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By PwC Deutschland | 05. März 2024

ECJ: VAT exemption for intra-Community supplies only if identity of recipient is known

In a decision following the request for a preliminary ruling from the Czech Republic the European Court of Justice held that exemption from VAT must be refused if the supplier has not provided evidence that the goods have been supplied to a recipient who is taxable in the other Member State and - taking into account the facts and the evidence provided by the supplier - the information required to verify the taxability of the recipient is missing.

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Background

In 2015, B2 Energy made deliveries of rapeseed oil to Poland. According to the referring court, those goods were not supplied to the recipients declared in the tax documents but to other recipients established in that Member State, some of whom confirmed receipt by stamping and signing international consignment notes.

After a tax audit the tax office found that B2 Energy had not demonstrated, on the basis of the documents provided, that it satisfied the conditions for entitlement to the VAT exemption. Although it did not dispute that the goods concerned had actually been transported to another Member State, it took the view that B2 Energy had not shown that it had transferred the right to dispose of those goods as owner to the persons presented in the tax documents as being the recipients or even that those goods had been supplied to a person registered for tax purposes in another Member State.

B2 Energy claimed that it had provided evidence that the conditions for exercising the right to exemption from VAT for the supply of goods to another Member State were satisfied. The **evidence** provided, certifying the actual receipt of the goods concerned by companies other than the entities declared on the relevant tax documents, makes it possible to establish the identity of the recipients to whom the right to dispose of those goods has been transferred.

ECJ decision

According to the ECJ case law there are only **two situations** in which the failure to meet a formal requirement may result in the loss of entitlement for VAT exemption.

First, the principle of fiscal neutrality cannot be relied on for the purposes of an exemption from VAT by a taxable person who has intentionally **participated in tax evasion** which has jeopardized the operation of the common system of VAT. If the taxable person concerned knew or should have known that the transaction which it had carried out was part of a fraud committed by the purchaser and that the taxable person had not taken every step which could reasonably be required of it to prevent that fraud from being committed, that person would have to be refused a VAT exemption.

Second, non-compliance with a formal requirement may lead to the refusal of an exemption from VAT if that non-compliance would effectively prevent the production of conclusive evidence that the substantive requirements have been satisfied.

The ECJ points out that the tax authorities must**take proper account of all the information** in their possession, such as the documents mentioned by the referring court, for the purposes of examining whether those documents may, where necessary, substantiate the likelihood of the actual supply of the goods transported to another Member State.

Furthermore, in the light of **the principle of fiscal neutrality**, a taxable person cannot be required to prove, in every case, where the recipient of the goods concerned has not been identified, that that recipient has the status of a taxable person in so far as it clearly follows from the factual circumstances that that recipient necessarily had that status (judgment of 9 December 2021, *Kemwater ProChemie*, C?154/20, paragraph

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In those circumstances, it is for the tax authorities and the competent national courts to ascertain, on the basis of all the documents produced, including the documents in the supplier's possession, whether the substantive conditions for entitlement to the VAT exemption were met.

Only where, based on the factual circumstances, and despite the evidence provided by the taxable person, the necessary information is lacking, must the taxable person be excluded from VAT exemption, **without the tax authorities** being required **to prove** that that taxable person was involved in **VAT fraud**.

Source:

ECJ, judgment of 29 February 2024 (**C?676/22**) *B2 Energy*.

Schlagwörter

VAT Exemption, delivery documentation