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By PwC Deutschland | 07 September 2011

Delivery documentation of intra-community supply must be complete and accurate

The Supreme Tax Court has (again) held that failure to observe the full documentation formalities in respect of EU supplies can lead to taxation as domestic sales.

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A second-hand car dealer agreed a sale of 13 prime used cars to an Italian business. This business was represented by the son of the proprietor, who had given him the appropriate warrant. The son approached the seller with a car transporter and asked that the cars be loaded for road transport to Italy. He signed a receipt for them, made out on the letterhead of another business, and paid cash. The receipt gave Italy as the desination of the vehicles, but left the place of destination and the identity of the consignee open. The supplier then issued an invoice to the presumed purchaser. This invoice did not show VAT, but gave no indication of the reason why the sale should be exempt. The supplier took steps to establish the business identiy of the customer; however, these steps came to nothing in the face of a letter from the Italian authorities to their German colleagues to the effect that the purported customer was truly a business, but had never dealt in motor vehicles and did not have the facilities to display second-hand cars. Accordingly, the tax office took the line of least resistance and insisted that the transaction was taxable.

The Supreme Tax Court has now followed the tax authorities. The transaction was taxable as a home-country sale as its documentation as an EU intra-community supply was incomplete and open to doubt. The invoice did not show VAT, but did not explain why not; thus the customer was not put on notice of his or her obligation to declare an intra-community acquisition of goods. The delivery documentation was also incomplete, or at least contradictory iin that the receipt for the cars was on the letterhead of another supplier and did not specify the precise Italian destination of the cars. It also did not identify the invoicee as the customer of the cars, except, perhaps, by inference.

These documentation deficiencies had to be laid at the door of the supplier. At best he had been negligent and could not therefore – for lack of proof – claim that the conditions for intra-community supply exemption had, in fact, been met. He also could not claim to be the innocent victim of customer deception, since with due care he could have recognised a potential problem.

Supreme Tax Court judgment V R 46/10 of May 12, 2011 published on September 7

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