

Significant Value Added Tax VAT Decisions

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Introduction

1. National VAT law in the Member States of the European Union since 1977 is based on the Council Directives (Sixth VAT Directive replaced by the Directive 2006/112 EC the 1. January 2007).
2. Art. 267 of the European treaty of Lissabon allows the national Tax Courts to ask questions to the European Court of Justice in a so called "preliminary ruling"

VAT-System

- Input-VAT Output-VAT
T----->-----A----->-----B
 goods goods
- Output-VAT
B----->-----Private Person
 goods

Carousel fraud (chain-supplies)

- I. The problem:

MS 1 MS 2

A -->---- B (MT)->--C (Buffer)-->--D (Distributor)

A--<-----D (Distributor)

II. The consequences of carousel-fraud

- Distortion of competition
- Loss of revenue from VAT-taxation up to 330 billions US-Dollars a year in the whole European Union

The answer given by the European Court of Justice

1. **Judgment of the Court 12 January 2006** **Joined cases C-354/02, C-355/03, C-484/03** **Optigen Ltd. Fulcrum Electronics Ltd.**

- a) Transactions in chain-supplies constitute supplies or services effected by a taxable person.
- b) The right to deduct input VAT is not affected by the fact, that there is fraud in the chain of supply, without that taxable person knowing or having any means of knowing.

The answer given by the European Court of Justice

2. **Judgment of the Court 6 July 2006** **Joined Cases C-439/04 and C-440/04** **Axel Kittel/Recolta**

Where it is ascertained, that the supply is to a taxable person who knew or should have known that he was participating in a transaction connected with fraudulent evasion of VAT, it is for the national court to refuse that taxable person entitlement to the right to deduct.

Quintessence of these decisions:

1. The right to deduct input VAT of a taxable person who carries out such transactions cannot be affected by the fact that in the chain of supply a transaction is vitiated by VAT tax fraud, without that taxable person knowing or having any means of knowing.
2. Where it is ascertained, that the supply is to a taxable person who knew or should have known that, by his purchase, he was participating in a transaction connected with fraudulent evasion of VAT, it is for the national court to refuse that taxable person entitlement to the right to deduct.

Judgment of the Supreme Tax Court
Bundesfinanzhof 19. April 2007 V R 48/04

- A taxable person may claim a refund of the Input VAT, if he has done all what a good merchant possibly could do to make sure not to participate in a transaction connected with fraudulent evasion of VAT.
- Whether a taxable person knew or should have had any means of knowing, that, by his purchase, he was participating in a transaction connected with fraudulent evasion of VAT, is a decision which must be taken by the Tax Court of first instance. The taxable person has to prove that he knew not or did not have any means of knowing, that he was participating in a fraudulent chain-supply.

**Future Judgment of the European Court of Justice
C-285/09 “R”**

- **Reference for a preliminary ruling from the Bundesgerichtshof – Federal Supreme Court (Germany) 7. July 2009 1 StR 41/09**

Is it possible to refuse the exemption for supplies of goods from one Member State to another Member State, if the trader established in the Member State of origin of the goods knows that he is participating in a transaction connected with fraudulent evasion of VAT in the Member State of destination of the goods?

- **Advocate general’s opinion C-285/09 “R” 29. June 2010**

“No”