



VAT alert Belgium

Provision of sport infrastructure is not a VAT exempt immovable letting

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On 22 January 2015, the European Court of Justice rendered its judgment in the case *Régie communale autonome du stade Luc Varenne* (C-55/14). The CJEU considers that the provision of sport infrastructure, such as a football stadium, does not qualify as an immovable letting but rather as an agreement subject to VAT.

The judgment sheds new light on the scope of the VAT exemption of immovable letting.

Facts

An 'autonomous municipality corporation' runs a football stadium. This corporation entered into a contract with a local football club for the latter's use of the football stadium facilities. On this fee, the corporation applied VAT and therefore also deducted the VAT incurred on the initial purchase of those facilities.

Under Belgian VAT law, immovable letting is VAT exempt, which precludes the recovery of upstream VAT. The Belgian VAT authorities challenged the fact that the corporation deducted all of the input VAT and took the view that the services rendered by the corporation to the football club are VAT exempt as a letting of immovable property.

The CJEU had to decide whether the contract between the corporation and the football club qualifies as a VAT exempt letting of immovable property, precluding the corporation from deducting the input VAT.

CJEU decision

The CJEU begins its reasoning by firstly recalling that VAT exemptions should be interpreted in the strictest sense and that levying VAT should be the principle. Secondly, that services linked to the practice of sport or physical education must, to the furthest extent possible, be considered as a whole.

Immovable letting entails that the landlord must have assigned to the tenant, in return for rent and during an agreed period, the exclusive right to occupy the property. The CJEU decided that the contract does not meet these criteria. The corporation renders a more complicated service consisting of provision of access to sporting facilities and takes charge of the supervision, management, maintenance and cleaning of the facilities. Given that there were corporation representatives permanently present and that the fee charged to the football club consisted of only 20% as consideration for the use of the immovable property, the services could not be seen as the VAT exempt letting of immovable property.

The key lesson of the court case seems to be that an agreement can only be regarded as a VAT exempt immovable letting provided *all* characteristic elements of such a letting are present. If this is not the case, this means that the agreement is not exempt.

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