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## CJEU rules on VAT exemption for provisioning of seagoing vessels via intermediaries

The CJEU has ruled that the VAT exemption for the supply of fuel to seagoing vessels may be applied to intermediaries for supplies made before the last stage of the supply chain.

On 3 September 2015, the Court of Justice of the European Union (CJEU) issued its decision in the case of Fast Bunkering Klaipėda' UAB v Valstybinė mokesčių inspekcija prie Lietuvos Respublikos finansų ministerijos (C-526/13), concluding that a VAT exemption for the supply of fuel to and the provisioning of vessels used for navigation on the high seas may be applied to intermediaries for supplies made before the last stage of the supply chain.

This decision is likely to affect how businesses apply VAT to transactions involving the sale of products to marine vessels and aircraft, and in a broader sense, raises questions as to the conditions of a supply of goods in a supply chain.

**Facts of the case**
Fast Bunkering Klaipėda (FBK) purchased fuel from outside the EU and stored it in Lithuania under a customs warehousing procedure, whereby import VAT on the fuel was suspended provided the fuel was not released into free circulation in the EU. When FBK received an order to supply fuel to vessels used for navigation on the high seas, the fuel was removed from the customs depot and FBK loaded the fuel into the vessels' fuel tanks. FBK received the fuel orders from intermediaries, rather than from the vessel operators, and it invoiced the intermediaries for the fuel sales. The intermediaries never took possession of the fuel; they simply purchased the fuel from FBK and sold it to vessel operators.

Based on article 148(a) of the EU VAT directive, FBK applied the zero-rate VAT on the invoices it issued to the intermediaries for the supply of fuels and lubricants to vessels used for navigation on the high seas.

The Lithuanian tax authorities, however, took the position that the VAT exemption applies only where there is a direct supply of goods to the operators of seagoing vessels, and relying on previous decisions of the CJEU (Velker International Oil Company (C-185/89) and Elmeka (C-181/04 to C-183/04)), determined that the VAT exemption applies only at the last stage in the commercial chain of the goods concerned (i.e. when they are sold to the operators of the vessels that will use them).

The Lithuanian Tax Disputes Commission referred the case to the CJEU to decide whether the VAT exemption under article 148(a) could be applied to supplies made to intermediaries where those supplies physically move directly from an initial supplier to the vessel operator.

**CJEU decision**
The CJEU considered its decision in Velker International Oil Company, in which it held that the exemption in article 148(a) was applicable only to the final stage in the supply chain (from the supplier to a vessel operator); and did not extend to transactions that took place earlier in the supply chain. However, the CJEU noted that the facts in Velker case differed with respect to the timing of when the legal ownership of the fuel was transferred. In Velker, legal ownership was transferred before the fuel was delivered to the vessel operators; in FBK, legal ownership could change hands only after the fuel had been delivered (i.e. it was only at that point that the vessel owner was able to dispose of the fuel because it was physically located in its vessel).

The CJEU noted that its previous decision in A Oy (CJEU, C- 33/11 dated 19 July 2012), in which it held that the VAT exemption under article 148(e) applies to aircraft supplies if the aircraft will be used by an airline that operates for consideration on international routes, does not apply to the FBK case (because that case involved leasing of an aircraft and not goods used for provisioning of vessels). However, the VAT exemption under article 148(a) does apply to FBK because FBK, as the initial supplier, delivered fuel into a vessel, while the intermediary never took possession of the fuel.

**Comments**

The CJEU seems to limit the application of the supply of goods concept in situations where an intermediary does not have control of the goods until they are physically delivered to the final recipient in the supply chain. Thus, current VAT treatment and invoicing procedures may need to be adjusted by businesses involved in supply chains.

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