



VAT NEWSLETTER

## Annual Tax Act 2024: place of virtual events / activities (sec. 3a para. 3 of the German VAT Act)

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### 1 Background

The German VAT Act provides for specific provisions on the place of supply for services in connection with events in the fields of culture, the arts, sport, science, education, entertainment and other similar supplies (eg in connection with trade fairs and exhibitions) and related activities (hereinafter: events / activities). The place of supply for events / activities in the B2C sector, pursuant to sec. 3a para. 3 no. 3 letter a of the German VAT Act, and in the B2B sector, pursuant to sec. 3a para. 3 no. 5 of the German VAT Act, is the place where the event actually takes place.

With effect from 1 January 2025, the Union legislator amended the regulations in Art. 53, 54 of the VAT Directive on the place of supply for events / activities with regard to virtual participation. The national legislator is now adapting the provisions in sec. 3a para. 3 of the German VAT Act accordingly. The amendments will enter into force on 1 January 2025.

### 2 Adjustments to sec. 3a para. 3 of the German VAT Act

The draft bill includes adjustments to sec. 3a para. 3 of the German VAT Act. The previous provision of sec. 3a para. 3 no. 3 lit. a (B2C events/activities) is transferred to the new no. 3 without any change in content and the following sentence is added: *"If the supplies are transmitted by streaming or are otherwise made available in a virtual manner, the place of supply of services is, notwithstanding sentence 1, deemed to be the place where the recipient is established or where he has his permanent address or habitual residence."*



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The previous provision of sec. 3a para. 3 no. 5 of the German VAT Act (B2B events / activities) is supplemented by the following sentence: *"This does not apply in the case of virtual participation."*

### 3 Virtual events / activities in the B2B sector

The new provisions on the place of supply in accordance with sec. 3a para. 3 no. 5 of the German VAT Act for B2B events / activities clarifies that the place of supply is not the place where the event takes place if the business recipient only participates virtually. This ensures taxation in the Member State of consumption. This is because if the recipient, who is acting as a taxable person, only participates virtually, the supplies of services are consumed at the place where the recipient is established. Accordingly, the place of supply is determined pursuant to the general provisions on the place of supply in accordance with sec. 3a para. 2 of the German VAT Act for B2B services.

### 4 Virtual events / activities in the B2C sector

The new provisions on the place of supply in sec. 3a para. 3 no. 3 of the German VAT Act for B2C events / activities is far more interesting. Here too, virtual participation is not taxed at the place where the event takes place, but rather at the place where the consumer is established or where he has his permanent address or habitual residence. The wording corresponds to that of the provisions on the place of supply in sec. 3a para. 5 sentence 1 of the German VAT Act for electronically supplied services within the meaning of sec. 3a para. 5 sentence 2 no. 3 of the German VAT Act. In this respect, the place of supply is the same to both, B2C events / activities and electronically supplied services.

However, it is crucial that the presumption rules in Art. 24a-24c of the Council Implementing Regulation 282/2011 (CIR), and the means of proof for determining the place of supply in Art. 24e-24f CIR, only apply in the case of electronically supplied services. In this respect, a precise delimitation must be made between virtual participation in an event and electronically supplied services. In principle, virtual participation in an event does not constitute electronically supplied services. This is because, on the one hand, mere electronic communication is not sufficient, and, on the other hand, there is likely to be a regular opportunity for interaction on the part of the participant, which precludes the concept of electronically supplied services. However, the situation is different if the organiser makes available a recording of the event to the participant as a download. In this case, human intervention on the part of the supplier is lacking. Hence, such service is deemed to be an electronically supplied service (see KMLZ VAT Newsletter 55 | 2022).

### 5 Consequences for the practice

The national legislator is correctly implementing the amendments in Art. 53, 54 of the EU VAT Directive. In this respect, there is now clarity concerning the place of supply for virtual participation in an event. The organiser must collect the necessary information from its customers in order to be able to correctly determine the place of supply. This is likely to be particularly difficult in B2C cases. Experience has shown that determining the place where the consumer is established or where he has his permanent address or habitual residence is a major challenge. This is particularly true in view of the fact that the event organiser cannot directly invoke either the presumption rules in Art. 24a-24c CIR or the means of proof in Art. 24e-24f CIR. This is bound to lead to disputes with the tax authorities. Questions of delimitation will also arise as to whether virtual participation in an event constitutes an electronically supplied service. As is so often the case in VAT law, this depends on the individual case.