



# KMLZ VAT NEWSLETTER

## German VAT Act amended by Tax Amendment Act 2015

### 1. Reverse charge on construction work on operating facilities

As a consequence of the Federal Fiscal Court's decision of 28 August 2014 (V R 7/14), the scope of reverse charge, according to sec § 13b para 2 No 4 of the German VAT Act, has been amended with effect of 6 November 2015. The Federal Fiscal Court decided that a smoke extractor, installed to achieve clean room conditions, is to be considered as an operation facility and is consequently not a supply of construction work. According to the Federal Fiscal Court, equipment installed in buildings is considered to be part of the building only if it is of relevant importance to the construction, maintenance or use of the building, as a whole. The equipment needs to have a function for the building itself. If it serves a separate purpose and is only accommodated in the building, it is not considered to be part of the building (see Newsletter 26/2014). The Federal Fiscal Court's view conflicts with that held by the Fiscal authorities. Contrary to sec 13b.2 para 5 of the Administrative Circular, the installation of window displays and restaurant equipment is therefore not covered by construction work. This is considered to be an operating facility.

### VAT related amendments as of 2016

On 16 October 2015, the federate states agreed to the Tax Amendment Act 2015. Accordingly, there are various changes to the German VAT Act: the reverse charge on the supply of construction work on installed operating equipment is affected as well as the supply of products made of iron or steel, public sector taxation and chargeable events in respect of VAT charged incorrectly. With effect as of 1 January 2016, the intrastat threshold will be increased as well.

Section 13b para 2 No 4 of the German VAT Act will therefore be regulated to the effect that immovable property is considered in particular as goods, equipment and machines, which are permanently installed in a building or a construction and which cannot be moved without destroying or altering it. Among others operating equipment is also deemed to be covered by this definition. Reverse charge, according to sec 13b para 5 sentence 2 of the German VAT Act, remains applicable on the supply of construction work in connection with operating equipment. It is noticeable that the amendment corresponds exactly to the wording of Art. 13b(d) of Council Implementing Regulation (EU) 282/2011 which will enter into force as of 1 January 2017. As regards the interpretation of the amended regulation in sec 13b of the German VAT Act, reference can be made to the Explanatory Notes on EU VAT place of supply rules on services connected with immovable published on 26 October 2015. In this guide, some doubtful questions, as regards Art. 13b of the CIR (EU) 282/2011, have been clarified (newsletter will follow shortly). Notes 95 to 112 are particularly interesting with respect to the forthcoming amendments to sec 13b of the German VAT Act. There, it is stated that, for example,



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not every permanent connection will be sufficient to constitute a supply related to immovable property. It also has to be noted that the lawmaker did not adopt the definition of immovable property in Art. 13b(c) of the CIR (EU) 282/2011 for use in sec 13b of the German VAT Act. According to the said definition, essential parts, which cannot be easily dismantled or moved, shall be regarded as immovable property. Notes 83 to 94 of the above mentioned Explanatory Notes offer some explanations. For instance, the relation to the property does not necessarily result from a permanent connection but rather from the function it has for the building (Note 86). A smoke extraction system in a factory would, according to this, also be considered a part of the building even without a permanent connection (Note 88). It would seem that the lawmaker does not want to subsume such cases into sec 13b para 2 No 4 of the German VAT Act.

## 2. Public Sector Taxation

With effect from 1 January 2016 the newly implemented sec 2b of the German VAT Act consolidates special provisions for the public sector. It will determine whether corporate bodies under public law are taxable persons and accordingly, their VAT treatment. Additionally, a new sentence will be added to sec 13b para 5 of the German VAT Act which will cover exceptions from the reverse charge scheme for supplies purchased by corporate bodies under public law. These amendments will be described in a separate newsletter.

## 3. Reverse charge on supplies of metals

With effect from 1 January 2015 several retail products were excluded from Attachment 4 to sec 13b para 2 No. 11 of the German VAT Act (see Newsletter 03/2015). With effect from 6 November 2015, Attachment 4 has been amended again.

The complete customs tariff number 7207 is included in Attachment 4. Accordingly next to the already considered supply of massively cast, only prerolled or premouled products made of iron or steel, the reverse charge scheme now also applies to the supply of semi-finished products made of iron or steel, to the extent that the threshold of EUR 5,000 per economic event is exceeded.

## 4. Chargeable event if VAT is shown incorrectly

According to amended sec 14c para 1 of the German VAT Act, VAT incorrectly shown on an invoice shall now become chargeable only at the time the invoice is issued. Before 6 November 2015 VAT became chargeable at the time of the supply or at the time the invoice is paid (for payments on account) or at the time the invoice is issued, at the very latest. For this purpose, sec 13 para 1 No 3 of the German VAT Act has been amended respectively and No. 4 has been cancelled. The VAT due in accordance with sec 14c para 1 or para 2 of the German VAT Act now becomes chargeable at the time the invoice is issued. The amendment is based on a Federal Fiscal Court's decision of 5 June 2014, according to which VAT shown incorrectly acc. to sec 14c para 1 of the VAT Act, if interpreted in line with EU law, must not become chargeable already at the time in which the legally owed VAT for a supply or the supply of services has become chargeable but rather at the time the invoice is issued which contains the incorrect/overcharged VAT.

## 5. Intrastat Threshold 2016

As of 1 January 2016, the intrastat threshold for the intra-Community acquisition of goods will be increased from the current EUR 500,000 to EUR 800,000. The threshold for the intra-Community supply of goods will remain EUR 500,000.