

DRAFT

Subject Issuance of invoices according to § 14 of the German Value Added Tax Act; Introduction of mandatory electronic invoicing for transactions between domestic businesses starting from January 1, 2025

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General Information

1. With the Growth Opportunities Act (BGBl. I 2024 No. 108), the regulations for the issuance of invoices according to § 14 of the German Value Added Tax Act (UStG) have been revised for transactions executed after December 31, 2024. As a significant core point of the new regulation, the mandatory use of electronic invoices is introduced for transactions between domestic businesses (domestic B2B transactions). Exemptions include invoices for services that are tax-exempt according to § 4 numbers 8 to 29 of the UStG, as well as invoices for small amounts up to 250 euros (§ 33 UStDV) and transportation tickets (§ 34 UStDV). The introduction of mandatory electronic invoicing for domestic B2B transactions is closely linked to the future legal obligation to provide timely and transaction-related electronic reporting of certain invoice details to the tax authorities (reporting system).

2. The new regulation as of January 1, 2025, represents a significant building block for the digitalization of business transactions. For this purpose, the processes and procedures for the creation and processing of an e-invoice need to be digitized at various levels. In addition, the existing tax regulations need to be adjusted to these changed conditions, while the substantive content of an invoice in terms of value added tax law remains unchanged. The tax administration takes into account the transformation process to an appropriate extent during the transitional phase accompanied by transitional provisions (§ 27 paragraph 38 of the UStG).

II. Current Legal Situation and Innovations through the Growth Opportunities Act

1. Legal Situation until December 31, 2024

3. In addition to paper invoices, an electronic invoice could already be issued with the recipient's consent. For transactions executed until December 31, 2024, an electronic invoice is defined as an invoice that is issued and received in an electronic format (e.g., a PDF document or an email with the mandatory invoice information), according to § 14 paragraph 1 sentence 8 of the UStG in its version valid until December 31, 2024. These mentioned formats of electronic invoices will generally only be permissible for certain transitional periods for transactions between domestic businesses (see paragraphs 53 to 56).

2. Innovations for Mandatory Electronic Invoicing through the Growth Opportunities Act

2.1 Types of Invoices as of January 1, 2025

2.1.1 Electronic Invoice (E-Invoice)

4. Starting from January 1, 2025, the term "electronic invoice" (hereinafter: E-invoice) is newly defined by § 14 paragraph 1 of the UStG. In the future, an electronic invoice will only be considered an E-invoice if it is issued, transmitted, and received in a structured electronic format that enables electronic processing (§ 14 paragraph 1 sentence 3 of the UStG). The structured electronic format of an E-invoice:

- must either comply with the European standard for electronic invoicing and the list of corresponding syntaxes according to Directive 2014/55/EU of the European Parliament and of the Council of April 16, 2014, on electronic invoicing in public procurement (OJ L 133, May 6, 2014, p. 1) (§ 14 paragraph 1 sentence 6 number 1 of the UStG, see also explanations in paragraph 24 regarding the EN 16931 standard), or
- can be agreed upon between the invoice issuer and the recipient. A prerequisite for such an agreement is that the format used enables the correct and complete extraction of the information required under the UStG from the E-invoice into a format that complies with or is interoperable with the EN 16931 standard (§ 14 paragraph 1 sentence 6 number 2 of the UStG; see also paragraphs 29 and 30).

5. Furthermore, the authenticity of origin, integrity of content, and readability of the invoice must be ensured. "Readability" means that the XML file must be machine-readable (machine readability). Therefore, the additional creation of a human-readable document is not required. The consequence of machine-readable standardized file is that it can be displayed in a human-readable format using a visualization tool. However, the additional transmission of a human-readable document (e.g., through a hybrid format, see paragraphs 26 to 28, or an additional PDF document) is optional.

2.1.2 Other Invoices

6. Starting from January 1, 2025, all invoices in paper form or in electronic formats that do not comply with the requirements of § 14 paragraph 1 sentence 6 of the UStG (other electronic format) are considered other invoices. This includes all non-structured electronic files, such as JPEG or plain PDF files.

