



VAT NEWSLETTER

Zero-rating for export supply of goods - implementation of recent ECJ case law / evidence in non-commercial travel

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1 Requirements for zero-rating for export supplies of goods

Frequently, tax auditors raise doubts concerning the zero-rating of export supplies of goods claimed by taxable persons and collect VAT (including interest). In most cases, the reason given is that the necessary accounting and documentary evidence is not available, or at least does not meet the legal requirements.

In recent years, the ECJ has had the opportunity, in several cases (Case C-653/18 - Unitel Sp, Case C-495/17 - Cartrans Spedition and Case C-275/18 - Milan Vinš), to clarify the conditions for the zero-rating of export supplies of goods in connection with the proof of export. In essence, the ECJ has ruled that, in certain circumstances, the principles of neutrality and proportionality preclude the refusal of the zero-rating on the grounds of insufficient or missing evidence. The accounting and documentary evidence of export supplies is therefore only a formal requirement.

The ECJ has also previously ruled, in a similar way, on the accounting and documentary evidence for intra-Community supplies (basically Case C-409/04 Teleos). Meanwhile, the German legislator has reacted to this. The Quick Fixes, which came into force on 01.01.2020 (see KMLZ Newsletter 01/2019) make the accounting and documentary evidence a substantive legal requirement. The legislator has not yet taken action with regard to the zero-rating for export supplies of goods. Instead, with its letter dated 25 June 2020, the German tax authorities have amended the German VAT Circular and applied the principles of ECJ case law. The following applies in detail:



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2 Previous principles

According to the previously valid German VAT Circular, in order to claim the zero-rating, the taxable person must have had available appropriate accounting and documentary evidence of export in accordance with secs. 8 ff. of the German VAT Implementation Code. If the taxable person was unable to produce this material, it was generally not entitled to a zero-rating. Only in specially justified cases (e.g. in the event of the malfunction of the ATLAS system) may these requirements have been deviated from.

Finally, the taxable person could be granted a zero-rating by means of equitable relief if he had been presented with a forged export document, which he did not recognise as such, despite exercising the diligence of a prudent businessman.

3 New administrative practice

In the future, in accordance with recent case law, the zero-rating will apply as follows:

Although the Federal Ministry of Finance continues to assume, in principle, that the conditions for zero-rating are not met if the taxable person does not possess proper accounting and documentary evidence, this assumption will not apply if the fulfillment of the conditions is objectively beyond doubt. The Federal Ministry of Finance thus clarifies that the accounting or documentary evidence for the zero-rating of export supplies of goods is not a substantive legal requirement. In this situation, the zero-rating is excluded only if

- the taxable person has intentionally participated in tax evasion, thereby jeopardising the operation of the common system of VAT, or knew, or at least should reasonably have known, with all the diligence of a prudent businessman, that the transaction which it had carried out was part of a fraud committed by the recipient and that the taxable person had not taken every step which could reasonably be required of it to prevent that fraud from being committed, or
- the non-compliance of the formal requirements would effectively prevent the production of conclusive evidence that the substantive requirements have been satisfied.

With these changes, the Federal Ministry of Finance is bringing clarity to the situation. On the one hand, it is stated with gratifying clarity, that the accounting and documentary evidence is not a substantive legal requirement for the existence of an export supply. On the other hand, with the new regulations, the Federal Ministry of Finance applies the principles developed by the ECJ in the above-mentioned decisions, without restriction. Unfortunately, this level of clarity occurs far too rarely. Of course, practical cases still offer sufficient potential for discussion.

From the point of view of legal policy, it is remarkable that a much lower standard of accounting and documentary evidence is still being applied to export supplies than that applied to intra-Community supplies.

4 Other amendments – documentary evidence for exports of goods carried in the in the personal luggage of travellers

In principle, a taxable person may also use other means of evidence in certain circumstances when it is not possible or reasonable to supply the evidence including the confirmation from the border customs office or the office of departure as provided for by the German VAT Implementation Code.

The Federal Ministry of Finance adds here in more detail that this is the case for exports supplies of goods in the personal luggage of travellers if the customs administration at airports is not present in the transit or security areas. Finally, the German Federal Ministry of Finance will, in future, also permit a form of suitable alternative documentary evidence of export in justified individual cases. However, the practical effects of these changes are likely to be very limited.