



KMLZ VAT NEWSLETTER

Reorganisation of chain transactions!?

On 8 April 2015, the Federal Fiscal Court (XI. Senate) published two very important judgments regarding zero-rated intra-Community supplies within a chain transaction: XI R 30/13 and XI R 15/14 (subsequent decision in the legal case *VSTR*, ECJ, Sept. 27, 2012 – C-587/10).

1. Legal background to the decisions

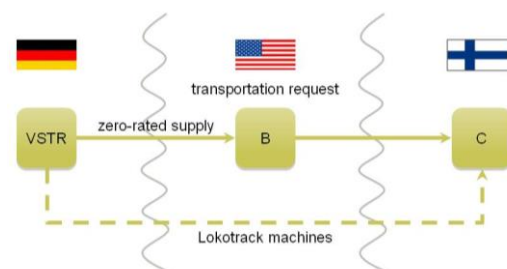
Since the ECJ's decisions in the legal cases *Euro Tyre Holding* (ECJ, 16 Dec. 2010 – C-430/09) and *VSTR*, there had been discussions as to what is decisive for determining to which of the supplies the transport should be ascribed: Is it decisive whether the middle entrepreneur informs the first entrepreneur selling the goods, that he will sell the goods to another person, which VAT-ID is employed or when the second person acquiring the goods (last buyer) receives the power to dispose of the goods?

2. Important aspects of the factual circumstances

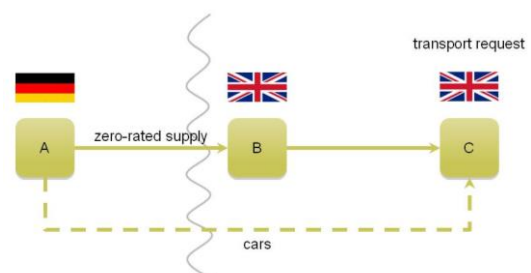
In its judgment XI R 15/14, the Federal Fiscal Court decided a case where the middle entrepreneur dispatched the goods. During the proceedings it was not possible to determine when the last buyer received the power to dispose of the goods.

Major changes for chain transactions

There are new criteria regarding chain transactions. For determining the supply, to which the transport is ascribed, it is decisive when the second person acquiring the goods receives the power to dispose of the goods. This also applies if the second person acquiring the goods transports or dispatches the goods. Therefore, the transportation order, which the German legal practice has always referred to, loses its importance. All chain transactions must be thoroughly checked.



In its judgment XI R 30/13, the Federal Fiscal Court decided a case where the last buyer (C) had dispatched the goods. In a second judicial process the tax court needs to determine when C has received the power to dispose of the goods.





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3. Core statements of the Federal Fiscal Court

- **Key criterion: Point in time when the power to dispose is given to the last buyer**

The supply to which the transport is ascribed is to be determined by all of the circumstances of the individual case. The key criterion is the point in time when the last buyer has received the power to dispose of the goods. If this happens in the country of departure, the second supply is to be regarded as the supply to which the transport is ascribed. However, if this happens following the cross-border movement of goods in the country of arrival, the first supply is to be regarded as the supply to which the transport is ascribed.

- **Transport or dispatch by last buyer**

In the view of the Federal Fiscal Court, this also applies if the last buyer (C) transports or dispatches the goods. Also in these cases, it is decisive when the last buyer received the power to dispose of the goods. According to the Federal Fiscal Court, the transport order is not the decisive criterion.

- **Sec. 3.14 para. 8 S. 2 of Administrative Circular**
Sec. 3.14 para. 8 S. 2 of the German Administrative Circular only refers to the transport or dispatch of goods. If the last buyer (C) supplies or dispatches the goods, the second supply, B to C, is the supply to which the transport is ascribed. According to the Federal Fiscal Court, this regulation is incompatible with the ECJ's case law.

- **Assumption rule, if a middle entrepreneur supplies or dispatches the goods**

If the middle entrepreneur transports or dispatches the goods, and if it is impossible to determine when the last buyer received the power to dispose of the goods, the statutory presumption of sec. 3 para. 6 sentence 6 of the German VAT Act applies. According to this provision, the transport is ascribed to the first supply.

- **Assumption rule, if last entrepreneur transports or dispatches the goods**

It is the view of the XI. Senate, that the same situation applies if the last entrepreneur transports or dispatches the goods and if it is impossible to determine when the last buyer received the power to dispose of the goods.

4. Conclusion and Consequences for the practice

The impact of these judgments to the German understanding of chain transactions is significant. Especially in cases where the last buyer transports or dispatches the goods, the German practice now no longer holds. Currently, the fiscal authorities are still applying the valid administrative instructions. However, changes being made to the Administrative Circular are to be expected.

According to the standards of the XI. Senate, the point in time when the power to dispose of the goods was given to the last buyer will be the decisive criterion. It will be defined abstractly, as the transfer of substance, value and income. It is already evident that there will be difficulties in the practical application. The XI. Senate refers to all circumstances of the individual case. There are several indications for the transfer of the power to dispose of goods. The XI. Senate considers it to be relevant what the parties agreed by contract and what was actually carried out. In cases where only third parties are involved in the chain transaction, it is an indication, if the parties consistently treat the supply as the one to which the transport is ascribed. It is important for entrepreneurs to work towards accumulating extremely comprehensive evidence and to adapt contracts and other documents accordingly.