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## IFA 17 January 2017

### The recent Case Law of the Court of Justice of the European Union in VAT - what are the trends?

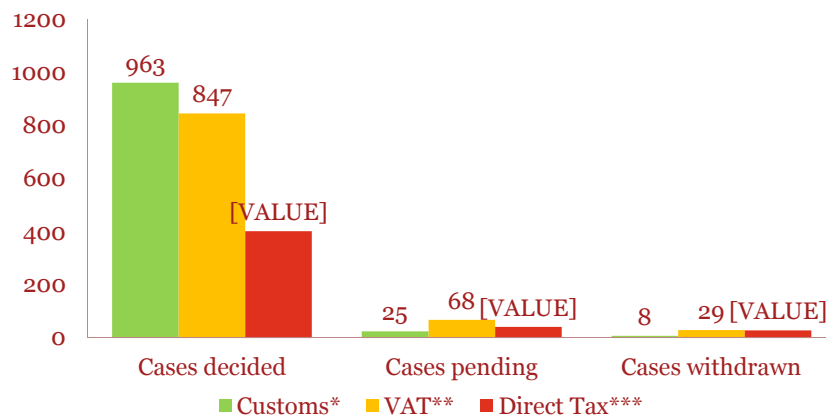
Ine Lejeune – Partner Tax policy and Dispute Resolution at Law Square

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**Significant more ITX cases compared to direct tax cases (1970 – 31 December 2016)**

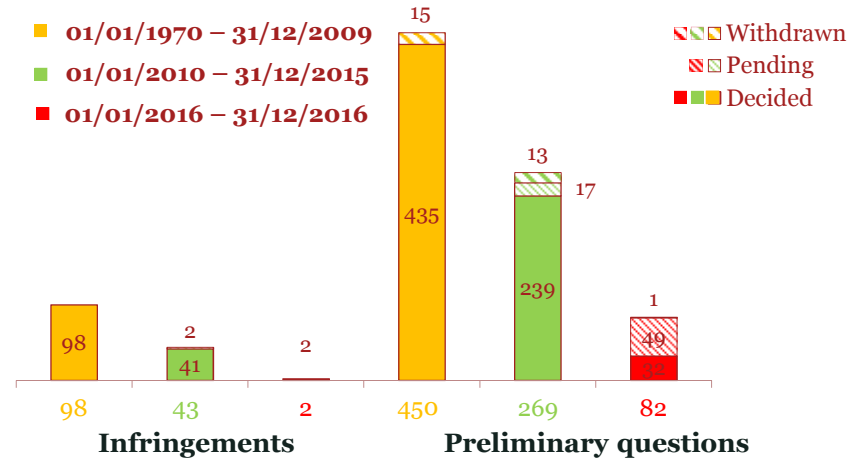


\* Curia.europa.eu, judgements, pending cases and orders (removal from the register) with subject matters: Value for customs purposes, Common Customs Tariff, Charges having equivalent effect, Excise duties, Customs cooperation, and Customs Union, 31 December 2016.

\*\* Based on Curia.europa.eu, together with additional selection of cases by Law Square.

\*\*\* [https://ec.europa.eu/taxation\\_customs/sites/taxation/files/docs/body/court\\_cases\\_direct\\_taxation\\_en.pdf](https://ec.europa.eu/taxation_customs/sites/taxation/files/docs/body/court_cases_direct_taxation_en.pdf), 31 December 2016

