KPMG

VAT Newsletter

Hot topics and issues in indirect taxation

January / February 2022

NEWS FROM THE CJEU

Point in time of the right to deduct input VAT

CJEU, ruling of 10 February 2022 – case C-9/20 – Grundstücksgemeinschaft Kollaustraße 136

The Lower Tax Court of Hamburg submitted a question to the Court of Justice of the European Union (CJEU) for a preliminary ruling regarding the interpretation of the VAT Directive, which has now been answered.

According to Art. 167 of the VAT Directive the entitlement to input VAT of the recipient of the supply only arises when the entitlement to the deductible tax arises. According to Art. 66 (b) of the VAT Directive, Member States can stipulate that the entitlement to VAT vis-à-vis certain taxable persons arises only upon receipt of the fee (cash accounting). Germany has availed of this option in § 13 (1) no. 1 (b) German VAT Law (UStG) in conjunction with § 20 UStG.

The Lower Tax Court would like to find out from the CJEU whether Art. 167 of the VAT Directive precludes § 15 (1) sent. 1 no. 1 UStG, according to which the right to deduct input VAT already arises at the point in time that the input supply is executed if, as a result of the cash accounting, the VAT entitlement vis-à-vis the suppliers only arises upon payment by the recipient of the supply.

This is relevant for the case under dispute as in this case the payment for the input supply was deferred and that statute of limitations for the VAT assessment relating to the taxation period in which the input supply was carried out, in which the invoice was also presented, had already passed.

Ruling

In its ruling of 10 February 2022, the CJEU interprets Art. 167 of the VAT Directive such that it stands in opposition to a national provision in which the right to deduct input VAT already arises at the point in time that the transaction is carried out if the VAT entitlement vis-à-vis the supplier of the goods or services, in line with a national deviation according to Art. 66 (1) (b) of the Directive 2006/112, only arises upon payment of the fee and this has not yet been paid.

Content

Please note:
Companies affected may invoke the Union law, which is more favorable to them. It should be assumed that the German VAT Law will be amended in the future to come in line with the CJEU legislation. To this extent, amendments may also be required for invoicing provisions under which, based on Art. 226 no. 7a UStG, the invoice, in the case of cash accounting, must contain the information "taxation following receipt of payment". It must then be procedurally ensured that the input tax deduction is asserted in the correct period.

Reduced VAT rate for supplies of firewood

CJEU, ruling of 3 February 2022 case C-515/20 – B

This CJEU ruling concerns a submission from the German Federal Tax Court (BFH) in relation to the question of whether the reduced VAT rate can be applied to supplies of wood chips in Germany.

The case
In 2015, B AG dealt in wood chips and carried out the maintenance of wood chip heating installations.

It supplied woodchips to municipality A and parish B. In this period of time it also supplied, as part of a contract to "operate a wood chip heating installation including maintenance and cleaning" with parish C, wood chips for burning. Whether these supplies are subject to the standard or reduced VAT rate is disputed.

The Lower Tax Court ruled that the supplies of wood chips to municipality A and parish B must be subject to the reduced VAT rate but that the package of services to parish C must be taxed at the standard VAT rate, as it constitutes a single overall supply. Both B AG and the tax authorities appealed this ruling to the BFH. The BFH submitted the case to the CJEU for a preliminary ruling.

Ruling
According to Art. 122 of the VAT Directive, a Member States may apply a reduced VAT rate to supplies of firewood. Art. 122 of the VAT Directive must be interpreted such that the term "firewood" within the meaning of this article means all types of wood that, on the basis of its objective characteristics, is intended solely for burning.

In addition, Art. 122 of the VAT Directive must be interpreted to mean that a Member State, making use of this provision to establish a reduced VAT rate for supplies of firewood, can limit its scope of application on the basis of the Combined Nomenclature to certain categories of supplies of firewood (in Germany § 12 (2) no. 1 UStG in conjunction with no. 48 of Annex 2 to the UStG) as long as the principle of tax neutrality is observed.

