



# KMLZ VAT NEWSLETTER

## Federal Ministry of Finance clarifies new reverse-charge rules

### 1. Construction work (sec. 13b para 2 no. 4 German VAT Act)

According to the VAT Act, the recipient of construction work is liable for payment of VAT only if it renders its own construction work in a sustained manner. Based on the new circular, this is the case (as previously) if the recipient renders more than 10% of its worldwide turnover in construction work. The supplier may assume this is the case if the recipient has received a corresponding certificate from its competent tax office based on form USt 1 TG published in the circular dated 26 August 2014. According to the circular's new sec. 13b.3 para 4, the certificate is valid for a maximum period of three years. The recipient is liable for the payment of VAT even if the competent tax office issued such a certificate to the recipient but the recipient did not provide it to the supplier. Sec. 13b.3 para 8 of the circular now comes with a clarification for property developers. Property developers who carry out construction on their

### Circular regarding Croatia Act

The Ministry of Finance published a circular dated 26 September 2014 regarding the amendments to the German VAT Act by the Act for the adjustment of national tax law resulting from the EU accession of Croatia (Croatia Act). This Act came into force on 1 October 2014. The most important change refers to the reverse charge scheme acc. to sec. 13b of the German VAT Act regarding construction work, the supply of tablet computers, game consoles and metal. Along with some clarifying instructions, this circular includes, an interim regulation for supplies rendered before 1 January 2015.

own real estate, solely in order to sell this property, render a supply of real estate but not construction work. This applies even if the sales contracts allow for the influence of the purchaser on the construction and design.

### 2. Professional cleaning of buildings

The law stipulates that the recipient of building cleaning services (Gebäudereinigungsleistungen) is liable for payment of VAT regardless of whether the recipient uses the received supply of services to render building cleaning services itself. It is, however, a precondition that the recipient renders building cleaning services in a sustained manner. Sec. 13b.5 para 4 of the German VAT Administrative Guidelines is amended accordingly. The rules regarding the certificate for construction work are also applicable to building cleaning services (sec. 13b.5 VAT Administrative Guideline).



### **3. Supply of tablet computers and game consoles (sec. 13b para 2 no. 10 VAT Act)**

The circular supplements sec. 13b.7 of the VAT Administrative Guideline with a definition of tablet computers (para 1a) and game consoles (para 1b). According to this definition, a tablet computer is "a portable flat computer that is especially light-weight and which is built encased in a touch-screen housing and which can be operated by fingers or a pen." This holds true regardless of whether the computer features a keyboard. Devices, which are encased in a single housing and can be operated completely via a touch-screen, are regarded as tablet computers regardless of whether they are fitted with a keyboard. There are some doubts as to whether this definition and classification are, in practice, suitable. There are, after all, a great number of products which fulfill these preconditions (for example mobile navigation devices, electronic note pads for service staff, etc.). "Game consoles are computers or similar devices which are designed primarily for video games. Besides gaming, these products can have additional functions, e.g. playing audio CDs, video DVDs and Blu Ray discs."

### **4. Supply of metals (sec. 13b para. 2 no. 11 VAT Act)**

The newly implemented sec. 13b 7a of the VAT Administrative Guidelines includes definitions of the respective metals. The definitions are strongly based on the explanatory notes to the Combined Nomenclature. The circular does not include any additional aspects or information, which is essential or new. In order to secure the customs classification, taxable persons should consider applying for non-binding customs tariff information for VAT purposes.

### **5. Limitation for margin schemes**

With the new circular, German tax authorities exclude the application of the reverse charge scheme in cases where

the supplier chooses to tax the supply based on the margin scheme. The reason for this is that usually, the recipient of the supply does not know the taxable amount of the supply.

### **6. Simplification rule in sec. 13b.8 VAT Administrative Guideline**

Sec. 13b para 5 sentence 7 of the VAT Act now includes a legal simplification rule. The wording of the previous simplification rule in sec. 13b.8 of the VAT Administrative Guideline was amended accordingly. According to sec. 13b.8 of the VAT Administrative Guideline, there is no longer any reference to the tax authorities not challenging the VAT treatment if the parties agreed to apply the reverse charge scheme even if the rule did not apply. In future "the recipient is deemed liable for payment of VAT". Just as in the case of the legal provision, it may now be questioned whether this regulation is still legally permissible. This might lead to a situation where reverse charge applies even if a precondition of the VAT Directive is not fulfilled. The simplification rule does not apply if the nature of the recipient is in question, especially if the recipient is a property developer.

### **7. Interim regulation until 31 December 2014**

Finally, the Ministry of Finance has provided an interim regulation for the supply of corresponding material rendered before 1 January 2015. According to the interim regulation, the tax administration will not object if both parties to the contract mutually agreed to assume that the supplier is liable for the VAT. If the recipient of the goods does not agree with the invoice including VAT, the interim regulation is not applicable. Additionally, the interim regulation is only applicable if the supplier duly pays the VAT.

For the "mutually agreed" application of the old legal position, it shall be sufficient if the supplier invoices VAT, which



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the recipient pays (and deducts as input VAT). The necessary mutual agreement cannot require any additional agreement. Otherwise, the interim regulation would be nothing other than the simplification regulation according to sec. 13b para 5 sentence 7 German VAT Act/sec. 13b.8 of the German VAT Administrative Guidelines and would, in practice, be empty. However, the supplier takes on a certain amount of risk issuing invoices with VAT. If the recipient of the goods rejects the invoice, the supplier is obliged to correct the invoice and apply the reverse charge procedure (sec. 14c para 1 German VAT Act). Therefore, it seems advisable that the supplier and the recipient expressly agree on the application of the interim regulation, in advance.

#### **8. Example cases for time limitations**

The circular also includes several practical case studies with regard to the application of the new regulations in circumstances where supplies are invoiced before 1 October 2014 and supply is rendered after this date or vice versa.

#### **9. Conclusion**

In the new circular, the Ministry of Finance provides some clarification with regard to the new regulations on the application of the reverse charge mechanism. For the time being, no additional clarification will be made available. Hence, taxable persons should immediately commence implementing the new regulations. Due to their wide-reaching impact, and the necessary implementations for taxable persons in bookkeeping and IT, the interim regulations would seem to be helpful. However, as there will be no additional interim regulation for supplies rendered after 31 December 2014, taxable persons concerned should make every effort to implement the new regulations as soon as possible. Alternatively, the period should be used to negotiate and agree to stipulations for the application of the simplification rule with all relevant business partners.