



VAT NEWSLETTER

ECJ on the formal requirements for VAT exemption on export supplies of goods

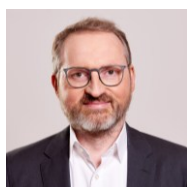
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The principle of fiscal neutrality is an ongoing source of contentious issues in VAT law. The principle states that VAT must remain economically neutral for taxable persons and may only be charged to consumers. On numerous occasions in the past, the ECJ has dealt with the question of whether VAT may be charged if the formal requirements for exemption are not met. The decisions on input VAT deduction, in the absence of an invoice, are particularly relevant here. In a recent judgment (ECJ, judgment of 1 August 2025 – Case C-602/24 – *W. sp. z o.o.*), the ECJ had to decide on the tax exemption of export supplies of goods when apparent formal requirements had not been met.

1 Facts of the case and questions referred

The plaintiff declared intra-Community supplies of apples in its 2017 and 2018 annual VAT returns. The apples were to be transported from Poland to Lithuania by carriers established in Belarus, Russia and Poland. The customer was to be responsible for the transport. The plaintiff did not carry out any checks on the customer's transport. The customer declared corresponding intra-Community acquisitions. However, the Polish tax authorities determined, on the basis of customs documents, that the customer had exported the apples directly from Poland to Belarus. The plaintiff was not aware of this. The Polish tax authorities did not recognise the intra-Community supplies declared by the plaintiff, as the goods were not transferred to another Member State. Instead, they assumed that the sale of the goods constituted a domestic supply liable to VAT at the rate of 5% and a penalty of 30%.

The plaintiff successfully brought a legal action before the Regional Administrative Court of first instance, claiming that the Polish tax authorities themselves had established that the goods had been exported. Since the substantive conditions for



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VAT exemption were met, the VAT exemption for the export supply of goods had to be recognised, even though the plaintiff had originally declared an intra-Community supply.

The Supreme Administrative Court overturned the decision in the second instance and referred the case back to the Regional Administrative Court of first instance for a new decision. The latter then referred the question to the ECJ as to whether a declared intra-Community supply can be recognised as an export supply of goods if the customer actually exports the goods. It also asked as to whether it matters that the customer decides to export without involving the supplier. Finally, it wanted to know if it makes a difference that the transport documents do not correspond to the customs documents on the basis of which the export can be traced.

2 ECJ decision

Referring to its previous jurisprudence, the ECJ reconfirmed that Art. 146 para. 1 lit. a of the EU VAT Directive provides for VAT exemption for export supplies of goods if

- the right to dispose, as owner of the goods, has been transferred to the customer,
- the supplier proves that the goods have been dispatched or transported to a place outside the Union, and
- the goods have physically left the territory of the Union as a result of that dispatch or transport.

The first condition was undisputedly fulfilled. The second condition was also satisfied as it was established, to the knowledge of the Polish tax authorities, that the apples had been transported outside the Union. The fact that this knowledge was obtained by the Polish tax authorities, on the basis of customs documents rather than being provided by the supplier, was irrelevant. The third condition was also fulfilled. Since the substantive conditions were all met, the principle of fiscal neutrality required that the VAT exemption be granted, even if the taxable person had not satisfied certain formal requirements. It was therefore irrelevant that the supplier had declared an intra-Community supply.

The ECJ also reconfirms that failure to comply with formal requirements can only lead to the loss of the right to VAT exemption in two cases, neither of which were relevant in the present case:

- the purpose of the breach is to prevent the production of conclusive evidence that the substantive conditions have been satisfied
- the supplier has intentionally participated in tax evasion, which has jeopardised the operation of the common system of VAT.

3 Opinion

With its ruling, the ECJ strengthens substantive VAT law. It places the principle of neutrality of VAT above the associated formal requirements. Even an incorrect declaration or faulty transport documents do not prevent VAT exemption if the substantive conditions can be proven in other ways. This is particularly relevant for businesses if the proof of exit cannot be found in connection with exports.