



## ***The German Federal Ministry of Finance publishes details about the evidence of the conditions for zero-rated intra-Community supplies of goods***

***On March 28th 2013, an amendment of the VAT Ordinance regarding the evidence for zero-rated intra-Community supplies of goods was published in the Federal Law Gazette. The amendment is, according to its wording, applicable for all intra-Community supplies of goods carried out after September 30th 2013. After the relevant trade associations were consulted, the VAT application guidelines have finally been amended by the Federal Ministry of Finance (Bundesministerium der Finanzen, or BMF) with a circular dated September 16th 2013.***

### ***Allocation of the intra-Community supply within a chain supply***

Within a chain supply, only one out of several supplies may qualify as zero-rated intra-Community supply of goods. All other supplies carried out within the chain supply are, at least from a German point of view, domestic supplies of goods either in Germany (as the EU member state of origin) or in the EU member state of destination. To date, the allocation of the intra-Community supply to one of several supplies within a chain supply depends on which party of the chain arranges for the transport (eg, orders the carrier) directly from the first supplier to the last customer. The BMF stipulates that, apparently for all pickup scenarios, “as the case may be”, a proxy verifying the authorization of the person collecting the goods and evidence about the person that has issued the proxy may be required for the purpose of above allocation. This requirement may cause problems particularly in cases where the supplier who intends to apply the zero rating is actually not involved in the transport and thus cannot verify the presented proxy. This may lead to difficulties if evidence is requested that the supply is neither considered to be a domestic supply in Germany nor in the EU member state of destination. Where this evidence cannot be provided, it is likely that the German tax authorities might deny the zero-rating, the reason being that the supply carried out by the supplier cannot be considered as intra-Community supply at all, regardless of whether the goods have demonstrably been received by the recipient in another EU member state.

Overall, the legal basis of this provision and the consequences of non-compliance are unclear. It appears that, in cases where the above-mentioned evidence cannot be provided, the tax authorities might intend to leave the question undecided as to which of the several supplies in the range of a chain supply qualifies as intra-Community supply of goods.

### ***Documentary evidence – General remarks***

The BMF highlights that the documentary evidence does not compulsorily need to be composed of the entry certificate or of other applicable document evidence. Rather, the taxable person may offer any document and any evidence which, on the basis of a holistic view, suggest in a manifest and credible way that the supplied good has reached the direct customer (sic) at the place of destination in another EU member state. The BMF

has thereby applied the case law of the highest courts whereby the taxable person has the right to provide evidence “in any way” about the condition of zero-rating. However, it is nevertheless advisable to provide evidence in line with the rules prescribed in the VAT Ordinance, so as to be in a position to provide evidence as convincing as possible.

Please note that the evidence for intra-Community supplies of means of transports is subject to particular requirements.

### ***The entry certificate***

The entry certificate will be the most important evidence for zero-rating of intra-Community supplies of goods. In certain cases such as most transport cases (cases where the goods are moved with own means of transport, as opposed to dispatch cases), it is even the only admissible evidence.

The signature of the recipient, of his representative or of an authorised person must be shown on the entry certificate. The BMF circular specifies the last customer of a chain supply as “representative” or “authorised agent”. Also the recipient’s employees, a storekeeper, or another taxable person in charge with the receipt of the goods may act as “representative” or “authorised agent”, but not, for example, a carrier in charge with the transport of the goods. In case of doubt, the authorization of the person must be proven by means of a written proxy, which should also be applicable for the last customer of the chain supply, if he is not the supplier’s direct customer to whom the goods are delivered. Unfortunately, the circumstances under which the supplier ought to be in doubt about the authorization are unclear, all the more since details about the powers of the recipient’s employees or his internal procedures are often unknown to the supplier.

The entry certificate may be issued electronically, for example, by means of an e-mail with attached PDF or text file or a download. In this case, a signature is not required, provided that it is identifiable that the electronic transmission has commenced in the recipient’s field of authority. The BMF mentions a number of examples of circumstances which indicate that this was the case. It is clarified in the circular that the respective e-mail account does not need to have previously been known to the supplier, nor is the evidence put at risk simply for the reason that the domain of the e-mail account neither refers to the member state of destination nor to the recipient’s country of residence. In case the entry certificate is submitted by e-mail, the entry certificate as well as the e-mail itself need to be archived. A printout of the electronically submitted entry certificate (as well as, where applicable, the e-mail) is sufficient for the purpose of evidence. It is moreover possible to provide evidence for a multitude of supplies performed to the same customer by means of an accumulative document, which may be issued for periods of up to a quarter.

