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By PwC Deutschland | 19 November 2026

No retroactive VAT exemption where tax evasion has been committed

Those who submit recapitulative statements (summary reports) for intra-Community supplies late but in full may obtain a retroactive VAT exemption. However, this does not preclude criminal liability for completed tax evasion, the Federal Court of Justice said in a decision from August 2026.

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I. The error of the defendant

After being held in pre-trial detention on suspicion of evading VAT and beer tax, the defendant shipped beverages to other EU countries over a two-year period as exempt intra-Community supplies. He failed to file advance VAT returns, annual tax returns, and summary reports. The tax shortfall amounted to approximately 636,000 Euro. Shortly before the trial started, he submitted the missing returns to obtain retroactive tax exemption and impunity.

II. The consequences in court

1. Summary report essential for VAT exemption

In its judgment, the Federal Court of Justice (FCJ) emphasizes that the timely, complete, and correct filing of summary reports pursuant to Section 18a of the German VAT Act is not a mere formality, but rather a substantive (material) condition for the VAT exemption under Section 4 No. 1 Letter b VAT Act. This follows from the wording of the law, the legislative history of Article 138(1a) of the VAT Directive, and the legislative materials. Therefore, in the opinion of the FCJ there is no need for a referral of the matter to the European Court of Justice (ECJ).

2. No impunity in case of retroactive VAT exemption

The FDJ further clarified that a retroactive tax exemption does not have the effect of exempting a person from criminal liability for tax evasion that has already been committed. Criminal tax law (regulated in Section 370 of the German Fiscal Code) is an endangerment offense, the wrongdoing being the lack of information available to the tax authorities. Retroactive effect for tax purposes is merely a fiction of law. What counts for the purposes of criminal assessment is the actual sequence of events at the time the offense was completed.

However, the late filing of the returns was not entirely without consequences. If the tax liability is retroactively eliminated the court must take this into account in favor of the defendant when determining the penalty. In the case at hand, the Regional Court had correctly applied this principle.

III. Takeaway

Subsequent submission of missed reports does not eliminate tax evasion that has already occurred, but it may result in a reduced penalty, as the judgment reveals. Whether the strict conditions for a voluntary disclosure of tax evasion (with immunity from prosecution) under Section 371 of the General Tax Code are met depends on the individual case and should always be taken into account .

Note: This is a free translation of excerpts from an article presented by Ismael Ott (Partner, PwC Germany) in the German Blog Steuern & Recht („*BGH bestätigt Steuerhinterziehung bei innergemeinschaftlichen Lieferungen - Keine Straffreiheit durch verspätete Zusammenfassende Meldungen*“).

Keywords

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