



Annual Tax Act 2024: Harmonisation of VAT exemptions with Union law: management of credit and operational helpers in agriculture and forestry

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New game, new luck: according to the draft bill for the 2024 Annual Tax Act, two VAT exemption provisions are to be amended in the same way as originally planned in 2023. These changes failed to make it through the legislative process to the Federal President's desk last year and from there into the Federal Law Gazette. Specifically, the amendment concerns the VAT exemption for the management of credit by the persons granting it and the extension of the VAT exemption for operational helpers in agriculture and forestry. The Federal Government is now making a fresh attempt to introduce the amendments to national law required under Union law.

1 Management of credit

According to sec. 4 no. 8 lit. a and g of the German VAT Act, in addition to the granting of credits and credit guarantees, their management by the creditor is to be exempt from VAT. A corresponding regulation was already included in the German government's draft bill for the Future Financing Act, with almost identical wording. However, it was rejected by the Finance Committee with reference to the tax losses which would have resulted from the new regulation.

The current explanatory memorandum to the draft bill basically corresponds to the government draft at that time. The amendment to the law is intended to harmonise the legal situation with that of other EU Member States, which already consider this said management VAT exempt. This is intended to eliminate the competitive disadvantage that German creditors have had to date. The only addition to the explanatory memorandum of the government draft bill in the new attempt is the indication that the VAT Committee, at EU level, also almost unanimously assumes that the management of credits constitutes a uniform, overall VAT exempt service.



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In terms of content, this concerns cases where several creditors (syndicates) grant credits and credit guarantees to (usually) large companies/groups in a coordinated manner in order to distribute the risks amongst all of the creditors involved. In this respect, it is conceivable that only one creditor acts as such towards the debtor and concludes corresponding agreements with other creditors. Alternatively, the debtor concludes corresponding credit agreements with all creditors. In both cases, however, there is a lead manager who coordinates the granting of the credit and organises the coordination between the syndicate members (and may also take on other tasks). This lead manager receives a separate consideration for his administrative activities.

It is undisputed that the lead manager's service is not VAT exempt, in its entirety, under German law (although the "as to whether" and the scope of a partial VAT exemption are disputed). However, Art. 132 para. 1 lit. b, c of the EU VAT Directive takes a different view. According to this, the management of credits and credit guarantees by persons granting such is also VAT exempt. The extension of sec. 4 no. 8 lit. a and g of the German VAT Act provided for in the draft bill would now implement this regulation into national law, in accordance with Union law. Against this background alone, the planned new regulation is to be welcomed. In addition, there would be an end to the disadvantage of granting credits in Germany compared to competitors in other Member States. At the same time, the lead manager has the possibility to opt for VAT with regard to the management of the credits. However, the supply of management services provided by suppliers who are not creditors would continue to be taxable. Holding structures may also benefit from the new regulation. If a group financing company receives extra consideration for the management and coordination of credits, in addition to interest on credits from the cash pool, this may also be covered by the new regulation.

2 Operational helpers in agriculture and forestry

A further change to the VAT exemptions, according to the draft bill, concerns the supply of agricultural and forestry operating aid services. An operational helper is deployed in an agricultural and forestry business if a farmer or his family members are unable to continue the business, eg due to illness. In this case, the social security provider (the Social Insurance for Agriculture, Forestry and Horticulture) either provides an operational helper itself or via a "Maschinenring" or "Betriebshilfedienst" (support organisation) or at least covers the costs. However, this only applies (and this should remain the case with the proposed amendment) if there are no more than three full-time employees on the farm.

According to the previous version of sec. 4 no. 27 lit. b of the German VAT Act, only the supplies of legal entities under public or private law to distressed businesses, and the provision to the statutory provider of social security, were exempt from VAT. However, the wording did not cover the supplies of an individual operational helper to the distressed business (even if the provider of social security covered the costs) or to the support organisation.

As early as 2017, the German Federal Fiscal Court ruled that supplies by operational helpers to distressed businesses, although not being covered by German VAT law, are also exempt from VAT in accordance with Art. 132 para. 1 lit. g of the EU VAT Directive. Nevertheless, the tax authorities have not yet included the corresponding judgment in the Federal Tax Gazette. Also, in this respect, the implementation of the amendment would eliminate a situation in national law that is contrary to Union law. To date, the VAT exemption of the supplies of operational helpers to support organisations have not been decided by the courts. Such services should also be covered by the new provision, as they are also exempt under Art. 132 para. 1 lit. g of the EU VAT Directive.