Car park fine is subject to VAT 2/6/22

Senior Manager, Tax Reporting, Accounting and Strategy, PwC Latvia
Juris Boiko

On 20 January 2022 the Court of Justice of the European Union (CJEU) ruled on C-90/20 (Apcoa Parking Danmark A/S) regarding the VAT treatment of a fee the operator of car parks located on private land charges any motorist who breaks the parking terms and conditions. This article explores the CJEU's findings and their practical implications.

The main proceedings and preliminary questions

A Danish company operates car parks located on private land. As part of its business it lays down the terms and conditions relating to rates and maximum parking periods for the car parks it operates.

The entrance to each car park has a stand showing that (1) the parking area is operated under private law and (2) a breach of the parking terms and conditions may result in a charge being made for failure to comply (a "fine").

In 2011 the company filed adjusted VAT returns with the Danish tax authority and claimed a refund of VAT it had paid on those fines in 2008 and 2009.

The company believes the fine is not a consideration for the exercise of parking rights. Because the fee (1) is set in advance and does not have an economic link with the value of the parking service and (2) is considered a penalty for a breach of the parking terms and conditions under Danish law, this is not a consideration for a taxable supply.

The Danish tax authority and courts, hearing the case in substance, disagree with the company's arguments and state the fine is a consideration for the parking service supplied to the motorist. And the Danish court states the fine involves reciprocal performance that creates a legal relationship constituting a direct link between the service and the actual consideration received for it.

CJEU findings

The CJEU states that under the VAT directive, tax is charged on a supply of services in a member state that a taxable person acting as such makes in exchange for a consideration. Services are supplied for a consideration within the meaning of this provision only if there is a legal relationship between the supplier and the customer that involves reciprocal performance and the fee the supplier receives is the actual consideration for an identifiable service supplied to the customer.

The CJEU states that parking a car in a particular space operated by the company creates a legal relationship between the operator supplying the parking service and the motorist using the car park. Under the parking terms and conditions, the parties to this legal relationship acquire rights and assume obligations, including the company making the car park available for use and the motorist being liable to pay a fine if he breaks the parking terms and conditions. In assessing whether the fine is the actual consideration for the service supplied to the customer, the CJEU states the motorist paying it has used the

car park and accepted the terms and conditions. So the fee he has undertaken to pay in consideration of the parking service must include the fine because it represents the fee the car park was actually used for, even if that use was against the rules. The fine is consistent with a surcharge made in certain circumstances and aims to provide the company with a contractual consideration for the service.

Having assessed all the facts and circumstances, the CJEU finds that under VAT law the fine a car park operator charges motorists for breaking the parking rules is a consideration for the service and therefore subject to VAT.

In Latvia the VAT treatment of a charge made for a breach of parking terms and conditions varies from operator to operator. Some do not apply VAT as they treat it as a fine, while others apply 21% VAT as they consider it a surcharge.

The CJEU ruling finally explains how a fine for breaking the parking terms and conditions should be treated under VAT law.