It is not compulsory that the entry certificate consists of a single document. Rather, it may be composed of several documents, which do not necessarily need to be linked to each other. For example, an entry certificate may consist of a bill of lading along with a written confirmation about the receipt of the goods, if the concerned documents show all items mentioned in the VAT Ordinance. The entry certificate or the documents out of which it is composed may be drawn up in German, English or French. Evidence drawn up in other languages requires a legally certified translation.

### ***Other document evidence***

The BMF mentions in connection with the bill of lading that the sender of the supplied goods (the party ordering the freight forwarder) is obliged to sign the bill of lading but may be represented by a third person, (eg, a storekeeper). In the case of a CMR bill of lading, the signature needs to be made in box 22. It is sufficient if the power of the third person to sign can credibly be shown. The signature of a third person who procures the transport (eg, a forwarding agent) is not necessary. The bill of lading may, just like the entry certificate, be composed of several documents as well. In the case of an international railway bill of lading (CIM bill of lading), a stamp or an automatically generated confirmation note is generally considered to be sufficient. In the case of a sea

waybill or an air waybill, the signature of the sender is not necessary. The requirements for the signature of the recipient are the same as for the entry certificate; in case of a CMR bill of lading, the signature needs to be placed in box 24.

In dispatch cases (where the transport is effected by an independent third party, eg, freight forwarder), the white carrier certificate (known as a WCC) may still be used. It is issued by the forwarding agent in charge. However, the WCC is no longer the same as for export cases but has now a (slightly different) content of its own. The BMF provides a specimen in German which – if filled in completely and correctly – is expressly to be accepted for evidence purposes.

Under the same conditions as for the entry certificate, the aforementioned documents may also be provided as accumulative proof, they may consist out of several documents, and they may be transmitted electronically. However, only the provisions about the WCC provide for the dispensability of the signature in case of electronic transmission.

In case the recipient dispatches the goods (pick up cases), a forwarding agent confirmation issued by the forwarding agent in charge may be provided. This confirmation must include a confirmation by the taxable person in charge with the transport that he will transport the goods to a specific place. The required information also includes the recipient in the EU member state of destination. Apart from that, the forwarding agent confirmation must include certain additional information. Please note that the forwarding agent confirmation will only be accepted as valid evidence if additional proof is provided that the consideration for the goods has been paid from a bank account held by the recipient. In terms of this requirement, a group clearing account or, in case of affiliated enterprises, an intercompany clearing system also may qualify as payment. An example forwarding agent confirmation form is available in German. However, in case there is reasonable doubt that the dispatched goods have actually been transported to another EU member state, the supplier must provide evidence with an entry certificate or another permitted document. Since it is unclear in what case reasonable doubt is applicable, time will tell whether the forwarding agent confirmation is a recommendable form of evidence.

The BMF deals in detail with evidence to be provided in cases where a postal service provider has been ordered for dispatch of the goods, as well as with the evidence in certain transport cases where, for example, the Community transit procedure is applied or where excise goods are supplied. Please note that the customs certificate issued for the community transport procedure may also be applied.

In dispatch cases, the evidence may also be provided by means of a written or electronic order and a consistent tracking and tracing protocol covering the transport until the delivery to the recipient – both of which are subject to certain requirements. However, where the value of the good(s) to be conveyed does not exceed €500, a simplification rule may be applied: in such a case, the order for the transport service provider along with evidence regarding the payment of the consideration for the good(s) is sufficient. The evidence of the placement of order may also consist of a written framework agreement about periodical transports of goods. Likewise, written confirmation issued by the transport service provider (eg, a listing of the delivered goods or a dispatch acknowledgement) may be sufficient.

### ***Application of the new rules***

The BMF amendment to the VAT application guidelines will be applicable to all intra-Community supplies of goods performed after September 30th 2013. However, for intra-Community supplies of goods carried out until December 31st 2013, the tax authorities are not going to object if evidence is still provided on the basis of the legal requirements in force until December 31st 2011. Where this has not already been done, the internal procedures ought to be adjusted soon in line with the new requirements.

### **Remarks**

The BMF has made remarkable efforts to comply with the practical requirements of the economy. However, in most transport cases, the entry certificate is still the only permitted evidence. Some matters are not fully clear – mostly cases concerning a proxy of the person collecting the goods or the evidentiary value of a forwarding agent confirmation in case of doubt.

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## **Contact**

We are available for any questions you might have and would be glad to put you in contact with the Indirect Tax Team of PwC Germany.

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