

By PwC Deutschland | 06 October 2011

Personal residence not immediately relevant to VAT place of business

The ECJ has held that an Austrian business does not rank as established in Germany, merely because the proprietor retains a residence there.

A German trader hiring drivers to haulage companies moved his business to Austria, but continued to service his German customer base. He also moved his main personal residence to Austria, but retained accommodation in Germany. On re-registering his business in Austria, he started billing his German customers free of VAT but with a note on the invoice to the effect that the customer should account for the VAT as a reverse charge. The German tax office challenged this position, saying that the trader continued to live in Germany. His business therefore continued to be established in Germany. As a domestic business providing a service to a domestic customer, his invoices were not open to reverse charge. Rather he should have charged the VAT and accounted for the amount to the tax office.

The ECJ has now held that the business establishment is the relevant criterion for determining a VAT filing obligation. A personal residence of the proprietor is of no moment, unless there is doubt as to where the business was located. Even then, its significance was that of an indicator as to where the business might be, rather than as part of the definition of a domestic/foreign business. Since there was doubt in this particular case that the business had genuinely been established in Austria, there was no need to examine the proprietor's personal residence. The customer invoices issued by the business were reverse-chargeable in Germany, regardless of where the proprietor lived.

The ECJ case reference is C-421/10 *Stoppelkamp* judgment of October 6, 2011.

Keywords

personal residence, place of business reverse charge