### Inflation of CJEU cases on VAT (since 1 January 2010 up to 31 December 2016)



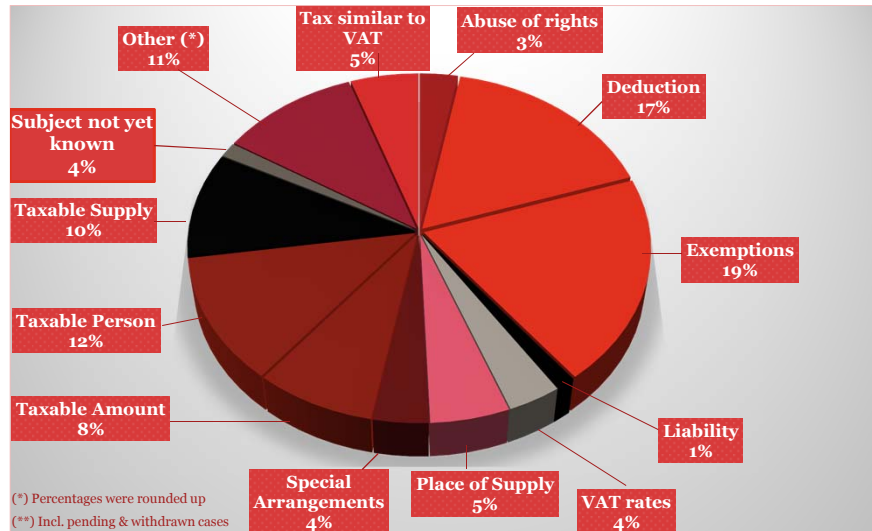
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### CJEU Cases by subject (1970 – 31 December 2016)(\*)

944 cases(\*\*): 143 infringements (15,15%) / 801 preliminary questions (84,85%)



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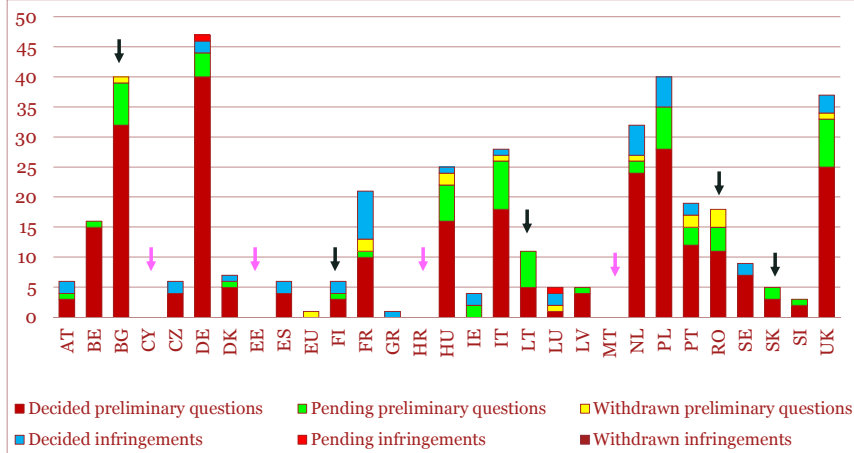
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## CJEU cases on VAT by Member State (2010 – 31 December 2016)

↓ MS without cases before the CJEU

↓ MS more active in 2016 compared to 2015

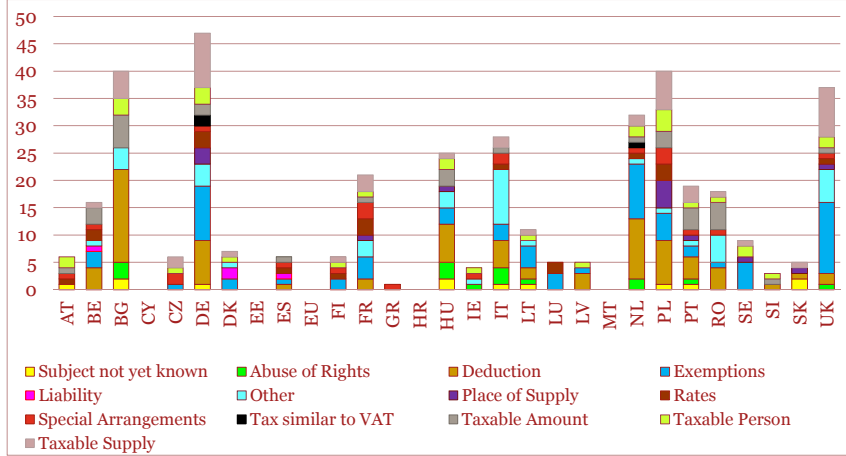


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## CJEU cases on VAT by subject by Member State (2010 – 31 December 2016)



