



VAT exemption of export transport services as from 1 January 2022

The transport of export goods is exempt from VAT under certain conditions (sec. 4 no. 3 lit. a lit. aa of the German VAT Act). However, as from 1 January 2022, the Federal Ministry of Finance will considerably restrict the present scope of the VAT exemption. While all supplies of transport services connected to exports were previously VAT exempt, this will now only apply to transport services rendered directly to the supplier of the goods or the customer receiving the goods. In its letter of 27 September 2021, the Federal Ministry of Finance clarifies questions of doubt raised by the businesses and changes the administrative practice after having twice extended the transitional period for transport services rendered after 31 December 2021.

1 Basis for tightening jurisprudence

This restriction is based on the ECJ judgment of 29 June 2017 in the Case L.Ĉ. (C-288/16). In this case, the ECJ dealt with the scope of the VAT exemption for transport services in connection with exports. In the facts presented, a logistics service provider had been commissioned by a vehicle supplier to arrange the transport of vehicles from Latvia to Belarus. The logistics provider assigned the effective performance of that transport to a subcontractor. With reference to the narrow interpretation of the VAT exemption, the ECJ ruled that the VAT exemption only applied to supplies of transport services rendered directly to the supplier of the goods or its customer. Therefore, the supply rendered by the subcontractor to the logistics provider was qualified to be not VAT exempt.

The Federal Ministry of Finance previously implemented the principles of this judgment with its letter of 6 February 2020. However, the application of the regulation was postponed, by means of a transitional period, which now expires on 31 December 2021.



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2 Abolition of the transitional regulation for supplies carried out after 31 December 2021

This narrow interpretation of the VAT exemption, for such transport services, has not as yet, been applied by the German tax authorities. With the new Federal Ministry of Finance's letter, the German VAT Circular (sec. 4.3.2 para. 3 and 4) will be amended with effect from 1 January 2022. Accordingly, through the implementation of the ECJ jurisprudence, the VAT exemption for transport services by the primary freight carrier, but not by the sub-carrier, will be taken into consideration. The Federal Ministry of Finance defines the primary freight carrier as being the one who renders the transport services for the supplier of the goods or the customer receiving the goods. Sub-carriers are suppliers of transport services who render the services to persons that are not the supplier of the goods or the customer receiving the goods.

The Federal Ministry of Finance's letter provides for a simplification rule in cases where the transport service provider acts for a principal as both primary freight carrier and sub-carrier. According to sec. 4.3.4 para. 3 sentence 6 of the German VAT Circular, the tax authorities will not object if the supply, as a whole, is subject to VAT. Correspondingly, the tax authorities will not object to the recipient's input VAT deduction.

The transport service provider is obliged to provide proof of the exemption requirements. The Federal Ministry of Finance's letter provides for the requirement of a written declaration of the service recipient's status.

3 Consequences for the practice

In recent weeks, many transport service providers have started requesting their customers to file declarations as to the role in which they make use of their transport services. Theoretically, the principal would have to make and communicate the decision as to whether to engage the service provider as primary freight carrier or sub-carrier in each individual case. In practice, however, this is impracticable due to the considerable effort and administrative challenges involved. Many transport service providers are therefore demanding general statements from their customers. However, this entails considerable tax risks for the companies involved.

If the principal declares that he is commissioning the service provider as a sub-carrier, VAT exemption is ruled out. The service provider then invoices the services with VAT. If this, however, turns out to be incorrect, the service provider is liable for the VAT in accordance with sec. 14c of the German VAT Act. Then, the recipient cannot claim input VAT deduction.

If, on the other hand, the principal states that he is commissioning the service provider as a primary freight carrier, the transport services are VAT exempt. This can be problematic in the case of chain transactions and transport agreements concluded in this context. Where supplies of transport services are purchased centrally, in a group, and passed on to the subsidiaries, the actual transport service provider is already a sub-carrier. The same applies to the dispatch of goods by marketplace operators. Providers of fulfilment services would be considered as primary freight carriers, transport service providers as sub-carriers. VAT exemption is excluded in these cases.

According to the wording of sec. 4.3.4 para. 3 sentence 2 of the German VAT Circular, the VAT exemption should not apply to the transport of goods to be repaired or to any other (company-internal) transfer of goods to a third country. In these cases, there is no supplier of goods.

Due to this change in the law, businesses are recommended to urgently review their shipping processes. In particular, whether it is possible to make a blanket statement to the transport service provider should be checked. Declarations to transport service providers must be filed in compliance with the existing shipping structures. In practice, this also requires that the existing processes do not allow for spontaneous deviations and that the use of individual customer numbers, vis-à-vis transport service providers, functions in a targeted and controlled manner.