

# Deemed intra-Community supplies: recovering VAT paid in another member state (1/27/20)

In its ruling of 11 June 2020, the Court of Justice of the European Union (“CJEU”) answered preliminary questions asked by a Romanian court as to whether moving goods to another member state constitutes a deemed intra-Community supply and whether the existence of a VAT identification number or the requirement for identification denies the right to a VAT refund in another member state under the 9th directive.<sup>1</sup> This article explores the CJEU findings.

## Facts and circumstances of case C-242/19

CHEP Equipment Pooling NV (“CHEP”) is a Belgian-registered company that rents out pallets across Europe. CHEP buys pallets in various member states and rents them to other CHEP group companies established in each member state for renting on to local customers.

The dispute was over the acquisition of pallets from a Romanian supplier who had included VAT in the selling price because he supplied pallets from his Romanian warehouse to a destination in Romania. Those pallets, along with others acquired in other member states and moved to Romania, were rented by CHEP to CHEP Pooling Services Romania SRL, a Romanian-registered company (“CHEP RO”).

CHEP RO rented the pallets on to Romanian customers, who used them in Romania and when sending goods to other member states or third countries. The pallets used in transporting goods declared for export were afterwards returned to CHEP RO, who declared them for import and included their amount with VAT in the invoice issued to CHEP.

Based on the 9th directive, CHEP asked the Romanian tax authority to refund the VAT which the Romanian supplier of pallets had included in its invoice and the VAT which CHEP RO had included in its invoice. The Romanian tax authority refused to make a VAT refund on the grounds that CHEP was required to be identified for Romanian VAT for a deemed intra-Community acquisition because CHEP had acquired pallets in other member states and moved them to Romania.

The district court to which CHEP appealed the tax authority’s ruling referred to the CJEU for an interpretation of circumstances in which it is correct to recognise that a deemed intra-Community acquisition of goods has not taken place and whether a non-established company, with no technical resources or personnel in Romania, that supplies services treated as supplied in Romania was required to be identified for Romanian VAT, and whether such identification denies the right to a VAT refund under the 9th directive?

## The CJEU findings

On the question of whether it is correct to recognise a deemed intra-Community supply/acquisition if a taxable person moves goods from one member state to another member state in order to supply rental services there, the CJEU states that Article 17(2)(g) of the VAT directive makes it sufficiently clear that the movement of goods to another member state, if they are moved for temporary use and dispatched or transported from the member state in which the taxable person is established, does not constitute a

deemed intra-Community supply. The CJEU states that this provision does not extend to cases where goods are moved for a long or indefinite period or used in a way that causes them to perish. Also, this provision does not apply where a taxable person dispatches or transports goods from a member state in which he is not established.

On the second question of whether the 9th directive permits a member state to deny a taxable person established in another member state the right to a VAT refund for the sole reason that the taxable person is, or was required to be, identified for VAT purposes in the member state of refund, the CJEU states that the refund rights under the 9th directive depend on the input tax recovery rights under the VAT directive. The taxable person is entitled to a VAT refund in a member state in which he is not established but acquires goods and services or makes imports with VAT. A refund is due if the taxable person –

- did not have a business establishment or a fixed establishment in the member state of refund in the refund period;
- did not supply any goods or services treated as supplied in the member state in the refund period, except for a few transactions listed in subparagraphs i) and ii) this provision.

The CJEU states that a member state cannot deny a taxable person established in another member state the right to a VAT refund for the sole reason that the taxable person is, or was required to be, identified for VAT purposes. Identification for VAT purposes as such does not prove that the taxable person in fact makes transactions in the member state, because identification for intra-Community acquisitions is the only formal requirement for control purposes.

The CJEU states that CHEP's services to CHEP RO are no grounds for denying a Romanian VAT refund because, although CHEP rents pallets to CHEP RO, thereby supplying services treated as supplied in Romania, CHEP RO is liable to pay VAT on the service under the reverse charge procedure.

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<sup>1</sup> Council Directive 2008/9/EC of 12 February 2008 laying down detailed rules for the refund of value added tax, provided for in Directive 2006/112/EC, to taxable persons not established in the Member State of refund but established in another Member State