The principle of tax neutrality does not allow the same type of items or services, which are competing items or services, to be treated differently in relation to VAT (see ruling of 9 September 2021 – case C-406/20 – Phantasialand). Based on settled case law, to determine the question of whether items or services are of the same type, primarily the view of the average consumer must be taken into consideration. Items or services are alike if they have similar properties and, based on the criterion of comparability, are used by the consumer to serve the same needs, and if the existing differences would not significantly influence the decision of the average consumer when choosing among the items or services.

Thus, whether the items or services in question are interchangeable from the point of view of the average consumer must be examined. In that case, the use of different VAT rates could influence the consumer's choice, which would indicate a violation of the principle of tax neutrality.

It is therefore incumbent on the BFH to carry out a specific review to determine if wood chips and other forms of firewood are interchangeable from the point of view of the average consumer.

Please note:
Applying the correct VAT rate often causes difficulties in practice. The rulingt shows that the often complex examination based on Annex 2 of the UStG and the Combined Nomenclature cannot be sufficient, but that the principle of tax neutrality for similar objects must also be observed. The point of view of the average consumer is decisive for this assessment. In the view of the CJEU (see ruling of 9 September 2021 – case C-406/20 – Phantasialand), a tax court is generally capable of determining the view of the average consumer on the basis of its own knowledge. However, Union law does not forbid a national court that is having particular difficulties with this assessment from commissioning an expert opinion in accordance with national law.

Right to deduct input VAT

CJEU, ruling of 13 January 2022 – case C-156/20 – Zipvit

The CJEU has issued its opinion on the right to deduct input VAT in accordance with Art. 168a of the VAT Directive. According to this, a trader is entitled, under the general requirements, to deduct as input VAT the "owed or remitted VAT" for services that were or will be carried out for them by another trader.

The case

Zipvit, a company located in the United Kingdom, operates a mail order business supplying vitamins and minerals. From 2006 to 2010, Royal Mail provided mail services on the basis of individually negotiated contracts. Royal Mail issued invoices without VAT for the services, and showed the services as being VAT exempt. However, on 23 April 2009 – case C-357/07 – TNT Post UK – the CJEU ruled that the VAT exemption in line with Art. 132 (1) (a) of the VAT Directive does not apply to supplies of services that are carried out by public mail organizations and conditions of which were negotiated individually. As Zipvit held the view that its payments to Royal Mail were thus to be retrospectively understood as including VAT, it unsuccessfully submitted applications to the tax and customs authorities for the deduction of input VAT for the supplies of services concerned in the amount of approx. EUR 500,000 plus interest.

In particular due to the associated high administrative burden and costs, Royal Mail did not attempt to ask Zipvit and other customers in the same situation to subsequently pay the VAT that was mistakenly not paid. Furthermore, the tax and customs authorities did not issue any adjustment notices in this respect due to the legitimate expectation that it considered it had created for Royal Mail. As a result of the expiry of the limitation periods, this type of action would no longer have been possible for either the tax and customs authorities or for Royal Mail.

Zipvit took the case all the way the highest court in the United Kingdom, which called on the CJEU for a preliminary ruling.

Ruling

The CJEU interprets Art. 168a of the VAT Directive to mean that the VAT cannot be considered to be owed or remitted within the meaning of this provision and thus cannot be deducted by the trader. This is the case if, first, the parties to the contract mistakenly considered the supplies concerned, due to the incorrect interpretation of Union law by the national authorities, to be exempt from VAT, consequently no VAT was shown in the invoices and, based on the contract, if this VAT were owed, the costs would have had to have been borne by the recipient of the supply. Secondly, this is the case if no timely steps were taken to belatedly collect the unpaid VAT and therefore the expiration of the limitation periods would obstruct every action of the supplier of the services and of the tax and customs authorities. This means that Zipvit has no right to deduct input VAT.

Please note:

The submitting court had an additional question: to find out if the recipient of supplies that are mistakenly exempted from VAT, has a right to deduct the input VAT owed or paid, if that recipient does not have any invoices showing VAT. The CJEU does not need to go into that any further.