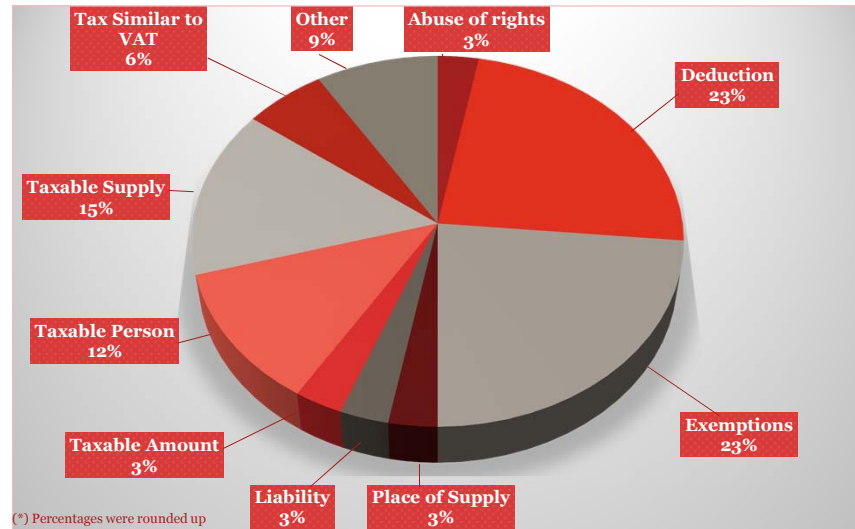
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### CJEU Cases by subject – decided in 2016(\*)

34 cases: 2 infringements/ 32 preliminary questions



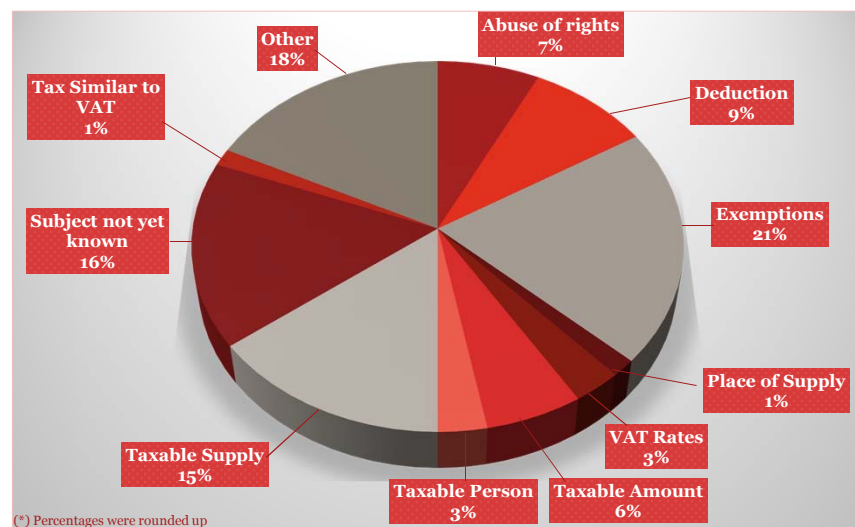
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### CJEU Cases by subject – pending in 2016(\*)

68 cases: 2 infringements/ 66 preliminary questions



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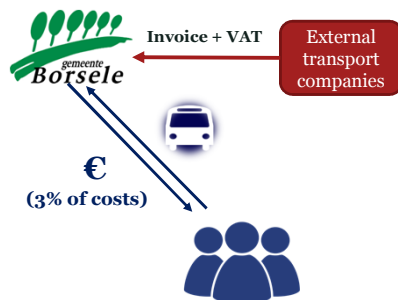
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Is the Court confirming its "old" case law or not? A selection of fundamental topics.

***Gemeente Borsele, C-520/14, 12 May 2016***

*VAT – Economic activity – School transport on behalf of a municipality – Financial contribution from parents*

FACTS



DICTUM

- Article 9(1) of the VAT Directive must be interpreted as meaning that a **regional or local authority** which **provides a service for the transport of schoolchildren** under conditions such as those described in the main proceedings does **not carry out an economic activity and is not therefore a taxable person.**

