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ECJ: Factoring fees are remuneration for debt collection services and subject to VAT

In a most recent judgment following a preliminary request from Finland, the European Court of Justice has once again confirmed that specific fees and commissions associated with debt collection are subject to VAT.

Background

The request for a preliminary ruling from the Supreme Administrative Court in Finland concerns the treatment for value added tax (VAT) of various commissions, mainly the factoring commission and the arrangement fees charged by A Oy ('A'), a company incorporated under Finnish law, in connection with its factoring activities. The factoring agreements concluded between A and its clients concern factoring taking either the form of financing guaranteed by invoices (**invoice factoring**) or the sale of debts (**trade factoring**).

In the case of **invoice factoring**, A, acting as a factor, provides financing to its client by granting it a credit based on the unpaid invoiced debts of the client's debtors, up to a total amount determined by A on the basis of the level of risk of that client's business activity, with A taking responsibility for sending reminders for the debts assigned to it and ensuring their extrajudicial collection.

Where **trade factoring** is concerned, A purchases invoiced debts from the client of its choice up to the maximum amount that A undertakes to purchase from that client. That amount is based on A's risk assessment of the client's business activity.

ECJ decision

*By its **first and second questions** the referring court asked, in essence, whether trade factoring, in the context of which the factor relieves the client of debt recovery operations and of the risk of the debts not being paid , the **factoring commission and the arrangement fee** paid by the client must be regarded as remunerating a supply of services falling within the scope of the VAT Directive.*

The ECJ confirmed this by stating that as regards trade factoring, **the factoring commission** paid for a debt collection service the value of which increases the longer the payment term and the greater the level of risk assumed by the factor and **the arrangement fees** paid by the client, which correspond to the flat-rate amount paid in order to set up the factoring process and which cover, *inter alia*, the cost of procedures relating to compliance with the obligations arising from the applicable legislation on money laundering, constitute the value actually given in return for the supply of services and to fall within the scope of the VAT Directive (judgment, paragraphs 27 to 40).

*By its **third and fourth questions**, the referring court asked whether Article 135(1)(b) and (d) of the VAT Directive must be interpreted as meaning that the factoring commission and the arrangement fees paid by the client and received by the factor in the context of a **trade factoring** or **invoice factoring** constitute consideration for a single and indivisible debt collection service that is subject to VAT, or whether they must, at least in part, be regarded as remuneration for a service exempt from VAT relating to the granting of credit.*

The ECJ held that the factoring commission and the arrangement fees charged by the factor, which correspond to the flat-rate amount paid in order to set up the factoring process and which cover, *inter alia*, the cost of procedures relating to compliance with the obligations arising from the applicable legislation on money laundering in the context of trade factoring or invoice factoring, are consideration **for a single and indivisible service of 'debt collection', subject to VAT** (judgment, paragraphs 41 to 69).

With the **fifth question** it should be clarified whether **the exception from VAT exemption** relating to debt collection provided for in Article 135(1)(d) of the VAT Directive applies to factoring services such as those at issue in the main proceedings, that exception is unconditional and sufficiently precise to have direct effect.

The ECJ answered in the affirmative by stating that said exception relating to debt collection is unconditional and sufficiently precise to have direct effect and, therefore, may be relied on by individuals before the national courts against the State (judgment, paragraphs 70 to 79).

More details of the decision in the ECJ case C-232/24 *Kosmilo* to be found [**here**](#).

Keywords

[Factoring, debt collection](#)