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By PwC Deutschland | 06 March 2015

# VAT-free oil for high seas shipping even if billed to intermediary?

**An advocate general has suggested the ECJ hold that fuel oil for high seas shipping be billed free of VAT even if the invoice is addressed to a broker, rather than to the shipping line.**

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Supplies, including fuel oil, for ships plying the high seas are free of VAT if supplied and invoiced direct. A Lithuanian tax office refused this exemption to a bunkering service in Klaipeda (Memel) because it invoiced a firm of brokers, rather than to the owner of the vessel. The bunkering service objected that charging VAT on its supplies to ships operated by international lines would be, at least, against the spirit of the VAT Directive, and the case came before the ECJ.

The advocate general accepts that perusal of the VAT Directive does not give an immediately clear answer. However, on the basis of a series of substance over form arguments, she comes to the conclusion that the court should hold that the supplies at issue should be exempt, provided that the delivery is to the ship itself in a manner that effectively excludes any possibility of their being seized by an intermediate legal owner or otherwise put to any use other than to power or maintain the ship on the high seas. In this case, as she points out, the largely unknown shipping line had appointed a broker to order the fuel in its own name for the sake of financial security for both parties. The bunkering service delivered the fuel to the ship once in port by pumping it into her tanks. From then on, there was no realistic possibility of using the oil other than as fuel for the ship's boilers.

The ECJ case reference is C-526/13 *Fast Bunkering Klaipeda* opinion of March 5, 2015.

**Keywords**

Shipping, fuel oil, high seas