



## VAT alert Belgium

### Supply chain – Goods processing by third parties before delivery to customer



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*The Court of Justice of the European Union (“CJEU”) ruled on 2 October 2014 in a case opposing the Italian company Fonderie 2A and the French tax authorities. It concerns goods supplied from one EU Member State to a customer established in another EU Member State. The goods are sent by the supplier to a contract worker established in the customer’s EU Member State in view of finishing the goods prior to delivery. The supply to the customer in such case qualifies as a local supply of goods occurring in the EU Member State where the goods are finished (C-446/13).*

#### Facts

In 2001, Fonderie 2A, an Italy-based company, concluded a contract with Atral, a France-based company, for the supply of painted metal parts. To meet its contractual obligations, Fonderie sent the (unpainted) metal parts to Saunier-Plumaz, another company also based in France, in view of their painting by the latter. Afterwards, the painted metal parts were sent directly from the Saunier-Plumaz to the Atral premises. Fonderie treated its supply of goods to Atral as a VAT exempt intra-Community supply from Italy to France.

Under the VAT rules applicable back in 2001, Saunier-Plumaz correctly charged French VAT to Fonderie for its contract work (as the goods did not leave France after performing the finishing work). Fonderie filed an Eighth VAT Directive refund claim to recover this French input VAT. The French tax authorities, however, rejected this refund claim based on the argument that Fonderie should have been registered for French VAT purposes and should have recovered the French input VAT through a French VAT return.

#### Judgment

The CJEU confirms that, based on the place of supply of goods rule (i.e. the place where the goods are at the time when dispatch or transport to the person to whom they are supplied begins), the place of supply in the case at hand is France since the only goods subject to the contract between the supplier of the goods and the person to whom they were supplied (the *painted* metal parts) were already in the customer’s EU Member State at the time of their dispatch or transport to the customer.

Additionally, the CJEU confirms that, in the case at hand, France is the country where the right to dispose of tangible property as owner is actually transferred to the customer: “When a supplier of goods, in the situation of the applicant in the main proceedings, dispatches the goods to a service provider instructed to carry out finishing work, the supplier does not yet transfer the right to dispose of the goods in question as owner to the person to whom the goods are being supplied. Such a dispatch is concerned solely with rendering the goods in question compliant with the supplier’s contractual obligations so that a supply to that person may only subsequently take place.”

## Impact

Although, in the Fonderie case, the (single) contract worker was established in the same EU Member State than the customer, the conclusions drawn by the CJEU equally apply, in our opinion, to cases where the contract worker is established in another EU Member State than that of the customer. It also applies to the final leg of the supply chain in case of multiple contract workers being subsequently called upon by the supplier of the goods.

This type of flows has become less visible for local VAT authorities since the change in the place of supply of services rules of 2010. Today, processing movable goods in a B2B context is not subject to VAT where the work is performed, but where the customer is established. Nevertheless, it is clear that companies that appoint contract workers to process goods before they are actually delivered to the customer should thoroughly evaluate the VAT (and possibly Intrastat) aspects of such business flows.

*Pro memorie*, the simplification measures introduced, amongst others, in Belgium (Circular Letter 40/2007) for a number of cross-border flows of goods involving processing work do not apply to the Fonderie situation. According to those simplification measures, contract work should be ordered and paid for by the customer rather than the supplier. However, differing viewpoints on the scope of these simplification measures in those Member States who implemented them means that local rules should be taken into account when setting up such flows.

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