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No VAT exemption for fraudulent intra-community supply

The Supreme Tax Court has denied a trader VAT exemption on car sales to a Spanish dealer when he knew that the vehicles were delivered directly to end-users in France without payment of acquisition tax.

A German resident car dealer was the managing director and sole shareholder of both a GmbH and of a Dutch BV with a French subsidiary. The French subsidiary identified retail customers, which it notified to a Spanish dealer. The Spanish dealer purchased the cars from the GmbH as VAT-free intra-community supplies against a declaration that he was taking them to Spain, but actually delivered them to the French customers in the name of the French subsidiary. He invoiced that subsidiary with margin-scheme VAT for used cars, the vehicles having been previously registered in Germany in the name of the GmbH. No acquisition tax was declared or paid in either Spain or France.

The Supreme Tax Court has now held that the tax office was right not to allow the GmbH the exemption claimed on the transactions as intra-community supplies. The GmbH had, through its managing director, full knowledge of the transaction chain. It therefore knew of the deliberate concealment of the intra-community acquisition from the Spanish and French authorities. It was not able to claim adherence to the formal delivery documentation and recording requirements when it knew of the evasion in another member state. The court dismissed as irrelevant a contention by the GmbH that the transaction was legal in Spain; the cars had never entered Spain and the acquisition should have been taxed in France.

Supreme Tax Court judgment V R 19/10 of August 11, 2011, published on November 2

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