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By PwC Deutschland | 20. April 2026

Federal Ministry of Finance publishes circular on the entrepreneurial status of tenancies in common

On 9 April 2026, the German Federal Ministry of Finance (Bundesministerium der Finanzen) published a circular amending the VAT Application Decree, which provides the administrative guidance on the application of VAT law, specifically with regard to the entrepreneurship status of tenancies in common (Bruchteilsgemeinschaften) and other entities without legal capacity.

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Legal Background

The **Finance Act 2022** amended **Section 2 (1) Sentence 1 of the Value Added Tax Act (VATA)**, clarifying a crucial point: **entrepreneurship for VAT purposes does not depend on an entity's legal capacity**. This legislative change was introduced to reverse previous court rulings and administrative practices that had denied tenancies in common the status of entrepreneurs under VAT law.

Entities Affected

The directive primarily addresses two types of entities:

1. **Tenancies in Common (*Bruchteilsgemeinschaften*):**A "Bruchteilgemeinschaft" is a community of owners holding shares or interests in a property. Under the new rules, these communities can now be recognized as VAT entrepreneurs if they carry out a business activity independently – that is, on a commercial or professional basis. This presupposes that the business activities of the community's partners are attributed to the entity itself, as the entity cannot carry out any activities on its own. However, the partners may act jointly vis-à-vis third parties, for example by entering into a joint contract of transfer (e.g. a tenancy agreement), thereby making their joint action visible to the outside world. Unlike individual contracts entered into by the partners, the contract applies to the community of joint ownership/tenancy in common.
2. **British Limiteds:** A British Limited company which is not considered to have legal capacity under German civil law can nevertheless qualify as a VAT entrepreneur if it **independently carries out commercial or professional activities**. This is independent of which jurisdiction it is established under or where its place of management is located. If such a Limited generates taxable sales in Germany, it must register for VAT purposes.

Key Changes to the VAT Application Decree

The circular outlines **specific amendments to sections 2.1 and 15.2b of the VAT Application Decree**, updating the administrative guidance to reflect the new legal position. These changes ensure that the tax authorities' practices align with the broadened definition of entrepreneurship under the amended VATA.

Application and Effective Date

The principles set out in this directive **apply from January 1, 2023**. However, the directive also permits **retroactive application** before that date, provided that the taxpayer has not acted in a contradictory manner (i.e., there is no inconsistent behavior regarding their VAT status prior to the effective date).

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Schlagwörter

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