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By PwC Deutschland | 07. Oktober 2016

Supply of blood plasma to manufacturers of medicinal products not VAT exempt

The ECJ held that the sale of blood plasma for the manufacture of medicines does not fall under the VAT exemption applicable to supplies of human blood. As a result a deduction of the underlying input VAT relating to the supply of plasma is available.

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General rule: The sale of blood plasma to customers in the EU is VAT-free as an intra-community supply. Exports outside the EU are “zero rated”, that is, the charges to customers are also not subject to VAT. Both types of supplies would entitle a VAT recovery on the related inputs. However, the same sale would also have been VAT-free if delivery had been to a German customer. In such an instance, VAT would not be recoverable. The ECJ has ruled in the case C-240/05 *Eurodental* of December 7, 2006 that the exemption of a product by its nature takes precedence over exemption by destination. In consequence, the right to deduct input tax incurred in connection with the sale should be excluded, just as it would have been, had the sale been made on the home market.

The most recent case before the ECJ takes the issue a step further as it involved a German GmbH managing a blood donor center and which supplied plasma to various production facilities in other EU Member States for the preparation of medicinal products. The GmbH took the view that the plasma supplied to the manufacturers of medicinal products did not fall under the exemption for supplies of human blood and claimed the corresponding input VAT. The local tax office considered the supplies as falling under the local VAT exemption regulation and thus refused the input tax deduction. The ECJ sided with the company and held that only plasma actually intended for direct therapeutic use comes under the exemption laid down in Article 132(1)(d) of Directive 2006/112. The Directive does not include plasma which is used exclusively for the manufacture of medicinal products.

The ECJ pointed out that the relevant Article 132 concerns transactions directly linked to healthcare or those which have any therapeutic purpose. The tax exemption under Article 132 is meant to ensure that the supply of goods, which contributes to healthcare or which has a direct therapeutic connection, does not increase the costs and thus becomes inaccessible if their supply were subject to VAT. As a result, the German GmbH could now assume intra-community supplies and claim the underlying input VAT.

The ECJ case reference is C-412/15 *TMD* judgment of October 5, 2016

Schlagwörter

VAT Exemption, blood plasma, medicinal products