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Tax offices do not have to coordinate application of VAT rules

The ECJ has held that there is no basic requirement on a member state to ensure that its tax authorities take the same position for both parties to a transaction.

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A German employment agency supplied lorry drivers to a series of Italian haulage companies. At the time, the hire of staff was taxable in the country of the customer, whereas the provision of general services was taxable in the country of the provider. The agency's local tax office took the view that the service was general and taxable in Germany, as the lorry drivers were not its own employees. Rather they were self-employed independent contractors taking on temporary assignments. Accordingly, the agency invoiced the Italian customers with German VAT. Initially, the customers accepted this invoicing on the basis that the VAT position had been confirmed by the German tax authorities and that they would be able to recover the amount charged through the refund scheme for foreign businesses. Unfortunately, their refund claims were rejected by the German Central Tax Office, the competent authority for dealing with refund claims from abroad, on the grounds that the VAT had been charged in error as the services were hire of staff – regardless of the formal employment status of the individuals – taxable in the country of the customer.

In consequence, the Italian customers refused to accept further invoices from the agency with VAT, leaving the agency with the choice of persuading its own tax office to follow the view of the Central Tax Office, bearing the cost of the VAT as its own expense, or allowing its customers to turn to other suppliers. In the event, it was unsuccessful in persuading the two German tax offices to apply the same law in the same way to both sides of the same transaction. It was unable to bear the cost of the VAT as a business expense as its margin was less than the VAT standard rate. It therefore had to face the loss of its market and ultimately went bankrupt.

The ECJ has now decided the VAT issue by holding that the supply of staff was taxable in the country of the customer, even if the supplier is not their formal employer. Unfortunately, this part of the decision came too late to save the taxpayer's business. As a precedent for the future it is now only relevant to cases of staff hire to non-business customers outside the EU/EEA. The court side-stepped the more basic issue of whether two tax authorities from the same country can be required to take a uniform approach to the same problem by saying, that it was up to member states to ensure that VAT is collected accurately and with respect for the principle of fiscal neutrality. The authorities must act if two subordinate offices consistently take conflicting positions, but do not have to establish a mechanism for automatic coordination. Rather, they only have to ensure that aggrieved parties can turn to the courts. The court did not comment further on the realism of this last demand.

The ECJ case reference is C-218/10 *ADV Allround*, judgment of January 26, 2012.

Keywords

VAT, coordinate, staff, tax offices