



VAT NEWSLETTER

ECJ again comments on the concept of arranging transportation in e-commerce

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1 Background: The importance of transport initiation in eCommerce

If the tax determination in a company is not legally secure, the associated risk can end up being an unbearable burden for the taxable person involved. This risk is particularly high in e-commerce, where B2C business primarily takes place. In this business sector, the agreed prices are meant gross. This being the case, sellers pay the taxes out of their own pockets. This makes it all the more important for every online retailer to define his VAT and, if applicable, excise duty obligations correctly in cross-border matters. In addressing these issues, transport responsibility plays an important role:

- VAT: According to Art. 33 of the EU VAT Directive, with a few exceptions, an intra-Community B2C supply (intra-Community distance sale) is always subject to VAT in the country of destination. Such intra-Community distance sales occur when the seller is directly or indirectly involved in the transport. According to the ECJ, this also applied prior to the clarification in Art. 5a of the CIR (EU) 282/2011 as per 1 July 2021 (ECJ C-278/18 | [KMLZ VAT Newsletter 29 | 2020](#)).
- Excise duty: If excise goods, which have already been released for consumption, are acquired across EU borders by a person established in another Member State who is not an authorized warehouse keeper or a registered (or certified according to the current legal situation) consignee and who does not pursue an independent economic activity, the goods are subject to excise duty in the country of destination in accordance with Art. 36 of Directive 2008/118 (old legal situation) / Art. 44 of Directive 2020/262 (current legal situation). However, this applies only if the goods are transported with the direct or indirect assistance of the seller.



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2 Facts of the case

A taxable person ran an online shop where customers could purchase alcoholic beverages across EU borders. At first glance, the taxable person was not involved in the transport of the goods. Rather, when an order was placed, advertising for various transport service providers appeared online. The customer was free to choose the services of those service providers or to organize independent transport. If a buyer opted to use the transport service of one of the advertised service providers, he was then redirected to the third-party website. Here, the buyer was required to provide his contact details and to pay for the transport. However, the buyer was not required to provide any information about his order. Rather, the consignment data was automatically transferred to the transport service provider. In the present proceedings C-596/23 (*Pohjanri*), the question was whether a cross-border consignment is a distance sale from an excise duty perspective. The answer to this question determines who owes the excise duty incurred at the destination.

3 ECJ Ruling

The court ruled in its decision of 19 December 2024 that a seller who assists a buyer in choosing a transport company can be considered as being indirectly involved in the transportation of the goods, even if it is only involved in the guidance of the customer, and that therefore the seller is liable for excise duty in the country of destination. The decisive factor in the assumed assistance was, above all, the fact that the shipment data was automatically transmitted to the carrier.

4 Consequences for the practice

To call a spade a spade – anyone in e-commerce who is thinking about how they can get out of transport organisation is doing so mainly for tax reasons and in order to avoid reporting and tax obligations in other EU countries. In the current proceedings, the ECJ was required to rule on excise duty. Furthermore, the legal norm in question is no longer valid, at least from a legal perspective. Nevertheless, both the reasoning and the decision can be applied analogously to the current legal situation. This applies not only to excise duty, but also to VAT.

In the VAT case C-278/18 (*KrakVet* | [KMLZ VAT Newsletter 29 | 2020](#)) as well as in the excise duty case C-296/95 (*EMU Tabac*), the ECJ had already made it clear that the civil law agreements existing between parties are not the only decisive factor. According to the ECJ, rather the actual business construct is decisive. The ECJ also clarified in the case at hand that economic reality, and not the formal legal construction of the transactions, is decisive for determining tax liability. The ECJ emphasizes that sellers can also be subject to excise duty if the transport contract is ordered and paid for separately. This even applies if the seller only supports the service of the carrier by forwarding data on the shipment to the carrier. The same standards will probably also have to be applied to VAT.

In conclusion, it can be said that the concept of arranging transport in cross-border B2C business is to be viewed much more widely than in B2B cases. The concept of non-relevant involvement in arranging transport does not exist. If the seller has no involvement in the transport organization, then the regulations on distance sales for VAT and excise duties do not apply. However, having said that, this variant will make little economic sense in cross-border e-commerce, since very few customers would place an order if they had to take care of the transport independently, especially from another EU country. If, on the other hand, the seller is involved in the transport in any way, even if it is only in the pure transfer of information, the place of taxation is in the country of destination.