



KMLZ VAT NEWSLETTER

Provision of a company car abroad to become more expensive

1. Background

The EU VAT Directive states in article 56 para 2 that, from 1 January 2013 onwards, VAT has to be imposed on the long-term rental of means of transportation to the final consumer at his residency. This regulation is to be implemented in every EU member state.

2. Amtshilferichtlinie-Umsetzungsgesetz

With effect from 30 June 2013, and therefore later than originally intended, this new regulation has entered into force in Germany as a result of the Amtshilferichtlinie-Umsetzungsgesetz.

If, for example, the means of transportation, such as a car or a caravan are rented to a final consumer for more than 30 days, VAT is to be imposed on this rental at the final consumer's residency. The registered office of the lessor is not decisive. The same applies for the provision of vessels (i.e. sailing boats) if they are rented for more than 90 days.

Provision of a company car – employers forced to act

The fiscal authority is to impose VAT on the cross-border provision of a company car at the residence of the final consumer.

This means that the German employer now has to pay foreign VAT if employees in Germany, who have their residence in another EU member state, receive a company car which is also for private use.

Only with respect to the long-term rental of a sport boat is the VAT imposed at the place where the final consumer does indeed use the boat if the lessor also has its residency there.

Ultimately, in the long run, taxation at the place of use should be ensured with respect to the long-term rental of a means of transportation to the final consumer.

3. Special case: provision of a company car

If the employer provides the employee with a car arising from the employment relationship, this provision is regarded to be a supply against payment from a VAT point of view (barter transaction). If the employee is also permitted to use the company car for private use (such as private trips, travel between home and work and travel home to the family in the case of a double household), this usage is subject to VAT within the framework of the so-called "financial advantage". Therefore, the employer has to account for VAT.



3.1 German point of view

By circular of 12 September 2013, the German fiscal authority reacted to the new regulation regarding long-term rental of means of transportation and made clear that the provision of a company car for private use to an employee is to be regarded as such. Therefore, VAT is to be imposed on the rental at the employee's residency.

The following rule applies from 30 June 2013: If an employee with residency in one of the EU member states receives a company car arising from the employment relationship and is also allowed to use it privately, this provision is regarded to have been realized at his residency. Then, it is no longer necessary to impose VAT in Germany.

3.2 Austrian point of view

The Austrian fiscal authority also regards the provision of a company car to be a long-term rental of a means of transportation. This results from the VAT protocol 2013 which is still in draft form but will be finalized and released in the coming weeks.

Taxation in Austria commenced operating at the final consumer's residency as from 1 January 2013 due to Austria having implemented article 56 para 2 of the EU VAT Directive on time.

4. Consequences for the practice

In a case like this, the German employer is obliged to be registered abroad and to pay the respective VAT to the tax authorities.

The German fiscal authority will not agree to any transitional arrangement concerning this matter. From the fiscal authority's point of view, German employers are also obliged to immediately implement this regulation from 30 June 2013 onwards.

Due to the regulation in Austria, however, an obligation to register and pay 20% of Austrian VAT exists as from 1 January 2013.

Ultimately, this would mean a typical double taxation in the first half of the year. Employers can avoid this kind of double taxation by directly referring to the Austrian point of view from 1 January 2013 and impose VAT in Austria.

5. Conclusion

The example regarding Austria makes the consequences of this regulation clear. The cross-border provision of a company car leads to a considerable administrative effort for the employer abroad.

As the VAT rate abroad is often higher than in Germany, this regulation will also lead to additional expenses for the employer.