



KMLZ VAT NEWSLETTER

Triangulation supplies: ECJ eases restrictions and reduces risks

1. Facts

Hans Bühler KG, which was resident in Germany, had a German, as well as an Austrian VAT-ID-No. Bühler applied the latter only when it participated, as an intermediate, in triangulation supplies. Bühler bought goods from German suppliers, which it then resold to a Czech customer (CZ). The goods were sent by the suppliers directly to CZ.

It was noted in the invoices that these transactions were intra-Community triangulation supplies and that CZ was liable to pay the VAT. There was a delay in Bühler filing its EC Sales Lists and it did not initially mark the supplies to CZ as triangulation supplies. Subsequently, Bühler corrected its EC Sales Lists, informing the tax authority that the mentioned supplies were made pursuant to triangular transactions. The Tax Authority Graz-Stadt rejected the application of the simplification rule for triangulation supplies, since

Triangulation supplies easier to conduct

The ECJ has made triangulation supplies easier to carry out through its judgment in the case of *Hans Bühler KG* (judgment of 19.04.2018 - C-580/16). The simplification rule for triangulation supplies is also applicable if the intermediate is established or registered in the country of departure. This means that businesses could possibly avoid registrations abroad. The situation is to be analyzed against this background and the progress in the relevant countries is to be followed. The ECJ also restricts the importance of the formal requirements, as it views EC Sales Lists, which have not been filed or filed late, as being harmless. This could also apply to other formal requirements, such as invoicing.

Bühler had not complied with its reporting obligations in its EC Sales Lists. Therefore, safety net acquisition VAT, in accordance with sec. 41 para. 1 VAT Directive (sec 3d sentence 2 German VAT Act), resulted due to the employment of the Austrian VAT-ID-No.

2. Reporting obligations in EC Sales List

The ECJ has once again limited the importance of formal preconditions for the applicability of a VAT regulation. The timely submission of the correct EC Sales List, which is a precondition for the application of the simplification rule to triangulation supplies, was classified as a formal requirement. If this is not fulfilled, the simplification rule can, nevertheless, be applied. The only time it cannot be applied is in circumstances where the intermediate (B) has committed tax evasion intentionally or where non-compliance with the formal requirements would effectively prevent the production of conclusive evidence that the substantive requirements have been satisfied.



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3. Establishment / Registration of B in departure country

According to Austrian VAT law, it was not only the fact that there was a delay in B filing its EC Sales Lists, which led to an unsuccessful triangular transaction. In the opinion of the tax authority, sec. 25 para. 3 lit. c of the Austrian VAT Act is to be interpreted as if the simplification rule for triangulation supplies is not applicable if B is established in the departure country. The simplification was only considered to be applicable as from 2015 in cases where B was registered (but not established) in the departure country and sec. 4294 of the Austrian VAT Administrative Guidelines had been amended to reflect this situation. There have been no restrictions like this in Germany. Sec. 25 of the German VAT Act does not contain any requirements concerning the status of B in the departure country. However, at least one third of EU members interpret sec. 141 lit. c of the German VAT directive restrictively, thus similarly to Austria.

The referring court therefore additionally asked the ECJ whether such a restriction existed. The ECJ came to the conclusion that art. 141 lit. c VAT Directive must be understood as if the establishment or registration of B in the country of departure is not relevant and that the simplification rule for triangulation supplies can also be applied in these cases. Thereby, the ECJ once again interprets a rule according to the objectives of the VAT Directive and does not orient itself purely on the Directive's wording.

4. Conclusions

Companies that apply simplification rules for triangulation supplies can be less concerned now. The interpretation of

the formal obligations, which has been rather strict so far, is no longer so alarming. Companies in dispute with the tax authority over triangular transactions, can now make use of the ECJ judgment of Bühler and regain hope. The safety net acquisition VAT (sec. 3d sentence 2 German VAT Act), which previously caused problems in most cases, can, from now on, be avoided.

Some registrations abroad can now possibly be omitted because of the extended applicability of the simplification. Certain countries will probably need to abolish the restriction for intermediates registered in the departure country.

The ECJ has not yet answered the question of whether, for example, the issuance of a proper invoice is merely a formal requirement. Only the reference on B's invoices to C that the VAT liability was shifted to C, due to the triangular transaction, would enable C to correctly declare the VAT liability, since C would generally be unaware of whether B was applying the simplification rule. This is why this requirement has, to date, been assumed to be a material requirement for the application of the simplification rule. Whether this is actually the case, seems now, at the very least, questionable. The EC Sales List only serves to evidence the correct handling of supplies and may be less decisive for the application of the simplification rule for triangular transactions than the correct invoicing. So, an important difference may be seen to exist. However, the development of ECJ jurisprudence, in particular, concerning the content of invoices and the retrospective effect of invoice amendments, which consequently weakens the importance of formal criteria, could be an indication that the invoices for triangulation supplies are of lesser importance than once thought.