



German Withholding Tax for Online Marketing

German withholding Tax on payments for displaymarketing and search engine marketing: Tax burden for Webshops, eCommerce and agencies

Online distribution is no longer conceivable without banner advertising and search engine marketing. In e-commerce, the cost of online advertising alone accounts for a large proportion of total expenses. Advertisers and agencies are faced with the risk of a considerable tax burden.

March 2019, Ernst Brückner

German companies pay material fees for display marketing or search engine marketing to foreign advertising service providers. As many European countries, Germany feels that it does not get its due share of taxation from such non-domestic service providers. However, German tax offices now seem to have come up with a simple trick.

Tax offices now claim withholding tax on the fees paid to foreign digital advertising service providers from the German customers as the debor of the fee. Of course, in practice, customers have not withheld any tax, as contracts typically do not include a “net of tax” clause. The effective tax burden is thus transferred to the German customer. The resulting charge is material: the tax rate amounts to 18.8 percent based on the amount paid to the service provider. As a result, an advertising service will now incur a cost of € 118.80 instead of the contractually agreed fee of € 100.

Technically, this is based on the argument that the portal operator’s algorithms are used for advertising purposes in Germany, which somehow makes it similar in nature to a license. Whether the remuneration for online marketing actually qualifies under the invoked provisions is subject to controversy. However, this is only small comfort to the German customer stuck with material tax assessments.

Recommendation

“Repairing” old cases is difficult. Advertising contracts typically do not provide for recourse against the foreign service provider. It is therefore important for affected companies in Germany to carefully prepare the facts and the legal position. Ideally, an additional charge can be averted in the course of a tax audit before an assessment is made. Assessment notices should be contested.

Agencies that contract display and banner advertising on behalf of their customers must ensure that they can claim reimbursement from the customer for all expenses incurred, including taxes.

The providers of advertising services could easily avert any withholding tax charge to their customers by reorganising the sales contract relationship – for example, by inserting a German distributor with an exemption certificate from the foreign service provider on file.

Contact:

Ernst Brückner

E-Mail: brueckner@buse.de | Tel: +49 40 41999 0

Web Version: <https://buse.de/en/insights/german-withholding-tax-for-online-marketing/>