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14:01 Uhr		14:01 Uhr		14:01 Uhr		14:01 Uhr	
Aktien	36.29	36.45	36.45	34.50	34.50	+1.791	35
DAX	74.50	75.41	75.83	71.89	71.90	+2.781	89
DAXI	50.24	51.10	51.12	48.53	48.79	+1.451	259
MDAX	150.24	151.00	151.70	140.24	140.28	+2.781	52
LEO	26.69	27.38	27.38	25.78	25.75	+1.141	24
Transportation & Logistics							
DPW	21.07	21.22	21.08	20.78	20.95	+0.121	45
LHR	16.00	16.30	16.20	15.50	15.50	+0.501	114
TUI1	14.00	14.10	14.10	13.70	13.70	+0.201	79
FRB	52.80	52.90	53.10	50.50	50.57	+2.031	15
Insurance							
AVV	120.800	120.00	124.00	113.49	114.82	+0.741	227
MWH	116.25	116.50	116.77	109.00	110.00	+1.241	56
MMS	91.498	91.50	91.28	91.11	91.11	+0.531	32
MOR1	27.10	27.50	27.72	27.19	27.35	+0.441	32

Federal Ministry of Finance communication dated 3 May 2021  
VAT treatment of services provided by exchanges and other trading platforms for financial products

May 2021

EY FSO alert  
Indirect Tax

## Background

As a result of Brexit, a number of UK financial service providers have relocated their business activities to Germany, including trading and clearing transactions in securities and derivatives. As a consequence, discussions have increasingly arisen as to how services that are processed via exchanges and other trading platforms are to be treated for German VAT purposes. So far, there has been no explicit regulation and therefore the German market and accounting practice have been inconsistent. In particular, matching, clearing and settlement services are in part considered to be taxable, whereas similar services in the UK are generally treated as VAT exempt. Since such transactions are linked to the VAT exempt trading with securities and therefore input VAT deduction is not allowed, trade participants are facing significant cost factor in the German market. Moreover, as trade participants based in Germany receive comparable services from exchanges and trading platforms based abroad, the differentiation between exempt and taxable services becomes relevant, as it needs to be assessed whether the reverse charge procedure is applicable.

The Federal Ministry of Finance (BMF) has reacted with a most recently published circular dated 3 May 2021. The BMF letter foresees a broad application of the VAT exemption for services of operators of exchanges and trading platforms for financial products.

In this newsletter, we would like to provide you with the details of the BMF letter and identify the possible need for action.

## Which services are affected by the BMF letter?

### The various services of exchanges and trading platforms

The BMF letter affects services rendered by operators of exchanges and other trading platforms for financial products that are usually provided in the context of processing of securities transactions as well as other financial transactions. The BMF decree is also relevant for financial service providers that make trades with securities, (virtual) currencies or financial derivatives and receive services from exchanges and trading platform providers for this purpose.

In the opinion of the BMF, exchange related services used by financial service providers can be classified into three different categories:

- ▶ services for which the exchange operates as a Central Counterparty (CCP);
- ▶ services of the exchange for the settlement of exchange transactions (matching, clearing, settlement), and
- ▶ supplies of IT-technical nature.

## The Exchange as Central Counterparty (CCP)

### The Exchange as CCP

In the first category, the exchange buys or sells securities in its own name and on its own account, often through a trading platform that is available to users for this purpose.

In these cases, the tax authorities consider the exchange provider's services, irrespective of whether they are spot or forward transactions, to be services which, if performed in Germany, are exempt from VAT under sec. 4 no. 8 letter e German VAT Act, being the services related to security transactions. The technical connecting of the market participant as well as the provision of the trading platform are considered to be ancillary services sharing the VAT treatment of the main service, since these are to be regarded merely as means to enable the actual service to be used under optimal conditions.

