



THE INTRA-EU SUPPLIES IN THE ECJ CASE-LAW ON VAT

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GENERAL COMMENTS ON THE INTRA-EU EXCHANGES VAT REGIME (I)

EMAG, C-245/04:

The special arrangements for the taxation of trade between Member States resulted in the **abolition of fiscal frontiers**.

Having verified that the conditions which would have made it possible to establish the principle of taxation in the Member State of origin were not met on that date without affecting, for EU traffic between taxable persons, the principle of attribution of tax revenue corresponding to the application of VAT at the final stage to the consumption Member State, the EU legislator established a **transitional system** of taxation of trade between Member States based on the establishment of a new taxable event, namely, the intra-EU acquisition of goods.

Under the transitional regime, the seller, on the one hand, makes an **exempt delivery** in the origin Member State and, on the other hand, obtains from the aforementioned State the deduction and refund of the borne VAT. As for the purchaser, it carries out an **intra-EU acquisition** VAT taxed in the destination Member State. This mechanism allows the tax revenue to be transferred to the Member State in which the final consumption takes place.

GENERAL COMMENTS ON THE INTRA-EU EXCHANGES VAT REGIME (II)

Teleos and others, C-409/04:

The objective pursued by the transitional regime established for intra-EU trade is the **transfer of tax revenue** to the consumption Member State, which was created to regulate intra-EU movement of goods.

Having replaced the system of imports and exports between the Member States, this regime is clearly distinguished from that regulating the operations carried out internally in the country. The precondition for the application of such a regime is the intra-EU nature of an operation and, in particular, a **physical movement** of goods from one Member State to another.

GENERAL COMMENTS ON THE INTRA-EU EXCHANGES VAT REGIME (III)

X, C-84/09:

The transitional VAT regime for the intra-EU trade is based on the establishment of a **new taxable event**, namely, the intra-EU acquisition of goods, which allows the tax income to be transferred to the Member State in which the final consumption takes place.

The mechanism consisting, on the one hand, of the exemption, by the departure Member State, of the delivery giving rise to the intra-EU transport, accompanied by the right to the deduction or refund of the VAT paid into that Member State, and, on the other hand, in the taxation required by the destination Member State, was intended to settle a clear **delimitation** of the **fiscal sovereignty** of the Member States.

In this regard, this judgment is identical to that of 14-6-2017, **Santogal M-Comércio e Reparação de Automóveis, C-26/16**.

EXEMPTION REQUIREMENTS. TRANSMISSION AND DEPARTURE OF THE GOODS (I)

Teleos and others, C-409/04:

The taxation of intra-EU acquisitions of goods and the exemption for the intra-EU deliveries established in the VAT Directive only apply if the **goods** have been **transferred** to the purchaser as the owner and, on the occasion of delivery, have **physically left** the State of delivery to another Member State of the EU.

EXEMPTION REQUIREMENTS. TRANSMISSION AND DEPARTURE OF THE GOODS (II)

X, C-84/09:

In order to qualify a **delivery** of goods as intra-EU there must be some type of **link** with the **transport** of the goods, but it cannot be related to a specific time frame within which the transport must begin or end. To do this, an **overall assessment** of all the objective circumstances and the intent of the purchaser must be made, provided that it can be deduced from objective elements that allow identification of the State in which the final use of the corresponding good is expected to take place.

EXEMPTION REQUIREMENTS. TRANSMISSION AND DEPARTURE OF THE GOODS (III)

Plöckl, C-24/15:

The VAT Directive precludes the tax authorities of the origin Member State from refusing to exempt an intra-EU transfer of goods claiming that the taxpayer has not communicated the **VAT Number** assigned by the destination Member State when there is no serious indication to suggest the existence of fraud, the goods have been transferred to another Member State and the other requirements for the exemption are fulfilled.

EXEMPTION REQUIREMENTS. TRANSMISSION AND DEPARTURE OF THE GOODS (IV)

Toridas, C-386/16:

For the intra-EU deliveries exemption, **processing or transforming** of the goods, in the course of a supply chain, carried out on the instructions of the intermediary acquiring the goods and before the goods are transported to the Member State of the final acquiror, has no effect where that processing takes place after the first supply.

