



VAT NEWSLETTER

## Administrative circular on the simplification rule for supplies via (consignment) stocks

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### 1 Background

EU supplies of goods, which are temporarily stored in the country of destination are, in principle, considered to be local supplies from the warehouse in the country of destination and are not intra-Community supplies. Replenishment of the warehouse then constitutes an intra-Community transfer of own goods. The supplier must therefore register for VAT in the country of destination and declare his purchases and supplies there. In order to relieve businesses of this administrative burden, and to uniformly regulate this issue within the EU, an EU-wide simplification regulation was introduced within the framework of the so-called "Quick Fixes" with effect from 01.01.2020 (KMLZ VAT Newsletter 04 | 2019). This simplification has been incorporated into sec. 6b of the German VAT Act (UStG). Under certain conditions, an intra-Community supply can be assumed at the time of withdrawal from the warehouse, and the replenishment of the warehouse is then not considered as being an intra-Community transfer of own goods.

Already in 2019, the EU Commission dealt intensively with the practical implementation of the new regulations and published Explanatory Notes, incl. Guidelines of the VAT Committee, on 20 December 2019. Now, almost two years after the new regulation in sec. 6b UStG came into force, the German Federal Ministry of Finance (BMF) has also published an introductory administrative circular.

### 2 Administrative circular / retroactive effect

The 13-page BMF circular, dated 10 December 2021, comprehensively amends the German Administrative VAT Guidelines (UStAE), in particular adding a new section 6b.1. The amendment has retroactive effect. The principles of the BMF circular are to be applied to all supplies via consignment stocks for which the transport began after 1 January 2020.



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### 3 Content

Even though it is of course impossible to present the entire content of the BMF circular in this newsletter, the most important points in the new section 6b.1 of the UStAE should nevertheless be pointed out:

- Paragraph 1 now contains a definition for consignment stocks, which is not contained in sec. 6b UStG.
- Paragraph 2 regulates the extent to which the supplier is deemed to be established in the country of destination by virtue of an own warehouse.
- Paragraph 3 confirms that several customers can be supplied via one warehouse.
- Paragraph 4 confirms that not only immobile warehouses can be used, but also mobile warehouses such as wagons, containers, trailers and ships, provided that their respective location is recorded.
- Paragraph 5 confirms the strict German view that the customer must (actively) use his VAT-ID of the country of destination vis-à-vis the supplier, whereas the EU VAT Directive only requires that it be known to the supplier.
- Paragraph 6 confirms that a change of customer does not extend the 12-month period.
- Paragraph 7 allows transport to the warehouse to be carried out by the recipient if the transport is expressly and recognisably carried out on behalf of the supplier, e.g. by agreement in a framework contract.
- Paragraph 12 clarifies that no import VAT exemption is possible for supplies from a non-EU country while applying the simplification pursuant to sec. 6b UStG, because the import is not directly followed by an intra-Community supply.
- Paragraph 15 stipulates that the 12-month period generally begins on the day following the end of the transport (irrespective of the actual day of entry into storage) and that the beginning or end of the period is postponed to the next working day if it falls on a weekend or a public holiday in the country of storage.
- Paragraph 16 confirms that sec. 6b UStG also applies to liquids, gases and bulk goods and that the FIFO (first in / first out) procedure can be used for these, as well as for other identical goods.
- Paragraph 17 stipulates that if the requirements of sec. 6b UStG cease to apply, the supplier must immediately register for VAT in the Member State of destination and apply for a VAT-ID. Only then, can the intra-Community transfer of own goods, to be subsequently declared, be VAT-exempt.
- Paragraph 19 confirms that the simplification is object-related and that failure to meet the requirements of sec. 6b UStG for individual goods does not lead to a general refusal of the simplification. It is also confirmed that the supplier can (voluntarily) waive the application of the simplification by (intentionally) failing to meet one of the requirements.
- Paragraph 22 introduces a tolerance rule for "small losses". Ordinary, customary losses in the warehouse are irrelevant. A threshold of 5% (in value or quantity) of the total stock is introduced. The relevant date is the date of the loss or, if this is not known, the date on which the loss was discovered.

### 4 Case law on binding orders

The provision in section 6b.1 para. 3 sentence 3 UStAE, which prevents a potential conflict of German case law with the rules in other EU Member States, is very welcome. According to the German Federal Fiscal Court, a supply is to be treated as a direct intra-Community supply, despite intermediate storage in the country of destination, if the recipient is already known at the time the transport begins. The supply is then deemed to have been carried out at the moment the transport begins and not when the goods are taken from the stock (after a preceding intra-Community transfer of own goods). This will be the case, for example, if there is a short period of intermediate storage and the customer has an unrestricted right of access (KMLZ VAT Newsletter 03 | 2017) or if the customer has already placed a binding order or paid before the transport begins (KMLZ VAT Newsletter 10 | 2017). Suppliers and customers can eliminate uncertainties in this regard by agreeing (e.g. in a frame contract) to apply and fulfilling the requirements of sec. 6b UStG.