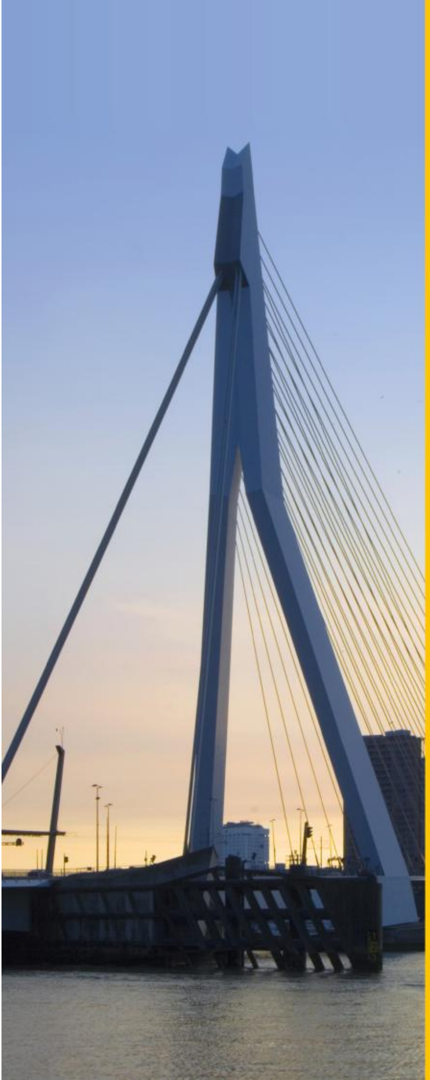

EFS
ERASMUS FISCAL STUDIES

Recent VAT developments

Webinar – 18 juni 2026

Erasmus University Rotterdam

Introduction

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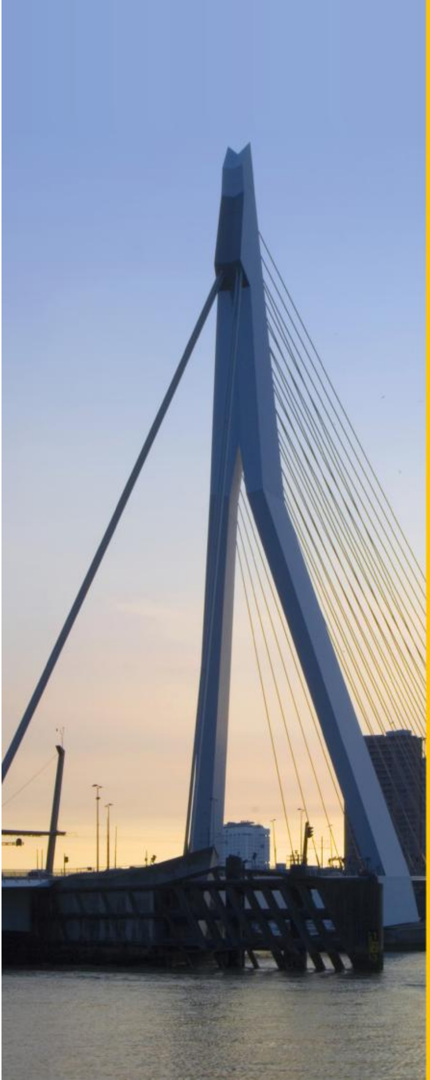
Agenda

Time	Topic	Speaker
16.00-16.05	Introduction	Madeleine Merkx
16.05-16.15	Transfer pricing and VAT	Milja Bormann-Bakker
16.15-16.25	VAT deduction and timing	Rakesh Ghirah
16.25-16.35	Introduction to EFS' programs	Milja Bormann-Bakker and Rakesh Ghirah
16.35-16.50	VAT and international trade	Madeleine Merkx
16.50-17.00	Q&A	Moderated by Madeleine Merkx



Transfer Pricing & VAT

Milja Bormann-Bakker LL.M.

Erasmus University Rotterdam

Why is transfer pricing a topic for VAT?

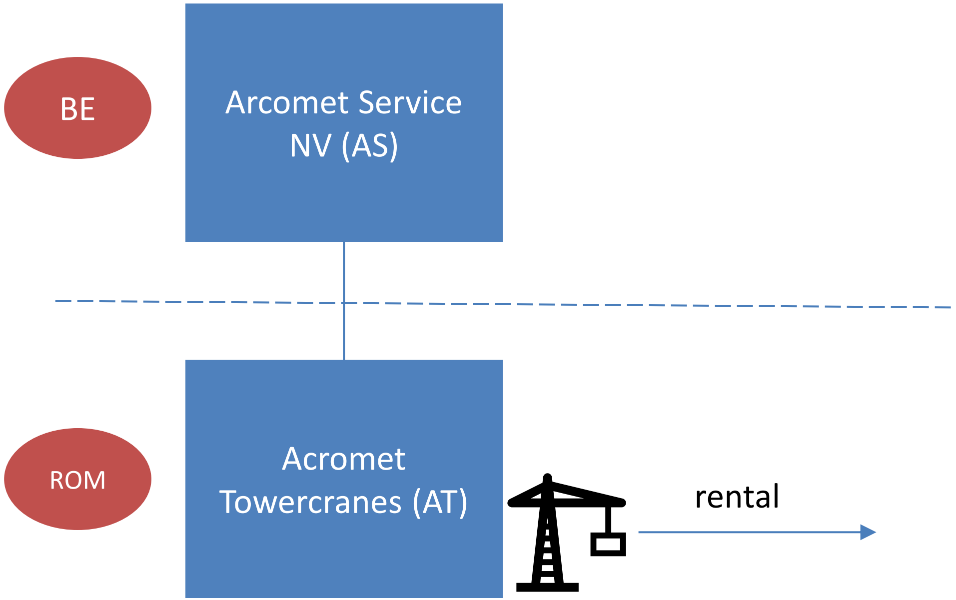
- In our EFS VAT webinar of November 2025 Rakesh already gave an introduction about Transfer Pricing (TP) and VAT

- Because of a new ruling/judgement we again discuss this topic in more detail, but first a brief reminder for anyone that missed that session (or wants a refresh) followed by the latest insights

What is transfer pricing?

- ‘The pricing of goods, services, or intangibles transferred between **related entities’**
- Determines how **profits** are allocated among different subsidiaries or branches.
  - The mechanism is designed for direct tax purposes.
- **“at arm’s length principle**”: transactions should be priced as if between independent parties.
- To mitigate TP risks because of prices not being at arm’s length, parties may set arm’s length prices for their intercompany transactions upfront (price setting) and then test outcomes at year-end (**outcome testing**). Outcome testing may require **adjustments, the so-called TP adjustments**. These retrospective adjustments can have VAT—and, in certain cases, customs—implications.

