

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 issue we would like to present the new regulations for consignment stock. 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

Until now, there has been no special legal regulation in Germany for the VAT treatment of stocks held by businesses not established in Germany. The general regulations therefore applied.

Other European member states had already been providing for simplification regulations for warehouses, in particular consignment stocks or call-off stocks, for some time.

However, the different handling of storage and withdrawal of goods from consignment stocks within the European Union has led to questions of differentiation and considerable practical implementation problems.

For this reason, the VAT action plan has created a uniform simplified handling for consignment stocks. This regulation was implemented in Germany in the Annual Tax Act 2019, which will apply as of 1.1.2020.

The new regulation only applies to goods movements within the European Union. Provided that the prerequisites are met, the withdrawal of goods from the warehouse at the supplying business is treated as an intra-EU supply. The acquiring party must tax an intra-EU acquisition. This means that a VAT registration of the supplying business is no longer necessary.

Requirements of the consignment stock regulation (Section 6b of the German Value Added Tax Act (UStG))

The new regulation only applies to intra-EU cases and thus to the transport of goods from another member state to a German warehouse.

The following requirements must also be met:

- The supplying business in the member state of departure transports or dispatches the goods.
- There is an agreement between the supplying business and the purchaser concerning the acquisition of the goods and the whereabouts of the goods in the member state of destination.
- The purchaser (full name and address) must be known at the time the transport starts.
- The supplying business must not have its registered office, management or a permanent establishment or its domicile or habitual residence in the member state of destination.
- The VAT identification number of the member state of destination must be used by the customer at the beginning of the transport or dispatch.
- Fulfilment of the documentary obligations by supplying businesses
- Fulfilment of documentary obligations by customers
- The supplying business operator shall fulfil the obligation to submit the EU Sales List.

Furthermore, delivery to the customer must be made within a period of twelve months.

Questions and answers

Is the new regulation optional?

No, If the prerequisites are met, the consignment stock regulation applies. However, it is possible to specifically avoid its use, for example, by extending the storage period or adjusting the terms of the contract.

Does the new regulation also affect stocks that are not designated as consignment stock?

Yes, the description of a stock is not a prerequisite for the scheme. This means that any stock of goods is affected, provided the prerequisites are met.

What happens if the goods are stored longer than twelve months?

If delivery to the customer does not take place within twelve months of the end of the transport or dispatch of the goods, the

transport or dispatch shall be deemed to be an intra-EU transfer equivalent to an intra-EU supply. The delivery to the customer is then subject to German VAT. The supplying business enterprise must register for VAT purposes.

If it is foreseeable that a delivery will not take place within twelve months, registration can be avoided by returning the goods to the member state of departure and documenting this separately by the business.

What should be the procedure if, as an exception, sales are made to other customers?

If the goods are sold to another customer, the prerequisites of the consignment stock regulation are not considered to be fulfilled.

The only exception to this is the legally regulated case of a change of purchaser within twelve months. The requirements are:

- The VAT identification number of the new purchaser's member state of destination must be used vis-à-vis the supplying business.
- The supplying business must know the full name and address of the new acquirer.
- The change of purchaser must be documented separately by the supplying business.

What is the legal status in case of destruction, loss or theft?

In such cases, the prerequisites for the application of the consignment stock regulation shall be deemed no longer to be fulfilled from the date of the determination. It remains to be seen whether a no-claims rule will be introduced subsequently.

Does the regulation also apply to deliveries of goods from third countries?

No, the consignment stock regulation only applies to deliveries of goods from other European member states. The previous procedure applies to deliveries of goods from third countries.

How is the supply via the consignment stock to be declared in the EU Sales List?

The supply to the customer at the time of withdrawal shall be considered as intra-EU supply. This must be declared accordingly in the EC Sales List.

Recommendations for action for German businesses

1. Examination of existing consignment stocks or call-off stocks in Germany

Domestic businesses

The application of the new regulation is not optional. If the prerequisites are already met, the regulation will apply as of 1.1.2020. If this is not established in time, your supplier will issue invoices with incorrect input tax information. In this case you are not entitled to deduct input tax. We therefore strongly recommend that you check existing stocks with regard to the new regulation and contact your suppliers.

Foreign businesses

Foreign companies should also check whether a VAT registration in Germany is still required. If the prerequisites for the con-

signment stock regulation have already been met as of 1.1.2020, invoicing must be adapted to the customer.

2. Checking of the company's own stocks in other European countries

All other member states are also obliged to implement the EU directive into domestic law by 1 January 2020. If the prerequisites are met, deregistration abroad may be possible. This reduces the compliance obligations abroad. However, we recommend contacting a local tax consultant in advance and having the requirements reviewed by them. We also recommend that you contact your customer.

3. Adaptation of existing agreements and processes

We recommend that you carefully check your requirements or the requirements of your supplier to determine whether you should make use of the consignment stock regulation. The existing agreements and processes should then be reviewed and adjusted accordingly.

Should you have any further questions, simply contact us. We would also be happy to support you in adapting your internal processes to the changes.

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.

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