

VAT Newsflash

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German Federal Government publishes draft of Annual Tax Law 2020

The draft of the Annual Tax Law 2020 (Jahressteuergesetz 2020, or JStG 2020) recently published by the German Federal Government amends a large number of tax laws, including the German VAT Act (Umsatzsteuergesetz, or UStG) and the German VAT Ordinance (Umsatzsteuer-Durchführungsverordnung, or UStDV). It mainly provides for the implementation of the Digital VAT Package, which involves a complete redesign of the distance sales regime, but also includes several other important amendments. It should be noted that the JStG 2020 is only a draft at present, so its current wording may be withdrawn or amended and new measures may still be added.

The Digital VAT Package

The JStG 2020 transposes Directives (EU) 2017/2455 and 2019/1995 into national law. This measure aims to create a more genuine internal market by removing certain obstacles (such as the need to register in multiple EU countries) and to reduce distortion of competition.

The Digital VAT Package has three main components. The first component is a revised definition of distance sales, which are taxable at the place where the transport of the supplied goods ends. For example, the scope of distance sales is now extended from intra-EU supplies to private individuals (and certain other recipients, including certain taxable persons) to include certain supplies of goods imported from outside the EU.

Second, for certain non-EU-related supplies of goods facilitated by electronic interfaces (e.g. online marketplaces), the interface provider themselves shall be deemed to have received and supplied the goods. This concerns supplies of goods carried out within the EU by third-country suppliers to certain recipients (mostly to private individuals and non-taxable entities), as well as distance sales of imported goods in consignments with intrinsic values not exceeding €150.

Third, the package introduces the one-stop shop (OSS) taxation procedure. Under certain conditions, this allows a single registration to be made in a single EU country for reporting distance sales carried out anywhere in the EU. This is similar but not identical to the mini one-stop shop procedure applied to cross-border telecommunications, broadcasting, and electronically supplied services.

The package also contains other amendments implemented at EU level. These include making many cross-border B2C services (even from third countries) eligible for OSS taxation, and granting an import VAT exemption for goods in consignments worth no more than €150 where the supplier applies the respective

import OSS. Alternatively, goods in consignments worth no more than €150 may be subject to a special import procedure for imports carried out on behalf of the recipient. There are also amendments on the German national level; these include a thorough overhaul of the joint and several liability of electronic interface providers to match the new measures.

It should be noted that the legal framework of the measures above is very complex and subject to a number of conditions such as the nature of the goods supplied and the list of qualified recipients. A comprehensive check of supplies of goods and services is therefore highly recommended.

Selected other amendments

The JStG 2020 also features a number of other amendments, some of which are examined below; these include an extension of the exemption of certain medical and patient care supplies, the abolishment of a certain simplification for short domestic sections in international passenger transportation with motor vehicles, or amendments regarding fines – in particular, fines imposed when VAT is not paid at all, not paid in full, or not paid on time.

Clarifications regarding the retroactive correction of invoices and of rebates and refunds in a supply chain

The current draft of the JStG 2020 provides that the correction of an invoice is not considered a retroactive event in terms of a particular provision allowing a tax assessment to be reopened. If an assessment is neither open for change by being under reservation for later review (“Vorbehalt der Nachprüfung”), nor open for change by means of a legal remedy (e.g. an objection), this means that input VAT from a later correction may be unrecoverable for technical reasons. However, this clarification does not mean that input invoices could not be retroactively corrected.

In cases where a taxable person grants price reductions or price refunds to a customer in a supply chain not directly following the taxable person in the chain, this taxable person may only reduce their VAT liability if the supply to the customer receiving the payment was taxable in Germany. The aim of this change is to transpose European Court of Justice and Federal Fiscal Court (Bundesfinanzhof, or BFH) jurisprudence into national law, so as to support the opinion of the tax authorities.

Reverse charge VAT on telecommunications services provided to resellers

Another amendment, designed to tackle VAT fraud, shifts VAT liability for telecommunications services to the recipient if the recipient is a reseller. A reseller is defined as a taxable person whose main activity regarding the acquisition of telecommunications services consists of providing them to third parties and whose own consumption of these services is of secondary importance. A taxable person is assumed to be a reseller if they have received a certificate to this effect, valid at the time at which the service is provided to the reseller, from the responsible tax authority. The possession of this certificate shifts the VAT liability to the recipient of the telecommunications services, even if the recipient does not use this certificate in dealing with the provider of these services.

Limitation of VAT ID number

The draft law also allows the responsible tax authority to limit a specific VAT ID if it can be proven that the VAT ID is e. g. being used to commit VAT fraud, or if there are credible indications that this is occurring. This will also apply e. g. in the case of VAT fraud committed in other EU member states. The draft does not explain what is meant by ‘limitation’, although this is likely to refer to a time limit.

Entry into force

The amendments related to the Digital VAT Package will come into force on 1 July 2021 (the OSS provisions will come into force on 1 April 2021 to enable the taxable persons concerned to register in time, but will only be applicable to supplies performed after 30 June 2021). The two clarifications above will come into force the day after publication in the Federal Law Gazette, while the provisions regarding the reverse charge procedure for telecommunications services and limitation of VAT IDs will come into force on 1 January 2021. Other amendments will come into force either at a point in time mentioned above or on 1 July 2022.

Sources

[Regierungsentwurf des Jahressteuergesetzes 2020](#) (Federal Government draft of the Annual Tax Law 2020) on the Federal Ministry of Finance website (in German only)

Council Directives (EU) [2017/2455](#) and [2019/1995](#) amending Directive 2006/112/EC

Council Implementation Regulation (EU) [2019/2026](#) amending Implementing Regulation (EU) No 282/2011

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