

### 3. Delivery (§ 3 UStG 1994)

#### 3.1. Term of delivery

##### 3.1.1. Delivery item

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A delivery is when the entrepreneur someone enables another, in their own to have names on a subject.

items are

- physical things or
- other assets that the public perception is like physical things  
be treated [for example, energy, gas, electric current (VwGH 10.11.1995, [94/17/0219](#) )  
Heat or cold (see. [Art. 15 para. 1 VAT Directive 2006/112 / EC](#) as amended by directive 2009/162 / EU)  
Steam, hydro, animals, goodwill].

The place of supply of gas or electricity see margin 474a to 474e margin.

The place of supply of heat or cold see margin 474a et seq.

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Also total cases (= collections of objects) are basically as objects of to display deliveries. A total thing is a combination of several things that the public perception is, and to be regarded as a thing with a Community Name is called (§ 302 Civil Code, such as stalls of a lecture hall, library, Picture Gallery). With regard to rate see Rz Rz 1169 to 1173rd

##### 3.1.2. Differentiation from other service

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The distinction between deliveries and other services for the assessment the place of performance, a possible tax exemption and the tax rate is important.

There are uniform receivables, other elements both a delivery and a Performance included. This depends on whether the performance majority of their economic importance as the acquisition of an object or as an action, tolerance, or Omission is to be considered. This preponderance is on the basis of generally accepted standards and after the intention of the parties to determine (VwGH 03.14.1980, 2045/79).

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**Mining contracts:** the fee amounted, in the provision of land for

Extraction of mineral substance according to the amount of the degraded material is a Delivery before (VwGH 06.21.1977, 2420/76; VwGH 03/11/1986, 85/15/0098).

**Foreign exchange business:** Transactions in which one party an agreed amount in a

Currency purchases and return to the other party an agreed amount in a other currency sold, these two amounts of money on the same value date to be paid, and in which both parties on the currencies concerned, to buying and selling amounts and which party which currency purchases, and have agreed on the value date, are other services (ECJ 14.7.1998, Case C-172/96 "First National Bank of Chicago").

**Grave care:** the performance of a gardener is limited to floral arrangements at a

suspend the grave, without further care of the grave (eg maintenance, care) to take over, so its performance is according to their predominant economic importance as to look at delivery of the plants.

**Guarantees of origin in accordance with § 10 Green Electricity Act 2012, BGBl. I no. 75/2011, and**

**RECS certificates:** The controllable transfer of certificates of origin by [§ 10 Electricity Act 2012](#) BGBl. I no. 75/2011, and RECS certificates provides other Performance is under the [§ 3a. 6 and para. 14 UStG 1994](#) (31.12.2009: [§ 3a. 10 UStG 1994](#) - Catalog power) falls. It is not in accordance [§ 6 para. 1 No. 8 UStG 1994](#) tax-exempt.

**Leasing:** If the leased after income tax principles (EStR 2000 para 135

ff) allocated to the lessor, is another service, it is the lessee attributable, is a delivery before (for an abusive practice see margin 1802a).

**Opinion poll:** The transfer results of writing represented a

Opinion poll in the field of market research is another service because the Sharing information is in the foreground (BStBl II 1974, 259).

**Repair or improvement works in conjunction with deliveries:** If the

Delivery item repaired or improved before the delivery process, there is a uniform power before that is to qualify as a supply (VwGH 2/27/1990, 89/14/0197; VwGH 04/16/1991, 90/14/0012; VwGH 04/22/1998, 95/13/0144).

**Restaurant transactions:** Restaurant transactions are to be regarded as top performers

(ECJ 02/05/1996, Case [C-231/94](#) , Faaborg - Gelting lines A / S), see closer Rz 641e and [Art. 6 Regulation \(EU\) 282/2011](#) OJ. No. L 77, 23/03/2011 p. 1

**Software licensing:** The sale of standard software on floppy disk or other

Media is a delivery (see also margin 642c). not to the surrender standardized software that is specially created for the user's requirements or an existing software adapts to the user's needs individually, there is a supply of services. The transmission of standard software on electronic means (eg internet) is another service.

