

Transfer of goods to another member state: less stringent VAT formalities

The Court of Justice of the European Union has recently taken less stringent positions with respect to formal conditions. As a consequence VAT payers can benefit from VAT exemptions when they fulfilled all material conditions, even when they do not meet the formal conditions. Therefore it is no longer a disaster if not all requirements are (correctly) filled out. But what does this exactly mean for a 'transfer'? A short analysis.

Transfer

There is a **transfer of goods** when a VAT payer (or someone on his behalf) dispatches or transports goods from one member state of the EU to another.

Such transfer is treated as an intracommunity supply and an intracommunity acquisition. This means that a transfer is treated in the same way for VAT purposes. In the member state of dispatch an intracommunity supply takes place. In the member state of arrival there is an intracommunity acquisition.

Conditions for the exemption

In order to perform an exempt intracommunity supply and so also a transfer, a number of conditions should be fulfilled.

In the first place the goods should actually be dispatched or transported from Belgium to another member state of the EU. The transport can be done by the supplier or by the client, or on their behalf. If the transport is made by/on behalf of the next person (customer of the customer in a chain transaction), there is no exemption.

Secondly the client itself should also be a VAT payer. He will after all perform an intracommunity acquisition in his country (where the transport ends).

Formal conditions

It is of key importance that also a number of **formal conditions** are fulfilled. The dispatch or transport of the goods outside Belgium should be proven with documents. Since 1 July 2016 the Belgian tax authorities accept that this proof is given by means of the simplified document, the **destination document**. The VAT payer should draft a document on which amongst others the VAT identification number of the customer is quoted. Mentioning this VAT identification number is after all proof that the transfer is made for the economic activity of the VAT payer acting as such in the member state of arrival. In other words, with this formal conditions the VAT payer can prove that the material condition is fulfilled.

Flexible position of the Court of Justice

Also the Court of Justice is currently taking a more flexible position with respect to formal VAT obligations. The Court attaches more importance to the *material* conditions. If the material conditions to obtain the exemption are met, the exemption should be granted. Even in case the VAT payer did not fulfill all *formal* conditions, e.g. when he did not quote all mandatory requirements on the drafted document. The Court does not consider quoting the VAT identification number as an essential condition to exempt an intracommunity transfer. The mere fact that this formal condition is not fulfilled does not justify that the exemption is refused.

What now?

The Court takes a flexible position, but this does not mean that formal conditions do not mean anything anymore. In case fulfilling the material conditions cannot longer be verified in absence of the formal conditions, the exemption cannot be applied. Additionally the flexible position is not applicable in cases of fraud.

Consequences for the Belgian VAT payers?

The judgment of the Court was given in a German case. However the reasoning of the Court is also applicable in Belgium.

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