

3. mednarodna DDV konferenca / 3rd International VAT conference

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VAT REGISTRATION OBLIGATION IN DE (I)

- + There are several cases, when a **VAT registration in Germany** can be obliged.
Please note that in Germany, different to other EU countries, there are no exemption rules or minimis limits for VAT.

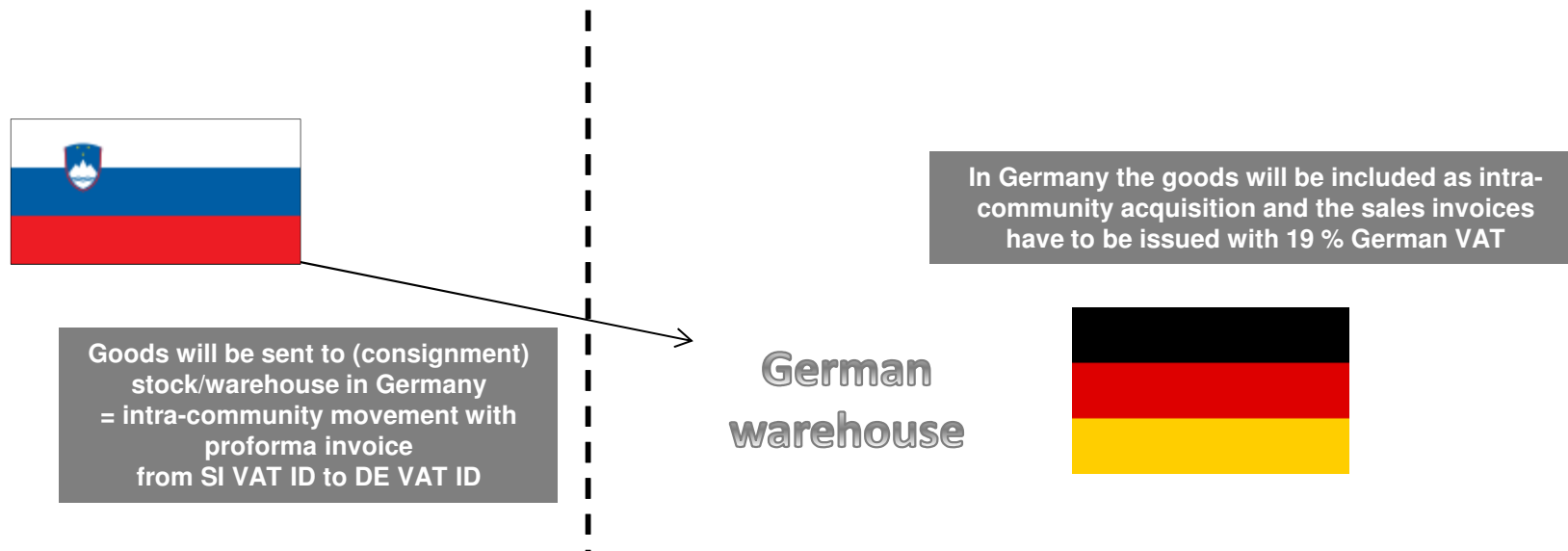
- + **Obligation for a VAT registration in Germany for conditions as follows:**
 - + Consignment stock or warehouse in Germany (also Amazon FBA) and selling goods from the German warehouse to German or foreign clients (B2B or B2C)
 - + Exceeding the distance selling threshold of EUR 100.000,00 to private persons in Germany
 - + Construction services for private persons in Germany
 - + Incoming invoices from subcontractors for a construction site in Germany, often with chains of subcontractors in the constructions industry

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VAT REGISTRATION OBLIGATION IN DE (II)

- + **Obligation for a VAT registration in Germany for conditions as follows:**
 - + Selling goods in Germany e.g. at a fair
 - + Buying and selling products in Germany without the goods leaving the country
 - + Importing goods into Germany from a third country or another EU state and selling the goods in Germany
 - + Organizing live events (conferences, art, education) in Germany
 - + Passenger transport e.g. with a coach through Germany

EXAMPLE: WAREHOUSE IN GERMANY



- + There is a VAT registration obligation for any warehouse/stock in Germany and no exemption relief for consignment stocks like in other EU countries.
- + The invoice for the client has to be issued with German VAT (19% standard rate or 7% reduced rate). Apart from an invoice the client himself can issue the invoice (self billing invoice/German: Gutschrift).

EXAMPLE: CONSTRUCTION IN GERMANY



Slovenian company is performing services on a German construction site.



Invoice to clients have to be issued without any VAT under the reverse charge procedure if they are companies.

If the client is an private person the invoice has to be with 19 % German VAT = German VAT registration obligation.

If there are subcontractors for the construction site in Germany, their invoices have to be included with reverse charge (VAT and VAT refund in the same second) in the German VAT returns = German VAT registration obligation.



- + There is a VAT registration obligation when construction services in Germany are performed for private persons and/or subcontractors are involved in Germany.
- + The invoice to the client has to be issued with German VAT in case the client is B2C, otherwise net under the reverse charge procedure.