2.2 Obligation to Issue Invoices

2.2.1 General Information

7. The entrepreneur is obligated to issue an invoice if the transaction is not tax-exempt according to § 4 numbers 8 to 29 of the UStG:

a) for a service provided to another entrepreneur for their business (§ 14 paragraph 2 sentence 2 number 1 of the UStG)

b) for a service provided to a legal person that is not an entrepreneur (§ 14 paragraph 2 sentence 2 number 2 of the UStG)

c) for a taxable work supply (§ 3 paragraph 4 sentence 1 of the UStG) or other service related to real estate provided to a recipient other than those mentioned in letters a) or b) (§ 14 paragraph 2 sentence 2 number 3 of the UStG).

8. The obligation to issue an invoice also applies to services provided to a legally active legal person that is not an entrepreneur.

9. The revision of § 14 paragraph 2 of the UStG introduces a distinction between the obligation to issue an E-invoice (see paragraph 4) and the possibility to issue other invoices (see paragraph 6).

10. The obligation to issue an invoice within six months after the provision of the service remains unchanged for all invoices, regardless of the format used (§ 14 paragraph 2 sentence 2 of the UStG).

2.2.2 Obligation to Issue an E-Invoice

11. For transactions between domestic businesses, according to § 14 paragraph 2 sentence 2 number 1, second half-sentence of the UStG, an E-invoice (see paragraphs 21 to 30) must generally be issued. Domestic business transactions exist when both the supplying entrepreneur and the recipient are resident in Germany or in one of the areas specified in § 1 paragraph 3 of the UStG. Residence in Germany or in one of the areas specified in § 1 paragraph 3 of the UStG exists when the entrepreneur has its registered office, management, (value added tax) permanent establishment involved in the transaction, or, in the absence of a registered office, its place of residence or habitual abode in one of these areas.

12. In these cases, the issuance of an E-invoice no longer requires the recipient's consent; at the same time, this assumes that the recipient creates the technical conditions for receiving an E-invoice (see paragraphs 36 and 53).

13. If at least one of the participating entrepreneurs is not resident in Germany or in one of the areas specified in § 1 paragraph 3 of the UStG, there is no obligation to issue an E-invoice according to § 14 paragraph 2 sentence 2 number 1, second half-sentence of the UStG. In these cases, the invoice that must be issued according to § 14 paragraph 2 sentence 2 number 1, first half-sentence of the UStG:

- can be issued on paper or
- with the recipient's consent, as an E-invoice or as another invoice in a different electronic format.

14. The regulations for the mandatory use of E-invoices also apply to invoices issued in the form of a credit note (§ 14 paragraph 2 sentence 5 of the UStG) as well as invoices:

- for transactions where the recipient is liable for the tax (§ 13b of the UStG),
- issued by small entrepreneurs (§ 19 of the UStG),
- for transactions subject to the flat-rate scheme for agricultural and forestry businesses (§ 24 of the UStG),
- for travel services (§ 25 of the UStG), and
- for transactions where the margin scheme (§ 25a of the UStG) is applied.

These regulations also apply when the invoice recipient is an entrepreneur who is a small entrepreneur, an agricultural or forestry entrepreneur, or exclusively carries out tax-exempt transactions (e.g., rental of an apartment).

15. For specific details regarding small invoices and transportation tickets, see paragraphs 19 and 20.

2.2.3 Possibility to Issue Other Invoices

16. For invoices:

- for a transaction with a legal person that is not an entrepreneur, or
- for taxable work supplies (§ 3 paragraph 4 sentence 1 of the UStG) or other services related to real estate provided to a recipient other than those mentioned in paragraph 7 letters a) or b) (non-entrepreneur or entrepreneur for their non-entrepreneurial area), another invoice (see paragraph 6) can be issued.

17. In these cases, the issuance and transmission of a paper invoice is always permissible for value added tax purposes. However, the issuance and transmission as an E-invoice or as another invoice in a different electronic format is only possible with the recipient's consent (§ 14 paragraph 1 sentence 5 of the UStG). This consent does not require a specific form and can also be given implicitly (e.g., through acceptance without objection). The obligation to issue an E-invoice according to other regulations (e.g., according to the E-Invoice Regulation - ERechV) must be observed independently of the value added tax regulations.