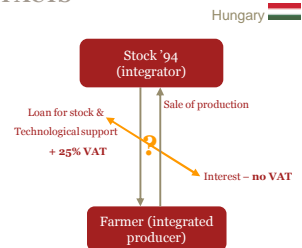
## Lajver – C-263/15 – 2 February 2016

- **Article 9(1)** of Directive 2006/112 must be interpreted as meaning that the **operation of agricultural engineering works by a non-profit company** which engages in such commercial activities only on an **ancillary basis**, constitutes an **economic activity**, notwithstanding the fact that **those works have in large part been financed by State Aid** and that their operation gives rise only to **revenue from modest fees**, provided that that fee can be regarded as having a **‘continuing basis’** on account of the period of time during which it is to be charged.
- **Article 24** of Directive 2006/112 must be interpreted as meaning that the operation of agricultural engineering works, constitutes a **supply of services for consideration**, on the ground that the services rendered are **directly linked to the fee received** or to be received, provided that that modest fee constitutes **remuneration** for the service supplied and **notwithstanding** the fact that **performance of those services is a legal obligation**. It is for the referring court to determine this.

## Stock '94 – C-208/15 – 8 December 2016

*Single, complex supply – Distinct and independent supplies - Ancillary and principal supply*

### FACTS



### DICTUM

- Article 1(2), Article 2(1)(a) and (c), Article 14(1), Article 24(1), Article 73, Article 78(b), and Article 135(1)(b) of the VAT Directive must be interpreted that:
- An **integrated agricultural cooperation** providing that an economic operator **delivers goods to a farmer and grants him a loan intended for purchasing those goods** constitutes a **single transaction** for the purposes of the directive, in which the supply of the goods is the **principal supply**. The **taxable amount** of that single transaction is made up of both the **price of those goods** and the **interest paid on the loans granted** to the farmers.
- The fact that an **integrator may provide the farmers with additional services** or **buy their agricultural production** has **no bearing on the categorization of the transaction** at issue as a **single transaction**, for the purposes of Directive 2006/112.

Cfr. C-224/11 BGZ Leasing, C-42/14 Woskova, C-461/08 Don Bosco Onroerend goed, C-175/09 Axa UK, C-392/11 Field Fisher Waterhouse, C-276/09 Everything Everywhere.

**Bastova – C-432/15 – 10 November 2016**  
*Supply for consideration – right to deduct linked to ‘overall activity’ – single composite supply – rate*

**FACTS**

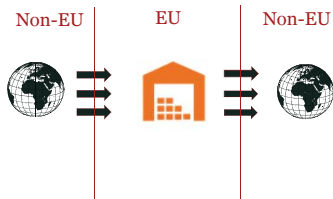


**DICTUM**

- Article 2(1)(c) of Council Directive 2006/112/EC must be interpreted to the effect that the **supply of a horse by its owner, who is a taxable person for value added tax purposes, to the organiser of a horse race for the purpose of the horse's participation in that race does not constitute a supply of services for consideration within the meaning of that provision where it does not give rise to a payment awarded for participation or any other direct remuneration and where only the owners of horses which are placed in the race receive a prize, even if that prize is determined in advance. On the other hand, such a supply of a horse for the purposes of its participation in the race constitutes a supply of services for consideration where it gives rise to the payment, by the organiser, of remuneration irrespective of whether or not the horse in question is placed in the race.**
- A taxable person, who breeds and trains his own race horses and those of other owners, has the right to deduct input value added tax on the transactions relating to the preparation for horse races of his own horses and the participation of his own horses in races, on the ground that the costs pertaining to those transactions are **part of the general costs linked to his economic activity**, provided that the costs incurred in each of those transactions have a **direct and immediate link with that overall activity**. That may be the case if the costs thus incurred pertain to race horses actually intended for sale or if the participation of those horses in races is, from an objective point of view, a means of promoting the economic activity, this being a matter for the referring court to determine. In a situation where such a right to deduct exists, **any prize won by the taxable person on account of the placing of one of his horses in a race is not to be included in the taxable amount for value added tax purposes.**
- Article 98 of the Directive 2006/112, read in conjunction with point 14 of Annex III thereto, must be interpreted to the effect that the **reduced rate of value added tax may not be applied to a single composite supply of services, made up of several components relating, inter alia, to the training of horses, the use of sporting facilities and the stabling, feeding and other care provided to the horses where the use of the sporting facilities, within the meaning of point 14 of Annex III to that directive, and the training of the horses constitute two components of that composite supply having equal status or where the training of the horses constitutes the main component of that supply, this being a matter for the referring court to assess.**

**Eurogate distribution GmbH v. Hauptzollamt Hamburg-Stadt, C-226/14, & DHL Hub Leipzig GmbH t. Hauptzollamt Braunschweig, C-228/14, 2 June 2016**  
*Existence of customs debt does not automatically lead to import VAT*

**FACTS**



**DICTUM**

- According to article 7(3) of the Sixth VAT Directive\*, VAT on goods which have been **re-exported as non-Community goods is not due** where those goods were **removed from a customs arrangement** as a result of their re-exportation. This is also the case where a **customs debt** is incurred exclusively on the basis of **Article 204 CCC**.
- Consequently **nobody is liable** for payment of VAT.

