

## VAT Alert

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#### Supply of electricity from private photovoltaic installations may be subject to VAT

*The European Court of Justice (hereafter referred to as CJEU) has ruled that the exploitation of a grid-connected photovoltaic installation on a private residence constitutes an economic activity for VAT purposes; to the extent that the electricity produced by the installation is supplied to the grid against payment (CJEU 20 June 2013, C-219/12, Finanzamt Freistadt Rohrbach Urfahr v Unabhängiger Finanzsenat Außenstelle Linz). This ruling may bring numerous home owners who invested in solar panels within the VAT scope.*

#### The case

An Austrian private individual, Mr Fuchs, installed grid-connected solar panels on the roof of his private residence. The photovoltaic installation was designed in such a way that the electricity it generated is lower than the total quantity of privately consumed electricity. Under the Austrian market model, all electricity generated by the solar panels is fed into the grid against a market price and under a contract for access to the grid concluded for an indefinite term with Mr Fuchs' electricity supplier. The privately consumed electricity is bought back from the electricity supplier.

Mr. Fuchs charged VAT on his supply of electricity and claimed input VAT deduction on the purchase and installation of the solar panels. The Austrian Tax Authorities rejected the VAT deduction, claiming that Mr Fuchs did not act as an entrepreneur for VAT purposes. The CJEU today decided that Mr Fuchs does indeed carry out an economic activity as an entrepreneur, namely the supply of electricity against remuneration on a continuing basis. The fact that the electricity generated by the installation is lower than the total quantity of privately consumed electricity and that Mr Fuchs mainly aims to reduce his electricity bill with the installation of solar panels, is in the given circumstances not relevant.

Notwithstanding the specific facts of this case, this judgment might have an impact on the Belgian viewpoint concerning the VAT status of private individuals producing electricity via solar panels. Under unpublished guidance, only private individuals whose solar panels allow a production of electricity largely exceeding their consumption are considered as taxable persons for VAT. Private individuals possessing a photovoltaic installation with a "reversing meter" (whereby the surplus of electricity produced and fed into the grid is deducted from the electricity withdrawn from the grid) do not qualify as taxable persons for VAT. The Belgian VAT authorities indeed accept that there is no taxable supply for the electricity fed into the grid, as only one supply of electricity takes place; that between a supplier and a private individual, for the positive balance between the electricity consumed by the private individual on the one hand and the supply of domestically generated electricity into the grid on the other.

If the Fuchs-case changes the Belgian viewpoint, private individuals could be considered as taxable persons in all cases, meaning that they would have to charge VAT on the total amount of electricity fed into the grid and on the supply of green certificates.

Given the importance placed on the solar panels' specific operating conditions when the CJEU was deciding the case, there are good arguments to distinguish the Belgian market situation with the "reversing meters" and thus justify VAT exemption.

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