KÜFFNER MAUNZ LANGER ZUGMAIER

KMLZ VAT NEWSLETTER

German Ministry of Finance on cross-border tax audits

Initial answers for taxpayers submitting Mini One Stop Shop reports

Since the introduction of the Mini One Stop Shop (or *"MOSS"*), tax audits have been a significant but unresolved issue. Member States have not (yet) been able to agree on harmonized rules. Neither the EU VAT Directive nor the VAT Implementation Regulation contain any corresponding provisions. A leaflet published by the German Ministry of Finance on cross-border tax audits now answers some of these questions, at least from a German perspective.

1. Background

B2C e-services are taxable where the customer is resident (for EU companies only since 01.01.2015). Accordingly, companies providing B2C e-services would seem to have to register in all EU Member States where their clients are based.

However, EU law allows companies to register in just one Member State. The companies then report all B2C e-services to this Member State in a single report. This Member State then forwards the report and paid VAT onto the other Member States. The Member State of registration is therefore ultimately a "letterbox". All subsequent administrative procedures are carried out by the Member State in which the customer resides. Local procedural law applies, which is not harmonised. Although the EU Commission has proposed standardised regulations, major Member States, including Germany, France and Italy, have declined these proposals.

Hence, it remains unclear how tax audits on MOSS returns will be carried out. The German Ministry of Finance published a leaflet on 06.01.2017 (in English), describing how it envisages cooperation to function during cross-border tax audits (IV B 6 – S 1315/16/10016:002). The leaflet answers some procedural questions regarding MOSS.

2. Content of the leaflet

2.1 Purpose of tax audits

Cross-border tax audits serve to establish the facts, amicably. However, the various tax authorities determine the legal consequences independently, based on their own national VAT law. The tax authorities may therefore consequently take a deviating legal standpoint, despite a coordinated external audit. This means that coordinated tax audits reduce the risk of double taxation. However they do not rule it out altogether.

Contact: Matthias Luther
LL.M. Tax., Lawyer
Phone: +49 211 54095395
Matthias.luther@kmlz.de

2.2 Types of tax audits

The German Ministry of Finance differentiates between simultaneous and joint tax audits. Simultaneous tax audits are carried out by the national tax authorities at the same time, but independently. They then exchange the information obtained between each other. Joint tax audits are preferable. For these, the tax authorities investigate the facts together. This avoids the tax authorities interpreting the facts differently. Another advantage of joint tax audits is that the tax authorities determine the focus of the tax audit together. This reduces the potential for conflicts with regard to the investigated facts.

2.3 Auditor's Powers

The auditor's powers depend on their own national procedural law. This means that if a German auditor is taking part in an external audit abroad, he essentially (only) has the rights granted to him by German law.

2.4 Practical implementation

Cross-border tax audits are coordinated via the central liaison bureau of the German Federal Tax Office. It processes e.g. proposals for joint external audits by foreign states or by German tax authorities.

In principle, taxable persons must be consulted prior to the commencement of a coordinated external audit. Taxable persons must therefore be consulted before tax authorities exchange information in order to determine the addressees of tax audits.

However, to ensure that the tax audit's results are not endangered, the tax authorities may delay consulting the taxpayers until such time as the tax audit order is sent out.

Taxable persons may object to the carrying out of coordinated tax audits. Any such objections are then assessed by the German Ministry of Finance's liaison bureau. If the objections are justified, only the national tax audit will be carried out. In any case, taxable persons can object to foreign auditors interrogating their staff or checking their documentation autonomously.

In the case of cross-border tax audits, the official language remains German. However, the participating tax authorities and taxable persons may agree on another foreign language.

3. Conclusion

The German Ministry of Finance's leaflet is a step in the right direction because it eliminates some of the existing legal uncertainties. This is particularly relevant because two years after the introduction of MOSS for EU companies, the first tax audits can be expected to occur in the not too distant future. The German tax office has already started contacting foreign B2C e-service providers. Companies who participate in the MOSS should start preparing for such tax audits. This is still possible, despite the uncertain legal situation. Art. 63c of the German VAT Implementation Regulation, in particular, makes provisions for binding, Europe-wide obligations to keep records. According to the European Commission, EU Member States may only request these records within the scope of tax audits.

As per: 18.04.2017 | All contributions are made to the best of our knowledge | No liability is assumed for the content | © KÜFFNER MAUNZ LANGER ZUGMAIER