\*Article 61 of Directive 2006/112/EC



## Wortmann KG – C-365/15 – 8 September 2016

### Customs – Annulment of the regulation imposing an antidumping duty - Repayment of import duties – Obligation to pay interest

#### FACTS



#### OPINION AG

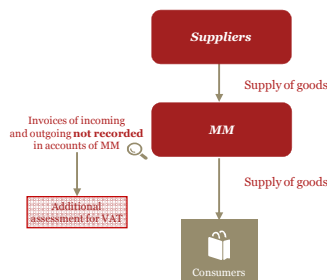
- Where a Member State has levied **charges in breach of the rules of Community law**, individuals are **entitled to reimbursement** not only of **the tax unduly levied** but also of the amounts paid to that State or retained by it which relate directly to that tax, **including losses constituted by the unavailability of sums of money as a result of a tax being levied prematurely**.
- If the **legal basis** on which taxes (antidumping duties) have been collected is **annulled**, the paid **sums must be reimbursed** by the tax authorities. This reimbursement **must include interest as from the date of payment of the taxes**.
- Reimbursement of the principal and of the interest reflects the primacy of EU law. Article 266 TFEU states that an institution whose act has been declared void must take the necessary measure to comply with the judgement.

See also: *Metallgesellschaft and other*, C-397/98; *Test Claimants in the FII Group Litigation*, C-446/04; *Irimi*, C-565/11 and *Littlewoods Retail and Others*, C-591/10.

## Maya Marinova – C-576/15 – 5 October 2016

### Use of presumption to assess VAT – Proportionality and neutrality

#### FACTS



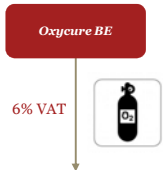
#### DICTUM

- Article 2 (1)(a), Article 9(1), Article 14(1) and Articles 73 and 273 of the VAT directive and the **principle of fiscal neutrality** must be interpreted as **not precluding** national legislation under which, **where goods are not in the warehouse** of the taxable person to whom they have been supplied and the **tax documents of relevance** to those goods have **not been recorded in the accounts** of that taxable person, tax authorities may **presume** that the **taxable person subsequently sold those goods to third parties** and **determine the taxable amount** of the sale of those goods **according to the factual information at hand pursuant to rules not provided for in that directive**. It is, however, for the referring court to ascertain whether the provisions of the national legislation go further than is necessary to ensure the correct collection of VAT and to prevent evasion.
- See also judgments: *Macikowski*, C-499/13, § 37 (26 March 2015); *NCC Construction Danmark*, C-174/08, §41 (29 October 2009) and *Commission v. Luxembourg*, C-502/13, § 50 (5 March 2015)

## Oxycure Belgium – C-573/15 – Opinion of the Advocate-General of 20 October 2016

### Principle of fiscal neutrality – reduced rate of VAT

#### FACTS



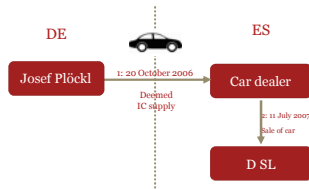
#### OPINION

- Article 98(1) and (2) of Council Directive 2006/112/EC, as amended by Council Directive 2006/138/EC of 19 December 2006, and Annex III, points 3 and 4, of that directive **do not preclude a national provision** by which a **reduced rate of value added tax is not applied to the supply and/or hire of oxygen concentrators** like those at issue in the main proceedings, inasmuch as those **appliances neither constitute pharmaceutical products** within the meaning of Annex III, point 3, of Directive 2006/112, as amended, **nor are for the exclusive use of the disabled** within the meaning of point 4 of that annex, which it is for the referring court to ascertain.
- The **principle of fiscal neutrality may not be interpreted as authorising the thwarting of the respective ambits of the categories** set out in Annex III, points 3 and 4, of Directive 2006/112, as amended, by **granting a reduced rate of value added tax for the supply and/or hire of devices that do not satisfy the definitions laid down in those points.**

