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VAT NEWSLETTER

Tax Court Affirms Chain Transaction in the Case of Partial Transport Orders

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1 Background

A chain transaction requires that the good being supplied is shipped directly from the first supplier to the last customer. If only one party orders the transport, this is indisputably the case. However, it is not so clear if the first supplier and the last customer each order a partial transport. Parts of the literature would affirm a direct shipment. The German tax authorities would deny this. The ECJ and the German Federal Tax Court have not yet ruled on this issue. In its judgment of 17 June 2020 (ref. 7 K 7214/17), the tax court Berlin-Brandenburg affirmed a direct shipment and thus a chain transaction.

2 Facts

The claimant is established and VAT registered in Germany. It purchased goods from two suppliers in Finland and the UK and sold them to a Russian customer. The suppliers dispatched the goods to a warehouse in Lithuania. There, the goods were bundled and repackaged on behalf of the Russian customer for onward transport to Russia. The transport to Russia was ordered by the Russian customer. The claimant purchased the goods using its German VAT-ID. It was not VAT registered in Lithuania.

The tax office denied the existence of a chain transaction due to the shared responsibility for transport (see sec. 3.14 (4) sentence 1 of the German VAT Circular). Instead, each case consisted of two successive supplies of goods within the meaning of Art. 32 of the EU VAT Directive; (1) the suppliers rendered a supply from Finland and the UK respectively to the claimant in Lithuania and (2) the claimant rendered a supply from Lithuania to its customer in Russia. The intra-Community transport resulted in intra-Community acquisitions. The acquisitions were realised (1) in Lithuania, where the

Jörg Scharrer
Lawyer, Dipl.-Kaufmann

+49 (0) 89 217 50 12-33
joerg.scharrer@kmlz.de

goods were located at the end of the intra-Community transport (see Art. 40 of the EU VAT Directive) and (2) in Germany, since the claimant purchased the goods using its German VAT-ID (see Art. 41 of the EU VAT Directive). The claimant challenged the taxation of the intra-Community acquisition in Germany, as it would not be entitled to input VAT deduction. According to the claimant, the VAT liability should alternatively be waived. It would be unreasonable to VAT register in Lithuania for a few supplies only.

3 The Court's Decision

In its judgment, the Court denied an intra-Community acquisition in Germany. The parties rendered the supplies within chain transactions instead. The fact that the initial suppliers and the final customer each ordered a partial transport was irrelevant. The goods were transported directly from Finland and the UK to Russia within a single transportation. The short interruption in Lithuania was irrelevant according to the case law of the ECJ (Case C-386/16 – *Toridas*) and the ship-to-hold case law of the German Federal Tax Court. According to this case law, a short period of storage does not preclude a single transportation of goods in the case of intra-Community supplies. This must also apply to chain transactions. Within the chain transaction, the claimant rendered (export) supplies within the meaning of Art. 32 of the EU VAT Directive. The Russian customer had obtained the right to dispose of the goods before the goods left the EU territory. The judgment is final.

4 Consequences for the Practice

The Court applied the case law on the single transportation of goods, as regards intra-Community supplies, to the direct shipment within chain transactions. Unfortunately, the judgment refers to the case law on the single transportation only. It does not assess the applicability in detail. This weakens the persuasiveness of the judgment. The addressed issues are certainly different. This is also evident from a look at the new chain transactions regulation (sec. 3 (6a) of the German VAT Act). The new regulation does not apply to cases realised in the past, however, it illustrates the issue. Assuming that there was a direct shipment, the transport could not clearly be assigned to one of the supplies. If the first supplier orders the transport, German VAT law assigns the shipment to the first supply. If the last customer orders the transport, German VAT law assigns the shipment to the last supply. Hence, two conclusions seem possible. The German VAT law contains a gap in this respect or the assumption of the chain transaction made previously is incorrect.

The effect of the judgment is therefore limited. It may help to avoid VAT disadvantages in cases where facts have already been realised, provided that the judgment convinces other courts. It seems unlikely that the German tax authorities will change their view. Therefore, it does not provide a secure basis for future supplies, in particular due to the new regulation.

It must also be taken into account that other EU countries are not bound by the Court's ruling. Lithuania independently decides whether the claimant realised intra-Community acquisitions and export deliveries in Lithuania requiring VAT returns (!). Moreover, not all EU countries allow unlimited retroactive deduction of input VAT from acquisitions. Finland and the UK also independently decide whether the claimant has made export supplies in these countries requiring VAT returns (!). It is therefore unwise to argue that registration for a few supplies makes no sense and that the VAT should be waived. The German tax office cannot grant a dispensation for Lithuania. There is an internal market but no single VAT area. Moreover, a waiver would have to be dealt with in a separate procedure. In the worst case scenario, a third party could understand the treatment as deliberate VAT unreliability.