



## Annual Tax Act 2020 (Part 6): VAT exemptions in the healthcare / nursing care / social services sector

37 | 2020

### 1 General information

According to the draft of the Annual Tax Act 2020, the legislator is taking steps to further align the VAT exemptions in the healthcare, nursing care and social services sector, provided for in the German VAT Act, with European law. The decisions of the German Federal Fiscal Court have served as blueprints for many of the adaptations. The new provisions are to enter into force on 01.01.2021. Despite the alignment, it will still often be worthwhile examining the VAT exemptions according to the VAT Directive in cases where the VAT exemptions, according to German VAT law, are not applicable.

### 2 Sec. 4 no. 16 German VAT Act (draft)

By slightly adjusting the wording of the introductory sentence of sec. 4 no. 16 German VAT Act (draft), the legislator extends the scope of the VAT exemption to institutions merely rendering services closely related to the care or nursing of persons in need of physical, mental or psychological assistance (but not actual care or nursing services). Now, the VAT exemption may also apply to institutions, which for example, merely render advisory services or prepare expert reports.

### 3 Assessment of the 25% threshold provided for in sec. 4 no. 16 lit. n German VAT Act (draft)

Sec. 4 no. 16 lit. I German VAT Act is a catch-all provision regarding the VAT exemption in the nursing care and social services sector. Institutions, which do not fulfil the requirements of the foregoing, more specific provisions, can still fall within the scope of the VAT exemption, if the costs of their care or nursing services were predominantly borne (i.e. more than 50%) by statutory social security agencies in at least 25% of cases ("social threshold") in the previous calendar year. In the future, this catch-all provision is to be found in sec. 4 no. 16 lit. n German VAT Act (draft), in an amended version. As early as 2013, the Federal Fiscal Court found that the assessment of the relevant 25% threshold, on the basis of the



Dr. Michael Rust  
Lawyer

+49 (0) 89 217 50 12-74  
michael.rust@kmlz.de

previous calendar year alone, was in violation of European law. However, the tax authorities have continued to calculate the threshold merely on the basis of the previous calendar year (except in the case of newly established institutions). The legislator is now putting a stop to this practice by eliminating the reference to the previous calendar year from the provision. The 25% threshold is now to be initially assessed on the basis of the current calendar year. However, according to the official justification to the law, it will still be sufficient if the threshold was met in the previous calendar year:

- Option 1: According to a forecast, made at the beginning of the year, the institution meets the 25% threshold for the current year. The threshold is deemed to be met for the whole year, regardless of the actual development.
- Option 2: According to the forecast, the institution does not meet the 25% threshold, but the circumstances change in the course of the year (e.g. because of the conclusion of a contract with a social security agency). As soon as it is foreseeable that the 25% threshold will be met, it is deemed to be met. Provided that the other requirements are fulfilled, the VAT exemption applies to supplies rendered as of this point in time.
- Option 3: According to the official justification to the law, it is sufficient if the 25% threshold was met in the previous year. However, caution should be exercised in this respect: Since the wording of the regulation no longer refers to the previous year, courts might not accept a corresponding assessment for periods after 2021.

#### 4 Short-term accommodation services to students and pupils, sec. 4 no. 23 lit. c German VAT Act (draft)

According to sec. 4 no. 23 lit. c German VAT Act (draft), short-term accommodation services (and not just boarding services) provided to students and pupils by institutions governed by public law or by other institutions, which do not pursue systematic realisation of profits, will also be VAT-exempt. Hitherto, short-term accommodation services for students were only VAT-exempt under the requirements of sec. 4 no. 18 German VAT Act. This could lead to discussions with the tax authorities. By means of the amendment of sec. 4 no. 23 lit. c German VAT Act (draft), the legislator clarifies that, for example, the short-term letting of rooms to guest students, foreign students, etc. is VAT exempt. As ancillary services, the provision of bed linen, towels, etc. is also VAT exempt. The same should apply for the possibility to use a washing machine as well as an internet and TV connection. The short-term letting of furnished apartments / rooms in guest houses to non-students (e.g. guest researchers) is not VAT exempt (but subject to the reduced VAT rate).

#### 5 Other amendments

In addition, the draft of the Annual Tax Act 2020 provides for a number of selective regulations:

- Supplies by certain taxable persons, which are not considered as VAT exempt medical treatment but are closely related to the promotion of the public healthcare system, are now to be VAT exempt according to sec. 4 no. 14 lit. f German VAT Act (draft). This includes e.g. medical services at large events or rescue services.
- Sec. 4 no. 16 lit. I German VAT Act (draft) implements a decision of the Federal Fiscal Court from 2019, according to which the supplies rendered by organisations, appointed as legal counsel for children pursuant to sec. 158 German Act on Court Procedure in Family Matters and non-litigious Matters, are VAT exempt. This requires, however, that the organisations' fees are officially approved or do not exceed the approved fee limit.
- According to sec. 4 no. 16 lit. m German VAT Act (draft), private nursing insurance companies with which agreements have been entered into according to sec. 7a of the Eleventh Book of the Social Security Code are recognised as organisations devoted to social wellbeing.