



VAT NEWSLETTER

Maritime transport and aviation transactions: Federal Ministry of Finance specifies conditions for zero-rating

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1 Background

For two years now, the Federal Ministry of Finance has been dealing with zero-rating for the supply of services and goods to sea-going vessels and aircrafts. The Federal Ministry of Finance issued letters dated 06.10.2017 (KMLZ Newsletter 36/2017) and 05.09.2018 (KMLZ Newsletter 38/2018) to implement the ECJ judgement of 04.05.2017 in the legal case A Oy (C-33/16). The German VAT Circular was also changed by means of the publication of the Federal Ministry of Finance's said letters.

On the one hand, the scope of the application of the zero-rating for the supply of services and goods for sea-going vessels and aircraft to supplies carried out was extended to supplies rendered by a sub-supplier. The prerequisite for the zero-rating of supplies carried out by the sub-supplier was and remains that the sea-going vessel or aircraft in question must "already exist". In its letter of 05.09.2018, the Federal Ministry of Finance defined the launch as the decisive point in time for the existence. However, there is no "launching" in aviation. The corresponding application of the maritime transport rules to aviation was therefore not, in practice, possible.

2 Innovation

In its recently issued letter of 18.06.2019, the Federal Ministry of Finance now defines the time of acceptance of the vehicle by the customer as the relevant time, rather than the launch date. This ensures the appropriate application of the rule for maritime transport to aviation transactions. However, an essential point of criticism, from the perspective of the



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practice (KMLZ Newsletter 38/2018), remains, even subsequent to the amendment of the German VAT Circular, namely: The time of acceptance by the customer will regularly depend on chance as regards the supplying taxable person in the case of supplies carried out at by a sub-supplier. Additionally the relevant taxable person will often not become aware of the previously carried out acceptance.

The new Federal Ministry of Finance letter of 18.06.2019 therefore does not change the practical difficulties associated with applying the zero-rating. In the future, it will also be decisive whether and when the respective taxable person, at an earlier stage, becomes aware of the actual time of acceptance. If a taxable person wishes to make use of the zero-rating, a considerable amount of corresponding complex documentation will be required.

3 Transitional period

The new letter applies to all outstanding cases. If a taxable person has applied zero-rating based on the statements of the Federal Ministry of Finance letter of 05.09.2018, he is not obliged to correct invoices issued in 2018 and in the first half of 2019.