By PwC Deutschland | 13 August 2014

No VAT return for German branch without taxable turnover

The Supreme Tax Court has held that a foreign business with a registered German branch cannot file a regular VAT return if it has no German turnover. Rather, it should recover its input tax as a foreign business undertaking.

The VAT Implementation Order requires of a foreign business that it register for VAT and then file regular VAT returns if it maintains a registered German branch. A foreign company in this position did so, only to see its return rejected on the grounds that it was not trading in Germany. In point of fact, the branch effectively operated as a representation office, serving as a market support vehicle for its foreign head office. That head office made the German sales direct.

The Supreme Tax Court has now confirmed the tax office stance to the effect that the branch was not an active trading entity and could not of itself lead to a VAT reporting or return obligation for its head office. This follows from the wording of the VAT Directive, which, in the event of a clash, takes precedence over German law. This wording requires actual turnover in the country concerned as a condition of registration. An intention to sell is insufficient. If the company achieves no turnover, it may have recourse to the VAT recovery system for business undertakings from other EEA member states. In this particular case, that avenue was closed, as the filing deadlines had long since been missed. Here, though, the court gave a very strong hint that the authorities could grant a dispensation on the grounds of equity, given that the taxpayer had relied in good faith on the statute as it stood. He could not be expected to recognise its inconsistency with community law, or to take action accordingly.

Supreme Tax Court judgment V R 50/13 of June 5, 2014 published on August 13

Keywords

German branch, German turnover, foreign business undertaking, regular VAT return