

# VAT newsletter

Current topics and questions about VAT

November 2020

## NEWS FROM THE EUGH

### ECJ submission on sales tax rate of woodchipping schnitzel

*BFH, decision of June 10, 2020, VR 6/18*

In the present revision driving before the BFH, it is particularly disputed whether the delivery of wood chips is below the reduced tax rate or the general tax rate.

lies.

### National law

In Section 12 (2) No. 1 of the UStG in conjunction with No. 48 of Annex 2 to the UStG, the German legislature stipulates that the tax is reduced to 7 percent of the assessment base for deliveries of certain forms of wood.

In the present case, according to national law, the reduced tax rate on the deliveries of wood chips does not come into consideration because these are to be classified as wood in the form of chips under subheadings 4401 21 00 or 4401 22 00 CN and thus not from Section 12 (2) No. 1 UStG in conjunction with No. 48 of Annex 2 to the UStG.

### Union law

According to Art. 122 of the VAT Directive, the member states can apply a reduced tax rate to deliveries of firewood. the.

According to Art. 98, Paragraph 1 of the VAT Directive, the member states can have one or two reduced rates

Apply tax rates. After Art. 98 Para. 3 of the VAT Directive, the Member States have the right to reduced tax can be applied to categories precisely delimit the categories in of objects on the basis of the Combined question for the purposes of paragraph 1. No-

The BFH asks the European Court of Justice whether the deliveries of different forms of

Firewood from the point of view of an average consumer are to be treated equally.

In this context, the ECJ judgment of 1.10.2020 - Case C-331/19 - X - on the question of the application of the

A reduced VAT rate on products that are sold and used as aphrodisiac should be observed.

## content

[News from the European Court of Justice](#)

[ECJ submission on VAT set of wood chips](#)

[Internal company no tax liability ger](#)

[News from the BFH](#)

[Reduced tax rate for the event of techno and house Concerts](#)

[Tax liability of the service recipients with tax group](#)

[News from the BMF](#)

[VAT treatment of Coupons](#)

[Temporary reduction in sales tax rates on July 1, 2020](#)

[Tax-free cross-border Freight transport, which relates to objects of import and export Respectively](#)

[Qualified confirmation of a foreign sales tax identification numbers from 2021](#)

[Briefly](#)

[SAP S / 4HANA implementation - an opportunity for the tax department](#)

[Event notice](#)

[Brexit at the turn of the year](#)

[Cologne Sales Tax Days 2020](#)

[Practical questions and information on the tax rate increase as of January 1, 2021](#)

The VAT system directive contains neither a definition of the term “food” nor the expression “products normally used as an additive or as a substitute for food”. Among other things, the ECJ comes to the conclusion that there is no reason to differentiate

tax regimes apply to them as these two categories of products have the same nutritional value

Function.

**Please note:**

The question of whether a reduced tax rate is not only based on the Combined Nomenclature but also, if necessary, other criteria in the evaluation, in particular the point of view of an average consumer

are taken into account, may also arise in other matters. In this respect, arguments can be made on the basis of this if sales tax rates are questioned by the tax administration.

Affected companies should independently of this, check your processes for applying the correct sales tax rates (possibly your product portfolio cluster) and the application of (non-binding) customs tariff consider information.

**Internal company no tax more obligatory**

*ECJ, ruling v. 16.9.2020 - Case C-312/19 - XT*

The ECJ comes with a judgment of 16.9.2020 - Case C-312/19 - XT - to the result that an internal company for lack of its own

is not a taxpayer when acting in legal dealings with third parties.

In the present case, XT and a business partner concluded an agreement through a joint venture with the activity in the form of personal purpose of collaboration to build a Residential property in Lithuania. They decided to purchase a piece of land, with XT alone signing the purchase agreement. XT brought in 30% of the purchase price and the business partner 70%. He transferred this contribution to XT. They decided to register XT alone as the owner in the land register. They then decided to build a real estate complex of five buildings. XT acted as the client and also received a building permit in his name for the construction of the building. The buildings were also sold on behalf of XT.

**Please note:**

The German financial administration also assumes that, in the case of an internal company, only the people involved in the internal company.

are entrepreneurs insofar as they appear entrepreneurial (see Section 2.1 Paragraph 5 UStAE). However, as part of tax audits

again and again constellations taken up, in which it is questionable in what form an external appearance of the persons involved can lead to the fact that the construction, which is conceived as an internal company, is to be qualified as an external company, thus as an entrepreneur. The current judgment can provide information in this regard.

