



KMLZ VAT NEWSLETTER

The need for adjusting input VAT deduction for long-term leasing of furnished flats

1. Previous administrative practice

According to the previous administrative practice, following sec. 4 no. 12 lit. a German VAT Act, VAT exemption did not generally include furniture, e.g. office furniture (sec. 4.12.1 para. 6 sentence 2 German VAT Circular). In this respect, the tax authorities' view did not correspond with the German Federal Fiscal Court's legislation (German Federal Fiscal Court, judgement of 11 November 2015 – V R 37/14).

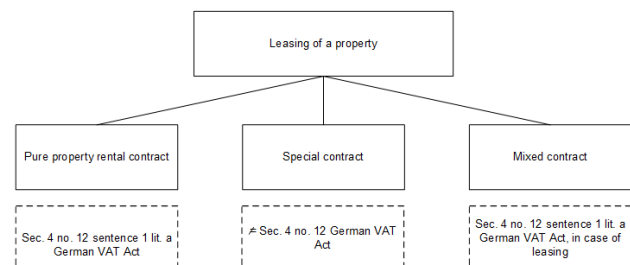
2. Legal appraisal of the Court

In its judgement of 11 November 2015 – V R 37/14, the Court decided that VAT exemption according to sec. 4 no. 12 lit. a German VAT Act includes the leasing of furnished rooms or buildings where the lease is long-term. The services that are useful or even necessary for the use of a leased property can exist independently from the leasing of

Leasing of furnished flats will be VAT tax-exempt no later than 1 January 2018

The German Ministry of Finance has implemented the Court's legislation of 11 November 2015 – V R 37/14, according to which, VAT exemption following sec. 4 no. 12 sentence 1 lit. a German VAT Act also includes the leasing of furnished rooms or buildings if the leasing is long-term. Landlords are required to implement this new legislation from 1 January 2018. Input VAT adjustments following sec. 15a German VAT Act must be made if necessary.

the property, represent an ancillary service or be inseparable from the lease and form a single supply with it. The finding as to whether a particular lease qualifies as a single supply is based on an assessment of the facts in the individual case.



3. Realization of the legislation

The tax authority has now adopted the Court's view and adjusted the administrative order accordingly. Sec 4.12.1 para. 6 German VAT Circular was removed and sentence 3 was added to sec. 4.12.1 para. 3 German VAT Circular:



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„³VAT exemption, in general, includes rented or leased furniture e.g. movable office furniture or the movable inventory of a nursing home (see Court judgement of 11 November 2015, V R 37/14 [...]), see sec 4.12.10 regarding the renting and leasing of operating facilities.“

4. Short transitional period

The letter of the German Ministry of Finance can be applied to all open cases. For transactions carried out prior to 1 January 2018, there will not be any complaints if the taxable person treats his or her supplies, which are subject to VAT, differently than as stipulated in sec. 4.12.1 para. 3 sentence 3 (new) German VAT Circular.

5. Practical consequences

The fact that the tax authority has changed its opinion might look like a positive development at first glance. However, there are also some pitfalls.

In the future, special emphasis will be placed on the difference between furniture and operating facilities.

In light of sec. 15a German VAT Act, the consequences will probably be much more severe. According to sec. 15a.2. para. 2 sentence 3 no. 5 German VAT Act, there will also be a change in terms of ratios in the sense of sec. 15a German VAT Act if a legal change after the benefit receipt has influence on the assessment of the input VAT deduction.

This means: If landlords have claimed input VAT deduction for the purchasing of furniture in the past, an input VAT adjustment following sec. 15a German VAT Act will follow if the adjustment period has not yet expired. See special arrangement in sec. 44 German VAT Implementation Code.

Furthermore, VAT must not be shown in invoices or rental contracts as from 1 January 2018 because according to sec. 14c German VAT Act, VAT liability would be the consequence.

In view of the above, the tight transitional period has a completely different meaning and we tax consultants know what we have to do during the holidays. With this in mind, we wish you a Merry Christmas!