



Supply of offshore jackup drilling rigs (ECJ case C-291/18)

On 10 April 2019 the Advocate General of the European Court of Justice delivered his official opinion for the case C-291/18, with regards to whether offshore jackup drilling rigs are vessels used for navigation on the high seas in order to determine whether their supply is covered by the exemption of Article 148 of the VAT Directive.

1. Facts of the Case

In May 2008, GSP sold three offshore jackup drilling rigs, operating in the Romanian territorial waters in the Black Sea, to certain Maltese purchasers for the purpose of carrying out drilling activities. The Maltese purchasers continued the operations in the Black Sea. On the occasion of that sale, GSP issued invoices without VAT by considering the supply as VAT exempt. On 23 May 2016, following the adoption of a tax inspection report, the Romanian tax administration issued a VAT adjustment notice on the grounds that, although the drilling rigs could be considered as vessels within the meaning of the national legislation and are suitable for unlimited use at sea, they do not navigate during drilling activity but are rather in a parked position. GSP submitted a complaint against this notice and the case was referred to the European Court of Justice for a preliminary ruling.

2. Questions referred to the ECJ

- (1) Does the VAT exemption apply, in some circumstances, to the sale of offshore jackup drilling rigs, that is to say, are offshore jackup drilling rigs covered by the term “vessels” within the meaning of the VAT Directive?
- (2) If the answer to the first question is in the affirmative, does that mean that the essential condition for applying the VAT exemption to an offshore jackup drilling rig, which has navigated into international waters, is that it must in fact be in a state of movement while it is being used (for commercial/industrial activities), floating or moving at sea from place to place, for a longer period than the period during which it is stationary or immobile, as a result of carrying out drilling activities at sea — that is to say, that navigation must in fact predominate in comparison with drilling activities?

3. Analysis of the Advocate General

In his analysis, the Advocate General doubts if an offshore jackup drilling rig can properly be described as a ‘vessel’, since it neither carries persons or goods on the water but it is more in the nature of a large-scale man-made machine structure which, once moved, is affixed to the sea floor for drilling purposes.

In addition, he states that even if such a rig may nonetheless properly be regarded as a ‘vessel’, this does not mean that it is a vessel ‘used for navigation on the high seas’ as required by Article 148(a) of the VAT Directive. The objective of Article 148 is to exempt the supply of vessels taking place within the geographical scope of the VAT Directive, but which are intended to carry out economic activities outside of it. For this reason, in his view, it is not sufficient for a vessel to be suitable for being used on the high seas but it needs to be mainly and effectively engaged in an activity conducted on the high seas, where high seas must be understood as designating the water outside the territorial scope of the VAT Directive. In this case, the Black Sea falls entirely under

one or the other exclusive economic zone of its various coastal States. Accordingly, no part of the Black Sea can be considered as part of the high seas.

4. Opinion of the Advocate General

The Advocate General concluded that Article 148(c) of the VAT Directive, read in conjunction with Article 148(a), must be interpreted as meaning that the exemption laid down in this provision is not applicable to offshore jackup drilling rigs such as the ones at issue in the main proceedings.

5. Other important arguments

In order to reach the above conclusion, the Advocate General also considered the following:

- (a) The use which needs to be taken into consideration to determine the applicable VAT rules is that which will be directly carried out after the purchase of the goods or the supply of the services in question and not those that could hypothetically be carried out at some point in the future.
- (b) While Article 156(d) of the VAT Directive states that the supply of goods which are intended to be admitted into territorial waters in order to be incorporated into drilling or production platforms, for purposes of the construction, repair, maintenance, alteration or fitting-out of such platforms, or to link such drilling or production platforms to the mainland may be VAT exempted, the wording of that article does not mention among the transactions covered the resale of drilling platforms.

6. Significance of the case

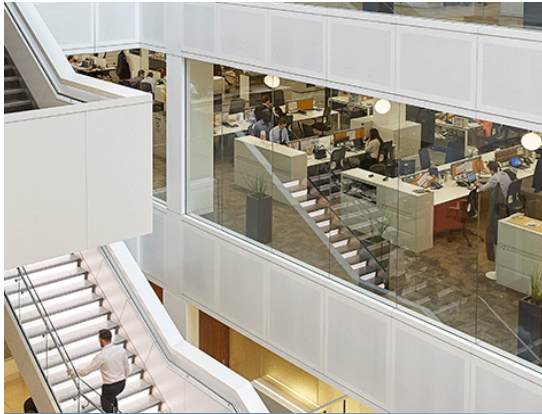
This opinion, if adopted by the ECJ in the final judgement, will affect businesses which are engaged in the sale or purchase of drilling platforms in the European market because such transactions may not qualify for the VAT exemption for qualifying vessels and be subject to VAT. Based on the rules for the place of supply, the seller may have an obligation to charge VAT on the sale invoice or the purchaser may have an obligation to self-charge VAT on the acquisition of the drilling platform. Notably, services supplied to such drilling platforms may also not qualify for VAT exemption in case drilling platforms do not meet the definition of a qualifying vessel for the purposes of the VAT exemption.

Our team will be closely monitoring the developments at the ECJ and will be keeping abreast whether the final decision of the ECJ will follow the opinion of the Advocate General.

7. Way forward: How PwC can help you

Our designated team of Indirect Tax Specialists is at your disposal to discuss the impact of this case in your business and assist in the correct application of the rules.

8. Your contacts for Indirect Tax matters in PwC Cyprus



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