# Translation of Email:

Dear Mr. Shevtcov,

We would like to inform you of the following regarding your request dated November 14, 2021 to set up an online marketing platform for wine (initially only with regard to vintners in other EU countries; vintners in third countries would have to be assessed differently again).

1. **According to you, you don't want to be a dealer, but an intermediary between the winemaker and customers.**

**This should be clearly shown on the online platform**. The sales contract for the wine should be concluded between the winemaker and the customer, and the **flow of money should also take place directly between the winemaker and the customer**.

Advantage: There are no sales tax or customs risks for you because you are not trading wine. You also do not have the risk of the end customer defaulting on payment.

Disadvantage: You run the risk of payment default from the winemaker.

The customer could also contact the winemaker directly after providing the contact details for the order.

For example, you bill the winemaker for your mediation or marketing activities on a monthly basis.

A distinction must be made here:

- the winemaker is based in Germany: invoice with 19% sales tax

- the winemaker is located in another EU country: invoice net without sales tax with the

11/22/2021

Notice that the tax liability is transferred to the recipient of the service. This means that the winemaker is responsible for registering and paying sales tax in his home country. Sales tax is normally a transitory item so that the winemaker only has the net invoice amount as the actual cost.

\* Is it about the taxes payed by winemaker for my activities?

*der Winzer sitzt in Deutschland: Rechnung mit 19% Umsatzsteuer*

*- der Winzer sitzt im EU-Ausland: Rechnung netto ohne Umsatzsteuer mit dem Hinweis, dass die Steuerschuldnerschaft auf den Leistungsempfänger übergeht. Das bedeutet, dass der Winzer in seinem Heimatland für die Anmeldung und Abführung der Umsatzsteuer zuständig ist. Normalerweise ist die Umsatzsteuer ein durchlaufender Posten, so dass der Winzer auch nur den Netto-Rechnungs- betrag als tatsächliche Kosten hat.*

1. **Legal form and sales taxation**

As a legal form, a sole proprietorship (Einzelunternehmen)is the simplest option, as this does not cause any start-up costs (in contrast to, for example, a GmbH). However, there is no limitation of liability here as with the GmbH. This means that you are privately fully liable for the operation of the marketing platform.

In terms of sales tax, we would rather recommend regular taxation and not the small business regulation. As winemakers, your customers are also entrepreneurs, so the sales tax on your bills is not a cost factor for your customers.

*\*Ihre Kunden sind als Winzer ebenfalls Unternehmer, so dass die Umsatzsteuer auf Ihre Rechnungen keinen Kostenfaktor für Ihre Kunden darstellt.*

As a regular taxpayer, you can get the input tax included in the invoice reimbursed by the tax office for all costs incurred (e.g. for the acquisition of the technology, programming and hosting of the platform, legal and consulting costs, etc.). This means a clear liquidity advantage over the small business regulation.

The cost of accounting does not differ significantly.

*\*Sie können als Regelbesteuerer bei allen anfallenden Kosten die in der Rechnung enthaltene Vorsteuer vom Finanzamt zurückerstattet bekommen (z.B. für Anschaffung der Technik, Programmierung und Hosting der Plattform, Rechts- und Beratungs- kosten etc.).*

*Is it just about expenses of the business – which leads to smaller profits -> smaller taxes, or the 19% of the cost for obtaining assets for operations?*

1. **Taxes to be paid**

Value added tax:

as a small business owner: none, but also no input tax deduction

as a regular taxpayer: 19% on sales, i.e. the bills to German winegrowers. You will receive this tax from the winemaker when you issue the invoice. In this case, you will be credited with the VAT charged to you as input tax.

The sales tax is therefore purely a transitory item

*\*Diese Steuer bekommen Sie vom Winzer vergütet über die Rechnungstellung.*

*.\* Die Umsatzsteuer ist also ein reiner Durchlaufposten.*

Income tax:

on the company's profit, tax exemption € 9,984, then the tax starts at approx. 14%

\*above this amount no tax?

Trade tax: on the company's profit, tax exemption € 24,500

\*What is the difference between Einkomennsteuer and Gewerbesteuer?

You do not have to pay any customs duties or the like, as you do not trade the wine yourself.

In the case of a GmbH, 15% corporation tax would have to be paid instead of income tax; there are then neither corporation tax nor trade tax exemptions.

1. **Consequences for the Winze**

The deliveries of wine from the winemaker's point of view are treated differently under tax law, depending on whether the wine is delivered to private individuals or entrepreneurs, and depending on the country to which it is delivered.

