

VAT Exemption on Exports: Actual Circumstances are decisive



Trade
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In its judgment of 1 August 2025 in Case C-602/24, the Court of Justice of the European Union (CJEU) addressed the conditions for the exemption from value added tax (VAT) in the context of the export of goods under Directive 2006/112/EC on the common system of value added tax. The Court clarified that supplies may qualify for VAT exemption even if they were initially declared by the supplier as intra-Community supplies but were subsequently exported to third countries by the purchaser without the supplier's knowledge. The Court thereby reaffirmed that it is the actual circumstances of the transaction that are decisive for the VAT exemption and that the intentions or assumptions of the taxable person are irrelevant. National formal requirements may not contradict this principle. However, this does not apply where the taxable person has acted in bad faith. Continuing its established case-law, the Court emphasized the principle of fiscal neutrality, the importance of good faith, and the irrelevance of formal breaches where the substantive conditions for VAT exemption are met.

1. Background to the Decision: Export of Apples

The judgment concerns the interpretation of Article 146(1)(b) of Directive 2006/112/EC regarding VAT exemptions on exports. According to this provision, Member States must exempt from VAT the supply of goods dispatched or transported to a destination outside the EU by or on behalf of a purchaser who is not established within their respective territory.

The key issue in dispute was whether this exemption could apply even when the supplier did not intend to carry out an export and was unaware of it, and where the export was only subsequently established by the tax authorities. The case concerned a Polish company that, in its VAT return, had reported the supply of apples to a Latvian-registered company (the purchaser) as a VAT-exempt intra-Community supply. According to the transport documents, the apples were to be transported from Poland to Lithuania. The purchaser organised the transport.

However, the Polish tax authorities found that the purchaser had exported the apples directly from Poland to Belarus and reclassified the transaction as a domestic supply subject to the reduced 5% VAT rate, due to the failure to meet the requirements for an intra-Community supply. Additionally, the authorities imposed penalties. Their reasoning was that the Polish company had failed to verify the final destination of the goods properly, relying solely on the transport company's formal confirmation of delivery to Lithuania.

After passing through several levels of jurisdiction, the Polish Supreme Administrative Court referred the matter to the CJEU.

2. Conditions for VAT Exemption: Objective Assessment

The CJEU has consistently held that, within the meaning of Article 146(1)(b) of Directive 2006/112/EC, a good is considered to have been "dispatched" where three conditions are fulfilled: the right to dispose of the goods as owner must have been transferred to the purchaser; the supplier must be able to demonstrate that the goods were dispatched or transported to a destination outside the Union; and the goods must have physically left the territory of the European Union as a result of that dispatch or transport. These conditions must be assessed on the basis of objective circumstances; the subjective intentions or expectations of the taxable person are not relevant.

In line with this, the CJEU clarified that it is irrelevant whether the parties initially agreed on an intra-Community supply that ultimately did not occur. It is equally irrelevant whether the export to a non-EU destination took place without the supplier's knowledge. With respect to the second condition, it is sufficient that it is established that the goods were dispatched or transported to a location outside the Union; it does not matter who makes this determination. National tax authorities are also competent to make such a finding. The supplier is under no further obligation to verify whether the delivery took place in accordance with the agreement made with the purchaser, provided that the right to dispose of the goods as owner had already been transferred to the purchaser.

3. Formal Requirements Under National Law Must Not Override

Where these conditions are met, formal requirements under national law must not obstruct the granting of the VAT exemption. For example, Polish VAT law requires the taxable supplier to obtain a document confirming the export of the goods to a destination outside the EU. This provision serves to prevent tax evasion.

While rules aimed at preventing tax evasion, avoidance, or the abuse of beneficial schemes are generally permissible under EU law, they are only justified to the extent necessary to ensure such protection. The Polish provision, according to the CJEU, exceeded this permissible scope by making the right to exemption essentially dependent on compliance with formal obligations, without regard for the fulfilment of the three substantive conditions.

The CJEU considers exceptions to this principle to be applicable only in two cases: First, a breach of a formal requirement may lead to the denial of the exemption if it renders it impossible to establish with certainty that the substantive conditions have been fulfilled. Second, the exemption may be denied if the taxable person has knowingly participated in tax fraud that threatens the functioning of

the common VAT system. Accordingly, where a taxable person knew or ought to have known that the transaction they carried out was connected with VAT fraud on the part of the purchaser and did not take all reasonable measures to prevent it, they must be denied the right to VAT exemption.

4. Practical Implications

National provisions and their interpretation by Member States' authorities must comply with these principles laid down by the CJEU. Where this is not the case, the relevant national provision must be interpreted in conformity with the Directive, or, if necessary, disapplied.

In Germany, VAT exemption for export supplies is governed by Section 4(1)(a) of the VAT Act (UStG). Documentation requirements are further specified in the VAT Implementation Regulation. The CJEU's judgment strengthens the position of businesses by confirming that fulfilment of the substantive conditions alone suffices for a VAT exemption. The judgment thus aligns with recent case-law of the Court and provides protection for bona fide economic operators.

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