



# KMLZ VAT NEWSLETTER

## New forms with qualified free-text field – opportunities, risks and action required

### 1. Amendments under the Act for Modernization of Taxation

The goal of the Act for Modernization of Taxation of 18.07.2016 is to achieve the automated processing of suitable tax returns. The legislator is of the opinion that this is the only way to ensure that the tax authorities are able to continue completing their tasks in a constitutional and proper manner. By enhancing the automatic processing of suitable tax returns by making use of risk management systems, the aim is that human resources can then be concentrated on cases, which require detailed consideration. Thus, tax assessments are to be processed using an automated method in circumstances where there is no reason for the individual case to be dealt with by an officer (new sec. 155 para. 4 of the German Fiscal Code). Cases, which will be dealt with by an officer, are those in which the taxpayer has chosen to make an entry in the relevant sec-

### New qualified free-text field

The Act for Modernization of Taxation aims to enhance the exclusive automatic assessment. By implementing a new “qualified free-text field” the taxpayer is given the opportunity of having his VAT return dealt with by an official. This should minimize the risk of fiscal offences. Vice versa, refraining from entering information in this field might also give rise to such a risk. Special care should therefore be taken regarding the proper handling of the free-text field.

tion or data fields. The new “qualified free-text field”, in accordance with sec. 150 para. 7 of the German Fiscal Code, constitutes such a field.

In this field the taxpayer may e.g.

- request a more detailed examination of the specific issues or legal questions;
- inform the authorities that, in his tax return, he deviated from the administrative opinion; or
- apply for a discretionary decision which will have an impact on the tax assessment.

This information has to be entered into the Federal Ministry of Finance’s new forms for the monthly VAT return (USt 1 A) in line 75 (box 23) respectively, for the application of a special advance payment (USt 1 H) in line 31 (box 23). Further information has to be provided by the taxpayer in a separate enclosure entitled “Further information regarding the tax return”. Where the taxpayer merely wants to add further lists or evidence, the taxpayer is required to enter information in line 15 rather than line 75.



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An entry in the qualified free-text field will result in a mandatory, legally required examination of the case by a tax officer. The VAT return will then not be automatically processed.

## 2. Consequences for the practice from a criminal law perspective

It is open to question if and to what extent, it becomes criminally relevant whether the taxpayer discloses a deviating legal opinion. According to the law, the taxpayer is only obliged to provide complete and correct facts. However, the taxpayer will, at least, be forced to disclose whether he is deviating from the relevant case law, the fiscal authorities' directives and/or regular administrative practice. Consequently, in cases where the taxpayer, on the one hand deviates from the fiscal authorities' opinion but, on the other hand, asserts a legal opinion which is in line with the Federal Fiscal Court's case law, there is no disclosure requirement for the taxpayer. This is also the situation where the individual case is not regulated by the fiscal authorities' directives. However, if the directives contain provisions on a very specific situation, and the taxpayer deviates from these provisions, he will be required to disclose this fact to the tax office in order to avoid any allegations of tax evasion.

Thus, where a taxpayer deliberately refrains from entering information in the new box 23 (incl. the attachment "Further information regarding the VAT return") when necessary, he might risk being accused of tax evasion. However, this has always been the case. In the past, there was merely no box included in the forms. In the past, taxpayers were required

to attach an explanation letter in such cases. Where a taxpayer refrained from attaching such a letter and where taxes were assessed incorrectly because of the missing information, this also constituted an act of tax evasion.

It can, however, be expected that the failure to state a deviating legal opinion, although requested in the new free-text field, will be used by the fiscal authorities to assume, at least the existence of conditional intent, as regards an act of tax evasion committed in this way.

In contrast, the new free-text field offers the possibility, by the act of consciously entering specific facts and having the tax return be dealt with by an officer, rather than being automatically assessed, of a precautionary measure, to minimize the risk of possibly emerging criminal charges. Therefore, special care should be taken as to whether any information needs to be entered into this field.

## 3. Adjustments to compliance procedures

As regards tax compliance, it is advisable to implement a new step into the declaration process. In this step, it should be examined whether an entry in the new field needs to be made. Where the fiscal authorities' directives provide for specific provisions on certain facts, from which the taxpayer deviates in his VAT return, it is required to be entered in box 23, respectively in an attachment thereto. The examination, as to whether entries must be made, the result of this check and its implementation into the VAT return, must all be comprehensively documented.