Here, the winemaker should find out about the tax and customs conditions in his home country in advance. If necessary, he must register for tax purposes in Germany and any other EU country to which he delivers and pay taxes there (from a German perspective: Appendix 1 - Info from the Koblenz Chamber of Commerce).

Winegrowers should also find out about customs in their home country.

The winemaker should also inquire about any licensing procedures or test regulations for the wine in his home country (from a German perspective: Appendix 2 - Article from German customs).

We cannot provide any information here, e.g. from an Italian point of view.

\*So it is purely related to the laws/food expertises in Italy?

**5) Price information on the online platform**

The price should be given to you by the winemaker after he has checked the conditions under 4. for himself. You should then be able to enter a Netto price plus statutory VAT on the platform. \*what is meant by Netto price

Deliveries from Italy to German private customers would have to be invoiced with German sales tax, deliveries from Italy to German entrepreneurs (hotels, restaurants) should be invoiced as intra-Community deliveries without sales tax. At this point see also the following remarks!

1. **Further questions**

Since this is a very complex issue with a wide variety of variants, the structure of the business should be carefully considered. Here are a few more suggestions and questions:

a) Who programs the website? If this is a professional provider, he will be able to point out many questions to you. For example, if-then relationships should be able to be built into the order in order to create the invoice correctly (private customer? Corporate customer? Domestic / foreign etc.).

Can the provider provide you with “general terms and conditions” and other legally necessary components for the homepage?

Where is your data actually located? If the data is stored in a cloud abroad, this must be reported to the tax authorities. What about the provider with regard to data protection (e.g. personal customer data)?

As the operator of an online marketplace, you are obliged to record various information (Annexes 3 and 4). Can this be ensured via the creator of the homepage?

b) At which points can you incur a liability risk with the marketing platform? An insurance broker should be consulted beforehand.

*\*An welchen Stellen kann Ihnen mit der Marketing-Plattform ein Haftungsrisiko entstehen? Evtl. sollte vorher ein Versicherungsmakler befragt werden.*

c) As an online marketplace, you may be liable for paying the winegrower's taxes. You have to ensure that every winemaker for whom you add goods to the platform has registered correctly for tax purposes.

There are certainly other questions to be clarified before you should dare to get off to a safe start with your new business idea. We would be happy to help you with this.

# Attachment 1: wine sales abroad

**Basics**

There are no customs borders within the 27 EU countries, so goods can move freely. However, there are still different sales tax and excise tax rates. Although no excise tax is levied on wine in Germany (tax rate = 0), excise tax regulations and formalities must be observed when transporting goods within the EU.

In the case of sales tax and consumption tax, a distinction is made between deliveries to entrepreneurs and private individuals.

**B2B**

The country of destination principle always applies to commercial trade between companies, which means that the wine is subject to the tax rates of the country of destination.

Winegrower delivers from Italy to Germany without sales tax

The German entrepreneur customer registers an intra-community acquisition with 19% VAT.

**value added tax**

For sales tax, this is achieved by using the so-called sales tax

Identification number (USt.-IdNr.)  ensured. The VAT ID no. is not identical to the tax number issued by the responsible tax office. can be obtained from the Federal Central Office for

Taxes can be applied for.  The indication of a valid VAT ID no. of the supplier and the purchaser in the invoice is always required for intra-community goods traffic between companies for VAT-free delivery

VAT ID no. at the Federal Central Tax Office. 

According to the sales tax law, flat-rate farmers are not entitled to any tax exemptions

to take. We recommend consulting a tax advisor.

**Excise tax**

With regard to the consumption tax, a distinction must be made between deliveries of wine to an entrepreneur in other EU countries whether the transport takes place “under tax suspension” or “free circulation under tax law”.

When transporting wine “under tax suspension” , the excise tax of the respective member state remains suspended. In principle, every trader who wants to export wine within the EU must apply for an excise number at the main customs office responsible for him. Before shipping, the supplier should ensure that the recipient has the appropriate authorization to purchase wine in the form of a valid excise number. This can be done online via the SEED database  (System of Exchange of Excise Datas) of the EU Commission or in Germany at the "Central Office for Excise Tax Information Requests" at the main customs office in Stuttgart, phone 0711 9 22 21 46 or by e-mail zvs @ hz-as.bfinv.de  be asked.

