

## **A Risky Business: German VAT and Export Sales**

German value added tax (VAT) is a very tricky issue for all companies exporting goods and services from Germany. Mistakes may be discovered years later and can lead to the loss of the normally tax-free status of export sales, resulting in the seller becoming liable to pay the 16% VAT which is due on most domestic sales.

In 2004, special VAT tax audits led to over €1.8 billion in VAT liability from export sales which sellers had invoiced as tax-free exports. Importantly, the special audits are typically conducted outside the normal cycle for tax audits and independent of the size of the company being audited. In this article, we attempt to shed some light on the risks associated with tax-free sales and common mistakes made by sellers.

### **Exporting to other EU-countries (Intra-Community Sales)**

A prerequisite for treatment as an intra-community VAT-exempt sale is that the purchase must be subject to VAT tax in another EU member state in which the buyer is located. Importantly, the buyer must actually be the recipient of the goods. The buyer and actual recipient of the goods can differ, but in this case, the buyer's VAT ID number will not suffice for the seller to claim VAT exemption on the sale.

In cases where a **freight forwarder is used to transport the goods**, both an original CMR and "white document from agent" for each individual delivery are the most common evidence used to support VAT-exempt sales, and these documents are easily traceable. Alternatively, the entrepreneur can fall back on delivery notes or certificates of receipt, if it is not possible to obtain a confirmation from the agent in charge.

You also must provide evidence that the goods have been moved across the intra-community border, even if transportation is provided by the purchaser. This can be done by adding the following statement: "The received goods will be moved into other community-territory."

In any case, the seller is always obligated to apply **the "care of orderly business persons"** in such cases if they expect protection from liability should conflicts arise. It is always advisable to obtain a qualified confirmation of the validity of the buyer's VAT ID number from the Bundesamt für Finanzen before making a VAT-exempt sale. Even in this case, the German tax authorities have been known to refuse the VAT-exempt status of some export sales.

Sellers are advised to exercise **great care when writing invoices**. All relevant details such as both the buyer and seller's VAT ID numbers and the clear notification that the transaction is an export sale must appear on the invoice. Should only one of these factors be missing on an invoice, the German tax office will likely refuse the tax-free status of the sale, making the seller liable for German VAT. In addition, should the seller be unable to provide adequate evidence and documentation supporting the export argument, then they will become liable for German VAT and possibly penalties on the sale.

### **VAT Carousel and Input VAT Deduction**

Intra-community sales of consumer electronics and beverages have been especially affected by VAT carousel fraud. VAT carousels typically involve several companies located in different EU countries. A seller exports goods to a buyer, located in a different EU country. The buyer does not pay the acquisition tax or uses a stolen VAT ID (missing trader). The goods are then sold several times within the second EU country. In the end, the goods are re-imported and one purchaser is identical with the original seller.

In such cases, the German tax office has refused the input VAT deduction with different arguments, even if the company behaved correctly and has a confirmation of the VAT identification number according to § 18 UStG of the purchaser in advance.

However, in a landmark case in January 2006, the European Court of Justice decided that a seller who is unknowingly involved in an VAT carousel has the right to the input VAT deduction. A VAT carousel does not change the character of certain turnovers in the supply chain.

**Seller beware:** selling for export is very complicated, and German VAT should be treated as a major cost factor which can further erode already thin margins! Business people involved in exporting are strongly advised to seek assistance from experienced professionals before they plunge into the business.

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