



VAT NEWSLETTER

Federal Ministry of Finance on the leasing of operating equipment – abandonment of the splitting requirement

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1 Background

Following the case law of the German Federal Fiscal Court (BFH), the tax authorities previously maintained that a so-called splitting requirement results from sec. 4 no. 12 sentence 2 of the German VAT Act (UStG) in sec. 4.12.10 sentence 1 of the German Administrative VAT Guidelines (UStAE). Accordingly, the leasing and letting of operating equipment were excluded from the VAT exemption under sec. 4 no. 12 sentence 1 lit. a) UStG, even if they constituted an ancillary supply to the VAT-exempt leasing or letting of immovable property.

As a result of the European Court of Justice (ECJ) ruling in 2023 (judgment of 4 May 2023 – C-516/21 – Finanzamt X; see [KMLZ VAT Newsletter 23 | 2023](#)), the BFH changed its legal interpretation. It ruled that the principle of uniformity of the supply takes precedence over any potential division into separate supplies. Therefore, sec. 4 no. 12 sentence 2 of the UStG does not apply when the leasing or letting of operating equipment constitutes a supply ancillary to a principal supply that is exempt from VAT under sec. 4 no. 12 sentence 1 lit. a) of the UStG (German Federal Fiscal Court, judgment of 17 August 2023 – V R 7/23 [V R 20/22]; see [KMLZ VAT Newsletter 38 | 2023](#)).

Despite the significant practical relevance, the tax authorities initially did not implement this case law. At the end of 2025, the German Federal Ministry of Finance (BMF) published a draft letter regarding the VAT exemption for the rental and leasing of business equipment. This draft led to intense discussions within the business community. The BMF's very recent letter of 19 October 2026 serves to implement the case law. The final version largely corresponds to the draft published at the end of 2025 and fails to fully address the criticisms previously expressed against it.



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2 German Federal Ministry of Finance's letter of 19 October 2026 – key facts

The BMF clarifies that, considering the changed case law of the BFH, the previous splitting requirement will no longer be upheld. Sec. 4.12.10 UStAE now expressly regulates that the lease of buildings with operating equipment can constitute a single supply (in individual cases). The constitution of a single supply is to be assessed according to the general principles of sec. 3.10 UStAE. If the examination concludes that a supply must be regarded as ancillary to a principal supply, the ancillary supply shares the VAT treatment of the main supply. If the provision of the operating equipment is merely an ancillary service to the principal service of providing the immovable property, the entire service is subject to the VAT exemption under sec. 4 no. 12 lit. a) UStG. If, on the other hand, the uniform service is characterised essentially by the provision of the operating equipment, the entire service is subject to VAT under sec. 4 no. 12 sentence 2 UStG. In individual cases, however, two separate principal services may also exist.

If the supply provided is of a single nature, the provision of the immovable property constitutes the principal service when the service does not have a purpose of its own for the recipient of the service but rather serves to utilize the principal service under optimal conditions (sec. 3.10 para. 5 UStAE). However, if the (complex) operating equipment enables the use for the intended purpose (e.g., in the case of swimming pools, climbing gyms, golf courses), the provision of the operating equipment is generally to be regarded as the principal service, which renders the overall usage provision subject to VAT under sec. 4 no. 12 sentence 2 UStG. As an initial guideline, sec. 4.12.11 of the UStAE includes several examples.

Finally, the BMF provides a transitional regulation: The new principles apply in all open cases. However, for transactions prior to 1 January 2027, it will not be objected to if the parties – even for the purposes of input VAT deduction – consistently apply the previous version of the UStAE.

3 Consequences for the practice

The implementation of the BFH jurisprudence by the BMF is to be welcomed. While the exemplary classification of individual case scenarios provides orientation, it still leaves significant demarcation questions unresolved. After the publication of the draft, practitioners demanded additional examples and more precise criteria for distinguishing between main and ancillary services. Whether a more extensive catalogue of examples would have led to greater legal certainty is doubtful. "Gray areas" will unquestionably remain. This particularly applies to the handling of the term "complex operating equipment" and the assessment, from the perspective of the average consumer.

The non-objection to transactions carried out before 1 January 2027 is fundamentally positive. However, this requires that the parties involved operate in agreement. Especially considering the often conflicting interests of the contracting parties, this can pose practical difficulties.

There is an immediate need for action. Companies should review both existing lease and rental agreements, as well as new contracts in order to determine whether the subject real estate and operating equipment constitute a uniform supply for VAT purposes and, if so, which component defines the supply. The effects of a changed VAT assessment on the input VAT deduction and any adjustment under sec. 15a UStG must be considered.