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By PwC Deutschland | 29 October 2020

Ministry of Finance: comments on amended requirements for intra-community supplies

The German Federal Ministry of Finance has commented on the changed requirements for intra-community supplies resulting from the Act on Further Tax Incentives for Electromobility and on the Amendment of other Tax Regulations – Finance Act 2019: “FA 2019” - amending the VAT Act Application Ordinance accordingly.

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Intra-community supplies

Intra-community supplies are tax-free according to the provisions of Section 4 No. 1 (b) and Section 6a VAT Act. In the course of the FA 2019, the substantive legal requirements for the existence of an intra-community supply in Section 6a (1) sentence 1 VAT Act and for its tax exemption in Section 4 No. 1 (b) VATA were adjusted under EU law within the framework of the so-called "Quick Fixes" as of 1 January 2020.

Presumption rule

The previous regulations relating to the proof of the tax exemption in the Value Added Tax Implementation Regulation, have been supplemented by a **“presumption of arrival”** (Section 17a (1) VAT Implementation Regulation): see Section 6a.3a. VAT Application Ordinance. If the conditions of Section 17a VAT Implementation Regulation are fulfilled, there is a **rebuttable presumption** that the supplied goods were transported or dispatched to another EU territory. According to Section 17a (3) VAT Implementation Regulation, the tax office can **rebut a presumption** arising under subsection 1. The presumption is rebutted if the tax office establishes (e.g. on the basis of available documentation or evidence) that the goods have not been transported or dispatched to another EU territory, for example, so that no intra-community supply has occurred. If the tax office can prove that the documents contain incorrect information or are falsified, the entrepreneur is free to prove that the goods have entered the other EU terrirory by means of other documents within the meaning of Section 17a (2) VAT Implementation Regulation (Section 6a.3a para. 3 VAT Act Application Ordinance). Contrary to the rebuttable presumption of § 17a VAT Implementation Regulation, the proof of receipt is deemed to have been provided if the conditions of § 17b VAT Implementation Regulation are fulfilled.

European sales list

Section 4.1.2 VAT Application Ordinance states that the correct and full completion of an European Sales List is a prerequisite for tax exemption of intra-community supplies. Furthermore, the section includes information (with an example) on how to correct an incorrect European Sales List. According to Section 18a (10) VAT Act, an incorrect ECL must be corrected within one month. Important: If the entrepreneur does not correct the incorrect ECL for the reporting period in which the relevant supply was made, the tax exemption for the relevant supply will be rejected retroactively.

VAT ID Number

Section 6a.1, paragraph 19 VAT Act Application Ordinance provides comments on the requirement of the recipient of services to use a valid VAT identification number (VAT ID number) issued by another Member State (keyword: "positive action"). If, for example, a VAT ID number issued to the entrepreneur by the Member State in which the transport or dispatch begins has been used, there is no intra-community supply.

Date of application

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The principles of this MoF circular are to be applied for the first time to intra-community supplies which are effected after 31 December 2019.

Reference

Ministry of Finance circular of 9 October 2020 (III C 3 - S 7140/19/10002 :007); published on 13 October 2020.

Keywords

European Sales List, VAT, intra-community supply