

# Case Alert

## *Mercedes Benz Financial Services: Advocate General's opinion*

### Court of Justice of the European Union

#### *Summary*

Under VAT law, there are two types of supply. A supply of goods occurs when tangible property is transferred for consideration. When goods are supplied on deferred terms (ie where the consideration is payable over a period of time), they are, nonetheless, still regarded as a supply of goods.

Anything which is not a supply of goods is, for VAT purposes treated as a supply of services.

The issue in this case was whether the supply of a vehicle under the terms of MBFS's Agility lease agreement, where the lease provided the lessee with an option to purchase the vehicle, was a supply of goods or a supply of services. The Advocate General considers that, in the circumstances, there is a supply of services.

This is a referral to the Court of Justice of the European Union (CJEU) by the UK's Court of Appeal. The question to be resolved is whether the supply of a vehicle on a lease which provides an option to the lessee to acquire the vehicle at the end of the lease is a supply of goods or a supply of services. Generally, a supply of goods is made at the time when the ownership in the goods is transferred from the buyer to the seller. However, in certain cases (such as hire purchase or where goods are supplied on deferred payment terms), VAT law asserts that there is a supply of goods on handover even though ownership of the goods does not pass to the purchaser unless and until the full consideration has been paid. VAT law also states that where there is no supply of goods, a supply for consideration is to be regarded as a supply of services.

Mercedes Benz Financial Services (MBFS) is a typical provider of motor finance. Under the provisions of its 'Agility' package, customers have three options when acquiring a vehicle. One of the options is for the customer to acquire ownership of the vehicle on payment of a final instalment. HMRC considers this a supply of goods and that output VAT is due on the full value of the supply at the outset of the lease. MBFS considers that the supply is a supply of services with output VAT due on receipt of each payment under the lease.

The Advocate General has issued his opinion and has agreed with MBFS's contentions. Essentially, in his view, the matter is fairly clear cut. There is a supply of goods where a clause in a lease makes it almost certain that a lessee will acquire ownership of the leased asset. This would be the case for example where the lease payments effectively cover the whole cost of the asset and ownership can be secured by payment of a nominal sum. In the MBFS case, there is no such certainty and so, in the circumstances, the AG took the view that such supplies must be considered to be a supply of services.

**Comment – this is only the Advocate General's opinion which the full court may not follow when it issues its judgment in due course. However, if the Court agrees with the Advocate General, the judgment will have major implications for the asset leasing sector. Businesses that have treated such supplies as supplies of goods and have accounted for output VAT at the onset of the agreement will be entitled to a refund of any VAT paid too early as a result of that treatment.**

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