



# KMLZ VAT NEWSLETTER

## Necessity of precise invoice information for intra-Community supplies

### 1. Background

It was disputed whether the supply of a motor yacht from a German entrepreneur (DE) to a Spanish customer (ES) did indeed take place. According to the international CMR waybill, the yacht was brought from DE to ES by a carrier. The invoice stated no VAT but included the phrase “VAT@zero for export”. However, the invoice did not explicitly state the existence of an intra-Community supply or its VAT-exemption.

The tax office denied a VAT-exemption on the grounds that the required accounting evidence, according to sec. 17c of the German VAT Implementation Code, was not provided. It is not clear whether ES did, in fact, purchase the yacht. While ES is a legal entity, it is not economically active. As it is unclear whether ES was indeed the customer which bought the yacht for its own use, there is no intra-Community supply.

### 2. Decision by the Supreme Tax Court

In its judgment of 14 November 2012, (file no. XI R 8/11), the Supreme Tax Court confirmed the judgment of the tax

### Caution re EU exports

In its judgment of 14 November 2012, (file no. XI R 8/11), the Supreme Tax Court ruled that there will be no VAT-exemption if there is no statement on the invoice that the supply is a VAT-exempt intra-Community supply.

court and denied a VAT-exemption. What is striking about the Supreme Tax Court’s decision is the fact that VAT-exemption for the intra-Community supply was denied on the grounds that there was nothing on the invoice that stated the existence of an intra-Community supply. This shortcoming caused the Supreme Tax Court to deny the VAT-exemption due to the lack of proof of supply required according to sec. 17a para 1 of the German VAT Implementation Code.

In this regard, the Supreme Tax Court points, once again, to the principle of its new jurisdiction for intra-Community supplies. According to this jurisdiction, the following applies:

- The entrepreneur can only make use of VAT-exemption for intra-Community supplies if he meets the burden of proof according to sec. 6a para 3 of the German VAT Act in connection with sec. 17a et seq. of the German VAT Implementation Code.
- The supply should be treated as taxable if the entrepreneur does not meet this requirement or only meets this requirement in part, or if it ultimately transpires that the evidence provided is incorrect or if there is reasonable doubt that the information provided is correct and the entrepreneur fails to dispel this doubt.



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- However, the supply is rated as VAT-exempt if there is, objectively, no doubt that the requirements for VAT-exemption have been met despite the existence of some shortcomings.
- If the latter is not the case, the supply can only, in exceptional circumstances, be held exempt from VAT according to sec. 6a para 4 of the German VAT Act.
- The Supreme Tax Court also denied legitimate expectation, according to sec. 6a para 4 of the German VAT Act, as the burden of proof was incomplete in a number of ways.
- The Supreme Tax Court denied legitimate expectation on the basis of the new jurisdiction of the European Court of Justice in the case of *Mahageben* and *David* (ECJ, judgment of 21 June 2012, C-80/11 and C-142/11, see also the KMLZ-newsletter 4/2013) as these judgments referred to VAT-deduction.

The Supreme Tax Court did not consider the burden of proof, according to sec. 17a para 1 of the German VAT Implementation Code, to have been met in the case in dispute as DE failed to issue an invoice that met the requirements of sec. 14, 14a of the German VAT Act on the supply of the yacht. The invoice did not include any VAT-statement and did not include a reference that stated the existence of a VAT-exempt intra-Community supply according to sec. 14a para 1 sentence 1 of the German VAT Act. According to the Supreme Tax Court, the phrase “VAT@zero for export” which was stated on the invoice did not meet these requirements as this phrase did not clearly point out that the supply was an intra-Community supply instead of a supply to a third country. Other significant aspects of this decision are as follows:

- The Supreme Tax Court did not rate the CMR waybill as sufficient proof as the necessary information concerning place and date of dispatch, according to sec. 10 para 1 no. 2 sentence 2 lit. d of the German VAT Implementation Code, were omitted.

### 3. Effects on day-to-day business

To ensure that a supply is rated as a “VAT-exempt intra-Community supply”, it is important that entrepreneurs take care to include the correct invoice text. In day-to-day business often the entrepreneurs do not distinguish between export supplies to third countries and intra-Community supplies to other member states. Many times the invoices do only contain a general statement of VAT-exemption. In these cases, the information provided on the invoice should, in the future, be made clearer.

In this regard, it is also important to point out the upcoming change to sec. 14a para 3 of the German VAT Act, as part of the *Amtshilferichtlinie-Umsetzungsgesetz*:

*“If the entrepreneur carries out an intra-Community supply, he is obliged to issue an invoice by the fifteenth day of the month that follows the month where the supply was carried out. The VAT identification numbers of both the entrepreneur and the customer are to be stated on the invoice.”*