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VAT alert
Belgium

CJEU Ruling on VAT exempt supplies to seagoing vessels

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The Court of Justice of the European Union (CJEU) delivered its judgement in the case of Fast Bunkering Klaipeda UAB (FBK) on 3 September 2015, considering the application of the VAT exemption (or zero-rating) provision for the supply of marine fuel and lubricants. The Court has decided that in certain circumstances, a fuel supplier may exempt transactions entered into with an intermediary – which differs from the interpretation to date in this area.

This judgement is likely to affect how businesses in the sector apply VAT to transactions involving the sale of products to marine vessels and aircraft. In a broader sense, the decision raises questions surrounding how VAT may apply throughout chain supplies.

Background

This Lithuanian referral to the CJEU related to the application of the exemption under Article 148(a) of the European VAT Directive on transactions involving the supply of fuels and lubricants to vessels for navigation on the high seas. The Court was asked whether the exemption can be applied to supplies made to intermediaries who themselves make the final sale of the product to the operator of the vessel, where it could be shown that the goods would be ultimately used on that vessel.

Exemption limited to final supply to vessel operator

The CJEU judgement considered its earlier ruling in the Velker case (C-185/89), following which the exemption in Article 148(a) was only applicable to the supply of goods to a vessel operator who will use the goods for fuelling and provisioning. As such the exemption cannot be extended to transactions taking place earlier in a supply chain. In principle, the supplies to intermediaries/agents, who will not use them for fuelling or provisioning vessels as operators, must be distinguished from supplies of goods to those operators, even if the ultimate use of the goods is known or guaranteed at the time of supply.

Timing of transfer of ownership as an additional element?

The decision however continues to discuss the specific facts of FBK and suggests that the time when ownership is transferred throughout the chain may affect the overall VAT treatment of FBK's supply.

FBK did not transfer legal ownership until the vessel owner was able to dispose of the fuel because it was physically located in its vessel. The Court therefore held that FBK as initial supplier may benefit from the Article 148(a) exemption where it delivers fuel into a vessel provided that the transfer of ownership of the product to an intermediary took place "…at the earliest at the same time as when the operators of vessels used for navigation on the high seas were actually entitled to dispose of those goods as owners…".

It seems that the Court views FBK as supplying goods directly to the owners of the vessels for VAT purposes, despite the fact that FBK's contractual relationships were with the intermediary. This

means that in some specific cases, only one supply might take place for VAT purposes (from the supplier to the ultimate vessel operator), even if there are multiple title transfers.

What could this mean in practice?

This judgement clearly looks at the exemption provision in a different light to earlier cases and it departs from the practice adopted by the tax authorities in various Member States, which tax the supplies prior to the final sale. For many businesses involved in chain supplies, this development could prompt a significant change in the way VAT is applied to their transactions.

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