

MEYER-LANDRUT/MILLER/THOMA

# Umsatzsteuergesetz 1980

Synoptische Deutsch-Englische Textausgabe  
mit einer Einführung in Englisch

# The German Turnover Tax Law 1980

Synoptic English-German Text  
with English Introduction

FRITZ KNAPP VERLAG · FRANKFURT/MAIN

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# The German Turnover Tax Law 1980

German-English Text

edited, translated and introduced  
by

Dr. J. Meyer-Landrut  
Dr. F. G. Miller  
Georg F. Thoma

Rechtsanwälte  
in  
Düsseldorf

FRITZ KNAPP VERLAG



FRANKFURT AM MAIN

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## Preface

After all other Member States of the European Communities had already introduced the further harmonization of the turnover tax legislation as prescribed by the Sixth EEC Directive, now as from 1 January 1980, also in the Federal Republic of Germany the new Law as in so far harmonized is in force. In spite of the fact that basic changes were not required, the German legislator has in addition to the necessary adaptation required by the EEC Directive undertaken a sort of overall "revamping" of the Turnover Tax Law.

In view of the existing interdependence of the German economy with the European and, especially, the Anglo-American markets, it seemed mandatory for the editors to present to the interested circles within and outside the country as soon as possible an English translation of the Law. The translation keeps as literally as possible to the German text. As a consequence, our text will not always be easy to read. However, also the German text is not marked by linguistic elegance. This could and should not be altered by the translation. Technical terms were used, as far as possible, in accordance with the officially published English text of the Sixth Directive. However, the German legal terminology deviates also from the terminology of the Directive. The use of Anglo-American legal technical terms was avoided where it could lead to misunderstandings because of the different structure, terminology and mechanics of the German turnover tax system.

The following introduction intends a survey of the history of the legislation and its specific implications, of the system of the Law and of the application of its individual provisions by taking into consideration the Implementing Regulation (*Durchführungsverordnung*) of 21 December 1979, and other implementing provisions.

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Deutsch-Englische Textausgabe

herausgegeben, übersetzt und eingeleitet  
von

Dr. J. Meyer-Landrut  
Dr. F. G. Miller  
Georg F. Thoma

Rechtsanwälte  
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# Introduction

## I

### GENERAL

#### 1. History

The Turnover Tax Law (*Mehrwertsteuergesetz*)<sup>1</sup> came into effect on 1 January 1968. It replaced the cumulative all-stage turnover tax (*Allphasenumsatzsteuer*) which had been in effect for almost fifty years.

Because of the weakness of the former tax system efforts were made for years to replace it by a value added tax system<sup>2</sup>. The developments were spurred by the studies undertaken in the European Economic Community (EEC) in order to evaluate the possibilities of harmonizing the turnover taxes of the six original Member States in accordance with the mandate given it by Article 99 of the Treaty of Rome. Irrespective of the actions taken by the EEC, in Germany, the efforts to introduce the value added tax were intensified by the Federal Constitutional Court's decision of 20 December 1966<sup>3</sup> which attacked the old system as unconstitutional and requested the legislator to abolish it within a reasonable time.

The main reason for the introduction of the value added tax system in the Federal Republik of Germany, however, was the passing of the First and Second Directive by the EEC Council on 9 February 1967, by which with reference to Article 99 of the Treaty of Rome the Member States adopted a common standpoint as to the character of the value added tax and its introduction in the Community<sup>4</sup>.

Since then further efforts have been made with regard to the harmonization of the value added tax, implemented in all Member

1 Published in Federal Law Gazette – BGBl. – 1967 I p. 545. The turnover tax is also called value added tax which is the more correct term since only the value added is taxed at the different stages.

2 For an outline of the history of the turnover tax see *Nöll v.d. Nahmer*, Lehrbuch der Finanzwissenschaft, II 1964, S. 169 ff.; *Erhard-Moll*, in Handwörterbuch des Steuerrechts II, S. 1115 ff.

3 Federal Tax Gazette – BStBl. – 1967 III p. 7 et. seq.

4 Dir. 67/227/EEC and Dir. 67/228, published in the Official Journal of the EEC – OJ 1967, No. L 71,, p. 1301, p. 1303.

States since 1973, in order to achieve an elimination of tax frontiers and to establish a uniform basis of assessment. The latter became necessary by the decision of the Council of 21 April 1970<sup>5</sup> by which it was established that the financial contributions of the Member States were to be replaced by own resources of the Community, which included *inter alia* a percentage of the income of the Member States from the value added tax.

The Second Directive, however, which was the cornerstone of the first stage of the harmonization, was not suitable as a foundation for such own resources decision, because it left too much freedom in the practical implementation to the Member States, which led to differences in particular with regard to the across-the-border movement of goods and services. Thus, on 17 May 1977 the Council of the European Communities passed the Sixth Directive for the harmonization of value added tax in the European Communities<sup>6</sup>.

