

January 2009

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## Editorial

The New Year brings a multitude of new challenges for businesses. And changes in VAT treatment, for instance, will have to be considered. We would like to take this opportunity to introduce to you the first issue of our "Newsletter" which henceforth provide you with information on the most important VAT developments in the area of legislation, jurisdiction and administration on a monthly basis.

This issue focuses on selected changes in the German VAT Law resulting from the German Tax Act 2009 and the Tax Bureaucracy Reduction Act. In particular the implementation of the "VAT Package" in German VAT Law will have a wide impact on internationally operating businesses.

Furthermore, the latest decision of the Federal Tax Court (BFH) regarding the place of cross-border supplies where the goods are temporarily stored in a warehouse and a "shipment on hold" clause was agreed results in a change of the jurisdiction concerning the time of supply of goods.

Please contact our Service Line team "Indirect Tax Services" for more information. Our team is looking forward to hearing from you.

Enjoy!

Yours,

**Wilfried Arbes**

Head of Indirect Tax Services

# New Year brings extensive changes to the VAT regime

Legislators have introduced a number of new legislative measures concerning VAT. The main changes result from the German Tax Act 2009, which completely overhauls the regulation of the place of service supply and the provisions relating to the input VAT refund procedure within the EU. The changes affect the following areas:

## New regulation for the place of services

Federal legislators have implemented the provisions of Directive 2008/8/EC of 12 February 2008 by redrafting §§ 3(a) and 3(b) of the German VAT Act (UStG).

The main amendment is the distinction between the provision of services to consumers (B2C sales) and those to other businesses for their own use (B2B sales), with effect of 1 January 2010. While the B2C area remains largely unchanged, the basic principle for B2B business is now as follows: The place of supply of services shall be deemed to be the place where the **recipient** is established. This new basic principle will be applicable from 1 January 2010 onwards.

As before, however, particular provisions apply to B2B services in connection with immovable property and services relating to artistic, cultural or similar activities, all of which shall continue to be taxed at the place where the property is located or where the activity is carried out. In the case of services of an intermediary nature, transport of goods, work performed on movable physical property and long-term rentals, the new basic principle is the place where the recipient is established.

For short-term rentals of means of transportation, the place of supply shall be the place where the means of transport is in fact made available, regardless of the commonly prescribed distinction between B2B and B2C. The use of the VAT identification number will be limited to B2B sales as a means for the recipient to indicate to the supplier that the service was purchased for business purposes.

### Recommendation:

In light of this complete revision of legislation, you should ensure the upgrading and adaption of your ERP-systems as soon as possible.

Due to the shift to the destination principle, i.e. the place where the recipient is established, the scope of application for the reverse-charge procedure set out in § 13(b) of the German VAT Act is being expanded, potentially leading to positive or negative cash-flow effects. Make use of optimisation schemes!

## Relief measures for the input VAT refund procedure within the EU

By implementing the Directive 2008/9/EC from 12 February 2008, legislators have facilitated the VAT refund applications with effect from 1 January 2010. Thenceforward, the following will apply:

- Electronic refund application in the member state of establishment
- New application deadline: 30 September of the following calendar year
- Interest payable by the member state of refund shall become due after four months and 10 days.



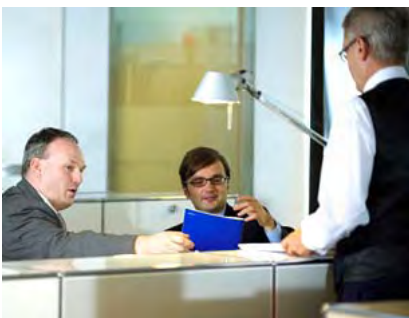
- For invoiced net amounts of at minimum EUR 1,000 (or at minimum EUR 250 and over in the case of fuel), the member state refunding may require the applicant to submit copies of the relevant invoices and receipts of importation by electronic means. It is obligatory for the applicant to do so in Germany, as set out in Article 61 (2.3) of the German VAT Operating Regulation (UStDV).

**Please note:**

- In its ruling of 17 April 2008, the German Federal Tax Court (BFH) requires the country's tax authorities to pay interest even in old cases going forward, albeit pursuant to § 233a of the General Tax Code (German Federal Tax Court ruling of 17 April 2008 – V R 41/06 referring to the European Court of Justice ruling of 7 May 1998 – case C-390/96 – Lease Plan).
- Whether or not an applicant may transfer power of attorney to a representative remains uncertain even in terms of the revised legislation. According to § 18g (2) of the German VAT Act and § 61 (2) sent. 2 of the German VAT Operating Regulation, business owners themselves will have to calculate the amount they should be refunded. In this context, please refer to the reference for a preliminary ruling put forward by the German Federal Tax Court to the European Court of Justice regarding the requirement of a personal signature according to the former law (German Federal Tax Court ruling of 13 August 2008 – XI R 19/08 versus Tax Court of Cologne, ruling of 19 October 2006 – 2 K 1629/05 and the ruling of 21 February 2008 – 2 K 736/07).

