



KMLZ VAT NEWSLETTER

VAT changes resulting from turn of the year 2017/2018

1. Waiver of VAT exemption for supply of immovable property

By means of its notification dated 02.08.2017, the German Ministry of Finance implemented the German Federal Tax Court's case law regarding the waiver of VAT exemptions, as well as the withdrawal thereof. Accordingly, the waiver and its withdrawal are still permissible up to the substantive enforceability. However, this does not apply to the supply of immovable property outside of a foreclosure procedure. In such cases, a taxable person can only waive the VAT exemption when a notarial sales contract is concluded (see KMLZ-Newsletter 24/2017).

The tax authorities do not object to notarial amendments being made to the sales contract for supplies of immovable property for declarations after 30.03.2004 and before 31.10.2010. After 01.11.2010, protection of legitimate expectations can only be granted, if the declaration was made before 01.01.2018. Therefore, taxable persons cannot claim protection of legitimate expectations, when they have waived the VAT exemption in notarized supplementary certificates and did not make the required declaration to the tax office by 31.12.2017.

Changes to be considered in the (VAT) year 2018

We wish you all a successful 2018 (VAT) year! Although the turn of the year 2017/2018 has not resulted in any major VAT changes, some action may, nevertheless, be required. On one hand, certain transitional arrangements expired on 31.12.2017. On the other hand, taxable persons need to act during the course of 2018 in order to ensure that necessary measures and amendments are implemented prior to the expiration of other transitional arrangements on 31.12.2018.

2. Zero-rating for maritime transport and aviation

By means of its notification dated 06.10.2017, the German Ministry of Finance extended the zero-rating for maritime transport and aviation with regard to supplies at earlier stages of the commercial chain (see KMLZ-Newsletter 36/2017). The transitional arrangements, under which taxable persons could apply the old VAT regime, have now expired. As of 01.01.2018, it is compulsory to apply the zero-rating. If taxable persons from these sectors have not already done so, they should review whether the provided or purchased services are subject to the zero-rating. Otherwise, there is a risk that the supplier will be liable for the VAT stated in invoices according to sec. 14c para 1 of the German VAT Act, in circumstances where the input VAT deduction is denied for the purchased services.

3. Exemption for management of special investment funds

As of 01.01.2018, the VAT exemption concerning special investment funds, according to sec. 4 no. 8 lit. h of the German VAT Act, was expanded. The VAT exemption is now applicable to:



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- the management of undertakings for Collective Investments in Transferable Securities (UCITS) in accordance with sec. 1 para 2 of the German capital assets law (KAGB)
- the management of comparable alternative investment funds in accordance with sec. 1 para 3 of the German capital assets law (KAGB), as well as
- the management of insurance supply utilities in accordance with the German insurance supervision law.

The amendments are part of the law to amend the taxation of investments and a reaction to the judgement of the ECJ (ECJ, judgement dated 09.12.2015 - C-595/13, *Fiscale Eenheid X NV* cs). Thus, the Europe-wide harmonized UCITS, as well as alternative investments funds, are now to be treated in the same way, from a VAT perspective, as funds in accordance with the German investment tax law.

4. Consignment stocks – extension of transitional arrangements up to 01.01.2019

By means of its notification dated 11.10.2017, the German Ministry of Finance implemented, into the German VAT Circular the opinion of the German Federal Tax Court with regard to the VAT treatment of supply via consignment stocks (see KMLZ-Newsletter 33/2017). In cases where the customer is already defined, prior to the commencement of transportation, a direct supply of goods is given, also in cases where the goods are temporarily stored in a consignment stock. By means of its notification dated 14.12.2017, the German Ministry of Finance extended the transitional arrangements to 01.01.2019. Taxable persons, suppliers as well as customers, now have until the end of the year to review whether their supplies via consignment stocks or other warehouses, are being treated correctly, from a VAT perspective or whether changes are required.

5. Preparation for 2019 legal situation for VAT groups

The VAT treatment of VAT groups was subject to major amendments in the past few years. By means of its notification dated 26.05.2017, the tax authorities confirmed that partnerships can also be part of a VAT group, provided that certain conditions are met (see KMLZ-Newsletter 16/2017). During 2018, taxable persons will still be permitted to apply the previous opinion of the tax authorities regarding VAT groups. This means that until 31.12.2018, it is possible for partnerships not to be regarded as part of a VAT group, despite meeting the preconditions. Taxable persons should therefore use the remaining time to perform a “VAT group review” of their company. Where necessary, measures should be taken to “destroy” a VAT group, in instances where there is no desire for a partnership to become part of that VAT group. This should be considered based on the fact that a VAT group would automatically be established and that the taxable person does not have the right to choose whether to apply the rules for a VAT group or not.

6. Extended deadline for VAT returns for 2019

The legal deadline for filing annual VAT returns will be extended by up to two months. Instead of having to file the annual VAT return by 31.05. of the following year, the filing deadline will be the 31.07. of the following year. Taxable persons, who are advised by tax advisors, are permitted to file their annual VAT return by 31.02. of the year after the year following the reporting period. This change only applies with regard to the reporting period 2018. Thus, the annual VAT return for 2018 is required to be filed by 31.07.2019 and when advised by a tax advisor by 28.02.2020. However, the annual VAT return for 2017 has to be filed by 31.05.2018 and when advised by a tax advisor by 31.12.2018. Otherwise, late filing penalties will be due.