VAT grouping in Germany

CJEU, opinions of 13 January 2022 – case C-141/20 – Tax Office Kiel; opinions of 27 January 2022 – case C-269/20 – Tax Office T

In two references for a preliminary ruling, the BFH put the question to the CJEU as to whether the VAT provisions on VAT groupings are compatible with Union law (BFH, resolution of 11 December 2019, XI R 16/18; CJEU ref.: C-141/20 – Tax Office Kiel; VAT Newsletter April 2020; and BFH, resolution of 7 May 2020, V R 40/19; CJEU ref.: C-269/20 – Tax Office T; VAT Newsletter July 2020). The opinions of the Advocate General, Laila Medina are now available:

Case C-141/20 – Tax Office Kiel

In this case two parties hold shares in a GmbH, A holding 51 per cent and C e. V. holding 49 per cent of the shares in the company. A is a public-law body. C e. V. is a registered association. The sole manager of the GmbH in 2005, the year under dispute, was E who, at the same time as being the sole manager of A, was also an executive board member of C e. V.

On the basis of the GmbH's original articles of association, A did not, however, have a majority of voting rights and was therefore not in a position to impose resolutions on the GmbH. As a result, the tax authorities denied the existence of a VAT group due to the GmbH's lack of financial integration into the business of A. They held that transactions in

the year under dispute carried out by the GmbH vis-à-vis third parties, and supplies to A, must therefore be recorded at the GmbH as a trader. It was entitled to an input VAT deduction of EUR 10,412. Contrary to this, the tax court affirmed the existence of a VAT group and therefore set the amount of VAT at EUR 0.

Case C-269/20 – Tax Office T
In this case, a foundation governed by public law is the funding body for a university that also maintains a university school of medicine. The foundation carries out economic activities; as an organization governed by public law, it also performs official duties for which it is not considered to be a trader. The foundation is the controlling enterprise of U-GmbH. U-GmbH provided, inter alia, cleaning services for the foundation. These included the entire building complex of the university school of medicine, including the areas related to exercising official duties.

The tax authorities considered the cleaning services provided by U-GmbH for the area used for official duties as being provided within the existing VAT group between the plaintiff and U-GmbH. The cleaning services were a non-business activity and triggered a benefit-in-kind at the foundation. The objection raised against this decision was not successful. In contrast, the tax court granted the action. The requirements for the existence of a benefit-in-kind were not deemed to exist. The tax office opposed this in its appeal.

Opinions
In accordance with the CJEU's request, the Advocate General essentially dealt with just two of the questions submitted in the BFH reference. She proposes that the CJEU answers the questions as follows:

Union law allows closely related parties belonging to a VAT group to be viewed as a single taxpayer for the purposes of fulfilling VAT obligations.

However, Union law precludes a Member State regulation determining that only the controlling member of a group – which commands the majority of voting rights and a majority shareholding in the controlling company in the group of taxable person – can be the representative of the VAT group and the party liable to VAT for this group, to the exclusion of the other members of the group.

The Advocate General also touches upon the concept of a VAT group in accordance with Union law. In the Advocate General's view, taxable persons that belong to a VAT group continue to be liable for taxes as individual persons. The VAT obligations should exist independently for each individual person (that is, independently of the VAT group). The VAT group serves solely to simplify the treatment of VAT. Specifically, the tax authorities should receive a single VAT return in which the individual returns of the taxable persons belonging to the group are combined.

In the Advocate General's view, it would be correct if, in case C-269/20, the cleaning company, U-GmbH had shown the VAT in respect of both services that were provided for the taxable person and also the for the non-taxable activities of the foundation. The funding body with public authority cannot actually deduct any VAT for services carried out for the purposes of its non-taxable activities.

Please note:
It will be interesting to see the CJEU's ruling. Additionally, the CJEU shall take a position on whether, in the case of a VAT group, a company can invoke the Union law, which is more favorable for the company. To the extent it is possible to invoke Union law, the outcome of the CJEU proceedings is of great importance for all existing VAT groups– even if it has to be examined in individual cases which effects will specifically result from the case law. In particular it must already be examined if final determinations should be kept open, procedurally, in order to preserve clients' legal positions.

Input VAT deduction when purchasing advertising services

CJEU, ruling of 25 November 2021 – case C-334/20 – Amper Metal

This CJEU ruling concerns the refusal of an input VAT deduction relating to the purchase of advertising services which the tax authorities deemed to be overpriced and pointless.