### Alignment of the tax exemption for medical care with the Council Directive on the common system of value added tax ("the VAT Directive")

Various rulings by the European Court of Justice and the German Federal Tax Court highlight the non-compliance of previous German provisions with EU directives. This deficiency is removed by the new legislation. As of 1 January 2009, exemptions will be limited to curative treatment in human medicine practiced by a physician or a healthcare professional in a similar capacity.



### No reintroduction of the cap on the input tax applicable to a company passenger car also meant for personal use

Legislators initially intended to restore the provisions to cap input tax at 50% as introduced with the Tax Relief Act of 1999/2000/2002 and abolished by the 2003 Tax Amendment Act with effect from 1 January 2004. **In addition, the taxation of the non business use would have been eliminated.** These proposed provisions were abandoned, however, in the course of the legislative procedure.

### Additional billing in electronic (EDI based) invoicing no longer obligatory

With the Tax Bureaucracy Reduction Act (Steuerbürokratieabbaugesetz), legislators have abolished the requirement of an additional billing summary in electronic (EDI-based) invoicing for supplies rendered in 2009 or later.

### No further obligation to issue invoices for certain tax-exempt services

As of 2009, businesses providing tax-exempt services in terms of § 4 (8) - (28) of the German VAT Act (including banking, insurance and healthcare services in particular) will no longer have to submit invoices for such services in accordance with VAT law.

# Change in legal practice relating to the time of supply

## The case:

The court decision relates to cases where the supplier in another EU member state transported goods by ship or road to the buyer with the shipping line or carrier not knowing the name of the buyer. The buyer was only informed by the depot after the goods were unloaded. The buyer was then entitled to collect the goods after payment. The supplier declared an intra-community supply of goods and the buyer an intra-community acquisition of goods, but the German authorities required a deemed intra-community movement of goods to the EU foreigner's own disposal with the subsequent domestic delivery subject to VAT for the EU foreigner.

Although in most cases the input tax deduction entitlement for the economic benefit of the supply option is zero for the tax authorities, the foreigner has to register for VAT in Germany. This often comes along with an interest payment in case of a late registration (§ 233a General Tax Code).

## Judgment of the Court:

To date, the German authorities have based their practice in this and similar cases on a judgment of 1966 (German Federal Tax Court, judgment of 10 November 1966 – V 73/74). This judgment has now been declared no longer applicable by the Court in its latest decision (German Federal Tax Court, judgment of 30 July 2008 – XI R 61/07).

The Court no longer sees any pressing requirement "that for a delivery, without exception, the buyer must be known to the shipper as proof that the buyer is known at the time the goods are handed over to the shipper". It is sufficient for the document to show with adequate certainty and in a simple and uncomplicated manner that the buyer was known at the relevant point in time.

## Recommendation:

Please examine cases in which goods are delivered from another EU Member State via a German warehouse to see whether the buyer is already specified in purchase documents at the time of dispatch to the warehouse. These cases – depending on the facts and the contracts – might result in favourable cash-flow effects where even the non-German supplier might avoid a VAT registration in Germany.



# Seminar Notes

## VAT 2009

4 February 2009 in Munich

5 February 2009 in Dusseldorf

11 February 2009 in Stuttgart

12 February 2009 in Hamburg

17 February 2009 in Nuremberg

18 February 2009 in Frankfurt

18 February 2009 in Berlin

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For more information

[www.kpmg.de/Umsatzsteuer2009.html](http://www.kpmg.de/Umsatzsteuer2009.html)

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## International Network of KPMG

If you like to know more about international VAT issues please visit our homepage [KPMG International](#)\* We would be glad to assist you in collaboration with our KPMG network in your worldwide VAT activities.

You can also get up-to-date information concerning Germany, Switzerland, Spain and United Kingdom via the homepage of [KPMG Europe LLP](#)\*.

Please visit KPMG LLP UK's pod cast site for the weekly published newsletter [Indirect Tax Update](#).

\*Please note that neither KPMG International nor KPMG Europe LLP provide any client services.



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\* Responsible according to German Law (§ 7 (2) Berliner PresseG)