Generally, it is the intention of the Sixth Directive to make further progress in the introduction of a uniform value added tax system and to remove by that restrictions on the movement of persons, goods, services and capital between the Member States. In its practical results, the Sixth Directive intends to harmonize all regulations of the Member States relating to value added tax, except the tax rates.

Article 1 of the Sixth Directive requested that the necessary steps for the modification of the national laws should be taken by the Member States at the earliest opportunity and by 1 January 1978 at the latest. However, despite this obligation and the fact that according to judgements of the European Court of Justice cogent provisions of a Directive have direct effect and can be invoked by persons concerned against national law that is contrary to such Directive after the time period for the implementation has elapsed<sup>7</sup>, only two Member States adopted the necessary laws, regulations and administrative provisions. Because of the difficulties ari-

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5 OJ No. L 94, p. 19

6 OJ No. L 145, p. 1

7 For an outline of jurisdiction of the European Court of Justice particularly with regard to the issues connected with the Sixth Directive see *Miller*, Die 6. Umsatzsteuer-Richtlinie seit 1. Januar 1979 geltendes Recht, in: *Der Betrieb* 1979, p. 2051 et seq.; see also *C.W.A. Timmermanns*, Directives: Their Effect within the National Legal Systems, in *Common Market Law Review*, 1979 p. 533 et seq.

sen in connection with the modification of the value added tax systems in the Member States the EC Council extended the implementation term of the Sixth Directive for seven Member States, the Federal Republic of Germany included, until 1 January 1979<sup>8</sup>. Nevertheless, the German legislator missed this time limit again and finally enacted the new Turnover Tax Law 1980 (*UStG 1980*) on 29 November 1979<sup>9</sup>, which became effective on 1 January 1980.

In the meantime the EC Council adopted on 6 December 1979<sup>10</sup> the Eighth Directive setting forth the procedure for the reimbursement of the so-called pre-tax (*Vorsteuer*)<sup>11</sup> by Member States to a taxable person being a non-resident in the Member State concerned. The Directive will not prompt a further change of the UStG 1980, because all necessary modifications had been made in connection with the conversion of the Sixth Directive.

Changes will have to be made in the UStG 1980, however, as soon as the Seventh Directive will be passed by the EC Council. The Seventh Directive already referred to in Article 32 of the Sixth Directive shall establish a Community taxation system to be applied to used goods, works of art, antiquities, and collectors' items<sup>12</sup>. A further modification of the UStG 1980 may be required as well by the Tenth Directive relating to the place where other services related to the lease of tangible property are performed<sup>13</sup>.

The UStG 1980 replaces the Turnover Tax Law 1973 (*UStG 1973*) enacted on 26 June 1973<sup>14</sup> in order to correct and modify provisions of the Turnover Tax Law 1968.

## 2. System

In the First Directive it is established that the value added tax raised in the Community is regarded as a general tax on consumption<sup>15</sup>. Although levied directly on the entrepreneurs who supply

8 OJ 1978 No. L 194.

9 BStBl. I 1979, p. 1959 et seq.

10 OJ 1979 No. L 331, p. 11 et seq.

11 Another customary term for pre-tax (*Vorsteuer*) is input tax, see s. 3 subsection (1) of the UK Finance Act 1972.

12 BT-Drucksache 8/1492.

13 BT-Drucksache 8/1737.

14 BGBl. I p. 676.

15 OJ 1967 No. L 71 p. 1301.



goods and services subject to value added tax to the consumers, the full burden of the tax is borne by the ultimate consumer who may not deduct the tax paid by him as a so-called pre-tax (*Vorsteuer*) or pass it on. The value added tax system thereby ensures that in contrary to the former system tax on tax is avoided.

### 3. Sources

Constitutional basis for the levy of the turnover tax is Article 105 II in connection with Article 106 III Constitution, legal basis the UStG 1980 and the implementing Turnover Tax Ordinance of 21 December 1979<sup>16</sup> (*UStDV 1980*). It should be borne in mind that although the UStG 1980 has been completely redrafted the numbers and subjects of the articles still correspond with the UStG 1973, with the exemption of § 3 a UStG 1980 (*other services*) and § 4 a UStG 1980 (*tax credit*), which both have been newly inserted.

## II

### TAXABILITY OF PERFORMANCES

A performance is subject to turnover tax if it is effected by an entrepreneur in the territory of levy being the territory of the Federal Republic of Germany and Berlin (West), within the scope of his enterprise for a consideration<sup>17</sup>.

#### 1. Entrepreneur

The term entrepreneur as used in the Turnover Tax Law means any person carrying on a commercial or professional activity in an independent capacity<sup>18</sup>. A professional or commercial activity is defined as the exercise of a business or profession pursued in a sustained manner and for the purpose of obtaining income not necessarily connected with the intention to make profits<sup>19</sup>. Thus, each independent business entity must be considered an entrepreneur under the Turnover Tax Law insofar as the intention to carry on

16 BGtBl. I p. 2359 et seq.

17 § 1 subs. 1 No. 1 UStG 1980 (UStG 1973).

18 § 2 subs. 1 UStG 1980 (UStG 1973).

19 see annot. 18.