

By PwC Deutschland | 31. August 2011

Registered proprietor liable for VAT on scam

The Supreme Tax Court has held that the person registered as the proprietor of a business is liable for the VAT on fraudulently issued invoices, even if she was completely unaware of the events in question.

Three local businessmen of tarnished reputation registered a publishing business in the name of one of their mothers. The lady signed the registration in her own hand and consented to the appearance of her name on the letterhead, even though she was long-since fully retired and had - she claimed - no knowledge of the business operation. In point of fact the business was a publishing scam: it bulk-mailed 464,000 invoices to named businesses for registration in a forthcoming telefax directory. Each invoice was for a fixed amount and showed VAT. The addressees were culled from public directories; clearly, the actual invoice issuers hoped that at least some of the recipients would assume a valid agreement and pay the amount requested. There was, however, never any intention of actually producing the purported directory. Following a back duty investigation by the tax criminal investigation service (attached to the public prosecution service), the tax office assumed that 10% of the invoice recipients had paid the amount demanded and raised a VAT assessment accordingly on the mother holding the business registration. She protested that she had no knowledge of, and certainly nothing to do with, the events in question, though to no avail, as the Supreme Tax Court has now held.

The Supreme Tax Court based its finding on the provisions rendering the issuer of a fraudulent invoice liable for the VAT shown. The issuer was the person shown as such on the invoice, provided that that person "had in some way contributed" to it. The contribution could be active or passive; a passive contribution could be seen in the failure of a registered business proprietor to take steps to prevent or detect any misuse of his name. The mother had met this criterion, either through her acceptance that other persons were acting in her name, or through her lack of interest in the possible use of her business registration by others.

Supreme Tax Court judgment V R 44/09 of April 7, 2011 published on August 31

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