



KMLZ VAT NEWSLETTER

Ausgangsvermerk does not always suffice as proper proof of export supplies

1. Background

For zero rated export supplies of goods, proof of transportation must be furnished. According to sections 9 and 10 of the VAT Implementation Code, taxable persons using the ATLAS electronic customs procedure for filing their export declarations are required to provide the so-called Ausgangsvermerk to the tax authorities. On 17 May 2014, ATALS release 8.5 was transferred in to real time operation. Inter alia, this changed the Ausgangsvermerk necessary for VAT purposes. This change concerns goods being declared for the export procedure followed by a transit procedure. If a German customs office of destination terminates the transit procedure, the Ausgangsvermerk will now carry the watermark "Ausgangsvermerk gilt nicht für Umsatzsteuerzwecke" which means that the document is not a valid proof of export for VAT purposes. By means of ALTAS-participant information dated 15.05.2014, the Data Processing and Information Technology Centre of the Federal Tax Adminis-

"Ausgangsvermerk gilt nicht für Umsatzsteuerzwecke"

As of 17 May 2014 Ausgangsvermerke include this watermark if the export procedure is connected with a transit procedure, which is terminated by specific German customs offices of destination. In these cases, taxable persons now need to furnish a valid alternative proof in the sense of the German VAT Implementation Code for the export of the goods. However, in general, the Ausgangsvermerk is still valid proof of export supplies.

tration (ZIVIT) stated that the modification only concerns customs offices of destination with the competence "customs office of exit - inland." In the case where the customs office of destination is a customs office at the border, the export notice for VAT purposes will further on be issued. The reason for the change is that currently in the cases at hand Ausgangsvermerke for VAT purposes are issued even though the goods are still located in the customs territory of the European Union (EU). The customs office that issues the Ausgangsvermerk is, however, not able to confirm the export of the goods into a third country.

2. Significance in practice

Cases, in which a transit procedure in connection with an export procedure is terminated by a German customs office of destination with the competence of a "customs office of exit - inland", are not the rule. According to customs law, a customs office situated



KÜFFNER MAUNZ LANGER ZUGMAIER

Contact: Dr. Christian Salder
Lawyer, Certified tax consultant
Phone: +49 (0)89 / 217 50 12 - 85
christian.salder@kmlz.de



in the inland may act as customs office of exit if the goods are exported by rail, post, air or sea. The first requirement is a single transport contract. Secondly, it is necessary that the goods are intended to leave the customs territory of the EU by rail, post, air or sea. Finally, the declarant or his representative needs to declare that the tasks of the customs office of export are fulfilled by this customs office.

If a transit procedure is terminated by a customs office of destination with the competence "customs office of exit - inland", a Ausgangsvermerk is automatically created to terminate the export procedure. At this point in time, however, it is uncertain whether the goods will reach a third country. The requirements of a zero-rated export supply are not fulfilled. In this case, an Ausgangsvermerk for VAT purposes will no longer be issued. Even prior to 17.05.2014 in these sorts of cases the requirements of a zero-rated export supply were not met, despite the fact that an export notice was issued.

ATLAS Release 8.5 does not change the legal situation, but rather clarifies it. In the future, in the cases concerned the export of goods will need to be proved with an alternative proof of export in accordance with the German VAT Implementation Code (UStVD). According to § 9 para. 1 no. 1 and § 10 para. 1 no. 2 UStDV permitted are, in particular, a way bill, a bill of lading or a certificate of the freight forwarder (so-called Spediteurbescheinigung).

3. Advice

Companies that carry out export procedures followed by a transit procedure, which are terminated by a German customs office of destination with the competence "customs office of exit - inland", will no longer be able to use the Ausgangsvermerk for VAT purposes. These companies need to ensure that they obtain a permitted alternative proof of export. Additionally, affected companies should check whether the correct documentation for past export supplies is available.