

Case C-430/09

Euro Tyre Holding BV

v

Staatssecretaris van Financiën

(Reference for a preliminary
ruling from the Hoge Raad der Nederlanden)

(Sixth VAT Directive — Article 8(1)(a) and (b), Article 28a(1)(a), Article 28b(A)(1) and the first subparagraph of Article 28c(A)(a) — Exemption of supplies of goods dispatched or transported within the European Union — Successive supplies of the same goods giving rise to a single intra-Community dispatch or transport)

Judgment of the Court (Second Chamber), 16 December 2010 I - 13337

Summary of the Judgment

Tax provisions — Harmonisation of laws — Turnover taxes — Common system of value added tax — Transitional arrangements for the taxation of trade between Member States — Exemption of supplies of goods dispatched or transported within the Community (first subparagraph of Article 28c(A)(a) of Council Directive 77/388)

When goods are the subject of two successive supplies between different taxable persons acting as such, but of a single intra-Community transport, the determination of the transaction to which that transport should be ascribed, namely, the first or second supply — given that that transaction therefore falls within the concept of an intra-Community supply for the purposes of the first subparagraph of Article 28c(A)(a) of Sixth Directive 77/388 on the harmonisation of the laws of the Member States relating to turnover taxes, as amended by Directive 96/95, read in conjunction with Article 8(1)(a) and (b), the first subparagraph of Article 28a(1)(a), and Article 28b(A)(1) of that directive — must be conducted in the light of an overall assessment of all the circumstances of the case in order to establish which of those two supplies fulfils all the conditions relating to an intra-Community supply.

In that connection, when the first person acquiring the goods, having obtained the right to dispose of the goods as owner in the Member State of the first supply, expresses his intention to transport those goods to another Member State and presents his value added tax identification number attributed by that other State, the intra-Community transport should be ascribed to the first supply, on condition that the right to dispose of the goods as owner has been transferred to the second person acquiring the goods in the Member State of destination of the intra-Community transport. It is for the national court to establish whether that condition has been fulfilled.

(see paras 44-45, operative part)