



EMCS report of receipt as proof for zero-rating of intra-Community supplies

1 Background

On 13 February 2023, the Seventh Act Amending the Acts on Excise Duties came into force (KMLZ Customs Newsletter 01 | 2023). An essential innovation was the extension of the so-called “EMCS” (Excise Movement and Control System) to the movement of excise goods (manufactured tobacco, sparkling wine and intermediate products, energy products and alcohol products) for commercial purposes released for consumption between EU Member States. Until now, this movement was carried out under cover of a so-called “simplified accompanying document” in paper form. Within the framework of the EMCS, the electronic simplified administrative document “e-SAD” replaces the simplified accompanying document in accordance with Art. 36 of the Council Directive (EU) 2020/262. Both the consignor and the consignee of the goods must also hold the status of certified consignor or certified consignee for movement of excise goods via the EMCS.

2 Validated EMCS report of receipt as proof of delivery

According to sec. 17b para. 3 sentence 1 no. 4 lit. a of the German VAT Implementation Code, a taxable person can use the validated EMCS report of receipt as proof of delivery for intra-Community supplies for the movement of excise goods under duty suspension. The validation of the report of receipt is carried out by the competent authority of the Member State of the consignee within the framework of the EMCS procedure. This regulation only applies to the use of the EMCS report of receipt as proof of delivery under a duty suspension arrangement. In the case of movement of excise goods, released for consumption, the proof of delivery could previously only be provided by means of the third copy of the simplified accompanying document, which must generally be submitted for the purposes of excise duty relief (see sec. 17b para. 3 sentence 1 no. 4 lit. b of the German VAT Implementation Code). In its letter of 11 July 2023, the Federal Ministry of Finance



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(BMF) has now also approved the use of a validated EMCS report of receipt as proof of delivery for intra-Community supplies of excise goods released for free circulation. Section 6a.5. para. 13 of the German Administrative VAT Guidelines, as well as Annex 6 thereto, have been amended accordingly.

3 Existence of a validated EMCS report of receipt

Proof of delivery can also be provided by means of a validated EMCS report of receipt. As regards excise goods released for free circulation, the EMCS report of receipt is first made by the person who is indicated as the consignee of the excise goods in the e-AD (electronic administrative document), within the framework of a duty suspension arrangement or in the e-SAD (electronic simplified administrative document). After receipt of the goods, this consignee must provide the mandatory data set out in Table 6 of Annex I to Commission Delegated Regulation (EU) 2022/1636 in the report of receipt. The competent customs authority of the Member State of destination must then check the completed report of receipt by means of an automated system. Provided that the system does not indicate any errors, the verified report of receipt is then validated. In a further step, the customs authority of the Member State of the consignee forwards the validated EMCS report of receipt to the authority of the Member State of the consignor so that the consignor also receives the validated EMCS report of receipt at the end of the procedure.

4 Further requirement according to the Federal Ministry of Finance's letter

The BMF clarifies that proof of delivery is, under a duty suspension arrangement, as well as where excise goods are released for consumption, only possible by means of the validated EMCS report of receipt if this report of receipt contains information on the place of the delivery (final destination). According to Table 6 of Annex I of the Commission Delegated Regulation (EU) 2022/1636, however, the consignee is only obliged to indicate the place of delivery in the report of receipt if he is a tax warehouse operator or a certified consignee or if it is a direct delivery. In all other cases, the indication of the place of delivery is not mandatory. If the place of delivery is not indicated in the report of receipt in these cases, the taxable person must submit further documents for the proof of delivery in the case of intra-Community supplies, from which the place of delivery can be clearly and easily verified.

5 Comments

The additional effort necessitated by the changeover from the paper procedure to the electronic EMCS procedure for the movement of excise goods released for consumption since 13 February 2023 is now paying off for taxable persons. The validated EMCS report of receipt, which must be generated in the mandatory EMCS in excise law anyway can, at the same time, serve as proof for the zero-rating of intra-Community supplies in VAT law. However, taxable persons who are considering this zero-rating under VAT law for their excise goods should pay attention to the indication of the place of delivery in the report of receipt. If it concerns cases of movement of goods in which the place of delivery does not have to be indicated, the validated EMCS report of receipt is only deemed to be a sufficient proof of delivery if it, nevertheless, indicates the place of delivery. Such a movement of goods exists, for example, in the course of a duty suspension arrangement if the consignee is a certified consignee or the movement of the goods is not a direct delivery. In this case, the parties involved should ensure, from the outset, that the consignee's details in the report of receipt are correct. This will avoid any need to produce further documents in order to prove the intra-Community supply.