

Chain Transactions

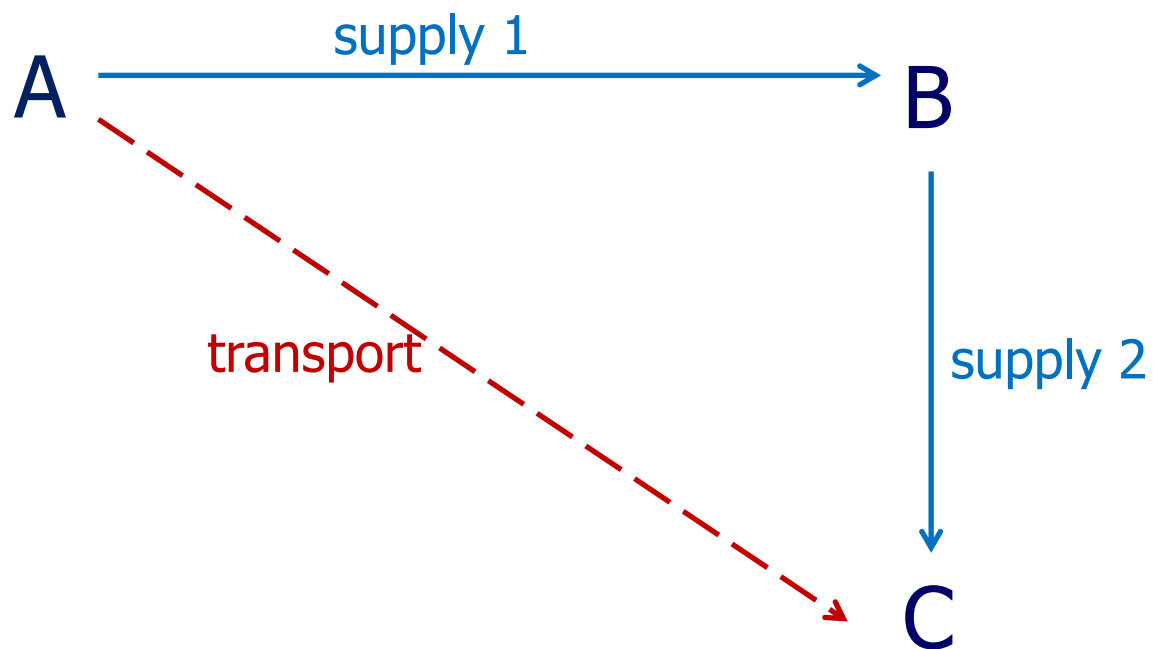
under the jurisdiction of the ECJ

Barbara Wisiak

definition



AEAJ



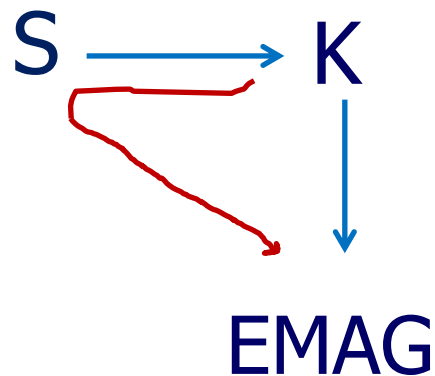
- no legal definition in the VAT directive
- no special regulation for the place of supply
- no special regulation for a tax exempt supply

place of supply (VAT dir):

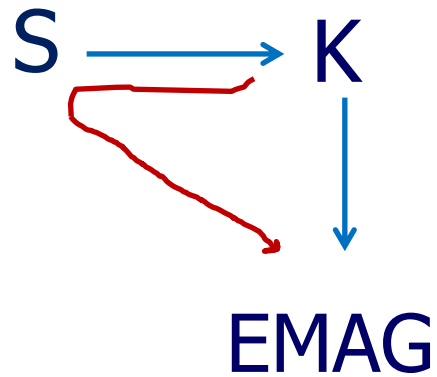
- Art 31 – if not dispatched or transported: where goods are located when the supply takes place
- Art 32 – if goods are dispatched or transported by the supplier/customer/third party: where the goods are located at the time when dispatch or transport of the goods to the customer begins

tax exemption (VAT dir):

