MALTA
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OF TAXATION

CJEU Tax Case-law digest

July - September 2022

A compilation of summaries of select judgements of the CJEU in the field of taxation

Table of Contents

This document contains summaries of select decisions of the CJEU during the relevant period. The contents of this document are for information purposes only.

The Malta Institute of Taxation is a professional body for advisors, practitioners and academics operating in the field of taxation in Malta, which has as its main purposes, the promotion of tax learning and ongoing professional education, as well as contributing toward the development of local tax policy and legislation. The Institute does not provide tax advice and is not a lobby group for tax professionals.

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Direct Taxation cases

- None to report -

CFE tax advisers europe

VAT cases

Case C-696/20 B decided 7 July 2022

Chain transactions – Article 41 fall-back provision

B is a company established and VAT registered in the Netherlands which is also VAT registered in Poland. B was involved in chain transactions, purchasing goods from BOP in Poland, which goods were transported out of Poland to another Member State. BOP treated its supply as a domestic supply, charging Polish VAT to B, and B treated its subsequent supply as an exempt intra-EC supply. The Polish tax authorities challenged this treatment, claiming that the transport was to be ascribed to the supply between BOP and B, and that since B had used its Polish VAT number for the purchase, B was required to report Polish VAT on the intra-community acquisition under the fall back provision in article 41 of the VAT Directive. This resulted in double taxation.

The CJEU held that in principle Article 41 could be applied where a supply was wrongly classified by the taxable persons involved as a domestic transaction and where the taxable person acquiring the goods communicated a VAT number in the Member State of dispatch of the goods. The fact that the last customer in the chain transaction had accounted for VAT on the intra-EC acquisition (wrongly classified) in the Member State in which the transport of the goods ended has no bearing on the assessment of the applicability of Article 41 of the VAT Directive. However, the CJEU noted that although the tax authority reclassified the supply made by BOP to B from a domestic transaction to an intra-Community transaction, BOP remained liable to collect VAT at the standard rate on that (domestic) supply to B. Therefore, since the supply from BOP to B (the intra-Community supply) was taxed in Poland (the Member State of departure), there was no risk of tax avoidance, and the application of tax to that transaction in Poland on the basis of Article 41 of the VAT Directive ran counter to the objectives pursued by that provision. The CJEU therefore held that the principles of proportionality and fiscal neutrality, do not permit the application of the fallback in Article 41 (i.e. taxation of the acquisition in the Member State of VAT registration) where the intra-Community supply of goods was not treated as an exempt transaction in that Member State.

Text of case here

Case C-194/21 X decided 7 July 2022

Input tax deduction

X purchased plots of land (taxable) from B with the intention of developing them by constructing mobile homes with accessories, and subsequently to selling those mobile homes together with the land on which they stood. X didn't exercise the right to deduct input VAT. The plans to develop didn't materialise so X resold the plots to B and invoiced with VAT. X didn't declare or pay that VAT charged. X was assessed to VAT in respect of the sale but claimed that he was still entitled to a deduction of input tax in relation to the original purchase.

The CJEU held that the right to deduct VAT must in principle be exercised during the same period as that in which it has arisen, namely at the time the tax becomes chargeable. A taxable person may nevertheless be authorised to make a deduction under Articles 180 and 182 of the VAT Directive even if they did not exercise their right during the period in which the right arose, subject, however, to compliance with certain conditions and procedures determined by national legislation.

In this case, national legislation prescribed a time limit which had already lapsed. The CJEU recognised that the possibility of exercising the right to deduct VAT without any temporal limit would be contrary to the principle of legal certainty, which requires the tax position of the taxable person, having regard to their rights and obligations vis-à-vis the tax authority, not to be open to challenge indefinitely. Furthermore, the principle of fiscal neutrality cannot have the effect of allowing a taxable person to adjust the amount of their deduction entitlement which right they did not exercise before the expiry of a limitation period and which they have therefore lost.

The Court recognised that the denial of the possibility of making a deduction by way of an adjustment, where the taxable person had failed to exercise the right to deduct VAT before the expiry of the limitation period laid down by national law, is not contrary to the VAT Directive.

