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By PwC Deutschland | 03. Mai 2026

Intra-Community supply of goods and protection of legitimate expectations

According to a judgment of the Supreme Tax Court, demonstrating the arrival of goods in another EU member State in the course of an intra-Community supply is not a prerequisite for the protection of legitimate expectations.

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Legal background

The taxable person must demonstrate that the requirements stipulated in paragraphs 1 and 2 of Section 6a VAT Act for an exemption of the intra-community supply of goods have been met and confirm that the goods subject to an intra-Community supply have reached another EU Member State (confirmation of arrival – „*Gelangensbestätigung*“).

Section 6a (4) Sentence 1 VAT Act provides protection of legitimate expectations if the taxable person has treated a supply as VAT exempt although the conditions for intra-Community supply as set forth in paragraph 1 have not been met. The supply shall, nevertheless, be VAT exempt if the application of the VAT exemption is based on incorrect information provided by the purchaser and the taxable person was unable to detect this incorrect information despite having exercised the due diligence of a prudent businessman.

The case of dispute

The dispute concerned the question whether a taxable person (business) can invoke the protection of legitimate expectations under Section 6a (4) of the German VAT Act even if no confirmation was received from the customer that the vehicle has entered (arrived in) other EU territory.

In 2018 (the year in dispute) the plaintiff, who works as a tax consultant, listed a car for sale on an online platform. After the managing director (A) of a company (G) based in Romania expressed interest in purchasing the car, the plaintiff conducted extensive checks including, i. a., verification of the VAT identification number by the Federal Central Tax Office which issued a qualified confirmation. In addition, the plaintiff requested a commercial register transcript from G which showed that G was represented by A as managing director.

Following an inquiry from the Romanian tax authority, which revealed that G had not declared an intra-Community acquisition of the car, the German tax office took the view that the sale of the car was not exempt under Section 4 (1) Letter b in conjunction with Section 6a of the VAT Act since there was no proof of entry into the territory of Romania and it was unclear whether the person who picked up the car was in fact A. The tax court of first instance dismissed the action. The Supreme Tax Court, however, upheld the

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plaintiff's appeal.

Decision

In the opinion of the Supreme Tax Court, confirmation of arrival, which - if prepared truthfully - can by its very nature only be available after the transaction has been completed. It follows that such confirmation cannot be required for the application of the VAT exemption under Section 6a (4) Sentence 1 VAT Act. Therefore, the supply is tax-exempt under this provision.

If a supplier has treated a supply as tax-exempt even though the conditions for the tax-exempt status of an intra-Community supply are not met the supply is nevertheless exempt from VAT if the use of the tax exemption is based on incorrect information provided by the customer and the supplier could not have been aware of the inaccuracy of this information even if he had exercised the care of a prudent businessman.

In the opinion of the Supreme Tax Court, the plaintiff acted with due care. For instance, he verified G's VAT ID number with the Federal Central Tax Office which issued a certified confirmation dated the day before the sale. Furthermore, the plaintiff verified the name, address, and authority of the alleged representative (A) of the buyer (G) and submitted corresponding documentation. He also requested an extract from the commercial register for G. The person picking up the vehicle identified himself to the plaintiff as A, the managing director listed in the extract from the commercial register, by presenting a photo ID of which the plaintiff made a copy. Furthermore, G agreed in the purchase agreement to deregister the vehicle and "export" it to Romania.

According to the ECJ case law, the VAT Directive precludes the competent authorities of the Member State of supply from requiring a supplier, who acted in good faith and submitted evidence establishing, at first sight, his right to the exemption of an intra-Community supply of goods, subsequently to account for value added tax on those goods where that evidence is found to be false, without, however, the supplier's involvement in the tax evasion being established, provided that the supplier took every reasonable measure in his power to ensure that the intra-Community supply he was effecting did not lead to his participation in such evasion (ECJ- judgment of 27 September 2007 *Teleos* **C-409/04**). Therefore, Section 6a (4) Sentence 1 VAT Act is in

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compliance with the provisions of EU VAT law.

Source:

Supreme Tax Court, judgment of 18 December 2025 (V R 3/25) published on 30 April 2026.

Schlagwörter

Protection of legitimate expectations, intra-community supply