



Annual Tax Act 2024: VAT exemption for educational services (sec. 4 no. 21 of the German VAT Act)

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1 Background

The national VAT exemptions in the education sector have, for some time now, been contrary to Union law (see only KMLZ VAT Newsletter 09 | 2022). For providers, this means one thing above all: legal uncertainty. In the consultations on the 2013 and 2019 Annual VAT Acts, reform efforts failed due to the amount of criticism voiced. Now that the legislator is threatened with an investigation by the European Commission, for breach of contract due to the unpopular certification procedure, it is now making another attempt to create a legal situation that complies with EU law. "All good things come in threes" would encourage some of those affected to stand firm this time.

2 Planned new regulation

Sec. 4 no. 21 of the German VAT Act will be completely redrafted and will now only contain two letters, which are closely aligned with the structure and wording of Art. 132 para. 1 lit. i and j of the EU VAT Directive. The unbeloved certification procedure has been completely removed under the draft bill. Sec. 4 no. 21 sentence 1 lit. a of the Germany VAT Act exempts school and university education, vocational training or retraining, including supplies of goods and services closely related thereto, provided by bodies governed by public law, having such as their aim, or by other educational or vocational training organisations. The VAT exemption for retraining services provided by private or professional educational institutions only applies if these institutions do not systematically aim to make a profit.

Sec. 4 no. 21 sentence 1 lit. b of the German VAT Act exempts "school and university education provided by private teachers."



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3 On the individual elements of the draft VAT Act

Education provider: The term "institution", within the meaning of sec. 4 no. 21 sentence 1 lit. a of the German VAT Act, is neutral in terms of legal form and covers both providers with and without a systematic intention to make a profit. Public institutions in this sense continue to be, in particular, general or vocational schools and state universities operated under public law. Private institutions with comparable objectives and state recognition, such as alternative and supplementary schools, as well as universities as defined by the state higher education acts, are treated in the same way. In addition, the large sector of education providers under private law, such as tutoring institutes, dance and music schools, as well as various vocational training and retraining institutions, also benefit. Self-employed teachers who provide teaching services as freelancers at schools, universities or other educational institutions are also to be regarded as other general education or vocational institutions. For all of these educators previously mentioned in sec. 4 no. 21 a) bb) and sec. 4 no. 21 b) bb) of the German VAT Act, there is no longer any need to apply the certification procedure. "Private teacher" within the meaning of sec. 4 no. 21 sentence 1 lit. b of the German VAT Act exclusively covers natural persons. A private teacher must provide teaching services in person, for their own account and under their own responsibility.

Educational services: Whether the services are provided in person or online is irrelevant for the question of VAT exemption. With regard to the eligible content, the individual sub-areas must be considered separately:

- **School and university education** is to be understood according to the strict definition of ECJ jurisprudence. Specialized, selective education can therefore not be exempted even if it is of significant general interest (eg swimming lessons). Irrespective of this, lessons that deepen and consolidate knowledge acquired by pupils and students in educational institutions, such as tutoring services, are also to be exempt - over and above the current wording of the law.
- **Vocational training and retraining** includes training courses, courses and the like, each of which, in itself, imparts knowledge and skills that qualify the individual to take up a (different) profession. This includes training courses regulated by public law, as well as services that prepare students for university entrance examinations, such as music, dance and ballet lessons or lessons in the arts.
- **Retraining** takes place in a profession already practiced and promotes this profession.
- **Services excluded from the exemption** are those that are purely recreational. Whether this is the situation can only be determined on a case-by-case basis on the basis of the thematic objective and the group of participants, among other things.

4 Classification and recommendations for action until entry into force

The new version of sec. 4 no. 21 of the German VAT Act is overdue and therefore to be welcomed. The current draft version has parallels to the 2019 version, which means that the criticism voiced at that time will likely resurface, for example regarding the distinction between vocational training and retraining in individual cases. Overall, the positives clearly outweigh the negatives: The legislator can no longer avoid adopting the ECJ's cryptic guidelines on school and university education. However, with the significantly broader sub-areas of training, vocational training and retraining, the new regulation offers providers possible solutions for VAT exemptions long thought to be lost. On the one hand, the abolition of the certification procedure leads to more legal certainty, as there is no need for double legal recourse in the event of a dispute. On the other hand, holders of a certificate felt quite safe from the tax office in the past. This is now a thing of the past. The new regulation is due to come into force on 1 January 2025. All providers of educational services should, without undue delay, review their range of services and, where applicable, their articles of association in light of the planned revision.