

Changed tax treatment of guarantee commitments in return for payment

Companies' need for action and information urges BMF to extend the implementation period

October 2021

In brief

In its decree dated 18 October 2021, the German Federal Ministry of Finance (Bundesfinanzministerium, "BMF") once again extended the implementation period on the IPT and VAT treatment of seller's/dealer's guarantee commitments in return for payment offered in connection with sales contracts or contracts for work and services.

Initially, the BMF had already postponed the originally planned application from 1 July 2021 to 1 January 2022. Now the transitional period has been extended by another year. The principles of the BMF letter of 11 May 2021 are only applicable to guarantee commitments concluded as of 1 January 2023.

However, it is not objected if the new principles are applied beforehand.

Consequences

The renewed extension of the implementation period follows a series of queries submitted to the BMF by several business associations.

The (merely) temporal shift, however, manifests an adherence to the direction taken, namely that guarantee commitments are fundamentally to be regarded as insurance benefits. Affected companies should therefore immediately start to clarify the impact on their business model and make the necessary adjustments to be tax compliant by 1 January 2023 at the latest.

It is already apparent that, due to the large number of industries, products and service relationships affected, individual clarification of how one is affected and planning of further action will probably be unavoidable for most companies with guarantee commitments. The adjustment of contracts or business models could be facilitated in part by the expected responsive letters from the BMF to the associations. In order to ensure sufficient planning certainty for the companies

concerned, it may nevertheless be advisable in some cases to obtain a binding ruling, in individual cases, it may even be indispensable. Sufficient time should be allowed for this.

The change in the tax treatment of payments for guarantee commitments is associated with a considerable effort for the companies concerned. If, on the basis of the amended administrative opinion, guarantee commitments for payment within the meaning of the Insurance Tax Act are offered, in particular invoice templates, accounting codes and, eventually, internal company IT processes need to be adjusted. Furthermore, it may be necessary to adjust the input tax key.

References

BMF letter dated 18 October 2021, III C 3 - S 7163/19/10001:001.

BMF letter dated 18 June 2021, BStBl. I p. 871.

BMF letter dated 11 May 2021, BStBl. I p. 781.

BFH ruling of 14 November 2018, XI R 16/17, BStBl. II 2021 p. 461.

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