

New rule in Germany for Reverse-charge on TCS

As of 1 January 2021, Germany has introduced the reverse charge mechanism for supplies of B2B telecommunication services (TCS). The rule applies to recipients who are resellers of TCS, independent of where they operate their business.

What kind of services are covered by the new rule?

TCS covered by the new provisions are services in the sense of Article 24 para. 2 of the VAT Directive and Article 6a of the VAT Implementing Regulation (i.e. services relating to the transmission, emission or reception of signals, words, images and sounds or information of any nature by wire, radio, optical or other electromagnetic systems, including the related transfer or assignment of the right to use capacity for such transmission, emission or reception, with the inclusion of the provision of access to global information networks).

The legislative objective of the new rule was to combat VAT fraud, especially observed in the Voice over IP sector. However, the scope of the new provision has not been limited to these kinds of services and covers TCS in general.

Who is considered a reseller of TCS?

Under the new rule, the person liable for the VAT due is the recipient of the service if he is considered a reseller of TCS.

A reseller of TCS is a taxable person whose core business activity is the resale of TCS and whose own consumption thereof is of minor importance (sec. 13b para. 5 sentence 6 of the German VAT Act). The requirement of *core business activity* is met if the taxable person resells more than half of the quantity he has purchased. The reseller's *own consumption is of minor importance* if he has not used more than 5 % of the purchased quantity for his own purposes (entrepreneurial and non-entrepreneurial) during the previous calendar year.

How can a reseller of TCS prove his status?

It is assumed that a taxable person is a reseller of TCS if he disposes of a valid reseller certificate. The tax authorities can issue this certificate upon application or ex officio. By circular of 23 December 2020, the new official form USt 1 TQ was introduced for resellers of TCS. The validity of the certificate is limited to a maximum of three years. It can only be cancelled or revoked for the future.

Does it make a difference whether the reseller certificate has been presented?

No. A taxable person meeting the requirements for a reseller of TCS is always liable under the reverse-charge-mechanism. If a reseller certificate is issued by the tax authorities (upon application or ex officio), the reseller is liable to pay and account for the VAT due, even if he does not present the certificate to the supplier.

Also, if a taxable person presents a valid reseller certificate, he is liable under the reverse-charge-mechanism even if, at the time of supply, he actually does not fulfill the conditions for a reseller of TCS.

What to do when in doubt?

In that case, the law provides for the following: if both parties are in doubt and agree on applying the reverse-charge-mechanism even though the objective conditions are not met, this will be accepted if the recipient correctly pays and accounts for the VAT due.

Is there a transition period?

Yes. Basically, the new rule applies to all TCS supplied after 31 December 2020. For services supplied after 31 December 2020 and before 1 April 2021, the tax authorities will not object if the parties agree on not applying the reverse-charge-mechanism provided that the supplier correctly pays and accounts for the VAT due.

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