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By PwC Deutschland | 06 November 2013

No input tax deduction on intra-community sale of VAT-free goods

The Supreme Tax Court has followed an ECJ judgment in holding that the VAT-free intra-community sale of goods does not allow an input tax deduction that would be excluded for the same sale on the home market.

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A supplier of blood plasma sold plasma to a customer in Austria. This sale was VAT-free as an intra-community supply. However, the same sale would also have been VAT-free if delivery had been to a German customer. The Supreme Tax Court has now followed an ECJ judgment (case C-240/05 *Eurodental*, December 7, 2006) in holding that the exemption of a product by its nature takes precedence over exemption by destination. In consequence, the right to deduct input tax incurred in connection with the sale was excluded, just as it would have been, had the sale been made on the home market. As the court pointed out, allowing an input tax deduction on an intra-community supply of an exempt product would distort the system as suppliers would then have an incentive to sell in member states other than their own.

The supplier requested the court not to follow the *Eurodental* judgment in view of the criticism of it in the professional press. The court, however, dismissed the request, as the criticism concerned the application of the judgment to a case involving a supply tax-free in the country of supply but taxable in the country of receipt. This was beside the present point. The court explicitly left the question open as to the application of its judgment to export sales outside the EU/EEA.

Supreme Tax Court judgment V R 30/12 of August 22, 2013 published on November 6

Keywords

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