**Contract for the management of fuel cards:** When settling fuel

using fuel cards by a mineral oil to a contractor Entrepreneur who under an agreement on the management of fuel cards for the direct users of the fuel card, only organized fuel cards and managed comes on the one hand to a supply of fuel of petroleum contractor to the immediate user of the card, and the tank on the other hand to a service of the Management of fuel cards exporting entrepreneur to the direct users the fuel card. This service is subject to the conditions of the [§ 6. 1 Z 8 lit. a UStG 1994](#) be tax-free (see. ECJ 05.15.2019, [C-235/18](#) . *Vega International Car Transport and Logistic*).

With fuel card agreements that regulate the purchase and sale of fuel, however, is assume a delivery in the series.

**Theater tickets:** The sale by the operator of a theater is still no power.

This is provided only by the theatrical performance. Among the vouchers see margin 4. To Deposit taxation see margin 2607th

**Sound recordings (compact discs, music cassettes, records):** The sale of a

Phonogram in retail to a final consumer delivery. Otherwise would be the to judge the case when the transfer of a right of significant economic Content of the power exchange would be:

*Example:*

*The entrepreneur A sells the operator of a broadcasting company R recordings with music that A has taken itself. A grants the R is the right of use to spread the music recordings in its radio broadcasts, as well as to reproduce the sound carrier when required. The main substance of the benefits of A is the granting of usage rights work within the meaning of §§ 24, 26 and 27 Copyright Act, BGBl. No. 111/1936. A has therefore provided some other performance under § 3a 6 or paragraph 14 Z 1 VATA 1994 (31.12.2009. § 3a 10 Z 1 VAT 1994 - Catalog power).. Fall (VwGH 05/06/1963, [1870/61](#) ).*

**Greenhouse gas emission allowances:** The controllable transmission of

Greenhouse gas emission allowances within the meaning of [Directive 2003/87 / EC](#) represents another service, the under [§ 3a. 6 and para. 14 UStG 1994](#) falls (ECJ 12.08.2016, Rs [C-453/15](#) . *A and B*).

1 it is not in accordance with § 6 para. 8 UStG 1994 tax-exempt.

**Publishing contract:** Passes an author to the publisher a manuscript and he admits this one

Work right of use (§§ 24 and 26 copyright law, FLG. No. 111/1936.) Thereon, is

in contrast to the book sale another service before that under § 3a. 6 and

Abs. 14 Z 1 VATA 1994 (31.12.2009: § 3a 10 Z 1 VAT 1994 - Catalog performance.) Drops,

because the granting of this right is in the foreground (VwGH 06.29.1959, 2466/57;

VwGH 15.09.1986, [84/15/0186](#) , [84/15/0187](#)).

**Cattle fattening business:** Takes a farmer, the animals of another farmer to

Auffütterung so is to achieve a Master Corol (other services) and not

to look at the supply of food as service content.

**Game shot:** The recipient of the services granted by the entrepreneur opportunity in

shoot a corresponding entrepreneur gate ground game and the trophy

and turn the meat of the game, is a single supply. Depending on whether the

Transfer of the meat together with the trophy on the one hand or the toleration of hunting and

Firing the other hand predominates as a power content, there is a delivery or other

Performance before. If the market value of the trophies and also ceded meat

low, is as half of the expended by the hunting client fee any other

Performance before (VwGH 03.14.1980, [2045/79](#) ; VwGH 13.05.1982, [81/15/0013](#) ) Under § 3a

Abs. 9 VATA 1994 (Grundstücksort; until 31.12.2009. § 3a 6 VATA 1994) falls.

**Magazine production:** The production of magazines to afford Text

and images by the contracting authority is to be treated as a supply of magazines.

### 3.1.3. Consistency of performance

#### 3.1.3.1. General

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Subject of the tax is basically every single performance. A uniform

Power is only given when multiple services are provided, which so closely

are connected together to form a whole objective in economic terms,

the split would be artificial. To determine whether the taxpayer the

Consumer several distinct principal supplies or a single supply,

is the essence to determine the transaction at issue, with the view of the

The average consumer is shut. A uniform supply in particular,

if one or more parts of the main performance, one or more elements are

represent ancillary services which share the tax treatment of the principal service (see, among other things.

ECJ 27/10/2005, Case [C-41/04](#) . *Levob Verzekeringen*; ECJ 02/25/1999, Case [C-349/96](#) . *Card*

*Protection Plan Ltd*, ECJ 05/15/2001, Case [C-34/99](#) . *Primback Ltd*, and VwGH 19.3.2008, [2005/15/0072](#) and VwGH 20.02.2008, [2006/15/0161](#) ).

