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Case alert

Vega International Car Transport & Logistic Trading GmbH

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Summary

The facts in this case – a Polish referral to the Court of Justice – are relatively straightforward. Vega International is an Austrian company which is the parent company of a larger group. Its subsidiaries around Europe (including its Polish subsidiary) transport cars from manufacturers to dealerships. Vega International provides each of its subsidiaries with a fuel card to enable the purchase of fuel. The costs of such fuel purchase are, thus, incurred centrally by Vega International and are recharged on a monthly basis to its subsidiaries along with a 2% uplift.

Vega incurred VAT on the purchase of the fuel and submitted a claim to the Polish tax authority for a refund. This claim was refused on the basis that the fuel had not been supplied to Vega International but had been supplied to its subsidiary in Poland.

The Court of Justice agreed that, as Vega International did not acquire the fuel, it could not re-supply it to its subsidiaries. What it did supply was a service and that service was, in essence a supply of short-term credit. This is an exempt supply for VAT purposes under Article 135 of the VAT Directive which precludes any recovery of input VAT.

Court of Justice of the European Union

The CJEU has released its judgment in the case of Vega International Car Transport & Logistic Trading GmbH (Vega). The case concerns the supply of fuel and whether Vega was entitled to a refund of the VAT it had incurred on the purchase of fuel in Poland.

The scenario is not uncommon. Vega is the parent company of a larger group. It has subsidiaries in a number of countries including Poland. Vega operates a fuel card system whereby it provides its subsidiaries with cards which entitle the subsidiary to fuel the cars it is transporting. The garage supplying the fuel sends an invoice to Vega which it settles and then recharges to each subsidiary with an uplift of 2% on the cost of the fuel. Each subsidiary must then settle the account with Vega (including the 2% uplift) within a certain number of days.

Vega submitted a claim to the Polish tax authority for a refund of the Polish VAT that it had incurred on the purchase of the fuel. However, that claim was rejected and Vega turned to the Polish courts. The Polish Supreme Administrative Court decided to refer the issue to the Court of Justice for guidance on the interpretation of the VAT Directive.

In essence, the Court of Justice decided that, on the facts of the case, Vega did not in fact acquire the fuel and, on that basis, it could not, therefore, have re-supplied the fuel to its Polish subsidiary. For there to be a supply of goods, EU VAT law dictates that there has to be a transfer of the right to dispose of tangible property as owner. In this case, the fuel was actually supplied to the subsidiary fueling the particular car and was never supplied to Vega. In the absence of a supply of goods, the Court confirmed that Vega had actually provided a service to its subsidiary. Looking at the nature of that service the CJEU considers that, in fact, Vega provides a short-term credit facility to its subsidiary. Article 135(1)(b) of the VAT Directive stipulates that such a supply of credit is exempt from VAT. On the basis that input VAT incurred on the purchase of goods or services can only be reclaimed by an entity if it is attributable to taxable activities, the Court of Justice confirmed that the Polish tax authority was right to refuse the VAT refund.

In reaching this decision, the Court took account of its earlier judgment in the case of Auto Lease Holland which was based on a similar fact pattern. In that case, fuel cards were supplied by the lessor to the lessee of vehicles.

Comment – Whilst this case refers solely to the supply of fuel under a fuel card scheme, it is possible that the case could have much wider application. As stated earlier, the model of goods being procured by a parent company on behalf of its subsidiaries where costs are recharged with an uplift is not uncommon. What matters is whether the parent actually acquires the goods in question – a question that will only be resolved by reference to the facts of each scenario. If the answer to that question is negative, however, then the tax authority is likely to conclude that there is an exempt supply of credit between the parent and the subsidiary which would mean that the parent is not entitled to reclaim the VAT incurred on the cost of the goods. Businesses involved with such a trading model should seek urgent advice from their usual Grant Thornton contact.

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