The case that started the latest discussions
CJEU C-726/23: Arcomet Towercranes



- Parties had a Transfer Pricing agreement securing operating profit margin to be adjusted at the end of the year:
  - operating profit margin AT lower than -0,71% AT invoices AS for the difference
  - operating profit margin between -0,71% and + 2,74% no entitlement to remuneration
  - operating profit margin more than + 2,74% AS invoices AT for the difference
- In 2011, 2012 and 2013 surplus profit for which AS issues three equalization invoices

CJEU C-726/23: Arcomet towercranes

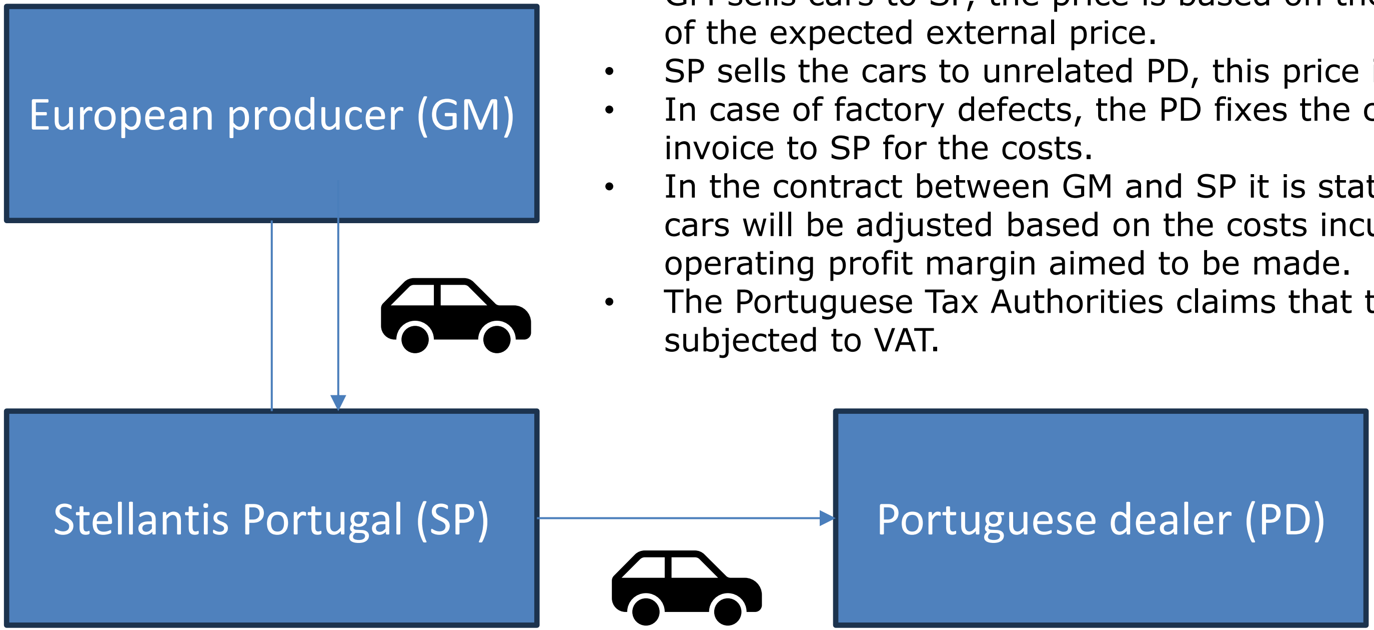
- The contractual arrangements between Arcomet Belgium and Arcomet Romania indicate a **legal relationship** between the supplier and the recipient.
- The payments made by Arcomet Romania under the contract of 24 January 2012 constituted the remuneration in respect of the activities carried out by Arcomet Belgium (**identifiable service**).
- Arcomet Romania obtained a **specific advantage** in return for the payments made.
  - The services provided by Arcomet Belgium had, in fact, an impact on Arcomet Romania's operating profit margin.
- Accordingly, the remuneration received constitutes the **actual consideration** for the service supplied to the recipient.

CJEU C-726/23: Arcomet towercranes

- **Legal relationship:**
  - Contractual agreement also is applicable in this situation
- **Identifiable service:**
  - Does Arcomet Romania supply a service to Arcomet Belgium? And does Arcomet Belgium receive a **specific advantage** from that service.
  - Contract: Arcomet Romania undertook to purchase and hold all the goods necessary for the exercise of its activity and to be responsible for the sale and rental of those goods and for the provision of services.
- **Actual consideration:**
  - CJEU: “the uncertain nature of the provision of any payment can break the direct link between the service provided to the recipient and any payment which may be received” (Tolsma, C-16/93 & Finanzamt X C-713/21)

CJEU case C-603/24: Stellantis Portugal

- GM and SP are part of the same group
- GM sells cars to SP, the price is based on the gross margin discount of the expected external price.
- SP sells the cars to unrelated PD, this price is the external price.
- In case of factory defects, the PD fixes the cars and sends an invoice to SP for the costs.
- In the contract between GM and SP it is stated that the prices of the cars will be adjusted based on the costs incurred by SP and an operating profit margin aimed to be made.
- The Portuguese Tax Authorities claims that this adjustment is subjected to VAT.



CJEU case C-603/24: Stellantis Portugal

- The question is whether Article 2 of the Sixth VAT Directive (77/388/EEC), as it stood at the time, should be interpreted to mean that the definition of "supply of services for consideration" includes price adjustments for vehicles. Specifically, these are adjustments agreed in a contract between the parties to ensure a minimum profit margin, and documented through a credit or debit note issued to the applicant/appellant by European manufacturers of the General Motors group.
- **Does Stellantis Portugal perform a supply of services for consideration?**

CJEU case C-603/24: Stellantis Portugal

- **The price adjustment is calculated in the following way**

External sale price	Minus	Distribution costs	Minus	Aimed operating profit
Price of the cars sold from SP to PD		Operating costs: staff, electricity and marketing costs Vehicle repair costs from PD, this includes: recall campaigns, policy and warranty and roadside assistance		Based op TP guidelines

CJEU case C-603/24: Stellantis Portugal

- **Legal relationship**
  - SP and GM have a contractual agreement.
- **Identifiable service:**
  - Can the activities of SP be regarded as an identifiable service?
    - Activities: staff, electricity, marketing costs and repair costs from PD.
  - If SP performs an identifiable service, does GM receive a **specific advantage**
- **Actual renumeration:**
  - Can the adjustment be seen as the actual renumeration for the supply of services performed?

CJEU case C-603/24: Stellantis Portugal

- Under the parties' agreement, transfer prices may be adjusted to ensure Stellantis achieves a predetermined profit margin. Prices are initially set using the **transactional net margin method (TNMM)** and adjusted upward or downward at the end of each period. The manufacturer issued a debit or credit note to Stellantis to align actual results with the target margin.
- Note that the TNMM is one of the most used Transfer Pricing methods!

CJEU case C-603/24: Stellantis Portugal

- According to the Portuguese tax authorities, the adjustment constituted consideration for repair services supplied by Stellantis to the manufacturer and, therefore, VAT was due on this amount.

- CJEU judgment: the CJEU rejected the tax authorities' position.