**NEWS FROM BFH**

**Reduced tax rate for the event of techno- and house concerts**

*BFH, ruling v. July 23, 2020, VR 17/17*

The BFH comes to the conclusion that admission revenues for techno and house concerts according to § 12 para. 2 no. 7 letter a UStG are tax-reduced if these musical performances represent The real purpose of the organizers was the initiation and are of secondary to give them the character of the Muzen. importance,

sik performance not impaired-

**facts**

The applicant operates the Techno club "X". There she organizes so-called techno and house club nights on weekends, where up to 30 different disc jockeys (DJs)

occur. The DJs play music from sound carriers and change it with the help of the mixer and other technical aids such as computers, filters, effects units and controllers

and synthesizers. New sound sequences and pieces of music are created. It is disputed whether the entry proceeds are subject to the standard tax rate (according to the tax office) or the reduced tax rate (according to the tax court).

**judgment**

The revision of the tax office was unsuccessful. The tax court ruled that the entrance fees for organizing the club nights as concerts are subject to the reduced tax rate.

gen. For the music styles "Techno" and "House" are also turntables,

To look at mixing consoles, CD players and the like with which the

Music is presented in the context of a concert if it is used to perform the piece of music - and not just to play a sound carrier.

In the present case, the tax court has assessed the circumstances established by it to the effect that that the performances of the DJs give the club nights from the point of view of the average consumer Stamped. The BFH does not object to this.

**Please note:**

In the present case, the concert constituted the actual purpose of the event. Among other things, the relationship between sales from admission entitlement (10 to 14 euros, ie approx. 1.6 million euros) and gastronomy (approx. 2.7 million euros) was not relevant in the overall assessment. The question of what, with such a combined service

offered the performance from the point of view of the average consumer

Characterizes, repeatedly creates difficulties in practice and leads precisely when different sales figures for the various services

tax rates apply, lead to controversial discussions. This judgment can provide relevant information in this context.

**Tax liability of the performance recipient in the case of tax group**

*BFH, ruling v. July 23, 2020 - VR 32/19*

The BFH ruling concerns the question of the tax liability of Beneficiary if a subsidiary civil legally procures construction work. According to the BFH, the parent company receives the income input power, so that the company uses the input reverse charge procedure so that it is the external sales of the circle arrives.

**facts**

In the present case, a sole proprietorship was the majority shareholder at various corporations properties. This included a GmbH. The GmbH performed construction work for sister companies companies for according to § 4 No. 9 rates in Letter a UStG tax-free conversion the context of building contractors for their activities. The GmbH contractor (third part other subordinates of the individual party contractor) entrepreneurs was not involved, with the provider third supply of construction work. They went entrepreneur and the GmbH debt from a tax partnership of the GmbH.

Following several external audits, the tax office assumed that the individual entrepreneur as the parent company

as well as the GmbH and its sister companies as an companies an organ according to § 2 Abs. 2 Nr. 2 UStG is given.

In addition, the tax office recorded the tax liability for the construction services obtained from the sole proprietorship.

The latter, on the other hand, asserted that the requirements for tax liability of

Beneficiary on the Basis of the BFH judgment of August 22, 2013 (BStBl II 2014 p. 128) are not given. What is decisive is that the construction services procured by the GmbH as a subsidiary company are used by the tax group for property deliveries tax-free according to § 4 No. 9 letter a UStG.

had been det.

**judgment**

The BFH has given the individual entrepreneur right. In the case of a tax group, the parent company, but not the input reverse charge procedure so that it is

verse-batch procedure on the

to be assigned to the parent company external sales and not non-taxable indoor sentences of the companies of the organizing group. External rates here are tax-free property deliveries that are not to be qualified as construction work. Thus the reverse charge procedure does not apply into consideration.

**Please note:**

According to the case law of BFH leads the non-independent ability of the subsidiary company to be

attributed to the carrier. The

non-controllability of such

The members of the parent company gankreis; rather, the organizational also have to pay tax on the sales of the companies have external sales. The same connection is with affects the organ shaft line ratio. not only the case in the example in the This is to claim the input tax case of in-suit, which is based on the

use of provision of input services for ses.

In connection with the assumption of the tax debtor's function by the controlling company, please refer to the pending ECJ submissions from

V. and XI. Senate of the BFH (see VAT Newsletter July 2020) to check pointed out. In particular is whether they should not be kept open in final determinations procedural order to protect business. Because if it the legal position of the company as an were more likely, would have to - so-independent taxpayer

widely permissible under procedural law - previous determinations against the parent company, if necessary be lifted wisely, while the tax group is an independent according to taxpayers already

(partially) statute of limitations could have occurred.

#### NEWS FROM THE BMF

#### VAT treatment management of vouchers

BMF, Schr. V. 2.11.2020 - III C 2 implemented.  
- S 7100/19/10001: 002

The BMF has [Wrote from 2.11.2020](#) for sales tax  
The treatment of vouchers in accordance with the Voucher Directive 2016/1065 and in accordance with Section 3 Paragraphs 13 to 15 UStG and amended the UStAE accordingly.