The case
Amper Metal is a Hungarian company active in the construction of electricity plants. It concluded a contract with a company regarding the provision of advertising services. This contract concerned affixing advertising labels showing the Amper Metal logo to vehicles participating in a motor race in Hungary. The company issued invoices for a total amount of approx. EUR 133,000 plus 27 per cent VAT (approx. EUR 36,000) for these services.

The tax authorities refused the input VAT deduction. The tax

authorities assumed that the costs arising for the advertising services in question did not constitute expenses in connection with an activity liable to VAT. The questionable advertising services were too expensive and in reality useless for Amper Metal, especially with regard to the types of customers the company has, primarily comprising paper factories, hot rolling mills and other industrial plants: stickers on race cars would not be capable of influencing these customers' commercial. The court hearing the action submitted the case to the CJEU for a preliminary ruling.

Ruling
The CJEU interprets Art. 168 (a) of the VAT Directive to mean that a taxpayer can deduct the input VAT for advertising services to the extent that such a supply of services constitutes a transaction liable to VAT, and has a general use in a direct and immediate link to one or more output transactions liable to VAT or to the overall economic activity of the taxpayer.

At the same time, the fact that the price invoiced for such services is higher than the reference value set out by the national tax authorities or the fact that these services did not lead to an increase in the taxpayer's revenue should not be taken into account.

The referring court will also be required to assess, on the basis of the objective contents of the advertising services at issue, whether the services in question constitute entertainment expenditure that is not strictly business expenditure in line with Art. 176 (1) of the VAT Directive. In that case, an input VAT deduction would have to be denied.

NEWS FROM THE BFH

Distinction between damages and remuneration

BFH, resolution of 26 August 2021, V R 13/19

The BFH has ruled that the fee to be paid following the cancellation of an architectural contract only constitutes remuneration within the meaning of § 10 (1) UStG to the extent that it arises on supplies that have already been carried out.

The case
A landscaping architect took on the design of the outdoor area of a school for a district. Before completion of the supply the district informed the architect that the project could no longer be realized for financial reasons. After a closing invoice was issued, a notice of termination was issued for the architectural contract. Subsequently a meeting was held in which the closing invoice was discussed. The parties to the contract agreed that the architect would receive another approximately EUR 22,000 for planning services actually rendered and the district would, in addition, pay a cancellation fee in the amount of approx. EUR 52,000 without VAT. This was intended to satisfy all claims arising from the architectural contract.

The architect treated the fee for services already rendered as an assessable and taxable transaction at the standard VAT rate of 19 per cent. Conversely, he considered the cancellation fee as not being assessable. The tax authorities assumed that the supply designated a cancellation fee was a consideration for the architect foregoing the fulfillment of the contract. They treated the amount of approx. EUR 52,000 as a consideration for which VAT should be calculated. The lower tax court dismissed the case.

Resolution
The appeal to the BFH was successful and the case was referred back to the lower tax court.

According to the BFH ruling of 27 August 1970 (Federal Tax Gazette (BStBl) II 1971 p. 6), the fee that a trader receives after the cancellation or dissolution of a contract for labor and materials, without having supplied the customer with the materials provisioned or the partially completed work, is not remuneration. Furthermore, in its ruling of 22 November 2007 (BGHZ 174, 267), the German Federal Court of Justice assumes that the fee to be paid in accordance with § 649 sent. 2 German Civil Code (old version) or § 8 no. 1 (2) of the German Construction Tendering and Contract Regulations following cancellation of a construction contract is only a fee to the extent that it is waived for parts of services already rendered.

The lower tax court's determinations in this case do not permit an assessment where the total amount paid by the district must be viewed as a consideration on the basis of the abovementioned case law. The mere numerical specification is, taken on its own, not suitable for reaching a decision on the classification of whether a payment should be viewed as remuneration for a partially supplied service or as a payment without the characteristics of a remuneration. In this respect, what the parties actually wanted to agree on is the decisive factor.

It must also be taken into consideration that the requirements for an exchange of

services in return for payment could exist if a taxpayer waives a legal position for a consideration that they are entitled to. However, there is some doubt as to this when the architect had already, on 28 February 2017, ended that contractual relationship (early), which the parties had assumed in their amicable agreement of 27 March 2017. In this case, at the point in time of the meeting he was potentially no longer entitled to any (financial) legal position from the architectural contract that he could have waived (for a consideration). In its ruling, the lower tax court merely determined that the cancellation of the architectural contract was pronounced, but not by which party to the contract.