18. If a transaction is carried out for both the entrepreneurial and non-entrepreneurial areas of a legal person, the obligation to issue an E-invoice according to paragraph 7 letter a) takes precedence.

2.2.4 Small Invoices and Transportation Tickets

19. Invoices with a total amount not exceeding 250 euros (small invoices) and transportation tickets issued for the transport of persons can always be issued and transmitted as other invoices, deviating from the obligation in § 14 paragraph 2 sentence 2 number 1, second half-sentence of the UStG (§ 33 sentence 4, § 34 paragraph 1 sentence 2 of the UStDV).

20. The decisive factor for the simplification according to § 33 sentence 4 of the UStDV is solely the total amount of the invoice, even if multiple services are invoiced in one invoice. If the total amount of the invoice exceeds 250 euros, an E-invoice must be issued, even if the gross amount of the portion of the invoiced services subject to the obligation to issue an E-invoice is less than 250 euros (e.g., when certain tax-exempt or non-taxable services are also invoiced).

2.3 Permissible Formats of an E-Invoice

21. E-invoices can be created in both purely structured and hybrid formats. An acceptable electronic invoice format must, in particular, ensure that the mandatory invoice information according to § 14 paragraph 4 of the UStG can be electronically transmitted and read. The use of structured invoice formats based on the EN 16931 standard (see paragraph 24) is always permissible. In addition, under certain conditions, other invoice formats can also be used (e.g., EDI procedures according to Article 2 of Commission Recommendation 94/820/EC of October 19, 1994, on the legal aspects of electronic data interchange, OJ L 338, December 28, 1994, p. 98, see also paragraphs 29 and 30). The choice of the permissible format is a civil law matter that can only be decided between the contracting parties.

22. Examples of permissible national electronic invoice formats: In particular, invoices according to the XStandard (see paragraph 25) and the ZUGFeRD format (see paragraph 26) from version 2.0.1 generally

represent an invoice in a structured electronic format that complies with the European standard for electronic invoicing and the list of corresponding syntaxes according to Directive 2014/55/EU. Invoices in these two formats can meet the new value added tax requirements for an E-invoice after December 31, 2024.

23. Examples of permissible European electronic invoice formats: The use of electronic invoice formats is not limited to national formats, as long as they comply with the European standard for electronic invoicing and the list of corresponding syntaxes according to Directive 2014/55/EU. For electronic invoicing of domestic B2B transactions, the use of other European invoice formats based on the aforementioned standard is also possible, such as FatturaPA (Italy) or Factur-X (France).

2.3.1 E-invoice according to the provisions of Directive 2014/55/EU of 16 April 2014 in a purely structured electronic format.

24 An e-invoice exists in particular if it complies with the provisions of Directive 2014/55/EU of the European Parliament and of the Council of 16 April 2014 on electronic invoicing in public procurement, as stipulated in Section 14(1) sentence 6 number 1 of the German Value Added Tax Act (UStG). The requirements of the mentioned directive, which was originally issued for invoicing to the public administration (B2G sector), have been technically implemented by the CEN (European Committee for Standardization) with the European standard EN 16931. The standard has since been adapted to the needs of private sector businesses (B2B sector) and is continuously being developed. Such an e-invoice is designed as a pure semantic data format and allows for importing invoice data directly into processing systems without media discontinuity. It is based on an XML format primarily intended for machine processing and is not suitable for visual inspection by the human eye. However, the XML dataset can be made readable for humans through the use of visualization programs. Page 9

25 The EN 16931 series of standards specifies the use of the structured data format XML for e-invoices. In Germany, based on the EN 16931 series of standards, the XRechnung standard has been developed as a purely structured format (in contrast to a hybrid format, see paragraph 26) based on the semantic core model. The XRechnung standard takes into account national specificities and thus represents an acknowledged national implementation of the EN 16931 standard. In addition to the core data model, the XRechnung standard also provides an extension (known as the XRechnung extension) to accommodate industry-specific requirements without the need to expand the core data model for all users. The value-added tax mandatory information is included in the core data model.

