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German Tax and Legal News

MOF abolishes VAT simplification rule for supplies in border areas

Abolition of the rule will increase the administrative burden for suppliers and customers.

Germany's Federal Minister of Finance (MOF) issued a letter on 23 April 2018 that will abolish a simplification rule (known as the "Pommes Erlass" (or "French fries") rule) that allows certain supplies of goods to other EU member states to be considered an intra-community transfer of a supplier's own goods for VAT purposes. The rule has been used to reduce the compliance burden on both the supplier and the customer in these cases. According to the MOF letter, the simplification regime will be abolished as from 1 January 2019, but participants can continue to use the rule until the end of 2018.

Background

Under the normal VAT rules, a supply of goods by an entrepreneur to an entrepreneur customer in another EU member state has the following consequences:

- The supplying entrepreneur generally makes a tax-free intra-Community supply; and
- The recipient has an intra-community acquisition in the country of destination and is responsible for the VAT due on the supply.

However, section 1a.2 (14) of the German VAT Act Application Degree allows an entrepreneur to treat a supply of goods to the customer as an intra-community transfer of its own goods if certain conditions are fulfilled. An intra-community transfer between different parts of a single enterprise is deemed to be a supply in the member state of dispatch and an acquisition in the member state of arrival, but the entrepreneur in this case is both the supplier and the purchaser, with the result that the delivery to the recipient is considered a domestic supply of goods.

The Pommes Erlass rule arose out of a situation where a Dutch wholesaler in located in Venlo near the German border supplied many small customers (e.g. snack bars, restaurants and factory canteens) with French fries. The German rule (which is not based on any provision in the EU VAT directive) reduces the compliance burden because the customer need not obtain a VAT ID for the intra-community acquisition and the supplier only has to account for one transaction relating to itself, instead of supplies to a large number of customers.

The Pommes Erlass rule applies exclusively to supplies to wholesalers located in the border region, and based on updated guidance issued by the MOF in 2012, it applies only if the supplier transports the goods itself (i.e. no intermediaries can be used and the recipient cannot arrange for shipment of the goods or pick up the goods itself). In addition, the tax authorities in both member states must approve the treatment, which means the approval must be obtained before the supply is made. If the taxpayer fails to obtain the relevant approvals, the transaction will be treated as a normal intra-community supply.

Comments

The MOF has concerns about abuse of the regime, as well as tax shortfalls, so it has decided to abolish the Pommes Erlass rule.

The Pommes Erlass rule no longer will be available as from 1 January 2019, which means that foreign entrepreneurs generally will have to settle accounts for a tax-free intra-community supply and comply with other VAT obligations, unless the entrepreneur qualifies as a "small entrepreneur" within the meaning of Germany's VAT act. In the latter case, the entrepreneur will be treated as private end consumers, with the VAT burden resting on the supplier. Small customers located in areas near the German border should begin to take steps to prepare for the changes in the rule and the likely enhanced administrative burdens.

Reference

Letter of the FMoF dated on [23 April 2018](#)

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