

Federal Ministry of Finance updates VAT treatment of supplies via consignment stock

Principles of BFH decisions on cross-border supplies of goods via consignment stock implemented into VAT act decree

Germany's Federal Ministry of Finance issued a guidance letter on 11 October 2017 that amends the VAT treatment of consignment stock (or call-off stock) provided for in the decree on the application of the VAT act, to align with the decisions of the Federal Tax Court (BFH). The amended rules will be applicable to all cases in which the statute of limitations has not expired as of the date the guidance letter was issued; however, taxpayers may choose to apply the previous rules until 31 December 2017.

Background

In a decision dated 20 October 2016 (see [Deloitte Tax-News](#)), the BFH ruled on the VAT treatment of supplies made via consignment stock, disagreeing with the German tax authorities' position. Under the former view of the tax authorities, the supply of goods from other EU member states via consignment stock located in Germany was deemed to be an intra-community supply of own goods, followed by a domestic supply by the supplier to the customer, which generally resulted in VAT reporting obligations for the supplier in Germany. However, the BFH concluded that a supply via consignment stock should be considered a direct intra-community supply if the final customer is identified at the time the transfer begins from the EU member state of dispatch and a binding purchase order for the supply exists on that date. The court concluded that it was irrelevant that the right to dispose of the goods was transferred in Germany. The BFH later held in a decision dated 16 November 2016 that the customer cannot be identified if there is no binding purchase contract between the supplier and the customer at the time of the original dispatch.

The Federal Ministry of Finance has now expressly endorsed the above BFH decisions in its guidance letter.

Guidance letter

Under the amended section 1a.2, paragraph 6 of the VAT act application decree, if a binding purchase order or payment is made by a customer before the goods are transported, the transfer of the goods by the supplier is deemed to be a "direct supply" of the goods to the customer, and not an intra-community transfer of own goods followed by a domestic supply to the customer. This rule applies both to goods that are brought into a domestic warehouse of the supplier and to goods that are temporarily stored in a consignment warehouse at the initiative of the customer.

The guidance letter clarifies that a customer is considered to be "fixed" (i.e. identified) if it has made a binding purchase order or already has paid for the goods at the time the shipment begins. In cases involving a purchase order, new wording added to section 3.12, paragraph 3 of the decree requires that the parties conclude a binding obligation for the purchase of the goods; a probable or likely customer would not be considered to be sufficiently identified.

The letter also confirms that if, on the other hand, the customer is not identified at the beginning of the transport or dispatch of the goods, the temporary storage of the goods in a German consignment warehouse constitutes an intra-community transfer by the supplier under section 1a, paragraph 2 of the VAT act. In such a case, the supply of the goods to the customer is deemed to take place only after the goods leave the warehouse and, consequently, the supply is taxable in Germany as a domestic supply.

Notwithstanding the temporary storage of the goods in a consignment warehouse, the date of a direct supply remains the date the transport or dispatch of the goods begins, and not the date when the goods are removed from the warehouse. As a result, a supplier would be required to report any direct supplies in the reporting period in which the transport of the goods to the warehouse began, and not when the goods are removed from the warehouse.

Comments

The implementation of the principles of the BFH's decisions into the application decree is welcome, even though the guidance letter does not answer all outstanding questions. In individual cases, it may be unclear as to when a binding order will be considered to exist, and the period of time that is still sufficiently "at short notice" to ensure that interim storage is not relevant for the acceptance of a direct supply.

Companies that deliver goods to their customers via domestic consignment stock or that choose the "shipment on hold" method should welcome the change in the tax authorities' position, since it should mean that the obligation to register for VAT tax purposes in Germany no longer will apply in the future, as long as transfers to their customers are deemed to be direct supplies.

It should be noted that the draft proposal released by the European Commission on 4 October 2017 on the creation of a definitive EU VAT system would simplify the VAT rules for certain companies moving goods via consignment stock arrangements. In particular, one of the short-term "fixes" provides that simplifications would be made to consignment stock supplies made by "certified taxable persons" (a new concept that would be introduced), whereby separate VAT registration would not be required in the EU member state where the consignment stock is located. If the proposal is implemented, the new rules would apply to supplies made as from 1 January 2019.

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