KMLZ

VAT'S UP

VAT NEWSLETTER

VAT treatment of GHG quota trading

32 I 2022

1 Background

Anyone who distributes fuels in Germany is subject to the greenhouse gas reduction quota (GHG quota) and, as such, obligated to reduce the emissions caused by these fuels by a specified annual percentage. The quota obligated parties can generate the reductions themselves by selling certain renewable energy products, or they can transfer their obligation to third parties and thus take advantage of their reductions. This practice is referred to as GHG quota trading.

In particular, electricity supplied for charging electric vehicles can be accounted for in the GHG quota. While the reduction was initially assigned to the electricity provider, as of 2022, it is to be assigned to charge point operators (CPO) or third parties appointed by them. Besides operators of public charging points, all (also private) owners of all-electric vehicles are considered to be CPO. They can have (flat rate) GHG reductions credited to them and subsequently "resell" them.

Various service providers are available to support CPO (especially vehicle owners). They register the GHG reductions of many CPO to the Federal Environment Agency and sell them to quota obligated parties. The service providers pay a premium to the CPO (in various models: at a fixed price, variable price or in the form of donations) and retain the difference to the realized price as a commission. It is not uncommon for these service providers to involve other intermediaries or brokers to negotiate with quota obligated parties, as larger reduction quantities can regularly be sold at better prices.

Individual tax authorities have now made their first comments on the VAT treatment of GHG quota trading. While some questions have been clarified, many more remain unanswered, at least for the time being.

Laura Klein
Certified Tax Consultant
Master of Science (M.Sc.)

+49 (0) 89 21759 1296
laura.klein@kmlz.de

2 VAT treatment of CPO

The tax authorities have made it clear that private vehicle owners are not engaging in economic activity by selling their reductions – even over a period of several years. Taxable persons selling GHG reductions for vehicles assigned to their business, on the other hand, are subject to VAT. In this case, according to the tax authorities, the purchase price of the vehicle is not proportionally allocated to the GHG reduction.

It is generally the CPO's responsibility to know and comply with the VAT consequences of its supplies (which in the present case is usually the assignment of the right to the GHG quota to the service provider). In this regard, difficulties may arise in determining when the VAT becomes chargeable. The supply and the payment of the premium may differ significantly in time. The assessment of the remuneration may also lead to problems, considering – in addition to the distinction as to whether a gross or net premium is agreed upon – the variable premium components or the possibility of donations.

3 VAT treatment of GHG quota traders

For the service providers and intermediaries involved, the tax authorities clarify that trading in GHG quotas is considered an economic activity subject to VAT. No further explanations have been provided.

In this context, it should first be noted that the distinction between non-taxable and taxable CPO (including vehicle owners) is also relevant for service providers. For purchases from taxable CPO, the service provider is generally entitled to input VAT deduction. However, this requires a corresponding invoice showing VAT. Typically, the service provider will agree with the CPO on self-billing invoices and will thus be responsible itself for the invoicing with VAT. Due to the input VAT deduction, the service provider is generally able to pay out the premium plus VAT to the taxable CPO and thus avoid reducing the CPO's premium by its VAT liability. Invoices to non-taxable CPO, however, may not show any VAT.

The involvement of other intermediaries or brokers, in addition to the service providers, also leads to increasing complexity in invoicing. Usually, the reduction of the CPO is to be assigned to the service provider registering it with the relevant authorities. If the service provider concludes a contract both with another intermediary or broker and – as required by the Federal Immission Control Act – with the quota obligated party, the service provider must carefully examine to whom it is supplying which service, at what point in time VAT becomes chargeable for this supply, and to whom it must issue a corresponding invoice showing VAT. If the service provider invoices the payments received to the wrong contractual partner, this may result in an additional VAT liability under sec 14c German VAT Act, while the actual taxable supply remains untaxed.

It is to be assumed that the VAT liability, for the supplies within the (domestic) GHG quota trading, generally lies with the supplier. Under the current – narrowly defined – wording of sec. 13b para 2 no. 6 German VAT Act, GHG trading is most likely not covered by the reverse charge mechanism, which applies for the transfer of emission certificates. In this respect, it is also to be taken into account, that – contrary to the term "GHG quota trading" – no actual certificates are transferred but rather the quota obligated parties transfer their obligation.

Overall, the parties involved in GHG quota trading will be facing a number of VAT pitfalls. For this reason, it is essential that all parties involved carefully examine their individual contracts and VAT treatments with respect to possible risks.

KMLZ Rechtsanwaltsgesellschaft mbH | www.kmlz.de | office@kmlz.de
D-80331 München | Unterer Anger 3 | Tel.: +49 89 217501220 | Fax: +49 89 217501299
D-40221 Düsseldorf | Speditionstraße 21 | Tel.: +49 211 54095320 | Fax: +49 211 54095399