2.3.2 Hybrid Formats

26 In addition to purely structured e-invoices, hybrid invoice formats can also meet the requirements of an e-invoice. A hybrid format consists of a structured data part (e.g., XML file) and a human-readable data part (e.g., PDF document). Both data parts are combined in one file. For example, the ZUGFeRD format falls under the category of hybrid invoice formats. While the original ZUGFeRD format was not based on the EN 16931 standard, this is the case from version 2.0.1 onwards, which is why a ZUGFeRD invoice from this version meets the requirements of an e-invoice.

27 Invoice data transmitted in a structured electronic format (e.g., XML file) is not generally human-readable in this data format, but only after conversion. According to the previous administrative opinion, the characteristic of "readability" required the invoice to be readable to the human eye. In the case of a hybrid format, in the event of a discrepancy between electronic information and the image part readable to the human eye, the latter part took precedence. With the introduction of mandatory e-invoicing, this relationship is reversed. "Readable" now refers to the requirement that the file must be machine-readable (see also paragraph 5). In a hybrid format, the invoice data in the XML format takes precedence. In the case of discrepancies between the structured invoice data and other information, the data from the structured part take precedence over the image file. However, this does not change the fundamental permissibility of a hybrid format. Page 10

28 If the image part does not contain any invoice information that deviates from the structured part according to Sections 14 and 14a of the German Value Added Tax Act (UStG), the image part is considered an identical duplicate (see also Section 14c.1(4) UStAE). However, if the image part contains differing invoice information

(e.g., a different description of services or a different VAT amount due to manipulative interventions), it may constitute an additional (other) invoice for which the requirements of Section 14c UStG need to be examined.

2.3.3 Other Formats

29 The structured electronic format of an e-invoice can also be agreed upon between the invoice issuer and the invoice recipient (Section 14(1) sentence 6 number 2 UStG) and thus deviate from the requirements of the EN 16931 standard. The prerequisite for this is that the format allows for the correct and complete extraction of the information required by the Value Added Tax Act (UStG) from the e-invoice into a format that complies with or is interoperable with the EN 16931 standard. This regulation also allows for the continued use of already established electronic invoice formats (e.g., EDI procedures such as EDIFACT) beyond the transition periods described in paragraphs 54 and 56.

30 Interoperable, in this context, means that the value-added tax required information from the source file (extraction of data from the used invoice format) can be converted into the target format (according to the EN 16931 standard) without any loss of information. Information loss occurs when the content or meaning of information changes or becomes unrecognizable.

3. Special Questions

3.1 Scope of an E-Invoice

31 One of the requirements for an e-invoice is that it enables electronic processing. This means that for a proper invoice, all the value-added tax mandatory information according to Sections 14 and 14a of the Value Added Tax Act (UStG) must be included in the structured part of the e-invoice. Regarding the description of services, the information contained in the structured part of the e-invoice must enable the clear identification of the invoiced service, but supplementary information can be included in an attachment integrated into the e-invoice.

3.2 Transmission and Receipt of E-Invoices

32 The transmission of an e-invoice must be done in electronic form. Possible methods of transmitting e-invoices include sending them via email, providing the data through an electronic interface, or making them available for download via a (customer) portal.

33 A business is free to use external service providers for the creation or transmission of e-invoices. In this case, the supplying business must ensure that the external service provider guarantees compliance with the formal requirements arising from Sections 14 and 14a of the Value Added Tax Act (UStG).

34 It is not problematic if the file for an e-invoice is sent multiple times, as long as it is the same invoice and the transmission only serves as an identical duplicate (see Section 14c.1(4) UStAE).

35 Handing over the XML file on an external storage medium (e.g., USB stick) does not meet the requirements for transmission in electronic form. Therefore, it can at most be considered another type of invoice.