This reflects the economic on the approach ( [§ 21 BAO](#) )

Principle of unity of the supply-based. Accordingly, a uniform must economic process for the purposes of VAT taxation not in its components be dismantled. Uniform services are thus to be assessed for VAT defined; the legal consequences are identical for all parts of a single performance and depend on The main purpose of the uniform power (cf.. VwGH 21.12.1966, [0937/66](#) ; VwGH 30.03.1992, [90/15/0158](#) ). If, for example, the main purpose of the uniform performance in a certain delivery, enter only the legal consequences of this for the entire performance certain delivery a.

It is then, among other things. not permitted, the single economic operation of a plant delivery (For example, during construction of a building) in a delivery of goods and any other service (Labor) to decompose (VwGH 01.14.1963, 1364/60; VwGH 24.06.1971, 0107/71). This also apply when separate the supply and processing of the material Orders issued and separate bills are placed. The same applies to Transport services, which are closely related supplies.

### 3.1.3.2. Dependent fringe benefits

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share dependent ancillary services, the sales tax treatment of the principal service (Place of performance, machine control, tax liability, tax rate).

Dependent fringe benefits

- usually come in the wake of the main power before,
- are in relation to the main power, the public perception of minor  
Meaning, for example, because the interests of the purchasers regularly to the main service concentrated and
- have to facilitate to supplement the main power the purpose, to enable or round. So you have the advantage over the main power a serving function (VwGH 04/05/1984, [83/15/0045](#) ; VwGH 17.09.1990, [89/15/0048](#) ; VwGH 17.09.1990, [89/15/0051](#) ; VwGH 17.09.1996, [93/14/0055](#) ; VwGH 17.12.1996, [96/14/0016](#) ; ECJ 22.10.1998, Rs [C-308/96](#) Rs and C-94/97 *The Howden Court Hotel*; ECJ 25.02.1999, Rs [C-349/96](#) . *Card Protection Plan*).

The ratio of the value of the services here is not of decisive

Meaning, but can be used as evidence. Whether all the services one

uniform price is required or whether all services in the course of a single Contract be provided is immaterial. Is not necessary that one of the two Services makes economic sense only in the context of other (VwGH 04/05/1984, 83/15/0045).

### 3.1.3.3. ABC of equal benefits and fringe benefits paid employment

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**Following electricity, water and gas lines:** See margin 1170th

**Following the cable television network:** See margin 1284th

**Transport as a secondary activity:** Is the transport performance compared to a other services participating in the exchange of services is of secondary importance, it can be a dependent ancillary service.

At a feed of the delivered object can usually economically uniform delivery process sales tax legally in the delivery of the goods and a transport service (Delivery) are decomposed (VwGH 05.10.1957, 0426/55 for delivery of sand; VwGH 06.03.1964, 1437/62 for delivery of stones to the construction site).

The transportation of children to and from kindergarten, regardless of whether all children who the visit kindergarten, being carried, an ancillary to the principal service "Kindergarten Operation" (VwGH 09/17/1996, 93/14/0055).

Rafting - passenger transport occurs in the background (see margin in 1313).

Sommerrodelbahn see margin 1313th

**Transportation fringe benefits:** Are loading, unloading, collections (ECJ 12/06/1979, Rs C-126/78, "NV Nederlandse Spoorwegen"), handling, storage, Grab insurance, pay your customs and / or the EUST (VwGH 29.1.1998, 96/15/0066), a possible monitoring and transport similar to the transport of an article in Context-quality services provided by the contractor transported, they are as to view additional services of goods transport.

**Lending:** See margin 754 to Rz 758th

**Teaching:** The provision of books, scripts and other written Documents related to the teaching, by those entrepreneurs, performs this activity is considered as a mere ancillary to the teaching to view (VwGH 17/12/1996, 96/14/0016; cf. VwGH 09.28.1976, 1545/74.).

The provision of a course concept to a company acting in the field of vocational training Companies and taking place in the framework of this concept teaching the same Person make separate main benefits are (VwGH 08/27/1990, 89/15/0128).