The monitoring of the transport under tax suspension within the EU takes place electronically by means of the procedure EMCS <https://www.zoll.de/DE/Unternehmen/Warenverkehr/Warenverkehr-innerhalb-der-EU/Verfahren/Befoerderung-von-Waren-Steueraussetzung/befoerderung-von-waren-steueraussetzung_node.html>

In Germany there is no excise tax on wine (tax rate = 0). If wine from Germany is delivered directly to an EU member state in which the excise tax on wine is also zero, the wine is in "tax-free circulation" upon delivery. A simplified accompanying document (VBD) in triplicate must be enclosed. This document consists of three copies, the first remains at the supplier's premises and copies two and three accompany the delivery of the wine and are presented to the responsible customs office in the recipient country. Copy 2 then stays with the recipient and the third copy is sent back to the German sender as evidence.

Member State levies an excise tax on wine , see the customs page. The recipient has to inform the customs office responsible for him that he has purchased the wine before the start of the transport and is then assigned a reference number, which he forwards to the sender together with the full address of his customs office. The sender in turn enters this data in the VBD.

**B2C**

If an entrepreneur sells wine to a private customer in another EU country, it depends on whether the wine is picked up or delivered in Germany.

In the case of wine deliveries to private individuals in other EU countries, the sales tax of the country of destination must be invoiced by the sender. The sender has to register for sales tax in the EU country concerned, receives a tax number there and pays the foreign tax in the country of destination. The mail order company is liable for tax. In practice, this means that from the first bottle of wine sold, tax liability for consumption and sales tax is present in the other EU country.

Free amounts do not exist. For the consumption tax, the sender must register with the customs authority responsible for the recipient as a "mail order company" before delivery of the goods and usually deposit a security there in the amount of the applicable consumption tax. The delivery of goods subject to excise duty must also be reported to the main customs office responsible for the company before they are shipped for the first time.

We recommend engaging a tax officer (fiscal representative). In some Member States this is even compulsory. A fiscal representative becomes tax debtor instead of the sender. The sender transmits the shipment data to the fiscal representative before shipping. The fiscal representative takes care of the tax processing and sends the sender the relevant documentation including accompanying papers.

If the wine is picked up by foreign private individuals who take the wine home across the border, the seller shows sales tax of 19%. Up to a guideline quantity of 90 liters per person, the buyer can take wine across the German border to other EU countries without incurring any excise tax. However, this only applies if the goods are transported by him personally. A refund of sales tax for private individuals is not possible.

**Official export certificate for wine**

Some states outside the EU require German wine exporters to issue official certificates that confirm, among other things, the conformity of the products with the applicable regulations. If such export certificates are required (e.g. "Certificate of Free Sale" or "Health Certificate"), the following offices are responsible in Rhineland-Palatinate:

# Attachment 2: import of wine.

What are the criteria for importing wine?

Viticulture products manufactured in a third country (see Annex I Part XII of Regulation (EU) 1308/2013) may only be imported (Section 35 Wine Act) if:

* they are harmless to health and suitable for consumption,
* the regulations of the European Union applicable to them have been complied with (e.g. with regard to the prescribed presentation and designation) and
* they may be placed on the market in the country of manufacture with the purpose of being consumed unchanged.

According to this, viticulture products must meet the requirements for production, marketing and delivery for direct human consumption. Non-compliant products, e.g. products (§ 27 WeinG, Art. 80, 81, 167 of

VO (EU) 1308/2013):

* which are not of a healthy or commercial quality or
* which have not been produced according to approved oenological processes

Those cannot be placed on market or improted

How does the import clearance of wine work?

As part of the import clearance, it is checked whether the products meet the prescribed import requirements.

In order to ensure effective controls, the transfer to a customs procedure is in principle only possible at certain so-called "authorized customs offices*"(befugten Zollstellen).* If all requirements are met, this customs office grants importation approval.

Information on customs offices and their clearance authorizations can be found in the general office search. On the left-hand side, the filter "Handling authorizations*"(“Abfertigungsbefugnisse")”* must be set and the respective authorization selected:

* <https://www.zoll.de/DE/Service/Dienststellensuche/Dienststellensuche/_function/DienststellenSuche_Formular.html;jsessionid=AE102F2D1BCD77CCB2577FC10E2B2C27.internet672?nn=306214>

For this purpose, the wine must be examined in principle by the responsible official inspection bodies. If this confirms that the wine meets the stipulated requirements, approval for import is granted.

In certain cases, the wine is exempt from the obligation to be admitted for import. This applies, for example, to wine from the EEA countries, to wine that is exclusively intended for cultic purposes or for products that are intended as samples and samples in containers in small quantities.

If there is an exception to the obligation to import the wine, the wine can be placed under a customs procedure at any customs office.

