



KMLZ VAT NEWSLETTER

Place of supply for intermediaries selling tickets which grant access to events

On 10 June 2013, the German Ministry of Finance published a Circular, which amends the regulations to the German VAT Guidelines concerning the sale by intermediaries of tickets granting access to events. The changes are based on the Guideline resulting from the VAT Committee meeting of 7 September 2012 (Working paper 743). The EU member states unanimously confirmed a VAT treatment which does not correspond to the German VAT Guidelines before its amendment.

1. Background

Services in respect of admission to events are deemed to be rendered where the events actually take place. There is no difference between supplies to non-taxable persons (B2C – Art. 54 of the EU-VAT-Directive) and taxable persons (B2B – Art. 53 of the EU-VAT-Directive).

This exception to the main rule of Art. 44 of the EU-VAT-Directive has a practical background. When selling tickets at the box office, organizers of events would always have to

Administration amends regulation regarding the sale of tickets

Last year the German Ministry of Finance changed its view on the VAT treatment of sales of tickets by intermediaries. Now, the German VAT Circular has been amended accordingly. All entrepreneurs selling tickets as intermediaries but not as organizers of events will need to review their invoicing processes. This not only concerns typical ticket sellers but potentially event organizers and all other entrepreneurs selling tickets to other parties.

determine whether the customer was a taxable person, and if so, whether he was acting as such.

2. Previous VAT treatment

According to Art. 3a.6 para. 13 sentence 2 of the German VAT Circular, Art. 54 of the EU-VAT-Directive was not to be applied to the sale of tickets to non-taxable persons by intermediaries. In such cases, Art. 45 of the EU-VAT-Directive was to be applied which means that the service was deemed to be rendered where the intermediary was established. Similarly, Art. 44 of the EU-VAT-Directive should have been applied with respect to sales by intermediaries to taxable persons. The view of the German tax authorities results from a decision of the Federal Fiscal Court of 3 June 2009, which concerned the legal situation before implementation of the VAT-package.

There was some doubt as to whether the view of the German tax authorities made any sense. Intermediaries, selling



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tickets in the same manner as the organizers of the events to a large number of customers, would always require the verification of the taxable status of the customers.

3. New regulation

The differences in the VAT treatment of supplies of organizers of events and intermediaries will be abolished. The new version of Art. 3a.6 para. 2 sentence 2 and para. 13 sentence 1 of the German VAT Circular stipulates that the sale of tickets by parties other than the organizers of the events, will now also be deemed to be rendered where the event takes place, in B2B situations (Art. 53) as well as in B2C situations (Art. 54).

According to the wording of the VAT Circular, the new interpretation not only applies to intermediaries acting in their own name and on their own behalf, but also in cases where the intermediary acts on its own behalf but in the name of another person, e.g. the organizer.

Furthermore, the new interpretation must be applicable to sales by intermediaries acting in their own names and on behalf of another person. In such cases, the principles for commissionaires, according to Art. 28 of the EU-VAT-Directive, apply. The organizer, as well as the intermediary, render services in the country where the event takes place.

4. Period of application

According to the VAT Circular, the new regulation is only applicable to supplies rendered after 30 June 2013. However, with the amendment of the VAT Circular the tax authori-

ties merely published their different interpretation to Art. 53 and 54 of the EU-VAT-Directive. The legal regulations in Sec. 3a para. 3 no. 3 lit. a (B2C) and Sec. 3a para. 3 no. 5 of the German VAT Act remain unchanged. Hence, if the new interpretation should be advantageous, entrepreneurs may refer to it even with respect to supplies rendered before 1 July 2013. Furthermore, according to the VAT Circular, it would not be inappropriate for the new interpretation with respect to the sale of tickets to non-taxable persons to be applied as a result of the laws of another EU member state, even before 1 July 2013. By the way, this limitation to supplies to non-taxable persons appears to be not appropriate.

5. Changes required

Intermediaries established in Germany will no longer have to charge German VAT for events taking place outside Germany. For sales to taxable persons, the reverse charge scheme may apply, depending on the respective country. In many cases, however, the local VAT of the country where the event takes place will have to be charged.

In the future, the sale of tickets for events in Germany by intermediaries established in Germany to foreign customers will be subject to German VAT. The reverse charge scheme will not be applicable. Only intermediaries not established in Germany may apply the reverse charge scheme for sales to taxable persons according to Sec. 13b para. 2 no. 1 of the German VAT Act. However, it needs to be considered that the reverse charge scheme does not apply when granting access to trade fairs, exhibitions and congresses (Sec. 13b para. 6 no. 4 of the German VAT Act).