Lotto Syndicates / syndicates: Lotto Syndicates rendering their Customers with a consistent performance that neither mediation nor a Procurement performance. The services - such as organizing and conducting the Syndicates and creation of number sequences - are part of this uniform (Turnover tax) performance (see. VwGH 29.7.2010, [2008/15/0272](#) ; VwGH 10.24.2013, [2011/15/0053](#) And VwGH 12.18.2017, [ro 2016/15/0015](#) ). See also Rz 657th

**Fairs and exhibitions - services of the organizers:** See margin 640U to Rz 640y.

**Serviced apartments and business premises:** See margin 888 and Rz 894th

**Notary - fringe benefits in connection with the certification of**

**Land supplies:** See margin 640b.

**Portfolio management:** The commercial activities of an entrepreneur who own due decides discretion for the purchase and sale of securities and these Decision takes place through the purchase and sale of securities, provides a uniform

**Another benefit is (ECJ 19.07.2012, Rs [C-44/11](#) . *Deutsche Bank AG*). for the place of performance**  
See margin 642d, for not applying the tax exemption see margin 767 ff.

**Lawyer - Litigation as a single operation:** The acts of representation a lawyer in a process are to be regarded as a single other power at the time of final completion of the process is considered to be executed (VwGH 20.12.1996, 96/17/0451).

**Repairs in connection with deliveries:** See margin 345th

**Restaurant transactions:** To assess the uniform top performers see margin 345th

The dispensing of beverages as part of a restoration turnover is not as to display dependent service ancillary to the provision of food. Also, the delivery not considered food as a dependent ancillary service of dispensing beverages are (VwGH 24.11.1998, 98/14/0055).

**Seminar services:** Services such as the provision of a seminar room together Basic equipment and technology, Seminar support and beverage administration, no salaried ancillary to the accommodation represents (VwGH 20.02.2008, [2006/15/0161](#) ). See also margin 1,371th

**Seminar and meeting room rental: Part of a single power as**

Grundstücksvermietungsgesellschaft is considered, for example, the provision of

- Electricity,
- Internet,
- Cleaning,
- seating,
- Projector or beamer,

if this happens in a way and to an extent, as for seminar or Conference rooms is common.

If required by the wise use of the land (eg due to the size of the Space), and the provision of a conventional sound or light can technique (optionally including a necessary personnel) still be seen as part of the uniform performance.

Independent services generally constitute the provision of

- special stage technology
- Catering (even providing beverages)
- Wardrobe, including staff
- (If it is not active security personnel in the overriding interest of the landlord becomes).

**Trainer: Training and competition planning and supervision of athletes**

Training courses at home and abroad represent a consistent top performers. That part the activities of the coach, which is used for advertising and public relations subject, no separate assessment (VwGH 01/25/2000, 94/14/0123).

**packing material, ( Bottles, crates, barrels, other packaging), which** usually are provided by the supplier shall be agreed and for the pledged funds, divide the sales tax treatment of the supply (see. VwGH 05/30/1988, 86/15/0119).

**Water supplies, water meter: See "Connecting to electricity, water and Gas lines. "**

**Payment Processing fee: Additional charges that the supplier of a main power** (Eg telecommunications services) customers in the choice of certain Payment systems offset, do not constitute consideration for a separate



Payment service is and therefore share the fate of the main power (cf.. ECJ

02.12.2010, Rs [C-276/09](#) . *Everything Everywhere Ltd*).

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No single service is available:

**Menus (Quick) restaurants:** When dividing the standard menu prices on the

reduced rate underlying food sales and the normal tax rate

underlying beverage sales is the flat charge in proportion to the

Retail prices divide because they are already and no separate calculation

require ( "linear reduction" VwGH 16.12.2009, [2008/15/0075](#) ; VwGH 12.20.2016, [ro](#)

[2014/15/0039](#) And VwGH 10.17.2017, [Ra 2017/15/0056](#) ).

**Insurance benefits to leasing contracts:** Is the conclusion of a

Lease also concluded an insurance contract, it can be assumed,

that it is in the other existing in the insurance of the leased property performance

a - in addition to the transfer of use of the car - an independent other

(Insurance) power is (ECJ 17.01.2013, Rs [C-224/11](#) . *BGZ Leasing*). to

Exemption of insurance services see margin 851 to Rz 853rd

**Magazine subscriptions with online access (legal until 31.12.2019):** The

Division of a flat-rate fee subject to the reduced rate

Delivery of newspapers, magazines, etc., and the standard rate subject

Providing an online version has - unless retail prices are available -

be in accordance with the actual costs (see Administrative Court 16.12.2009, [2008/15/0075](#) , under

Recalling ECJ 22.10.1998, Rs [C-308/96](#) Rs and [C-94/97](#) *TP Madgett and RM*

*Baldwin*). The not directly print or online production costs attributable

divided in the same proportion as the direct costs.

