

EU court on VAT treatment of new vehicle supplies (2/26/17)

On 14 June 2017, the Court of Justice of the European Union (“CJEU”) announced Ruling C-26/16 on the conditions for applying a VAT exemption to intra-Community supplies of new vehicles. This article explores relevant findings.

Background

Santogal M-Comércio e Reparação de Automóveis Lda is a Portuguese company that sells automobiles. The company sold a new vehicle to an Angolan national, which he had previously brought into Portugal under a customs declaration for vehicles. The buyer had stated that he was planning to use the vehicle for private purposes in Spain, which he had named as his permanent residence to which he was planning to deliver the vehicle, then take it through a roadworthiness test and complete its registration. The buyer had provided his foreign citizen registration number in Spain and a copy of his Angolan passport. The address he stated at the time of purchase did not match the one appearing in his foreign citizen registration document. The vehicle was carried to Spain in a fully closed vehicle transporter. After the delivery to Spain, the Portuguese tax authority received the vehicle’s Spanish registration certificate, which stated yet another address of the buyer and mentioned *temporary registration for tourism purposes*. The Portuguese tax authority had found that the buyer’s permanent residence was in Portugal and he was registered as the CEO of a Portuguese company and had a Portuguese taxpayer number.

Under article 138(2)(a) of the VAT directive, a member state will exempt VAT on supplies of new vehicles that are shipped or transported by the seller, the buyer, or a third party on behalf of the seller or the buyer, to a destination outside the member state but within the EU if supplies are made to taxable persons, non-taxable entities whose intra-Community acquisitions of goods are exempt from VAT under article 3(1) of the directive, or to any other non-taxable person.

Since the company was in dispute with the Portuguese tax authority over the conditions for applying a VAT exemption, the case was referred to the CJEU.

Court findings

Having considered the facts and circumstances of the case and the relevant Portuguese legislation, the CJEU came to the following conclusions:

1. Article 138(2)(a) of the VAT directive is contradicted by the requirement that the buyer of a new vehicle should be registered or permanently resident in the member state of destination. The fact that the buyer is not living in the member state of destination does not necessarily mean that the final and permanent use of the vehicle does not take place in that member state. All the objective facts and circumstances should be assessed, including the buyer’s place of residence.

2. If a member state is to grant a VAT exemption to the supply of a new vehicle, article 138(2)(a) of the VAT directive implies that three cumulative conditions must be satisfied:

a) the seller must give the buyer the right to deal with the vehicle as owner;

- b) the supplier must prove that the goods have been shipped or transported to another member state;
- c) after the shipment or transportation the goods must be physically removed from the member state of shipment.

3. These conditions do not require that a new vehicle should be registered in the member state of destination, and the member state cannot, therefore, restrict the application of an exemption on the grounds that the registration made in the member state of destination is temporary, and the grant of registration in the member state of destination does not help determine the member state of end use of the vehicle, which is the place of taxation.

4. The court stated that evidence of the vehicle's physical movement to the place of its end use, which the seller can file with the tax authority, depends on the buyer, and the seller cannot be required to provide evidence that the intra-Community acquisition of goods has been charged to VAT in order to receive an exemption.

5. Article 138(2)(a) of the VAT directive is contradicted by the fact that the seller must later pay VAT on the new vehicle which the buyer transported to another member state and temporarily registered in that last mentioned country unless it is proved that the temporary registration arrangement has ended and that VAT has been, or will be, paid in the member state of destination. The seller cannot be required to provide evidence that the buyer has paid VAT in the member state of destination.

6. The court also stated, however, that the trader must take all steps that may be reasonably demanded from him to make sure the transaction will not involve him in tax fraud. The seller cannot rely solely on the buyer's intention to transport the goods to another member state for their end use, but the seller should ensure that the buyer's intention is supported by objective circumstances. The seller must also demonstrate special care, given that an individual is not permitted to recover VAT when acquiring a new vehicle, and so the individual is more interested in evading VAT than a trader. In assessing the supplier's good faith, we should form an opinion on whether the seller could know that the temporary registration of vehicles is restricted to persons without a permanent residence in the country, and whether the seller should not have had doubts about the buyer's permanent residence after he had filed documents with different addresses. The seller should make a general assessment of all the facts and circumstances in order to treat the transaction as an intra-Community supply and to prevent any involvement in tax fraud; he should accumulate all evidence he can reasonably obtain to make sure all the conditions are satisfied, in particular the requirement for permanent use in the member state of destination. Considering the vehicle's temporary registration, it would also be reasonable to check the country of its end use with the buyer.

In view of this court ruling, we would recommend that any company making supplies of goods in the EU, in particular supplies of new vehicles to EU individuals that do not carry on a trade or business, should make an advanced assessment of its supply procedures to stay compliant with the conditions for a VAT exemption (section 43 of the Latvian VAT Act) and make sure the company steers clear of fraudulent transactions.

PwC professionals will be happy to help you prepare a business partner risk management procedure (kristine.skrastina@lv.pwc.com, phone +371 67094400).