  The court found no contractual arrangement under which Stellantis supplied repair services to the manufacturer. The only agreement in place concerned the guaranteed profit margin. Furthermore, the actual behaviour of the parties, as described by the referring court, did not indicate the existence of a repair-service agreement.

  Even if such an agreement existed, the court held that the transfer pricing adjustment could not be regarded as consideration for repair services. Repair costs were only one of several parameters in the transfer pricing formula. When Stellantis Portugal achieved its target margin, no reimbursement took place.

  The CJEU did emphasize that transfer pricing adjustments **may require an upward or downward correction of the taxable amount for the original supply of vehicles**. This may affect VAT and, in the case of imports from outside the EU, customs duties.

Now what…?

Many may have underestimated the indirect tax consequences of transfer pricing adjustments in the past considering that these rules were made for direct tax purposes!

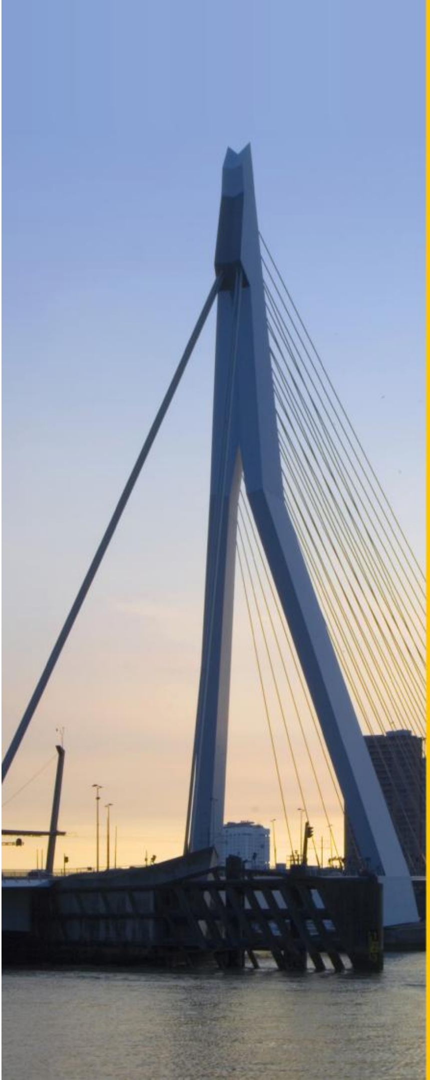
However depending on the facts: An adjustment may constitute consideration for a supply of services, as seen in the Arcomet Towercranes case or according to the Stellantis case: an adjustment may require revisiting the taxable amount of earlier supplies for which VAT has already been accounted for.

In cross-border transactions, zero-rating or the reverse charge may limit the actual VAT payable. However, administrative and invoicing obligations remain, including: issuing corrective invoices, amending VAT returns; or updating EC Sales Lists (recapitulative statements). Non-compliance can lead to significant penalties.

Customs valuation may also be affected where goods are imported!

Given the potential VAT and customs implications, businesses should together with their TP and Indirect Tax teams and advisors:

- Assess the VAT treatment of all transfer pricing adjustments, including whether they affect the taxable amount of prior supplies.
- Review and, if necessary, update intercompany agreements, ensuring they accurately reflect the intended economic reality.
- Evaluate customs implications where transfer pricing adjustments affect import values and related procedures.



VAT deduction and timing

Dyrektor Krajowej Informacji Skarbowej (T-689/24)

Tax period A

Substantive conditions are met

Tax period B

Invoice received

- I. S.A. operates a clearing and settlement house for energy and electricity transactions in Poland.
- I. S.A. purchased goods during a given tax period but received corresponding supplier invoices in the following tax period.
- The company received all invoices prior to submitting its VAT return for the initial purchase period.
- Under the national law (Article 86(10b)(1) of the Polish VAT Law), a taxable person is prohibited from claiming an input VAT deduction in the tax return for the specific tax period in which all substantive conditions were met, solely because the corresponding invoice was not yet received during that specific period.
- Do Articles 167, 168(a), and 178(a) of the VAT Directive (Directive 2006/112/EC), along with the fundamental EU law principles of fiscal neutrality, effectiveness, and proportionality, preclude national legislation that delays a taxable person's right to deduct input VAT when the substantive conditions are met?

General Court ruling

- Under Article 167 of the VAT Directive, the origin of the right to deduct depends solely on substantive conditions
- Holding an invoice is a formal requirement for exercising the right. It must not modify the timing of when the right arises.
- Forcing a delay in deduction when the invoice is possessed before filing the return temporarily shifts the VAT burden onto the taxable person, violating fiscal neutrality.
- National control measures cannot systematically impede the core right of deduction when verification is fully possible.

DECISION OF THE COURT OF JUSTICE (Reviewing Chamber), Case C-167/26 RX

- The First Advocate General submitted a proposal to review the General Court's judgment from February 11, 2026 (Dyrektor Krajowej Informacji Skarbowej, T-689/24).
- The review is initiated under Article 256(3) TFEU and Article 62 of the Statute of the Court of Justice, which exceptionally allow reviews if there is a "serious risk of the unity or consistency of Union law being affected".
- The Reviewing Chamber of the Court of Justice of the European Union (CJEU) officially decided that the General Court's ruling will be reviewed.
- The CJEU is questioning the General Court's decision with specific regard to potential contradictions with established case-law, notably the judgments in Terra Baubedarf-Handel (C-152/02) and Aptiv Services Hungary (C-521/24).

Aptiv Services (C-521/24)

2016-2018

Aptiv makes intra-Community purchases

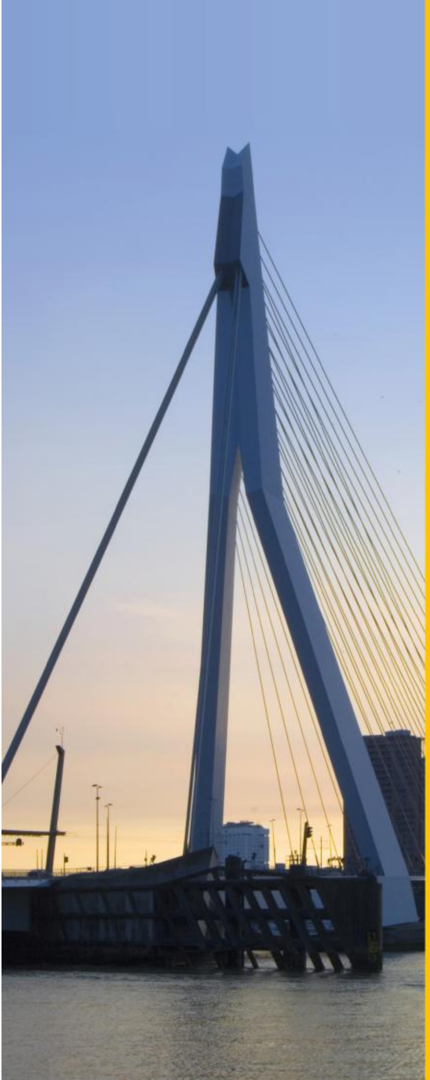
2021

Aptiv receives the invoices and claims the VAT deduction

- Aptiv Services Hungary Kft. ("Aptiv") performed B2B intra-Community acquisitions of goods between 2016 and 2018.
- Due to third-party supplier delays, Aptiv did not receive the required VAT invoices or record them in its accounts until 2021.
- Aptiv claimed the corresponding input VAT deductions in its B2B reverse-charge returns for the Q3 2021 period (when the invoices were physically received).
- The Hungarian tax authority audited Aptiv and rejected the 2021 deduction, ruling that the VAT must be claimed retrospectively via the national "self-correction" procedure for the 2016–2018 periods.
- Because the domestic limitation period to perform a self-correction had already expired for 2016 and early 2017, the tax authority excluded Aptiv's right of deduction for those periods

