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Reverse charges in the building trade

The finance ministry has amplified its acceptance of a Supreme Tax Court judgment on building trade reverse charges with changeover provisions for work straddling the changeover deadline.

The VAT Act provides for reverse charging building and related work for other businesses in the same trade. The VAT implementation decree specified that the recipient's building activity must be more than purely nominal, that is, it should have accounted for at least 10% of turnover in the previous year. On August 22, 2013 the Supreme Tax Court held, following an ECJ judgment, that the reverse charge depended upon the recipient business's use of the supply for its own turnover of the same nature. On the other hand, the 10% limit had no basis in law and should be ignored. In consequence, some supplies that were previously reverse charged fell under regular taxation, whilst others previously taxed by the supplier now fell under the reverse charge scheme. The finance ministry published these judgments in its official journal on February 14, 2014 and amended its VAT Implementation Decree to follow the new law for all transactions completed after that date. It has now added to its decree to cover practical issues, especially with transactions in progress on the changeover date:

- The recipient of the supply furnishes proof that the supply is to be used for an onward supply of the same type with a written statement to the supplier. This statement may be made in the contract itself, or separately. It must, however, identify the project for which the supply serves as an input. The reverse charge obligation remains if, in the event, the supply is actually put to a different purpose, unless the supplier was aware the statement was false.
- A supply to one member of an Organschaft is reverse charged even if the qualifying output is made by another member.
- No objection will be taken to taxation under the previous rules of supplies made or started before the changeover date provided both parties take the same position.
- If payments in advance were taxed on the one basis and the final settlement after the changeover date is to be taxed on the other, both parties should amend their treatment appropriately. However, the amendment may be dispensed with if the recipient is fully entitled to input tax deduction and both sides take the same position. In that case, the final settlement will be taxed differently from the advance or progress payments.
- Invoices for advance or progress payments issued before the changeover date but not paid until afterwards are to be corrected to conform to the new rules, as the date of payment, rather than the date of the invoice is decisive in such cases.

Schlagwörter

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