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7 March 2012

Mr. Donato Raponi
Directorate-General for Taxation and Customs Union
VAT and other turnover taxes – Unit C1
European Commission
Rue Joseph II 79, Office J79 05/093
B-1049 Brussels

Via email: Donato.Raponi@ec.europa.eu

Re: **New documentation requirements for intra-community supplies from Germany to other EU Member States – “Gelangensbestätigung”**

Dear Mr. Raponi,

On behalf of Tax Executives Institute, thank you for the opportunity to meet in Madrid on 25 January 2012 to discuss the European Commission’s White Paper on the future of VAT and other European Union VAT issues of general importance to business. TEI very much appreciated the candid conversation and looks forward to working with you and your colleagues in the future. In that respect, we draw your attention to a recent law change in Germany that introduces new documentation requirements to substantiate zero-rating of intra-community supplies. These rules create new risks for legitimate business and undermine the application of the zero-rating provisions for intra-community supplies by making trade within the EU more burdensome for international business.¹

TEI urges the Commission to communicate the concerns of international businesses, as documented in this letter, to the German government and to engage appropriately with it to ensure that Germany applies its new law in line with the EU VAT regulations.

Background

Under German law, supplies of goods made by a VAT-registered business in Germany to a VAT-registered business in another Member State may be zero-rated. Businesses must maintain documentation proving that the goods were shipped to another Member State to substantiate the utilization of this zero-rating. German tax authorities have historically interpreted the law flexibly to allow businesses to rely on documentation received and maintained in good faith that clearly shows a supply was made within the EU. Examples of acceptable documentation include transport documents, delivery notes, and receipts

¹ Although the German legislation also affects exports, this letter focuses on changes affecting intra-community supplies because they are the most rigid and onerous for business.

of payment. This flexibility allows legitimate businesses to qualify for zero-rating while protecting the government against VAT fraud.

Despite concerns raised by German business groups, on 25 November 2011, the German Bundesrat approved changes to the Umsatzsteuer-Durchführungsverordnung (the official regulation implementing the German VAT law) that affect the documentation requirements for zero-rated intra-community supplies. The amendments created a new document, a confirmation of arrival of goods (Gelangensbestätigung), that must be used to substantiate every zero-rated intra-community supply of goods originating in Germany. This confirmation must be signed by the recipient of the goods and must contain specified information including the name and address of the customer, the quantity of the goods supplied, a description of those goods, and the place and date of receipt of the delivered goods in another EU-member state. The effective date of the new law was originally set as 1 January 2012.

In making use of the Gelangensbestätigung mandatory, the November legislation stripped the German tax authorities of their ability to accept other documents created in the ordinary course of business, even where those records prove conclusively that goods were shipped from Germany to another VAT-registered business in the EU and otherwise qualified for zero-rating. As a result, the documentation requirements for intra-community sales from Germany are stricter than for exports from Germany to non-EU countries.

Although the new rules have been touted as simplifying compliance for businesses, business groups contended that the new requirements would create new risks and effectively render zero-rating inapplicable to certain transactions. For example, where goods are shipped by a third-party (*e.g.*, a shipping agent), the Gelangensbestätigung is not compatible with normal business practice since the third-party would need to ensure collection of the signed confirmation document and then forward that on to the seller of the goods. Other transactions such as chain transactions involving multiple parties similarly do not lend themselves to the new rules and, hence, underscore why alternative documentation obtained in good faith should remain acceptable as proof of intra-community shipment of goods for purposes of zero-rating.

In response to these concerns, the German Finance Ministry postponed the effective date of the new documentation requirement for intra-community sales to the end of June 2012. This extension provides time for the German government to craft changes to support the goal of reducing fraud without placing undue burdens on legitimate businesses or eliminating the ability for some businesses to utilize intra-community zero-rating at all.

Recommendation

TEI supports the efforts of Member States to fight VAT fraud, and we appreciate that some level of administrative complexity for compliant taxpayers is unavoidable. The imperative of combatting fraud, however, must be balanced against maintaining the free-flow of commerce throughout the Member States, which has been one of the main goals of the EU since its inception. Not only are the new German documentation requirements inefficient and difficult to comply with, but they also potentially violate EU VAT law by

making the rules stricter for intra-community sales than for exports outside the EU and by unduly inhibiting the ability of businesses to recover refunds of overpaid taxes.

The new German documentation requirements for intra-community sales have a disproportionate effect in this case given Germany's place as the largest economy in Europe with the most shipments of goods to customers located in the EU. If the mandatory use of the *Gelangensbestätigung* goes into effect, it will endanger the application of the zero-rating provisions for intra-community supplies and hinder trade within the EU. Indeed, the new rules have prompted some businesses to consider moving operations out of Germany.

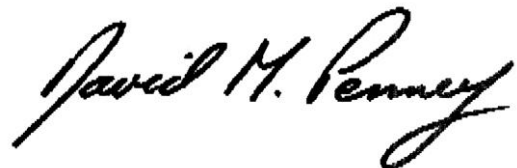
To strike the proper balance between administrative compliance and efficient intra-community commerce, the use of the *Gelangensbestätigung* should be optional, with businesses retaining the option of using alternative means of demonstrating that goods have been shipped to a destination within the EU.

TEI urges the Commission to communicate these concerns to the German government and request that the Bundesrat amend the Umsatzsteuer-Durchführungsverordnung to reinstate the good faith provisions providing the German Finance Ministry with discretion to accept other documentation as adequate proof for purposes of zero-rating of intra-community supplies of goods. In addition, the Commission should suggest to the German Finance Ministry that it publish clear guidance in the form of a decree allowing the use of alternative evidence in lieu of the *Gelangensbestätigung*.

This letter was prepared by TEI's European Indirect Tax Committee, whose chair is Siegert Slagman. If you have any questions about TEI's comments, please contact Mr. Slagman at +41 58 242 6513 (or siegert.slagman@pmi.com), or Daniel B. De Jong of the Institute's legal staff at +1 202 638 5601 (or ddejong@tei.org).

Respectfully submitted,

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