



VAT NEWSLETTER

Federal Ministry of Finance: Place of supply for admission to events and online workshops

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1 Introduction

The determination of the place of supply for services relating to the right of admission to events is, in practice, associated with questions of delimitation. If the event is open to everyone, the place of supply, according to Art. 53 VAT Directive / sec. 3a para. 3 no. 5 German VAT Act, is the event's location. However, according to the tax authorities, the standard rule of Art. 44 VAT Directive / sec. 3a para. 2 German VAT Act should apply to so-called closed events (not open to public). The latter lacks a basis in EU law and contradicts the ECJ in the *Srf konsulterna* case (KMLZ VAT Newsletter 14 | 2019). If the recipient of the service is not a taxable person, Art. 54 VAT Directive / sec. 3a para. 3 no. 3 lit. a German VAT Act applies and the place of supply is also determined by the location of the event.

Online events have become popular since the beginning of the Corona pandemic, especially due to contact and travel restrictions. Whether the place of supply for these services can also be determined by where the events actually take place was, due to the lack of a physical venue, previously unclear.

2 The Ministry of Finance's notification dated 9 June 2021

For the purposes of determining the place of supply in accordance with Art. 53 VAT Directive / sec. 3a para. 3 no. 5 German VAT Act, the Federal Ministry of Finance has adopted the principles of the judgment from the ECJ case *Srf konsulterna*. Consequently, the general rules in Art. 44 and 45 VAT Directive / sec. 3a para. 1 and 2 German VAT Act do not take precedence over special rules for determining the place of supply in Art. 46 to 59a VAT Directive / sec. 3a para. 3 - 8, sec. 3b, sec. 3e, sec. 3f German VAT Act. The latter are therefore not to be interpreted narrowly. The instructions on the application of Art. 44 VAT Directive / sec. 3a para. 2 German VAT Act for closed events in sec. 3a.6 para. 13 German



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VAT Circular have now been deleted and a new sec. 3a.7a has been introduced. If an admission ticket to an event is acquired by a taxable person, the place of supply is to be determined by the place of the event. This not only applies to the organizer itself, but also to other businesses who grant admission rights to taxable persons for their own account or for the account of the organizer. If the services mentioned in the provision are provided to non-taxable persons, Art. 54 VAT Directive / sec. 3a para. 3 no. 3 lit. a German VAT Act applies. In these cases, the place where the activity of the supplier is carried out is decisive. As a rule, this corresponds with the location of the event.

For the definition of "admission rights", the Federal Ministry of Finance's notification refers, as before, to the directly applicable Art. 32 and 33 Council Implementing Regulation. In summary, the venue principle applies if the remuneration is paid for granting a certain number of persons the right of access to a certain event. This also applies if a company pays the remuneration and its employees participate in the event. Admission rights continue to include ancillary services such as the use of cloakrooms and sanitary facilities. The same applies, inter alia, to accommodation and transport services if they are offered by the organizer as part of a single service. In contrast, the granting of the mere right to use premises (e.g. gymnasiums) and the procurement of admission rights, do not attract the application of the venue principle.

With reference to the Advocate General's comments in the opinion in the *Srf konsulterna* case, the Federal Ministry of Finance has also introduced the criterion of the physical presence of the recipient of the service at the event as part of the determination of the place of supply in accordance with Art. 53 VAT Directive / sec. 3a para 3 no. 5 German VAT Act. For online seminars for entrepreneurs, the place of supply is therefore determined according to the standard rule of Art. 44 VAT Directive / sec. 3a para. 2 German VAT Act.

3 Consequences for the practice

The Ministry of Finance's notification is to be welcomed because it adapts an administrative instruction, that is contrary to EU law, so that it now conforms with the ECJ's reasoning. However, entrepreneurs from the event sector and their customers will not be particularly thrilled. This is because the venue principle may lead to increased registration obligations in Germany. If, for example, a non-resident in Germany holds a seminar for Austrian taxable persons, all recipients must register for VAT purposes in Germany because the seminar can no longer be considered to be a closed event and Art. 44 VAT Directive / sec. 3a para. 2 German VAT Act is no longer applicable. In the case of on-billing within a company group and within commissionaire structures, this can trigger multiple registration obligations. Only for in-house trainings, Art. 44 VAT Directive / sec. 3a para. 2 German VAT Act may still be applicable if these can rather be classified as a special consulting activity rather than a seminar / event. The ECJ's interpretation is already widely applied in other EU countries. According to the new German administrative opinion, the place of supply for VAT purposes is also at the venue of the event. If the venue principle is applied abroad, the VAT exemption for educational services, which is structured inconsistently throughout the EU, must also be examined according to the legal situation in that country.

From now on, providers of online seminars must check very carefully whether the recipient of their service is an entrepreneur or a private person. In future, foreign taxable persons must be invoiced without VAT. If local VAT has been invoiced in these cases up until now, there is a risk that VAT was charged unduly and Art. 203 VAT Directive / sec. 14c German VAT Act will apply, leading to a problem with input VAT deduction.

Affected businesses should therefore immediately review the VAT assessment of their services. In open cases, protection of legitimate expectations should be granted for the past pursuant to sec. 176 German General Fiscal Code.