## Matching, clearing and settlement services

### Matching, clearing and settlement services

The second category includes, according to the tax authorities, the IT services of exchange and platform providers in relation to the matching, clearing and settlement of securities transactions and other financial contracts between two trading participants.

If the matching, clearing and settlement services are provided from a sole provider, the tax authorities consider this to be a single supply of services where the clearing and settlement services are to be regarded as ancillary services since they exclusively serve to process and conclude the matching service. This service is exempt from VAT as well, as it constitutes a transaction in securities, provided that it is rendered to a recipient resident in Germany.

## IV. Providing IT exchange software/programs

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### Taxation of IT services

If the service rendered by the exchange provider is limited to the provision/making available of a platform that serves purposes other than the processing of financial transactions, the tax authorities consider this to be an IT service in the form of technical connectivity or the provision of data capacity, which, if performed in Germany, is a taxable supply of service within the meaning of sec. 3 (9) of the German VAT Act. The BMF letter mentions as examples the provision of platforms for research purposes of universities, for press reporting as well as the planning of wealth investments.

## V. Receipt of cross-border services

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### Services of foreign providers

The current BMF letter is not only relevant for services provided by domestic exchanges or platform providers and their customers, but also for comparable services provided by foreign providers. These will no longer be subject to the reverse charge pursuant to sec. 13b German VAT Act, to the extent that the service is exempt from VAT under the conditions described above.

## VI. Option to tax and input VAT recovery

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### Option to tax

In its decree the BMF expressly points out that, in the case of services qualified as VAT exempt, it is possible to opt to tax pursuant to sec. 9 German VAT Act, if the service is provided to another (domestic) entrepreneur for the latter's business. The option to tax allows the exchange provider to deduct input tax from allocable input services, which, without a waiver of the tax exemption, is only permissible to the extent that the service of the exchange provider is rendered to non-EU recipients, which since the Brexit also includes customers in the UK.

## VII. Application of the decree

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### Implementation

The aforementioned principles are to be applied in all open cases according to the BMF, with explicit indication of the possibility for opting for supplies in the past. Finally, the BMF letter contains a non-objection provision: Under this provision, it will not be objected if IT services, which are ancillary services according to the principles stated above, are invoiced as a taxable supply separately from the exempt core service. Thus, the separate invoice of the IT services does neither affect the input VAT deduction of the service recipient nor the input VAT calculation of the exchange or platform provider. However, the provision is only applicable for services invoiced before July 1, 2021. The separate invoicing of IT services and core services may then have to be adjusted in accordance with the above-mentioned principles.

The actual decree, finally, annuls Section I lit. c of the decree issued 27 February 2018. Within this decree, the tax authorities hold the opinion that the provision of a platform allowing to purchase or trade Bitcoins has to be regarded as a taxable IT supply.

## VIII. Required actions

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### Required actions

The current BMF letter has significant consequences for the business of a large number of financial service providers who procure or provide exchange services.

- ▶ Providers of exchange and trading platform services resident in Germany should review what impacts the principles established by the BMF have on the taxation of their services, the billing process and the input VAT deduction. This also includes the question, whether valid waivers of the tax exemption were made in the past or whether an effective waiver of tax exemption can or should be revoked in individual cases.
- ▶ Trade participants resident in Germany who purchase comparable services from foreign exchanges and trading platforms should assess the applicability of the VAT exemption in accordance with the BMF letter. One should also establish if VAT that has been reported and paid in the reverse charge procedure can be reclaimed in individual cases, if no or only partial input tax deduction has been made.
- ▶ Finally, providers of exchanges and trading platforms should check whether settlement, operational and accounting systems need to be amended. This may further impact the input VAT adjustment under sec. 15a German VAT Act (Capital Goods Scheme) and the price calculation.

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Please contact us if you have any questions regarding the content of this newsletter. If required, we will also be delighted to share our many years of expertise in the financial services sector to support you in identifying impacts and implementing solutions triggered by the recent changes.

Kind regards,

**Ingo Bustorff**

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