



## Proof for VAT exemptions pursuant to sec. 4 no. 7 of the German VAT Act for supplies to special institutions

40 | 2022

### 1 VAT exemptions in accordance with sec. 4 no. 7 of the German VAT Act

Sec. 4 no. 7 of the German VAT Act provides for some VAT exemptions for supplies to special institutions. Sec. 4 no. 7 sentence 1 lit. a and b of the German VAT Act provides for VAT exemptions for supplies to NATO troops. In accordance with sec. 4 no. 7 sentence 1 lit. c and d of the German VAT Act, supplies of services to permanent diplomatic missions and consular representations established in the territory of another Member State, as well as intergovernmental institutions and their members, are also exempt from VAT.

In the course of the EU's efforts to strengthen the Common Security and Defence Policy, including exempting it from VAT (see KMLZ Newsletter 22 | 2019), the Annual Tax Act 2020 added to the VAT exemptions two further standards in favour of the armed forces of EU Member States. Sec. 4 no. 7 sentence 1 lit. e of the German VAT Act exempts supplies of goods and services to armed forces of another EU Member State based in Germany. While Sec. 4 no. 7 sentence 1 lit. f of the German VAT Act exempts supplies of goods and services to armed forces of other Member States that are not stationed in their home state. The VAT exemptions pursuant to sec. 4 no. 7 sentence 1 lit. e and f of the German VAT Act have been applicable since 1 July 2022 (see KMLZ Newsletter 40 | 2020).

### 2 Proof of conditions

The conditions and restrictions applicable in the host Member State are decisive for the VAT exemptions pursuant to sec. 4 no. 7 sentence 1 lit. b to d and f of the German VAT Act. Taxable persons must prove, by means of a certificate issued by



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the competent authority of the host Member State, that the conditions and restrictions applicable to the VAT exemption in the host Member State have been complied with. The certificate to be issued by the competent authority of the host Member State (or the self-certification of the beneficiary body) must be made using a form from Annex II to the Council Implementing Regulation. The harmonised model certificate in Annex II of the Council Implementing Regulation was adapted, in accordance with the changes, on 1 July 2022. Now the Federal Ministry of Finance has also replaced the model form published in the Federal Ministry of Finance's letter of 23 June 2011 for proof of the conditions for VAT exemptions.

### **3 New sec. 4c of the German VAT Act - VAT refund for procured goods and services from European institutions**

In addition, sec. 4c was inserted into the German VAT Act on 1 January 2022. The provision serves to implement Art. 151 para. 1 lit. a lig. aa and ab of the VAT Directive, as amended by Council Directive (EU) 2021/1159 of 13 July 2021, amending Directive 2006/112/EC. According to this, supplies acquired by the European Commission or any other body established under Union law to respond to the COVID-19 pandemic are to be exempt from VAT. The VAT exemption was implemented by way of a refund procedure and is to be applied retroactively as from 1 January 2021. Proof of the use of goods by EU bodies in response to the COVID-19 pandemic is to be furnished using the new model form.

### **4 Comments**

A form adapted to the new VAT exemptions, in accordance with Annex II of the Council Implementing Regulation, was published with the Council Implementing Regulation (EU) 2022/432 of 15 March 2022. In accordance with the requirements of Union law, as from 1 July 2022, it has been mandatory to use the form as proof of the conditions for VAT exemptions in accordance with sec. 4 no. 7 sentence 1 lit. b to d and f of the German VAT Act and sec. 4c of the German VAT Act. This applies irrespective of the Member State of the EU in which the institution is established, to which a company renders a supply exempt from VAT in accordance with sec. 4 no. 7 sentence 1 lit. b to d and f of the German VAT Act. The Federal Ministry of Finance's letter does not give rise to a separate need for action.