VAT REGISTRATION PROCEDURE

- + **Please note:** A VAT registration is necessary before you start the first sale / business in Germany!

- + The VAT registration in Germany usually takes about two to eight weeks.

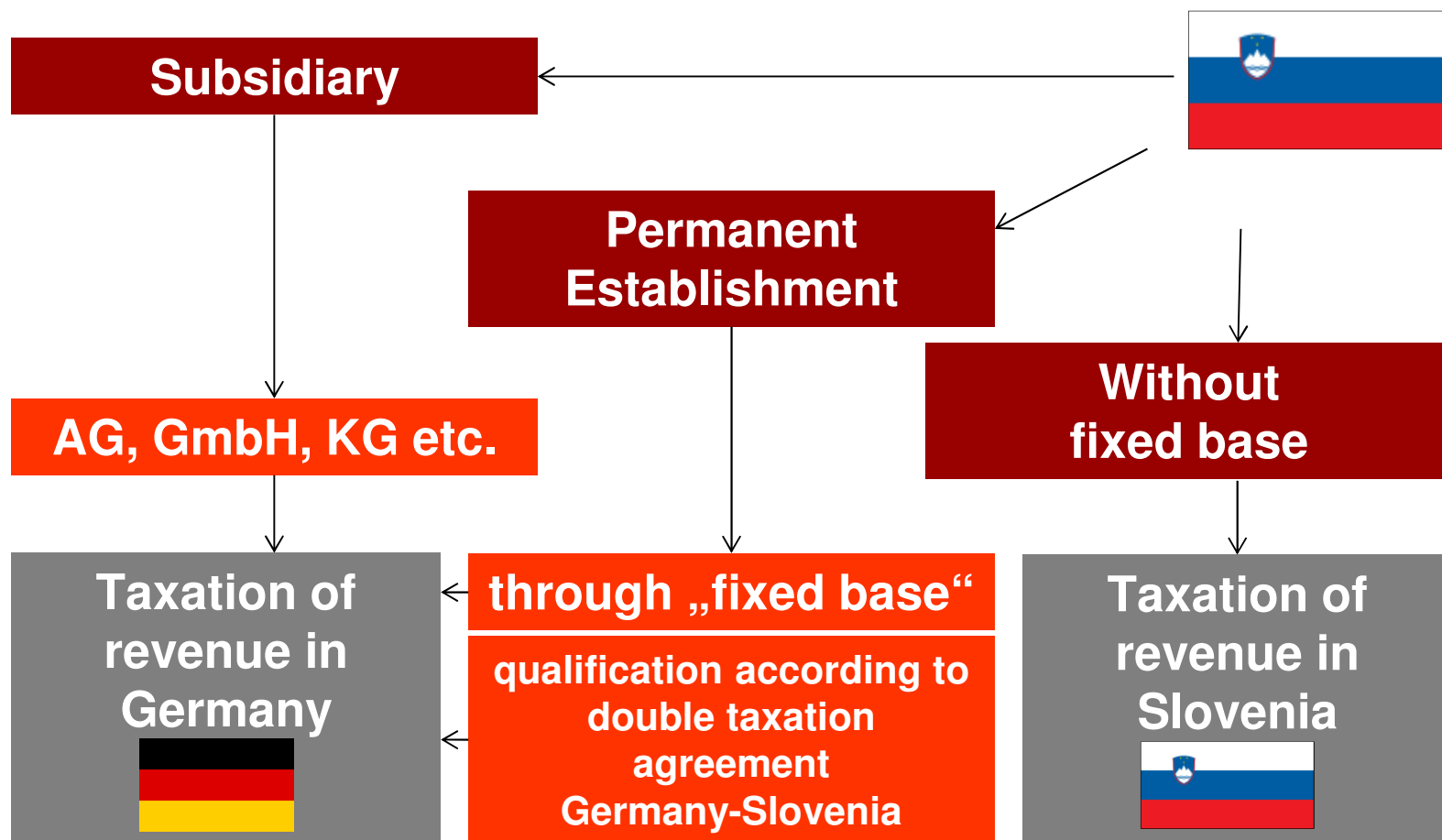
- + **For the VAT registration the following documents and information are needed:**
 - + Name and address of the company
 - + Contact details of the company
 - + Bank details of company
 - + Information about the planned business in Germany
 - + Starting date of business in Germany
 - + Excerpt of the commercial register with information about shareholders and managing directors
 - + Articles of association
 - + Tax registration certificate

VAT COMPLIANCE OBLIGATIONS IN DE

- + **The VAT registration leads to the following duties:**
 - + Monthly preparation and filing of preliminary VAT returns (can be quarterly after 2 years)
 - + Preparation and filing of an annual VAT return
 - + Filing of INTRASTAT declarations, depending on amount of sales or purchases
 - + Filing EC sales lists, depending on amount of sales

