

Indirect Tax Services

Newsletter



Newsletter 73 / May 2017

In brief

On 4 May 2017, the Court of Justice of the European Union (hereafter referred to as "CJEU") released its decision in case C-33/16 concerning the interpretation of article 148(d) of the VAT Directive, in relation to the application of the VAT exemption of services of loading and unloading cargo on qualifying vessels when supplied before the end of the supply chain. The CJEU ruled that the services of loading and unloading cargo qualify for VAT exemption even when supplied at earlier stages in the supply chain. Businesses should assess the impact the decision would have on their commercial transactions and also assess the applicability of VAT rulings they may have obtained in the past.

In detail the CJEU decision in case C-33/16

Facts of the case

A supplies services of loading and unloading, warehousing, shipping agency and freight forwarding. The services of loading and unloading cargo of vessels used for navigation on the high seas and for commercial purposes were supplied through intermediaries. The intermediaries invoiced A which in turn re-invoiced them to its customers which included an affiliated company, the holder of goods, the loader, the forwarding company or the ship owner.

By its decision on 1 October 2014, the Central Tax Board informed A that the services of loading and unloading cargo may be exempt only if supplied at the end of the commercial chain. A brought an appeal against the decision of the Central Tax Board to the Supreme Administrative Court of Finland which decided to stay the proceedings and seek a preliminary ruling from the CJEU.

The CJEU Decision

(a) Services of loading and unloading cargo

The Court observed that for services to qualify for exemption, firstly the services are to be performed to meet the direct needs of a vessel and its cargo and secondly that the vessel is a vessel that navigates the high seas for the purpose of a commercial activity.

As concerns the second condition, it was assumed by the Court that the condition was fulfilled.

As concerns the first condition, the CJEU observed that the Directive does not indicate how the concept 'direct needs of a vessel and its cargo' is to be understood. Nevertheless, article 148(c) of the Directive to which article 148(d) expressly refers states that there should be a link between the services supplied and the operation of the vessel. The services of loading and unloading cargo satisfy that requirement since for the cargo to be transported and the vessel to be operated it is necessary for that cargo to be loaded at the port of departure and unloaded at the port of arrival.

(b) Should the exemption for services of loading and unloading cargo only be exempt at the end of the commercial chain

The CJEU observed that article 148(d) of the VAT Directive does not refer to a particular stage of the commercial chain, but made reference to article 131 of the VAT Directive which specifies that the exemption must be implemented in a manner which permits its straightforward and correct application and the prevention of possible fraud, avoidance and abuse.

Reference is also made to earlier cases of Elmeka and Velker which concerned services for the transport of petroleum products for provisioning of vessels. In those particular cases, several transactions had to physically take place before the services supplied could be used to meet the needs of the vessels. Therefore applying the exemption at a stage before the end of the supply chain would entail putting in place of guarding and surveillance services in order to ensure the ultimate use of the fuel. These physical constraints do not exist in the case of services of loading and unloading cargo and therefore the exemption should apply at all stages. This is also in line with the principle of fiscal neutrality which precludes businesses performing the same transactions from being treated differently.

Implications

The CJEU has clearly differentiated this case from the earlier cases of Elmeka and Velker. Businesses should consider whether this decision has an impact on the VAT treatment they follow and also assess the applicability of any VAT rulings they may have obtained.

How can PwC assist:

If you are a business engaged in the shipping /shipmanagement industry, and wish to assess whether this case impacts the VAT treatment of your transactions, please contact any of the persons indicated below to arrange a meeting.

Your contacts for Indirect Tax matters in PwC Cyprus:

Theo Parperis, Head of Tax & Legal Services - theo.parperis@cy.pwc.com

Chrysilios Pelekanos, In charge of Indirect Tax Services - chrysilios.pelekanos@cy.pwc.com

Varnavas Nicolaou - varnavas.nicolaou@cy.pwc.com

Martha Lambrou - martha.lambrou@cy.pwc.com

PricewaterhouseCoopers Limited
PwC Central
43 Demostheni Severi Avenue
CY-1080 Nicosia
Cyprus
Tel. +357 - 22 555 000

www.pwc.com.cy

This publication has been prepared for general guidance on matters of interest only, and does not constitute professional advice. You should not act upon the information contained in this publication without obtaining specific professional advice. No representation or warranty (express or implied) is given as to the accuracy or completeness of the information contained in this publication, and, to the extent permitted by law, PricewaterhouseCoopers Ltd, Cyprus, its members, employees and agents do not accept or assume any liability, responsibility or duty of care for any consequences of you or anyone else acting, or refraining to act, in reliance on the information contained in this publication or for any decision based on it.

©2017 PricewaterhouseCoopers Ltd. All rights reserved. In this document, "PwC" refers to PricewaterhouseCoopers Ltd of Cyprus, which is a member firm of PricewaterhouseCoopers International Limited, each member firm of which is a separate legal entity.