



KMLZ VAT NEWSLETTER

VAT refund procedure: EU Commission refers Germany to court and VAT Implementation Code to be amended

According to sec. 61a para. 2 sentence 4 of the German VAT Implementation Code, VAT refund applications made by taxable persons established in a third country, according to the 13th EU Directive, must be personally signed. In the fiscal authority's view, signature by an authorized representative is not acceptable. The Federal Tax Office has therefore, in the past, regularly rejected VAT refund applications which were not signed personally.

In its decision of 3 December 2009 as regards the lawsuit *Yaesu Europe* (C-433/08), the European Court of Justice decided that taxable persons established in the European Community territory do not have to sign the VAT refund applications, according to the 8th EU Directive, personally.

EU Commission refers Germany to Court - non-EU-operators may file an appeal

Until now VAT refund applications made by taxable persons established in a third country had to be personally signed. The European Commission is now seeking to change this by referring Germany to court. Non-EU-operators whose VAT refund applications were rejected, due to the missing personal signature, should file an appeal and apply for suspension of proceedings.

This applied at least to the paper applications prior to the implementation of the electronic procedure in 2010. In accordance with the decision of the European Court of Justice, the signature of an authorized representative was sufficient.

To date, the German case law has generally chosen not to correspondingly apply this decision to VAT refund applications made by taxable persons established in a third country. For example, in its decision of 8 August 2013 (V R 3/11), the Federal Fiscal Court decided that the personal signature of a taxable person established in a third country could not be waived in view of the Community principles.

The European Commission subsequently ruled that this requirement for VAT refund applications of non-EU-operators violates the principles of effectiveness, propor-



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tionality and the equivalence of EU law. In September 2012, Germany was asked by the European Commission, by means of a reasoned opinion to amend the relevant rules. As the rules have not been adjusted until now, the European Commission has now decided to refer Germany to court (see Commission press release IP/14/1038 dated 25 September 2014).

Taxable persons established in a third country having received a written notice of rejection, due to the missing personal signature, should file an appeal and apply for suspension of proceedings with reference to the European Commission's infringement procedure.

In addition, amendment of the German VAT Implementation Code is being planned. In the draft legislation of the "Verordnung zur Änderung steuerlicher Verordnungen und weiterer Vorschriften - Regulation for the Amendment of Taxation Rules and other Regulations", published on 9 October 2014 by the Federal Ministry of Finance, the following amendments are foreseen.

- Sec. 59 sentence 2:
A taxable person shall be considered to be established abroad if he, on the one hand, has a fixed establishment in Germany but, on the other hand, has not carried out supplies through it during the refund period.

- Sec. 60 sentence 3 and 4:
In the future, it shall be possible to file another application for the calendar year besides the four quarterly VAT refund applications. Here, input VAT may be included which refers to other refund applications of the calendar year.
- Sec. 61 para. 2 sentence 3:
Scans of the original invoices, rather than scanned copies, should be attached to the VAT refund application.
- Sec. 61 para. 5 sentence 3:
In cases where the invoices were not submitted along with the VAT refund application, interest on the VAT refund will only be paid for the period starting 4 months and 10 days after the subsequent submission of the scanned original invoices.
- Sec. 61a para. 1 sentence 9:
For applications filed later than 30 June 2016, the mandatory submission through electronic means shall be introduced, also for taxable persons established in a third country.