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By PwC Deutschland | 02 September 2024

Hazardous waste accepted prior to its orderly disposal and recycling not subject to VAT

Hazardous waste accepted by an entrepreneur for the sole purpose of legally ordered disposal and recycling is a service subject to VAT. In a most recent decision and contrary to the view of the tax office the Supreme Tax Court held that the prior delivery of the hazardous waste by the customer to the entrepreneur is not a VATable transaction.

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Background

The plaintiff was a certified waste management company. Its customers used chemicals in their operations which, after operational use, constituted hazardous waste whose proper disposal had to be proven before the competent authorities. The plaintiff took the contaminated chemicals from the customers for the purpose of proper disposal and its recovery/regeneration. The plaintiff initially stored the contaminated chemicals in special warehouses equipped in accordance with the statutory regulations and later undertook the proper preparation and disposal as part of a chemical process. The plaintiff calculated the price for the disposal of the hazardous waste based on the degree of contamination which was determined by an analysis in its company after the contaminated chemicals were received from the customers.

The tax office considered the disposal of the contaminated chemicals to be a barter-like transaction („*tauschähnlicher Umsatz*“). In addition to the agreed price for the disposal, the plaintiff had received a VATable delivery in return. The delivered goods were the contaminated chemicals that the plaintiff received for the purpose of disposal. Therefore, the value of the contaminated chemicals increased the VAT basis for the service provided by the plaintiff.

The Tax Court of Munich had confirmed the opinion of the tax office. However, **the Supreme Tax Court** took a different view and set aside the decision of the Munich tax court.

Decision

The hazardous waste accepted for the sole purpose of legally prescribed disposal in connection with a special recycling process constitutes a service (disposal of the waste) provided by the plaintiff. Contrary to the view of the tax office, there is no barter-like transaction in lieu of a delivery of the hazardous waste to the entrepreneur. This also applies in cases where the plaintiff provided a discount to the customer by taking into account a possible sales price of materials that he later resells after recycling of the hazardous waste.

A **barter transaction** is assumed if the consideration for a supply of goods consists of a supply of goods. A **barter-like transaction** is assumed if the consideration for a supply of services consists of a supply of goods or a supply of service. In the case of barter and barter-like transactions, the value of each transaction is deemed to be consideration for the other transaction.

The tax office and the tax court had wrongly assumed that the contaminated chemicals had been supplied solely because they constituted valuable waste and their value would have determined the amount of the disposal fee according to the content of the agreements between the parties. Rather, the handover of the hazardous waste to the plaintiff for disposal was not of independent significance and thus not a separate transaction for VAT purposes. According to the underlying legal arrangements between the plaintiff and its customers the handover of the hazardous waste was not intended to constitute a delivery.

Based on the above, the transfer of hazardous waste for subsequent disposal is not to be viewed as an independent supply within the meaning of Section 3 (1) VAT Act (Article 14 (1) VAT Directive). The handover of the contaminated chemicals solely for the purpose of disposal under a specific legally

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prescribed recycling process is merely a secondary measure to ensure the ultimate disposal of the waste.

Source:

Supreme Tax Court, decision of 18 April 2024 (V R 7/22) – published on 29 August 2024.

Keywords

waste disposal