



VAT NEWSLETTER

E-Commerce: Federal Ministry of Finance comments on participation of online marketplaces in deemed chain transaction

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1 Background

With effect as of 01.07.2021, sec. 3 para 3a of the German VAT Act will, in certain cases, deem a chain transaction to take place between online traders, electronic interfaces (e.g. online marketplaces) and end customers. As a result, online marketplaces will become liable for VAT. With its circular dated 01.04.2021, the German Federal Ministry of Finance takes a position on the new regulations.

2 Deemed chain transaction cases

Sec. 3 para 3a sent. 1 of the German VAT Act concerns the supply of goods via an online marketplace to non-taxable persons by an online trader who is not established in the EU. The transport or dispatch starts in the EU and ends in the same or in another Member State. No chain transaction will be deemed to take place if the online trader is established or has a fixed establishment in the EU.

Sec. 3 para 3a sent. 2 of the German VAT Act concerns distance sales of goods imported from third countries in consignments of an intrinsic value not exceeding 150 Euro. These distance sales are rendered by means of an online marketplace to non-taxable persons or to a person specified in sec. 1a para 3 no. 1 of the German VAT Act who neither exceeds the acquisition threshold nor waives its application. This applies regardless of the residency of the online trader.

3 Clarification of different acquirers

The regulations of sec. 3 para 3a sent. 1 and. 2 of the German VAT Act apply to different acquirers. While the acquirer is a non-taxable person in cases concerning sec. 3 para 3a sent. 1 of the German VAT Act, in sec. 3 para 3a sent. 2 of the



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Act the acquirer may also be a person referred to in sec 1a para 3 no. 1 of the VAT Act who neither exceeds the relevant acquisition threshold nor waives its application. This includes taxable persons who only render VAT exempt supplies that do not entitle them to deduct input VAT, small businesses, flat-rate farmers and foresters, as well as legal entities that are either not taxable persons or do not acquire the goods for business purposes.

4 Clarification of “facilitating” within the meaning of sec. 3 para 3a of the German VAT Act

The German Ministry of Finance clarifies that a “facilitating” of the online marketplace will be found to exist if it allows a customer and an online trader, offering goods for sale through the online marketplace, to enter into contact which results in a supply of goods being made through that online marketplace. Furthermore, the German Ministry of Finance states under which cumulative conditions no “facilitating” of the online marketplace will be found to exist. Both the definition and the negative delimitation are to be found, word-for-word, in sec. 25e para 6 of the German VAT Act and Art. 5b of the Council Implementing Regulation (EU) 282/2011. In its circular, the German Ministry of Finance lists some conditions (none of which are to be understood conclusively nor cumulatively), which may indicate that no “facilitating” of the online marketplace has taken place. In this context, the Federal Ministry of Finance adopts the same wording as the EU Commission’s Explanatory Notes on VAT e-commerce rules.

5 Clarification of “consignment” within the meaning of sec. 3 para 3a sent. 2 of the German VAT Act

A chain transaction, in the sense of sec. 3 para 3a sent. 2 of the German VAT Act, requires a consignment of an intrinsic value not exceeding 150 Euro. The German Ministry of Finance specifies the meaning of the term “consignment” by also referring to the EU Commission’s Explanatory Notes on VAT e-commerce rules. Accordingly, each individual package will generally constitute a single consignment. If multiple goods are boxed together in one package and simultaneously shipped by the same shipper to the same receiver under a contract of carriage (e.g. Air Waybill, CMR, Universal Postal Convention Mail with S-10 Barcode) they are then considered to be one single shipment. Goods, which have been ordered separately but are shipped in one package, will also be regarded as one shipment.

6 Consequences for the practice

The German Federal Ministry of Finance’s explanations, including the numerous sample cases provided, should facilitate the correct application of the complex legal provisions on deemed chain transactions. However, the circular does not contain many new findings. For the most part, the clarifications already result directly from the German VAT Act or the Council Implementing Regulation (EU) 282/2011, which constitutes directly applicable law. It is encouraging that the German Ministry of Finance has adopted some of the EU Commission’s Explanatory Notes using identical wording, thus declaring them to be binding at the level of the tax authorities.

The clarifications provided by the Ministry of Finance regarding “consignment” will have a great practical impact. An online marketplace cannot regularly verify the value of a consignment if multiple orders from the same customer to the same online trader exist and the shipment is made by the online trader. The reason for this is that the online marketplace cannot know in how many packages the multiple goods are in fact distributed. Therefore, the online marketplace will be unable to verify whether a chain transaction is deemed to have taken place (consignment of an intrinsic value not exceeding 150 Euro) and whether it will thus be liable for VAT. In order to properly fulfill its obligations under VAT law, the online marketplace must therefore reach contractual agreements with its online traders to the effect that they provide it with all necessary information (in particular, the intrinsic value per consignment).