



VAT NEWSLETTER

Annual Tax Act (Part 8):

OSS for all services to non-taxable persons – in particular passenger transportation

39 | 2020

1 OSS for services to non-taxable persons

The Mini-One-Stop-Shop procedure (MOSS) will be replaced by the One-Stop-Shop (OSS) (Newsletter 36/2020). As a result, the special taxation procedure will no longer be limited to electronically supplied services. In future, also the following services can be reported via OSS: services related to immovable property, cultural and entertainment activities, restaurant services, agency services and services in connection with events, work on movable tangible goods and the evaluation of said goods, as well as passenger transportation services and long-term lease of vehicles. Precondition is that the services are provided to non-taxable persons. Thus, OSS will not only apply to services for which the place of supply is determined according to sec. 3a para 1 of the German VAT Act (Art. 45 of the VAT Directive), but to all services to non-taxable persons. Therefore, a supplier – regardless whether he is resident in a third country, in another member state or in Germany – can use OSS, provided that the services are rendered to non-taxable persons. As a result, the provider of passenger transportation services might avoid a VAT registration in the countries where the transportation is carried out, if the services are provided to non-taxable persons. A VAT registration in the country where the supplied service is taxable will not be required anymore.

2 OSS and passenger transportation

The VAT treatment of cross-border passenger transportation services is quite complex. In particular, the difficulties arise from the rules concerning the determination of the place of supply for passenger transportation, which is, according to sec. 3b para 1 of the German VAT Act, where the transportation is carried out. With respect to passenger transportation services, which are carried out on routes in Germany, as well as in other countries (cross-border passenger transportation), only that part of the route located in Germany is subject to German VAT. Consequently, the total price of



Eveline Beer
Lawyer, Certified Tax Consultant

+49 (0) 211 54 095-335
eveline.beer@kmlz.de

the transportation is required to be divided according to the respective routes located in Germany and abroad and must be taxed according to the rules of the respective country. Providers of cross-border passenger transportation services are consequently obliged to register for VAT purposes in many European countries and to file VAT returns in those countries. As a result of the extension of the OSS-procedure, the provider of passenger transportation services might avoid a VAT registration in the countries where the transportation is carried out, if the services are provided to non-taxable persons.

3 Abrogation of sec. 5 of the German VAT Implementation Code

According to sec. 2-7 of the German VAT Implementation Code (GVIC), simplification rules apply for cross-border passenger transportation. Based on these simplification rules, connection routes located in Germany are regarded as routes located abroad, if no more than 30 kilometres are travelled within Germany (sec. 2 of the GVIC). Furthermore, connection routes located abroad are regarded as routes located in Germany, provided that no more than 10 kilometres are travelled outside Germany (sec. 3 of the GVIC). According to sec. 5 of the GVIC, short routes in one direction, which are not longer than 10 kilometres, are regarded as routes located abroad when cross-border passenger transportation via non-scheduled services using vehicles are provided. This simplification rule applies for transportation by taxis, excursion and vacation tours, transportation with rented buses and cars, but does not include regular line traffic. Based on these simplification rules, Germany waives its right of taxation for a short part of the transportation route. The cross-border transportation service is thus subject to the VAT law of the respective neighbouring country. As a result, providers of cross-border transportation are currently not obliged to VAT register in Germany when traveling within Germany on a route, which does not exceed 10 kilometres.

Due to the extension of the application of the OSS, the legislator has decided to abolish the simplification rule mentioned in sec. 5 of the GVIC. However, the other simplification rules, as mentioned in sec. 2-4, 6 and 7 of the GVIC, will remain in force. Thus, short connection routes, which are not longer than 30 kilometres will continue to be non-taxable in Germany.

4 Consequences for the practice

Taxable persons who provide services such as passenger transportation to non-taxable persons should now check whether they can use OSS. It should be noted that OSS cannot be used when services are provided to taxable persons. If a taxable person provides on a route passenger transportation by himself as well as by engaging subcontractors, OSS cannot be applied. If a subcontractor resident abroad provides passenger transportation to a taxable person also not resident in Germany, he would be liable for the VAT for the German route based on the reverse-charge mechanism (sec. 13b para 5, in connection with para 7 of the German VAT Act). As a result, the taxable person not resident abroad would be obliged to VAT register in Germany and report a reverse-charge transaction.

As a result of the abrogation of sec. 5 of the GVIC, as of 1 January 2021, taxable persons not resident in Germany will be required to also apply German VAT with regard to short distances (less than 10 kilometres in one direction) travelled in Germany. These taxable persons are not obliged to VAT register in Germany merely because they provide passenger transportation on routes which are not longer than 10 kilometres. However, the declaration of German VAT via OSS also means these taxable persons will bear an additional administrative burden. Furthermore, it might be necessary to consider price adjustments. Until now, the VAT rate of neighbouring countries has applied for routes up to 10 kilometres travelled in Germany. Depending on whether the VAT rate of the neighbouring country for passenger transportation is higher or lower than in Germany, the application of 19% German VAT can lead to an increase or decrease in a provider's revenue. Ultimately, the VAT treatment of cross-border transactions will become even more complex.