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KMLZ VAT NEWSLETTER

Entry certificate 2.0 - Part 2

3. Alternative forms of proof

Sec. 17a para 3 of the German VAT Implementation Code covers a total of seven forms of alternative proof that can take the place of the entry certificate in certain cases.

3.1 General rules

Generally, the rules for entry certificates (with regard to layout, language, electronic transmission and the possibility of issuing summary certificates) also apply for the alternative forms of proof.

3.2 Dispatching proof, especially CMR (sec. 17a para 3 sentence 1 no. 1a of the German VAT Implementation Code)

In cases where the supplier or customer dispatches the goods, proof can be provided by a CMR. This document needs to contain the signature of the carrier's customer (= CMR field 22) as well as the signature of the recipient in order to prove the receipt of the delivery items (= CMR field 24). In both cases, it is also possible to have representatives sign the document, however, their authorization to sign needs to be verified.

Entry certificate 2.0 – Part 2

Regarding intra-Community supplies the German law allows certain alternative means of proof besides the entry certificate. These alternative means of proof are in the scope of the second part of our newsletter regarding the required proof for intra-Community supplies.

3.3 Carrier confirmation (sec. 17a para 3 sentence 1 no. 1b of the German VAT Implementation Code)

In cases where the supplier or customer dispatches the goods, proof can also be provided by means of a carrier confirmation (former "white carrier confirmation"). It is essential that the month of the completion of the transport is stated in this confirmation. Therefore, this confirmation can only be issued after finalizing the transport.

According to the Federal Ministry of Finance's draft, the carrier needs to confirm, with his signature, that he has a duplicate of the customer's written confirmation regarding the receipt of the delivery items. In reality, the carrier confirms that he has an entry certificate. This harbors liability risks for the carrier. It remains to be seen how this will develop in the future.

3.4 Carrier assurance (sec 17a para 3 sentence 1 no. 2 of the German VAT Implementation Code)

The proof by means of a carrier assurance can only be provided if the customer dispatches the goods. Contrary to the basic concept, the carrier's assurance to dispatch the

delivery items to another member state is sufficient. The background to this provision is that the supplier does not have any contractual relationship with the carrier in the case where the customer dispatches the goods, on which basis he can later enforce the receipt of proof.

However, as the carrier assurance can already be issued at the beginning of the transport, there is no proof of arrival. If there is any reasonable doubt, the tax office can demand further proof be provided.

In addition to verifying the carrier assurance, it is also required that the remuneration was paid using the customer's bank account. According to the Federal Ministry of Finance's draft, this covers not only domestic and foreign bank accounts but also domestic group offsetting accounts as well as settlement via an inter company clearing. However, cases in which payment is made via external payment service providers (i.e. central settlement), or the remuneration do not consist of money (i.e. barter transaction) or there is no cash flow for other reasons (i.e. accounting case) have not yet been covered. However, factoring should still be possible as payment by the customer but not necessarily to the supplier is required. However, in practice it needs to be ensured that the supplier receives a receipt of payment from the customer's bank account by the factoring company.

3.5 Tracking and tracing (sec. 17a para 3 sentence 1 no. 1c of the German VAT Implementation Code)

In cases where the dispatch is carried out by the supplier or customer by means of a courier, proof can be provided by means of a tracking and tracing protocol. This document requires the seamless documentation of the transport up to the delivery at the recipient as well as the month and place of

the completion of the transport. There is no need for a signature. The protocol can be stored electronically or as a print.

Additionally, a written or electronic order confirmation needs to be presented. This confirmation needs to contain, inter alia, a detailed description and amount of the items as well as the value of each item. According to the Federal Ministry of Finance's draft and contrary to the situation with postal services, mere reference to the invoice is insufficient (see below).

3.6 Postal services (sec. 17a para 3 sentence 1 no. 1d of the German VAT Implementation Code)

For postal services for which a tracking and tracing protocol is not possible, proof can be provided by means of the postal service's certificate of receipt in connection with proof of payment of the supply in cases where the dispatch is carried out by the supplier or customer.

It is pleasing that the necessary information stated on the certificate of receipt (i.e. customary description and amount of items) can be replaced by reference to the invoice. It is also not necessary that payment be made via the customer's bank account. For cash transactions, a duplicate of the payment receipt is sufficient.

3.7 Car registration (sec. 17a para 3 sentence 1 no. 5 of the German VAT Implementation Code)

In cases where a car is supplied that is transported by the customer, proof can be provided by the registration in the country of destination. It should be noted, however, that the car needs to be registered to the customer (i.e. foreign car dealer). It is insufficient to register the car to the final customer.

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3.8 Special cases

Alternative forms of proof exist for using the common Community transit (sec. 17a para 3 sentence 1 no. 3 of the German VAT Implementation Code) and for goods that are subject to excise duties (sec. 17a para 3 sentence 1 no. 4 of the German VAT Implementation Code).

4. Objective proof always possible, however, no escape clause yet

If, despite all efforts, proof cannot be provided in an individual case, the intra-Community supply will not automatically become subject to tax as the proof is not a substantive prerequisite for zero-rating. Therefore, the supplier can verify, by all means of appropriate proof, that the delivery item did indeed reach the other member state.

Realistically, such objective proof will be possible only rarely. For these cases i.e. where the supplier does everything to provide proof but fails to do so, it would be best if the Federal Ministry of Finance's circular was expanded by an escape clause, perhaps by assuming the items did reach the Community territory if the entrepreneur can prove that he had unsuccessfully tried, several times, to receive a confirmation of arrival.

5. Practical implementation

In the remaining three months until the revision takes effect, companies need to analyze their own processes and adapt them to the requirements.

5.1 Analysis and decision on types of proof

During any appraisal, it should first be checked as to which countries intra-Community supplies are being made and how transportation is being effected. Based upon this, it should be decided which types of proof are to be used in the future.

5.2 Implementation

Most companies are likely to use the entry certificate, especially the summary certificates. Generally, a simple e-mail with the corresponding information is sufficient, however, in practice, integration into the ERP-system is necessary. A corresponding software solution should automatically issue outgoing confirmations of arrival from the documents received and send them to the customers. At the same time, incoming confirmations of arrival should automatically be integrated into the document flow and be stored and controlled via a status monitor.

6. Adaption of terms and conditions

From the viewpoint of civil law, the right to demand an entry certificate or another kind of alternative proof from the customer should exist (sec. 241 para 2 of the German Civil Code). However, this should explicitly be mentioned in the terms and conditions.