- + **To prepare the ongoing VAT returns, the following documents have to be provided:**
 - + Incoming invoices
 - + Outgoing invoices
 - + Import VAT documents from German customs
 - + Transport documents e.g. in case of intra-community deliveries

SETTING UP A PERMANENT ESTABLISHMENT IN GERMANY (1)



SETTING UP A PERMANENT ESTABLISHMENT IN GERMANY (2)

+ **Art. 5 (1)** Double Taxation Agreement Germany-Slovenia:

„For the purposes of this Agreement, the term “permanent establishment” means a fixed place of business through which the business of an enterprise is wholly or partly carried on.“

+ **Permanent establishments are in particular:** The place of management, a branch, an office, a factory, a workshop and a mine. (Art. 5 (2) DTA)

+ **No permanent establishments are:** The use of facilities solely for the purpose of storage, display or delivery of goods; the maintenance of a fixed place of business solely for the purpose of purchasing or collecting information; the maintenance of a fixed place of business solely for the purpose of carrying out any other activity of a preparatory or auxiliary character (Art. 5 (4) DTA).

SETTING UP A PERMANENT ESTABLISHMENT IN GERMANY (3)

+ **Dependent representative:** Art. 5 (5) DTA Germany-Slovenia („Representative PE“):

„When a person has the authority to conclude contracts in the name of the enterprise and is exercising habitually, the enterprise shall be deemed to have a permanent establishment in the contractual state.“

(Exemption: storage, representation, independent agent)

→ This determination can also be applied to the managing director (d.o.o.), when working in Germany.

+ **Independent agent:** No permanent establishment when ordering an independent agent, broker or commission merchant, provided that those persons are acting in the ordinary course of their business. (Art. 5 (6) DTA)

+ No permanent establishment when the **company is controlled** by a company which is resident in the other contracting state. (Art. 5 (7) DTA)

EXEMPTION FOR BUILDING SITES, CONSTRUCTION OR INSTALLATION PROJECT

- + **Art. 5 (3)** Double taxation agreement Germany-Slovenia:
„A building site or construction or installation project constitutes a permanent establishment only if it lasts more than twelve month.“
- + **Problem of demarcation:** An office container at the construction site can be deemed as fixed place of business according to Art. 5 (1) DTA. In this case there would be a permanent establishment, even when business in Germany runs less than 12 months.
- + **Subcontractors:** If a general contractor engages a subcontractor these services may be attributed to the general contractor.
- + **Start and end:** Construction PEs start with the arrival of the first employee. Under certain circumstances several construction sites can be „counted“ as one PE. The PE ends with the performance of the last service in Germany.



FOUNDATION OF A SUBSIDIARY IN DE

- + As an alternative to a PE Germany many companies choose to found a subsidiary.
- + In Germany, the most common legal form as limited company is the „Gesellschaft mit beschränkter Haftung“, short **GmbH**.
- + A German company like a GmbH has to fulfill „complete“ tax obligations in Germany. Therefore VAT, corporation tax and business tax returns have to be filed. Furthermore accounting, payroll and financial statements have to be prepared.
- + **Advantages** of the foundation of a German company:
 - customers prefer doing business with companies with a local legal form, which is well known and accepted in Germany
 - good reputation and therefore attractive for German employees
 - possibility to limit liability to the assets of the company
- + The foundation of a corporation in Germany has to be carried out by a German notary in German (bilingual documents are possible) and signed by authorised persons (proxy possible).



TAX OBLIGATION OF EMPLOYEES IN DE

- + **Cost transfer to or payment of the wages through the permanent establishment:**
Germany has the right of taxation for the respective wages of the employees (wage tax).
→ German permanent establishment always leads to a wage tax obligation!!!

- + **183-days-rule:** 183 days are referring to aggregated 183 days in any twelve month period /
If the wage/salary will be paid through a „German“ employer or the permanent establishment,
the wages have to be taxed from the beginning in Germany
→ 183-days-rule only for employees working at a non permanent establishment

- + **Social insurance:** Within the EU a social security exemption can be applied for (form A1).

- + **Minimum wages:** In Germany there is a general minimum wage of EUR 8,84 per hour. Nevertheless
many industries have higher minimum wages guaranteed due to extensive collective agreements.

DE CONSTRUCTION WITHHOLDING TAX – EXEMPTION CERTIFICATE

- + **German construction withholding tax** according to §§ 48-48d EStG
 - „Prepayment“ for wage, income and corporation tax
 - **Aim:** To curb illegal business in Germany

- + A **company** has to deduct the withholding tax for construction from invoices for construction services in Germany which are paid to the subcontractor.
 - Manufacture, maintenance, modification or removal of buildings
 - **Construction withholding tax = 15 %** of the invoice value

- + **Exemption certificate:** Construction companies can register at the German tax authorities and apply for an exemption certificate for the German construction withholding tax (in German: Freistellungsbescheinigung).
 - With a valid exemption certificate the contractor does not have to withhold any taxes.
 - Please note: The exemption certificate has to be applied for before the start of the construction side in Germany!



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