Please note:
The distinction between damages and remuneration is often very important in practice. Most recently, the CJEU, in its ruling of 20 January 2022 – case C-90/20 – Apcoa Parking Danmark, issued its opinion on the classification of parking fees. That ruling concerned the control fees charged by a company incorporated under private law that was contracted to operate parking lots on private land in the case that motorists failed to comply with the general terms and conditions of use for these parking lots. According to the CJEU, the control fees must be viewed as a consideration for a supply of service that is subject to VAT.

Restaurant transactions of a bakery

BFH, resolution of 15 September 2021, XI R 21 (XI R 25/19)

This BFH ruling concerns the VAT rate on transactions arising from the sale of meals that are eaten from the dishes of a bakery at tables on site.

The case
In 2006 a KG produced baked goods of all kinds, sold these and operated pastry shops and cafés. In 84 of its branches altogether, the KG provided tables and chairs. 71 of the branches involved in this dispute were located in so-called pre-checkout areas of grocery stores. 13 branches were separately operated stores.

In all 84 branches, the serving of certain goods and meals to customers for consumption on site generally occurred directly at the sales counter. The clearing of the tables was, as a rule, the responsibility of the customer. Racks were provided for the return of the crockery handed out that were generally intended to be filled by the customers. If the customers neglected to clear the tables, the KG's staff cleared the dishes from the tables. Subsequently, the dishes were cleaned by employees of the KG. These staff were employed solely as salespeople for baked goods and not as waitstaff, cooks, or similarly qualified culinary professionals.

Whether the reduced VAT rate should be applied to transactions arising from the sale of sandwiches and slices of cake that were consumed on site is disputed. The lower tax court denied this. The KG's appeal to the BFH was not successful.

Resolution
According to BFH case law, the sale of standardized prepared meals by a food stall for consumption at a table with seating results in a restaurant transaction subject to the standard VAT rate. The threshold to restaurant services is exceeded, as the provision of crockery, cutlery or furnishings (tables offering the opportunity to sit) requires a certain level of staffing in order to provide, take back and, if applicable, clean the materials that are made available.

The owner of a barbeque stand in a beer garden provides other services subject to the standard VAT rate if they sell meals to visitors to the beer garden for a consideration and, due to the leasing contract with the operator of the beer garden, are entitled to make the infrastructure of the beer garden available to their customers.

Also, the owner of a grilled fish stand in a beer garden provides visitors to a beer garden with other supplies (subject to the standard VAT rate) in the beer garden, if they sell grilled fish for a consideration, they are – as a result of explicit or implicit agreements with the owner or the operator of the beer garden – entitled to make the infrastructure of the beer garden available to their customers, and this does in fact take place.

Conversely, in the case of the sale of meals to take away, a supply of goods (to be taxed at the reduced rate) exists.

Based on these principles, as a result of the actual findings and appraisal of the facts of the case by the lower tax court, no objection can be raised from a legal appeal perspective to applying the standard VAT rate to the KG's transactions arising from the sale of baked goods and fast food for consumption on site in the branches equipped with seating.

Please note:
When reviewing which VAT rate to use, the mere presence of furnishings that are not solely

intended to potentially make the consumption of foodstuffs easier must not be taken into account as an element of a supply of services. This is the case, for example, to the extent that furnished areas concurrently serve as waiting or meeting areas.

In this case, as part of its overall appraisal, the lower tax court reached the same conclusion as that reached by the BFH, that furniture set out in and around the branches of the KG from both an objective point of view, and also on the basis of the objective circumstances, are solely intended for use by the KG's customers. This is indicated especially by the spatial proximity, the color of the furnishings, the partially different floor color, and the decorations put up in some instances by the KG.

NEWS FROM THE BMF

Non-company (private) use of electric vehicles & co. and transfer of the use of e-bikes and bicycles to employees

BMF, guidance of 7 February 2022 – III C 2 - S 7300/19/10004 :001

The following applies in relation to the taxation of non-company (private) use of an electric vehicle, hybrid car, electric bike or bicycle assigned to the company.

