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No automatic VAT liability solely because of missing VAT ID No

The ECJ held that an exempt intra-community supply should not be taxable merely because of a missing VAT registration No. where there is no suggestion of evasion and the other conditions for exemption are fulfilled.

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A German businessman took his car to Spain for business use. Nine months later he sold it to a Spanish business. He ignored the VAT implications of the move to Spain and issued a VAT-free invoice to the buyer as an intra-community supply from Germany. The German tax office saw the move to Spain and the later sale as separate transactions and – without informing the Spanish authorities – refused exemption from German VAT on the grounds that the German taxable event was the move to Spain. The liability arose from the failure of the taxpayer to provide a valid Spanish VAT registration number.

The ECJ held that in these circumstances the requirement on the taxpayer to document the move of the car to Spain with a Spanish registration number be treated as a purely formal requirement. There was no indication of an attempt to evade taxes and all the other conditions for exempting the sale to the ultimate buyer were fulfilled. Rather, the seller had misinterpreted the law, but – given the unrestricted right of both parties to deduct input tax borne – without endangering tax revenue in either member state.

The referring Lower Tax Court of Munich has also asked the ECJ on the implication of an earlier judgment from September 27, 2012 (C-587/10, *VSTR*) in which the ECJ found that the lack of the appropriate VAT ID No. is not a decisive criterion for the refusal of tax exemption where there is no question of bad faith and if the supplier took all reasonable, albeit unsuccessful steps to obtain the number from his customer and is, on the basis of other evidence, able to demonstrate that the recipient of the goods was a taxable person acting as such. Would the supplier – if he has not taken all the measures which can reasonably be required of him to provide the authorities with a VAT identification number - in general be refused an exemption from VAT? According to the opinion of the court responsible in the current case this requirement is only relevant to establish whether or not the supplier has participated in tax evasion. As a participation in tax evasion has in any event been ruled out in the present case the German businessman cannot be refused an exemption from VAT.

The ECJ case reference is C-24/15 *Plöckl* judgment of October 20, 2016.

Keywords

VAT ID Number, VAT registration No., intra-community supply