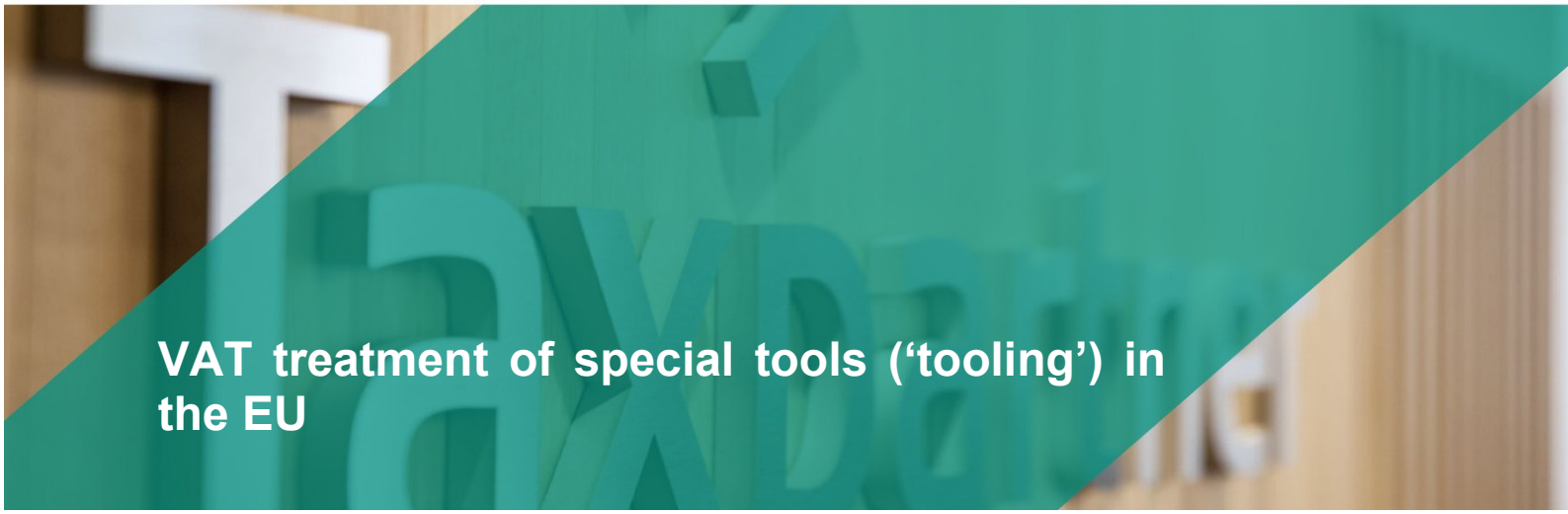


VAT treatment of special tools (‘tooling’) in the EU

Background

Special tools (“tooling”) such as moulds, dies or jigs play a key role in many supply chains. They are often manufactured at the beginning of a production order specifically for a particular customer and remain with the manufacturer, even though legal title passes to the customer. In practice, the question regularly arises whether, for VAT purposes, the sale of such production tools is to be treated as an independent local supply of goods or as an ancillary supply to the products manufactured with them.

European Court of Justice (ECJ) judgment C-234/24 – Brose Prievidza

In a recent case, the ECJ had to rule on the VAT treatment of special tools that are manufactured and used in one Member State, while the components produced with them are supplied to another Member State. The core issue was whether the Member State in which the tools are manufactured was entitled to charge VAT, or whether the local sale of such tools should have been zero-rated from VAT since the products manufactured were delivered in the course of intra-community supplies.

The ECJ first clarified that an exempt intra-Community supply within the meaning of Article 138(1) of the VAT Directive requires an actual movement of goods to another Member State. If the special tools remain in the supplier’s Member State and continue to be used there, there is no intra-Community supply in this respect, but rather a local supply of the tool to the customer that is subject to VAT in that Member State. It is not possible to qualify the supply of the tools as an ancillary supply to the products manufactured with them, which could benefit from a zero-rating as intra-Community supplies. They are, quite simply, production assets sold locally. A zero-rating from VAT can only apply in exceptional cases, namely where, in the specific case and from an economic perspective, there is in fact a single complex supply.

Current administrative practice in the Member States

In some Member States (including Germany, Austria, Belgium and Bulgaria), the sale of special tools has in the past, on the basis of administrative guidance, often been treated as an ancillary supply to the components manufactured with the tools, with the result that the supply of the tools shared in the

VAT exemption for the intra-Community supplies of those components. Other countries (for example France, Spain, Poland and Hungary) have already been treating the supply of the tools as a local supply subject to VAT in the Member State of manufacture.

The ECJ judgment compels the Member States to review this practice. In particular, where special tools have so far been classified in a schematic way as a non-independent ancillary supply, a more nuanced case-by-case analysis will be required in future.

Swiss rules for special tools

The Swiss special rule in Article 31 of the Swiss VAT Ordinance remains unaffected by the ECJ judgment. Under this provision, special tools that are purchased, manufactured or produced in-house specifically for the performance of a manufacturing order are, for VAT purposes, regarded as forming part of the supply of the goods manufactured with them. This applies irrespective of whether the tools are invoiced separately or included in the unit price of the products, and irrespective of whether, after completion of the order, they are physically delivered to the customer or retained by the manufacturer.

Where products manufactured in Switzerland using special tools are exported, the sale of the special tool is also exempt from VAT to the corresponding extent; in the case of a partial export, the exemption applies only on a pro-rata basis. Special tools are therefore, in Switzerland, systematically treated in the same way as the products for the manufacture of which they are used.

Tooling and customs value

From a customs law perspective, the costs of special tools borne by the customer must, as a rule, be included on a pro-rata basis in the customs value of the imported products, to the extent that they are not already included in the price of the goods. In such cases, the tooling costs are allocated proportionally to the products manufactured and imported using the tool. The customs value determined in this way then serves as the taxable amount for any customs duties and for the levying of import VAT.

Takeaways for Swiss businesses

Swiss businesses that have such production aids manufactured and used in EU countries should closely monitor further developments in the individual Member States. It is only when special tools are acquired again that the applicable rules in the relevant EU Member State need to be reviewed. If the Swiss business is not registered for VAT purposes in that Member State, it must claim the VAT charged on the special tool under the 13th VAT directive refund scheme.

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