CJEU rules on applicability of VAT in chain transactions

The Court of Justice of the EU (CJEU) has recently clarified in its important decision in VAT case B (C-696/20)) the applicability of VAT in chain transactions.

This case shows that the tax authorities can have extremely rigid approach to the chain transactions and the taxpayers need to carefully consider VAT consequences of their cross-border (chain) transactions in the EU.

Good news is that the CJEU decided that if the intra-EU sale is not exempt from VAT because the seller did not meet all conditions, then the taxpayer should not face double taxation on this transaction.

Introduction

The CJEU has ruled on this topic on several occasions. This shows that the VAT treatment of EU chain transactions is far from being clear and simple.

The transactions in question took place before the new rules on chain transactions became into force with the implementation of so-called 'quick fixes' introduced by EU Directive 2018/1910. These new rules have made the applicability of VAT on chain transactions much clearer and simpler.

However, principles what the CJEU has introduced in this decision, are also applicable under the current EU VAT rules.

Facts

B (established in the Netherlands and also registered for VAT in Poland) acted as an intermediary in a chain of transactions. The goods were purchased from BOP (established in Poland) and shipped directly from Poland to final customers of B located in other Member States (MSs). B communicated to BOP its Polish VAT number and BOP threated those supplies as domestic supplies in Poland subject to VAT at 23%. B treated the supplies it made to its clients as intra-Community supplies and therefore exempt. B's customers reported the VAT applicable on the intra-Community acquisitions in the MSs of destination of the goods.

The Polish tax authorities found that transport should be attributed to the first sale in the chain transaction. Consequently, the first sale instead of the second sale was re-classified to be an intra-Community supply. However, the tax authorities took the position that that supply could not be exempted and BOP was obliged to charge 23% VAT on the re-classified intra-Community supply because B had communicated the Polish VAT number to BOP.

Thus, B had to pay Polish VAT at 23% invoiced to it by BOP. Moreover, as the referring court observes, B's right to deduct the corresponding input VAT was refused. This meant that 23% VAT charged on the sale was not deductible.

Moreover, since B communicated its Polish VAT registration number to BOP, Polish VAT was also payable on a so-called 'number acquisition'. The number acquisition takes place under the rules of Article 41 of the VAT Directive which provides that if the buyer in an intra-community transaction communicates to the seller a VAT identification number of another Member State (MS) than the MS of arrival of the goods, then the VAT becomes payable in the MS where this VAT number is issued, unless the EU triangulation applies or if the buyer can

prove that the acquisition VAT was paid in the MS of the arrival of goods.

The Polish VAT that became payable on the number acquisition was not deductible because the Polish tax authorities argued that the acquisition VAT was not paid on this supply in the country of destination. This resulted in B being charged 46% Polish VAT in total.

B argued that VAT was incorrectly applied on the number acquisition because the VAT number of the MS of departure of goods was used when acquiring the goods not a VAT number of a MS other than the departure of goods. In addition, it argued that the supplies had been taxed in the MS where the transport ended (by final customers) and therefore the VAT on the number acquisition in Poland was applied incorrectly.

A number acquisition even if the number of MS of departure is used

The CJEU states that the applicability of Article 41 of the VAT Directive (so-called 'number acquisition') is not precluded because B made the acquisition with the VAT number of the MS of departure of the goods.

A number acquisition even if the final customer pays VAT

According to the CJEU, the application of VAT by B's customers cannot be relied upon by B to correct the applicability of the 'number acquisition'. B's customers paid tax on the second supply in the chain not on the first supply. In order to make a correction, the VAT should be applied in the MS of destination by the same person who made the 'number acquisition'. Consequently, the fact that B's customers applied VAT on the purchases of goods which were erroneously classified as intra-Community acquisitions in the MSs of arrival of the goods has no influence of the applicability of VAT on the 'number acquisition' and on the possible correction of it.

Double taxation is not allowed

The CJEU decides that the number acquisition is not applicable if reclassified intra-Community supply is not subject to exemption.

Conclusions and practical implications

The CJEU provides important guidance how the VAT on chain transaction applies. Although the VAT rules on the chain transactions have changed in the meantime, those principles remain relevant for the practice.

The non-deductible domestic VAT on (re-classified) intra-Community supply could become due if the correct VAT number of a MS other than the MS of departure is not provided.

The VAT on a number acquisition could become applicable even if the goods are acquired under the VAT number of the departure. If the chain transactions are wrongly classified, the number acquisition cannot be corrected if the final customer applies VAT on the acquisition that actually should have been a domestic purchase in the MS of arrival had the VAT rules been applied correctly.

However, on the positive side, if the tax authorities find that the transport has been allocated to the wrong supply and consequently re-classify a domestic sale as an intra-Community supply which however cannot be exempted and is subject to non-deductible VAT, then this transaction cannot be subject to the double taxation (i.e. the non-deductible VAT on the number acquisition is not applicable in such case).

The businesses should ensure that they treat the intra-EU (chain) transactions correctly in order to avoid paying high amounts of non-deductible VAT when the VAT should actually not been charged at all or should have been fully deductible if the VAT rules had been applied correctly.

For more detailed information about the matters discussed above, please contact us.

Contact

Do you have questions or do you need more information? Please do not hesitate to contact us.
Grant Thornton's international indirect tax team and digital advisory team can assist you in your VAT / customs matters. compliance and update of your systems and processes. Please contact us if you would like to discuss.

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