



Ministry of Finance letter on chain transactions - particularly on assignment of the transport and communication of the VAT-ID

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1 Background

According to Art. 36a EU VAT Directive, transposed into German law in sec. 3 para. 6a sentence 4 German VAT Act, as of 01.01.2020 a supplier in a chain transaction other than the first supplier, who also arranges the transport (intermediary operator), has a VAT privilege - he can determine the allocation of the transport by communicating a specific VAT-ID. Such supplier within a chain transaction becomes an intermediary operator when he arranges the transport. This enables him to shift the transport by communicating a VAT-ID to its customer. In this way, he can avoid the obligation to register abroad. The EU regulation corresponds with the legal situation previously applicable in Germany. So, from a purely German perspective, not too much has changed. Nevertheless, some questions remain open, including what the authority understands by the terms "transport arrangement" and "communication of the VAT ID" in a cross-bordering context.

2 Allocation of the transport in a chain transaction

The transport allocation in a chain transaction (the only supply of goods with transport) depends on whether the goods are transported by the first supplier (first supply = with transport), the last customer (last supply = with transport) or an intermediary (= right of choice). The determination of "by whom" the transport is carried out is not always apparent and treated congruently on EU level, especially in circumstances where this is not done with one's own means of transport. In its letter dated 25.04.2023, the Federal Ministry of Finance (BMF) comments on this topic as follows:

- The civil law commissioning of the freight forwarder is decisive.
- A different assignment is only permissible if a taxable person proves that the transport was carried out for the account of another taxable person and that the latter actually bore the risk of accidental loss of the goods during transport.



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3 Use of the VAT-ID number by the intermediary operator

Where an intermediary operator is involved in a chain transaction, the supply with transport is to be assigned to the supply to him, unless he makes use of his right of choice. He can do this uniformly within the EU by communicating a specific VAT-ID. However, the term "communicating" is understood differently among the Member States. The German view has always been very restrictive and required active action on the part of the supplier. This restrictive view remains unchanged:

- The term "communicating" of a specific VAT-ID continues to require a positive action taken on the part of the intermediary operator, at the latest at the time of supply. Subsequent changes in the communication have no effect.
- The VAT-ID communicated should be recorded, in writing, in the respective order document. Verbal communication still requires documentation of the VAT-ID and the time of communication.
- However, it is sufficient if the communication of the VAT-ID number is deliberately made once for all future supplies.
- Communication of a specific VAT-ID number may exceptionally be assumed to be implied if all parties have made the assessment uniformly and have fully completed their related declaration obligations.

4 Further comments in the BMF letter

- A consecutive intra-Community transport within the meaning of sec. 3 para. 6a sentence 1 German VAT Act is still not given if transport is arranged by several participating persons. In this case, the chain transaction breaks down.
- The BMF explains the regulations in the German VAT Act that go beyond the scope of Art. 36a VAT Directive on supplies with a connection to a third country and provides some examples.
- The communication of a foreign VAT-ID alone does not lead to a changed VAT assessment (e.g. in the case of a domestic supply).
- The BMF principles do not apply to deemed supply chains for distance sales via online marketplaces.

5 Consequences for the practice

The BMF letter is, for the time it has taken to be produced, not a silver bullet. The legal situation in Germany did not change as a result of the introduction of the quick fixes. Rather, the other Member States were actually required to adopt the German legal framework. The BMF remains true to its original interpretation of the term "communication" which requires active action on the part of the intermediary operator. There is also no possibility of curing an (unintentionally) incorrect communication of a VAT-ID. The EU Commission and certain Member States see things differently. With regard to the concept of the transport's arrangement, it is still fundamentally a matter of civil law when commissioning a forwarding service. In any case, it is important to note that the risks associated with the loss of the goods being dispatched can still play a role, because not all Member States focus on the commissioning under civil law. This being the case, INCOTERMS can also be relevant under certain circumstances.

The BMF letter lacks the hoped-for simplification regulation in the matter of accepting a consecutive transport where more than one party arranges the transport. From a German perspective, if more than one party is involved in the transport's arrangement, it cannot be a chain transaction. Many Member States see this differently and allow constellations in which several parties are responsible for the transport for logistical reasons. Businesses must therefore continue to live with the risk of additional taxation according to Art. 41 EU VAT Directive if two Member States handle this issue differently. Unfortunately, the BMF continues to maintain its position, which is not always comprehensible in practice, namely, that in chain transactions with more than three participants, the simplification rule for intra-Community triangular transactions can only be applied by the last three participants. Most Member States allow its application regardless of the position of the participants in the chain transaction, provided that the actual requirements for this are met.