36 Starting from 1 January 2025, domestic businesses are required to be able to receive e-invoices. It is sufficient for the invoice recipient to provide an email mailbox. However, the parties involved can agree on alternative electronic transmission methods.

37 If the invoice recipient refuses to accept an e-invoice or is technically unable to do so, they are not entitled to an alternative issuance of another type of invoice by the invoice issuer. In this case, the value-added tax obligations of the invoice issuer are considered fulfilled if they have issued an e-invoice and have made demonstrable efforts for proper transmission.

3.3 Contracts as Invoices

38 Contracts are considered as invoices if they contain the required information according to Section 14(4) UStG. If there is an obligation to issue an e-invoice for a continuous supply of services (e.g., rental agreement), it is sufficient to issue an e-invoice for the first partial period, with the underlying contract attached as an appendix or clearly indicating that it is a continuous invoice.

39 For continuous supplies of services, an initial e-invoice must be issued in accordance with the above-mentioned rule no later than the expiration of the transitional period applied by the invoice issuer according to Section 27(38) UStG. This also applies to continuous supplies of services that were established before 1 January 2025.

3.4 Correction

40 The invoice issuer can correct the issued e-invoice. For an invoice correction, the same requirements regarding form and content apply as stated in Section 14 UStG according to Section 31(5) sentence 3 UStDV. Therefore, the correction of an e-invoice must also be made in the prescribed form for e-invoices (using the corresponding document type). Transmitting the missing or incorrect information in a different form is not sufficient. A valid correction has retroactive effect to the date of issuance of the original e-invoice (see BMF letter of 18 September 2020, BStBl I p. 976). For input tax deduction from a non-corrected e-invoice, see paragraphs 45 to 50.

41 In cases of a change in the taxable amount, a correction of the tax amount in the original invoice is not required, even for an e-invoice. The obligation to exchange documents in cases specified in Section 17(4) UStG remains unaffected. 3.5 Legal Persons under Public Law

42 The obligation to issue an e-invoice is irrelevant whether the supply is based on civil law or public law, as long as it involves a taxable supply of goods or services. Regardless of an obligation, for example, according to the ERechV, legal persons under public law (jPÖR) are subject to the value-added tax obligation to issue and receive e-invoices, provided the other requirements are met.

43 If a supply is partially carried out within the scope of the business and partially from the non-economic sector of a legal person under public law (jPÖR), it is not considered a single supply but two independently assessable transactions for value-added tax purposes (see also Section 15.2c(4) UStAE). If there is an obligation to issue an e-invoice for the supply carried out within the scope of the business and these two supplies are invoiced in one invoice, the invoice as a whole must be issued as an e-invoice.

44 Regardless of the amount of input tax deduction claimed, an e-invoice must be issued to a legal person under public law (jPÖR) if the requirements are met. This explicitly applies even if the supply is not considered related to the business according to Section 15(1) sentence 2 UStG or if the other supply is obtained for an extremely low proportion for the business sector (e.g., 1.2 percent).

4. E-Invoice and Input Tax Deduction

45 If there is an obligation to issue an e-invoice according to Section 14(2) sentence 2 in conjunction with Section 27(38) UStG, only such an e-invoice fundamentally meets the requirements of Sections 14 and 14a UStG. In these cases, another type of invoice does not fulfill the legal requirements of a proper invoice.

46 When exercising the care of a prudent businessman, an invoice issuer can rely on the information provided by the recipient regarding whether they are a domestic entrepreneur or not, unless there is contradictory information available to them.

47 If there was an obligation to issue an e-invoice and instead another type of invoice is issued according to Section 14(1) sentence 4 UStG, it does not constitute a proper invoice according to Sections 14 and 14a UStG. Therefore, the issued invoice does not, in principle, entitle to input tax deduction according to Section 15(1) sentence 1 number 1 UStG.

