



KMLZ VAT NEWSLETTER

Federal Ministry of Finance withdraws French Fries Decree (*Pommes-Erlass*)

1. Previous legal situation

Generally speaking, when a supplier, which is established somewhere in the Community territory outside Germany, renders a supply to a taxable persons in Germany this is an intra-Community supply. A transfer of own goods and a subsequent domestic delivery are generally excluded in cases where the customer is already known to the supplier at the time the transport from abroad begins.

In the past, for simplification purposes in accordance with sec 1a.2 para 14 of the German VAT Circular, the fiscal authorities have, under certain conditions, accepted such treatment of the supplies. The relevant regulation was called the “French Fries Decree” due to the example used to illustrate the regulation in the German VAT Circular, namely where a Dutch supplier supplies French fries to German customers.

No simplification regulation for self-supplies in future

In its letter of 23.04.2018, the Federal Ministry of Finance withdrew the so called “French Fries Decree”. Until very recently, a supplier established somewhere in the Community territory outside Germany could, under certain circumstances, invoice its German customers with German VAT, even where the recipient of the goods was already known at the beginning of the transport in the country of departure. The Federal Ministry of Finance has cited the avoidance of the risk of tax losses as the reason for the change, which applies to all open cases. The Federal Ministry of Finance has granted German customers a transitional period until 31.12.2018 for deducting input tax.

Up until very recently, suppliers have been able to invoice supplies to German customers with German VAT. The simplification was particularly useful for smaller customers, with no or limited experience purchasing goods from the rest of the Community territory. Further, suppliers were able, to a certain extent, to conceal the origin of the supplied goods, since only the supplier’s German VAT-ID-No., and not that of the actual country of departure of the goods, was required to be stated on the invoice. Additionally, some taxable persons used this simplification regulation to standardize their own invoicing and accounting processes.

2. New legal situation and temporal application

The Federal Ministry of Finance has now removed the French Fries Decree from the German VAT Circular, without



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substitution. Where the recipient of the supply is already known to the supplier, at the beginning of the transport, the supply will now always be deemed an intra-Community supply. Basically, this applies to all open cases. However, the Federal Ministry of Finance has, granted a transition period, until 31.12.2018, for the input VAT deduction of German customers. Up until this point in time, the German fiscal authorities will not object if customers claim input VAT deduction from invoices on the basis of the existing French Fries Decree.

3. Need for action

By removing the French Fries Decree, the Federal Ministry of Finance is basically withdrawing the legal basis for simplified invoicing with immediate effect (also as regards open supplies carried out in the past!).

Affected companies need to identify cases where the French Fries Decree applies as soon as possible and then change their relevant invoicing procedures. However, as regards the recipients, this could prove, in many cases, to be more difficult to achieve. After all, they have been deliberately left “in the dark” by their suppliers in the past as regards whether the French Fries Decree applied. In case of doubt, taxable persons should contact their suppliers established abroad in order to clarify whether or not the particular supplier’s invoices are affected. This is necessary because at the end of the transition period, at the latest, the major portion of the risk will not be borne by the foreign supplier, but rather by the German customer.