

Høringssvar til udkast til styresignal – Praksisændring – Genoptagelse – Momsfritagelse af skoleundervisning

Skattestyrelsen har den 7. juli 2022 sendt ovenstående styresignal i høring med journalnr. 21-1229043. Styresignalet vedrører en ændring af praksis for, hvilke leverancer der kan omfattes af den danske momsfrigørelse for skoleundervisning. Udkastet til styresignal er udarbejdet med baggrund i EU-Domstolens afgørelser i sagerne C-449/17, A&G Fahrschul, C-47/19, HA og C-373/19, Dubrovin & Tröger Aquatics.

Udkastet giver efter vores opfattelse for det første anledning til en række tvivls- og afgrænsningstilfælde og bør gennemgå en væsentlig tilpasning inden offentliggørelse. For det andet ønsker vi at sætte fokus på de alvorlige økonomiske og samfundsmæssige, herunder konkurrenceforvridende, konsekvenser, som den foreslåede ændring af praksis vil have for en lang række af offentlige og private virksomheder, foreninger mv., som i dag udbyder momsfri skoleundervisning til private personer.

Det er overordnet set vores vurdering, at styresignalet lægger op til en al for snæver fortolkning af de nævnte EU-domme og en alt for snæver fortolkning af de EU-direktivbestemte fritagelser for undervisning. Skattestyrelsen har vurderet, at de tre tyske domme giver anledning til at indskrænke rækkevidden og afgrænsningen af den danske undervisningsfrigørelse.

Mentor Danmarks formål er at hjælpe elever i folkeskolen og gymnasiet med at forstå og bestå de fag, som udbydes, og som er en del af undervisningen. Vores kunder er ofte forældre til disse elever. Det er forældre, som desværre er nødsaget til at købe privat hjælp ved siden af det udbud af undervisning, som ikke altid er nok for den enkelte elev. Vores kunder køber altså forløb, som fx skal hjælpe til, at en gymnasieelev kan bestå faget Matematik B på gymnasiet. Der er tale om en-til-en undervisning i samme pensum, som folkeskolen og gymnasiet udbyder, men grundet vores mentors undervisningsform virker undervisningen bedre for eleverne end den undervisning, der udbydes på klassehold.

Vi skal i det følgende give vores kommentarer til styresignalet indhold, ligesom vi beder om personligt fremtræde for Skattestyrelsen med henblik på at forklare og tydeliggøre vores bekymring omkring udkast til styresignal for skoleundervisning.

1. Tvivls- og afgrænsningsproblemer i styresignalet

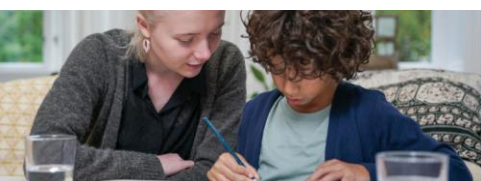
1.a Undervisning i enkelte emner

Skattestyrelsen udleder ud fra de tre domme, at momsfrigørelsen ikke kan omfatte undervisning i enkelte emner, da undervisning i enkelte emner ifølge Skattestyrelsen ikke indeholder en overførsel af viden og færdigheder vedrørende en bred og varieret mængde af emner.

Denne argumentation har EU-Domstolen benyttet sig af, når den udtaler, at en svømmeskoles undervisning i svømmeundervisning ikke kan sidestilles med overførsel af viden og færdigheder vedrørende en bred og varieret mængde af emner. På lignende vis udtalte EU-Domstolen, at en køreskoles køreundervisning er en specialiseret undervisning, der ikke i sig selv er ensbetydende med at overføre viden og færdigheder vedrørende en bred og varieret mængde af emner. Vi kan følge EU-Domstolens argumentation for, at disse specielle kurser ikke kan fritages.

Det er dog ikke logisk, at Skattestyrelsen herefter udstrækker denne betydning til at udtale, at undervisning i fx dansk skal anses som specialiseret undervisning, der ikke opfylder betingelsen om bred og varieret mængde af emner. Undervisningen i dansk på fx folkeskole- eller gymnasieniveau indeholder i sig selv en bred og varieret mængde af emner inden for faget dansk. Faget dansk er som skræddersyet til at være en del af skoleundervisning og skal ikke anses som et så specialiseret fag, at dansk skal sidestilles med undervisning i svømning.

Følges Skattestyrelsens argumentation om, at undervisning i enkelte emner ikke kan fritages, vil det ramme både de enkeltfag, der udbydes af offentlige institutioner, fx suppleringsfag eller HF-enkeltfag, men også de undervisningsformer, der udbydes af private virksomheder, herunder Mentor Danmark. Det har ikke været EU-lovgivers formål, at undervisning, der hører til de nationale skolesystemer, skal belastes af moms uagtet, om skoleundervisningen udbydes af det offentlige skolesystem selv eller af andre udbydere af samme skoleundervisning. På samme måde er det meget tvivlsomt, om det er lovgivers formål i Danmark at gøre skoleundervisningen på folkeskole- og gymnasieniveau væsentlig dyrere.



Mentor Danmark er Danmarks største lektiehjælpsvirksomhed, men kun én blandt mange. Den undervisning, der tilbydes af Mentor Danmark, er et tilbud til de børn og unge, der har brug for hjælp til den undervisning, der foregår i skolerne. Det stigende pres på skolerne og børn og unge har de seneste år desværre betydet, at flere i større grad har brug for hjælp til at kunne forstå og bestå den normale undervisning, som skolerne ikke i alle tilfælde kan magte. Mentor Danmark sørger for en professionel løsning med internt ansatte uddannede mentorer. Alle mentorer er topstuderende med topkarakterer, og alle ansatte mentorer skal bestå Mentor Danmarks professionelle rekrutteringsproces med bl.a. relevante faglige og pædagogiske test og formelle kontroller af eksamensresultater samt ren børne- og straffeattest.

