

Client Alert

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Changes in the VAT evidence for exports and intra-community supplies may create some hurdles for the export industry

New law has been passed

On 25 November 2011, the *Bundesrat* (Federal Counsel) approved the amendment of the *Umsatzsteuer-Durchführungsverordnung (UStDV)* (German VAT Implementation Regulation) which reorganizes the VAT evidence for intra-community supplies and exports. Entrepreneurs will henceforth have to comply with more stringent documentation requirements in order to justify the tax-exempt status of their exports and intra-community supplies. The new requirements will enter into force on 01 January 2012.

Effect on the export industry

The changes in the documentation requirements pose a challenge for all companies exporting goods to EU countries or third countries and claiming tax exemptions for these exports. The new statutory provisions reduce the previously permitted variety of documentary evidence to a few mandatory documents. The customs endorsement of exit (*Ausgangsvermerk*), which previously played only a minor role when furnishing proof of export to third countries for VAT purposes, is now becoming the key document. For intra-community supplies, a completely new document is now required, a so-called *Gelangensbestätigung* (confirmation of arrival). The frequently used freight forwarder certificates, on the other hand, will only be accepted as proof in exceptional cases. As the new rules enter into force on 01 January 2012, companies need to review their existing systems and, if applicable, make the necessary changes by the end of the year.

The main changes in detail

In determining which type of proof is acceptable for the VAT exemption, the new regulation still distinguishes between exports to third countries and intra-community exports to EU member states. However, under the new regulation it no longer matters whether the supplier or the customer transport the goods themselves or whether they have the goods shipped through a third party.

- The key proof required for **export supplies** is the customs endorsement of exit (*Ausgangsvermerk*). Any supplier who exports goods to third countries and is the exporter under customs rules has been required to participate in the electronic export procedure since 1 June 2009. Under this procedure, the physical exit of the goods from the EU customs territory is confirmed electronically through the endorsement of exit (*Ausgangsvermerk*). Other

types of documentary proof (e.g. a freight forwarder certificate) are permitted only for exports for which the electronic export procedure is not mandatory.

- For **intra-community supplies** proof must be furnished in the form of a confirmation of arrival (*Gelangensbestätigung*), which must contain the date and place of receipt of the goods in the EU Member State of destination, or the date and place of the end of the transport. In addition it must be signed by the customer.
- Other forms of proof will no longer be accepted. The requirements concerning documentary proof, which until now were defined as "should rules", are now becoming "**must rules**". This makes them substantive in nature, which violates European legislative provisions. It is not unlikely that suppliers may have to resort to appeal proceedings to have other documents accepted as proof for VAT exemption.

What needs to be done?

Companies who make export supplies or intra-community supplies and claim exemption from VAT for these supplies should take the following steps in order to be able to continue to be exempted from VAT on their exports:

- Review of the distribution and supply chains, and of the current documentation for VAT exemption.
- For exports to third countries: Change documentary proof over to the endorsement of exit (*Ausgangsvermerk*). This may require contacting the customer or freight forwarder.
- For intra-community deliveries: Change documentary proof over to the confirmation of arrival (*Gelangensbestätigung*). For this, the customer must be contacted.
- Adjustment of the workflows and documentation processes and of the corresponding operating procedures and work instructions.

Conclusion:

As of 01 January 2011, the proof accepted for the VAT exemption for exports and intra-community supplies will be limited to just a few documents, and they will become mandatory. Suppliers that fail to comply risk losing the VAT exemption. To ensure that the VAT exemption is granted, suppliers must adapt their processes accordingly. The VAT team at Baker & McKenzie will be happy to assist you.



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