



KMLZ VAT NEWSLETTER

Ministry expands zero-rating for maritime transport and aviation

1. Background

To date, only direct supplies to operators of vessels or international air carriers have been zero-rated. The zero-rating was not applicable to supplies made at earlier stages of the commercial chain. With its decision of 04.05.2017 (C-33/16 – A) the ECJ expanded the zero-rating to cover these supplies where the final use, by an operator of vessels or international air carrier, is already determined at the time the earlier supply is agreed upon. Further, it is required that the zero-rating is correctly applicable without the necessity for any control or monitoring scheme.

2. Implementation by the Federal Ministry of Finance

In its letter of 06.10.2017, the Federal Ministry of Finance adopted the findings of the ECJ. However, it failed to elaborate as to how these findings should function in practice. Zero-rating applies where the final use is already determined at the time the supply is rendered. However, control or monitoring schemes are only dispensable for fiscal authorities. Companies are still required to maintain book records evidencing that the requirements are being met (see sec 8.3 of the German VAT Circular).

Maritime and aviation sectors required to reconsider procurements and supplies

The German Federal Ministry of Finance has expanded the zero-rating for these sectors with regard to supplies at earlier stages of the commercial chain. However, the final use must (1) already be determined at the time of supply and (2) within the scope of the zero-rating. This situation will create significant work for the companies concerned, given that compliance by the end of the year is necessary due to the fact that the zero-rating is mandatory and the non-objection regulation only applies until 31.12.2017.

3. Consequences for the practice

Companies now have to check whether their procurements or supplies are subject to the expanded zero-rating. The zero-rating for supplies on maritime transport or international aviation is mandatory. The incorrect use of the zero-rating could trigger additional payments, including interest payments, and in the worst case, penalties. If the supplier incorrectly invoices VAT, the supplier owes the invoiced VAT (see sec 14c para 1 of the German VAT Act). However, the customer is not entitled to input VAT deduction. A non-objection regulation only applies until 31.12.2017.

A supply at an earlier stage of the commercial chain is, subject to further requirements, zero-rated where it is apparent that it will be used for maritime transport or international aviation. E.g. this applies to identical supplies of services within a supply chain or to supplies of goods, if the supplied good is destined to be incorporated into a specific final good (e.g. aircraft for international aviation). It is significant whether the final use is determined at the date of supply. A record of the actual final use should be kept.



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