Vi er i tvivl, om Skattestyrelsen er opmærksom på konsekvenserne ved at gøre skoleundervisning i enkeltfag momspligtig, og vi opfordrer derfor Skattestyrelsen til at genoverveje sin fortolkning og forholde sig mere konkret til, at det ikke har været EU-Domstolens formål, at enkeltfag pr. definition ikke skal være omfattet af fritagelsen.

1.b Uddannelsesforløb

Skattestyrelsen nævner i styresignalet, at der skal være tale om et forløb, hvor der undervises i flere forskellige fag, hvor et samlet forløb "bestående af dansk, engelsk, tysk og fransk" nævnes som et eksempel på værende et samlet forløb.

Hvis Skattestyrelsen fastholder fortolkningen af, at der skal være en væsentlig forskel på skoleundervisning som et samlet forløb og skoleundervisning i enkelte fag, så opfordres Skattestyrelsen til at gøre det klarere, hvornår der er tale om et samlet forløb, og hvornår der er tale om undervisning i enkelte emner. Det er ikke tydeligt i Styresignalet, hvor grænsedragningen skal foretages, og hvordan det af virksomhederne skal håndteres i praksis. Kan to fag udgøre et samlet forløb, eller skal samlet forløb indeholde alle de fag, som udbydes på en skole for et bestemt klassetrin? Hvordan skal virksomheder momsmæssigt håndtere, at privatpersoner køber lektiehjælp i to fag, fx dansk og engelsk, men senere tilmelder sig yderligere to fag, fx tysk og fransk?

1.c Reglerne i Tyskland og andre nabolande

Skattestyrelsen tager som nævnt udgangspunkt i tre EU-domme, der alle er præjudicielt forelagt EU-Domstolen af de tyske domstole.

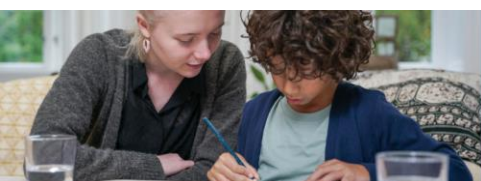
Vi har bedt Deloitte i Tyskland om at analysere og konkludere på praksis i Tyskland for privatundervisning i enkeltfag.

Konklusionen er, at hverken de tyske skattemyndigheder eller de tyske domstole på baggrund heraf har ændret praksis på området for momsfri undervisning. Videre bemærker vi, at de tyske skattemyndigheder ej heller har planer om at ændre lovgivningen på baggrund af EU-sagerne og/eller de tyske sager, der gav anledning til de præjudicielle forelæggelser.

Lektiehjælpsvirksomhed er således fritaget i Tyskland og vil fortsætte med at være fritaget. Dette er ligeledes tilfældet i Norge og Holland (link: [Exemption in education \(belastingdienst.nl\)](#)).

Det undrer, at de danske skattemyndigheder vælger at fortolke EU-domme vedrørende tyske momsforhold på en markant anden måde end de tyske myndigheder, som dommene vedrører. Vi anbefaler, at Skattestyrelsen kigger ud over Danmarks grænser og skeler til udlandet – herunder særligt Tyskland, som har genereret sagerne – med hensyn til, hvordan andre skattemyndigheder har reageret på den praksis, der nu i Danmark gennemgår en væsentlig og betydningsfuld ændring.

Da begreberne i fritagelserne i momssystemdirektivet er selvstændige EU-retlige begreber, der ikke skal anvendes på forskellig vis i de enkelte medlemsstater, opfordrer vi til, at Skattestyrelsen foretager et nabotjek i forhold til momsfritagelsens anvendelsesområde. Skattestyrelsen opfordres således til at tage kontakt til skattemyndighederne i de nærmeste nabolande, herunder Tyskland, for at sikre, at Danmark ikke foretager en overimplementering på baggrund af EU-Domstolssagerne til skade for en række virksomheder og organisationer.



2. Økonomiske og samfundsmæssige konsekvenser og konkurrenceforvridning

2.a Konkurrenceforvridning

Skattestyrelsen har udsendt udkast til styresignal vedrørende momsfrigørelse af aftenskoler, daghøjskoler og folkeuniversiteter, journalnr. 22-0348231. Styresignalet fritager de undervisningsydelse, der leveres af aftenskoler, daghøjskoler og folkeuniversiteter, når disse skoler modtager tilskud med hjemmel i folkeoplysningsloven. Styresignalet lægger op til, at undervisningsydelse – når de leveres af aftenskoler mv. – fritages som kulturelle aktiviteter.

Vi gør opmærksom på, at aftenskoler mv. efter styresignalet kan fortsætte med at levere momsfri undervisning i enkelte emner, som blandt andet sprogundervisning, yoga samt kunsthåndværksfag, hvorimod andre virksomheder og institutioner skal opkræve moms af deres levering af undervisning i samme emner.

Der bliver tale om konkurrenceforvridning, når der med den kommende praksisændring for momsfrigørelsen for undervisning opstår en forskel i prisen for undervisningen, grundet at én udbyder skal opkræve moms af skoleundervisning, og en anden udbyder kan undlade at opkræve moms af skoleundervisning, jf. udkast til styresignalet vedrørende momsfrigørelse af skoleundervisning (journalnr. 21-1229043).

Vi opfordrer Skattestyrelsen til at tage stilling til denne konkurrencefordrejning og på baggrund heraf genoverveje rækkevidden af den foreslåede praksisændring i styresignalet vedrørende momsfrigørelse af skoleundervisning.

