



KMLZ VAT NEWSLETTER

Consignment Stocks - Update

1. Decision of the tax court Düsseldorf

On 6 November 2015, the tax court Düsseldorf handed down a decision concerning the supply of goods via consignment stocks. This said decision was in accordance with earlier decisions made by the tax court of Lower Saxony (see newsletter 21/2015) and the Hessian tax court (see newsletter 30/2015). The case before the tax court Düsseldorf involved goods being delivered from the Netherlands, via a consignment stock, to a German recipient. In making its decision, the tax court repeated the findings of the earlier decisions and objects the fiscal authority's view that an intra-Community transfer of own goods always has to be assumed if goods are supplied via consignment stock (sec. 3.12 para 3 and sec. 1a.2 para 6 of the Administrative VAT Guidelines):

- The question of whether the transport of goods to a consignment stock is deemed to be a supply of goods to the recipient according to sec. 3 para 6 German VAT Act or a transfer of own goods according to sec. 1a para 2 German VAT Act, cannot, in principle, be answered consistently, since specific rules for consignment stocks do not exist. The VAT treatment follows the contract design of the single consignment stock agreement.

Tax administration extends list of countries accepting simplification

The tax court Düsseldorf's recent decision, in a case involving consignment stock, repeated the earlier findings of other tax courts. It confirmed that the circumstances of the specific single case are relevant, particularly, as to whether legally binding orders exist prior to the transfer of the goods to the stock. Only confirmation by the Federal Fiscal Court is, as yet, missing. Meanwhile, the Upper Tax Authority of Frankfurt am Main included these findings in its administrative circular regarding consignment stocks. The Authority also now allows the suspension of proceedings, in the case of appeals. The Upper Tax Authority also extended the list of countries accepting simplifications for consignment stocks, which are also acknowledged by the German tax authorities.

- The transfer of goods to a consignment stock is not generally deemed to be a supply to the recipient, considering that the right to dispose of the goods is not transferred.
- The transfer of goods to a consignment stock would (only) be considered a rendered supply to the recipient at the place where the transport or dispatch begins if a legally binding order, by the recipient of the goods, existed at the time the transport of the dispatch to the consignment stock began.

Applying these principles, in the case in question, the place of supply was found to be the place where the consignment stock was located within the domestic territory. Based on the provisions of the Consignment Distribution Agreement



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(CDA) agreed upon by the supplier and the recipient, the tax court was of the opinion that a binding purchase agreement had only been concluded by the parties involved upon storage of the goods and that the recipient had not been obliged, from the outset, to purchase the goods which were transferred to the consignment stock by the supplier.

According to the CDA, the recipient was entitled to sell the consignment stock to his clients within the scope of his normal business operations. Once a week, the recipient was required to forward a report to the supplier on the consigned inventory sold the previous week. This list was to be understood as an order. According to the CDA, the supplier retained title to the Consigned Inventory until he received the said report. Accordingly, a binding purchase agreement between the supplier and the recipient was only concluded at the time the stored good were resold by the recipient to his customers and/or by forwarding the weekly report containing the consigned inventory which was sold in the previous week. The purchase price to be paid by the recipient to the supplier was therefore determined on the basis of the price list, which was valid at the time of the resale. Until the time of resale to his customer, the recipient had not been obliged to purchase the goods stored in the consignment stock. Based on the CDA, the recipient was entitled to return all or part of the consigned inventory that had not been sold at the end of the consignment period of three weeks.

2. Decision of the OFD in Frankfurt am Main

On 15 December 2015, the Upper Tax Authority (OFD) in Frankfurt am Main issued a revised version of its administrative circular as regards the supply of goods to and from consignment stocks. The Upper Tax Authority included the

Hessian tax court's decision of 25 August 2015, mentioning that it was contradictory to sec. 1a.2 para 6 of the German VAT Circular. In doing so, the Upper Tax Authority pointed to the fact that proceedings according to sec. 363 para 1 German Fiscal Code should be suspended in instances where taxable persons invoke the tax authority's view.

Further, the Upper Tax Authority decision indicates in which countries simplification rules for consignment stocks exist, according to which the supplies via consignment stock can be treated as direct intra-Community supplies. Romania and Spain have been added to the list of the countries accepting simplification rules for consignment stocks.

In principle, Romania accepts the simplifications for consignment stocks only if a similar rule exists in the country of departure. As there is no such rule in Germany, simplification as regards Romanian consignment stocks, which are supplied from Germany, is not permitted. However, in accordance with the Upper Tax Authority's view, the supplier's competent German tax office could, in individual cases, confirm the simplification for supplies to Romania. In return, the Romanian tax authorities would acknowledge the simplification rule for supplies from Germany.

Spain basically does not apply the simplification rule. However, the Spanish tax authorities have published several binding rulings according to which supplies to Spain via consignment stocks can be treated as intra-Community supplies. The most recent binding ruling was published on 12 November 2015 (ref. V3482-15). The Upper Tax Authorities confirmed that, also from a German point of view, the simplification rule could be applied in such circumstances.