CJEU ruling

- The Court reiterated that the right to deduct must, in principle, be exercised in the tax period during which **two cumulative conditions** are met: the right of deduction has arisen and the taxable person physically holds the **relevant invoice**.
- The Court emphasizes that fiscal neutrality requires an input VAT deduction to be allowed if substantive requirements are satisfied, even if certain formal requirements are missed. Additional conditions cannot be imposed by tax authorities that render the right of deduction ineffective, unless formal non-compliance prevents conclusive proof that substantive criteria were met.
- National legislation or practices breach the principle of effectiveness if they block a trader from claiming a deduction in the tax period they finally receive missing invoices, while simultaneously forcing them into retrospective adjustment mechanisms (like self-correction) that have already expired due to separate administrative deadlines.
- Ruling: EU law directly precludes any national rule that definitively refuses a VAT deduction in the period of invoice receipt, provided the general limitation period has not expired and the taxable person is acting in good faith.



Introduction to EFS' programs

VAT

Upcoming programs Erasmus Fiscal Studies

Post-Masters (in Dutch)
- Indirect taxes (9 September – 2 December 2026)
- International and European Tax law (March and June 2027)

Post-Masters (in English)
- EU Customs Law (September and November 2026)
- EU VAT (March – June 2027)
- EU Tax Law (January – September 2027)
- International and European Tax law (September – December 2027)

Top-Level Seminars (in English)
- EU VAT (23-25 September 2026)
- EU Customs Law (June 2027)

Upcoming programmes Erasmus Fiscal Studies

For 2026 the following webinars are planned:

- 8 October 2026 Customs
-12 November 2026 VAT

Conferences

• Upcoming conference: 8 October 2026

For more information and registration, visit the official website:
erasmusfiscalstudies.nl

EU Top-level seminar EU VAT (23-25 September):
Recent Developments and Outlook

- **A three-day seminar (in English)**
- 25 top international indirect tax specialists from tax advisory services, legal practice, the judiciary, government bodies, tax authorities and academia will discuss the VAT implications of a wide range of topical issues, including the measures recently implemented or soon to be implemented across the EU. We guarantee in-depth. Interactive sessions bridging theory and practice and an excellent opportunity for international networking
- The fee covers all seminar materials, lunches on the campus, a dinner at a wonderful and acclaimed restaurant, and a walking dinner during a boat trip on the river Maas in the port of Rotterdam

- *Our agenda:*
- **Day One**
  - Update European Commission on future of VAT
  - E-invoicing and digital reporting – state of play
  - Trends in VAT audits
  - Navigating the risks of the use of fraud detection systems
- **Day Two**
  - Holding companies and intercompany transactions
  - The trust-and-distrust dynamic between EU tax administrations in the VAT e-commerce context
  - How to determine the status of your customer (B2B or B2C)?
  - Expert Panel Session: the impact of AI on the work of the VAT specialist
- **Day Three**
  - Functioning of the CJEU (ECJ and Court)
  - The Court of Justice and VAT: recent judgments, opinions and pending cases.

Overview of the Post Master EU VAT

- Combined campus and online training programme about EU VAT from March through April and October 2027
- In English
- Suitable for:
  - Tax professional in the tax consultancy practice, the business world, academia, the judiciary, other legal professions, ministries or the Tax Authorities
  - Tax professionals working in an EU Member State or dealing with VAT in EU Member States
  - 2-9 years' experience in VAT
- Paper and defence to obtain certificate

Programme topics

On Campus

- Taxable person and taxable supply
- Taxable amount including vouchers
- Exemptions
- Deduction
- International trade in goods and services
- Panel session: VAT and entrepreneur strategies in the EU
- Back to practice session

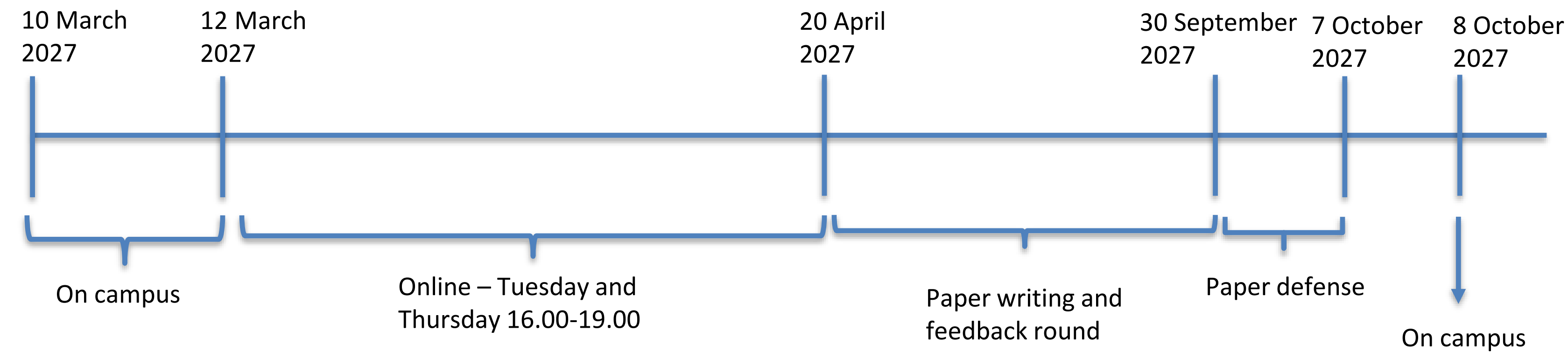
Online

- Case study
- Deduction – deep dive
- Supply chain and VAT
- Business restructuring and VAT
- VAT in a digital environment
- Indirect tax assurance
- EU principles and taxpayer rights
- Administrative cooperation in the field of VAT
- Panel session: How the VAT world works: understanding the interaction between the judiciary, legislation, politics and practice
- Verbal defence paper

Pre-recorded

- Functioning of the CJEU, how to read cases of the CJEU and legislative process

Timetable


10 March 2027
12 March 2027
20 April 2027
30 September 2027
7 October 2027
8 October 2027
On campus
Online – Tuesday and Thursday 16.00-19.00
Paper writing and feedback round
Paper defense
On campus

