

Do mortgage enforcement procedures represent taxable transactions for VAT? 2/5/21

On 20 January 2021 the Court of Justice of the European Union ("CJEU") ruled on case C-655/19 to determine whether a transaction, in which an individual sold properties he acquired as creditor through enforcement procedures after he had provided mortgages, is considered economic activity within the meaning of the VAT directive¹ and attracts VAT. This article explores the CJEU's findings.

Background

LN provided a third party with several mortgages that were secured on a number of properties in 2009. The borrower was unable to repay, so the properties were put up for auction and three of them went to the lender. LN had income from selling them over the period from 2010 to 2012.

The Romanian tax authority claimed that for VAT purposes the transactions represented LN's permanent economic activity because he had acquired the properties with a view to profitable sale rather than for private use. Since the transactions exceeded the VAT registration threshold, the tax authority assessed VAT as well as a penalty and interest on arrears.

LN sued the tax authority. During the litigation the Romanian appeal court asked the CJEU to determine whether in the circumstances LN was considered a trader and a taxable person within the meaning of the VAT directive.

The CJEU's findings

The CJEU found that in order to restore his property and recover debts, LN did not take any active steps to sell land, in particular by means similar to those used by a manufacturer, seller or service provider within the meaning of the VAT directive. The property sales in fact represent simple exercise of ownership rights and proper management of private property and do not, therefore, represent conduct of economic activity.

The CJEU disagreed with the Romanian tax authority's position that tangible assets were used with the intention of earning permanent income and so LN should be considered a taxable person even though he himself took part in the auction and acquired the properties.

Given their nature, the property sales should be rather treated as LN's private property management, according to the CJEU. LN cannot be considered a taxable person within the meaning of article 9(1)(1) of the VAT directive as far as the property sales are concerned, and those transactions are not, therefore, subject to VAT.

¹ Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax