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Rules for place of supply of storage services clarified

The European Court of Justice (CJEU) has ruled that complex cross-border services relating to the storage of goods can be subject to VAT in the Member State where the storage depot is located. This is specifically the case when the service covers, inter alia, admission of goods into a warehouse and appropriate storage of those goods (CJEU 27 June 2013, C-155/12, RR Donnelley Global Turnkey Solutions Poland sp. z o.o.). In Belgium, this may have an impact on the current administrative tolerance which allows the invoicing of every storage service to professionals with the 'reverse charge mechanism'.

The facts of the case

The Polish company RR Donnelley Global Turnkey Solutions Poland sp. z o.o. supplies a complex service relating to the storage of goods. That service covers, inter alia, admission of goods into a warehouse, shelving, storage, packaging for customers as well as issuing, unloading and loading of goods. In addition, for certain contractual partners which supply goods to computer companies, the service concerned also includes the repackaging, into individual sets, of materials supplied in collective packaging.

The dispute related to the "place of supply" rules' application, more specifically, whether the supply is located in the country hosting the immovable property used for warehousing purposes or whether it qualifies as a general B2B-service subject to the reverse charge mechanism. In the first hypothesis, Polish VAT would be due. The second hypothesis would avoid any VAT pre-financing for non-Polish customers.

The decision

The CJEU ruled that the supply of a complex storage service, as described above, is subject to VAT in the country hosting the immovable property if the storage constitutes the principal service of a single transaction and only if the recipients of that service are given a right to use all or part of the explicitly designated immovable property.

If no right to use all or part of the specific immovable property is given to the client, the service is subject to the reverse charge mechanism. According to the CJEU, this would be the case when for example the client has no right of access to the part of the property where their goods are stored, or if the immovable property where those goods are to be stored does not constitute a central and essential element of the supply of services.

Impact

The judgment sets a new standard in the analysis of the place of supply rules for complex storage services. In Belgium, a practical approach has been taken since 2010 allowing the treatment of all storage services, regardless of their specific characteristics, as general B2B services subject to the reverse charge mechanism if supplied to a company established abroad.

The ruling also anticipates the regulation agreed upon in the ECOFIN Council on Friday 21 June 2013, giving detailed definitions for a range of services considered as relating to immovable property. Under that text, due to enter into force on 1 January 2015, storage of goods in an immovable property is taxable in the immovable property's country if a specific part of this property is assigned for the customer's *exclusive* use. This seems to be more restrictive than the CJEU judgment.

These two developments may impact the current favourable status quo in Belgium, so companies should prepare for a change and analyse their existing contracts for storage services to assess the impact.

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