

Authorisation to declare import of goods/fixed assets on form KMD

This provision allows traders who fulfil certain conditions to declare the VAT charged on goods imported from third countries in the VAT return (hereinafter form KMD) at the same time as the right to deduct it, if the goods are used for the purposes of the taxable supply. In other words, a company with taxable supply does not incur any real tax liability, since the calculated VAT can be deducted as input VAT on the same form KMD (by indicating a plus and a minus on form KMD). If a company generates supply exempt from tax, the input VAT can be deducted in part according to the proportion of supply exempt from tax to total supply.

CONDITIONS

In order to declare the VAT calculated on import on form KMD, the following conditions are laid down for a taxable person (e.g. a company, a sole proprietor, hereinafter the person) to fulfil (subsection 2¹ of § 38 of the VAT Act):

1. the person has been registered as a taxable person for at least preceding 12 consecutive months;
2. the person's supply taxable at the 0 percent value added tax rate has formed at least 50 percent of the total supply of the preceding 12 months **(repealed 1 January 2019)**;
3. the person has submitted tax returns only by electronic means within preceding 12 months **(repealed 1 January 2019)**;
4. the person has not failed to submit tax returns on time within preceding 12 months;
5. the person has not had tax arrears within the preceding 12 months **(in this context, tax arrears paid in instalments are treated as having no arrears)**.

The person can declare VAT on the import of goods on form KMD if all the conditions are met and if the tax authority has also confirmed that the conditions are met. If one of the conditions is not met, VAT on the import of goods must be paid in accordance with the customs legislation (on the basis of a customs declaration).

CONDITIONS FOR IMPORTING FIXED ASSETS

Import of fixed assets is provided as an exception. In this case, the first three conditions (subsection 2² of § 38 of the VAT Act) need not be met **(first condition as of 1 January 2019)**:

1. the person has been registered as a taxable person for at least preceding 12 consecutive months;
2. the person's supply taxable at the 0 percent value added tax rate has formed at least 50 percent of the total supply of the preceding 12 months; **(repealed 1 January 2019)**;
3. the person has submitted tax returns only by electronic means within preceding 12 months; **(repealed 1 January 2019)**.

However, the last two conditions must be met, i.e. **the person has not failed to submit tax returns on time within preceding 12 months; and the person has not had tax arrears within the preceding 12 months.**

If the person does not comply with the first three conditions specified in subsection 2¹ of § 38 of the VAT Act (with the first of those conditions as of 1 January 2019), the tax authority has the right to demand the provision of a security.

A security shall be submitted, released, used and calculated in accordance with Chapter 12 of the Taxation Act. A security may be required only on import of fixed assets, i.e. no security is required when goods are imported.

CHANGE FOR FUEL SELLERS FROM 1 FEBRUARY 2019

As of 1 February 2019 an amendment to subsection 2⁷ of § 38 of the VAT Act entered into force for the sellers of fuel within the meaning of the Liquid Fuel Act who have an activity licence for the import of fuel and the obligation to provide security upon import of fuel. In such a case, the seller of fuel does not have to comply with the conditions laid down in subsection 2¹ of § 38 of the VAT Act. On the basis of a notification, the seller of fuel who is a taxable person for VAT purposes will have the right to declare the import of fuel in the VAT return even if the required conditions are not met.

APPLYING FOR THE RIGHT TO DECLARE VAT ON THE IMPORT OF GOODS OR FIXED ASSETS ON FORM KMD (HEREINAFTER AUTHORISATION)

The authorisation to declare import of goods or fixed assets on form KMD can be applied for by a person who is the consignee of the goods according to the documents on the basis of which the goods are placed under the customs procedure for release for free circulation. Usually, the importer (consignee) is the purchaser of the goods. If a person other than the purchaser is indicated in the documents as the consignee, the importer is the consignee.

Submission of an application

Persons who wish to declare the VAT on import of goods or fixed assets on form KMD must first notify the tax authority in writing (submit an application). The application can be submitted only electronically in the e-services environment e-MTA (after signing in, select "Customs">"Rights and obligations" > "Licenses (LUBA)").