EXEMPTION REQUIREMENTS. STATUS AND IDENTIFICATION OF THE RECIPIENT (I)

R., C-285/09:

In the case of intra-EU supplies in which the **identity** of the real **purchaser** of the goods is **concealed** within the framework of a carousel fraud scheme, the origin Member State may deny the exemption.

EXEMPTION REQUIREMENTS. STATUS AND IDENTIFICATION OF THE RECIPIENT (II)

VSTR, C-587/10:

The exemption of the intra-EU supplies of goods is subordinated to the **condition of taxable person** of the acquirer, which is usually demonstrated by means of its VAT number, but this does not prevent its accreditation by other means.

The denial of the exemption cannot be justified by the fact that this obligation has not been fulfilled when the supplier cannot, in good faith, and after having taken all the measures that can be reasonably required, provide such VAT number and provides, on the other hand, indications that serve to demonstrate sufficiently that the acquirer is a taxpayer who acts as such in the operation in question.

EXEMPTION REQUIREMENTS. STATUS AND IDENTIFICATION OF THE RECIPIENT (III)

Traum, C-492/13:

The VAT Directive, together with the principle of legal certainty, preclude the tax authorities from refusing the exemption in respect of an intra-EU supply of goods on the ground that the **purchaser** was **not registered for VAT purposes** in another Member State and the supplier has proven neither the **authenticity of the signature** on the documents submitted in support of its declaration nor that the person who signed those documents on behalf of the purchaser had the **authority** to represent him, where the evidence submitted in support of the declaration is consistent with the list of documents to be submitted to those authorities under national law and has been accepted by them, initially, as supporting evidence.

The art.138 of the VAT Directive, establishing the exemption of the intra-EU supplies has **direct effect**, so that it may be relied upon by taxable persons before national courts against the State in order to obtain an exemption from value added tax in respect of an intra-EU supply of goods.

EXEMPTION REQUIREMENTS. STATUS AND IDENTIFICATION OF THE RECIPIENT (IV)

Plöckl, C-24/15:

The VAT Directive precludes the tax authorities of the origin Member State from refusing to exempt an **intra-EU transfer** of goods claiming that the taxpayer has not communicated the **VAT Number** assigned by the Member State of destination when there is no serious indication to suggest the existence of fraud, the goods have been transferred to another Member State and the other requirements for the exemption are fulfilled.

EXEMPTION REQUIREMENTS. STATUS AND IDENTIFICATION OF THE RECIPIENT (V)

Euro Tyre Holding, C-21/16:

The VAT Directive precludes the tax authorities from refusing to exempt an intra-EU supply for the sole reason that, at the time of delivery, the **purchaser**, domiciled in the territory of the destination Member State and holder of a VAT Number valid for transactions in that State, is **not registered in the VAT information exchange system (VIES)** and is not subject to a system of taxation of intra-EU acquisitions, even when there is no serious indication of fraud and it has been proven that the material requirements for exemption are met.

In this case, the art.138 of the VAT Directive, interpreted in light of the principle of **proportionality**, also precludes the denial of the exemption in the event that the seller knows the circumstances that characterize the situation of the purchaser and has the expectation that, at a later time, this one will obtain registration as an intra-EU operator with retroactive effects.

EXEMPTION REQUIREMENTS. STATUS AND IDENTIFICATION OF THE RECIPIENT (VI)

Santogal M-Comércio e Reparação de Automóveis, C-26/16:

The VAT Directive precludes a national provision from making the recognition of the exemption of intra-EU supply of a new means of transport subject to the requirement that the purchaser be **established** or domiciled in the **destination Member State** of that means of transport.

ACTIONS OF THE TAX AUTHORITIES (I)

Teleos and others, C-409/04:

The tax authorities cannot refuse the exemption of intra-EU supplies of goods applied by an operator who acted in **good faith**, with support in documentary evidence that at first sight justifies their right to the exemption but which prove to be false, without having demonstrated that said operator participated in a fraud scheme, provided that the latter would have taken all reasonable measures at his disposal to ensure that such participation did not exist.