New liability requirements for marketplace operators as of July 1, 2021: The BMF letter of April 20, 2021 (Part I)

Are there any other provisions to be observed?

In addition to the wine law provisions, the regulations of the market organization law may have to be observed. In addition, the provisions of consumption tax law must be taken into account.

Further information on the topics:

* <https://www.zoll.de/DE/Fachthemen/Marktordnungen/Einfuhr-Ausfuhr-landwirtschaftliche-Erzeugnisse/Einfuhr-Wein-Weinbauerzeugnissen/einfuhr-wein-weinbauerzeugnissen_node.html;jsessionid=AE102F2D1BCD77CCB2577FC10E2B2C27.internet672>
* <https://www.zoll.de/DE/Fachthemen/Steuern/Verbrauchsteuern/Alkohol-Tabakwaren-Kaffee/Steuergegenstand-Besonderheiten-Wein/Besonderheiten-Wein/besonderheiten_wein_node.html;jsessionid=AE102F2D1BCD77CCB2577FC10E2B2C27.internet672>

# Attachment 3 – liability requirement for marketplaces:

With the Annual Tax Act 2020, the provisions of the VAT digital package were implemented in national law. With the law, among others

Effective July 1st, 2021, adjustments to §§ 22e, 25f UStG made.

The administration has commented on this in a letter (BMF of April 20, 2021)

based. What applies to the operators of online marketplaces from the middle of the year?

Background

There are extensive innovations that the online marketplace operators already received on 01/01/2019. Since the member states of the

European Union probably several hundred million euros

Tax revenue was lost because providers sold their goods in the EU via online marketplaces, the corresponding sales tax

but did not pay off, two new paragraphs were added to the

Sales tax law inserted: Firstly, § 22f UStG, which deals with the recording obligations for online marketplaces. And secondly, § 25e UStG, which addresses the liability of the online marketplace. Since 01.01.2019, operators of electronic marketplaces have been obliged, for example, to record information from users whose sales are taxable in Germany and to make them available to the tax office upon request (Section 22f UStG).

In addition to the full name and full address, the operator must also record the tax number and, if available, the VAT ID number of the delivering company. Furthermore, the entrepreneur who wants to sell goods on an electronic platform must prove to the operator that he is registered for tax purposes. So far this has been granted by the responsible tax office for a maximum of three years

Certificate (§ 22f Paragraph 1 UStG) about the tax registration of the entrepreneur (form USt 1 Tl), which was also saved by the operator of the marketplace.

**Reformulation of the requirements by the Annual Tax Act 2020**

In addition to the new requirements for the so-called chain transaction, in which an online marketplace operator can be included (Section 3 (3a) UStG), the regulations on recording obligations and liability issues for online marketplace operators were reformed with the Annual Tax Act 2021. For example, the operator of the electronic interface within the framework of Section 25e UStG can avoid liability in accordance with Section 25e Paragraph 2 UStG if he has a valid domestic VAT ID no. of the supplying company. There is therefore no need to hold a certificate from the tax office about VAT registration. The operator's recording obligations have also been expanded (Section 22f UStG). In accordance with Section 22f (3) of the UStG, for example, in the case of a performance commission, interface operators also have to comply with those recording obligations arising from Art. 54c DVO.

A retention period of ten years applies. At the same time, the records are to be transmitted electronically at the request of the tax office.

**Financial management takes a position**

In her letter v. April 20th, 2021 the tax authorities take a position on the new liability requirements and record-keeping obligations and change the sales tax application decree. Statements are made in detail ...

... on the recording obligations for the operators of the marketplace:

In addition to the data to be recorded so far, the new

Regulations in particular (I) the electronic address or website of the delivering entrepreneur, (II) the bank details or the number of the virtual account of the supplier (if known) and (III) a description of the delivered item and the order number or the unique transaction number ( as far as this is known) must be documented. The previous proof of the VAT registration of the entrepreneur providing the service by means of the registration certificate is no longer required. It is now replaced by proof of the valid VAT ID number given to the supplier by the BZSt. (Section 22f Paragraph 1 Clause 1 No. 3 UStG). In the context of a non-objection regulation, the tax authorities will not object until August 15, 2021 if the evidence is still provided with the old registration certificate (USt 1 TI).

... to the qualified confirmation procedure:

According to 18e No. 3 UStG, marketplace operators have the option of using the German VAT ID number given to them by the online retailer. as well as to have the name and address confirmed by the BZSt in a qualified manner (so-called qualified confirmation request). The BMF gives the details in Sect. 18e.3 UStAE. The prerequisite for this request is that the marketplace operator is registered for tax purposes in Germany and has a German VAT ID number. disposes.