Upon submission of the application, select if you want to apply for the authorisation for:

- ✓ declaring VAT on the import of goods on form KMD (hereinafter authorisation to import goods)
- ✓ declaring VAT on the import of fixed assets on form KMD (hereinafter authorisation to import fixed

- ✓ assets)

The following data must be submitted upon applying for the authorisation:

- ✓ details of the applicant (for both goods and fixed assets): registry code/personal identification code, business name, address of residence or seat, VAT number;;
- ✓ details of the applicant's contact person (for both goods and fixed assets): name, e-mail address, phone number, seller of fuel (as of 1 February 2019);
- ✓ additional information when applying for authorisation upon import of fixed assets: the term during which fixed assets are imported (maximum 3 months), the value of the goods – the estimated taxable value of the fixed assets to be imported (§ 13 of the VAT Act), the description of the goods – commercial and/or technical specifications.

If a person has a valid authorisation to import goods, then there is no need to apply for a separate authorisation for the import of fixed assets in order to import fixed assets.

Compliance check

After the application is submitted, the tax authority carries out a verification of the person's compliance with the conditions of the VAT Act and confirms compliance with the conditions or failure to comply with the conditions within 30 days as of the receipt of the application (in the information system LUBA in the e-MTA).

The tax authority may ask the person for additional information on the fulfilment of the conditions if it does not have enough information. If a security is required, a security claim shall be submitted to the person.

Issuing of the authorisation

The authorisation to import goods is issued if all five conditions have been met by the person(**three as of 1 February 2019**). If one of the conditions is not met, the authorisation is not issued. As a general rule, the authorisation is issued for an indefinite period.

The authorisation to import fixed assets is issued if all five conditions have been met (three as of 1 January 2019) or if the first three (the first one as of 1 January 2019) have not been fulfilled, but upon request of a security it is accepted by the tax authority. The authorisation is issued for a limited period, in accordance with the time limit specified in the application.

Renewal, suspension and revocation of authorisation

In the case of a person who has been granted the authorisation to import goods, the tax authority verifies compliance with the conditions on a monthly basis (subsection 2⁴ of § 38 of the VAT Act; the results are visible in the e-MTA information system LUBA). If the applicant fulfils the conditions, the validity of the authorisation to import goods is extended until the end of the following calendar month. If the applicant does not meet the conditions, the authorisation to import goods is suspended until the end of the following calendar month.

The tax authority has the right to suspend both the authorisation to import goods as well as fixed assets during a tax procedure (subsection 2⁴ of § 38 of the VAT Act).

In order to revoke the authorisation to import goods, a person must submit a corresponding application. As the authorisation to import fixed assets is issued for a fixed term (deadline specified in the application), the authorisation will be revoked when the deadline is exceeded (there is no need to submit a separate application).

The tax authority revokes the authorisation for both goods and fixed assets upon deletion of a person from the register of taxable persons (subsection 2⁵ of § 38 of the VAT Act) and may revoke the authorisation by means of a notice of assessment or if the validity of the authorisation has been suspended for six consecutive months (subsection 2⁶ of § 38 of the VAT Act).

Please note that the application for authorisation to import goods is submitted once, unless the authorisation was not granted on the basis of a prior application or if the prior authorisation has been revoked.

In the event that a prior authorisation to import fixed assets has been revoked or if there is a wish to import fixed assets which are not indicated in the authorisation, a new application must be submitted.

Filling in a customs declaration

Upon valid authorisation to import goods or fixed assets, additional document codes 6024 (goods, filled in automatically) or 6025 (fixed assets, filled in manually) must be indicated in a declaration and the method of payment must be indicated as "2".

Filling in form KMD

In the case of an authorisation to import goods or fixed assets, the VAT calculated on import of goods must be declared in field 4.1 of form KMD, which is a field to be filled in by the tax authority according to the data obtained from Impulss (the system for processing customs declarations). Taxable persons themselves cannot fill in or amend the field 4.1.

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