The submission of a **VAT declaration** in the **destination Member State** of the merchandise including the intra-EU acquisitions of the same may be an evidence to be considered to prove that the goods have left the country of origin, but it does not constitute conclusive proof for the purposes of the exemption of intra-EU supply.

ACTIONS OF THE TAX AUTHORITIES (II)

Collée, C-146/05:

The exemption of intra-EU supplies cannot be denied as a consequence of the fact that the **proof** of the accomplishment of the aforementioned delivery is **not provided** in due course.

The circumstance that the taxpayer who has made an intra-EU supply has consciously concealed its realization at first is only relevant in the event that the taxpayer has not completely eliminated the risk of tax loss and that risk actually exists.

ACTIONS OF THE TAX AUTHORITIES (III)

Twoh International, C-184/05:

Neither the VAT Directive nor the EU rules on **administrative cooperation** imply that, in the framework of an intra-EU supply whose exemption is disputed, the authorities of the Member States are obliged to request information from the State of destination indicated by the supplier.

ACTIONS OF THE TAX AUTHORITIES (IV)

R., C-285/09:

In the case of intra-EU supplies in which the **identity** of the real **purchaser** of the goods is **concealed** within the framework of a carousel fraud scheme, the origin Member State may deny the exemption.

ACTIONS OF THE TAX AUTHORITIES (V)

Mecsek-Gabona Kft, C-273/11:

The VAT Directive does not preclude the seller from being denied the exemption from intra-EU delivery, provided that it is objectively proved that has failed to comply with its obligations, provided that it has been established, on the basis of objective evidence, that knew or should have known that the transaction it carried out was involved in a fraud committed by the purchaser and that it did not take all reasonable measures within its reach to prevent its own participation in the fraud.

The exemption of an intra-EU supply cannot be denied due to the fact that the **recipient** has been **retroactively withdrawn**, by its tax authorities, its **VAT identification number**.

ACTIONS OF THE TAX AUTHORITIES (VI)

Enteco Baltic, C-108/17:

The VAT Directive precludes an administrative practice under which an importer acting in good faith is refused the right to the exemption settled for imports followed by intra-EU supplies where the conditions for this are not satisfied, because of tax evasion on the part of the purchaser, unless it is shown that **the importer knew or ought to have known** that the transaction was involved in tax evasion committed by the purchaser and did not take all reasonable steps in his power to avoid participation in the evasion.

The mere fact that the importer and the purchaser communicated by electronic means of communication cannot allow it to be **presumed** that the importer knew or could have known that he was participating in tax evasion.

According to the VAT Directive, the competent national authorities are not obliged, when examining the transfer of the power to dispose of goods as owner, to collect information to which only the public authorities have access.

OTHER ISSUES. THE THEORY OF KNOWLEDGE (I)

Mecsek-Gabona, C-273/11:

The VAT Directive does not preclude the seller from being denied the exemption from intra-EU delivery, provided that it is objectively proved that has failed to comply with its obligations with respect to evidence or **knew or should have known** that the transaction it carried out was involved in a fraud committed by the purchaser and that it did not take all reasonable measures within its reach to prevent its own participation in the fraud.

OTHER ISSUES. THE THEORY OF KNOWLEDGE (II)

Santogal M-Comércio e Reparação de Automóveis, C-26/16:

The VAT Directive, together with the principles of legal certainty, proportionality and protection of legitimate expectations preclude that the seller of a new means of transport, transported by the purchaser to another Member State and registered in this State on a temporary basis, is subsequently forced to pay VAT in case of **tax fraud committed by the purchaser**, unless it is demonstrated, on the basis of objective data, that **the** aforementioned **seller knew or should have known** that the operation was involved in a fraud committed by the purchaser and did not take all reasonable measures at its disposal to prevent its participation in that fraud.

OTHER ISSUES. CHAIN SUPPLIES (I)

EMAG, C-245/04:

In intra-EU chain operations in which there are two deliveries and a **single transport**, said transport can only be linked to **one** of these deliveries, which will be the exempt supply and will result in the intra-EU acquisition in the State of destination of the goods.

The foregoing interpretation is valid regardless of which of the operators involved in the transactions has the **right to dispose** of the goods during their shipment or transport.

