



Deadlines for EC Sales Lists irrelevant for VAT exemption of intra-Community supplies

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1 Background

With effect from 1 January 2020, the requirements for the VAT exemption of intra-Community supplies have been tightened. Since then, the VAT-ID of the recipient and the correct declaration in the EC Sales List (ECSL) have become substantive requirements for VAT exemption. The Federal Ministry of Finance (BMF) accordingly amended the German Administrative VAT Circular by means of its letter dated 9 October 2020 (KMLZ VAT Newsletter 53 | 2020). The BMF had previously taken what transpired as a far too strict position with regard to the ECSL. The BMF was therefore forced to make corrections and has now softened its interpretation in section 4.1.2 of the VAT Circular with its letter dated 20 May 2022.

2 Timely (initial) submission of ECSL

According to sec. 4 no. 1 lit. b of the German VAT Act, an intra-Community supply cannot be VAT exempt if the supplier has not submitted an ECSL or if he has not declared the supply in question in the ECSL or has declared it incorrectly. In this respect, the BMF had previously stipulated in sec. 4.1.2 para. 2 of the VAT Circular: "If the taxable person does not submit the ECSL correctly, completely or in due time, it does not fulfil the conditions for VAT exemption". With the requirement of timely (initial) submission of the ECSL, the tax authorities went beyond the wording of the law, without making any further comments on this. According to a literal interpretation, a failure to submit the ECSL by the relevant deadline would always have led to a VAT liability, without a subsequent correction being possible.

The BMF has recognised this problem and has now removed the requirement to submit the ECSL in due time in paragraph 2 of sec. 4.1.2 UStAE. In paragraph 3, it has also clarified that the conditions for VAT exemption are met (retroactively) if



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an ECSL that was initially not submitted on time is later submitted correctly and completely for the first time. The tax office could therefore initially assess VAT for the intra-Community supplies declared in a VAT return if no ECSL was submitted for the reporting period in question. After the (correct) ECSL has been submitted, however, the VAT exemption would then have to be granted retroactively (provided the VAT assessments can, at that time, still be changed).

3 Timely correction of ECSL

The second sentence of sec. 4 no. 1 lit. b of the German VAT Act contains the following phrase: "Sec. 18a (10) remains unaffected". There it is regulated that an incorrect or incomplete ECSL must be corrected within one month after the taxable person becomes aware of the error. The BMF had not only repeated this in sec. 4.1.2 para. 3 of the VAT Circular. In the example provided, it also stated: "If U ... were to correct the ECSL ... within the one-month period of sec. 18a para. 10, the VAT exemption would be revived". Until now, the tax authorities have taken this literally and ultimately denied the VAT exemption if the ECSL was not corrected within one month of the error becoming apparent.

However, the provisions of the EU VAT Directive, on which sec. 4 no. 1 lit. b of the German VAT Act is based, do not contain any time limits with regard to the correction of the ECSL. Doubts have therefore increased as to whether the loss of the VAT exemption due to a late correction of the ECSL is justifiable under EU law. The BMF has therefore removed the link between the VAT exemption and the timely correction of the ECSL from sec. 4.1.2 para. 3 of the VAT Circular. The one-month deadline is now to be relevant exclusively for the intra-Community control procedure and for penalization pursuant to sec. 26a para. 2 no. 5 of the German VAT Act.

4 Proper reporting period

The BMF has also taken this opportunity to correct ambiguities with regard to the reporting period relevant for the ZM. Sec. 4.1.2 of the VAT Circular previously referred to the reporting period in which the intra-Community supply was carried out. However, according to sec. 18a para. 8 of the German VAT Act, to which explicit reference is now made, intra-Community supplies must be declared for the reporting period in which the invoice was issued or, at the latest, for the reporting period in which the month following the execution of the intra-Community supply ends. This must be observed both for the first submission of an ECSL and for the correction of an ECSL. The VAT exemption is only applicable if the declaration has been made in the correct ECSL.

5 Temporal scope

The amendments are to be applied to all supplies made after 31 December 2019. Fortunately, the easing of the strictness of the provision is therefore retroactive. This new interpretation will facilitate the settlement of many current disputes between businesses and the tax authorities.

According to our sources, consideration is also being given to removing the reference to sec. 18a (10) from sec. 4 no. 1 lit. b of the German VAT Act. The relevant provisions of the EU VAT Directive do not contain a corresponding time limit for the correction of an ECSL. However, the amendment of the law requires a legislative procedure in which the amendment can be taken into account.