Input VAT deduction and application of VAT in the case of (partially) commercially used vehicles

The term vehicle within the meaning of Section 15.23 VAT Application Decree (UStAE) is to be equated with the term motor vehicle and thus also encompasses electric bikes that are require license plates, insurance or a driver's license.

As previously, it can be assumed – besides other appraisal methods – that the amounts ascertained for income tax purposes in line with the so-called 1 % rule (§ 6 (1) no. 4 sent. 2 German Income Tax Law (EStG)) apply.

It has been clarified that for VAT purposes the special regulations on electric and hybrid vehicles in accordance with § 6 (1) no. 4 sent. 2 no.1 to 5 EStG do not apply. The same applies for the special regulations in accordance with § 6 (1) no. 4 sent. 3 no. 1 to 5 EStG. This replaces existing provisions in Section 15.23 UStAE on electric vehicles and hybrid electric vehicles.

Input VAT deduction and application of VAT in the case of (partially) commercially used bicycles

A new Section 15.24 UStAE "Input VAT deduction and application of VAT in the case of (partially) commercially used bicycles" shall be inserted.

The provisions in Section 15.23 UStAE shall accordingly also apply for bicycles, including electric bicycles that from a traffic law perspective (no obligations relating to license plates, insurance or driver's licenses) are to be classified as bicycles, save as otherwise provided for in the following.

For VAT purposes, § 6 (1) no. 4 sent. 6 EStG shall not apply in the case of non-company (private) use by the contractor of a bicycle registered to the company. The portion of the non-company use cannot be documented by use of a logbook. Alternatively, the contractor can, for simplicity's sake, calculate the value of the non-company use on the basis of the so-called 1% rule, if they have not chosen another method permitted from a VAT law point of view for determining the value.

For VAT purposes, in the case of a transfer for a consideration of a bicycle for the employee's private use, § 3 no 37 EStG does not apply. The portion of use attributed to the employee's private use cannot be documented by means of a logbook. For simplicity's sake, no objection shall be raised if the basis of assessment for the paid transfer of use is considered to be 1 per cent per month, rounded down to the nearest EUR 100, of the manufacturer, importer or wholesaler's non-binding recommended price at the point in time of the bicycle being put into use (corresponding to no. 1 of the identical state decrees of 9 January 2020, BStBl I p. 174). This value is to be considered to be the gross value from which VAT is to be calculated. If the value of the bicycle is estimated at less than EUR 500, no objection will be raised if, deviating from the abovementioned, it is assumed that there is no transfer of the bicycle for a consideration. In these cases it is not necessary for any VAT on the supply to be charged to the employee.

Please note:

The principles of this German Ministry of Finance (BMF) guidance must be applied to all open cases. The effects of the CJEU ruling of 20 January 2021 – case C-288/19 – QM (see VAT Newsletter January/February 2021) on the German administrative view are currently still being debated among the states' highest tax authorities. If necessary, a separate BMF

guidance will be issued in this respect.

IN BRIEF

VAT in the digital economy – Commission begins consultation

EU Commission, press release of 21 January 2022

The digitalization of the economy brings with it challenges in relation to charging VAT. The European Commission plans to present a legislative package to meet these challenges. In this respect it has asked companies, researchers, Member States and other interested parties to submit their views on the topic as part of a public consultation process.

VAT remains a primary source of revenue for Member States, while efforts in relation to economic recovery from the Coronavirus pandemic are continuing. The current VAT system is not, however, sufficiently equipped to do justice to our new digital reality. It is excessively complex for companies and susceptible to fraud. At the same time, the rise of the digital economy and the development of new business models open up new challenges, but also new opportunities.

In its action plan for a fair and simple taxation for the upturn from 2020, the Commission announced that it will therefore present a series of measures aimed at improving the situation. The suggestions, expected to be presented this year, will cover digital reporting requirements for companies in the whole of the EU, new provisions for the digital platform economy, and uniform registration for companies in the EU. These measures will reduce the costs and administrative burden for companies and at the same time contribute to combatting VAT fraud. The public consultation will run for 12 weeks. Submissions can be made online.

You can find additional information on the homepage of the European Commission.

