, GoBD)* basically also cover accounting for cash transactions. However, given that the GoBD are administrative regulations, previously there was no legal certainty and, thus, no common applicable standard. The additional KassenSichV will now ensure that transaction data will be stored in a tamper-proof way and archived in accordance with the retention periods and that this data can be forwarded to the local tax office in the new standard data format (DSFinV-K).

The Anti-Tampering Ordinance also provides for the mandatory retrofitting of all cash registers with a technical security system (TSS). From now on, among other things, there will be clear rules on the mandatory information on the receipt, such as, for example, the serial number of the cash register or TSS, a verification code as well as the transaction signature, and a requirement to issue a receipt. This means that retailers have to issue their customers with a till receipt for every sale. This has to be either printed out or generated electronically. Whether or not the customer also actually takes the receipt is not important here.

Please note: Once a new TSS has been installed then – probably from September 2023 – the competent tax office will have to be notified of this and the following information provided: taxpayer's name and tax number, serial number

and location of the cash register as well as the date of its purchase or shutdown, or something similar.

1.2 The key role of the DSFinV-K format

The standardised DSFinV-K format plays a key role in the new KassenSichV provisions; since 1.1.2020, it has been mandatory for all cash register users to provide this format for inspections of cash register data by the local tax office. In this regard, up to 31.3.2021, there was still a transition period or no objection arrangement during which all operators were retroactively given the opportunity to retrofit their systems accordingly. Up to now, extended exemptions applied for cash registers that could not be retrofitted – these expired on 31.12.2022.

Please note: The advantage of DSFinV-K is the standardised audit that can be performed by the local tax office; the audit tool that is used for this is IDEA software with a specially integrated interface for DSFinV-K data. Submitting data in the new format will now ensure that a comprehensive and consistent audit is possible.

A DSFinV-K data export is divided into three blocks:

- The first block consists of the individual recording module that comprises the receipt header as well as the individual receipt items.
- The master data module, as the second block, comprises all the necessary information about the master data, e.g., locations, cash registers as well as VAT data.
- Subsequently, the third block, in the form of the cash register closing module, consists of all the information on payment methods, types of business transactions or currency data.

However, at all the stages, the transaction should be clearly defined as a record and shown with the corresponding net and gross amounts or tax legend so that it is possible to perform a proper reconciliation of all the stages.

Recommendation: It should be possible to clearly separate any incoming or outgoing payments, opening balances or money transit that are not attributable to the transaction. Furthermore, for every transaction there has to be detailed documentation explaining what exactly is behind it.

2. Stumbling blocks related to accounting for cash transactions

2.1 Reconciliation with the financial accounts

For companies, an important step in the run-up to a potential cash register inspection is a detailed analysis of the cash register data in order to ensure that the cash transactions are being correctly recorded in accordance with common conformity standards and tax principles. Broadly speaking, here there are three approaches to a review.

Notre Dame de l'Assomption, La Passe

- The first step is a pure cash register data analysis that focuses on reconciling the individual tables with each other.
- If it can be ascertained that the cash register data are in themselves consistent and reliable then, subsequently, they can be divided up into gross sales, net sales and the tax amount.
- For a detailed reconciliation with transactions in the financial accounts it would then make sense to split them up for each branch, tax rate or on a monthly basis.

Splitting them up in this way will make it possible to have an initial insight into any potential anomalies that occur when the data are transferred from the cash register to the financial accounts. The first stumbling block often already appears here. Master data are frequently not maintained and the reconciliation with the cost centres in the financial accounts will fail because a clear allocation via the master data is not possible. It is also often the case that products are incorrectly taxed – particularly as a result of changes in tax rates, for example, during the COVID-19 crisis – and thus the data on the receipt will differ from the transactions recorded in the financial accounts.

Please note: Here, when accounting for cash transactions, it is vital that internal controls are regularly performed and checks are carried out to determine whether or not the information on the receipt matches the information in the financial accounts.

2.2 Reconciliation with the merchandise management system

During the pandemic phase, the VAT rate applicable to restaurants and the food service industry, pursuant to Section 12 of the German VAT Act, for both takeaway purchases as well as on-site food and service was levelled down to 7%. Drinks were excluded from this concession in order to avoid a disparity with respect to retailers. This provision was supposed to expire on 31.12.2022 but it was extended once again until 31.12.2023 on account of the effectively smooth transition from the COVID-19 crisis to the Ukraine crisis. The aim is to subsidise this sector by means of this extension in view of the increased energy prices.

