



VAT alert

Belgium

CJEU confirms strict VAT exemption conditions for transport allocation in chain transactions

On 21 February 2018, the CJEU issued a ruling in another case regarding the VAT exemption for cross border chain transactions (C-628/16 Kreuzmayer). In the case at hand, the third party in the chain (party C) had transported the goods. The CJEU considered that in such case, the second supply should have been exempt from VAT, as it is an intra-Community supply. Party C was therefore not entitled to deduct the input VAT that was incorrectly charged on the second transaction by Party B. The case reconfirms the importance of verifying the correct VAT treatment of incoming supplies, based on all information available.

Facts

A German BP affiliate sold petroleum products to BIDI, a company VAT registered in Austria. BIDI agreed to transport the goods to Austria. BP therefore zero-rated its sales as intra-community dispatches.

Without informing BP, BIDI resold those goods to Kreuzmayer, an Austrian VAT registered company. It entrusted the pickup of the goods in Germany to Kreuzmayer. When BP became aware, it spontaneously corrected the invoice to BIDI and charged German VAT on the sales to BIDI.

In the meantime, BIDI had charged and collected Austrian VAT on its sales to Kreuzmayer. However, BIDI did not transfer this

VAT to the Austrian authorities. The Austrian tax authorities discovered this and denied Kreuzmayer's input tax recovery. At that point, it was practically impossible for Kreuzmayer to rectify matters, as BIDI had become insolvent.

The Court's decision

Applying its *Euro Tyre Holding* (C-430/09) and *Toridas*, (C-386/16) case laws, the CJEU considers that the second supply is considered to be the exempt intracommunity dispatch, since it was clear that Kreuzmayer (party C) became the goods' owner before they were transported.

Therefore, the CJEU concluded that Kreuzmayer was not entitled to deduct Austrian input VAT, since this VAT was incorrectly charged in the first place.

Finally, the court states that Kreuzmayer cannot rely on legitimate expectations against the VAT authorities, as this principle can only be invoked in situations where the authorities themselves created expectations. According to the CJEU, Kreuzmayer simply has to seek repayment from its insolvent supplier.

Impact

This CJEU case serves as a reminder that it is important for all parties involved in a chain of transactions to analyse the correct VAT treatment and to be fully aware of all relevant facts available to them. In a broader sense, this Court Case also demonstrates the importance of checking the correct VAT application on all incoming invoices before payment, since incorrectly charged VAT cannot be recovered.

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