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# EUROPEAN

NEWSLETTER / JANUARY 2019

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## GUIDANCE

### 1.1

#### **New guidelines on VAT published - “VAT Committee”**

On 8 January the latest list of guidelines agreed by the VAT Committee was made available. This list includes the text of all the guidelines issued since the VAT Committee was set up in 1977. An index of guidelines (in Excel) was also made available which links the guidelines agreed with the relevant provisions of the VAT Directive and comments upon them. The VAT Committee also examines questions concerning the application of EU VAT provisions raised by the Commission or a Member State. As a result of the discussion, the VAT Committee may agree guidelines on specific matters.

Please bear in mind that guidelines issued by the VAT Committee are merely views of an advisory committee. They do not constitute an official interpretation of EU law and do not necessarily have the agreement of the European Commission. They do not bind the European Commission or the Member States which are free not to follow them.

## EUROPEAN COURT OF JUSTICE

### 2.1

**Reference for a preliminary ruling – Value added tax (VAT) – Directive 2006/112/EC – Articles 2(1), a) and c) – Article 14(1) – Article 24(1) – Transactions for a consideration – Transactions for a consideration constituted partly by services or goods – Demolition contract – Purchase contract for dismantling. Decision dated 10 January 2019, Case C-410/17, *A Oy*, intervening party *Veronsaajien oikeudenvalvontayksikkö***

This request for a preliminary ruling concerns the interpretation of Article 2(1)(a) and (c), Article 14(1) and Article 24(1) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax.

The request has been made in proceedings brought by *A Oy* concerning the treatment, for the purposes of value added tax (VAT), of transactions made as follows:

- under a demolition contract requiring the service provider to dispose of demolition waste which, as it contains iron, may, pursuant to that contract, be resold by the latter and,
- under a contract for the purchase of goods for dismantling, which includes the obligation for the purchaser to demolish or dismantle and to dispose of those goods, together with the disposal of the resulting waste.

The following two questions were submitted to the Court for a preliminary ruling. First, whether Article 2(1)(a) and (c) of Directive 2006/112, read together with Article 14(1) and Article 24(1) thereof, must be interpreted as meaning that where, under a demolition contract, the service provider, that is a demolition company, is required to carry out demolition works and may, if the demolition waste contains scrap metal, resell it, that contract consists of one single transaction or two transactions for VAT purposes.

According to the European Court of Justice: “Article 2(1)(a) and (c) of Directive 2006/112, read together with Article 14(1) and Article 24(1) thereof, must be interpreted as meaning that, where, pursuant to a demolition contract, the service provider, namely a demolition company, is required to carry out demolition works and may, in so far as the demolition waste contains scrap metal, resell that scrap metal, that

*contract consists of a supply of services for consideration, that is to say the performance of demolition works, and also a supply of goods for consideration, that is the supply of the scrap metal, if the purchaser, that is to say the demolition company, attributes a value to that supply of goods, which it factors in when calculating the price quoted for the performance of the demolition works, that supply of goods being, however, subject to VAT only if it is made by a taxable person acting as such”.*

By its second question, the court asked essentially whether Article 2(1)(a) and (c) of Directive 2006/112, read together with Article 14(1) and Article 24(1) thereof, must be interpreted as meaning that where, pursuant to a purchase contract for dismantling, the purchaser, that is a demolition company, purchases goods for dismantling and undertakes, subject to a contractual penalty, to dismantle those goods and to dispose of them, and to dispose of the resulting waste within a period fixed in the contract, that contract consists of one single transaction or two transactions for the purposes of VAT.

According to the European Court of Justice: *“ article 2(1)(a) and (c) of Directive 2006/112, read together with Article 14(1) and Article 24(1) thereof, must be interpreted as meaning that, where, pursuant to a purchase contract for dismantling, the purchaser, namely a demolition company, purchases goods to be dismantled and undertakes, subject to a contractual penalty, to dismantle and dispose of those goods and to dispose of the waste within a period fixed in the contract, that contract consists of a supply of goods for consideration, that is the supply of goods to be dismantled, which is subject to VAT only if it is made by a taxable person acting as such, which is for the referring court to ascertain. In so far as the purchaser is required to dismantle and dispose of those goods and to dispose of the resulting waste, thereby specifically meeting the needs of the seller, which is for the referring court to ascertain, that contract also includes a supply of services for consideration, that is the performance of dismantling and waste disposal, if that purchaser attributes a value to that supply of goods which it factors in to the price quoted as a factor reducing the purchase price of the goods to be dismantled, which is for the referring court to ascertain”.*

## 2.2

**Reference for a preliminary ruling – Value added tax (VAT) – Protection of the European Union’s financial interests – Article 325(1) TFEU – Convention on the protection of the European Communities’ financial interests – Criminal proceedings concerning VAT offences – Principle of effectiveness – Taking of evidence – Interception of telecommunications – Authorisation granted by a court that lacks jurisdiction – Taking those interceptions into consideration as evidence – Provisions of national law – Prohibition. Decision of 17 January 2019, Case C-310/16, *Petar Dzivev, Galina Angelova, Georgi Dimov, Milko Velkov***

*Article 325(1) TFEU, and Article 1(1)(b) and Article 2(1) of the Convention drawn up on the basis of Article K.3 of the Treaty on European Union, on the protection of the European Communities’ financial interests, signed in Luxembourg on 26 July 1995, read in conjunction with the Charter of Fundamental Rights of the European Union, must be interpreted to the effect that, in the light of the principle of effectiveness of the prosecution of value added tax (VAT) offences, they do not preclude a national court from applying a national provision excluding, from a prosecution, evidence such as the interception of telecommunications requiring prior judicial authorisation, where that authorisation was given by a court that lacked jurisdiction, in a situation in which that evidence alone is capable of proving that the offences in question were committed.*

This request for a preliminary ruling concerns the interpretation of Article 325(1) TFEU, Article 1(1)(b) and Article 2(1) of the Convention drawn up on the basis of Article K.3 of the Treaty on European Union, on the protection of the European Communities’ financial interests, signed in Luxembourg on 26 July 1995. The request has been made in criminal proceedings brought against certain individuals accused of having committed offences relating to value added tax (VAT).

The European Court of Justice also clarified that it is for the national legislature “to amend the legislation and to ensure that the procedural rules applicable to the prosecutions of offences affecting the financial interests of the European Union are not designed in such a way that there arises, for reasons inherent in those rules, a systemic risk that acts that may be categorised as such offences may go unpunished, and also to ensure that the fundamental rights of accused persons are protected.” (see judgments *Scialdone and Kolev and others*).

## EUROPEAN TAX NEWSLETTER | JANUARY 2019

LEGISLATION, MINISTERIAL GUIDANCE AND CASE LAW AT 31 JANUARY 2019.  
THIS NEWSLETTER IS INTENDED AS A SUMMARY OF KEY DEVELOPMENTS AND HIGHLIGHTS MATTERS OF GENERAL INTEREST,  
AND THEREFORE SHOULD NOT BE USED AS A BASIS FOR DECISION-MAKING.  
FOR FURTHER DETAILS AND INFORMATION, PLEASE CONTACT YOUR RELATED PARTNER OR SEND AN EMAIL TO [UFFICIOSTUDI@STUDIOPIROLA.COM](mailto:UFFICIOSTUDI@STUDIOPIROLA.COM)