



KMLZ VAT NEWSLETTER

Circular on foreign electronic confirmation of export

1. Current status

Exports with a value exceeding EUR 1,000 have to be declared electronically via web-portal (IAA-Plus) or via ATLAS. In such cases, sec. 10 para. 1 sentence 1 No. 1 of the German VAT Implementation Code stipulates that the electronic confirmation of export is the only acceptable proof of export for VAT purposes. Quite often, taxable persons perform export supplies of goods which are taxable in Germany, but which also require customs clearance for export in another EU member state. Until now, it has been unclear if and under which preconditions the German tax authorities would accept the confirmation of export issued by customs authorities of other EU member states.

2. Typical cases

In practice, the place of supply, as regards VAT, usually deviates from the place significant for customs purposes in the following cases:

Proper proof of export – acceptance of foreign electronic confirmation of export

Taxable persons are in need of a proper proof of export for zero-rated export supplies of goods. To date, the only admissible proof of export for export declarations filed electronically (via ATLAS), has been an electronic confirmation of export. However, on 19 June 2015 the German Federal Ministry of Finance issued a circular, commenting on the preconditions on the basis of which the German tax authorities will accept, for VAT purposes, an electronic proof of export issued by customs authorities of another EU member state.

2.1 In General, the export declaration has to be lodged at the place where the goods are packed or loaded for export shipment. If the taxable person packs or loads the goods for export shipment in Germany, the export declaration has to be lodged in Germany. The place of supply for the export supply of goods as regards VAT would also be in Germany. If the goods are dispatched in Germany but packed or loaded for export shipment in another EU member state, the place of supply for VAT purposes, (pursuant to sec. 3 para. 6 sentence 1 of the German VAT Act), is different to the place of packing or loading for export shipment. Of course, this only holds true if the customer outside the EU is already known at the time of dispatch and the goods are not processed within the EU. Otherwise, there would be no export supply of goods taxable in Germany, rather only a self-supply from Germany to the EU member state in which the goods are processed.



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For instance: A German taxable person supplies plant components to a customer in Brazil. For logistical reasons the plant components are packed in boxes for export by a sub-contractor at the port of Rotterdam.

2.2 If the value of the export does not exceed EUR 3,000, a simplified declaration procedure may be used. Using this simplified procedure means that no export declaration has to be lodged at the German customs authorities. It is sufficient to lodge an electronic declaration at the customs authorities of the EU member state where the goods will leave the customs territory of the EU. As regards VAT, the place of supply would be the place from which the goods are dispatched, (sec. 3 para. 6 sentence 1 of the German VAT Act), whereas the consignment would be customs cleared for export in another EU member state.

2.3 In addition, under certain preconditions, Article 791 of the CCIC allows customs to clear goods for export at a customs office which is not competent for the place where the taxable person is established or where the goods are packed or loaded for export. This would be the case, for instance, if the destination of the goods was changed during transport and the new destination was outside the EU. In such a case, it would also be sufficient to lodge an export declaration directly at the customs office located on the border.

3. New provision

By issuing the new circular, the Federal Ministry of Finance has indicated its approval, in general, of electronic confirmations of export issued by other EU member states as being acceptable for VAT purposes. Such proof is to be accepted

with the reservation that complete documentation is available evidencing that the goods have indeed been exported. In particular, these reservations are important in circumstances where the customs authorities of the other EU member state only issue an electronic message confirming the proper termination of the export procedure rather than also providing a document of confirmation as a PDF file. In this case, the following additional preconditions have to be fulfilled:

- proof that the goods physically left the EU must be provided, as evidenced by the electronic message issued by the foreign customs authorities;
- documentary evidence must be made available by the taxable person of the receipt of the electronic message issued by the foreign customs authorities;
- documentary evidence of the link between the electronic message issued by the foreign customs authorities and the relevant export declaration must be available; and
- there must be no doubt that the goods left the EU in the correct manner.

4. Practical impact

The clarification by the Federal Ministry of Finance and the acceptance of the confirmations of export issued by foreign customs authorities are very welcome developments. Affected taxable persons should immediately safeguard that all electronic messages received from foreign customs authorities are being properly archived. For those not receiving confirmations as PDF files, steps should be taken to ensure that the additional preconditions are being fulfilled for the acceptance of such messages and that these documents are being meticulously archived.