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By PwC Deutschland | 06. November 2013

VAT refund claim from third country must be signed by authorised signatory

The Supreme Tax Court has upheld the VAT Act provision that a VAT refund claim of a non-EU/EEA company must be signed by an authorised signatory.

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The VAT Act requires VAT refund claims from businesses outside Germany to be signed personally by the applicant. This personal signature “in his or her own hand” is taken to mean that of the authorised signatories of a company. The Supreme Tax Court has now confirmed this view in an appeal by a Swiss company against the refusal of the Central Tax Office to grant it a refund because the application had been signed by a deputy, rather than by the authorised signatory himself.

The company argued that the wording of the VAT Act did not, in this regard, differentiate between businesses from other EU/EEA countries and those abroad. The ECJ had already held that the Eighth Directive (then in force) did not require that refund claims be signed by the applicant or his legal representative personally (case C-433/08 *Yaesu*, judgment of December 3, 2009) and this judgment should be applied to third country applications, too, to avoid discrimination. The court, though, took the view that *Yaesu* required Germany to forego her demand for a personal signature on applications from businesses within the EU/EEA, but did not require her to extend the same liberty to those from third countries. Rather, the Thirteenth Directive explicitly allowed member states to set further conditions and additional or alternative procedures for third country applicants. The only limitation was that third country applicants should not be treated more favourably than those from member states. Similarly, the discrimination prohibitions banned measures to the disadvantage of EU/EEA businesses, but not to those to the disadvantage of businesses from outside the area. The court also pointed out that the demand for a personal signature was important from the point of view of ensuring that the managing director or other authorised signatory was aware of his or her responsibility before the law for the accuracy of a tax return of the company.

Supreme Tax Court judgment V R 3/11 of August 8, 2013 published on November 6

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