



Newsletter 13/ 11 November 2019

UCC: Non-EU companies cannot be the 'exporter' and ECJ case C-653/18 on VAT exemption on export of goods

(a) UCC: Non-EU companies cannot be the 'exporter'

Since the implementation of the UCC and the introduction of the new definition of 'exporter', it is no longer possible to include a non-EU company as the 'exporter' of the goods in box 2 of the export declaration.

What does this mean for your company?

We advise companies to check whether in their setup, a non-EU company is mentioned in box 2 of the export declaration. If so, it will be essential to review your supply chain and to see which party could act as the 'exporter' and which steps need to be taken to make this happen, e.g. appointment of an indirect agent.

VAT – exempt export supplies

From a VAT point of view, the export declaration is often used as evidence to apply the 0% VAT rate for export. Since it is not possible to include the name of the non-EU company as the 'exporter' on the export declaration, this could cause practical difficulties in providing proof that they have exported the goods and as such rightfully claimed the 0% VAT rate at export.

(b) ECJ case C-653/18 on VAT exemption on export of goods

On 17 October 2019 the European Court of Justice delivered its Judgement in the Polish case concerning the applicability of the VAT exemption for export supplies.

What did the ECJ consider in this Judgement?

In this latest European Court of Justice Case, the Court considered whether the right to apply the 0% VAT rate for export of goods exists if:

- (i) the goods have been exported to an unidentified recipient outside the EU,
- (ii) there is evidence that the goods have left the EU, but
- (iii) the invoice indicates the wrong name of the recipient

Judgement

The Court in this particular case ruled that:

- if it can be proven that the substantive conditions of an export supply are met (i.e. goods have been sold and physically transferred outside the EU Customs territory), then an export supply took place, irrespective of the formal conditions are met (i.e. whether the invoice was drawn up to the correct recipient) and thus the VAT exemption should apply. Nevertheless, the ECJ clearly stated that in circumstances of tax fraud, which the taxpayer knew or ought to have known about, there is no right to apply the 0% VAT rate.

- if it can be proven that an export supply did not take place (i.e. where fraud has taken place which the taxpayer knew or ought to have known about), then the tax authority cannot apply the standard rate of VAT on the supply (that is, cannot treat it as a domestic supply). The relevant transaction is not within the scope of VAT and consequently the seller will not have the right to deduct input VAT.

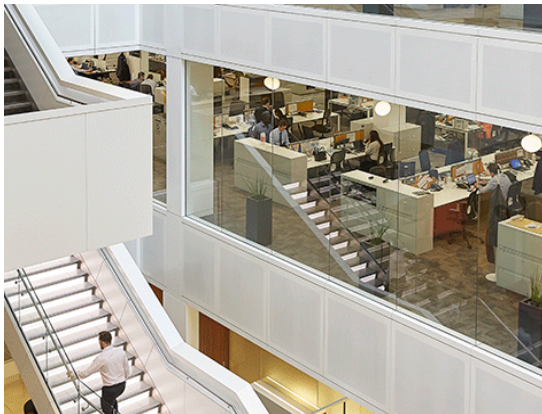
Implications

Following the delivery of the aforementioned judgement, we consider the fact that the Non EU company will not be mentioned as exporter in Box 2 of the export declaration should not be enough for the Member State to deny the VAT exemption, provided that the substantive conditions for an export supply are met and there is sufficient evidence to prove that the goods have actually been sold and have left the EU. Nevertheless, a possible additional safeguard would be to mention the exporter for VAT purposes in box 44 of the export declaration. This would ensure that the non-EU company will still be mentioned in the export declarations.

Let's talk

Our dedicated team of indirect tax and customs specialists are ready to engage in discussions with you, review your supply chain and offer practical advice on any safeguards or actions you should be taking in respect of the non EU companies in your supply chain which are exporting goods from the EU.

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