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German Tax and Legal News

BMF issues guidance on triangular leasing relationships

Determination of the parties of a supply of assets for leasing purposes depends on the contractual agreements

Germany's Federal Ministry of Finance (BMF) issued a circular on 31 August 2015 that provides guidance on the allocation of a VAT supply in a triangular relationship between a supplier, lessor and lessee. The guidance applies to all open cases.

A common procedure is for a person to acquire investment goods by ordering the goods in its own name from a supplier followed by concluding a leasing agreement with a lessor. By entering into the sales contract with the supplier, the lessor assumes all obligations and rights under the sales contract.

The BMF circular clarifies that, in such cases, the supplier and the recipient of the supply of the leased goods should be determined from a VAT perspective based on the contractual agreements in existence at the time the goods are delivered to the future lessee. While any change in the underlying contractual relationship (including the parties involved) after the goods are delivered should be disregarded for VAT purposes, all contractual changes before delivery must be taken into account

The guidance elaborates, in particular, on the following situations:

- Where the lessor enters into the contract before the supplier delivers the goods to the lessee, the lessor will be considered the recipient of the supplied goods. Depending on the allocation for income tax purposes, the subsequent lease between the lessor and the lessee would be considered a leasing service or a supply of the goods.
- Where the lessor enters into the contract after the supplier delivers the goods to the lessee, the supply will be between the supplier and the lessee. In this case, the lessor merely is granting a credit to the lessee and no taxable transaction would take place between the supplier and the lessor.

Companies should be aware of the different VAT treatment as outlined in the BMF guidance when entering into new leasing contracts.

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