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# Tax News+



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**Below you will find the tasks and potential issues arising from key tax law changes of the past month and recent weeks. We would be ready and glad to discuss with you any of your company specific issues.**

## **VAT treatment of canceled transactions – Case Almos**

According to the facts and circumstances of the recent judgment of the Court of Justice of the European Union (“ECJ”), the buyer did not pay the purchase price of the goods that the seller already shipped. As a consequence of the non-payment, the parties terminated their contract with a retroactive effect. Almos Ltd. issued an invoice – including VAT – when the goods were shipped to its customer. Due to the termination of the contract, Almos subsequently canceled its invoice and adjusted its VAT base accordingly.

The tax authority challenged the adjustment of the tax base, because – according to their standpoint – the original transaction was completed and the termination of the sales contract classifies as a new transaction for VAT purposes. As a result, the tax authority assessed unlawful reclaim of tax as well as tax penalty for Almos Ltd. Almos Ltd. initiated a review procedure before the Curia. The Curia referred the case to the ECJ.

According to the judgment of the ECJ, it is questionable whether paragraph 77 of the VAT Act regarding the adjustment of the tax base (effective until 1 January 2014) did adequately implement the provisions of the VAT Directive. The ECJ transferred the decision of this into the scope of the Curia. The judgment emphasized that provided that the national court decides that Hungary did not implement correctly the rules of the VAT Directive regarding the adjustment of the VAT base, then taxpayers should be entitled to refer to directly the concerned provision of the VAT Directive before the national court.

It is important to note in respect of the above mentioned that as of 1 January 2014 the VAT Act generally allows the adjustment of the VAT base in case of non-performance. However, in respect of transactions occurred before 1 January 2014, it is recommended reviewing such cases where the taxpayer did not or – based on the standpoint of the authorities – was not entitled to adjust the VAT base despite of non-performance.

## **Will the distinction between the printed books and the books stored on other physical data storage systems remain relevant with respect to the applicable VAT rate? – Case K Oy**

Similarly to many EU Member States, a reduced VAT rate is applicable to the sale of printed books in Hungary. However, the sale of books stored on other physical data storage systems (e.g. CD, CD-ROM, USB) does not benefit from the reduced VAT rate. Due to the continuous development of technology and the increasing importance of digital media, it has been questioned whether such distinction is in line with the EU law. In case C-219/13 the ECJ examines whether the application of a different VAT rate for books stored on other physical data storage systems is in line with the EU law.

The opinion of the Advocate-General – which was recently made available – puts two conditions into the center of examination concerning the application of a reduced VAT rate. Based on this, it should be examined whether:

- books stored on other physical data storage systems qualify as a specific and independent product group, besides printed books, and
- the principle of tax neutrality is violated, if competitor and similar products are treated differently from a VAT perspective.

As per the analysis of the Advocate-General, the books stored on other physical data storage systems indeed qualify as a specific and independent product group. In respect of the second question, the Advocate-General is of the view that it has to be examined from the point of view of the general customer whether the printed books and the books stored on other physical data storage systems are competitors and similar to each other. In this regard, it has to be examined whether the printed books and the books stored on other physical data storage systems aim to serve the same customer needs. As a basis of the examination, the general customers of the given

Member State are to be considered. This is due to the fact that the general customer needs may depend on the magnitude of presence of new technologies on the national markets and the availability of those technologic devices which are being used for reading or listening to the books stored on other physical data storage systems.

The opinion of the Advocate-General assigns the above examination to the national courts.

Considering that the ECJ's decision may have a significant impact on the sale of books stored on other physical data storage systems, we will inform our Clients on the content of the decision, once it has been released.

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please contact one of our tax experts below:

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