



***Judgement of ECJ case C-71/18
Supply of land with a building which will be demolished***

This is a follow up to PwC Newsletter 9/2019 which analysed the opinion of the Advocate General in the European Court of Justice (ECJ) case of C-71/18 regarding the definition of 'building land'. On the 4th of September 2019, the ECJ delivered its official judgement for the case C-71/18 with regards to whether the supply of land which includes a building should be considered as a sale of 'building land' subject to VAT, when it is the parties' intention that the building is to be demolished completely or partially in order to make room for a new building. Interestingly, the ECJ decided that such a supply **cannot** be considered as a sale of 'building land' and will **not** be subject to VAT.

1. Facts of the case

In April 2012, the Odense Municipal Council in Denmark adopted an urban plan for an area in the port which includes a warehouse. KPC Herning A/S (a Danish project development and construction company) and Boligforeningen Kristiansdal (housing association) worked together on a project from May 2013 for the construction of youth housing in the port of Odense. In November 2013, KPC purchased the property. The transaction was considered VAT exempt, as the transfer related to property with an existing building. However, in the event that the transaction was subject to VAT, the agreement provided that any VAT due would be paid by KPC.

On 5 December 2013, KPC entered into agreements with Boligforeningen stating that Boligforeningen will purchase the property in order, as a builder and operator, to convert it into housing units which it would subsequently rent out and manage, and that KPC, as a condition of the sale of the property, reserved the right to carry out the design and conversion of the property into housing units as contractor. It was also agreed that Boligforeningen was to take care of demolishing the warehouse (except of the middle part of the warehouse's eastern gable that was to be preserved) at its own expense and risk. At the date of the successive transfers of the land and the warehouse, the warehouse was fully operational. On 7 March 2014, Boligforeningen entered into an agreement with another company for the demolition of the warehouse at its own expense and risk. It is undisputed that Port of Odense, KPC and Boligforeningen had a common understanding for the construction work that was to be undertaken, including the demolition of the warehouse. The housing units on the property were ready for occupation on 15 August 2015.

2. Analysis of the case

The ECJ examines first whether a number of successive supplies, such as the sale of a land with a building, the demolition of that building and the construction of a new building must be classified, for VAT purposes, as transactions which are independent of each other or as a single transaction composed of several indivisibly linked services which are so closely linked that it would be artificial to split them. In those circumstances, according to the judgement, it appears that the demolition of the warehouse is a transaction independent of its sale, therefore the successive supplies should not be treated as a single economic service. Therefore, the transactions at issue in the main proceedings cannot be regarded as forming a part of a single package and must be assessed separately for VAT purposes.

The Court explicitly states that if the sale of a fully operational warehouse could be classified as a supply of 'building land' and not as the supply of an old building and of the land on which it stands, solely on the basis of the parties' intention in the sale contract, that would undermine the principles of the EU VAT Directive and would be likely to render the exemption provided for in Article 135(1)(j) meaningless.

4. Judgement

On those grounds, the Court hereby rules:

Article 12(1)(a) and (b), (2) and (3) and Article 135(1)(j) and (k) of Council Directive 2006/112/EC must be interpreted as meaning that a supply of land, which includes a building at the date of that supply, cannot be classified as a supply of ‘building land’ where that transaction is economically independent of other services and does not form a single transaction with them, even if the parties’ intention was that the building should be wholly or partly demolished to make room for a new building.

5. Significance of the judgement

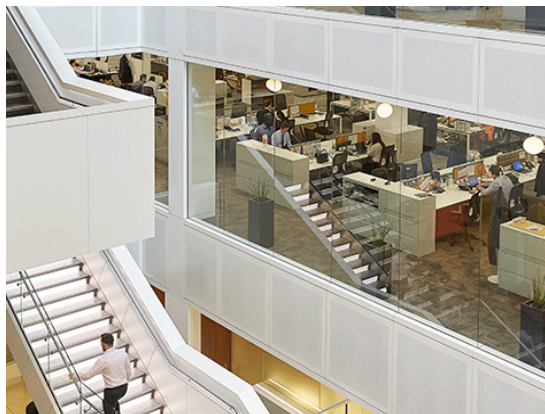
This case sheds light upon the VAT treatment of the sale of land which includes a building in cases when the parties intend to demolish that building. In particular, businesses and individuals engaged in the sale of land with a building (after its first occupation), even if the buyer’s intention is to demolish the building in order to construct a new building, this transaction will be VAT exempt.

It is worth mentioning that the Cypriot VAT legislation has a provision that the term ‘non-developed building land’, which is subject to VAT, includes plots with a building that will be demolished based on a planning permission for demolition. It remains to be seen how this provision will be applied following this decision of the ECJ.

6. 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 on your business, how your business may benefit from a potential VAT exemption and assist you in the correct application of the rules.

7. Your contacts for Indirect Tax matters in PwC Cyprus



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