



VAT NEWSLETTER

## Liability of online marketplaces: Federal Ministry of Finance amends German VAT Circular

15 | 2021

### 1 Background

On 1 January 2019, the legislator inserted sec 22f, on the special obligations for online marketplaces, and sec 25e, on the liability of online marketplaces, into the German VAT Act. The Federal Ministry of Finance's letter of 20 April 2021 now serves to amend the German VAT Circular accordingly. The letter also comments on the amendments to secs. 22f, 25e of the German VAT Act made as part of the Annual Tax Act 2020 with effect from 01.07.2021. These comments are summarized below.

### 2 Online marketplaces' record keeping obligations as from 1 July 2021

As from 1 July 2021, online marketplaces are no longer required to present the online trader's tax registration certificate as proof of its VAT registration. Rather, the online marketplace is required to record the VAT-ID issued to the online trader by the German Federal Central Tax Office. The following exceptions apply:

- If the online trader renders distance sales outside the scope of German VAT (not exceeding the threshold) and therefore does not have a German VAT-ID, the online marketplace may record the VAT-ID issued to the online trader by another Member State.
- If the online trader participates in the OSS procedure, the online marketplace may record the VAT-ID of the Member State in which the online trader has notified its participation in the OSS procedure.
- If the online trader supplies goods, with a material value exceeding EUR 150, from a third country and no obligation to register in Germany for VAT purposes exists, the online marketplace must be able to present appropriate proof. (e.g. submission of a corresponding declaration by the online trader).



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Further, as from 1 July 2021, online marketplaces will be required to record the electronic address or website of the supplying taxable person, the bank details or the supplier's virtual account number – insofar as this is known, a description of the supplied goods, as well as the order number or the unique transaction number – insofar as this is known – in addition to the information previously provided for in sec. 22f para 1 sentence 1 of the German VAT Act

### **3 Non-objection regulation for tax registration certificate until 15 August 2021**

The tax authorities will not object if, up until 15 August 2021, an online marketplace presents the online trader's tax registration certificate rather than the VAT-ID issued to the online trader by the German Federal Central Tax Office.

### **4 Liability of online marketplaces as from 1 July 2021**

Even if an online marketplace complies with the record keeping obligations, it will be held liable if it knew or should have known, in accordance with the due diligence of a prudent businessman, that the online trader was not, or only partially fulfilling its VAT obligations. Irrespective of its knowledge, an online marketplace will be held liable if the online trader does not have a valid VAT-ID issued to it by the German Federal Central Tax Office at the time of the supply of goods or if the online marketplace is not able to present an alternative proof in the prescribed exceptional cases (see sec. 2).

### **5 Qualified confirmation request to the German Federal Central Tax Office**

In accordance with sec. 18e no. 3 of the German VAT Act, online marketplaces have the possibility of obtaining qualified confirmation by the German Federal Central Tax Office concerning the German VAT-ID, name and the address provided to them by the online trader. This is subject to the condition that the online marketplace is registered in Germany for VAT purposes, that it has a German VAT-ID and has successfully applied for admission. The application for admission can be submitted as from 1 May 2021. It must contain information on the online marketplace and must furnish evidence to the effect that the online marketplace is "facilitating" within the meaning of sec. 25e para 6 of the German VAT Act.

### **6 Consequences for the practice**

As from 1 July 2021 (respectively as from 16 August 2021, at the latest) an online trader's VAT-ID will replace the frequently criticised tax registration certificate, which in the EU-Commission's view, violates EU law (KMLZ VAT Newsletter 42 | 2019). Exculpation from this liability is only possible for an online marketplace if the online trader has a valid German VAT-ID at the time of the supply of goods (apart from the exceptional cases in sec. 2).

Accordingly, online marketplaces must request and record the German VAT-IDs of online traders using their marketplaces. An online marketplace's liability is, however, only ruled out if it successfully checks the validity of the German VAT-IDs. For this purpose, there will be a possibility of submitting a qualified query to the German Federal Central Tax Office as from 1 July 2021. In practice, however, the problem arises that, within the scope of a qualified query, the German Federal Central Tax Office will only confirm that the VAT-ID is valid / invalid and that the name and address details match / do not match. The German Federal Central Tax Office will not provide any further information on any discrepancy. In many cases, an online marketplace's master data may not exactly match the data filed with the German Federal Central Tax Office. This being the case, a qualified query will yield an unsuccessful result, which it is not possible to compare with the name and address information on the online marketplace's master data. Against this background, online marketplaces should consider using other IT tools in order to check the VAT-ID and to compare the name and address information with their master data.