

Tax Advisory

Sentence of the ECJ in relation to the VAT exemption in intracommunity operations

March 2017

On 9 February 2017, the Ninth Courtroom of the European Court of Justice (ECJ), in the case C-21/2016 again ruled on the exemption of intracommunity deliveries of goods between enterprises/professionals.

In this matter, the Court analysed whether the VAT Directive should be interpreted in the sense that (i) it opposes that the Tax Administration of a Member State may deny the VAT exemption of an intracommunity delivery by the simple fact that at the time in which the delivery was made, the acquiring party was not registered in the Registry of Intracommunity Operators (RIO) or in the VIES system; and, (ii) it opposes such denial in the case where the seller knows that the acquiring party is still not registered either in the RIO or in the VIES, but hopes to obtain it at a later time and with retroactive effects.

Thus, after analysing Article 131 and 138.1 of the VAT Directive, the ECJ reached the conclusion that:

- The Tax Administrations of the Member States cannot deny the exemption of the intracommunity deliveries due to the simple fact that the acquiring party is not registered either in the RIO or in the VIES.
- Furthermore, the Tax Administrations cannot deny the exemption in the case that the seller knows that the acquiring party is not registered either in the RIO or in the VIES, but expects to obtain such registration at a later time and with retroactive effects.

This sentence is in line with the criteria already sustained by the Court, for example in the cases Mecsek-Gabona (C-273/11) and Plöckl (C-24/15).

Therefore, despite a certain tendency of the Tax Management bodies of the AEAT to rely on the mere formality of registration in the RIO and VIES for granting the material right, it is evident that, by virtue of the principle of the direct community effect, the Tax Administration cannot deny the right to apply the exemption of the intracommunity deliveries if the acquiring party is not registered either in the RIO or in the VIES.