



VAT alert Belgium

CJEU: “VAT exemption is not always limited to the final supply to the vessel operator”

On 4 May 2017, the CJEU (Court of Justice of the European Union) issued its decision in the *A Oy* case.

The main findings of the case are that (un)loading cargo with vessels used for navigation across high seas can be exempt from VAT even if not invoiced to the vessel operator. The Court decided that (un)loading services can be exempt at an earlier stage (e.g. services provided by a subcontractor). (Un)loading cargo supplied to the holders of that cargo, such as the exporter or importer, may also be exempt.

In previous case-law (e.g. *Elmeka*, C-181/04 to C 183/04 and *Velker*, C-185/89) the CJEU limited the exemption to the last supply in the commercial chain. According to the Court, the difference between the current *A Oy* case and its previous case-law is the fact that for (un)loading cargo, the final use is clear from the very moment the activities are carried out. If the type of vessel used for the cargo is entitled to the exemption, then there is no doubt that the exemption conditions will ultimately be fulfilled. However, this is different for (e.g.) supplies of fuel, which require further control to ensure that the fuel is ultimately used for a vessel entitled to the exemption.

The same reasoning was applied in a previous case where the Court allowed the VAT exemption in the sale of an aircraft to an operator which was not an international airline operator

itself. In this case, the end use of the aircraft was also clear from the beginning, since the operator acquired the aircraft for the exclusive use by an international airline operator.

This Case clearly opens the door to broadening the exemption scope for supplies to vessels, which is currently limited to the final supply by tax authorities in various EU Member States. For many businesses involved in chain supplies, such as trading companies, this development could significantly impact the way in which VAT is applied to their transactions, requiring a careful review of the circumstances in which such operations take place to assess whether the VAT exemption may (or may not) be applied.

Contacts

If you have any questions concerning the items in this alert, please contact your usual tax consultant at our Deloitte office in Belgium

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