



Coalition agreement: Not too bad – from a VAT perspective

1 “Dare more progress”

The traffic light coalition (Germany's SPD, the Greens and the FDP) has quickly switched to green. Now the 178-page coalition agreement is sealed. It is true that, in this respect, tax policy is no longer as important as it once was. Essentially, only 117 lines of the agreement deal with tax law. Nevertheless, there is improvement: in the last coalition agreement in 2018, only 70 lines remained for us tax lawyers. What about VAT this time though? After all, it is Germany's main source of tax revenue. In our capacity as VAT lawyers, we have taken a look at the government's programme for the next four years. We were pleased to see that numerous ideas and suggestions made by KMLZ have been taken up.

2 Strengthening the non-profit sector

The non-profit sector is to be promoted using various measures. This is right and also important. What is particularly pleasing is that *inclusion companies are to benefit from formal privileges laid down in the VAT Act*. Although the wording remains somewhat vague, this is probably aimed at ensuring the application of the reduced VAT rate for these facilities for people with special needs. In our earlier Newsletter 50 | 2019, we took a critical look at the jurisprudence of the German Federal Fiscal Court (decision of 23 July 2019, XI R 2/17). This is because the German Federal Fiscal Court is increasingly attempting to restrict the scope of the reduced VAT rate.

It is also to be welcomed that the request in our Newsletter 10 | 2021 will be fulfilled: *Tax law obstacles for in-kind donations to charitable institutions are to be removed by a legally secure, low-bureaucracy and simple regulation in order to prevent the destruction of these goods*. Currently, in-kind donations are still subject to taxation as a supply carried out



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free of charge. Some of our European neighbours have had a better idea. They simply waive VAT for such donations. How this could be implemented in conformity with Union law can soon be read in an article in DER BETRIEB, written by my colleagues Birgit Weitemeyer and Oliver Zugmaier and myself.

Also to be emphasised is *the preservation of the VAT exemption for educational services of general interest in conformity with Union law*. That means: sec. 4 no. 22 of the German VAT Act is to be maintained. This provision is based on Art. 132 para. 1 lit. i and j of the EU VAT Directive and has, in various decisions of the German Federal Fiscal Court, been found to be contrary to the EU VAT Directive. Its relationship with national law can be described as “strained”. In our Newsletter 34 | 2021 (VAT exemption for swimming lessons) we pointed out that the public interest is still neglected in the case of educational services.

3 E-invoicing and extension of reverse charge

One of the new federal government's objectives is to *implement an electronic reporting system uniformly throughout the country as soon as possible, which will be used for issuing, verification and forwarding of invoices*. This means the implementation of an e-invoicing system, i.e. a system, which issues invoices based on invoice data uploaded, forwards these invoices to customers and runs background check routines. Italy has already gained experience with using such a system. Now Germany is following suit and this is basically a good thing – provided there is EU-wide coordination beforehand. There must be no more isolated solutions. The implementation of such a system would initially involve a major conversion effort. However, this can be worthwhile for both the tax authorities and businesses. Since electronic invoices, in 2021, are still leading a wallflower existence in Germany, the announcement of the e-invoicing system can be seen as real *progress*, quite in line with the coalition agreement's title. My KMLZ colleagues have published an article on this subject in the tax journal *DStR* that is worth reading (*Artinger/Putz/Zugmaier, DStR 2021, 2273*).

Another measure to combat VAT fraud, namely *the creation of a definitive VAT system at EU level (e.g. reverse charge)*, follows the same line. This initiative, too, can only be supported. Taxable persons need legal certainty in the cross-border movement of goods and supplies of services within the EU. However, zero-rating for intra-Community supplies is prone to errors and the supplier bears the burden of proof. The solution to this problem can only be to abolish this system.

It also fits in that the *import VAT is to be further developed in order to achieve equal conditions in European competition*. My colleague, Christian Salder, has already called for this action in the ifst-publication no. 529/2019 and made corresponding reform proposals.

4 What is not (yet) coming

From a VAT perspective, public transport is still in danger. To strengthen climate protection, we need more certainty in Germany with regard to the non-taxability of grants (project sponsorships) – see the Federal Council initiative of the states of Lower Saxony and Bavaria of 9 March 2021. Another pity is that the need for reform of the VAT group is still not being acknowledged. Proposals to this effect have already been made. Even the ECJ has been pointing out to Germany that the VAT group could be structured as an application procedure (see our Newsletter 14 | 2021). Let's wait and see what happens in the next four years. In any case, we will continue to campaign for the reform of the VAT group at all levels.