This issue also plays a major role with regard to reconciling the merchandise management system used by a company and the cash register transactions that it generates. This is because the constant changes on the part of lawmakers could mean that, here, different information is input into the merchandise management system and the cash register. For example, in the context of a cash register data analysis, besides incorrectly taxed products and wrongly issued receipts, you can currently also frequently find incorrect merchandise category assignments, varying tax rates within a single merchandise category and even a complete lack of data on merchandise categories in the cash register data.

Recommendation

Such information gaps and, in particular, incorrect data on tax rates per product or merchandise category could result in heavy additional charges for a company and should therefore be detected as quickly as possible and rectified in order not to be exposed to any unnecessary complications in the event of a potential cash register inspection.

LEGAL

RAin [German lawyer] Yvonne Sinram

Equal pay for equal work

In a pivotal ruling, the Federal Labour Court decided that a woman may claim the same remuneration as her male colleague for the same or equivalent work. An employer cannot contest this, especially not by arguing that the man had "negotiated better".

1. Issue

A legal action was brought by a female sales representative who took up her job with a monthly basic salary of €3,500 (gross). This salary had also been offered to a male colleague in the same field of activity who had been hired two months earlier; however, he had rejected this offer. Instead, a basic salary of €4,500 had been agreed for a transitional period. Subsequently, new collective bargaining rules came into effect whereby the sales representatives concerned were then each entitled to the same basic salary. However, the claimant sued for the difference in the remuneration of

€1,000 monthly also for the period before that as well as for payment of appropriate compensation for the discrimination that occurred on the grounds of gender.

2. Decision

After the lower courts had still rejected the request, the BAG then ruled in favour of the claimant, in its ruling of 16.2.2023 (case reference: 8 AZR 450/21). According to this, the entitlement arises directly from the German Pay Transparency Act (Section 3(1), Section 7). This states that lower remuneration may not be agreed or paid for the same or equivalent work on the grounds of gender.

In this respect, what is notable is that the judges already allowed a comparison with one single better paid male employee to be an adequate indication of gender-based pay discrimination. It was thus up to the employer to rebut this presumption. He failed to do so. In particular, the court did not accept the man's supposed negotiating skills as justification for the unequal treatment.

Therefore, the claimant was awarded back pay and also compensation for gender discrimination under the German General Equal Treatment Act. However, at €2,000 this was considerably lower than what had been requested (€6,000).

3. Outlook

While the implications of this ruling for the workplace and future salary negotiations cannot yet even be assessed, nevertheless, they will be considerable. The principle of freedom of contract that applies to employment outside the collectively agreed pay scale will increasingly come into conflict here with potential discrimination risks.

In future, the question of when the same or equivalent work is performed and the criteria that have to be applied here will likewise grow in importance.

Please note

Since 2018, under the German Pay Transparency Act, employees have had the right to information vis-à-vis their employers. If a business normally has more than 200 employees and at least six members of staff of the other gender perform the same or equivalent work then, upon request, information has to be provided about the average gross monthly remuneration and up to two other remuneration components.

RA/StB [German lawyer/tax consultant] Dr. Dirk Moldenhauer

Act to Transpose the EU Directive on Cross-Border Conversions – An overview

The Directive (EU) 2019/2121 (Directive on Cross-Border Conversions) had to be transposed into national law by 31.1.2023. It will introduce, for the first time, standard rules for cross-border changes of legal form and divisions and amend the rules on cross-border mergers throughout Europe. In Germany, on 20.1.2023, the *Bundestag* [lower house of the German parliament] passed the 'Act to Transpose the EU Directive on Cross-Border Conversions' *(Gesetz zur Umsetzung der Umwandlungsrichtlinie, UmRUG)* and the accompanying 'Act to Transpose the provisions in the EU Directive on Cross-Border Conversions relating to Employee Participation in cases of Cross-Border Conversions, Mergers and Divisions' *(Gesetz zur Umsetzung der Bestimmungen der Umwandlungsrichtlinie über die Mitbestimmung der Arbeitnehmer bei grenzüberschreitenden Umwandlungen, Verschmelzungen und Spaltungen, UmRUGMitbestG).*

1. The Aim of the EU Directive on Cross-Border Conversions

The German Reorganisation Act hitherto provided no rules on cross-border changes of legal form or divisions. Solely cross-border mergers of corporations were regulated by legal provisions. Even hitherto unregulated reorganisation transactions were however permitted and possible, according to an ECJ ruling, by virtue of the freedom of establishment (Art. 49, 54 TFEU). In practice, however, the different arrangements for cross-border reorganisations in the legal systems of the Member States created uncertainty and ambiguity in relation to transactions. The requirements of the Directive on Cross-Border Conversions are closely linked to the freedom of establishment and their aim is the harmonisation of cross-border conversions throughout Europe.