OTHER ISSUES. CHAIN SUPPLIES (II)

Euro Tyre Holding, C-430/09:

When two chain supplies occur, the first one can be considered as intra-EU supply if the intention of the purchaser, confirmed by objective elements, allows concluding that the goods will leave the State of origin. To do this, an **overall assessment** of all the particular circumstances must be carried out in order to determine which of these two deliveries meets all the requirements corresponding to an intra-EU supply.

However, if the first person acquiring the goods, having obtained the **right to dispose** of them in the Member State of the first supply, expresses his intention to transport them to another Member State and presents a VAT number attributed by that other State, the intra-EU transport should be ascribed to the **first** supply, on condition that the right to dispose of the goods as owner has been transferred to the second person acquiring the goods in the destination Member State.

OTHER ISSUES. CHAIN SUPPLIES (III)

VSTR, C-587/10:

In intra-EU chain operations where there is only **one transport**, only the one to which the transport can be attributed can be considered as intra-EU.

OTHER ISSUES. CHAIN SUPPLIES (IV)

Toridas, C-386/16:

A supply of goods by a taxable person established in a first Member State is not exempt where, prior to entering into that supply transaction, the person acquiring the goods, who is identified for VAT purposes in a second Member State, informs the supplier that the **goods** will be **resold** immediately to a taxable person established in a third Member State, **before he takes them out of the first Member State** and transports them to that third taxable person, provided that that second supply has in fact been carried out and the goods have then been transported from the first Member State to the Member State of the third taxable person.

The fact that the first person acquiring the goods is identified for VAT purposes in a Member State other than that of the place of the first supply or that of the place of the final acquisition is not a criterion for classification of an intra-EU transaction or, in itself, evidence sufficient to show that a transaction is an intra-EU one.

OTHER ISSUES. CHAIN SUPPLIES (V)

AREX CZ, C-414/17:

In the context of chain transactions with a single transport, in order to determine to which of the transactions the intra-EU transport must be related and which must, therefore, be classified as an intra-EU acquisition, it is for the referring court to carry out an **overall assessment** of all the specific circumstances of the individual case and to determine, in particular, when the transfer to Arex of the right to dispose of the goods as an owner occurred.

In the event that the **transfer took place before the intra-EU transport** started, said transport must be related to the acquisition by Arex and that acquisition must therefore be classified as an intra-EU acquisition.

The fact that the fuel transport at issue in the main proceedings was carried out under an excise duty special regime is not, however, a decisive factor in determining to which of the acquisitions of the chain at issue in the main proceedings that transport must be ascribed.

OTHER ISSUES. INDEPENDENCE OF TAXATION IN DIFFERENT STATES (I)

Transport Service, C-395/02:

A delivery that is treated as an intra-EU exempt supply, but it does not meet the requirements for the exemption, and to which no other exemption is applicable, it is a delivery subject and not exempt from VAT. In case the operation has been considered as exempt, the corresponding State may proceed to the VAT **collection** without the principle of neutrality precluding it.

The fact that **at the end of a distribution chain** the corresponding **VAT** has been **paid** does not exempt from the payment of VAT that is applicable for the previous operations of the chain (this is a CJEU order, not a judgment).

OTHER ISSUES. INDEPENDENCE OF TAXATION IN DIFFERENT STATES (II)

Teleos and others, C-409/04:

The tax authorities cannot refuse the exemption of intra-EU supplies of goods applied by an operator who acted in good faith, with support in documentary evidence that at first sight justifies their right to the exemption but which prove to be false, without having demonstrated that said operator participated in a fraud scheme, provided that the latter would have taken all **reasonable measures** at his disposal to ensure that such participation did not exist.

The **submission of a VAT declaration in the destination Member State** including the intra-EU acquisitions may be an evidence to be taken into account to prove that the goods have left the country of origin, but it does not constitute conclusive proof for the purposes of the exemption of intra-EU supply.

OTHER ISSUES. INDEPENDENCE OF TAXATION IN DIFFERENT STATES (III)

Santogal M-Comércio e Reparação de Automóveis, C-26/16:

The exemption of a delivery of a new means of transport cannot be refused in the origin Member State for the sole reason that such means of transport have been granted only of a **temporary registration** in the **destination Member State**, being the seller of a new means of transport, transported to another Member State by the purchaser and registered in this State on a temporary basis, required to pay VAT at a later stage when it is not established that the temporary registration regime has ended and VAT has or will be paid in the Member State of destination.