Text of case here

Case C-267/21 Uniqa Asigurări SA **decided 1 August 2022**

Place of supply of insurance claims handling services

Uniqa offers, in Romania, insurance policies covering the risks relating to motor accidents and medical expenses occurring outside the territory of that Member State. Uniqa entered into arrangements with companies having their registered office outside Romania who handle claims by Uniqa's customers involving insurable events in their country (medical or motor vehicle claims). Uniqa did not declare the VAT due under the reverse charge regime on the services that had been invoiced to it for services of claims handling and complaint resolution, on the ground that under domestic law the place of those services was the place of establishment of the supplier of the services (place of supply rules in force prior to 2010). Under the place of supply rules in force at the time, Uniqa would have had to reverse charge on the services if the services were found to come within the scope of the 'services of consultants, engineers, consultancy bureaux, lawyers, accountants and other similar services, as well as data processing and the provision of information'. However the CJEU found that the services in question were not similar to services of consultants, engineers, consultancy bureaux, lawyers, or accountants and therefore the provision did not apply.

It is noted that the place of supply rules were revised in 2010.

Text of case here.

Case C-294/21 Navitours **decided 1 August 2022**

Place of supply of passenger transport – river under joint sovereignty

Navitours is a Luxembourg company which offers tourist cruises on a part of the Moselle river that falls under the joint sovereignty of Germany and Luxembourg. In view of this status, the Luxembourg tax authorities had considered the services to fall outside the scope of the VAT legislation, so that it had not claimed payment of that tax on the price of the sale of tickets for the carriage of passengers by Navitours. Following a decision by the national court that the VAT on passenger transport services in the German-Luxembourg Condominium may be collected either by the Grand Duchy of Luxembourg or by the Federal Republic of Germany, the Luxembourg authorities assessed Navitours to VAT. The CJEU was asked whether a Member State may tax passenger transport services carried out by a service provider established in that Member State, within a territory which, pursuant to an international treaty concluded between that Member State and another Member State, constitutes a joint territory under the joint sovereignty of those Member States. The CJEU concluded that a Member State must tax such passenger transport, provided that those services have not already been taxed by the other Member State. The taxation, by one of the Member States, of those services prevents the other Member State from taxing them in turn, without prejudice to the possibility for those two Member States to regulate in another way the taxation of services performed within that territory, inter alia by means of an agreement, provided that non-taxation and double taxation is avoided.

Text of case here.

Case C-98/21 W GmbH **decided 8 September 2022**

Holding company – contribution of services - input tax deduction

W is a property development company which holds shares in subsidiaries which undertake exempt property transactions. W contributed services free of charge to its subsidiary (including architectural services, static calculations, drawing up plans for heat and sound systems, energy supply and network connections, and general contracting activities for two buildings to be constructed by the subsidiary, as well as putting them up for sale on the market. W used its own staff/equipment to perform such services, valued €9.4 million, and also outsourced goods and services from third parties. The German tax authorities restricted W's input tax deductions on the basis that the shareholder contributions (the free supplies of services) made by W had to be classified as non-taxable activities since they had not served to earn income for the purposes of the VAT legislation and therefore were not attributable to W's commercial activity.

The CJEU held that a holding company which carries out taxable output transactions in favour of subsidiaries is not entitled to deduct the input tax levied on the services that it obtains from third parties and supplies to the subsidiaries in return for the grant of a share in the general profit, where, first, the input services have direct and immediate links not with the holding company's own transactions but with the

largely tax-exempt activities of the subsidiaries, second, those services are not included in the price of the taxable transactions carried out in favour of the subsidiaries and, third, the said services are not part of the general costs of the holding company's own economic activity.

Text of case here.

Case C-368/21 R.T. decided 8 September 2022

Import VAT

RT, a German Company, purchased and registered a car in Georgia and two months after drove it from Georgia to Germany via a number of states without presenting the vehicle to an import customs officer. RT was assessed for failure to present the vehicle at the first customs office in the EU. The question arose as to which country import VAT had to be paid - was the place of importation the Member State in which the customs legislation was infringed and the vehicle was first used in the European Union, or is it situated in the Member State in which the person who failed to comply with customs obligations resides and actually uses the vehicle? The CJEU held that for VAT purposes, the place of importation of a vehicle registered in a third country and imported into the European Union in breach of customs legislation is situated in the Member State in which the person who failed to comply with customs obligations resides and actually uses the vehicle.

