



Annual Tax Act 2024: Do providers of educational programmes have to apply for new certificates as of 1 January 2025?

55 | 2024

1 Reform of the VAT exemption for educational services as of 1 January 2025

The VAT exemption for educational services according to sec. 4 no. 21 of the German VAT Act will be revised by the Annual Tax Act 2024. We recently reported on this in detail in [KMLZ VAT Newsletter 49 | 2024](#). The reform will take effect on 1 January 2025.

2 The certification procedure remains

The government draft of the Annual Tax Act 2024 no longer provided for the certification procedure. In mid-October, a significantly amended draft of the reform was circulated, which has now found its way into the Federal Law Gazette (Federal Law Gazette I of 5 December 2024). The result: the certification procedure remains, but the responsible state authorities must now issue certificates to the contrary:

- In the version of the law in force until 31 December 2024, educational services provided by private schools and other general or vocational educational institutions may be exempt from VAT 'if the responsible state authority certifies that they properly prepare for a profession or an examination to be taken in front of a legal entity under public law' (sec. 4 no. 21 letter a double letter bb of the German VAT Act).
- From 1 January 2025, the new version of sec. 4 no. 21 sentence 1 letter a double letter bb of the German VAT Act will read as follows: 'if the responsible state authority certifies that they provide school education, higher education, training, further education or professional retraining'.



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3 Countless new applications required – written question to the federal government

The responsible state authorities will thus be confronted with a mass of new applications. Against this background, Fritz Güntzler, a member of the Bundestag, has followed up with a written question to the federal government asking whether the previous certificates will continue to be valid. And if not, how it is to be ensured that all affected training providers will have new certificates as from 1 January 2025.

In a letter dated 5 December 2024 (III C 3 - S 7179/21/10003:003), the Federal Ministry of Finance replied as follows:

'The Federal Government shares the view that certificates issued before the Annual Tax Act 2024 comes into force in accordance with sec. 4 no. 21 letter a double letter bb of the German VAT Act (UStG) will continue to be valid from 1 January 2025, and remain valid after 31 December 2024 in accordance with the conditions of sec. 4 no. 21 sentence 1 letter a double letter bb UStG,. A corresponding clarification is to be included in the Federal Ministry of Finance's letter on the revision of sec. 4 no. 21 UStG.'

4 Federal Ministry of Finance's letter is only binding on the tax authorities, not the fiscal courts

The clarification announced by the Federal Ministry of Finance is to be included in a Federal Ministry of Finance's letter. This will be issued in agreement with the federal states, which is still pending. The Federal Ministry of Finance's letters are administrative instructions addressed to the subordinate tax authorities, which are bound by these instructions. Fiscal Courts, on the other hand, are bound by law and justice (Art. 20 para. 3 of the German Constitution), but are not bound by the Federal Ministry of Finance's letters (principle of the separation of powers).

If the tax authorities assess VAT facts in the field of education differently than the taxable person would have liked, for example because the scope or details of the VAT exemption are disputed, the Fiscal Courts may need to become involved. However, the Fiscal Courts are not bound by the Federal Ministry of Finance's letter but will adhere to the wording of the law. And this requires, from 1 January 2025, a certificate from the responsible state authority that the educational institutions 'provide school education, higher education, training, further education or professional retraining'. If an educational institution does not possess this (new) certificate, its VAT exemption will automatically be brought into question; the scope and details will no longer need to be disputed before the Fiscal Court.

5 Recommended action for taxable persons (and also for the Federal Ministry of Finance)

In this context, educational institutions that wish to continue to benefit from VAT exemption should apply to the relevant state authority for a new certificate. This is the only way to ensure that the new version of the VAT exemption in sec. 4 no. 21 sentence 1 letter a double letter bb of the German VAT Act can take effect.

In the past, commercial education providers did not have a certificate, so their supplies were subject to VAT. This was also a good thing, as it meant that they are entitled for input VAT deduction. However, the new law now threatens to cause annoyance because many commercial educational service providers offer 'further training or vocational retraining'. One solution could be simply not to apply for the new certificate. However, the certificate can also be applied for by third parties (e.g. the tax office). We have documented cases in several federal states. There is therefore a risk that, against the will of the commercial education provider, there will be a VAT exemption and thus a loss of input VAT deduction. But that's not all: input VAT adjustments (sec. 15a of the German VAT Act) may be required for the past and liability for damages to landlords may occur. It is therefore imperative that the Administrative VAT Guidelines be clarified to state that the certificate can only be requested by the taxable person, but not by the tax office. It is now up to the Federal Ministry of Finance.