

Communication concerning the decision of the Curia of Hungary
in administrative case n° Kfv.I.35.032/2017

The plaintiff as an integrator concluded current assets financing agreements with various farmers. In the agreements, the farmers as integrated producers committed themselves to cultivate specific agricultural products in a specific size of land and to purchase, up to the level of financing, current assets necessary for agricultural production exclusively from the plaintiff. The annexed general terms and conditions formed an intrinsic part of the integrated current assets financing agreements. In the general terms and conditions, the plaintiff undertook to support the farmers' integrated production and to finance the purchase of the current assets necessary for production, in addition, unless otherwise agreed by the parties in their technological integration agreement, to buy up the produces for reselling purposes in case of the exercise of his call option right and to provide the technological background necessary for production.

The plaintiff issued invoices in respect of the sale of current assets to the integrated producers on the date of the transactions and applied a 25 percent VAT rate. Moreover, the plaintiff invoiced VAT exempted interests – under the reference number SZJ 65.23.10 (financial services not elsewhere classified) – on the loans granted to the farmers to purchase the current assets on a quarterly basis in accordance with the financing agreements.

The defendant tax authority found that the plaintiff had provided complex integrated co-operation services and the loans for the purchase of current assets had constituted an intrinsic part of such services, hence the loans and the interests on them could not be separated from the plaintiff's other revenues. Consequently, on the basis of section 9, subsection (1), section 13, subsection (1), section 65, section 70, subsection (1), point b), section 70, subsection (2) and section 82, subsection (1) of Act no. CXXVII of 2007 on Value Added Tax, a 25 percent VAT rate should be uniformly applied to all the transactions. The agreements had been qualified pursuant to section 1, subsection (7) of Act no. XCII of 2003 on Taxation.

The court of first instance rejected the plaintiff's claim and considered that the loans granted could be used only to purchase the current assets with the result that the integrated loans, the interests on them and the supply of goods had constituted three intrinsic elements of the integrated co-operation services, therefore the same tax regime had to be used in their regard.

Proceeding upon the plaintiff's petition for judicial review, the Curia decided to stay its proceedings and to make a reference for a preliminary ruling. In its judgement delivered on 8 December 2016 in case C-208/15, the European Court of Justice made two important findings. Firstly, the Court esteemed that Article 1, paragraph (2), Article 2, paragraph (1), points a) and c), Article 14, paragraph (1), Article 24, paragraph (1), Article 73, Article 78, point b) and Article 135, paragraph (1), point b) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (hereinafter referred to as the VAT Directive) must be interpreted as meaning that an integrated agricultural co-operation providing that an economic operator delivers goods to a farmer and grants him a loan intended for purchasing those goods constitutes a single transaction for the purposes of the VAT Directive, in which the supply of the goods is the principal supply. The taxable amount of that single transaction is made up of both the price of those goods and the interest paid on the loans granted to the farmers.

Secondly, the Court concluded that the fact that an integrator may provide the farmers with additional services or buy their agricultural production has no bearing on the categorisation of the transaction at issue as a single transaction, for the purposes of the VAT Directive.

In accordance with the Court's judgement in case C-208/15, the Curia upheld the judgement of the court of first instance.

Budapest, the 11th of April 2017

Administrative and Labour Department of the Curia of Hungary