2.b Undervisning bliver dyrere for deltagerne

Det er en misforståelse, at vores økonomi vil være uændret, hvis Skattestyrelsen pålægger moms på enkeltfag. Momspligten vil alt andet lige medføre et forholdsmæssigt større momsfradrag i form af, at den delvise fradragprocent forøges, når den momspligtige omsætning forholdsmæssigt bliver større end den momsfrie omsætning. Vi vil også skulle betale et mindre beløb i lønsumsafgift. Men den typiske helt overvejende andel af omkostningerne udgøres af lønninger til vores mange ansatte mentorer. Denne udgift vil være uændret, da udbetaling af lønninger til ansatte i forvejen ikke er belagt med moms, og da en øget fradragssret for moms intet ændrer for omkostningen til ansatte mentorer.

Prisen for Mentor Danmarks undervisning synes af vores kunder i forvejen høj, da vores kunder er private kunder, som skal dække udgiften fra et almindeligt privatbudget. Kunderne har ingen mulighed for at fradrage momsen på undervisningen. Grundet nuværende prissammensætning vil Mentor Danmark være nødsaget til at hæve prisen på undervisningen med et beløb svarende til momsen, altså med 25%. Det er en så væsentlig forøgelse af en pris, som vores kunder i forvejen finder høj, at vi risikerer, at mange kunder ikke længere vil have råd til at støtte sine børn med eksternt hjælp til at klare folkeskole- og gymnasieundervisningen.

2.c Risiko for mere sort arbejde

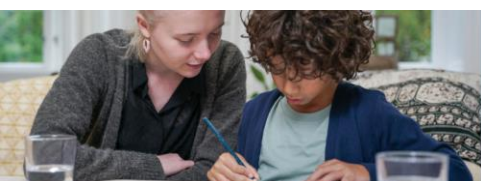
Det er en kendsgerning, at mange af Mentor Danmarks mentorer og andre private undervisere bliver tilbudt at udføre undervisningen sort, for at prisen bliver mere overkommelig for kunderne.

Mentor Danmark har lavet en intern undersøgelse, som viser, at omkring 25% af deres mentorer fortæller, at de af kunderne er blevet tilbudt sort arbejde som undervisere.

Mentor Danmark er på denne måde i forvejen udsat for et stærkt pres fra personer, der sælger privatundervisning uden selv at betale skat af indtægten.

Mentor Danmarks timepris for mentorer er naturligvis ligesom andre undervisningsudbydere sammensat ud fra forskellige omkostningselementer, herunder skat. Hvis udbydere af undervisning nu skal tillægge undervisningen 25% i moms, vil brugen af undervisning fra sort arbejdskraft blive meget mere fordelagtig. Dette er en u hensigtsmæssig konsekvens af udkastet til styresignal om at pålægge moms på undervisning i enkeltfag.

Den forventede negative efterspørgselseffekt af en momspåleggelse af lektiehjælp kombineret med det øgede incitament til sort arbejde, vil sandsynligvis medføre et samlet provenutab for staten som følge af den markant lavere aktivitet i branchen.



2.d Risiko for at markedet for privat undervisning går tilbage til uordnede forhold

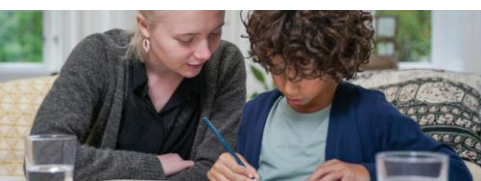
En væsentlig del af Mentor Danmarks arbejde med privat undervisning består i at sikre, at privat undervisning foregår under ordnede vilkår. Her tænkes på de omfattende processer, der varetages systematisk af Mentor Danmark, for dels at finde den helt rigtige mentor til den enkelte mentee, dels at lave en systematisk løbende rapportering til mentee og dennes forældre og dels sikre, at mentee får tilpasset undervisning til dennes niveau. Her tænkes på skatte- og ansættelsesmæssige vilkår, hvor Mentor Danmark sikrer, at alle mentorer betaler skat og er ansatte på ordnede vilkår. Der tænkes desuden særligt på, at Mentor Danmark sikrer, at alle mentorer har ren straffe- og børneattest. Med moms på privatundervisning vil markedet vende tilbage til tidligere tiders marked, hvor lovlig privat undervisning var forbeholdt en mindre elite, og sort privat undervisning var normen, og hvor ukontrollerede aktører vil spille en helt uforholdsmæssig rolle med én sikker taber; alle de børn og unge, som fremadrettet ikke længere vil få adgang til en dokumenteret lovlig, betalbar, sikker og kvalitetssikret privat undervisning.

3. Afslutning

Vi står til rådighed med yderligere information, eksempler eller drøftelser om mere uddybende regler, hvis Skattestyrelsen måtte have behov for dette.

Med venlig hilsen

Mentor Danmark ApS





Mentor Danmark ApS

Private tutoring under German VAT rules

August 22, 2022

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1. Query

E-Mail 15 August 2022

Area

Facts

Mentor Danmark ApS offers private tutoring to pupils within the general school system.

The tutoring is aimed at individuals who require extra tutoring in subjects they are about to fail or need to exceed.

