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- **E-mail distribution U1** -
- **E-mail distribution U2** -

SUBJECT **Value added tax;**

Sales Tax treatment of rental and lease agreements as delivery or other service;

ECJ ruling of 4 October 2017 Rs. C-164/16, Mercedes-Benz Financial Services UK Ltd.

GZ **III C 2 - S 7100/19/10008: 003**

DOK **2020/0256754**

(In reply please GZ and DOK specify)

I. Basics

The ECJ / 16, Mercedes-Benz Financial Services UK Ltd, a judgment of 4 October 2017 Rs. C-164, that in Art. 14 para. 2 point VAT Directive b wording used "rental agreement containing the clause that the property is acquired under normal circumstances the latest upon payment of the final installment "is to be interpreted as meaning that two conditions must be met for the adoption of a delivery.

Firstly, it must contract, the transfer takes place of the object due to which expressly include a clause for transfer of ownership of that object from the lessor to the lessee. This requirement provides the Court to be met if the contract provides for an option to buy the leased asset.

Second, it must from the - at the time the contract was signed and objectively assessed - clearly indicate conditions that the property will automatically pass the object to the lessee when the contract is scheduled to run until the contract expires.

Page 2 **The contract may the lessee no real economic alternative in the sense**

That he return to the time when he has to make a choice of buying the item, depending on their interests or continue renting can provide. In one contained in the Treaty - although formally completely non-binding - purchase option that condition is met if the option is exercised appear given the financial conditions in due course, in reality the only economically rational option for the lessee.

The VAT treatment of leasing and rental agreements in Section 3.5 para. 5 and 6 UStAE is partly in line with the ECJ ruling.

Section 3.5 para. 5 UStAE provides for the adoption of a delivery focuses on whether the lessee as an owner can dispose of the subject, and pointing to an income tax allocation of the object. independently of a call option - - thereafter of the leased property are for allocation among other things, the ratio of the fixed-term basic to useful life, an economically sensible utility after expiration of the lease term the lessor and the ratio of the purchase price book value at the time of expiry of the lease significant.

After Section 3.5 Abs. 6 sentence 1 UStAE i is at lease agreements. Of § 535 BGB with the right to purchase, after which the transition of civil property from further declarations of intent is subject to a delivery only at the time of matching declaration of intent before. This contradicts the view of EuGHs, the question is whether it is after a delivery or other service must be already clearly clarified in the interests of legal certainty at the time the contract is concluded.

The para. 5 and 6 of Section 3.5 UStAE are in their current form, to the extent no longer applicable.

II. Change in the VAT application decree

Referring to the outcome of discussions with the chief financial authorities of the countries section 3.5 of the VAT Application Decree (UStAE) from

has been 001 (2020/0057950), Federal Tax Gazette I, p 235 changed: S 7156/19/10002 - 1 October 2010, Federal Tax Gazette I page 864, the last by the BMF letter dated February 6, 2020 III C 3 , amended as follows:

1. Paragraph 4, the subheading is worded as follows: "Li EFER Ungen and sons ti ge Le is Ungen be i Mi et - and Lea si ngver tr ä - gen "

2. Paragraph 5 shall read as follows: "(5) 1 If items are left in the leasing process is the transfer of goods by the lessor to the lessee only one delivery if:
 1. the contract expressly includes a clause on transfer of ownership of that object from the lessor to the lessee and
 2. from the - if the contract is scheduled to run until the end of the contract is clear contract terms that the property will automatically pass the object to the lessee - at the time the contract was signed and objectively appraise sirloin.

2 An explicit clause transfer of ownership is also present when the contract includes a purchase option for the article. 3 In one contained in the Treaty

- Although formally completely non-binding - purchase option is fulfilled the second condition when given the financial conditions the exercise of the option at the appropriate time, in fact the only economically rational possibility appears for the lessee. 4 The contract may provide the lessee no real economic alternative in the sense that he return to the time when he has to make a choice of buying the item, depending on their interests or can continue to rent. 5 This can be the case when, after the contract at the time at which the option may be exercised, the sum of the contractual rate corresponds to the market value of the subject matter, the financing costs and the lessee because of the exercise of the option not additionally a substantial sum pay must (see. ECJ judgment of 4 10 2017, C-164/16, Mercedes-Benz Financial Services UK Ltd, BStBI II 2020

S. XXX). 6 A substantial sum is to be paid in terms of the set 5 when the amount to be paid in addition 1 percent of the market value exceeds the object at the time of exercising the option. 7 For the provision of goods outside the leasing process (eg leases within the meaning of § 535 BGB right to buy) sentences 1 shall apply mutatis mutandis to the fifth

3. Paragraph 6 is worded as follows: "(6) Takes place at a cross-border transfer of a leasing object (so-called. Cross-border leasing) the allocation of those goods on the basis of the law of another member state of exception, notwithstanding paragraph 5 in the domestic resident contractors, this assignment to avoid final tax revenue is to consequences; is the assignment of derogation of paragraph 5 takes place at the residents of the other member State partner, it can be followed if the proof is provided that the transfer has been unsuccessful in the other member state of the taxation. "

4. Paragraph 7 sentence 5 shall read as follows: " 5 Therefore, z. B. at a by paragraph 5 as a supply to be qualified Nutzungsüber- omission with preceding transfer of ownership to the passage over ends (so-called. sale-and-hire-back) to assume a financial business. "

III. application

The principles of this letter are to be applied in all open cases. For before March 18, 2020 concluded leasing and rental agreements, but it is - not be contested if the parties apply Section 3.5, Section 5 and 6 UStAE unanimously in force on March 17, 2020 version - for purposes of deductions..

This document is being published in part one of the "Bundessteuerblatt".

On behalf

This document was sent electronically and is only drawn in the draft.