

EDITORIAL

Dear Sir or Madam

In our newsletter series we have already pointed out the upcoming changes as of 1.1.2020 due to the EU VAT action plan.

In this last issue we would like to present the new regulations for chain transactions. To clarify the upcoming changes we have formulated and answered some useful questions.

You will need to assess how the coming changes will affect your company, train your employees and adapt your processes and IT systems. We will support you with our recommendations for action.

Please feel free to contact us, we will be happy to assist you with the implementation of these changes.

With best wishes
Your HLB Stückmann VAT team

New regulation

The previously undefined concept of chain transactions in European law has never been included in the VAT system directive as part of the VAT action plan.

In contrast to other European member states, the German VAT law already knows the concept of chain transactions. With the Annual Tax Act 2019, the changes to the VAT system directive were incorporated into national law. In terms of content, the new regulation is similar to the previous German definition in many respects.

A chain transaction is defined by law as the conclusion of supply transactions between several businesses for the same object, in which the object is supplied directly from the first business to the last customer.

Despite the existence of only one physical goods route, there are at least two supplies to be assessed for VAT purposes, depending on the length of the supply chain. Of these, only one supply can be assigned to the transport of goods (so-called "moving supply"). All other supplies within the framework of chain transactions are considered as immovable (so-called dormant supplies).

The issue of chain transactions in connection with the crossing of borders of the goods supplied or in intra-EU trade is becoming increasingly topical, as only the moving supply can claim exemption from tax as an intra-EU or export supply. All other deliveries are local and regularly subject to VAT in the country of departure or destination. The classification of a supply as "moving" or "dormant" is therefore of decisive importance for the further VAT treatment.

The new regulation now clarifies, in particular in the case of the transport of goods by an intermediary, which supply is to be regarded as moving or dormant.

Transport of goods by the first business in the chain

As in the past, the transport or dispatch of the supply of the first business (moving supply) is to be assigned to it in the chain, if it is precisely this business that transports or dispatches the object of the supply. The subsequent supplies in the supply chain shall be deemed dormant. The place of supply of the moving supply is the member state of departure, the place of dormant supplies is in the country of destination.

Transport of goods by the last business in the chain

If the object of the supply is transported or dispatched by the last customer, the transport or dispatch is to be assigned to them. The previous supplies in the supply chain are accordingly considered dormant. The place of supply of the moving supply and the place of the dormant supplies shall be in the country of departure.

Transport of goods by an intermediary

The term "intermediary" is used to describe the business in the chain that is both customer and supplier. In principle, the supply to the intermediary is regarded as a moving delivery (so-called rebuttable presumption). To rebut this presumption, the intermediary must prove that he has transported or dispatched the item in his capacity as a supplier.

How this evidence is to be provided was not, however, previously regulated in the German VAT Act, so that it was assumed that there was a de facto right of option. This no longer applies as of 1.1.2020. If the supply of the intermediary is to be the moving supply and not

the supply to him, the intermediary must use his VAT identification number from the member state of departure of the goods vis-à-vis the supplying business.

The place of the moving supply will remain in the member state of departure. If dormant supplies precede the moving supply, the place of supply will also be in the member state of departure. For dormant supplies after the moving supply, the place of supply is in the member state of destination.

Regulation relating to third countries

In contrast to the VAT system directive, which regulates chain transactions only for intra-EU matters, the national annual tax law also provides for rules for third country cases. In the case of supplies by the first business and the last customer, there are no differences to the intra-EU case with regard to the allocation of the goods movement.

In the case of transport by an intermediary, even in the case of **supply to a third country**, the basic legal presumption is deemed to be rebutted by the use of a VAT identification number or tax number issued by the member state in which transport or dispatch commences.

In the case of **imports** into the EU, the declaration for free circulation for customs and tax purposes shall be taken into account. Where this is done in the name of the intermediary or under indirect representation on his behalf, the supply made by the intermediary shall be considered to be the moving supply.

Questions and answers

How is the documentation of the intermediary carried out if the legal presumption is rebutted?

The term "use of a VAT identification number" presupposes positive action by the intermediary. The use of the VAT identification number issued by the country of departure of the goods must be made by the intermediary at the latest when the supply is effected so it is recommended that the VAT identification number used be included in the relevant order document. It is also considered sufficient if the intermediary documents that he has declared to his supplier that he intends to use the VAT identification number issued to him by the country of departure of the goods for all future deliveries. A VAT identification number merely printed in a document on a form is not considered to be sufficient.

Can the intermediary change the VAT identification number after the supply has been effected?

Subsequent changes in the use of the VAT identification number have no effect, i.e. the rebuttal of the legal presumption and thus the appearance of the intermediary as a supplier cannot be revoked at the latest at the time of execution of the supply.

Is the simplification rule for intra-EU triangular trade still applicable?

Yes, there are no changes with regard to intra-EU triangular trade.

Recommendations for action

1. Review of all chain transactions

We recommend that you check whether there are any chain transactions in your business. In particular in the case of goods transport via an intermediary, it should be clarified what the effects the changed legal situation as of 1.1.2020 will bring about. In order to provide clarity, you should contact the intermediary. If you yourself transport goods as an intermediary, we also recommend that you seek clarifying agreements with your suppliers regarding the VAT identification number used.

2. Optimisation of supply chains

Due to the clear definition of the allocation of the moving supply in the case of transport by an intermediary, new possibilities for the VAT optimisation of existing supply chains may arise. For this reason, we recommend that you check this, especially for companies with extensive chain transaction structures.

NOTICE

On our own behalf:

For up-to-date information on VAT please visit:
<https://www.stueckmann.de/sales-tax-consulting>

You can also contact us directly via our contact form there.

CONTACT & QUERIES

HLB Stückmann | Elsa-Brändström-Straße 7 | 33602 Bielefeld | +49 521 29930

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PUBLISHER: HLB Dr. Stückmann und Partner mbB
Auditing | tax consulting firm

EDITOR: Karin Korte, Dipl.-Kff., Auditor, tax consultant
korte@stueckmann.de | +49 521 2993358

Please notify any changes of address in writing to Noreen Mehler – mehler@stueckmann.de

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