Overview of the Dutch Post Master Indirecte Belastingen

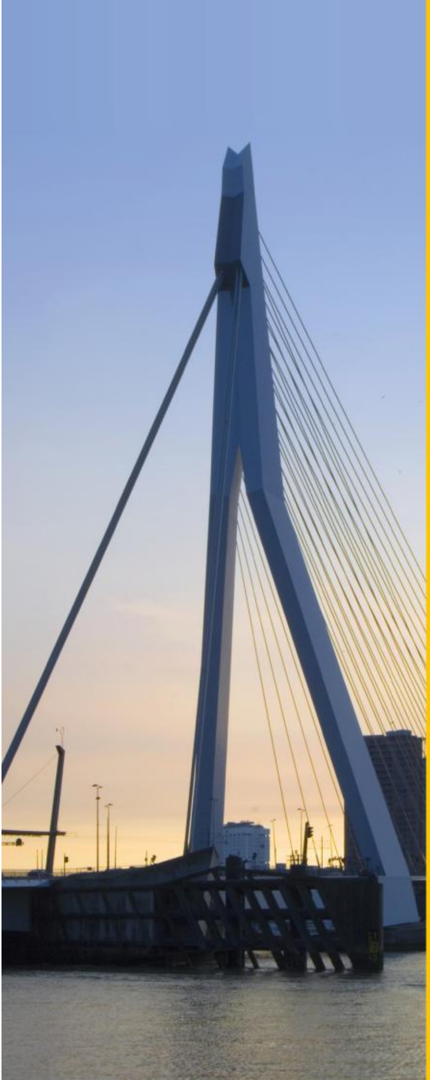
- Twelve weeks of training in VAT on Tuesday from September-December 2026
- In Dutch
- Suitable for:
  - Tax professional in the tax consultancy practice, the business world, academia, the judiciary, other legal professions, ministries or the Tax Authorities
  - 2-9 years experience in VAT
- Paper and defence to obtain certificate

Topics of the Dutch program (in Dutch)

1. Algemene beginselen van EU-recht/ misbruik van recht en fraude
2. Belastingplicht/publiekrechtelijke lichamen
3. Concernproblematiek I en II
4. Maatstaf van heffing/Btw-aspecten van vouchers
5. Aftrek van voorbelasting I en II
6. Intracommunautaire goederenhandel/Plaats van dienst en vaste inrichting
7. Douanerechten, heffingen bij invoer/onroerend goed
8. Vrijstellingen: medisch, onderwijs, sociaal-cultureel I en II
9. Financiele vrijstellingen I en II
10. Internationale en nationale ontwikkelingen in het fiscale toezicht I en II
11. Wetgevingsproces/Btw en technologie
12. Controle en boete, fraude en strafrecht/Btw ondernemingsstrategieën in Europa

For more information

- Post Master EU VAT: [Post-Master EU VAT (in English) - EFS, Erasmus University Rotterdam]
- Post Master Indirecte Belastingen: [Post-Master Indirecte Belastingen - EFS, Erasmus University Rotterdam]
- Top Level Seminar EU VAT: [Top Level Seminar 'EU VAT: Recent Developments and Outlook' (in English) - EFS, Erasmus University Rotterdam]



Recent cases on intra-Community trade

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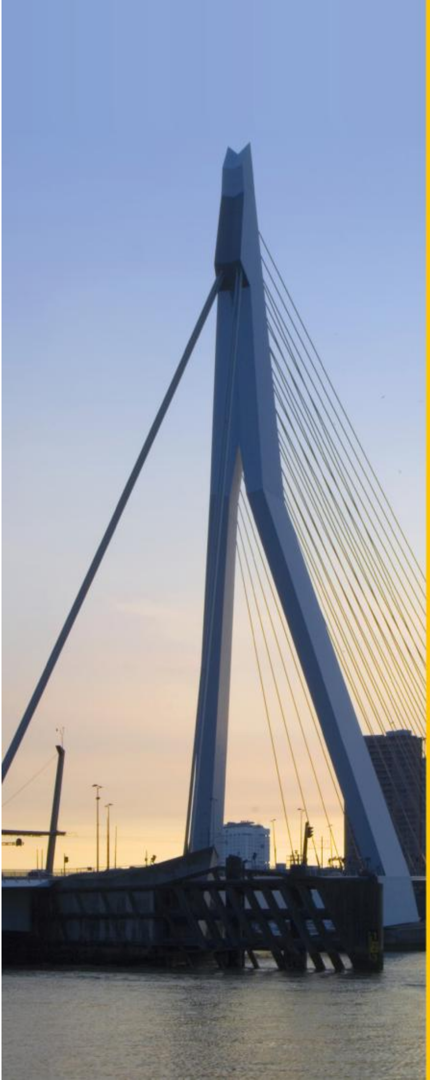

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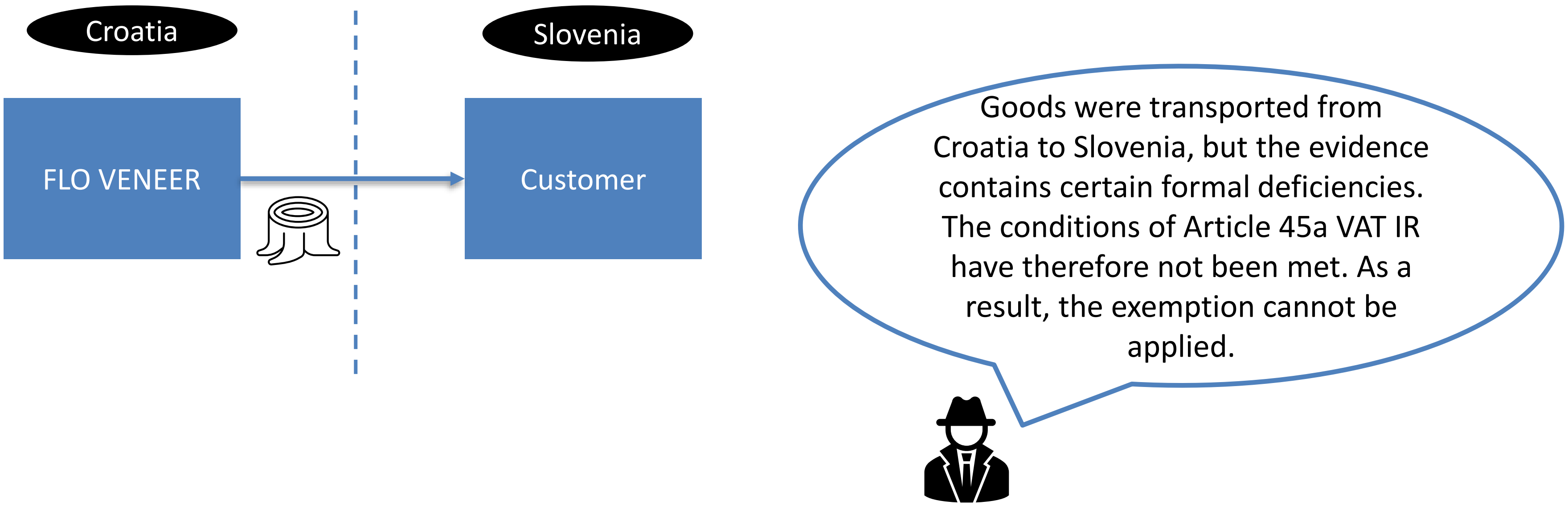
ERASMUS FISCAL STUDIES

Provision of evidence for intra-Community transport

C-639/24 FLO VENEER

Erasmus University Rotterdam

Facts


Croatia
Slovenia
FLO VENEER
Customer
Goods were transported from Croatia to Slovenia, but the evidence contains certain formal deficiencies. The conditions of Article 45a VAT IR have therefore not been met. As a result, the exemption cannot be applied.