- Art 138 – supply of goods dispatched or transported to a customer into another Member state which are subject to an ic acquisition



- K (Austria) supplied goods to EMAG (Austria)
- K acquired the goods from suppliers (S) in Italy
- K instructed S to hand the goods to a forwarding agent K had engaged to deliver them to EMAG

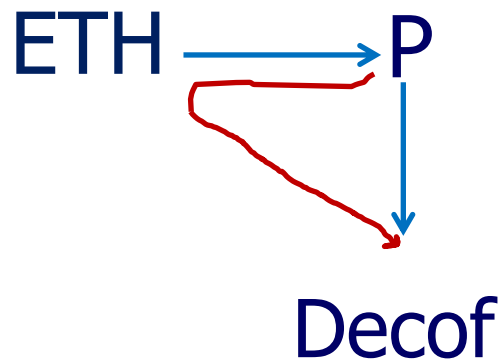


Questions:

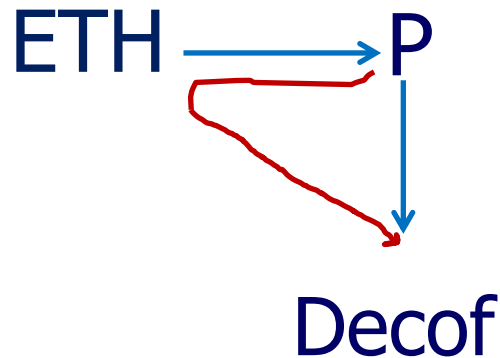
- transportation relevant for both supplies?
- may both supplies be tax exempt?

ECJ:

- transport can be ascribed to only one supply
- this supply alone will be exempted from tax
- place of supply of the transport-supply:
where the delivery of goods begins
- place of the other supply: MS of departure
OR arrival, depending on which supply is first



- ETH (from NL) supplied goods to purchasers P (from Belgium)
- they agreed: P picks the goods in NL and brings them to Belgium
- P sells the goods to Decof from Belgium
- they agreed: P brings the goods to Decof in a lorry supplied by Decof

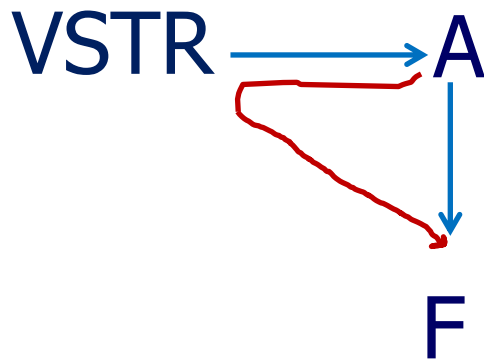


Question:

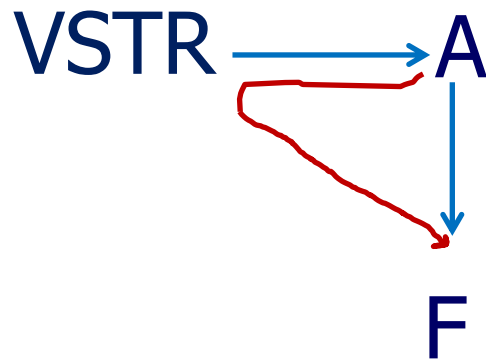
- the transport shall be ascribed to which supply ?

- the transport shall be ascribed to a supply by an overall assessment of all circumstances considering if the right to dispose of the goods as owner has been transferred before or after the intra-Community transport
- up to the referring court to establish whether that condition has been fulfilled

- to the first supply (ETH to P)
 - if the right to dispose of the goods as owner has been transferred to Decof in the Member State of destination
- to the second supply (P to Decof)
 - if the right to dispose of the goods as owner has been transferred to Decof in the Member State of origin



- VSTR (from Germany) sold machines to A(tlantic) from US
- A sold the goods to F (Finland)
- A picked the goods from VSTR and brought them to Finland
- A told that they had sold the machines to F and presented the Finnish VAT-Identification Number

