Downloaded from Blogs on 03.11.2026 02:39

By PwC Deutschland | 05 October 2011

Intra-community supply taxable if intent fraudulent

The Supreme Tax Court has held that an intra-community supply is subject to VAT if the supplier deliberately disguised the identity of the customers so that they could evade VAT in their own member states.

Downloaded from Blogs on 03.11.2026 02:39

A partnership delivered luxury motor cars to addresses in Italy. In most cases, the recipients were dealers interested in obtaining the cars free of VAT. At their suggestion, the partnership invoiced its deliveries as tax-free intra-community supplies to a series of Italian import traders. These then failed to declare their intra-community acquisitions, leaving cars on the Italian market that had not been charged with input tax. The partnership then destroyed most of its own records of these transactions in an attempt to prevent complete follow-up by the authorities. However, it soon became apparent that all was not fully in order, and the two partners found themselves facing criminal charges for tax evasion. They pleaded guilty, made full confessions of their misdeeds and received two-year suspended prison sentences. In the view of the criminal court, they had falsely declared the names of their customers. Their records did not therefore satisfy the intra-community supply documentation requirements which rendered the transactions taxable. They were convicted for their failure to declare and pay this tax. The tax office took note of this trial and promptly issued assessment notices on the partnership for the tax. The partnership appealed on the grounds that the persons involved could adequately demonstrate the fact of delivery to registered businesses in Italy and thus the entitlement to tax exemption of the deliveries as intra-community supplies. Incorrectly naming business partners was a minor detail when the fact of delivery was not in doubt.

The Supreme Tax Court has now rejected the appeal. The VAT Directive (at the time, the Sixth Directive) specifically excludes exemption for a supplier who deliberately distorts evidence in order to conceal the true identity of the recipient of the goods and so enable him to evade VAT in his own member state. In the face of this specific disqualification, proof of delivery to another member state was irrelevant.

Supreme Tax Court judgment V R 50/09 of August 11, 2011 published on October 5

Keywords

intra-community supply