Question raised

- Must the exemption for intra-Community supplies be denied when the supplier is not able to provide the evidence listed in art. 45a VAT IR?

Quick fix 2020 – presumption of transport

Rebuttable presumption of transport

Transport by supplier

Two pieces of non-contradictory evidence issued by two different independent parties → two transport documents or a- and b-document

Transport by recipient

- Written statement acquirer
- Two pieces of non-contradictory evidence issued by two different independent parties → two transport documents or a- and b-document

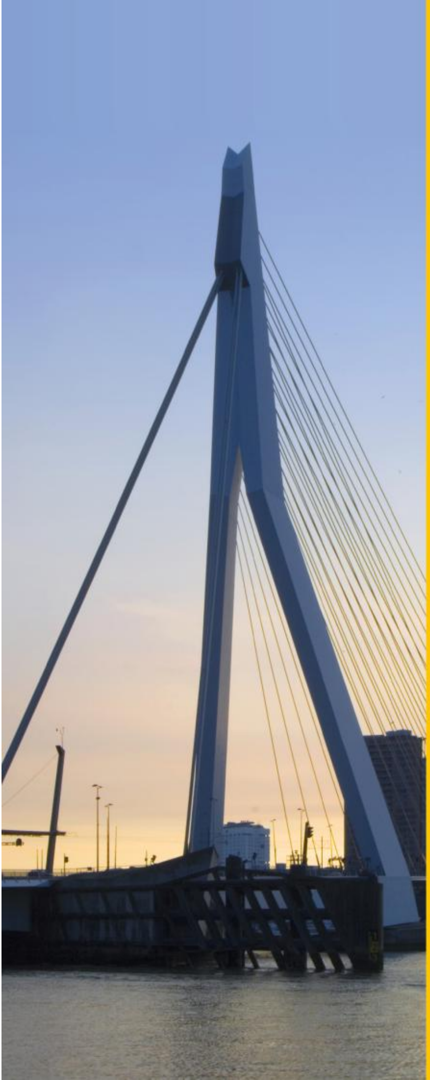
Relevant documents: a) transportdocuments and b) insurance policy or bank documents proving payment for the transport, official documents issued by a public authority such as a notary confirming arrival of the goods or a receipt issued by a warehouse keeper confirming storage in the Member State of destination

CJEU ruling

- Conditions for application of the exemption:
  - Goods supplied to another taxable person (or non-taxable legal person) in a MS other than the MS of dispatch/transport
  - Taxable person (or non-taxable legal person) registered for VAT in MS other than the MS of dispatch/transport + has indicated VAT ID nr to supplier
- Art. 45a VAT IR presumption but not an exhaustive list
- Tax administrations required to assess any evidence provided by the supplier to determine whether conditions of exemption are met
- Substance over form approach and in line with neutrality principle

Analysis

- Understandable question because of confusing wording in preamble of Regulation 2018/1912
- Inclusion in implementing regulation however shows that practice of Member States cannot be changed by this provision
- Interpretation in line with explanatory notes
- No clarity on the concept of independent parties
- Does the CJEU follow the approach that having the VAT ID nr of the recipient is a substantive condition?
  – Mentioned in para. 14
  – However, question has not been raised
  – Not mentioned as substantive condition in Brose Prievidza
  – Answer will be provided in James Howden, T-689/25



