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Mail order attempt to avoid VAT fails

The Supreme Tax Court has held that a mail order business purporting to import goods on behalf of its customers was in reality acting on its own account, with the consequence that the sales were subject to VAT as having been made in Germany.

A mail order business sold books and CDs to German consumers. The goods were delivered from a store run by an associated company in Switzerland. Delivery was by post. The postal service cleared the shipments through customs under an arrangement with the seller. Customs clearance was “for the account” of the customer. However, customers were assured that no taxes or duties would be payable, or, if they were, would be borne by the seller. VAT on import was not due under a small shipment exemption for packages worth up to €22. However, the tax office maintained the seller had sold the goods in Germany to German consumers and should have paid the VAT on sale.

The Supreme Tax Court has now agreed with the tax office. Customs clearance was made by the seller acting in his own interests. Under no circumstances could any charge be passed on to the customer. Similarly, the arrangements with the postal service had been agreed by the seller. He was therefore the importer of the goods. Their subsequent sale to the customer was thus a German domestic sale subject to VAT.

Supreme Tax Court judgment V R 5/14 of January 29, 2015 published on April 29

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