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.

Contacts

If you have any questions concerning the items in this alert, please contact your usual tax consultant at our Deloitte office in Belgium or:

• Johan Van der Paal, jvanderpaal@deloitte.com, +32 2 600 66 39
• Pieter Van Hoecke, pivanhoecke@deloitte.com, +32 2 800 86 74
• Charlotte Degadt (Laga), cdegadt@laga.be, +32 2 800 70 23

For general inquiries, please contact:
bedeloittetax@deloitte.com, + 32 2 600 60 00

Be sure to visit us at our website:

Deloitte Academy

Tax Tools and Publications
Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee ("DTTL"), its network of member firms, and their related entities. DTTL and each of its member firms are legally separate and independent entities. DTTL (also referred to as "Deloitte Global") does not provide services to clients. Please see www.deloitte.com/about for a more detailed description of DTTL and its member firms.

Deloitte provides audit, tax and legal, consulting, and financial advisory services to public and private clients spanning multiple industries. With a globally connected network of member firms in more than 150 countries, Deloitte brings world-class capabilities and high-quality service to clients, delivering the insights they need to address their most complex business challenges. Deloitte has in the region of 225,000 professionals, all committed to becoming the standard of excellence.

This communication contains general information only, and none of Deloitte Touche Tohmatsu Limited, its member firms, or their related entities (collectively, the "Deloitte Network") is, by means of this communication, rendering professional advice or services. No entity in the Deloitte network shall be responsible for any loss whatsoever sustained by any person who relies on this communication.

Laga BV CVBA in Belgium

Laga BV CVBA is part of a privileged multidisciplinary cost-sharing association with Deloitte Accountants BV CVBA.

© 2018. For information, contact Deloitte Belgium.

Subscribe | Unsubscribe