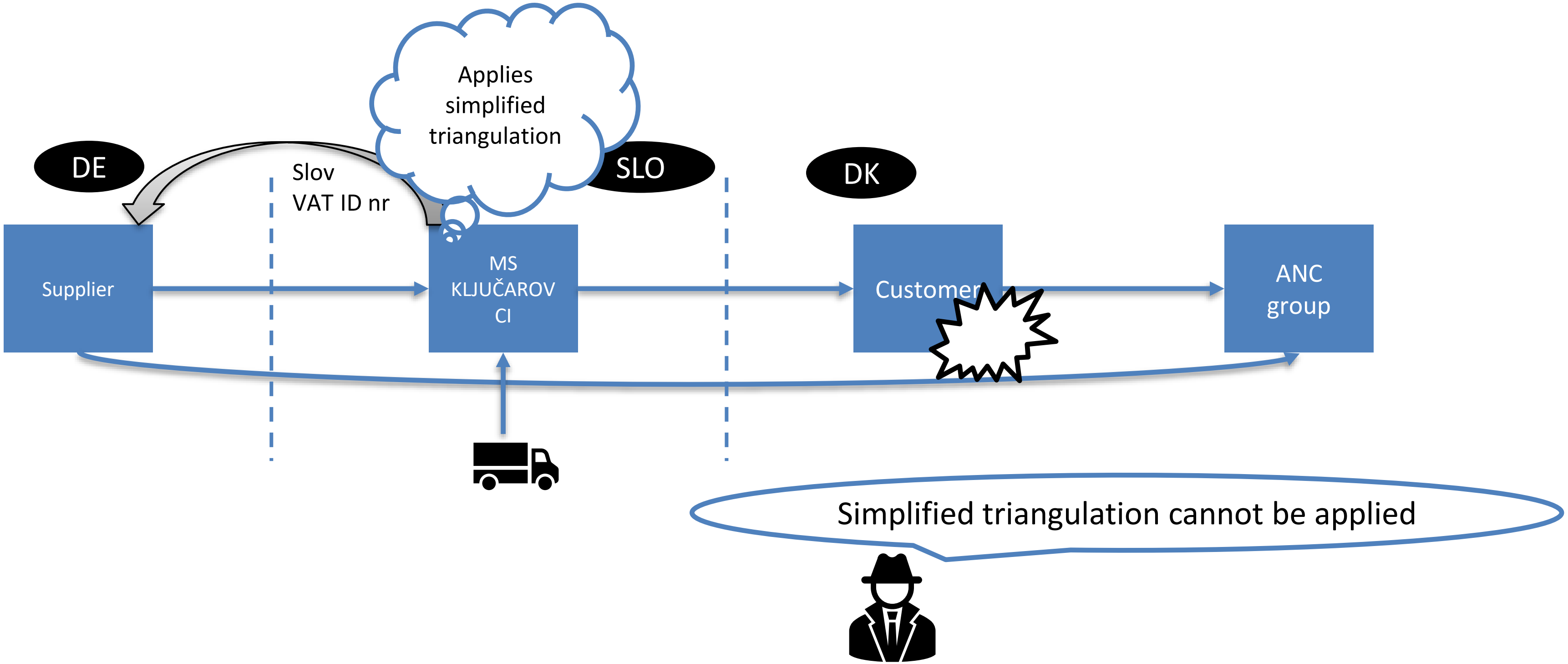
EFS ERASMUS FISCAL STUDIES

Simplified triangulation in four party chain

T-646/24 MS KLJUČAROVCI

Erasmus University Rotterdam

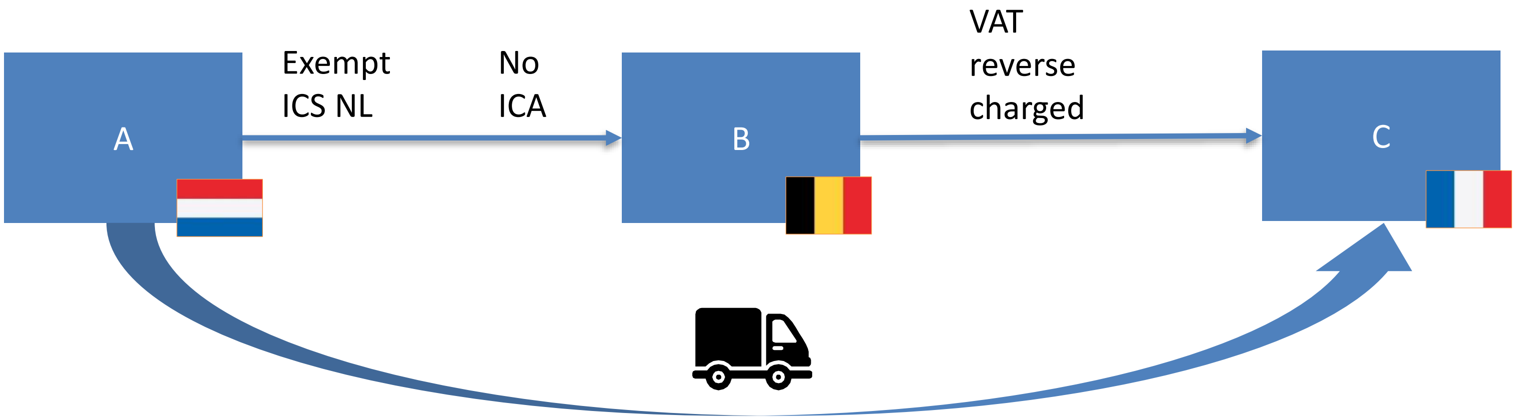
Facts


Applies
simplified
triangulation
DE
Slov
VAT ID nr
SLO
DK
Supplier
MS
KLJUČAROV
CI
Customer
ANC
group
Simplified triangulation cannot be applied

Questions raised

1. Can simplified triangulation be applied in a **supply chain consisting of four parties** when the fourth party is registered for VAT in the same Member State as the third party?
2. Is it relevant that the person claiming the simplification is **aware of the subsequent supply?**
3. Does VAT need to be paid in the Member State that issued the VAT ID nr and can the reduction of the taxable amount be denied when the **supplier knew or should have known** that he was participating in an **abusive transaction**?

Simplified triangulation



Only applicable when A-B supply is the intra-Community supply

- A makes an exempt ICS subject to VAT in NL
- B makes an ICA in France, but is not required to report it
- Obligation to report ICA in Belgium (safety net ICA) is waived
- B makes a domestic supply in France on which the VAT is reverse charged to C

General Court ruling – first question

- Simplified triangulation can be applied in this situation:
  - Not required that the person to whom a subsequent supply is to be made within the meaning of art. 141 (c) and (d) VAT-D physically possesses the goods or that goods must be physically transported and/or received by that person
  - Objective of simplified triangulation is to avoid a VAT registration of party B → does not depend on goods being physically transported to the person for whom the subsequent supply is carried out

General Court ruling – second question

- Simplified triangulation can also be applied when the second supplier is not aware of the supply to the fourth party
  - Refers to reasoning when answering the first question
- Transactions must be taxed by taking into account their objective characteristics

General Court ruling – third question

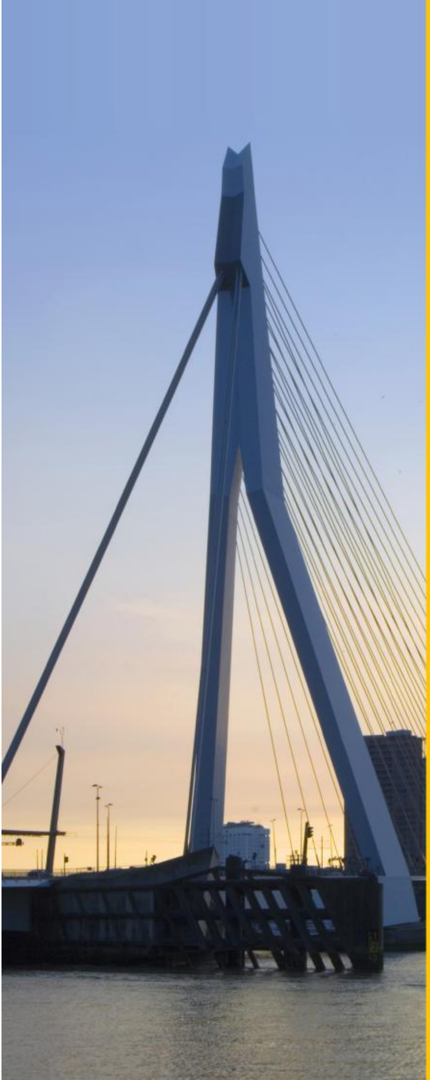
- Rights under VAT-D can be denied in case of fraud or abuse
  - Objective conditions for obtaining the advantage under the VAT-D have not been met
- Refusal of the benefit not contrary to principle of proportionality, neutrality, legal certainty or protection of legitimate expectations
- Person applying the simplified triangulation can be required to report an intra-Community acquisition and can be denied the right to the reduction of the taxable amount if this person knew or should have known that he/she was participating in VAT fraud

Analysis – first and second question

- Broad interpretation which is in line with the objective to provide administrative relief
- Approach consistent with interpretation in Explantory notes
- Approach in second question consistent with CJEU W (Exportation à l’insu de l’assujetti)

Analysis – third question

- Double taxation of ICA → Denmark and Slovenia
  - Not problematic in the light of recent approach in CJEU Konreo
- ECHR endorsed CJEU's position of no criminal charge (Italmoda)
  - Took into account that calculation of the VAT assessment was based on a standard calculation of the VAT owed
- General Court states that principle of proportionality cannot be invoked in fraudulent cases by referring to para. 52 and 54 of the CJEU R case
  - Incorrect → principle can be invoked, but it wasn't breached in the situation of R.