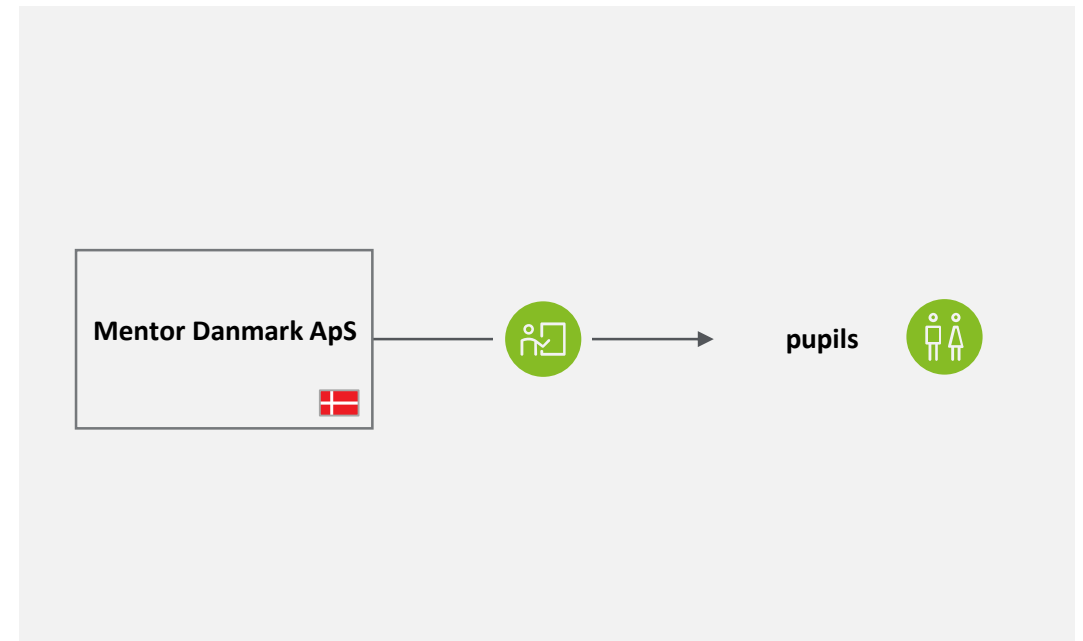
All lessons offered by Mentor Danmark ApS concern subjects taught within the general school system, e. g., Danish, Mathematics, English, etc.

The tutors are hired and trained by Mentor Danmark ApS.

The tutoring is performed by students who are employed by Mentor Danmark ApS who runs the activities in the Danish form of a private limited company.

The tutoring is performed in person or via virtual live meetings.

Usually, only tutoring in one or two subjects is purchased, not a full course program.



1. Query

E-Mail 15 August 2022

Area

Request We were requested to provide a memorandum on the VAT treatment applicable to private tutoring in single courses under German VAT rules. This memorandum is based on the current legislation, existing administrative and judicial interpretations thereof and the practice of the German Tax Authorities.

Questions

1. If the place of supply for the private tutoring services by Mentor Danmark ApS was in Germany, would a VAT exemption rule apply from a German VAT perspective?
2. Are future changes to the VAT legislation or practice of the German Tax Authorities to be expected against the background of recent CJEU cases related to the definition of VAT exempt school and university education?

2. Summary

Area	Findings
VAT-exempt private tutoring without right to deduct input tax	<p data-bbox="624 425 2446 482">1. If the place of supply for the private tutoring services supplied by Mentor Danmark ApS was in Germany, the services would be exempt from VAT without right to deduct input tax.</p> <p data-bbox="659 529 2446 658">Neither the CJEU nor the German Federal Fiscal Court have expressly ruled that the VAT exemption under Article 132(1)(j) of the Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (hereinafter: VAT Directive) is to be interpreted as meaning that tutoring services by a private tutoring provider related to subjects covered by the general school education curricula are not covered by the VAT exemption under Article 132(1)(j) VAT Directive.</p> <p data-bbox="659 705 2446 862">Against the background of the CJEU’s narrow interpretation of the concept of school and university education, it may be argued that teaching of merely one subject by a private provider constitutes a non-exempt specialized service. The question as to whether the CJEU intends to limit VAT-exemption for school and university education to classical schools and exclude area-related instruction can be answered in the negative. Further, the lessons offered by Mentor Danmark ApS concern subjects taught within the general school system. Besides, the business model and wide ranged tuition offer at issue refers to an integrated system for the transfer of knowledge and skills covering a diversified set of subjects.</p> <p data-bbox="624 909 2446 966">2. Currently, there are no indications for any intended legislative amendment to the VAT exemption rule as per Sec. 4 no. 21 GVATA. Previous attempts to amend the VAT exemption were dismissed by the legislator.</p> <p data-bbox="659 1013 2446 1071">The German Tax Authorities have not yet reacted to the CJEU’s narrow interpretation of the concept of school or university education (CJEU, judgment of March 14, 2019, A & G Fahrschul-Akademie, C-449/17; judgment of October 21, 2021, Dubrovin & Tröger GbR – Aquatics, C-373/19).</p> <p data-bbox="659 1118 1936 1146">The current draft of the Annual Tax Act 2022 does not suggest amendments to the relevant legal provisions.</p>

Legal Context

German VAT Law	Wording	EU VAT Directive	Wording
Sec. 1(1) no. 1(1) GVATA	<p>The following transactions shall be subject to VAT:</p> <p>supplies of goods and services carried out by a taxable person for consideration within Germany and within the scope of his business activities.</p>	Article 2(1)(c) VAT Directive	<p>The following transactions shall be subject to VAT:</p> <p>the supply of services for consideration within the territory of a Member State by a taxable person acting as such.</p>
Sec. 4 no. 21 GVATA	<p>Of the supplies mentioned in Sec. 1 (1) no. 1, the following are VAT exempt: [...]</p> <ul style="list-style-type: none">a) services provided by private schools and other general educational or vocational institutions that directly serve the purpose of training or education;aa) if they are state-approved as substitute schools pursuant to Article 7(4) of the Constitution of the Federal Republic of Germany or are permitted under Federal state law, orbb) if the responsible Federal State Authority certifies that they properly prepare persons for a profession or for taking an examination before a body governed by public law,b) teaching services by independent teachers that directly serve the purpose of training or education;aa) in universities within the meaning of Sec. 1 and 70 of the Framework Act for Higher Education and at general educational and vocational public schools, orbb) in private schools and other general educational or vocational institutions, provided they meet the requirements set out in lit. a.	Article 132(1) VAT Directive	<p>Member States shall exempt the following transactions: [...]</p> <ul style="list-style-type: none">i) the provision of children's or young people's education, school or university education, vocational training or retraining, including the supply of services and of goods closely related thereto, by bodies governed by public law having such as their aim or by other organizations recognized by the Member State concerned as having similar objects;j) tuition given privately by teachers and covering school or university education.

