



Federal Ministry of Finance clarifies status of communities by undivided shares as taxable persons

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1 Background

The VAT treatment of communities by undivided shares has been characterized by significant legal uncertainty in recent years. Traditionally, the tax authorities assumed that communities by undivided shares could be taxable persons within the meaning of VAT law. In contrast, the Federal Fiscal Court opposed this view with its decision of 22 November 2018 (V R 65/17). The Federal Fiscal Court reasoned that communities by undivided shares could not be taxable persons due to their lack of legal capacity under civil law (see KMLZ VAT Newsletter 9 | 2019). This jurisprudence was confirmed by the Federal Fiscal Court with its judgement of 7 May 2020 (V R 1/18). Consequently, significant difficulties of differentiation arose in practice, particularly whether the services should be attributed to the community by undivided shares itself, an overarching civil law partnership, or the individual co-owners. The legislator responded to this with the Annual Tax Act 2022 and amended sec. 2 para. 1 sentence 1 of the German VAT Act (UStG) with effect from 1 January 2023 (see KMLZ VAT Newsletter 58 | 2022). The concept of a taxable person was redefined and explicitly decoupled from legal capacity under other provisions.

In its decision of 23 February 2023 (V B 44/22) issued after the new regulation came into effect, the Federal Fiscal Court maintained its previous jurisprudence but left open whether the legislative amendment would allow communities by undivided shares to be taxable persons in the future. The Federal Ministry of Finance's letter of 9 April 2026 serves to specify the effects of the legislative amendment and adjust the German Administrative VAT Guidelines accordingly. This is to be welcomed in terms of legal certainty in practice. Nevertheless, some questions remain unanswered.



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2 Contents of the Federal Ministry of Finance's letter

The Federal Ministry of Finance (BMF) classifies the amendment of sec. 2 para. 1 sentence 1 UStG as a clarification of the legislative intent. Under VAT law, the status of a taxable person is to be assessed independently of whether the party acting has legal capacity under other provisions. If the requirements of sec. 2 UStG are met, even associations of persons and companies without legal capacities can be taxable persons.

Regarding communities by undivided shares, the Federal Ministry of Finance states that they are taxable persons, within the meaning of sec. 2 UStG, if the business activities of their co-owners are attributed to the community by undivided shares, as they cannot perform activities themselves. If they act jointly in relation to third parties, for example by concluding a joint transfer agreement (e.g., tenancy agreement), the VAT-related legal consequences are attributed to the community by undivided shares. In these cases, the community by undivided shares is to be regarded as a taxable person for VAT purposes.

Furthermore, the Federal Ministry of Finance's letter also applies to British Limited companies, which do not have legal capacity in Germany but may nevertheless be regarded as taxable persons within the meaning of sec. 2 UStG. This applies irrespective of the founding statute or the location of the administrative headquarters. The status of a taxable person generally leads to an obligation to register for VAT purposes in Germany, subject to special provisions, in particular sec. 13b para. 5 UStG and sec. 1 para. 1 no. 4 UStG.

The German Administrative VAT Guidelines are now adjusted accordingly. In particular, detailed guidance on the VAT treatment, in different factual scenarios, of part owners who are spouses is also covered.

The principles are to be applied from 1 January 2023, but may also be applied to previous tax periods. The application of the Federal Fiscal Court's jurisprudence from 2018 and 2020 (see above) is only possible provided there is no contradictory conduct and the members of the community by undivided shares have submitted separate VAT returns.

3 Implications for practice

With its letter, the Federal Ministry of Finance is seen to be consistently implementing the legislative amendments and strengthening the previous administrative view that communities by undivided shares can be taxable persons under VAT law. This results in an increased level of legal certainty for legal practitioners. If the community by undivided shares independently carries out a commercial or professional activity, it is to be treated as a taxable person within the meaning of sec. 2 UStG, with corresponding consequences for/in terms of invoicing, reporting obligations and input VAT deduction. The question whether services are attributable to the community of part owners, an overarching civil law partnership or the individual members depends on the civil law structure and the community's external presentation.

It remains to be seen whether and to what extent the Federal Fiscal Court will confirm the administrative view in light of EU law. In her Opinion of 3 July 2025 in the ECJ case C-796/23, Advocate General *Kokott* pointed out that legal capacity is a mandatory requirement for the independent exercise of an economic activity within the meaning of EU law. Against this background, it cannot be ruled out that the EU law debate, on the taxable status of entities without legal capacity, could regain significance.