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# KMLZ VAT NEWSLETTER

## Federal Ministry of Finance comments on construction work once again

The decision of the Federal Fiscal Court of 22 August 2013 (V R 37/10) that the reverse-charge-scheme is no longer applicable to supplies to property developers and the circular of the Federal Ministry of Finance dated 05 February 2014 according to which the tax authorities generally apply this decision (Newsletter 2/2014) have caused a lot of discussion. Even a change of the VAT Act appears to be possible now. Sec. 13b may be amended in order to establish the legal basis for applying the VAT treatment before the decision of the Federal Fiscal Court. Meanwhile, the tax authorities have now, once again, commented on the issue and have released another Federal Ministry of Finance's circular dated 08 May 2014.

### 1. Circular dated 08 May 2014

The regulations explained in the following (1.1 – 1.3) apply to all transactions executed after 14 February 2014.

### Transitional arrangements regarding construction work leads to significant manual effort

The Federal Ministry of Finance has again responded to the issue of construction work and has touched up on areas such as legitimate expectations, supplies for private purposes and VAT groups.

The fiscal authorities have commented on the question of taxation for advance and final invoices exceeding the deadline of 14 February 2014. This regulation requires significant manual effort for successful technical implementation.

#### 1.1 New legitimate expectation

The reverse-charge-scheme is only applicable to supplies to property developers where the property developer uses the received construction work directly for such a supply itself. If the recipient confirms to the property developer that it intends to directly use the received supply for construction work itself, the recipient is obliged to pay VAT although he might not ultimately directly use it for such a supply itself. This shall not apply if the property developer knew about the inaccuracy of the confirmation.

#### 1.2 Non-entrepreneurial purpose

According to the wording of sec. 13b para 5 sentence 6 of the German VAT Act, the reverse-charge-system is also applicable to the recipient if construction work or building cleaning services are obtained for private purposes and the recipient itself provides such services. Due to the direct use



now required by the Federal Fiscal Court, the reverse-charge-scheme is no longer applicable to the recipient as regards services for non-entrepreneurial purposes.

### 1.3 VAT group

If one part of the VAT group obtains construction work, the reverse-charge-scheme is only applicable if the supply is directly used for construction work. In this content direct use means that one part of the VAT group (controlling company or controlled company) uses the received supply to carry out such a supply to a third person.

### 1.4 Expansion of the non-objection scheme

The non-objection scheme in the circular of the Federal Ministry of Finance dated 05 February 2014 has been extended by two cases.

If construction work is commenced prior to 15 February 2014, it will not be objected to if the parties invoice this construction work carried out after 14 February 2014 by mutual agreement using the reverse-charge-scheme.

It also will not be objected to if a service is invoiced with VAT before 15 February 2014 by mutual agreement and in consideration of the then current administrative interpretation, although the recipient would have already been liable for VAT according to the new case law.

### 1.5 Advance and final invoices

The property developer will owe VAT for construction work if he has issued advance invoices before 15 February 2014 without VAT for building projects which will be completed after 14 February 2014, as the supply is to be assessed in accordance with the new legal position.

In the interest of simplification, however, it is sufficient for the property developer to charge VAT for the total amount in the final invoice. The advance payments made are to be charged in their net amount (without VAT) in the final invoice. VAT for the total payment is to be declared in the VAT return for the period in which the service was carried out. The recipient will need to correct the VAT paid for the advance payments in the same period.

If the recipient is entitled to deduct VAT, it will not be objected to if only the difference between the total amount and the advance payments paid before the 15 February 2014 is stated in the final invoice, as long as the recipient has taxed the advance payments accordingly.

## 2. Technical implementation in practice

Technical implementation will lead to significant manual effort for both the property developer as well as the recipient.

The invoicing of the advance payment invoices is normally made by means of an ERP system using the tax code "reverse-charge-transactions". However, automatic creation of the final invoice will no longer be possible, as, according to the opinion of the administration, VAT is to be charged. Then, the tax code would be "19% VAT". The final invoice will have to be manually created.

The same applies for the recipient, as charging the final invoice with the tax code "19% VAT" will lead to an error, as the VAT amount of the final invoice does not comply with 19% of the basis of assessment.