Private tutoring under German VAT rules

VAT exemption acc. to sec. 4 no. 21 GVATA

Area	Findings	Reference
VAT exemption	<p>Under Sec. 4 no. 21 of the German VAT Act (hereinafter: GVATA), the services of private and recognized comparable schools and educational institutions directly serving the school and educational purpose, as well as the teaching services of independent teachers at universities or private or recognized comparable schools and educational institutions are exempt from VAT. The VAT exemption leads to the exclusion of the input tax deduction according to Sec. 15(2) GVATA. The taxable person cannot waive the VAT exemption if the requirements of the VAT exemption rule are met.</p> <p>According to Sec. 4 no. 21 lit. a GVATA, supplies of services that are provided by private schools and other general educational or vocational institutions that directly serve the purpose of training or education are exempt from VAT. The VAT exemption rule requires that the providing institution is a state-approved substitute school pursuant to Article 7(4) of the Constitution of the Federal Republic of Germany (Basic Law) or permitted under State law pursuant to Sec. 4 no. 21 lit. a) aa) GVATA. Alternatively, the VAT exemption requires that the responsible Federal State Authority certifies that the institution properly prepares for a profession or for taking an examination before a body governed by public law under Sec. 4 no. 21 lit. a) bb) GVATA. The required recognition of the comparability of the objective with public institutions is reflected by means of a certificate issued by the competent State Authority confirming that the tutoring facility properly prepares students for an examination to be taken before a legal entity under public law.</p> <p>Under Sec. 4 no. 21 lit. b GVATA, the education services of independent teachers at universities within the Framework Act for Higher Education and public general education or vocational schools (Sec. 4 no. 21 lit. b) aa) GVATA) and at private schools and other general education or vocational institutions, which directly serve the purpose of schooling and education, provided that they meet the requirements of Sec. 4 no. 21 lit. a GATA, are exempt from VAT (Sec. 4 no. 21 lit. b) bb) GVATA). A certificate for the independent teacher is not required.</p>	<p>Sec. 4 no. 21 GVATA</p> <p>Sec. 4 no. 21 lit. a GVATA</p> <p>Sec. 4 no. 21 lit. b GVATA</p>

Private tutoring under German VAT rules

VAT exemption under EU VAT Law

Area	Findings	Reference
Legal basis under EU VAT Law	Sec. 4 no. 21 lit. a GVATA is based on Article 132(1)(i) VAT Directive , which stipulates a VAT exemption for the provision of children's or young people's education, school or university education, vocational training or retraining, including the supply of services and of goods closely related thereto, by bodies governed by public law having such as their aim or by other organisations recognised by the Member State concerned as having similar objects.	Article 132(1)(j) VAT Directive
	Sec. 4 no. 21 lit. b GVATA implements Article 132(1)(j) VAT Directive . Under Article 132(1)(j) VAT Directive, the tuition given privately by teachers and covering school or university education shall be exempt from VAT.	Article 132(1)(i) VAT Directive
Interpretation of Sec. 4 no. 21 GVATA in line with EU VAT Law	The VAT exemption under Sec. 4 no. 21 GVATA is to be interpreted in line with the VAT Directive. The incomplete implementation of the wording of the VAT Directive into the German VAT law does not prevent this interpretation.	
Direct Application of EU VAT Law	Taxable persons can directly invoke the VAT exemption rules under Article 132(1)(i) and (j) VAT Directive, particularly, when they do not dispose of the State Authority certificate under Sec. 4 no. 21 GVATA.	

Private tutoring under German VAT rules

Interpretation by the German Financial Courts and the CJEU

Area	Findings	Reference
Service-related requirements	Pursuant to Sec. 4 no. 21 lit. a and lit. b GVATA, services directly serving the purpose of schooling and education are exempt from VAT. The requirement “directly” describes the way in which the services must be used in the fulfillment of the school and educational purpose. For instance, arithmetic, reading, and writing exercises directly fulfill the educational purposes. Related services of care or the supply of teaching and learning materials do not directly fulfill educational purposes, although they may nevertheless be exempt from VAT as ancillary services. Services directly serving the purpose of schooling and education are to be interpreted in line with the VAT Directive and in light of the CJEU case law, and therefore include children's or young people's education, school or university education.	Sec. 4 no. 21 lit. a GVATA Sec. 4 no. 21 lit. b GVATA
Previous extensive interpretation of school or university education by the CJEU and Federal Fiscal Court	Until the CJEU ruling in the A & G Fahrschul-Akademie case, the CJEU, and also the Federal Fiscal Court, interpreted the VAT exemption extensively. All teaching services were covered that did not merely serve leisure purposes. The Federal Fiscal Court specified the demarcation criterion of pure leisure activities to the extent that a high public interest refutes the assumption of leisure activities.	CJEU, judgment of June 14, 2007, C-434/05, Horizon College CJEU, judgment of June 14, 2007, C-445/05, Haderer CJEU, judgment of January 28, 2010, C-473/08, Eulitz Federal Fiscal Court, judgment of June 5, 2014, V R 19/13 judgment of January 24, 2008, V R 3/05 decision of January 7, 2015, V B 102/14

