

CJEU ruling on inclusion of interest in taxable amount (1/7/17)

On 8 December 2016 the Court of Justice of the European Union (CJEU) ruled on case C-208/15 to determine whether a taxable person has made a single transaction (a supply of goods for a consideration) or multiple transactions (a supply of goods and a grant of finance). The CJEU finds that a supply of goods and the grant of a loan for the purchase of those goods within the integrated agricultural cooperation framework form a single transaction, and the taxable amount should therefore include both the price of the goods and interest on the loan granted to the farmer for the purchase.

Background

A Hungarian company (integrator) operating within the integrated agricultural cooperation framework financed a supply of current assets to a farmer (subject to integration). The loan could be used only for the purchase of current assets. An invoice for the supply of goods charged VAT at the standard rate, but quarterly interest on the loan was exempt.

During a tax audit, the Hungarian tax authorities disagreed with the VAT exemption for the loan interest and assessed additional VAT. The case eventually came up before the Hungarian Supreme Court, who decided to suspend the litigation and put the following questions to the CJEU:

1. Should the supply of goods and the grant of loan in this situation be regarded as distinct and independent transactions or as a single transaction whose taxable amount should include the loan interest?
2. If this is a single transaction, then may the VAT directive be interpreted with respect to the single transaction in a way which implies that this transaction is an exception to the principle of general applicability?

In other words, the Hungarian court asked how to apply and interpret the following provisions of the VAT directive:

- article 73 – “...the taxable amount shall include everything which constitutes consideration obtained or to be obtained by the supplier, in return for the supply, from the customer or a third party, including subsidies directly linked to the price of the supply;”
- article 78(b) – “The taxable amount shall include the following factors: incidental expenses, such as commission, packing, transport and insurance costs...;”
- article 135(1)(b) – “Member States shall exempt the following transactions:... the granting and the negotiation of credit and the management of credit by the person granting it.”

CJEU considerations and ruling

The CJEU emphasises that in certain circumstances, multiple services that are technically distinct and could be supplied separately and, if so supplied, could be either taxable or exempt, should be regarded as a single transaction, unless they are indeed independent.

A single service exists especially where two or more elements are so closely interrelated that they objectively form a single, economically indivisible service, the splitting of which would be artificial.

A service should be regarded as an additional service if it is not the customer's goal, but rather the most comfortable way of receiving the main service. We should, therefore, consider both the economic purpose of the transaction and the customer's interests.

The CJEU finds that where an integrator operating within the integrated agricultural cooperation framework grants a loan to a farmer (subject to integration) for the purchase of current assets from the integrator, the loan cannot be regarded as an autonomous service from the farmer's point of view, because the farmer does not have discretion to freely use the loan. What matters, however, is that a loan cannot be granted without restricting its use to the purchase of current assets.

The CJEU also attaches significance to the fact that the supply of current assets and the loan share the same economic purpose. In such circumstances, therefore, the supply of current assets is considered the main service, and the farmer's borrowing to buy those assets is not the end in itself, but it is merely a means that helps him buy assets necessary for production.

The CJEU ruled that where a supply of assets and a loan share the same objective, the supply of such assets and the grant of the loan intended for their purchase should be regarded as a single complex transaction for VAT purposes, and the loan interest should therefore be included in the taxable amount.

According to the CJEU, the fact that an integrator may supply additional services to farmers does not affect the finding that the transaction meets the criteria for a single transaction.