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By PwC Deutschland | 25. Oktober 2012

No refusal of Eighth Directive refund to businesses without local turnover

The ECJ has upheld the rights of foreign businesses to a refund of VAT borne in a member state in which they do not carry out taxable transactions.

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A German motor vehicle manufacturer made frequent use of facilities in northern Sweden for testing its cars under extreme winter conditions. It flew the necessary technical staff and equipment in from Germany, but purchased various support services as needed from its Swedish subsidiary. The testing facility had no other purpose; in particular, it made no sales of its own and its entire costs were borne by the German head office as incurred.

A Danish manufacturer maintained a research station in Sweden. It also held a Swedish subsidiary, the main purpose of which had become the provision of support services to the research station. As in the German case, the research station had no other purpose, was not involved in selling and saw its entire costs borne by the Danish head office as incurred.

Both companies applied for VAT refunds in Sweden under the then valid Eighth Directive rules for businesses established in other member states. The Swedish tax board refused both applications on the grounds that both companies maintained a fixed place of business in Sweden, through which they were able to make sales of their products. The fact that neither had done so was irrelevant. Each Swedish establishment was also dependent on its group subsidiary in Sweden, another reason for seeing a close link from the establishment to taxable turnover.

The ECJ has now held that that the Eighth (and now the VAT) Directive excludes a non-resident business from a local VAT refund if it carries out taxable transactions in the country concerned. However, refund is not excluded by the mere fact that such taxable turnover could have been achieved had there been any attempt to do so. Also, the existence of a group subsidiary in the same country as the establishment did not taint the subsidiary's sales as those of the establishment, and did not taint the establishment's costs as those of the subsidiary. Accordingly, the head office of the Swedish establishment in both cases was entitled to VAT refund under the rules for business undertakings established in other member states.

The ECJ case references are C-318/11 *Daimler* (the German case) and C-319/11 *Widex* (the Danish case), joint judgment of October 25, 2012.

Schlagwörter

Eighth Directive, VAT refund, refund of VAT