Private tutoring under German VAT rules

Interpretation by the German Financial Courts and the CJEU

Area	Findings	Reference
Narrow interpretation of school or university education by the CJEU and Federal Fiscal Court	<p>In the A & G Fahrschul-Akademie and Dubrovin & Tröger GbR – Aquatics cases, the ECJ applied a narrow definition of school and university education. Accordingly, the concept of ‘school or university education’ covers activities which are characterized both by their specific nature and by reason of the framework in which they are carried out. Consequently, the concept of school or university education refers generally to an integrated system for the transfer of knowledge and skills covering a wide and diversified set of subjects, and to the furthering and development of that knowledge and those skills by the pupils and students in the course of their progress and their specialization in the various constituent stages of that system. Correspondingly, school or university education is not limited to instruction leading to a final examination for the attainment of a qualification or providing training with a view to the pursuit of a professional activity. It includes other activities in schools and colleges in order to acquire the knowledge and develop the skills, provided that these activities do not have the character of mere leisure activities.</p>	<p>CJEU, judgment of March 14, 2019, A & G Fahrschul-Akademie, C-449/17</p>
	<p>The Federal Fiscal Court adopted the CJEU case law and ruled that driving lessons constitute specialized instruction services, which do not involve the deepening and development of knowledge and skills in relation to a wide and varied range of subjects, and therefore do not fall within the concept of school and university education pursuant to Article 132(1)(i) and (j) of VAT Directive.</p>	<p>Federal Fiscal Court, judgment of May 23, 2019, V R 7/19 (V R 38/16)</p>
Teaching of one subject by a private tutor	<p>Against this background, it could be argued that the teaching of merely one subject by a private provider is not school and university education, but a non-exempt supply of service.</p> <p>Adversely, the question as to whether the CJEU intends to limit the VAT-exemption for school and university education to classical schools and exclude specific, area-related instruction of one subject can be answered in the negative. A limitation to classical schools cannot be reconciled with the CJEU specification that school and university education is not limited to education leading to a final examination for a qualification. Further, the historical legislator to the GVATA did not provide for this restriction.</p>	<p>Alvermann/Esteves Gomes in: Wäger, GVATA, 2nd edition 2022, Sec. 4 no. 21 para. 35</p>

Private tutoring under German VAT rules

Interpretation by the German Financial Courts and the CJEU

Area	Findings	Reference
Teaching of one subject by a private tutor	Revision lessons for students to prepare for academic examinations as well as tutoring for pupils can be school and university education according to the new CJEU criteria if they are embedded in a corresponding teaching system. If there is only specialized teaching of specific subject, it can be argued that the VAT exemption for education-related service or teaching by a private teacher or services closely related to school teaching applies.	
	In the opinion of the German VAT Authorities, private tutoring is also exempt from VAT without right to deduct input tax under Sec. 4 no. 21 GVATA.	Sec. 4.21.2(1)(1) GVAD Sec. 4.21.2(2)(5) GVAD
	By judgment of June 16, 2011, the Fiscal Court Hamburg held that a tutor who independently gives private lessons to pupils with reading, spelling or arithmetic difficulties can directly invoke the VAT exemption pursuant to Article 132(1)(j) of VAT Directive.	Fiscal Court Hamburg, judgment of June 16, 2011, 6 K 165/10
	According to several German Fiscal Courts, the services of a self-employed language teacher who teaches English to preschoolers and schoolchildren may be exempt from VAT on the basis of Article 132(1)(j) VAT Directive.	Fiscal Court Thuringia, judgment of May 9, 2016, 2 K 75/15
		Fiscal Court Schleswig-Holstein, judgment of June 15, 2015 4 K 19/15
	Fiscal Court Lower Saxony Judgment of December 19, 2011, 5 K 370/11	

Private tutoring under German VAT rules

Interpretation by the German Financial Courts and the CJEU

Area	Findings	Reference
Services closely related to school education	<p>The question as to whether the services consisting of the organization of activities supplementing the school curriculum, such as homework support classes, educational programs, foreign language classes, art classes, sporting activities, picking children up from school and the provision of after-school meals (school after school program) are services closely related to school education was the subject of a Romanian request for a preliminary ruling referred to the CJEU. In the case Happy Education, the CJEU confirmed that Member States have extensive jurisdiction when it comes to determining which types or forms of education should be exempt from VAT.</p> <p>The judgment does not result in any new findings, and thus has no impact on the application of VAT rules in Germany. Since the VAT exemption of services provided by private educational institutions depends on the respective national rules recognizing the comparable objective with public-law institutions, the CJEU's comments on the Romanian rules are not relevant for the interpretation of Sec. 4 no 21 GVATA. Additionally, the CJEU has not yet clarified how the criterion of closely related services is to be interpreted, and whether private tutoring and other services supplementing school instruction are to covered by this type of service.</p>	<p>CJEU, judgment of April 28, 2022 C-612/20, Happy Education SRL</p> <p>CJEU, judgment of April 28, 2022, C-612/20, Happy Education SRL, MwStR 2022, 503 (507), commented by Lippross</p>

Private tutoring under German VAT rules

Interpretation by the German tax authorities

Area	Findings	Reference
German Tax Authorities	<p>The German Tax Authorities have not yet applied the principles of the narrow interpretation of school and university education developed by the CJEU. Conversely, they follow a broad understanding of the concept of school and university education.</p> <p>The German Tax Authorities classify private tutoring courses for pupils as a general educational institution pursuant to Sec. 4.21.2(1)(1) of the German VAT Application Decree (hereinafter: GVAD) provided that the requirements of Sec. 4.21.2(2) GVAD are met, i.e. equitable classrooms and a permanent teaching program, which may be limited to supporting the existing school program.</p> <p>Pursuant to Sec. 4.21.2(1)(1) GVAD, general education, or vocational training institutions within the meaning include, inter alia, but are not limited to, distance learning institutes, institutions offering private tutoring for students, and institutions offering revision courses in order to prepare students for academic examinations.</p> <p>The taxable person is the provider of an educational institution if the offer includes paid educational services provided to pupils, students, professionals, or employers according to Sec. 4.21.2(2)(1) GVAD.</p> <p>In the view of the German Tax Authorities, an educational institution requires a fixed teaching program and curricula for teaching the subject matter in order to achieve a specific course objective, as well as suitable teaching rooms or facilities. The operation of the educational institution must be designed for a certain duration pursuant to Sec. 4.21.2(2)(2) GVAD. It is sufficient if the service is limited to supporting the school or university offering or to repeating the material offered by the school. The organization of individual lectures or a series of lectures, on the other hand, does not meet the requirements of an instructional service according to Sec. 4.21.2(2)(5) GVAD.</p> <p>The legal form of the institution is irrelevant according to Sec. 4.21.2(1)(5) GVAD.</p>	Sec. 4.21.2 GVAD

