Extension of the reverse charge procedure to certain supplies of mobile phones and integrated circuits

In 2010, Germany (along with Austria and Italy) obtained authorisation from the EU Council to apply the reverse charge procedure to certain supplies that are particularly prone to tax fraud — mobile phones and integrated circuits — as part of the attempts to combat this fraud. (The UK has been exercising such authorisation since 2007.) Effective July 1st 2011, Germany makes use of the aforementioned authorisation.

Summary of the amendment of the German VAT Act
The application of the amendment to implement the authorisation is restricted to certain goods. In addition, a de minimis rule and transitional provisions have been enacted.

Mobile phones and integrated circuits
The goods subject to the amendment of the German VAT Act (Umsatzsteuergesetz, or UStG) have been defined in descriptive terms only, not by commodity codes. Mobile phones are defined as devices by which telecommunication services, ie, voice transmission over wireless mobile networks, can be used. An integrated circuit is understood to be an electric circuit on a chip, such as a central processing unit (CPU). The Federal Ministry of Finance has also provided a number of negative definitions. For instance, navigation systems are not covered by the term “mobile phone”, and the term “integrated circuit” does not apply to antennas and sensors. The integrated circuits do not have to be incorporated into the end product. Please note that the new provisions are only applicable if a taxable person supplies the goods described above to another taxable person.

De minimis rule
The amendment is only applicable if the total tax base of all of the supplies constituting a coherent economic transaction amounts to a minimum of €5,000. Subsequent reductions of the tax base cannot be considered.

The intended meaning of the term “coherent economic transaction” is not fully clear. The order or the contract may serve as indication. Since the purpose of the provision is the prevention of tax avoidance and fraud, it could be interpreted to mean that the coherent economic transaction includes all supplies of goods in VAT terms that have been ordered on the basis of a single purchase decision. For instance, if goods of a value of €10,000 are ordered, and these goods are delivered in €1,000 tranches, each transaction is subject to the reverse charge procedure. It is, however, unclear whether the agreement to a minimum purchase quantity of a value above the €5,000 threshold would automatically trigger the application of the new provision.

Simplification rule
If a recipient of supply has applied the reverse charge procedure to a transaction, although the conditions for the application of the reverse charge procedure were subject to doubt, or if it subsequently turns out that these conditions were in fact not fulfilled,
this course of action will not be contested, given that both the supplier and the recipient of supplied agreed unanimously that the reverse charge procedure was applicable and the recipient has treated the transaction correctly in VAT terms with the correct amount.

**Transitional rules**
The transitional rules deal, inter alia, with cases where invoices are issued for supplies carried out after June 30th while down payments were collected before July 1st. In such cases, objections will not be raised, if only the consideration less the advance payment obtained before July 1st is subject to the reverse charge procedure, provided the down payments have been treated correctly by the supplier in VAT terms. In such cases, the advance invoice does not need to be corrected.

If it turns out that the down payment as invoiced and collected by the supplier proves to be an incorrect amount, it must be determined whether a reduction or an increase of the tax base is concerned. If an erroneous advance invoice was obtained and paid in June, but the amount was determined to be too high in July, the change should apply to both output as well as input tax in July. If, however, the advance payment proves to be too low, the invoice must be corrected, but only the subsequent payment is subject to the reverse charge procedure.

**Forms for the preliminary VAT returns**
The amendment necessitated changes in the preliminary VAT returns forms. Therefore, the Federal Ministry of Finance has, by circular letter, amended these forms accordingly.

**Recommendations**
Unfortunately, the Federal Ministry of Finance has not defined the goods subject to the new rule using commodity codes. If the lack of clarity concerning whether or not goods are subject to the reverse charge procedure persists, relying on the simplification rule described above cannot be recommended, except in exceptional cases. A binding rule might contribute to achieving legal certainty.

The short implementation phase requires a sound IT system and sufficiently skilled operators. The IT implementation process ought to be overseen by tax advisors, so as to avoid tax exposures (incorrect invoicing, input VAT corrections or supplementary VAT payments).

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