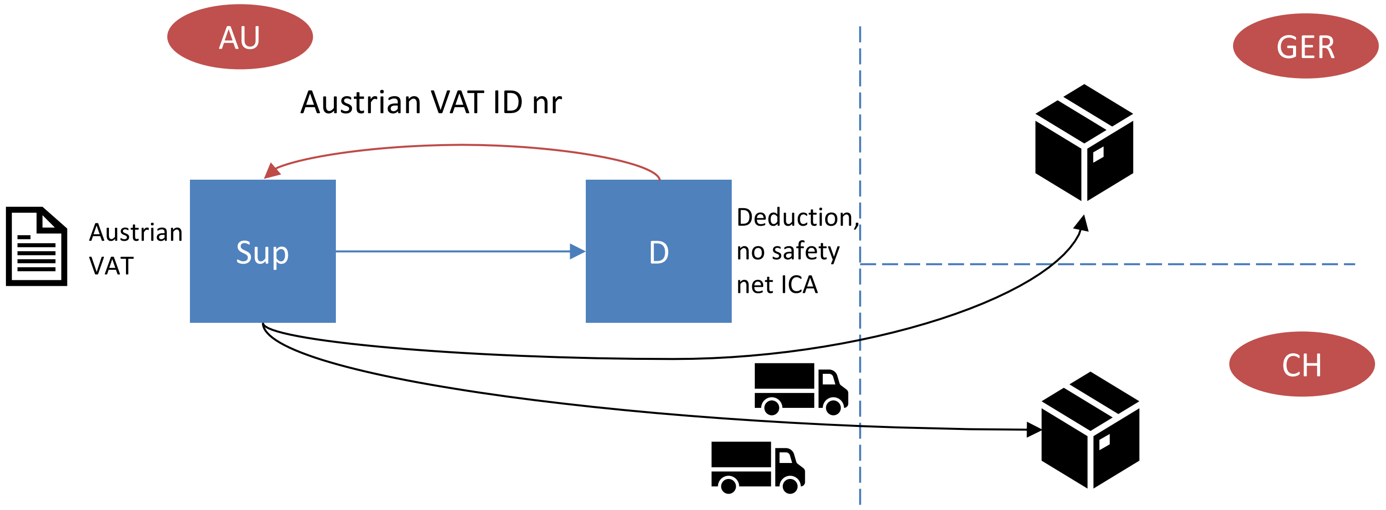
EFS ERASMUS FISCAL STUDIES

Consequences of incorrectly treating ICS as domestic supply

T-638/24 Finanzamt Ostenreich

Erasmus University Rotterdam

Facts



2011 t/m 2015

Austrian VAT due based on art. 203 VAT-D as incorrectly charged VAT. Recipient cannot deduct this VAT. Different from case C-696/20 (B)

Questions raised

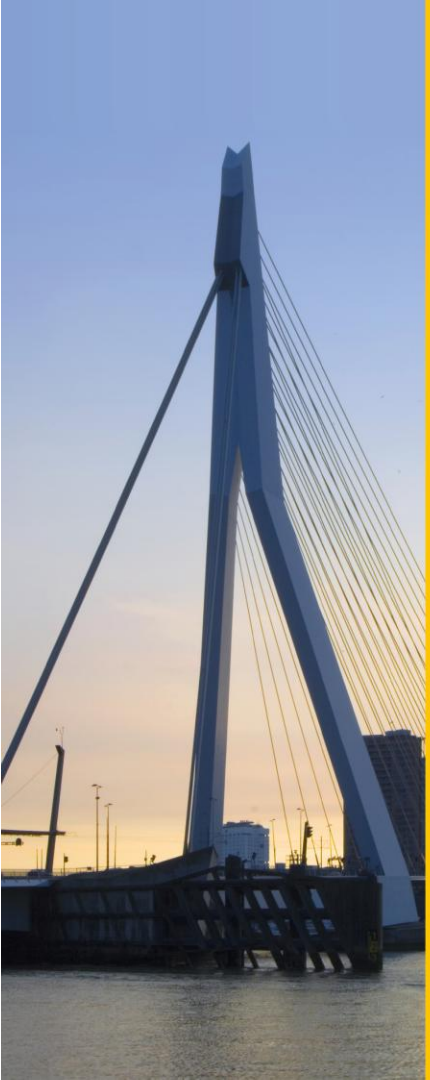
1. Is a national provision permissible under which a **safety net/ number acquisition is deemed to take place in Austria** due to the Austrian VAT identification number used by the customer in the transaction, in a situation where an intra-Community acquisition is accompanied by an intra-Community supply that has been treated in Austria as an exempt supply, but where Austrian VAT is nevertheless due on that supply because Austrian VAT has been stated on the invoice?
2. If the first question is answered in the affirmative: is there a safety net/number acquisition where the VAT incorrectly stated on the invoice for the VAT-exempt intra-Community supply is no longer due because the issuer subsequently **corrects that invoice**, and if so, at what point in time is that intra-Community acquisition deemed to take place?

CJEU judgement (only first question)

- Before the introduction of art. 138 (1) (b) VAT-D, art. 41, first paragraph VAT-D applies as well when the EU Member State that levies the safety net/number acquisition is the Member State of departure
- By exempting the ICS as corollary of the ICA double taxation and infringement of the neutrality principle can be avoided
- Art. 41 VAT-D pursues to guarantee that the ICA is subject to VAT in the EU Member State of arrival and that the same ICA is not taxed twice
- Art. 203 VAT-D aims to prevent the risk of loss of tax revenue
- Art. 41 and 203 VAT-D have different conditions of application and each pursue a specific purpose → can be applied together
- The VAT that is due based on art. 203 VAT-D can be corrected → This is possible in Austria even after the statute of limitation has expired
- No infringment of neutrality and proportionality principle when ICA is is subject to VAT in EU Member State of departure when VAT is due in that Member State on the basis of art. 203 VAT-D
- No infringment of earlier case C-696/20 → supply definitely subject to VAT in Member State of departure in that situation

Analysis

- Two different outcomes in two cases with a similar fact pattern
    - Current case → correct the art. 203 VAT and obligation to report safety net/number acquisition (with the right to reduce the taxable amount when the ICA has been reported in the Member State of arrival)
    - Case C-696/20 → no safety net acquisition because incorrectly charged VAT cannot be corrected
- Quick fix 2020: VAT identification number of recipient from an EU country different from the country of departure a substantive condition
- VAT correctly charged and deduction for recipient
    - No safety net/number acquisition?
        - Text of art. 41 VAT-D has not been changed in 2020
        - Its objective to ensure that the ICA is subject to VAT in the EU Member State of destination and double taxation is prevented still applies



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Thank you for your attention