Private tutoring under German VAT rules

Interpretation by the German tax authorities

Area	Findings	Reference
Immediateness	In the view of the German Tax Administration, taxable persons, who are commissioned to teach at other educational institutions, can also be independent teachers within the meaning of Sec. 4 no. 21 lit. b GVATA.	Sec. 4 no. 21 lit. b GVATA Sec. 4.21.3(1)(3) GVAD

Private tutoring under German VAT rules

Interpretation by the German tax authorities

Area	Findings	Reference
Taxable-person related requirements	<p>Under Sec. 4 no. 21 lit. a GVATA covers the substitute schools which are state-approved pursuant to Article 7(4) of the Basic Law or which are permitted under the State law. These are private schools which are equivalent to public schools in their educational objectives and serve as a substitute for a public school.</p> <p>Substitute schools may be operated as private schools by private individuals, legal entities under private law, associations, foundations and other special-purpose entities under private law without legal capacity.</p> <p>The provision also favors the services of so-called supplementary schools and other general education or vocational training institutions that directly serve the purpose of schooling and education if the competent State Authority certifies that they properly prepare students for a profession or an examination to be taken before a legal entity under public law.</p> <p>In contrast to substitute schools, supplementary schools do not pursue the educational goals of public schools. Rather, they offer a supplement to general education or specialized knowledge outside the public school system.</p> <p>Other general education or vocational training institutions are institutions that pursue the aforementioned purposes and offer paid teaching services. Examples of such institutions are private tutoring institutions, distance learning institutes, or educational institutions of chambers of industry and crafts.</p> <p>Tutoring organizations are entitled to be issued a certificate pursuant to Sec. 4 no. 21 lit. a) bb) GVATA if they properly prepare for an examination to be taken before a legal entity under public law.</p> <p>The VAT exemption for supplementary schools and other educational institutions pursuant to Sec. 4 no. 21 lit. a) bb) GVATA requires a certificate from the competent State Authority confirming that the institution properly prepares students for a profession or an examination to be taken before a legal entity under public law. The certificate is a substantive legal prerequisite for the VAT exemption.</p>	Sec. 4 no. 21 lit. a GVATA

Private tutoring under German VAT rules

Interpretation by the German tax authorities

Area	Findings	Reference
Taxable-person related requirements	<p>Under Sec. 4 no. 21 lit. b GVATA, the educational service is to be provided by an independent teacher.</p> <p>Independent teachers are self-employed taxable persons who teach lessons. The teacher has to have certain minimum qualifications. However, a professional qualification as a teacher or university degree is not a prerequisite. Recognition by way of a certificate from the State Authority is also not required under Sec. 4 no. 21 lit. b GVATA.</p> <p>The Fiscal Court Hamburg held that private tutors are independent teachers. Accordingly, the VAT exemption applies, to an educator who completed additional training for the support of children with dyslexia or dyscalculia.</p> <p>In the opinion of the German Tax Authorities, the legal form of the taxable person is irrelevant, so that associations of persons or legal entities can be independent teachers within the meaning of Sec. 4 no. 21 lit. b GVATA.</p> <p>Private teachers are teachers who provide an exempt teaching activity privately. This involves a form of teaching according to which the teacher is the provider of the educational service, because he or she provides the teaching on his or her own responsibility in terms of content, organization and within the framework of a personal relationship of trust with the students being taught.</p> <p>Teachers who provide educational services must ensure by means of corresponding contracts with the institution that they provide the services for their own account and on their own responsibility in order to invoke the VAT exemption under Art. 132(1)(j) VAT Directive.</p> <p>Sec. 4 no. 21 lit. b GVATA does not conclusively implement Art. 132(1)(j) VAT Directive with regard to the service provider because independent teachers are not only those who are private teachers. Consequently, there are the following options for the taxable persons :</p> <ol style="list-style-type: none">By directly invoking Art. 132(1)(j) VAT Directive, they can claim the taxability of a supply to the recipients of the services referred to in Sec. 4 no. 21 lit. b GVATA for the purpose of input tax deduction.By directly invoking Art. 132(1)(i) VAT Directive, they can claim the VAT exemption for private teachers for teaching services provided to recipients of services not mentioned in Sec. 4 no. 21 lit. b GVATA.	<p>Sec. 4 no. 21 lit. b GVATA</p> <p>Fiscal Court Hamburg, judgment of June 16, 2011, 6 K 165/10</p> <p>Sec. 4.21.2(1)(5) GVAD</p> <p>Sec. 4.21.3(1)(2) GVAD Sec. 4.21.3(1)(3) GVAD</p> <p>Alvermann/Esteves Gomes in: Wäger, GVATA, 2nd edition 2022, Sec. 4 no. 21 para. 154-157</p>