MISCELLANEOUS

Changes in Intrastat reporting

On 1 January 2022 new regulations in relation to Intrastat declarations came into effect. The main points are:

Change to nature of the transaction codes
Companies should examine if the nature of the transaction codes in their ERP systems have been amended to take account of the new nomenclature from January 2022. In this respect, it is important, for example, that even possible private client business is accurately identified and declared.

Mandatory statement of the VAT identification number
The valid VAT identification number belonging to the foreign recipient of the goods has also become a mandatory detail to be given in future on the dispatching side from January 2022. Businesses should ensure that the VAT identification number agrees with the details of the EC sales list (recapitulative statement), for example by means of a query as part of the qualified confirmation. In this respect IT applications, for example the V.I.S. interface (KPMG Direct Services: V.I.S. – Value Added Tax Identification Number Information System) can significantly reduce the amount of time you need for these queries and offer you additional security.

Our experience shows that the customer and transaction data relevant for the Intrastat declaration frequently comes from different systems, and these data then often have to be supplemented with information from the finance department (VAT identification number). We are happy to support companies in designing these processes in an optimal manner that is also automated to the extent possible.

Region of origin
There is now an obligation to indicate the region of origin. The challenge here could come from the company not always being given this information. Furthermore, any processing or finishing of the goods could lead to a change in the region of origin. A process should therefore be drawn up with suppliers and warehouses that makes it possible for the companies to ensure the appropriate details on the region of origin are given in their Intrastat declarations.

Commodity codes
This year has also brought with it changes to the customs tariff numbers. Companies should compare the customs tariff numbers populated in their ERP systems with the updated data. To the extent that goods or products distributed or purchased by the company are affected, a change to its systems is absolutely necessary. The customs tariff number is not only a mandatory piece of information for the Intrastat declaration, it could also result in VAT consequences (e.g. changes to VAT rates, tax debtors) or customs impacts (e.g. rates of duty). We are happy to support

your business with regard to this topic.

Please note:
In summary, it should be noted that a proper declaration in the new format must be submitted since January 2022. For breaches of Intrastat reporting obligations and for failing to cooperate in responding to queries, including in relation to claims for payment, a non-compliance procedure can be initiated against the responsible people at the level of those who bear responsibility for providing information. From January 2022 an amendment has been added that a violation of the reporting obligations can be prosecuted with a financial penalty of up to EUR 50,000 (previously EUR 5,000).

AROUND THE WORLD

TaxNewsFlash Indirect Tax
KPMG articles on indirect tax from all around the world

4 February – Slovenia: VAT amendments effective in 2022

2 February – Ireland: Potential VAT compliance changes

2 February – Serbia: Rules concerning VAT invoices

28 January – Poland: National e-invoicing system effective 1 January 2022

26 January – Bahrain: VAT rate increase to 10%; treatment of imports during one-year transitional period

25 January – Qatar: VAT regime now expected in 2022

20 January – France: Foreign head offices providing services to French branches subject to VAT

20 January – South Africa: Updated tax invoice requirements for VAT-registered electronic services suppliers

14 January – Czech Republic: VAT changes in 2022

6 January – Malta: Reporting requirements for goods transported within EU

You can find this and additional articles here.

EVENTS

Webcast Live: Current changes in Intrastat declarations
on 3 March 2022

You can find additional information and the registration form here.

Webcast Live: Quick Fixes 2020
on 8 March 2022

You will shortly find additional information and the registration form here.

VAT Technology Webcast: Declarations – VERA –
on 22 March 2022

You will shortly find additional information and the registration form here.

Webcast Live: Media meets Tax
on 30 March 2022

You will shortly find additional information and the registration form here.

Hybrid Annual VAT Conference 2022
on 11 May 2022

Take part in our annual conference again in 2022 and find out about current topics and challenges from representatives from the tax courts, the tax authorities, the business world, and advisory practices, and use your own questions to take an active part in the live talks.

As well as an update on current topics in the area of VAT, the focus of this event will be on the intersection of VAT and payroll taxes, as well as topics relating to customs and import tax laws.

You can find additional information and the registration form for the event here.

Webcast Live: Quo vadis taxation of permanent establishments
on 18 May 2022

You will shortly find additional information and the registration form here.

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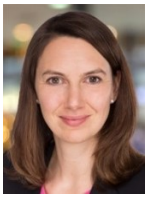

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