Text of case here.

Case C-227/21 HA.EN GmbH decided 8 September 2022

Input tax deduction – vendor insolvency

Bank granted Vendor a loan to carry out real estate development activity. For the purpose of securing due performance of the agreement, Vendor granted Bank a mortgage over a plot of land. HA.EN. acquired from the bank for consideration all the monetary claims arising from the credit agreement concluded between the bank and the vendor and all the rights established to secure the performance of obligations, including the contractual mortgage. Vendor was insolvent and the subject of administration proceedings. The auction of a part of the Vendor's item of immovable property was unsuccessful, so HA.EN. was offered, in the context of the auction procedure, the immovable property at issue for its initial price of sale at the auction, an acquisition which would extinguish a part of HA.EN.'s claims. HA.EN. exercised that right and took over the immovable property at issue. Vendor issued an invoice to HA.EN. indicating the tax base and VAT, declared the output VAT in its tax return, but never paid it. HA.EN declared the invoice in its tax return and exercised the related right to deduct VAT. The tax authority denied the right to deduct VAT on the grounds that HA.EN. knew or should have known that the Vendor would not pay output VAT because of its financial difficulties.

The CJEU referred to previous decisions in which it was recognised that the question whether or not the supplier of the goods has paid the VAT due on sale transactions to the public purse has no bearing on the right of the taxable person to deduct input VAT. The right to deduct may only be restricted in circumstances of tax evasion or abuse of rights.

The CJEU held that a Member State may not deny the right to deduct input VAT merely because the purchaser knew or should have known that the seller was in financial difficulty, or even insolvent, and that that circumstance could result in the seller not paying or not being able to pay VAT into the public purse.

Text of case here.

Case C-330/21 Escape Center **decided 22 September 2022**

Reduced rate for use of sporting facilities

The Escape Center operates 'fitness centres'. The fitness equipment is used either by individuals or by groups, with or without limited coaching. It also offers personal training and group classes. It historically charged VAT at the standard rate however started charging VAT at a reduced rate following a domestic case to which it was not a party. It also sought reimbursement of the additional VAT charged.

The CJEU was asked whether Article 98(2) of the VAT Directive, read in conjunction with point 14 of Annex III to that directive, must be interpreted as meaning that a supply of services consisting of permission to use sporting facilities in a fitness centre and the supply of individual or group coaching may be subject to a reduced rate of VAT. The Court held that access to a fitness centre with use of sports facilities and coaching of new customers in the responsible use of that fitness centre's equipment clearly falls within point 14 of Annex III to the VAT Directive, but recognised that The Escape Center also offeres, in addition to that access and use, personal coaching and group classes. Therefore, it must be ascertained whether all the services offered by that company are capable of falling within the scope of point 14 of Annex III to that directive, in that they form a single supply. The Court concluded that Article 98(2) of the VAT Directive, read in conjunction with point 14 of Annex III to that directive, must be interpreted as meaning that a supply of services consisting of permission to use sporting facilities in a fitness centre and the supply of individual or group coaching may be subject to a reduced rate of VAT where that coaching is linked to the use of those facilities and is necessary for the practice of sports and physical education or where that coaching is ancillary to the use of those facilities or to their actual use.

Text of case here

Case C-235/21 Raiffeisen Leasing **decided 29 September 2022**

Contract serving as a tax invoice

RED concluded a contractual sale-and-lease back agreement with Raiffeisen Leasing under which Raiffeisen Leasing was required to buy land at a price and RED was required to pay Raiffeisen Leasing the monthly lease instalments. Raiffeisen Leasing did not issue an invoice to RED, nor did it charge or pay the VAT. RED exercised its right to deduct VAT on the basis of the contractual sale-and-lease back agreement, contending that that agreement constituted an invoice. The input tax deduction was denied on the basis of the absence of a proper tax invoice. The CJEU held that a contractual sale-and-lease back agreement, the conclusion of which was not followed by the issue of an invoice by the parties, may be regarded as an invoice, within the meaning of that provision, where that contractual agreement contains all the information necessary for the tax authorities to be able to establish whether the substantive conditions for the right to deduct value added tax are satisfied in the case.

Text of case here.

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