Private tutoring under German VAT rules

Interpretation by the German tax authorities

Area	Findings	Reference
Recipient	<p>Recipients of services directly serving the purpose of schooling and education within the meaning of Sec. 4 no. 21 lit. a GVATA are the contractual partners of the service provider, natural persons or legal entities. The natural person who actually benefits from the service does not have to be a contractual partner.</p>	Sec. 4 no. 21 lit. a GVATA
Recipient	<p>Entities qualifying as recipients of a VAT-exempt educational service under Sec. 4 no. 21 lit. b GVATA are</p> <ul style="list-style-type: none">• institutions of higher education within the meaning of sections 1 and 70 of the Framework Act for Higher Education and public general or vocational schools or• private schools and other general education or vocational training institutions, insofar as they meet the requirements of Sec. 4 no. 21 lit. a) bb) GVATA. <p>Institutions of higher education include universities, colleges of education, art colleges, universities of applied sciences and other educational institutions that are universities under state law. Educational institutions which are not state institutions of higher education may be granted the status of state-recognized institutions of higher education in accordance with more detailed provisions of the state law. Taxable persons must prove that they are active at an institution of higher education, school or institution within the meaning of Sec. 4 no. 21 lit. a GVATA. The proof shall be provided by means of a confirmation from the educational institution stating that it meets the requirements of Sec. 4 No. 21 lit. a) bb) GVATA. The confirmation is waived if the teaching services are provided at the following institutions:</p> <ol style="list-style-type: none">1. Institutions of higher education within the meaning of sections 1 and 70 of the Framework Act for Higher Education;2. Public general and vocational schools, e.g., grammar schools, secondary schools, vocational schools;3. State-approved substitute schools pursuant to Article 7(4) of the Basic Law or under State law. <p>The confirmation shall contain the following information:</p> <ul style="list-style-type: none">• Name and address of the educational institution;• Name and address of the operator;• Designation of the subject, course or course;• Period of education; and• Assurance of the existence of a certificate pursuant to Sec. 4 no. 21 lit. a) bb) GVATA for the field of education.	Sec. no. 21 lit. b GVATA Sec. 4.21.3(3) GVAD Sec. 4.21.3(4) GVAD

4. Unrealized legislative amendments

Area	Findings
Draft of the Annual Tax Act 2013	<p>The government draft of the Annual Tax Act 2013 provided for a new wording of the VAT exemption under Sec. 4 no. 21 GVATA:</p> <p><i>“Of the supplies mentioned in Sec. 1(1) no. 1 GVATA, the following are VAT exempt:</i></p> <p><i>School and university instruction, initial and further training, and vocational retraining (educational services) and closely related supplies and other services by institutions under public law entrusted with such tasks, substitute schools approved by the state pursuant to Article 7(4) of the Basic Law (German Constitution) or permitted under state law, and other institutions with comparable objectives, as well as educational services provided by private teachers. A comparable objective is given if the services of the institution are suitable to impart special knowledge and skills to the participant. Services that serve purely leisure purposes are not exempt. If another institution with a comparable objective provides services within the meaning of the first sentence, which may also serve the purpose of leisure activities, such services shall be exempt only if the institution does not systematically seek to make a profit and any profits that nevertheless accrue are not withdrawn but are used to maintain or improve the services provided.”</i></p> <p>The new version was intended to adopt the terminology of Art. 132(1)(i) and (j) VAT Directive and CJEU case law.</p> <p>Nonetheless, the intended legislative amendment was highly controversial. Educational service providers, who intended to retain the VAT liability due to the associated input tax deduction, severely criticized the legislative project. As a result, the legislative amendment was postponed.</p>

4. Unrealized legislative amendments

Area	Findings
Draft of the Annual Tax Act 2019	<p>The German government's bill to further promote electromobility for tax purposes and amend other tax regulations of August 9, 2019 provided for a new regulation of the VAT exemption for educational services in Sec. 4 no. 21 GVATA:</p> <p><i>“Of the supplies mentioned in Sec. 1(1) no. 1 GVATA, the following are VAT exempt:</i></p> <ul style="list-style-type: none"><li data-bbox="440 522 2435 796"><i>a) School and university education, training and further education as well as vocational retraining and closely related supplies and other services provided by bodies governed by public law which are entrusted with such tasks. Services pursuant to sentence 1 are also exempt if they are provided by other institutions whose objectives are comparable to those of a comparable to that of an educational institution under public law. Institutions within the meaning of sentence 2 are institutions that impart knowledge and skills suitable for a school-leaving certificate, a university degree or a vocational qualification or professional knowledge through further training. School and university education includes the imparting and deepening of knowledge and skills in relation to a broad and diverse range of content depending on the progress and specialization of pupils and students. The terms education, further education or vocational retraining are defined in Article 44, second sentence, of the Council Implementing Regulation (EU) No 282/2011 of 15 March 2011. Further training is only exempt if it is provided by institutions that do not systematic profit-making; any profits that are nevertheless made may not be distributed but must be used to maintain or improve the services provided.</i><li data-bbox="440 836 1875 865"><i>b) school and university education given personally by private teachers. Letter a, sentences 4 to 6 shall apply accordingly.</i> <p><i>Services which, according to their objective, serve purely for leisure purposes shall not be exempt. The services referred to in number 15b and 15c shall be exempt from VAT only under the conditions specified therein.”</i></p> <p>The revised wording was intended to adopt the terminology of Article 132(1)(i) and (j) VAT Directive and align the GVATA with the CJEU case law (CJEU, judgment of March 14, 2019, C-449/17, A & G Fahrschul-Akademie; judgment of November 28, 2013, C-319/12, MDDP; judgment of January 28, 2010, C-473/08, Eulitz; judgment of June 14, 2007, C-445/05, Haderer; judgment of June 14, 2007, C-434/05, Horizon College). After the public hearing of the German Parliament (Bundestag) Finance Committee, the grand coalition decided to abandon the intended legislative amendments to Sec. 4 no. 21 GVATA due to strong criticism.</p>



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