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By PwC Deutschland | 21 May 2023

VAT: ECJ clarifies conditions on margin-scheme taxation for used cars

In a Belgian case the ECJ commented on the conditions for application of the so-called margin scheme in respect of certain sales of second-hand goods. In the case at hand the ECJ held that definitively end-of-life motor vehicles acquired by an undertaking and intended to be sold ‘for parts’ without the parts having been removed might qualify as second-hand goods within the meaning of Article 311(1)(1) of the VAT Directive.

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Background

For second-hand goods, taxable persons may apply the margin scheme under the conditions set out in Articles 311 to 315 of the VAT Directive. In this respect, only the margin of the taxable reseller is subject to VAT.

The plaintiff (*IT*) was registered for VAT purposes in respect of his business consisting in selling second-hand vehicles and wrecks. In the context of that activity, the entrepreneur purchased, among other things, scrapped (written-off) vehicles from insurance companies and resold them to third parties as wrecks or 'for parts'. The Belgian ax authorities decided to exclude invoices referring to 'cars sold for parts or invoices relating to wrecks from the margin scheme.

ECJ decision

The ECJ held that definitively end-of-life motor vehicles acquired by an undertaking and intended to be sold 'for parts' without the parts having been removed are second-hand goods within the meaning of Article 311(1)(1) of the VAT Directive if it is established that those vehicles remain in the same economic cycle because of that re-use of parts. Under Article 311 (1)(1) of the VAT Directive, 'movable tangible property that is suitable for further use as it is or after repair' constitutes 'second-hand goods'. In order to be characterized as 'second-hand goods', it is only necessary that the used property has maintained the functionalities it possessed when new and that it may, therefore, be re-used as it is or after repair (the ECJ refers to its judgment of 18 January 2017, *Sjelle Autogenbrug*, C?471/15, paragraphs 31 and 32).

The application of the margin scheme does not necessarily entail that the property purchased is the same as the property sold. In particular, the ECJ confirmed that the margin scheme applied to the resale of parts removed by the taxable person from an end-of-life motor vehicle acquired by the taxable person, in so far as a motor vehicle is composed of a set of parts which have been assembled and may be removed and resold, as they are or after repair (judgment of 18 January 2017, *Sjelle Autogenbrug*, C?471/15, paragraphs 36 and 37).

Admittedly, the taxable dealer did not remove the parts from a definitively end-of-life vehicle which that dealer itself had acquired for resale, but resold the vehicle as such 'for parts', i. e. with a view to the subsequent use of the parts of that vehicle as spare parts. It must be taken into account though, that the vehicles acquired by a taxable dealer, such as *IT*, are definitively end-of-life and cannot therefore be resold in order to be reused as they are or repaired. Since the vehicle itself, as movable tangible property, is not by definition suitable for further use, it is necessary to focus on only the parts of that vehicle which, in the context of a resale by the taxable dealer to other persons, are suitable for such further use.

The ECJ went on to say that an interpretation allowing a definitively end-of-life vehicle, as a second-hand good, to fall within the margin scheme because some of its components are suitable for further use is in accordance with the objective of that scheme which seeks to avoid in particular double taxation which might result, first, from the sale price of those components already taking into account VAT paid at the time of the vehicle's purchase by a person falling within Article 314 of that directive and, secondly, neither that person

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nor the taxable dealer being able to deduct that amount.

Source:

ECJ judgment of 17 May 2023 in the case **C?365/22** *État belge (TVA – Véhicules vendus pour pièces)*.

Keywords

Margin-scheme taxation, motor vehicle