

EU COURT OF JUSTICE CASE C-695/19 - RADIO POPULAR

*TRANSACTIONS INVOLVING INTERMEDIATION IN THE SALE OF EXTENDED
PRODUCT WARRANTIES ARE RELEVANT FOR THE PURPOSE OF DETERMINING
THE SELLER'S DEDUCTIBLE PROPORTION*



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By decision dated 8 July 2021 on case C-695/19, *Rádio Popular – Electrodomésticos SA c. Autoridade Tributária e Aduaneira*, the European Court of Justice (the “Court of Justice”) stated the principle according to which consideration for the sale of warranty extensions paid by consumers to a taxable person whose main activity consists in the sale of household electrical appliances and other computer and telecommunications equipment is included in the determination of the deductible proportion pursuant to article 174(1) of the VAT Directive.

The decision stems from a request for a preliminary ruling from the Portuguese *Tribunal Arbitral Tributário* and concerns the possibility that transactions involving intermediation in the sale of extended product warranties may be treated as ancillary “financial” transactions, which are not included in the calculation of the deductible proportion pursuant to Article 174(2)(b) and (c) of the VAT directive.

First of all, the Court of Justice pointed out that the transactions not relevant for the purpose of the calculation of the deductible proportion do not include the “exempt transactions” pursuant to Article 135(1)(a) of the VAT Directive, i.e. “*insurance and reinsurance transactions, including related services performed by insurance brokers and insurance agents*”. In the opinion of the ECJ Judges, the services rendered by the taxpayer are included among the latter transactions, as they meet both the objective condition (the sale of the warranty extension takes the form of an insurance contract) and the subjective condition (the taxpayer acts as insurance broker between the insurance company and the consumer) required by the rule.

Having said that, the Court of Justice maintains that the notion of “insurance transactions,”



under Article 135(1)(a) does not coincide with the notion of “financial transactions” (including “ancillary” financial transactions) referred to in Article 174(2)(b) and (c). Pursuant to a systematic reconstruction, based inter alia on the VAT Directive, the latter provision may not be construed to apply also to insurance transactions and, in particular, to transactions involving intermediation in the sale of extended warranties. As a result, the turnover attributable to those transactions must be excluded from the denominator of the fraction used to calculate the deductible proportion.

Article 19-bis(2) of Italian Presidential Decree no. 633 of 26 October 1972 (“Decree no. 633/72”) extends the exclusion from the calculation of the deductible proportion to the exempt transactions under article 10 (1) to (9) of Decree no. 633/72, if they do not constitute the taxable person’s core business as they are performed on an occasional basis or are ancillary to the taxable transaction; in any case, the tax on the goods and services solely used to carry out such transactions is not deductible. This triggers a possible conflict with EU rules, since insurance and reinsurance transactions, including related services (pursuant to article 10(1) to (9) of Decree no. 633/1972) should be included in the calculation of the deductible proportion – pursuant to Article 174(2)(b) and (c) of the VAT Directive – regardless of whether they are occasional or ancillary transactions. Therefore, clarifying legislation is required to eliminate such conflict. In the meantime, should the Italian rules cause harm to the taxpayer, compared to the effects deriving from the application of the VAT Directive, this would constitute a breach of EU law requiring disapplication of the conflicting domestic rules.