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Special duty of care on cash sales to businesses in other member states

The Supreme Tax Court has held that a cash sale as a tax-free intra-community supply places a special duty of care on the seller to ensure that there is no evasion, even if cash sales are customary in the circumstances.

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A motor car dealer sold a Porsche for cash to a business customer in Italy. The customer sent an agent to collect the car and to pay for it in cash. She gave the agent a written authority to act on her behalf and to drive the car to Italy. The agent duly took possession of the car, paid over the agreed sum free of VAT as an intra-community supply. He signed with a signature manifestly different from that on his identity card. On investigation, the tax office refused to accept the VAT exemption, having in the meantime received information from Italy to the effect that the customer was a business in name only.

The Supreme Tax Court has upheld the tax office refusal in principle, whilst giving the German seller the chance to bolster his case with further evidence. It made the point that even in the motor trade where large cash payments are customary (payment in advance or in arrear would expose one of the parties to an unacceptable credit risk) they are still conducive to VAT fraud and thus impose a particular duty of care on the seller accepting them. Any apparent deviation should be followed up conclusively. In this case, an obviously different signature from that shown on the identity document was such a deviation requiring follow up, notwithstanding the plaintiff's claim that a person's signature tends to change over time and that the space for signature on an identity card necessarily means that the signature shown is cramped. The court emphasised that it was insufficient to demonstrate full formal adherence to the documentation requirements if no attempt was made to reconcile discrepancies. An apparently different signature was one example. Others were the absence of an on-going business relationship with the customer (she was otherwise unknown to the supplier and the two had never met personally), the entire contact throughout the deal having been through the agent, the customer appearing only on paper, and apparent discrepancies in the correspondence, such as a foreign business customer sending faxes from a German address.

Supreme Tax Court judgment XI R 17/12 of November 14, 2012 published on April 10, 2013

Keywords

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