#### Previous treatment

In the case of vouchers, sales tax law was previously between Vouchers and goods or vouchers in kind divorced. While valuables Notes over a certain nominal amount could be exchanged at the issuing dealer for any goods or service,

related to goods or in-kind vouchers for a specifically named goods or service. The issue of a voucher was only treated as an exchange of means of payment and did not itself constitute a service in terms of sales tax

The sales tax was only incurred when the voucher was redeemed and thus when the actual transaction was made.

In the case of goods or material vouchers, the reference to the service specified in the voucher given when the voucher is issued. Therefore, the amount paid when purchasing a voucher represented a down payment on the specified service, which was subject to down payment taxation in accordance with Section 13 Paragraph 1 No. 1 Letter a Clause 4 UStG.

#### Treatment since 1.1.2019

With the law to avoid sales tax losses at

Trading in goods on the Internet and amending other tax regulations from

11.4.2018 the voucher guideline became effective as of 1.1.2019 into national law

Decisive demarcation

The characteristic is whether there is an obligation to accept the voucher as consideration - in whole or in part instead of a regular payment - for a delivery of objects or the rendering of other services. The

Like the Voucher Directive, the law provides

tion single-purpose and multi-purpose vouchers. Especially the vouchers that only entitle the holder to a price reduction or reimbursement

but do not confer the right to receive such goods or services,

are not affected by the new regulations. Postage stamps,

Tickets, tickets for Cinemas and museums as well as not equivalent instruments fall in the application 15 UStG, since in The scope of Section 3 (14) already these counterfeit obligations exists beyond the mere pending claims

and proof of payment. this is primarily about

#### Change of the UStAE

The new section 3.17 UStAE contains the following regulations:

- Definition and demarcation of vouchers to other instruments
- Single-purpose vouchers and Multipurpose vouchers
- Vouchers in sales chains BMF has issued a letter from (acting in foreign and in own name)

- Determination of the performance location for vouchers
- Assessment basis for Coupons
- Non-redemption of vouchers nen
- Remonetizability of Coupons
- Invoicing for credit seem to be

#### Temporal application

The principles of the BMF letter are to be applied for the first time to vouchers that issued after December 31, 2018. It will not be objected to - also for the purposes of input tax deduction - if from

On January 1st, 2019 and before February 2nd, 2021, vouchers issued by those involved do not correspond accordingly have been dealt with in accordance with the specifications of the BMF letter.

#### Please note:

Affected companies should at the latest by 2.2.2021 your sales tax processes in Check with regard to vouchers and adjust accordingly if necessary. This applies to the incoming invoices

audit as well as taxation and invoicing on the exit side.

#### Temporary lowering of the sales tax rate on July 1, 2020

BMF, Schr. V. November 4, 2020 - III C 2  
- S 7030/20/10009: 016

By the Second Law for the Implementation of Tax Aid measures to cope the corona crisis (second Corona Tax Aid Act) ten for the period from July 1, 2020 to December 31, 2020 a general tax rate of 16 percent and a reduced tax rate of 5 percent. The

June 30, 2020 (see [VAT Newslet-](#)

ter July 2020 ) have already asked about numerous application questions and in some cases relief has been made for practice.

In addition, the BMF is now responding to numerous practical questions with a letter of November 4, 2020 for the following points:

- Advance and down payment bills
- Issuing a voucher for a bindingly ordered item as well as restaurant vouchers
- Reimbursement of deposit amounts
- Granting of annual bonuses
- Manufacturer discount when dispensing pharmaceutical products
- Taxation of electricity, Gas, water, cold and heat supplies as well as from Sewage disposal
- Taxation of personal transport by rail rail traffic, in the sweeping with motor vehicles and in traffic with trolleybuses
- Special and compensation number solutions for rental or leasing contracts
- Applicable tax rate with total margin formation according to § 25 Abs. 3 Satz 3 UStG
- Differential taxation according to § 25a Abs. 4 UStG
- Newspaper and magazine subscriptions
- Time of performance for performance of an insolvency agreement
- Services of the scaffolding craft
- Recurring services
- Taxation of sales in the hospitality industry

You can find the BMF letter with the specific information [here](#).

**Tax-free cross-border ongoing freight transport, which relate to objects of import and export**  
*BMF, Schr. V. 14.10.2020 - III C 3 - S 7156/19/10002: 002*

According to § 4 No. 3 letter a UStG, cross-border goods transports that relate to objects of import and export are taxed under the conditions specified there.

free. The provision is based on Art. 146 Paragraph 1 Letter e of the VAT Directive.