... on the liability rules for the operators of the marketplace:

Sections 25e.1 to 25e.4 UStAE summarize the new liability rules that have to be observed since July 1st, 2021. First of all, the tax authorities present the various cases that can lead to liability through the support of the operator of an electronic interface. It also points out that brokerage marketplaces or platforms that have the function of a "notice board" and through which users can find out about existing offers from third parties and contact a possible contractual partner, as well as platforms / portals that are exclusively used for processing payments serve, are not electronic interfaces in the sense of the regulations and liability is out of the question here. In addition, it is communicated that, despite compliance with the recording obligations, a marketplace operator is also liable if he was aware of it or should have known with the care of a prudent businessman that the online retailer is not fulfilling his sales tax obligations or not fulfilling them in full. Irrespective of this, the marketplace is also always liable if the online retailer does not have a valid VAT ID number issued by the BZSt at the time of delivery. or the marketplace operator does not have an alternative proof in the exceptional cases described above.

If the marketplace operator determines that there is a breach of duty with regard to sales tax on the part of the online retailer, he must request the online retailer with a deadline of no more than 2 months to remedy the violations.

Part 2:

Due to the Annual Tax Act 2020, the liability regulations and recording requirements for operators of electronic interfaces have been reformed. In a letter dated April 20, 2021, the BMF made comprehensive statements about the innovations. What are the consequences of the new specifications for the operator of such an interface and for dealers who sell on such marketplaces

From July 1st, 2021, operators of online marketplaces will have to consider extensive innovations. They were inserted into the Sales Tax Act with the Annual Tax Act and concern, among other things, § 22f UStG, i.e. the recording obligations for online marketplaces and § 25e UStG, which addresses the liability of the online marketplace. At the same time, an extension of § 3 UStG by a paragraph 3a ensures that under certain circumstances a marketplace operator is treated for sales tax as of July 1st, 2021 as if he had received the delivery himself and then carried it out to the end customer (active chain transaction). While the content of the innovations was presented in Part I, the following Part II mainly deals with the consequences that marketplace operators and retailers will face with these changed regulations and based on the statements in the BMF letter of April 20, 2021:

Qualified confirmation query and new verification:

The main change for the operators of the marketplaces is likely to be the conversion of the evidence that the entrepreneur who uses the marketplace to sell his products is registered in Germany. While evidence was previously provided via the special VAT 1 TI certificate, from the middle of the year this must be provided via a German VAT ID number. take place. Evidence can and should always be provided by a qualified confirmation request from the BZSt. The marketplace operator must submit an application for this to his tax office. This has been possible since May 1st, 2021. In contrast to the other query procedure, in https://www.nwb-experten-blog.de/neue-haftungsvorhaben-fuer-marktplatzhaben these constellations at the BZSt, the German company is given a VAT ID number. of another entrepreneur registered in Germany. For this reason, a special procedure must be used here. It is worth noting that the company making the request must provide evidence by printing out the electronic display or archiving a screenshot. However, the BMF grants the previous confirmation USt 1 TI instead of the UStIDNr for the proof of the registration of the dealer in Germany until August 15, 2021.

**Inclusion of other services in the record-keeping obligations:**

Section 22.f.3.UStAE provides that from the middle of the year special

Recording regulations for other services are to be fulfilled. Whenever these are carried out to non-entrepreneurs in other member states (Section 22f (3) UStG in the version applicable from July 1, 2021), corresponding recording requirements must be met. At the same time, it should be noted that the liability provisions according to § 25e UStG do not apply to other services, but only to deliveries via online marketplaces.

**Track down fictitious chain deals**

The addition of the new regulations on fictitious chain transactions is also relevant for marketplace operators: they must identify those cases in which such a fictitious chain transaction exists. In these cases, the online marketplaces become tax debtors. Extensive adjustments are therefore required in the accounting or ERP system

**Implement new regulations promptly**

The extensive expense of the VAT digital package, the second stage of which will take effect in Germany on July 1st, 2021, should force many entrepreneurs to implement new procedures. The introduction of the regulations on marketplace liability on January 1st, 2019 was already a challenge for marketplace operators. Online marketplaces had to make extensive system adjustments on January 1st, 2019 in order to comply with the regulations on marketplace liability. In order to continue to meet the legal requirements and to ensure compliance with them, it is advisable to implement the new requirements promptly. You can read detailed descriptions of the individual P obligations and new specifications that will now come to online marketplace operators in my current article in the sales tax directly digitally (for subscribers

free of charge).