EU court on VAT treatment of export related services (3/34/17)

On 29 June 2017 the Court of Justice of the European Union (CJEU) passed judgement on case C-288/16 concerning a VAT exemption on services connected with the export or import of goods. The Latvian Supreme Court had requested a preliminary ruling from the CJEU in a dispute between IK "L.Č." and the Latvian State Revenue Service (SRS) on how to interpret Article 146(1)(e) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax. This clause allows member states to exempt VAT on services, including transport and ancillary transactions, that are directly connected with the export or import of goods. We will explore some of the court findings.

Background

Atek SIA, a Latvian limited company, was contracted to ensure the carriage of goods under the transit procedure from Riga Port to Belarus. The vehicles used for this purpose were owned by the company and rented to IK L.Č., a Latvian sole trader who supplied services of driving, repairs and fuelling, completing customs documents at border crossing points, guarding the goods and delivery to the consignee, as well as necessary loading and unloading work. The sole trader zero-rated his services for VAT in the belief they were connected with transit.

The sole trader then underwent a tax audit by the SRS resulting in the assessment of VAT, a penalty and a late charge. The SRS claimed that the sole trader was not permitted to zero-rate his services because –

- although his services were connected with goods carried in transit through Latvia, he had no legal connection with the consignor or consignee, and the services do not, therefore, amount to shipping or forwarding services;
- the sole trader does not hold a Latvian statutory licence and does not, therefore, have carrier status.

CJEU findings

Having heard the facts and circumstances of the case, the CJEU made the following findings:

1. The VAT exemption under Article 146 of Directive 2006/112 aims to ensure the principle that goods and services are taxed in the country of destination, i.e. where the exported goods will be consumed. All exports and deemed exports should therefore be exempt from VAT. Accordingly, transport services that are directly connected with the export of goods also qualify for an exemption.
2. According to CJEU case law a narrow interpretation should be put on VAT exemptions since interpreting this rule broadly to cover services that are not supplied directly to the exporter, importer or consignee might place restrictions on member states and relevant business entities that would be incompatible with the correct and fair application of the exemption for preventing any potential fraud, evasion and abuse.
3. The existence of a direct link means not only that a supply of services helps the parties actually conduct an export or import transaction but also that those services are supplied directly to the exporter, importer or consignee. Although the sole trader's services in question are necessary for the conduct of the export transaction, they are not supplied directly to the consignee or exporter, but rather to a party to their transaction.

The CJEU ruled that the sole trader's services are beyond the scope of exemption under Article 146(1)(e) of Directive 2006/112 because the exemption is not available on services that are connected with the

carriage of goods to a non-EU country but are not supplied directly to the consignor or consignee.

This ruling is crucial to Latvian taxpayers that supply export, import or transit related carriage services and claim a VAT exemption, as their eligibility for an exemption has so far depended on the connection of their services with the export, import or transit and on the fact that the carrier has completed statutory procedures for organising road haulage operations, but not on the party (seller, buyer or middleman) to whom the services are directly supplied.