



European General Court: Safety-net acquisition VAT for using wrong VAT-ID in addition to unduly paid VAT

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1 Background and scope of application of safety-net acquisition VAT

According to Art. 40 of the EU VAT Directive, intra-Community acquisitions are deemed to have taken place where the transport ends. This results in acquisition taxation in the Member State of arrival (usually without any VAT liability, provided that there is a full right to deduct input VAT). However, if the acquirer does not use its VAT-ID from the Member State of arrival vis-à-vis the supplier, but rather a VAT-ID assigned to it by another Member State, an additional acquisition VAT arises in accordance with Art. 41 EU VAT Directive (provided that no triangular transaction is involved). There is no input VAT deduction for this safety-net acquisition VAT, meaning that the acquirer must pay acquisition VAT in the Member State of the VAT-ID used. The safety-net acquisition VAT will only be refunded once the acquirer has provided evidence that the acquisition was taxed in the Member State of arrival.

2 Facts of the case T-638/24

Between 2011 and 2015, D GmbH purchased goods from Austrian suppliers and had them transported to other Member States. D used its Austrian VAT-ID vis-à-vis the suppliers. The suppliers invoiced Austrian VAT to D. D claimed this VAT as input VAT but at the same time did not declare any intra-Community acquisitions. The Austrian tax authorities took the view that these supplies to D were intra-Community supplies, which were VAT-exempt in Austria. The fact that D did not use a VAT-ID from another Member State vis-à-vis the suppliers was apparently considered irrelevant for the VAT exemption. However, due to the use of the Austrian VAT-ID, an intra-Community acquisition in Austria was deemed to have taken place in accordance with Art. 41 of the EU VAT Directive. However, both the resulting safety-net acquisition VAT and the VAT unduly charged by the suppliers (Art. 203 EU VAT Directive) were not deductible as input VAT, resulting in (at least temporary) double taxation.



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3 Judgment of 25 February 2026 (T-638/24) – General Court confirms safety-net acquisition VAT

The General Court (GC) confirms the imposition of safety-net acquisition VAT pursuant to Art. 41 of the EU VAT Directive – even in cases where the acquirer has used a VAT-ID issued by the Member State of departure. Art. 41 of the EU VAT Directive is intended to ensure that an intra-Community acquisition is subject, at least once, to acquisition VAT. In the case in question, there may also be a VAT liability under Art. 203 of the EU VAT Directive for unduly charged VAT. However, the intra-Community supply remains VAT-exempt. Art. 203 of the EU VAT Directive establishes a separate VAT liability due to the incorrect VAT amount stated on the supplier's invoice. This VAT liability does not constitute taxation of the underlying transaction. The parallel application of Art. 41 and 203 therefore does not lead to double taxation in violation of EU law. The EU principles of neutrality and proportionality are also upheld, as the unduly charged VAT can be corrected (indefinitely) and the economic burden is therefore not final.

4 Double taxation – distinction from ECJ ruling C-696/20

In its ruling of 7 July 2022 (C-696/20), the ECJ ruled that double taxation (due to safety-net acquisition VAT) in the case of a chain transaction from Poland was in breach of EU law (KMLZ VAT Newsletter 29 | 2022). The GC does not question this either. However, in the opinion of the GC, there is a crucial difference. In the C-696/20 ruling, the intra-Community supply was considered not to be VAT-exempt under Polish law. However, in the current case T-638/24, the GC had to rule on a situation in which the tax authorities classified intra-Community supplies as VAT-exempt and the suppliers had incorrectly charged VAT. The GC does not consider this to be double taxation. The decisive factor, therefore, both in chain transactions and in two-party transactions, is whether the underlying intra-Community supply is VAT-exempt or not.

5 Time distinction – VAT ID as a condition for VAT exemption

The case decided by the GC concerns periods prior to 2020, when a VAT-ID from another Member State was not yet a material condition for the VAT exemption of an intra-Community supply. Since 2020, however, an intra-Community supply, such as in the case ruled on, would probably not be VAT-exempt because Art. 138(1)(b) of the EU VAT Directive requires the acquirer to use its VAT-ID from another Member State in order to qualify for VAT exemption. For cases from 2020 onwards, the ECJ ruling of 7 July 2022 (C-696/20) would therefore be decisive. This means that no safety-net acquisition VAT could arise, as this would otherwise lead to double taxation. However, another case is pending before the GC (T-689/25), which could become relevant for cases from 2020 onwards. The GC must decide whether the VAT-ID is a material condition for VAT exemption for the legal situation dating from 2020. If not, the VAT charged by the supplier could continue to be classified as unduly charged VAT, resulting in safety-net acquisition VAT.

6 Crucial point: Use of a VAT-ID

The GC's ruling is based on the assumption that the acquirer 'used' the Austrian VAT-ID. 'Using' a VAT-ID is a condition for safety-net acquisition VAT and must therefore always be examined as a first step. However, neither the EU VAT Directive nor previous case law define this term. The German Administrative VAT Guidelines in sect. 3a.2 para. 10 require positive action and do not consider, for example, a VAT-ID printed on letterhead to be sufficient. This aspect was not raised as an issue by the referring court and was therefore not addressed by the GC. The previous lack of clarity therefore remains, even for a classic case: In practice, it is not uncommon for the supplier to know the VAT-ID of the acquirer from the Member State of departure and to state it on the invoice, even if the acquirer has not actively communicated it for the specific supply. In such cases, it is often assumed that the VAT-ID has been used. There are doubts here, but those who want to avoid risks should pay attention to such cases.