*Example:*

*direct costs:*

*Print: € 9 million Online: 1 € million*

*not directly attributable costs: € 10 million*

*Print: 90%, or € 9 million; Online: 10%, or € 1 million*

*Print total cost: € 18 million (90% of total costs); Total cost online: € 2 million (10% of total costs)*

*Revenue Package: 30 € million*

*90% of sales subject to the reduced tax rate, 10% of sales to the standard rate*

however arising for the entrepreneurs by providing online access  
 its print subscribers, no significant amount of work and the online access without  
 given charge (free access), this power can (online access) no part of the  
**be attributed print subscription price (see. VwGH 22.11.2018, [Ra 2017/15/0091](#) ).**

For the application of the reduced rate for electronic publications from 1.1.2020

See margin 1339 et seq.

**Additional items on newspaper subscriptions: When dispensing - no relation to**

The business purpose of the company standing - objects to a non  
 below cost price with simultaneous conclusion of a subscription contract, to be  
 the same conditions will be completed by customers who do not object  
 purchase, there are two services for consideration. In exchange for the addition is not  
 cost pricing according to the price agreed with the customer to be set (see.  
 VwGH 27.05.2015, [2012/13/0029](#) ).

Edge numbers 350-360: *currently free*

## 3.2. Deliveries assimilated own consumption

### 3.2.1. General

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the removal of an object is treated as a supply for consideration by  
 an entrepreneur from his business

- for purposes which are outside of the company,
- for the needs of his staff, provided everything attentions, or
- for any other free gift, except gifts of small

Value and product samples for business purposes.

The gratuitous transfer of a business or part of operation is a delivery  
 equal remuneration. For each object of the transferred operation, the whole  
 or has partially deductible, is therefore an  
 make own consumption taxation according to § 3 para. 2 UStG 1994. Regarding the  
 Next proratable on their own consumption tax according to § 12 para. 15 UStG

1994 2151 see margin to margin 2,153th

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The samples taken for purposes outside the company's articles must the  
 Companies serve or have served before. If anything the company  
 serves, 2 VATA 1994 depends on § 12. (see Rz Rz 1901 to 1952). Was a

mixed-use subject to the company only to the extent assigned when he  
business purposes only, a withdrawal may be this part only in terms  
respectively.

### 3.2.2. Headed deduction

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A personal consumption tax is levied in the cases [§ 3 para. 2 UStG 1994](#) only then,  
when the article or its components partial to a full or  
Deduction have authorized, with a deduction abroad is sufficient (VwGH  
5/22/2014, [2011/15/0176](#) ).

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As components all not independently usable assets that apply to the  
object supplied in a uniform usage and functional relationship  
are, even if they have entered into the object until later (eg a later  
built in a motor vehicle air conditioning). do not lead to a part of expenses  
the use and the preservation of the object, the income tax deductible immediately  
Maintenance costs represent (eg expenses for repair, replacement or  
Wear parts).

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On the one hand a double taxation and secondly a non-headed end-  
to avoid is to make a partial self-consumption taxation.

*Example 1:*

*In a no possibility of a tax deduction acquired building an elevator will be installed in 2001, claiming the tax deduction. In 2002, the property is removed.*

*A self-consumption taxation occurs only in terms of the land portion lift.*

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This assessment is also in major repairs to buildings (eg replacement of windows or  
doors; Renewal of the roof or the heating system; Draining effort)  
make.

*Example 2:*

*In an acquiree without the possibility of a tax deduction building tax deduction is made a major repair in 2001 by asserting (eg replacement of windows). In 2002, the property is removed.*

*A self-consumption taxation occurs only in terms of the land part of the window.*

A deduction in connection with the ongoing use of buildings (maintenance, Repairs, other than major repairs) does not lead to self-consumption taxation with regard to removal.

### 3.2.3. Demarcation pecuniary transactions

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If items of business to third parties at a below-cost price issued, it must be determined whether the entrepreneur this low price from for economic reasons (for example, sales; bait and switch) or off-site from Subjects (familial or friendly close relations; company creation, etc.) has scheduled. Are operational reasons before, a total of a pecuniary interest to go out process. on the other hand, the value is output from non-operational reasons below cost or below cost, then a total of be assumed free of charge operation and a self-consumption tax under make § 3 para. 2 UStG 1994.