Aldabra Giant Tortoise

2. Enhancing protection for the parties concerned as an objective of the German UmRuG

The UmRuG, which transposes the EU Directive, aims to protect the parties concerned; this will be achieved through various measures.

(1) Shareholders – In cases of cross-border conversions this includes exit rights for members of a company in exchange for adequate cash compensation, whereby the exit rights will be applied such that the members of a company who accept the compensation offer will no longer become shareholders in the offeree company. Another protective measure for shareholders is the right to assert a claim for improvement of an inadequate exchange ratio for both national as well as cross-border conversions.

(2) Creditors – There were also specific creditor protection rules that had to be transposed in the context of the UmRUG. The creditors of the transferor company are entitled to financial guarantees so that their claims cannot be jeopardised by the conversion.

(3) Employees – An integral part of the UmRUG is moreover the protection of employees and this will be guaranteed through information and consultation rights for works councils and employees as well as by detailed rules with respect to the right of co-determination.

3. Procedural simplifications

The UmRUG defines other cases (in particular, corporate group situations) where it will not be necessary to produce a report on the effects of the conversions on the members of the company and its employees. Furthermore, in the future, – both in the case of cross-border conversions as well as national reorganisations – even the members of just one company concerned will be able to effectively waive the report for their company.

The harmonisation of the process for completing cross-border registration through the introduction of a Europe-wide compatible procedure of digital communication between the commercial registries concerned (Business Registers Interconnection System – BRIS) will likewise make a considerable contribution towards simplifying cross-border conversions.

Conclusion

The UmRUG, which also includes important changes for national corporate reorganisations, will create a more transaction friendly environment for cross-border restructuring measures. Whether or not the goal of promoting the European freedom of establishment is achieved will only become clear in future practice. No procedure has been provided for cross-border conversions of partnerships; the scope of application of the UmRUG is limited to corporations only. With respect to corporate conversion measures initiated prior to the date of the promulgation of the UmRUG, please note the transitional rules under Section 355(1) of the Reorganisation Act Draft.

IN BRIEF

Employer's obligation to assume the costs for spectacles worn while working in front of screens

In a recent case, the ECJ had to rule on whether or not an employee would have to accept their employer's refusal to reimburse the costs for spectacles worn while working in front of screens.

In the case on which the ECJ ruled, of 22.12.2022 (case reference: C-392/21), an employee had requested the reimbursement of the costs for new corrective spectacles. These had become necessary because his eyesight had deteriorated as a result of, among other things, working in front of screens. However, the employer refused to cover the costs.

The national court then suspended the proceedings and requested a preliminary ruling from the ECJ on how Directive 90/270/EEC on the minimum safety and health requirements for work with display screen equipment should be interpreted. The ECJ replied that "special corrective appliances" provided for in that Directive include spectacles aimed specifically at the correction and prevention of visual impairment relating to work involving display screen equipment. Although, eye tests have to establish that the vision is impaired in order to give rise to a right to be provided with a special corrective appliance. However, the display screen work need not necessarily be the cause of that impairment. Moreover, it is not a condition that corrective appliances may only be used for professional purposes.

Please note: Employers can comply with their obligation either by directly providing employees with spectacles or by reimbursing the expenses incurred by employees.

New build rental apartments – Special depreciation allowance of 5% per year will be re-introduced

To encourage the new construction of rental apartments, in 2019 already, German lawmakers introduced a special depreciation allowance of up to 5% per year that could be claimed for the first four years starting in the year of completion and in addition to scheduled depreciation. However, this concession could only be claimed if, during the period 2019 to 2021, an application for a building permit had been filed or a notice of intended building works had been placed. As of the beginning of 2022, it was thus no longer possible to claim a special depreciation allowance for new build projects.

