KMLZ

Annual Tax Act 2024 (draft bill):
Overview / entry into force / outlook

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1   Draft bill for the Annual Tax Act 2024

The legislator is not allowing the dispute over the Annual Tax Act 2023 to hold it back. Although the Annual Tax Act 2023 was only recently promulgated, the draft bill for the Annual Tax Act 2024 is already available. The 240-page draft bill presents the necessary adjustments to be made in light of EU law, ECJ case law and German Federal Fiscal Court (BFH) case law. The jurisdiction of tax authorities is also amended with regard to certain areas. The draft bill also contains comprehensive changes to be made this year in the area of VAT.

2   VAT related changes in the Annual Tax Act 2024

The planned changes can be categorised into the following thematic blocks. We will highlight the following topics separately in a series of newsletters during the next few days:

- Extension of the transitional period for legal entities governed by public law (sec. 2b of the German VAT Act)
- Place of taxation of virtual events/activities (sec. 3a para. 3 of the German VAT Act)
- VAT exemption for services provided by consortium leaders (sec. 4 no. 8 lit. a and g of the German VAT Act)
- VAT exemption for educational services (sec. 4 no. 21 of the German VAT Act)
- VAT exemption for particular sporting events (sec. 4 no. 22 of the German VAT Act)
- VAT exemption for agricultural farm assistants (sec. 4 no. 27 lit. b of the German VAT Act)
- Taxation of small enterprises (sec. 19 of the German VAT Act)
- Changes to the Platform Tax Transparency Act (PTTA)

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The draft bill contains further "minor" amendments to the German VAT Act that incorporate recent developments in case law into German law, some of which we have already reported on:

➢ **Redefinition of work deliveries (sec. 3 para. 4 of the German VAT Act):** According to the current wording in the VAT Act, a supply is considered to be a work delivery if the supplier processes "an item" (sec. 3 para. 4 sentence 1 of the German VAT Act). The BFH already clarified, in its judgement V R 37/10 of 22 August 2013, that the interpretation of the law requires that a supplier processes "third-party" goods but not his "own" goods. Although significantly later, the Federal Ministry of Finance also clarified the ambiguity in the wording in its circular dated 1 October 2020 (KMLZ VAT Newsletter 50 | 2020). According to the wording of the German VAT Act, a work delivery now only exists if a "third-party" item is processed. Otherwise, the transaction is qualified as an assembly delivery. The correct categorisation of the transaction is particularly important for the question of who is liable for the VAT. This is because, in the case of an assembly delivery by a non-established taxable person, there is no transfer of the VAT liability to the recipient of the supply in accordance with sec. 13b para. 2 no. 1, para. 5, para. 7 of the German VAT Act. In this case, the supplier must charge VAT on the supply provided in Germany.

➢ **Abolition of the regulation on VAT warehouses (Sec. 4 no. 4a German VAT Act):** The tax exemption for supplies of goods to be stored in a VAT warehouse or supplies within a VAT warehouse will be cancelled.

➢ **Unduly charged VAT on self-billing invoices (sec. 14c para. 2 of the German VAT Act):** The scope of application of sec. 14c para. 2 of the German VAT Act shall be extended to self-billing invoices. This amendment to the law is in response to the BFH ruling V R 23/19 of 27 November 2019 (KMLZ VAT Newsletter 06 | 2020). According to the current wording in the German VAT Act, no VAT liability is triggered for self-billing invoices, in accordance with sec. 14c para.2 of the German VAT Act, if the recipient of the self-billing invoice is not a taxable person.

➢ **Changes to the time of input VAT deduction (sec. 15 para. 1 sentence 1 no. 1 sentence 2 German VAT Act):** In future, a distinction will be made between different points in time of an input VAT deduction, depending on whether this arises from the invoice where the VAT is calculated (i) on agreed consideration, (ii) on consideration received or (iii) from an advance payment invoice.

➢ **Input VAT apportionment (sec. 15 para. 4 of the German VAT Act):** A new wording clarifies that, in the case of input VAT apportionment, a calculation of non-deductible input VAT, according to the total turnover key, is only allowed if this is the only possible apportionment method (KMLZ VAT Newsletter 42 | 2022 and 08 | 2024). Furthermore, the total turnover key is to be applied subordinate to other, more precise and appropriate apportionment methods.

➢ **VAT rate for agriculture and forestry businesses (sec. 24 para. 1 sentence 1 no. 3 and sentence 3 of the German VAT Act):** VAT rate and input VAT flat rate for farmers will, for certain transactions, be adjusted to 8.4 per cent.

➢ **Northern Ireland as an EU territory (sec. 30 of the German VAT Act):** For transactions after 31 December 2020, the territory of Northern Ireland will be treated as Community territory. VAT-IDs with the prefix "XI" are valid VAT-IDs.

3 Entry into force and outlook

The entry into force of the VAT changes, in a large part of the regulations, has not yet been scheduled. The new regulation on the taxation of small enterprises is to apply from 1 January 2025. On the other hand, the abolition of the tax exemption for supplies in a VAT warehouse as well as further amendments to the German VAT Implementation Code (UStDV) are not due to come into force until 1 January 2026.

The legislative process has only just begun. Work will certainly continue on the wording. The current status is therefore very likely not yet the final version. Nevertheless, many of the requirements are based on EU law and ECJ case law. The majority of the regulations are therefore likely to be close to the final version, at least in terms of their meaning. The companies affected can therefore already start preparing for practical implementation.