

Exempt intra-Community supplies: does VIES registration matter? (3/24/17)

This article explores the ruling made by the Court of Justice of the European Union (CJEU) in Case C-21/16 (Euro Tyre) on 9 February 2017.

What is VIES?

VIES (VAT Information Exchange System) is a search engine owned by the European Commission that helps retrieve data from the VAT databases of all member states. VIES is used for checking whether a company – business partner – is registered for cross-border transactions in the EU. A search can show that a particular EU VAT registration number either –

1. exists, i.e. it is valid (the system will show relevant EU VAT information); or
2. does not exist, i.e. the number is not valid (not entered on the member state's database for various reasons, e.g. there is no such number, its registration is pending, or the number is not activated for intra-Community transactions). If a business partner claims that he has a taxable person's registration number, but a VIES search does not confirm that claim, the business partner can ask the tax authority in his member state to issue a certificate of VAT registration. The business partner could also be required to register for cross-border intra-Community transactions because there is no uniform procedure across the EU.

Background

Euro Tyre is a Portuguese branch of Euro Tyre BV, a company incorporated under Netherlands law. It is engaged in the import, export and marketing of tyres of various brands for retailers based in Portugal and Spain. On the Spanish market, it sells in part directly and in part through a distributor, Euro Tyre Distribución de Neumáticos SL.

The dispute in the main proceedings concerns several sales made during the period between 2010 and 2012 to the distributor, who was registered as a taxable person for VAT purposes in Spain at the time of those sales. However, the distributor was not yet subject in Spain to the system of taxation of intra-Community acquisitions nor registered in VIES. It was not until 19 March 2013 that the Spanish tax authority granted intra-Community operator status and entered the distributor on VIES with retroactive effect from 1 July 2012.

Euro Tyre declared those sales to be intra-Community supplies and thus exempt under article 14(a) of the Portuguese VAT rules for intra-Community trade.

Following a VAT audit covering 2010–2012, however, the Portuguese tax authority claimed that the article 14(a) conditions for a VAT exemption were not satisfied because the distributor was neither registered for intra-Community transactions in Spain nor entered on VIES at the time of those sales.

Consequently, the Portuguese tax authority adjusted the VAT due from Euro Tyre for 2010–2012 together with interest for late payment. Euro Tyre challenged those adjustments.

Preliminary questions

1. Must articles 131 and 138(1) of Directive 2006/112/EC be interpreted, in respect of an intra-Community supply of goods, as precluding a member state's tax authority from refusing to grant a VAT exemption to a seller domiciled in that member state on the grounds that the buyer, domiciled in another member state, is neither registered in VIES nor subject in that country to a system of taxation of intra-Community acquisitions, although he holds, at the time of the transactions, a valid VAT number in that other member state, which has been used on the invoices, and the cumulative material conditions for an intra-Community supply are satisfied, namely, the right to dispose of the goods as owner has been transferred to the buyer and the seller has established that these goods were dispatched or transported to another member state and that, after the dispatch or transport, those goods physically left the member state of departure and were delivered to a taxable buyer, or to a legal entity acting as such, in a member state other than that in which the dispatch or transport began?
2. Does the principle of proportionality preclude an interpretation of article 138(1) of the directive to the effect that the benefit of the right to a VAT exemption is to be denied where the seller, domiciled in a member state, was aware that the buyer, domiciled in another member state, although holding a valid VAT number in that other member state, was not registered in VIES nor came under a system of taxation of intra-Community acquisitions, but the seller was convinced that the buyer would be retroactively registered as an intra-Community operator?

The ruling

The CJEU analysed the question whether VIES registration is necessary for exempting intra-Community supplies from VAT.

The CJEU finds that articles 131 and 138(1) of the directive must be interpreted as precluding a member state's tax authority from refusing to exempt an intra-Community supply from VAT on the sole ground that, at the time of that supply, the buyer, who was domiciled in the member state of destination and held a valid VAT number in that member state, is neither registered in VIES nor comes under a system of taxation of intra-Community acquisitions, where there is no sound evidence pointing to the existence of fraud and it is established that the basic conditions for the exemption are satisfied. In that case, article 138(1), interpreted in the light of the principle of proportionality, also precludes such refusal where the seller was aware of the buyer's circumstances relevant to VAT treatment and was convinced that the buyer would later be registered as an intra-Community operator with retroactive effect.

Thus, the CJEU stated that the requirements for the buyer to obtain a VAT number valid for intra-Community transactions and to be entered on VIES are not essential for transactions to be exempted from VAT. These are formal requirements that cannot deny the supplier's right to exempt supplies from VAT if the substantive conditions laid down by the directive for an intra-Community supply are satisfied.