



Federal Fiscal Court comments on proof of status as taxable person in the absence of a VAT-ID number

21 | 2024

1 Background: The importance of the VAT-ID number

The VAT Identification Number (VAT-ID no.) has a decisive influence in many areas of cross-border business. Particularly, it certifies the status as a taxable person within the meaning of the EU VAT Directive. Among other things, this status can determine the place of taxation, a possible VAT exemption and the VAT rate as well as who is liable for the VAT. In cross-border EU B2B trade in goods, for example, the possession of a VAT-ID no. and its notification is now a material prerequisite for the zero-rating of intra-Community supplies. For the taxation of services provided across EU borders, the notification of a VAT-ID no., in accordance with Art. 18 CIR (EU) 282/2011, has at least an indicative effect on the status of the supplier as a taxable person.

Suppliers must always ensure that the information provided by their customers is true to determine the correct VAT treatment. As long as a supplier receives the customer's correct VAT-ID no., everything should be fine. However, in practice customers are rarely obliged to provide this information. It is therefore often not easy to obtain the correct VAT-ID no. of a customer. Certain business areas, especially the eCommerce sector, are particularly affected by this. Little is known about customers there. Instead, business is done with the masses. Suppliers must therefore often rely on circumstantial evidence when determining the correct VAT treatment which results in tax risks.

2 Facts of the case

The plaintiff, which is domiciled abroad, operated an online marketplace on which both taxable persons and non-taxable persons offered items for sale. The services provided by the plaintiff consisted of offering the sellers access to and the use



Dr. Atanas Mateev
Dipl. Wirtschaftsjurist (univ.),
Certified Tax Consultant

+49 (0) 89 217 50 12-53
atanas.mateev@kmlz.de

of its online marketplace in return for a fee. In the case in dispute, the place of supply was indisputably Germany (Art. 44 or Art. 58 of the EU VAT Directive). The question was who is liable to pay the VAT for domestic supplies. The answer depended on the VAT status of the recipient of the service. The plaintiff always carried out internal checks in this regard. Customers with a valid VAT-ID no. were treated as taxable persons. The status of the remaining users who registered as taxable persons was checked on the basis of other indicators. If the user fulfilled one of three criteria (minimum number of transactions, minimum transaction volume, registration on a B2B platform), they were categorised as a taxable person. The lower tax court had previously decided that, for the customer group without a valid VAT-ID no., it is not solely the notification of the VAT-ID no. that is important. The lower tax court nevertheless assessed VAT with the plaintiff for these transactions. It considered the service recipient's status as a taxable person in these cases to be uncertain. The remaining verification measures of the plaintiff were not accepted as evidence.

3 Decision of the Court

In its judgement of 31 January 2024 - V R 20/21, the Federal Fiscal Court ruled that the use of a valid VAT-ID no. by the recipient is not decisive for the reverse charge mechanism. Rather, the recipient's status as a taxable person alone is decisive. The transfer of the VAT liability from the supplier to the recipient works in favour of the supplier. The supplier must therefore prove that the requirements of the relevant standard are met. However, this determination must be made on the basis of objective criteria. Only if the facts cannot be clarified they can be interpreted against the supplier. This applies to individual transactions; blanket treatment is unlawful.

4 Consequences for the practice

The Federal Tax Court decision is hardly surprising. Nowhere is the transfer of the VAT liability for cross-border services legally linked to the use of a correct VAT-ID no. The transfer of the VAT liability depends solely on the status of the recipient of the service as a taxable person.

Nevertheless, the decision may be important in practice in the future. On the one hand, neither the lower tax court nor the Federal Fiscal Court questioned the status of the customers holding a verified valid VAT-ID no. This means that the highest priority for future cross-border transactions remains to check and archive the VAT-ID no. of the customer. Tools such as our **VAT-ID Verifier** can be helpful for that. On top of this, however, the Federal Fiscal Court provides legal certainty for practitioners when it comes to the frequently occurring problem of obtaining a correct VAT-ID no. from the customer. According to the Federal Fiscal Court, it is clear that suppliers can also prove the status of the customers in another way and are free how to do this. However, they must carry out the verification using methods that they have chosen objectively and that are considered legally suitable. In addition to the constellation to be decided, this should also apply to other types of cross-border transactions.

For example, the decision may not only be relevant for the supply of electronically provided services. It can also provide relief when examining whether an intra-Community distance sale (B2C) or an intra-Community supply (B2B) exists. This is because there is room for interpretation when it comes to proving the status of the individual customer by the supplier. In practice, this is often interpreted in favor of the tax authorities. The Federal Fiscal Court has now made it clear that tax determination can be organised in a legally secure manner with factually comprehensible audit concepts. Affected businesses should take this as an opportunity to review their structures in terms of such cross-border constellations or to reorganise their verification concepts.