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VAT NEWSLETTER

# Pitfalls in the relocation of customer tools

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## 1 Customer Tools

Special tools and moulds are often indispensable in the production of parts. The buyers of the parts to be produced (customers) are aware of this importance. They therefore regularly acquire the necessary tools and moulds themselves at the start of production, either from the parts manufacturer, a tool supplier or via sub-suppliers. However, the tools remain at the production site and are provided to the parts manufacturer by the customer for the purposes of production. The customers thus protect themselves against unexpected production breakdowns at the parts manufacturer. As the customers acquire ownership of the tools, these so-called customer tools - and thus the complete production of the parts - can, if necessary, be relocated more easily to another manufacturer, generally without any major downtime.

When these customer tools are moved to another country, e.g. because production is relocated, the customer, as the owner of the tools, must consider what VAT consequences may result from the relocation. To this end, parts manufacturers, sub-suppliers and customers should coordinate at an early stage in terms of whether and how the tools are to be relocated.

## 2 Relocations within the EU

In the case of transfer to another EU Member State, it must be determined whether this relocation constitutes an intra-Community transfer according to Art. 17 (1) of the EU VAT Directive. If so, the customer would then be required to declare the transfer in the country of departure and correspondingly an intra-Community acquisition in the country of destination. If the customer is not yet registered for VAT in these countries, the transfer results in a registration obligation, possibly in both countries.

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Some experts are of the opinion that there is no transfer, since according to Art. 17 (1) para. 2 of the EU VAT Directive a "dispatch or transport ... by or on behalf of the taxable person" is a precondition and this is not the case with the relocation by the parts manufacturer. However, doubt still exists as to whether this view is justifiable and this would also have to be examined from the perspective of the countries concerned. There is no case law or even administrative instructions available on this.

If a transfer is assumed, the question then arises as to whether this is VAT-exempt in accordance with Art. 138 of the EU VAT Directive. The stricter requirements, within the scope of the quick fixes as of 01.01.2020, must be taken into account here. The customer must therefore declare the transfer in the recapitulative statement in the country of departure (in addition to the VAT return) not only for compliance reasons. The country of departure could also make the VAT exemption conditional on the correct declaration. Additionally, the VAT registration number of the country of destination could also be a condition for the VAT exemption of the transfer from the country of departure. If this VAT number is not obtained by the customer untill the transfer, the question arises as to whether the country of departure in question is then so liberal that a subsequent use of the VAT number ultimately proves not to be detrimental to the VAT exemption. It also becomes interesting in circumstances where the transfer is not recognised early enough, registration is subsequently applied for in the country of destination, but the VAT registration number cannot be issued retroactively in this country. In this case, there is no valid VAT registration number in the country of destination at the time of the transfer.

One can certainly derive arguments from Art. 138 of the EU VAT Directive as to why a transfer should not be subject to VAT. One can also discuss whether a VAT number from the country of destination is required or whether the VAT number from the customer's country of residence is sufficient. However, as is often the case, the EU member states hold different views on this issue and therefore problems in dealing with it are inevitable.

## 3 Relocation to / from third countries

If a tool is not moved within the EU but across a third country border, the customs regulations in the country of departure must be observed. For example, it must be clarified who can declare and handle the export, the parts manufacturer or the customer/owner. A transfer, in the absence of a legal transaction, should not result in any VAT consequences in the country of departure. As regards the country of destination, it would need to be determined whether an import duty exemption is applicable. If not, attention must be paid to the matter of in whose name the import is declared and processed. While there should be no restrictions under customs law, the import VAT incurred could, however, only be claimed for reimbursement by the person who is entitled to dispose of the goods, i.e. the customer, not the parts manufacturer.

## 4 Need for action by the parts manufacturer

Since the parts manufacturer sells the tool to the customer at the start of production (possibly also via a sub-supplier), the parts manufacturer and the sub-supplier are not required to take direct tax action when relocating the tool. However, they usually have an obligation to inform the customer of any such relocation. In particular, they must inform the customer if and when the tool is moved from its original location to a new location. If this is not done, the customer could later claim compensation if, for example, tax damages result from the failure to notify.