



Annual Tax Act 2024: Legal entities under public law and non-profit organisations

1 Renewal of the transitional period for legal entities under public law

Once upon a time there was a legislator who wanted to align the new regulation of the taxation of legal entities under public law with Union law. The previous link to the corporate tax 'business of a commercial nature' (Betriebe gewerblicher Art) was abandoned. According to the new regulation in sec. 2b of the German VAT Act (UStG), legal entities under public law should always be considered as taxable persons under VAT law. An exception was only to be made if legal entities under public law exercised official authority and there was no risk of major distortions of competition.

Nine years have passed since then, and the federal and state governments (the legislators!) have still not done their homework. Many have not yet completed the transition. The whole issue was completely underestimated in Berlin.

The legislator has now, once again, taken action and written a further two-year transition period into law for the third time, this time until 31 December 2026. This means that we have a new record in VAT: an 11-year transition period for a single regulation.

Good or bad? For those who have made no changes, it is good: the wait has paid off. For the rest, those who have already completed the full revenue analysis, it depends: Some will exploit the input VAT potential and switch to the new legal system. However, the majority will probably not switch, since, in the future, above all, cooperations will be subject to VAT and will thus become more expensive. Nevertheless, a bitter aftertaste remains for them: they trusted the legislator and invested a



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lot of personnel and material resources in the changeover. They will have to repeat their revenue analysis in two years. This will once again cost a lot of money and lead to frustration for everyone involved.

Nevertheless, nothing in life is free. Those who have already invested a great deal in the changeover can now fully concentrate on the necessary adaptation of the organisational structures in their authority. This is entirely in line with tax compliance. As previous consulting practice has shown, a great deal of effort is required to ensure that decentralised information is made available to the person with central VAT responsibility. The new electronic invoice (e-invoice), which will apply from 1 January 2025, could have a significant impact here. To really take advantage of the many opportunities offered by the new e-invoice, both sides of the incoming and outgoing invoice process need to be rethought. This is a unique opportunity to integrate the tax function into these processes as an integral part of them.

2 No further exemption for sports

Fortunately, the legislator has refrained from extending the VAT exemption for sports. This could have led to the use of sports facilities (gyms, swimming pools, etc.) remaining exempt from VAT in the future. It would no longer have been possible to deduct input VAT. Input VAT adjustments in accordance with sec. 15a UStG would have been necessary. In the end, no one supported this idea, since input VAT surpluses usually exist. Fortunately, after the changeover to sec. 2b UStG, there is potential for input VAT when building new sports facilities.

3 Disorder within educational services

The new regulation of the VAT exemption for educational services in sec. 4 no. 21 UStG (KMLZ Newsletter 49 | 2024) also affects educational institutions organised under public law and/or operating as non-profit organisations. So far, they have provided their educational services to the participants exempt from VAT pursuant to sec. 4 no. 22 lit. a UStG, since the income is generally used primarily to cover costs. However, adhering to the certification procedure in the new sec. 4 no. 21 UStG will also be of significant relevance to them if they want to ensure that their lecturers continue to charge them without VAT. Since the legislator has reformulated the content of the certificate, new certificates will have to be obtained. Disorder is inevitable, as the authorities responsible for issuing the certificates must first become thoroughly familiar with the highly complex developments in the case law of the ECJ and the German Federal Fiscal Court regarding the educational terms 'school or university education, vocational training or retraining'. According to reports, there will initially be a transitional regulation. Bring on Christmas. It will be interesting to see how the tax authorities deal with the newly created regulation next year.

4 A little consolation: 500 litres of beer will be exempt from VAT in the future

While there is trouble coming from Berlin, the extension of the VAT exemption for beer ensures a positive mood. The coalition government has left the German Bundestag with a palatable gift for all home and hobby brewers. From now on, they will be allowed to brew 500 litres VAT exempt instead of the previous 200 litres. Some will accept the VAT gift and obtain their beer VAT exempt from their own home. Perhaps this will make the Berlin chaos a little more bearable.