

KMLZ VAT NEWSLETTER

Chargeable VAT at the time the payment is received – need of an automatic switch?

1. Sec. 16 vs. sec. 20 of the German VAT Act

According to sec. 16 para. 1 sent. 1 of the German VAT Act, VAT becomes chargeable when the goods or the services are supplied. However, sec. 20 of the German VAT Act allows certain taxable persons to pay VAT only at the time the payment is received. For being granted this privilege, by means of a formal “approval” from the tax authorities, the taxable person has to file an application and to fulfill one of the following requirements:

- the total sales of the previous calendar year did not exceed EUR 500,000;
- the taxable person does not have to retain accounts in accordance with sec. 148 of the German General Fiscal Code; **or**
- the taxable person is a freelancer in terms of sec. 18 para. 1 no. 1 of the German Income Tax Act.

“Terms“ determine whether there is an automatic switch of the taxation principle

If a taxable person has been granted the privilege of VAT only becoming chargeable at the time the payment is received, he should check whether the approval, granted to him by the tax authorities in this regard, contains a term stating that the approval terminates automatically.

2. Omission of the requirements

Typically, if these requirements are omitted, the taxable person does not have to switch automatically to being bound by sec. 16 para. 1 sent. 1 of the German VAT Act. Instead, he may wait for formal revocation of the approval by the tax authorities.

However, the tax authorities often include a term in the said approval stating that if the requirements above are omitted, the taxable person **automatically has to** switch to the principle of VAT being chargeable when the goods or services are supplied, right from the beginning of the following calendar year.

If the approval contains such a term, the taxable person should check, at the beginning of each new calendar year, to ensure that the requirements are still being fulfilled. If this is no longer the case, the taxable person has to switch to the principle of sec. 16 para. 1 sent. 1 of the German VAT Act, for the first VAT return period of the following year.