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Acquisition VAT due without input tax deduction if goods fraudulently delivered elsewhere

Both VAT senates of the Supreme Tax Court have held that a VAT-free purchase by a trader giving a German VAT ID No. for goods delivered elsewhere is taxable without a corresponding input tax deduction.

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The two VAT senates of the Supreme Tax Court each tried a case involving unclear deliveries of mobile phones supposedly between Italy and Austria within a week of each other. In each case the purchaser gave the Italian supplier a German VAT ID No. as the basis for exempting the supply in Italy as an intra-community delivery. Both schemes were fraudulent, and in both there was a suspicion that at least some of the goods had never actually left Italy. There was also a suspicion that those that did reach Austria were then taken back to Italy for the ultimate benefit of local consumers. No claim was made that an intra-community acquisition had been taxed in Austria.

Both senates held that acquisition tax was due in Germany simply because the purchaser had given his German VAT ID No. as the ground for exemption in Italy. Under both German and community law, the tax was due in the country issuing that ID unless and until the purchaser demonstrated actual taxation in the country of final destination. In each case the senate held that the tax due for want of the demonstration that it had not been paid elsewhere could not be deducted as input tax, as the goods had not been acquired in connection with taxable or zero-rated turnover. Rather, the remedy available to preserve the neutrality of the VAT system was to claim a refund of the German tax paid by demonstrating taxation in Austria. At first sight the two senates took a slightly different view of those goods that had never left Italy. The fifth senate, deciding first, chose to ignore the non-delivery as a ground for levying acquisition tax, unless the purchaser clearly proved that there had truly been no intra-community supply. The reason was that he had led his supplier to believe that the goods were bound for another EU country, and must now be held to his own statements. The other senate placed rather more emphasis on the point that if the goods never left the country of origin, there could be no intra-community supplier or acquisition. However, that contention would also have to be demonstrated, so whether there is, in fact, a divergence of views between the two senates remains to be seen.

Supreme Tax Court judgments V R 39/08 of September 1, 2010 and XI R 40/08of September 8, both published on January 26, 2011

Schlagwörter

Acquisition VAT, VAT ID Number, fraudulent, input tax deduction, intra-community delivery