*example*

*A furniture dealer leaves his daughter a piece of furniture, which he shopped around 500 euros and sold for 700 euro according to the price list to 400 euros. For this price reduction is no economic reasons are.*

*It is overall a gratuitous withdrawal in accordance [§ 3 para. 2 UStG 1994](#) in front. The tax base is determined in accordance with [§ 4 para 8. Lit. UStG 1994](#) (Generally the purchase price).*

For the application of the normal value as of 1 January 2013 see margin 682nd

### 3.2.4. Benefits in kind to the staff

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See Rz Rz 66 to 74th

### 3.2.5. Other free gifts

#### 3.2.5.1. General

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Free gifts of items that are not in the removal of made objects or in-kind contributions to the staff, are also controllable, if the entrepreneur it, for commercial reasons, eg for advertising purposes for sales promotion or for image building, actuated. This includes in particular Donations to associations, goods duty on the occasion of contests, sweepstakes, etc. for advertising purposes. The controllability not apply if the recipient's facing Objects used in his company. Exempt from taxation Gifts of small value and the delivery of samples for the purpose of

Company. Gifts of small value are present if the acquisition or Manufacturing cost of the receiver facing the articles in the calendar year 40 Euro (without VAT) not exceed. Expenses or expenses can low-value advertising medium (eg, pens, lighters, calendars, etc.) here are neglected and are not to involve boundary euro in the 40th Not controllable is the provision of free services from other business purposes. This includes, for example, falls transferred free of Objects remain the property of the donor and the recipient of the accordingly later to the funding bodies must return.

### 3.2.5.2. Gifts

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A gift is a free gift forward to a third party. The Gratuity is not given if the care given in exchange for a Consideration is to look at the receiver. A gift is to take regularly if an entrepreneur a business associate or his agent without legal Liability and without temporal or other direct connection with a Performance of the receiver one such benefits are (see. In this regard EStR 2000 para 4813). No gifts include awards at a competition brief. They are therefore without testing a Geringfügigkeitsgrenze always controllable.

### 3.2.5.3. Non-taxable delivery of samples

371

Product samples are specifically excluded from the controllability. This is to objects that represent a certain type of goods already produced or are examples of goods, their preparation is provided; thereof are excluded However, similar products made in such amounts to the same recipient be that a whole, they no longer constitute samples under ordinary commercial usage. The type and appearance are commercial samples of goods offered by the entrepreneur convince meet potential buyers of the quality of the goods and thus the promote decision to purchase the receiver. to the delivery of a "sample" the Receiver not spare the purchase, but just encourage him to buy. is irrelevant whether commercial samples one another trader for his corporate purposes or final consumers are facing. not taxable also relates to the delivery of so-called tasting packs in the beverage and Food retailers (such as the free distribution of loose or packaged beverages

and food as part of promotions, sample packs, etc.)

Final consumers.

#### **3.2.5.4. Sales catalogs, commercial printing, advertising papers, etc.**

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Real output sales catalogs, mail order catalogs, travel catalogs, Leaflets and -handzettel, event programs and calendars, etc. are used for Advertising, in particular the initiation of subsequent sales. A (private) Enrichment of the receiver is thus not regularly connected. This also applies to Advertising newspapers including an editorial component (eg for Local, club news, etc.) be distributed free to all households in a given area. When giving such products is not about free gifts within the meaning of § 3 para. 2 UStG 1994.

#### **3.2.5.5. Sales aids, sale signs, displays, etc.**

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The free distribution of advertising and decoration materials which, after expiry of the advertising or selling action is destroyed or at the receiver not to of a (private) Enrichment leads (eg sale signs, price tags, known as displays), to other Entrepreneurs (eg from manufacturers to wholesalers or from wholesalers to retailers) also serves the advertising and sales promotion. The same applies to so-called Sales aids or stands (eg soup stands, confectionery stand), for example, by manufacturers or wholesalers are delivered to retailers at no extra cost when at the receiver, a use of these items in the non-business field is excluded. Upon submission of such products is not to be free gifts within the meaning of 2 UStG 1994 § 3..

By contrast, it is in the distribution free of charge not entrepreneurially usable items that after the advertising or promotions for Receiver still a use value have (eg vehicles, toys, sports and Leisure Products) to free gifts within the meaning of § 3 para. 2 UStG 1994.

