



# KMLZ VAT NEWSLETTER

## “Croatia Bill“ amends VAT Act

### 1. VAT exemptions

In sec. 4 no. 25, the VAT exemption for child day care services was adapted. The amendment will become effective on the day following the promulgation in the Federal Law Gazette. A VAT exemption for employment services has also been implemented with sec. 4 no. 15b and will take effect as from 1 January 2015. In addition, the VAT exemption for the supply of staff by religious or philosophical institutions was adapted into EU law in sec. 4 no. 27 lit. a.

### 2. Commissionaire structures for telecommunications

Sec. 3 no. 11a was implemented with effect from 1 January 2015 and sec. 45h para. 4 of the German Telecommunication Act (TKG) was deleted. Thereby, the important VAT regulation on commissionaire structures was brought back into the VAT Act. However, the legislator (intentionally) derives from art. 9a of the EU Implementing Regulation 282/2011. Time will tell, if this will ultimately make sense.

### 3. Mini-One-Stop-Shop (MOSS)

The German VAT Act was amended extensively in order to implement the rules of the MOSS for telecommunication, broadcasting and television services as well as other services provided by electronic means to non-taxable persons. The place of supply will be deemed to be where the customer is established. Furthermore, the regulation on the One-Stop-

## German VAT Act amended more extensively

On 11 July 2014, the Federal Council adopted the “Act for the adaption of the national tax law to reflect the accession of Croatia to the EU and to amend further tax law provisions” which also amends the German VAT Act. Compared to the first draft (KMLZ-Newsletter 10/2014) some amendments were subsequently added to the bill (see topics 5 – 11). Companies should verify, whether action is needed.

Shop which previously only applied to suppliers established outside the EU has now been extended to those established in the EU. Sec. 18 and 27 para. 20 will be implemented with effect from 1 October 2014. Sec. 3a para. 4 sentence 2 no. 11 – 13 will be deleted and sec. 3a para. 5 will be amended, in addition to other regulations of the German VAT Act and the German VAT Implementing Regulation with effect from 1 January 2015.

### 4. Limitation of the minimum taxable amount

Sec. 10 para. 5 was adapted to EU law and restricted in so far that the open market value is the maximum limit for the taxable amount. The amendment will become effective on the day following the promulgation in the Federal Law Gazette.

### 5. Reduced VAT rate for audio books

Number 50 was added to Annex 2 of the VAT Act which makes the reduced VAT rate applicable to audio books (sound recording of the reading of a book) just as it is to printed books. The change will take effect from 1 January 2015.

### 6. Reverse Charge for tablets and game consoles

Sec. 13b para. 2 no. 10, according to which the VAT liability for supplies of mobile phones and integrated circuits is shifted



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to the customer if the remuneration amounts to a minimum of EUR 5,000, also applies to supplies of tablet computers and game consoles with effect from 1 October 2014.

#### **7. Reverse Charge for metals**

Number 11 was added to sec. 13b para. 2 and thereby, a reverse-charge-scheme was implemented for the supplies of the precious metals silver, gold and platinum and for all base metals with effect from 1 October 2014. The new annex 4 to the VAT Act contains a full list of the metals concerned.

#### **8. Reverse Charge for construction services**

##### **a. Definition of supplier of construction services**

In its decision of 22 August 2013, the Federal Fiscal Court came to the conclusion that the so-called 10% hurdle for the determination of "sustainable construction work" is not suitable as the contractor is unable to reliably assess whether he or his customer is liable to pay the VAT (see KMLZ-Newsletter 33/2013). Rather, it will be decisive whether a direct link exists between the received and the carried out construction work. The definition of "sustainable construction work" has now been implemented in sec. 13b para. 5 sentence 2 and thereby, the missing legal regulation has been created with effect from 1 October 2014. In future, the responsible tax office will decide the issue of sustainability by issuing a certificate. As to when sustainability exists is not mentioned in the law. An invoicing of construction services without VAT, because of the reverse-charge-scheme, will only be possible, in future, if the customer provides a certificate.

##### **b. Abolishment of the legitimate expectation**

A new paragraph 19 was added to sec. 27, which governs the correction of VAT assessments of sub-suppliers of property developers. The effect of the decision of the Federal Fiscal

Court of 22 August 2013 (see KMLZ-Newsletter 33/2013) on the public budget will be limited as a result of this amendment. The property developers could have reclaimed billions of euro whereas the sub-supplier could have referred to the legitimate expectation of art. 176 of the General Tax Code and have escaped additional VAT payments. The amendment will become effective on the day following the promulgation in the Federal Law Gazette.

#### **9. Reverse Charge for cleaning services**

The definition of sustainability was implemented in sec. 13b para. 5 sentence 5 for cleaning services suppliers. In future, the responsible tax office will decide on the question of sustainability and issue the respective certificates. The change will take effect from 1 October 2014.

#### **10. No Reverse Charge in the case of margin schemes**

A new sentence 8 was added to sec. 13b para. 5 according to which the reverse-charge-scheme will not apply to supplies under the margin scheme of sec. 25a of the VAT Act. The change will take effect from 1 October 2014.

#### **11. Legitimate expectation for reverse charge**

The regulation on legitimate expectation in sec. 13b.8 of the German Administrative Guidelines for certain cases of the reverse-charge-scheme was implemented in sec. 13b para. 5 sentence 6 of the German VAT Act. Based on this regulation, it will not be objected to if parties apply the reverse-charge-scheme in the case of doubt, provided no tax losses result. The Federal Fiscal Court rejected the regulation in the Administrative Guidelines, as it contended that the decision, as to the applicability of the reverse-charge-scheme, cannot be left to the discretion of the individual participants. The change will take legitimate effect from 1 October 2014.