

Sale of personal property or carrying on an economic activity? 2/20/25



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The question of when the sale of property shifts from being considered a private sale to being regarded as an economic activity has always been a pertinent issue.

On the website of the State Revenue Service (“SRS”), there is an informative material titled “Economic Operators”, which outlines the conditions under which the SRS identifies a registrable economic activity (<https://www.vid.gov.lv/lv/saimnieciskas-darbibas-veiceji>).

The Court of Justice of the European Union (CJEU) has also repeatedly considered disputes regarding what is regarded as economic activity. Among others, the CJEU examined a Latvian case concerning whether the supply of timber from private forest to eliminate storm damage constitutes economic activity (Judgment of 19 July 2012, Rēdlihs v. State Revenue Service (C-263/11)).

The criteria for the existence of economic activity were also addressed in a recent CJEU judgment in a Polish case (3 April 2025, E. T., C-213/24). Full details are available in the article

Facts of the case

- The married couple jointly owned immovable property – agricultural land – as part of their marital property. The property had been transferred to one of the spouses without compensation by their parents;
- The couple decided to sell the land. To carry out this intention, they signed a power of attorney agreement with a Polish company;
- The authorised representative was tasked not only with advertising the land to potential buyers and preparing the necessary documents for sale, but also with organizing the division of the property into smaller plots, changing the land use from agricultural to building land, and organizing the installation of utility networks on the property;
- The attorney’s fee was set as the difference between the actual selling price of the property and the sale price specified in the power of attorney agreement;
- The land plots were sold without applying VAT, considering the transaction as a private sale of property, not an economic activity. The Polish tax administration disagreed. The dispute ended up before the CJEU.

CJEU considerations: Definitions, explanations, and conclusions

In considering the case, the CJEU first addressed the concepts of “taxpayer” and “economic activity,” emphasizing that the definition of “taxpayer” is broad and focused on independence in carrying out economic activities. Similarly, the concept of “economic activity” is defined broadly, encompassing all activities of producers, traders, and service providers, and specifically the use of tangible or intangible

property with the intention of generating long-term income from it.

Regarding the qualification of the sale of land for construction as economic activity, the criterion for evaluation is whether the person has engaged in active land sales activities and used means similar to those typically employed by economic operators. In the CJEU's view, the activities of the spouses, which included subdividing the property into smaller plots, changing the land use, acquiring additional land to create internal roads and provide access to specific plots, and actively advertising the plots to potential buyers, are actions that can be qualified as active commercial activities, using means similar to those employed by real estate sales professionals. The Court held that the fact that the property in question was initially acquired to meet the personal needs of the buyer does not preclude it from being subsequently used for economic activities.

The CJEU reminded that, to establish whether economic activity exists, the independence of the activities must be assessed, i.e., whether the person performs activities in their own name, in their own interest, and assumes responsibility (taking on the economic risk associated with carrying out those activities). Therefore, the CJEU assessed whether the independence of the activities was affected by the fact that the active work was primarily carried out not by the owner of the land being sold, but by a professional authorised for this purpose. Specifically, the question arose as to whether the involvement of the authorised person significantly reduces the economic risk borne by the married couple. In this regard, the CJEU noted that the authorised representative's role is limited to carrying out the tasks specified in the power of attorney agreement on behalf of and in the interest of the landowners. The authorised representative assumes the economic risk related to the power of attorney and the real estate transactions outlined in the agreement, but the ultimate economic risk arising from the non-performance of the power of attorney or the lack of a buyer for the land falls solely on the principals.

Consequently, the CJEU concluded that the transactions conducted by the married couple concerning the land constituted economic activity.

CJEU Considerations: Is there a VAT taxpayer?

Furthermore, the CJEU provided its assessment on whether the marital property jointly owned by both spouses could be considered the taxpayer or if each spouse should be considered separately. In the CJEU's view, all individuals who objectively fulfil the criteria of an economic operator—whether physical, legal, public, private persons, or those without legal personality—are regarded as VAT taxpayers. It must be determined who independently carried out the economic activity in question. The mere fact that the property is part of the legal marital property and is jointly owned by the spouses does not preclude the possibility of taxing them separately if one of them carries out the economic activity independently, or if each of them conducts the economic activity independently.

According to Polish practice, a civil partnership without legal personality may be a taxpayer, where each of its members is liable for VAT. Moreover, for the sale of jointly owned property, the consent of each spouse is required. Since neither spouse had the authority to act on behalf of the marital partnership, it is considered that both spouses acted together and did not act independently with regard to third parties, which is a crucial factor in identifying the taxpayer. Both spouses also jointly entered into the power of attorney agreement with the authorised representative and jointly requested the local authorities to register the easement for access to the relevant plots of land. The CJEU further suggested that the national court verify who assumes the economic risk related to the sale of the land. However, in the CJEU's view, the legal marital property formed by the joint ownership of the spouses can be regarded as the taxpayer.