OTHER ISSUES. COMPATIBILITY WITH OTHER EXEMPTION CASES

Eurodental, C-240/05:

The exemption of the supplies carried out by **dental technicians** prevails over the exemption of intra-EU deliveries. Consequently, a dental technician who makes intra-EU supplies cannot deduct the input VAT corresponding to the manufacture of dental prosthesis, even if its delivery is an intra-EU transaction and irrespective of the VAT regime applicable in the Member State of destination.

OTHER ISSUES. TRIANGULAR TRANSACTIONS (I)

Firma Hans Bühler, C-580/16:

The requirement laid down for the exemption of the intra-EU acquisitions corresponding to the triangular transactions can be considered met where the taxable person is resident and identified for VAT purposes in the Member State from which the goods are dispatched or transported, but that that taxable person uses the **VAT identification number of another Member State** for that specific intra-EU acquisition.

The VAT Directive precludes the tax authorities of a Member State from applying that exemption solely on the ground that, in the context of an intra-EU acquisition, made for the purposes of a subsequent supply in the territory of a Member State, the **recapitulative declaration** for the intra-EU transactions was not submitted in good time by the taxable person identified for VAT purposes in that Member State.

OTHER ISSUES. IMPORTATIONS FOLLOWED BY INTRA-EU SUPPLIES (I)

Enteco Baltic, C-108/17:

The VAT Directive precludes the tax authorities from refusing the exemption of on importation on the sole ground that, following a **change of circumstances after the importation**, the concerned goods have been supplied to a taxable person other than the person whose VAT number was stated in the import declaration, where the importer has communicated all the information on the identity of the new purchaser to the competent authorities, provided that it is shown that the substantive conditions for the exemption of the subsequent intra-EU supply are actually satisfied. To this effect:

- **documents** which confirm the transport of goods from a tax warehouse in the Member State of import, not to the purchaser but to a tax warehouse in another Member State, may be regarded as sufficient evidence of dispatch or transport of the goods to another Member State;
- **documents** such as consignment notes on the basis of the Convention on the Contract for the International Carriage of Goods by Road, and electronic administrative documents accompanying movements under suspension of excise duty may be taken into account to show that, at the time of importation, the goods concerned are intended to be dispatched or transported to another Member State, provided that the documents are submitted at that time and include all the necessary information. Those documents, as also the electronic confirmations of the supply of the goods and the report of receipt issued following a movement under suspension of excise duty, are capable of showing that the goods have actually been dispatched or transported to another Member State.

The VAT Directive precludes the tax authorities from refusing the exemption for imports of goods followed by intra-EU supplies on the ground that the goods were not transferred directly to the purchaser but were handled by **transport companies** and tax **warehouses** designated by the purchaser, where the power to dispose of the goods as owner was transferred to the purchaser by the importer.

OTHER ISSUES. IMPORTATIONS FOLLOWED BY INTRA-EU SUPPLIES (II)

Božičević Ježovnik, C-528/17:

The exemption from import VAT in a case of an importation followed by an intra-EU supply is conditional upon the importer subsequently making an exempt intra-EU supply under. Both **transactions** must be **treated consistently** so as to ensure the inherent logic of the import exemption scheme.

The principle of legal certainty precludes a Member State which has initially accepted the documents submitted by the vendor as evidence establishing entitlement to an exemption for a supply from subsequently requiring that vendor to account for the VAT on that supply, because of fraud by the customer of which the vendor had and could have had no **knowledge**.

The application of the above is limited to situations where the taxable person acted in **good faith** and took every step which could reasonably be asked of him to avoid any participation in tax evasion, which is for the national court to determine based on an **overall assessment** of the circumstances.

ADDITIONAL INFORMATION

Additional information about some of those topics can be found in the book **"ECJ case-law on VAT"**, available **electronically** and whose link is attached:

<https://www.efl.es/catalogo/manuales-juridicos/ecj-case-law-on-vat>