



# KMLZ VAT NEWSLETTER

## Customs authority temporarily discontinues querying tax IDs

### 1. Background

The UCC entered into force on 01.05.2016. As a consequence, the requirements for the granting of customs authorizations were changed. The new law provided for pre-existing authorizations to be legally reassessed (see our newsletter 07/2017). To this end, the customs authority requested that the holders of these authorizations complete a questionnaire. This questionnaire required a large number of persons to provide the authority with information, including their tax IDs. Major shareholders, managing directors, board members, advisory and supervisory board members as well as the most senior company executives were amongst those from whom tax IDs were sought. Further, persons responsible for customs matters or those dealing with customs matters were also affected. The provision of

### Amended questionnaire for the reassessment of existing authorizations and new applications published

When the Union Customs Code entered into force, the customs authority started requesting the provision of the tax IDs of employees, executives and supervisory board members when reassessing existing authorizations and applications for the granting of new authorizations. Many companies, however, subsequently expressed doubts as regards the lawfulness of these requests. The Tax Court in Düsseldorf has referred this question to the ECJ. In the meantime, the customs authority has amended its questionnaire for the reassessment of and applications for authorizations.

tax IDs enables the customs authority to determine whether persons are in compliance with the customs and tax law provisions (Art. 39 lit. a of the UCC).

The main customs office exchanges information with the tax offices based on the use of tax IDs. According to the customs authority, the exchange is limited to information as regards possible breaches of tax law provisions. Salary information, private income conditions and similar information is not requested. If there is no evidence pointing to involvement in a serious and repeated breach of tax law provisions, the financial officials inform the customs authority accordingly. Only where the customs authority is of the opinion that there has been such a breach, will the infringements be evaluated, in detail, in view of the authorizations to be granted.



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## 2. Judicial review of the tax ID request

Requesting tax IDs has caused mistrust and misunderstanding amongst a large number of those affected. The question, as to what extent the customs authority is permitted to request tax IDs, is the subject of legal proceedings before the Tax Court in Düsseldorf (4 K 1404/17). The Court recently referred the case to the ECJ for an advisory opinion (C-496/17).

The Tax Court raised doubts as to whether requesting tax IDs is compatible with the protection of personal data, which is guaranteed in accordance with Art. 8 of the Charter of Fundamental Rights. In the Tax Court's view, it is also left open to question whether the request, in its existing form, is compatible with the principle of proportionality.

## 3. Amendment of the questionnaire

The German customs authority was, until very recently, insisting on the provision of tax IDs. The authority merely stated that affected persons might provisionally refrain from indicating their respective tax IDs until the issue had been finally clarified. In the course of a subsequent transition phase, the customs authority took on the criticism, which led to it amending the reassessment questionnaire. In this amended version of the questionnaire, it was only management board, advisory board and supervisory board members, having a direct decision-making power in customs matters, who were still being requested to indicate their tax

IDs. In addition, the customs authority offered the possibility to come to an agreement with the main customs office as regards the relevant persons required to produce their tax data, prior to the submission of the questionnaire.

Now, the situation has changed again and the German customs authority is currently no longer requesting any tax IDs. The questionnaire for reassessment has been respectively amended and uploaded to the customs' website.

## 4. Conclusion and tips for the practice

Companies, which have not yet submitted the questionnaire can refrain from indicating their tax ID. This is also true, where an older and unamended version of the questionnaire, which includes the request for the tax ID, is being used. There is no requirement to use the new questionnaire.

However, the issue of the requirement for the provision of tax IDs is not completely off the agenda. If the ECJ come to the conclusion that rights are not being breached by the request, the customs authority could return to its initial practice and request tax IDs to be indicated.