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URL: http://mobile.deloitte-tax-news.de/german-tax-legal-news/new-guidance-published-on-vat-treatment-of-supplies-via-consignment-stock.html

30.03.2016

German Tax and Legal News

New guidance published on VAT treatment of supplies via consignment stock

OFD Frankfurt updates guidance following tax court decisions

The Regional Tax Administration Authority (OFD) of Frankfurt updated its guidance on the VAT treatment of supplies via consignment stock on December 15, 2015 to take into account several decisions of the lower tax courts (FG Niedersachsen, dated June 18, 2015; FG Hessen, dated August 25, 2015, as well as FG Duesseldorf dated November 6, 2015).

According to interpretation of German VAT law by the tax administration, an EU cross-border supply via consignment (serving several clients) or call-off stock (serving one client) is considered an intra-community transfer of own goods and a subsequent domestic supply to the customer once the goods are withdrawn from the stock, provided title is transferred at the time the goods are removed from the stock.

Recently, this principle seems to be diluted by several lower tax court decisions, as well as a case pending before the Federal Tax Court (BFH). The courts have introduced criteria that would consider such supplies in specific cases as direct intra-community supplies to the customer.

In the pending case, the BFH must decide whether to affirm the decision of FG Hessen that a supply via a call-off stock where the final customer was identified at the beginning of the transfer from the EU member state of dispatch and where a binding order exists at that date should be considered a direct intra-community supply to the customer in Germany rather than an intra-community transfer followed by a German domestic supply.

The guidance issued by the OFD of Frankfurt confirms that the supply of consignment stock (including call-off stock) generally should be considered an internal transfer of own goods if title is transferred to the customer when the goods are withdrawn. If the goods are transferred from another EU member state to a German consignment stock, the transfer will trigger a deemed intra-community acquisition of the goods by the seller in Germany, followed by a domestic taxable supply. As a result, nonresident suppliers still must register for VAT purposes in Germany.

In light of the pending case at the BFH, the OFD clarified that all proceedings where taxpayers refer to this pending case will be suspended until the BFH issues its decision.

Comments
Nonresident taxpayers that have registered or intend to register for VAT in Germany due to supplies via call-off stock should monitor developments and keep proceedings open by referring to the case before the BFH.

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