#### **3.2.5.6. Demarcation of paid deliveries of free gifts**

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If the recipient of a seemingly given free of charge subject for obtaining This article actually provides something in return, supply this Object not as a free gift by § 3 para. 2 UStG 1994, but as supply for consideration controllable. The consideration of the recipient, in money or in

The form of a delivery or other performance consist (§ 3. 12 or § 3a. 2 UStG 1994).

*Examples:*

- *If an entrepreneur can the customer upon acceptance of a certain amount or exceeding send additional pieces of the same object without calculation of a determined amount of order (for example, 11 pieces at a price of 10 pieces), it is in economic terms and in terms of additional pieces to a total of pecuniary Delivery. Similar to a staggering price to purchase quantities in this case, the customer shall pay full price with the price of the calculated pieces of the uncalculated pieces.*
- *If a business owner to the customer for purchase of a certain quantity or exceeding a determined amount of order can also send other items without calculation (for example, in quantities of 20 refrigerators a microwave oven without calculation is supplied), it also is a commercial perspective, for a total supply for consideration ,*
- *A total supply for consideration is, for example, the uncalculated delivery of coasters (Coaster) Saugdecken (Tropfdeckchen), ashtrays and glasses of a brewery or a beverage sales department of a guest host as part of a beverage delivery, the uncalculated delivery of car accessories (floor mats, warning triangles) and care agents, etc a vehicle dealer. to the buyer of a new car or uncalculated delivering shoe polish a shoe dealer to a shoe shopper.*
- *Other cases in which regular deliveries for value or pecuniary interest are present:*
  - *Non Credited transfer of ownership of a mobile device (cell phone) from a mobile service provider to a new customer who signs a long-term network usage contract simultaneously;*
  - *Bonuses in kind of newspaper and magazine publishers to the new subscribers a magazine that have concluded a long-term subscription;*
- *Cases where a regular exchange of similar sales exists:*
  - *Product awards to existing clients for the placement of new customers: The property premium is a switching capacity of existing customers over (the dedication of property premium represents a supply for consideration);*
  - *Bonuses in kind of a car manufacturer to the sales from an authorized dealer if this personnel is thus rewarded for special sales success (the devotion of the bonus in kind constitutes a supply for consideration).*

Edge numbers 375-380: *currently free.*

### 3.3. commission business

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The commission is in its own name and on behalf of (namely, active principals). According to [§ 383 UGB](#) can any natural or legal person (A partnership) to be that it takes, goods or securities for the account of

Customer to buy on its own behalf or sell. There are three types of Commission transactions: the purchase and sales commission (§ 383 UGB) and the Works delivery Commission ([1 second sentence of the Austrian Commercial Code § 383 para. 1](#)).

In commission transactions are between the principals and the commission Deliveries before. It applies to the sale Commission of the commission in the Shopping Commission of the principal of as a customer. Before the sale, the Commission applies Delivery of the principal, to the commission only upon delivery by the Commission is considered executed. However, this rule applies only to the time and not to the place of delivery.

Regarding commission business in the single market see margin 3589th

### 3.3a. Trade across platforms and other electronic interfaces

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From 01.01.2021 platforms and other electronic interfaces (subsequently be: "Platforms"), the transaction provided for [§ 3 para. 3 UStG 1994](#) support for VAT purposes even for tax debtors. I.e. the platform is treated as would have acquired the goods by the supplier itself and in its own name on delivered (see § 3, para. 3 UStG 1994).

At conversions within the meaning of [§ 3 para. 3 UStG 1994](#) is this is the following transactions:

- Import mail order sales ([§ 3 para. 8 UStG 1994](#) ; see Rz 451) in which the (Customs) single value for each consignment does not exceed 150 euros,
- Deliveries in the Community (including domestic deliveries) by a non-established within the Community to an entrepreneur  
Not an entrepreneur.