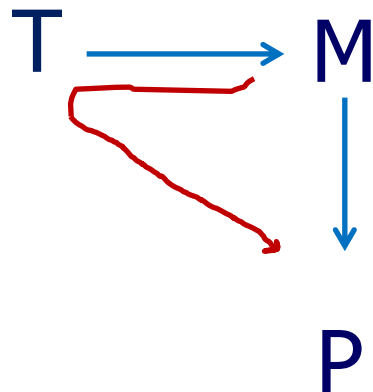


Questions

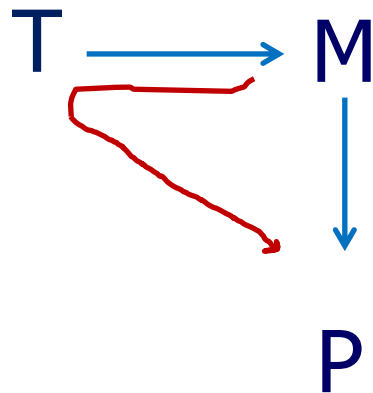
... under the condition that the case is solved in the light of Euro Tyre ...

- Tax exemption subject to provision of a VAT-ID?
- Tax exemption subject to the fact that the purchaser is established in a Member State?

- paragraph 32 (again): by an overall assessment of all circumstances check if the right to dispose of the goods as an owner took place before or after the intra-Community transport
- paragraph 36 (fact): A told VSTR that they sold the machines to F
- paragraph 37 (ECJ): **information given not sufficient** to answer this question



- Toridas (Lithuania) sold fish to Megalain (Estonia)
- Megalain sold the fish the next day to Purchasers from other MS
- Megalain undertook to have the fish at issue taken out from Lithuania
- Megalain told Toridas, that he sold the fish to P

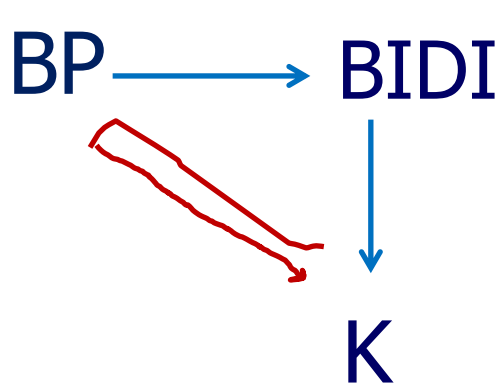


Question:

- must the first supply be tax exempt in case the purchaser told that he intends to sell the goods before transportation to another customer?

- paragraph 36: if the **second supply** (transfer of the right to dispose of the goods as owner) has taken place **before the transport occurs**, the transport must be ascribed to the second supply
- ? *in case of chain transactions the second supply always takes place before the transport*
(otherwise a chain transaction can not be carried out)





Questions:

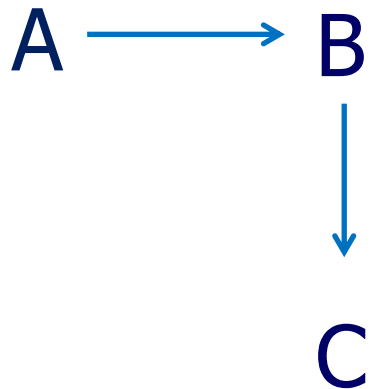
- is the supply from BP to BIDI tax exempt?
- if so, is there a possibility that the first supply loses its status as tax exempt?
- if not, has K the right to deduct input-VAT because of legitimate expectations?

- if the transport is effected by the last acquirer of the goods the transport must be ascribed to the second supply
- paragraph 33 (as Toridas): if the second supply (transfer of the right to dispose of the goods as owner) took place before the transport occurs the transport can not be ascribed to the first supply
- K may not deduct the input-VAT on the bases of the wrong invoices

Conclusion



- transport can be ascribed to only one supply
- this supply alone will be exempted from tax
- to ascribe the transport: check by an overall assessment of all circumstances if the right to dispose of the goods as an owner took place before or after the intra-Community transport



A dispatches

- transport ascribed to A (EMAG, Art 141 VAT-dir)

? *but: the right to dispose... might be transferred before the ic transportation?*

B dispatches

- transport ascribed by an overall assessment of all circumstances...

C = dispatches

- transport ascribed to B (Kreuzmayr)

Thank you for your attention

... to be continued with the workshops ...

