



2024 Annual Tax Act: Reform of educational services – the chaos continues for commercial and online providers

49 | 2024

1 Background

Due to the fact that the German rules on VAT exemption in the education sector are contrary to EU law, the legislator undertook the third fundamental reform attempt after 2013 and 2019 with the government draft of the Annual Tax Act 2024 (see KMLZ VAT Newsletter 15 | 2024). Probably due to the criticism raised, a significantly amended draft made the rounds in mid-October. Due to the increased pressure to reform resulting from EU infringement proceedings, this “Plan B”, which was at least as worthy of criticism, has now been adopted. Anyone supplying digital services must also now observe new provisions on the place of supply and the Ministry of Finance's letter of 29 April 2024 (see KMLZ VAT Newsletter 24 | 2024).

2 General overview of the new regulations

The basic framework of the current legal situation remains in place. The following changes will apply from 1 January 2025:

- **Exempt supplies:** According to the provisions of Art. 132 para. 1 lit. i of the EU VAT Directive, the scope of application henceforth includes school and university education, vocational training and retraining. Previously, the preparation for a profession or an examination to be taken before a public body was foreseen. The amendment adapts the standard to the requirements of EU law. The distinction made in the draft bill between vocational training retraining, in relation to the existence of a systematic aim to make a profit, was not implemented.
- **Certification procedure:** In line with the material scope of application, the federal state authorities must certify that the institution provides school or university education, vocational training or retraining.



Dr. Markus Müller, LL.M.
Dipl.-Finanzwirt (FH),
Certified Tax Consultant

+49 (0) 211 54 095-387
markus.mueller@kmlz.de

- **Private teachers:** Sec. 4 no. 21 lit. c of the German VAT Act (UStG) has been introduced from scratch. According to this, (only) school and university education provided by private teachers is exempt. The concept of a private teacher is based on Art. 132 para. 1 lit. j of the EU VAT Directive and is intended to include only natural persons. The exemption does not apply in a subcontracting relationship, but only if the private teacher is the direct provider of the educational service. This is the case, for example, with tutoring services provided directly to customers. In the subcontracting relationship, sec. 4 no. 21 lit. b sub-lit. bb UStG remains unchanged, i.e. the intermediate institution requires a certificate.
- **Public bodies:** The following has been added to sec. 4 no. 21 lit. a UStG: “bodies governed by public law that are entrusted with such tasks.” This includes, in particular, publicly funded general or vocational schools and state universities within the meaning of sec. 1 of the German Higher Education Framework Act (HRG).
- **Priority of application:** According to sec. 4 no. 21 sentence 2 UStG, educational services within the scope of integration services under German Social Security Code (SGB) II, employment promotion services under SGB III and services for participation in working life under SGB IX are only exempt from VAT under the conditions of sec. 4 no. 15b / 15c UStG.

3 Special aspects of online education – Ministry of Finance’s letter dated 29 April 2024 and place of supply rule

Regardless of the new regulation, providers must take note of the Federal Ministry of Finance’s letter dated 29 April 2024 which, in practice, is causing considerable unease. According to this, pre-produced content such as video courses, learning platforms, etc. are excluded from the VAT exemption. The same applies if live content is recorded. In special audits for VAT and in common field tax audits, it is currently being argued that any (even subordinate) electronic service elements “infect” the entire supply. The first federal state authorities are already no longer issuing certificates if recordings are provided, despite predominantly human elements.

Apart from the VAT exemption, the new regulations on the place of supply must be observed in the online area. For virtual B2C (sec. 3a para. 3 no. 3 UStG) and B2B services (sec. 3a para. 3 no. 5 UStG), the place of supply is henceforth at the recipient’s (residential) address. By contrast, in the B2C area, the place of supply was previously at the supplier’s place of business. This change is based on a corresponding amendment to the EU VAT Directive.

4 Effects on practice

Due to pressure on the legislator, the reform is not far reaching. It is a challenge for commercial providers, though. Has Berlin simply missed the practical consequences of the new regulation? First of all, all providers must apply for a new certificate in accordance with sec. 4 no. 21 lit. a double-lit. bb UStG as soon as possible. This is because the content of the certificate is different. It will be impossible to issue new certificates to all those affected by 1 January 2025. Furthermore, it is unfortunate that the federal state authorities will henceforth decide on the interpretation of the criteria of school teaching, training, etc., which originate from EU law. Training providers who have previously been subject to VAT may be placed in a considerably worse position as a result of the tax exemption. The certification procedure is not optional. The certificate can also be applied for by third parties (e.g. tax office). If the requirements are met, the state authority must certify. Providers are then confronted with non-deductible input VAT, input VAT corrections, compensation obligations towards landlords, etc. And in the online education sector, the new place-of-supply rules must be observed. For foreign customers, new processes for checking residency must be set up and, if necessary, VAT must be paid abroad. Domestic sales may also be subject to VAT in light of the German Federal Ministry of Finance letter dated 29 April 2024, despite certification. It would have been better if the legislator had taken another deep breath and tried to find a fair solution for all providers...