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By PwC Deutschland | 19. Oktober 2011

Intra-community supply, even if collector conceals prior resale

The Supreme Tax Court has held that a supplier who honestly believed in the propriety of the documents before him showing a sale of goods to Spain could not be held liable for the VAT when the carrier diverted them to an end customer in France.

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A motor car dealer sold a car to a Spanish dealer, after taking all appropriate steps to establish that customer's identity and VAT status. The customer sent a driver to pick up the car and to drive it back to Spain. The driver showed the supplier the necessary credentials and signed the necessary receipts for the car to be taken to the customer's address in Spain. However, he actually took it to an end customer in France, who had, in the meantime, bought the car from the Spanish dealer without the knowledge of the German supplier. The tax office discovered the truth of what had actually happened and insisted on treating the transaction as a chain transaction, the first part of which was a sale to the Spanish customer in Germany. That customer then took the car from Germany in an intra-community supply to France. The sale in Germany was subject to VAT. The German dealer protested on the grounds that he had done all he could to determine the nature of the transaction in which he was involved. He had been misled, but had had no possibility of recognising that fact at the time. His records and documentation were fully in order, and he should therefore be allowed to treat the transaction as the intra-community supply he had genuinely believed it was.

The Supreme Tax Court has now sided with the dealer. He had fully complied with all legal requirements and had otherwise taken all due care. That his Spanish customer had already sold the car on to another party in France was not something he could have discovered for himself. The court agreed that there could be only one tax-free intra-community supply in the transaction chain; however the German dealer, and not his Spanish customer, had made it. The court went on to say that the consequence of its judgment was that a foreign intermediary had, effectively, a choice in taxation; if he revealed the fact of resale to the supplier, the first leg of the transaction, a sale in Germany "on hold", would be subject to VAT; if he chose to remain silent on the resale and allow the supplier to think that delivery would be to his own address for resale later, the sale would be free of VAT in Germany. Unsatisfactory that this might be, the truly innocent German supplier could not be held accountable for his customer's misdemeanour.

Supreme Tax Court judgment V R 3/10 of August 11, 2011 published on October 19

Schlagwörter

chain transaction, intra-community supply