The previous handling of the financial administration is not in line with the ECJ ruling of June 29, 2017 - Case C-288/16 - LC (see [VAT Newsletter July 2017](#)). In section 4.3.2 (4) UStAE, the BMF letter of 6.2.2020

the following restriction take: "The tax exemption basically only comes for the performance of the main carrier, but not for the services of the subcontractors, as these are the transport services do not deliver the goods directly to the consignor or recipient of the goods, but to the main carrier. "Also section 4.3. Paragraph 8 UStAE has been adapted to this extent. The principles of the BMF letter are to be applied to all open cases.

For sales made before 1.1.2022 (Section 4 No. 3 Letter a UStG), however, there will be no objection if the previous legal position to Section 4.3.2 Paragraph 4 UStAE is applied. The original no-objection policy is

has thus been extended repeatedly.

**Qualified confirmation of a foreign sales tax Identification number from 2021**

*BMF, Schr. V. 28.10.2020 - III C 5 - S 7427-e / 19/10001: 001*

In its letter dated October 28, 2020, the BMF announced that the manner in which qualified sales tax identification number verification

can be officially confirmed from 1.1.2021 onwards. Section 18e.1

UStAE, which provides evidence of the qualified confirmation of VAT identification numbers ("USt-IdNr.") regulates, will be the same on January 1st, 2021 customized.

According to Section 18e.1 Paragraph 2 Clauses 1 and 2 UStAE, entrepreneurs can, as before, simple and qualified confirmation ask in writing, over the Internet or by telephone to the Federal Central Tax Office (BZSt); In the case of inquiries via the Internet, in addition to the request for individual VAT ID numbers. also the possibility of simultaneous inquiries about several VAT ID no. perform.

The BMF letter of 28.10.2020, sentences 3 to 5 of Section 18e.1 Paragraph 2 UStAE were worded as follows:

"For inquiries about individual VAT ID no. is proof of the qualified work carried out

to keep the confirmation request by storing the printout or by adopting the result communicated by the BZSt in a generally customary format or as a screenshot in the company's system

Simultaneous inquiries about several VAT ID numbers. Via the interface offered by the BZSt for this purpose, the electronic

Answer in the form of a data record directly integrated into the company's system and evaluated. In these cases, proof of a completed qualified

Request for a VAT ID no. on the data set received from the BZSt. "

Furthermore, paragraph 5 of drafting: Section 18e.1 UStAE as follows

"If an inquiry is made by telephone, the BZSt generally shares the result of the confirmation inquiry. Lich in writing. "

The principles of the BMF letter are to be applied to confirmation requests for the first time. those submitted to the BZSt after December 31, 2020. When using the interface in the context of mass queries, the data record received from the BZSt must be saved. We therefore recommend the current process for validating the sales tax identification

The cation number must be checked before the end of the year and adjusted if necessary.

## BRIEFLY

### **SAP S / 4HANA implementation - an opportunity for the tax department**

Fundamentally optimize processes within the SAP system from a tax point of view and strengthen tax compliance: Information on this in our [Flyer](#) .

## EVENT NOTICE

### **Brexit at the turn of the year - The movement of goods with the United Kingdom starts January 2021**

*Webcast on December 1st, 2020*

The aim of the webcast is to share the current

State of the art with regard to the most important issues relating to

To discuss the withdrawal of the United Kingdom (UK). With

Look at the topics of customs malities, supply chain adaptation regulations, origins of goods and preferences, sales tax

Effects of changed

Questions / added value supply chains and power flow men, need for action from tax

Compliance perspective, can the

Participants can check their own trade flows with the UK for the last time before the final UK exit takes effect

ask once and prepare for 1.1.2021.

You can find the registration form for the event [here](#) .

We would like to invite you to the following topic-related events design of the publishing house Dr. Otto Schmidt KG in cooperation with KPMG.

The event will take place as a hybrid event this year. Participants can follow the Cologne days via live stream.

### **Cologne days sales tax 2020**

on December 3rd and 4th, 2020 in Cologne

#### **subjects**

- Legal innovations 2020/2021 on Germany and EU level
- Sales tax and bankruptcy
- Retroactive billing right

- Innovations on the occasion of the Annual Tax Act 2020
- Current BFH and ECJ case law as well as foreign selected BMF letter

Further information and the registration form for the event you will find it [here](#) .

### **Practical questions and information on increasing the tax rate for 1.1.2021**

*Webcast on December 8th, 2020*

More information and the registration form for the event you will find it [here](#) .

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## International network from KPMG

On the website of KPMG International \*\* you can find a lot of important information on sales tax law in Germany and abroad. Especially

you can order the TaxNewsFlash Indirect Tax and the TaxNews- Flash Trade & Customs, which contain news from all over the world on these topics. We are happy to advise you with the help of our network on international

Questions.

## Our website / LinkedIn

For the latest information, please visit our website and our [LinkedIn page](#) [In-direct Tax Services](#).

\* Trade & Customs

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