48 If the invoice issuer was actually obliged to issue an e-invoice, a different type of invoice issued instead can be corrected according to Section 15.2a(7) UStAE by issuing an e-invoice. The e-invoice must clearly and specifically refer to the original invoice, expressing that it is a corrected invoice. Such a correction has retroactive effect to the date of issuance of the other invoice, even if input tax deduction was initially not possible according to paragraph 47. Page 14

49 If no invoice correction is made by subsequently issuing an e-invoice, it may still be possible to claim input tax deduction from another type of invoice, applying a strict standard, provided that the tax authorities have all the information necessary to verify the material requirements for input tax deduction (an entrepreneur provides a service to another entrepreneur that serves the latter's taxable supplies and for which the VAT has actually been paid). The information contained in another type of invoice should be considered as potential objective evidence for input tax deduction, according to Section 15.2a(1a) UStAE.

50 Furthermore, the input tax deduction will not be denied solely because the invoice is issued in the wrong format, as long as the invoice recipient could reasonably assume, based on the information available to them, that the invoice issuer could take advantage of the transitional provisions according to Section 27(38) UStG.

5. Storage

51 The structured part of an e-invoice must be stored in its original form and meet the requirements of immutability. It must be ensured that the tax authorities can perform machine-readable evaluations. If additional documents are transmitted containing records that are relevant for taxation, such as booking records, they must also be stored in their original form and meet the requirements of immutability. For further details, refer to the BMF letter of 28 November 2019, BStBl I p. 1269, paragraphs 131 and 133. 52 Regarding the record-keeping obligation for other types of invoices (see paragraph 6), reference is made to the BMF letter of 28 November 2019, BStBl I p. 1269, paragraphs 130 onwards.

III. Transitional Provisions

53 Regarding the obligation to issue an e-invoice according to Sections 14(1) and 14(2) UStG, various transitional provisions apply according to Section 27(38) UStG, which allow the invoice issuer to issue another type of invoice under certain conditions. There are no transitional provisions regarding the receipt of an e-invoice, which means that from 1 January 2025, it is the responsibility of the invoice recipient to ensure the receipt (see also paragraph 36).

54 Until the end of the calendar year 2026, an invoice for a transaction executed by then can also be issued and transmitted as another type of invoice (see paragraph 6). The issuance and transmission of a paper invoice is always permissible for value-added tax purposes until then. The recipient's consent to invoice issuance in another electronic format (see paragraph 17) does not require any specific form. It only requires agreement between the invoice issuer and the recipient regarding the format to be used. The consent can be given, for example, through a framework agreement (such as in the general terms and conditions) or implicitly.

55 If the total turnover of the invoice issuer did not exceed EUR 800,000 in the previous calendar year according to Section 19 UStG, an invoice for a transaction executed by then can also be issued and transmitted as another type of invoice until the end of the calendar year 2027. The threshold of EUR 800,000 applies regardless of whether the invoice issuer determines their turnover according to the rules for standard taxation (Section 16 UStG) or cash-based accounting (Section 20 UStG). In cases of value-added tax group taxation, the turnover of the entire group is relevant. If the invoice is issued in the form of a credit note (Section 14(2) sentence 5 UStG), the total turnover of the issuer of the credit note is relevant. If the invoice is issued by a third party not involved in the supply of goods or services, the total turnover of the principal is relevant.

56 Until the end of the calendar year 2027, subject to the recipient's consent, the issuance and transmission of invoices for transactions executed by then can also be done through electronic data interchange (EDI) according to Article 2 of Commission Recommendation 94/820/EC of 19 October 1994 on the legal aspects of electronic data interchange (OJ L 338, 28 December 1994, p. 98), provided that the invoice does not already meet the requirements of Section 14(1) sentence 6 number 1 or number 2 UStG.

IV. Amendments to the Value Added Tax Application Decree

57 The Value Added Tax Application Decree (UStAE) of 1 October 2010, BStBl I p. 846, will be adjusted in a separate letter from the Federal Ministry of Finance (BMF) in accordance with the above explanations.

V. Application Regulation

58 The principles of this letter apply to all transactions executed after 31 December 2024.

The BMF letter of 2 July 2012, BStBl I p. 726, will be repealed as of 31 December 2024. Final Provision

This letter will be published in the Federal Tax Gazette Part I.

On behalf of