However, in the 2022 German Annual Tax Act, lawmakers re-introduced the special depreciation allowance in a modified form and linked it to compliance with specific building efficiency requirements. The new rules for the concession apply to construction projects for which the application for a building permit was filed in 2023 to 2026, or a notice of intended building works was placed during this period. As under the previous provisions, in the first four years a special depreciation allowance of 5% per year can be deducted in addition to scheduled depreciation. To claim this concession, the newly constructed apartment has to be in a building that fulfils the criteria of the so-called Efficiency House 40 standard with sustainability class/building efficiency level 40; proof of this has to be provided in the form of the Qualitätssiegel Nachhaltiges Gebäude (QNG) [German sustainable building certification].

Moreover, the acquisition and construction costs may not exceed €4,800 per sq m of living area. Under the previous rules, this upper limit for construction costs was €3,000. The assessment basis used to calculate the special depreciation may not exceed an amount of €2,500 per sq m of living area (previously €2,000).

Please note: The upper limit for construction costs of €4,800 should not be confused with the maximum limit for the concession of €2,500 because the former figure determines whether or not the concession applies while the latter figure is merely a cap on the amount of the depreciation.

New model form for supplies of goods for export in cases of handling and processing

The Federal Ministry of Finance (Bundesministerium der Finanzen, BMF) has published a new model form for a certificate for VAT purposes in cases of handling and processing for supplies of items for export and for intra-Community supplies.

If an agent has handled or processed the supplied items prior to them being exported then the supplying enterprise has to provide proof of export via a supporting document that has to include the following additional information:

- the name and address of the agent,
- the quantity and usual commercial designation of the items that were delivered or despatched to the agent,
- the place and date the item was received by the agent and
- a description of the order as well as a description of the handling and processing carried out by the agent.

For this purpose, according to the BMF circular of 13.12.2022 (reference: III C 3 – S 7134/22/10002 :001), an agent may place an endorsement that contains the additional information on the document, or provide the additional information in a separate document. Alternatively, on the basis of the business records that are available (e.g. despatch document, export certificate from the commissioned forwarding agent, or a confirmation from the customs office at the border that monitors departures from Community territory), an agent may issue the supplying enterprise with a combined export and handling certificate based on the prescribed model.

Please note: The current model form (in German) 'Bescheinigung für Umsatzsteuerzwecke in Bearbeitungs- und Verarbeitungsfällen' [Certificate for VAT purposes in cases of handling and processing] can be found on the BMF website.

Treating fees as pass-through expenses

An expense will be deemed to be a pass-through expense if the business that collects and disburses such amounts merely acts as an intermediary in the payment transaction without itself having a claim for the amount against the paying party and without being obliged to pay the recipient.

The Federal Ministry of Finance (Bundesministerium der Finanzen, BMF) published a circular (of 11.1.2023, reference: III C 2 – S 7200/19/10004 :005) on treating fees as pass-through expenses or service charges . In 2014, the Federal Fiscal Court (Bundesfinanzhof, BFH) decided that fees are pass-through expenses even if the enterprise and the recipient of the service are jointly and severably liable to pay the amount that is owed. This was however a contradiction of the previous opinion of the fiscal authority as set out in the German VAT application decree. According to that, the presumption of a pass-through expense would be eliminated if an enterprise together with the recipient of its service jointly and severably owe the amounts. However, in the future, this criterion will no longer be important. The BMF engaged intensely with the ruling and amended the German VAT application decree accordingly. The Ministry clarified that the principles set out in the BFH ruling from 2014 should not be applied beyond the specific case that was ruled on, insofar as the BFH stipulated that the precondition for posting an item as a pass-through expense is its corresponding treatment in the taxpayer's accounting records.

Please note: The principles set out in the BMF circular have to be applied to all cases that are still open. However, for transactions that were carried out up to 31.12.2022, there will be no objection if an enterprise makes reference to the administrative opinion that was applicable up to the date of the issue of the BMF circular.


Palm trees on the beach

AND FINALLY...

"Anyone who has a lot of money to speculate should,
anyone who has little money should not,
and anyone who has no money must."

André Bartholomew Kostolany, 9.2.1906 – 14.9.1999, was a stock market and financial expert as well as a speculator who acted as a journalist, author and entertainer; he had Hungarian roots and acquired US American citizenship.

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