*Example 1:*

*A Canadian dealers sold a pair of earrings of branches established in Ireland and IOSS (see. [§ 25b UStG 1994](#) ) Registered platform by 120 euros (gross incl. VAT) to an individual in Austria. Goods come directly from Canada to Austria. Solution:*

*From 01.01.2021, in accordance with [§ 3 para. 3 Z 1 UStG 1994](#) feigned that the Canadian entrepreneurs (only) provides for VAT to the platform and the platform in turn performs a delivery to the end user. In order for a series of business is established.*

*Since the movement of goods in accordance with [§ 3, para. 15 Z 2 UStG 1994](#) is assigned to the delivery by the platform (moving delivery), there is the place of delivery for*



*Supplied by Canadian entrepreneur (resting delivery) pursuant [§ 3, para. 15 Z 3 UStG 1994](#) in Canada (see. also margin 474g). This turnover is therefore not taxable in Austria.*

*The delivery of the platform to the consumer is considered to import mail order sales under [§ 3 para. 8 lit. b UStG 1994](#) executed than in Austria. The platform has to explain the Austrian VAT (20 euros) over the IOSS in Ireland and remitted. The import tax-free upon presentation of IOSSIdentifikationsnummer the platform ([§ 6 para. 4 9 UStG 1994](#) ).*

*Example 2:*

*The Chinese traders CN without establishment in the EU, stores goods in a foreign camp in Germany. He later sold the goods via a platform of another entrepreneur to a non-entrepreneurs in Austria.*

*Solution (from 01/01/2021):*

*According to [§ 3 para. 3 Z 2 UStG 1994](#) is a supply of CN in front of the platform and a delivery platform to the non-entrepreneurs in Austria. In order for a series of business is established, in which the moving delivery of the delivery is attributed to the platform ([§ 3, para. 15 Z 2 UStG 1994](#) ). CN has a iSd [Art. 136a VAT Directive 2006/112 / EC](#) (equivalent to [Art. 6 4 UStG 1994, para. real](#)) exempt supply in Germany. The platform has an intra-Community trade by shipping [Art. 3 3 UStG 1994, para.](#) taxable in Germany. The platform can the EU (OSS [Art. 369a to 369K VAT Directive 2006/112 / EC](#) corresponds to [Art. 25a 1994](#) ) take advantage of. Otherwise, the platform must be possible to collect tax in Austria.*

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[§ 3 para. 3 UStG 1994](#) is only for deliveries to non-entrepreneurs or for import

Mail order sales for deliveries to non-entrepreneurs or other in [Art. 3](#)

[Para. 4 UStG 1994](#) Persons named (threshold acquirer, see margin 3626) application.

The platform has the scope of [§ 3 para. 3 UStG 1994](#) anticipated

that the supplier an entrepreneur and the recipient is a non-entrepreneurs if their

no contrary information (eg UID of the receiver) are known (see [Art. 5d VO](#)

[\(EU\) 282/2011](#) ).

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When the platform delivery "supported" in order according to [§ 3 para. 3 UStG 1994](#) as to be faked supplier, is given by [Art. 5b VO \(EU\) 282/2011](#) :

The term "support" refers to the use of an electronic interface to it

an acquirer and a supplier, the objects of an electronic interface

offering for sale, to allow to come into contact, resulting in a supply of

Objects on the electronic interface to such purchaser results.

An entrepreneur will not support the supply of goods, however, if all

following conditions are met:

- a) The operator sets any directly or indirectly, the conditions for the supply of goods solid;
- b) the operator is indirectly in the authorization neither directly nor the Accounting related to payment to the beneficiary involved with the purchaser;
- c) the trader is indirectly in the order or delivery, either directly or (Delivery) of the objects involved.

[§ 3 para. 3 UStG 1994](#) Neither does it apply to business owners who only one of the following services to offer:

- a) the processing of payments in connection with the delivery of objects;
- b) the list of goods or advertising of these;
- c) forwarding or switching of purchasers to other electronic interfaces, offered through the items for sale, without any further Integration into the delivery is.

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The tax liability of the delivery created in the scope of [§ 3 para. 3 UStG 1994](#) end of the calendar month in which the payment has been accepted (see [§ 19 para. 2 Z 1a UStG 1994](#) ). When "adopted" a payment as valid, is given by [Art. 41 VO \(EU\) 282/2011](#) , This applies to the delivery of the platform as well - if controlled - for delivery to the platform.

The date on which the payment was accepted, the date on which the Payment has been confirmed or payment authorization message or a payment commitment the purchaser with the supplier, which the items via an electronic interface sold or received for the account, regardless of when the actual payment is made, whichever date is earlier.

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Explains a platform within the scope of [§ 3 para. 3 UStG 1994](#) too low Tax amount, because the supplier has made her false statements, it owes the excess amount not when on this information for the correct explanation of Control was dependent and can prove that they neither knew nor after reasonably could have known that this information was incorrect (see [Art. 5c VO \(EU\) 282/2011](#) ).

Edge numbers 387-390: *currently free.*