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# KMLZ VAT NEWSLETTER

## VAT refund procedure for non-resident taxable persons: small concessions and significant tightening of formal requirements

Already with effect from 20.07.2017, sec. 60 and 61 of the German VAT Implementation Code were amended. In its letter of 22.09.2017, the Federal Ministry of Finance implemented the amendment into the German VAT Circular. Generally, the formal requirements are being tightened and will already apply to refund applications for 2017, which must be filed by 30.09.2017.

### 1. Sec. 60 of the German VAT Implementation Code - temporal concessions

Taxable persons can still file a so-called fifth refund claim for the respective year where they include the input VAT amounts, which have not been included in the hitherto refund applications for the year. However, taxable persons

### Formalism is increasing

In a few days, on 30.09.2017, the deadline for filing input VAT refund applications for businesses resident in the EU for the year 2016 will expire. Just in time, with its letter of 22.09.2017, the Federal Ministry of Finance calls attention to small concessions and to a significant tightening of formal requirements. The intra-year exact temporal allocation of invoices is no longer of vital importance. However, a refund application is no longer considered as having been filed when specific information is missing. A subsequent amendment is not possible. The first application must be correct. The provisions regarding the attached invoices have also been tightened.

no longer have to wait to file the fifth claim. Now it is possible to include invoices, which have not yet been considered, in each forthcoming intra-year refund application, even if an application was already filed for the respective period.

### 2. Sec. 61 of the German VAT Implementation Code - complete invoices

The provisions, as regards the invoices, which must be attached to the refund application, were tightened following a decision of the Tax Court in Cologne (decision of 09.11.2016, 2 K 1912/15) where the Tax Court, decided in favor of the Plaintiff. According to the court, claimants should be permitted to file missing pages or additional documents, even after the expiry of the application period. This option is now restricted following the amendment of sec. 61 of the German VAT Implementation Code. Missing invoice documents can no longer be subsequently reported, even in



Contact: Ronny Langer  
Certified Tax Consultant, Dipl.-FW (FH)  
Phone: +49 89 217501250  
ronny.langer@kmlz.de



circumstances where the application deadline has not yet expired. In order to avoid problems, invoices should be submitted in their entirety. This means complete with any annexes and appendices etc. which, by virtue of being mentioned in the invoice, become part of it.

### **3. Sec. 61 of the German VAT Implementation Code - tightened formalities**

The refund applications will be considered to have been filed only where the claimant has provided all of the information required pursuant to Art. 8 and 9 of the Directive 2008/9/EC together with a description of his business activities on the basis of harmonized codes. If this information is not complete, the refund application might be rejected in total on the grounds that it is not considered to have been submitted. Theoretically, the application could then be re-submitted. However, if the application deadline has, in the meantime, expired, a VAT refund will be denied due to this formal error.

### **4. Federal Fiscal Court decisions still pending**

Several proceedings referred to the Federal Fiscal Court by the Tax Court in Cologne are still pending. These cases deal with the VAT refund procedure requirements and illustrate how thoroughly and detailed how the applications should be completed.

In its decision of 11.05.2016 (2 K 1572/14), the Tax Court in Cologne held the view that, as regards the contested years

2010 and 2011, a scanned copy of an invoice would be sufficient for the VAT refund. The decision, however, can be applied only to refund applications filed prior to 30.12.2014. Sec. 61 para 2 sentence 3 of the German VAT Implementation Code was amended and the wording "a copy" was replaced by "a scanned original".

Further, the Tax Court in Cologne holds the view (decision of 11.05.2016, 2 K 2123/13), that it is not sufficient to provide the original invoice in paper form. It is now for the Federal Fiscal Court to decide on the appeal and whether original invoices must be filed exclusively electronically (Federal Fiscal Court, XI R 25/16).

A further proceeding before the Tax Court in Cologne (decision of 14.09.2017, 2 K 195/14), is based on the fact that in the field "Invoice No." another reference number, which was stated on the invoice, was filled in, rather than the invoice number. It is now for the Federal Fiscal Court to decide whether this formality already results in the refund application being invalid for the affected invoice positions (Federal Fiscal Court, XI R 13/17).

Even if the Federal Fiscal Court decisions should possibly stem the rather strict formalism, claimants should not speculate on this outcome. Rather, the strict formal requirements should be observed when filing applications. Otherwise there is a risk that input VAT deduction will be denied.