



KMLZ VAT NEWSLETTER

ECJ sticks to its principles – VAT-ID a relict of the past?

Anyone dealing with intra-Community supplies is probably familiar with the ECJ decision *Euro Tyre* (C-430/09) regarding chain transactions. In future, this case will need to be called “Euro Tyre 1”. The reason for this is that the ECJ has now, fortunately, had to take a second decision in a case initiated by the quarrelsome Dutch company (C-21/16 of 09.02.2017). “Euro Tyre 2” deals with the conditions for the VAT exemption of intra-Community supplies, particularly where the purchaser employs a VAT-ID that is not registered in the VAT Information Exchange System (VIES).

1. Facts

The Portuguese branch of *Euro Tyre BV* was engaged in the marketing of tyres for retailers based in Spain and Portugal. In Spain, it sold the tyres, in part, through a distributor, Euro Tyre Spain. Thus, it declared its sales in Portugal to be VAT exempt intra-Community supplies to Spain. Up until 1 July 2012, Euro Tyre Spain was registered in Spain as a taxable person for VAT purposes. However, it was not yet subject to the system of taxation on intra-Community acquisitions or registered in the VIES. *Euro*

“Euro Tyre 2” re significance of a VAT-ID

A VAT-ID is not necessarily a “real” VAT-ID. That was the problem the ECJ had to deal with in the case “Euro Tyre 2”. The ECJ unsurprisingly continued applying the basic principles of its recent decisions and came to the conclusion that the formal requirements are not substantive conditions for the VAT exemption. Hence, the VAT exemption cannot be refused solely on the grounds that the VAT-ID employed by the purchaser was not yet registered in the VIES, even if the supplier was aware of this fact. Apparently, the significance of VAT-IDs is being reduced more and more by the ECJ. This is only limited by fraudulent activities or if the substantive conditions for the VAT exemption cannot be proven because of the non-compliance.

Tyre BV was aware of this fact but expected the Spanish tax authorities to grant the VIES registration with retrospective effect.

2. Difficulties

However, following a tax inspection covering the years 2010 to 2012, the Portuguese tax authorities considered that the conditions for the VAT exemption of intra-Community supplies were not met, since, at the time of the sales in question, Euro Tyre Spain was neither registered for intra-Community transactions in Spain nor registered in the VIES. Consequently, *Euro Tyre BV* was required to pay VAT and interest.

This may sound rather strange for German companies since a German VAT-ID assigned by the Federal Central Tax



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Office is registered in VIES automatically. However, in many other countries, a VAT-ID is created, by simply adding the country abbreviation to the domestic tax number. Furthermore, in some countries, such as Spain and Italy, the VAT-ID requires a separate registration for intra-Community supplies, which must be supported by certain evidence.

3. Main conclusions of the ECJ

The ECJ came to the conclusion that the VAT exemption for an intra-Community supply cannot be refused on the sole ground that the purchaser was only in possession of a valid identification number for the purposes of value added tax but was neither registered in the VIES nor under a system of taxation on intra-Community acquisitions of goods. This also applies even if the vendor was aware of the circumstances of the purchaser's situation with regard to the application of VAT and was convinced that the purchaser would subsequently be registered as an intra-Community operator with retroactive effect.

The ECJ again pointed out that the formal requirements cannot be permitted to undermine the vendor's entitlement to exemption from VAT where the substantive conditions for an intra-Community supply are satisfied. This is in line with the decisions taken on this subject over the past years (e.g. *Mecsek-Gabona* of 06.09.2012, C-273/11 and *VSTR* of 27.09.2012, C-587/10), as well as the recently published decision of *Plöckl* (20.10.2016, C-24/15). In the latter case, the ECJ unsurprisingly accepted the VAT exemption for an intra-Community self-transfer of goods from Germany to Spain even though the taxable person did not have a VAT-ID in the ship-to-country.

4. Practical consequences

The ECJ has now taken a number of decisions of similar tenor. It shall only be relevant if the substantive conditions laid down in art. 138 EC-VAT-Directive are met. The formal requirements do not necessarily have to be met. The taxable persons are not even required to take all the necessary steps in order to meet the formal requirements. Hence, it's not the end of the world if the formal requirements leave something to be desired.

However, two restrictions exist: On the one hand, non-compliance with a formal requirement may lead to the refusal of an exemption from VAT if that non-compliance would effectively prevent the conclusive evidence that the substantive requirements have been satisfied. Hence, the production of some evidence will be required. It is recommendable to orientate one's administration in accordance with the expectations of the tax authorities in the ship-to-country. These can be quite different. On the other hand, no indications may exist that the taxable person has intentionally participated in tax evasion. The ECJ repeated that the taxable person is required to have acted in good faith.

In the circumstances, taxable persons should continue checking VAT-IDs and documenting the results in daily business. By so doing, adequate evidence will exist to support the case of a taxable person who becomes the victim of fraud. Albeit unlikely, it is, nevertheless, not unheard of that the good faith of a taxable person will be intensively scrutinized, particularly if the VAT number was not checked, regardless of whether this would have changed the outcome in anyway or not.