## Josef Plöckl – C-24/15 – 20 October 2016

### Exempt deemed intra-Community supply – missing VAT number – substance over form

#### FACTS



See also: VSTR, C-587/10, 27 September 2012

#### DICTUM

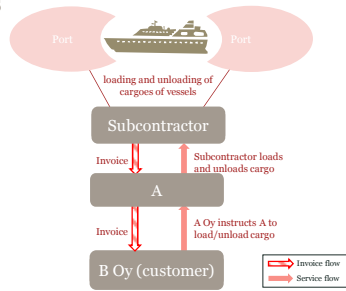
- The principle of **fiscal neutrality** requires that an **exemption from VAT** is allowed if the **substantive requirements are satisfied**, even if the taxable person has failed to comply with some of the formal requirements.
- In circumstances in which the taxable person's **participation in tax evasion** has in any event been **ruled out**, he **cannot be refused an exemption from VAT** on the ground that he did not take all the measures which could reasonably be required of him in order to satisfy a formal obligation, namely provision of the VAT identification number issued by the Member State of destination of the intra-Community transfer.
- Member States can adopt measures to ensure the **correct collection of VAT** and the **prevention of evasion**, such a **refusal to allow an exemption would go further than is necessary** to attain those objectives, since such an infringement of national law can be penalized by a fine proportionate to the seriousness of the infringement.

Cfr. Proposal of the European Commission to set the registration as a VAT taxable person as a substantial condition.

## A Oy– C-33/16 – Opinion of the Advocate General - 7 December 2016

### Supply of services to meet the direct needs of vessels used for navigation on the high seas or of their cargoes

#### FACTS



#### OPINION

Article 148(d) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as meaning that the **concept of the supply of services to meet the direct needs of the vessels referred to in Article 148(a) of that directive or of their cargoes includes the services of loading and unloading cargo onto and off a ship.**

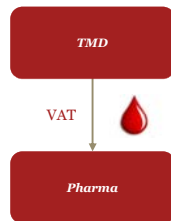
Article 148(d) of the VAT Directive must be interpreted as meaning that the exemption provided for in that provision includes the services of loading and unloading cargo onto and off a ship, where those **services are supplied by a subcontractor acting on behalf of an economic operator** which is itself linked not to the shipowner but to a freight forwarder, carrier or forwarding agent, or to the holder of the cargo concerned.

See also: CJEU 3 September 2015, case C-526/13, *Fast Bankering Klaipėda*; CJEU 14 September 2006, cases C-181/04 to C-183/04, *Elmekci* and CJEU 26 June 1990, case C-185/89, *Velker International Oil Company*

## TMD– C-412/15 – 5 October 2016

### Exemptions– Supplies of human blood for industrial purposes

#### FACTS



#### DICTUM

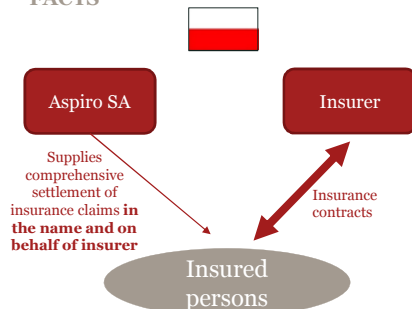
Article 132 (1)(d) of Directive 2006/112 must be interpreted to the effect that **supplies of human blood** which Member States are required to exempt by virtue of that provision do **not include supplies of plasma obtained from human blood** where that plasma is intended to be used, not for direct therapeutic purposes, but **exclusively for the manufacture of medicinal products.**

## ***C-543/14 – Ordre des barreaux francophones et germanophone***

- Can services supplied by lawyers be exempted under Art. 132(1)(g) VAT Directive if legal services rendered under national legal aid scheme can be equated to services closely linked to welfare and social security work?
  - The case stems from the application of the standstill provision in Belgium until 31 December 2013
  - According to the CJEU Art. 132(1)(g) VAT Directive does not allow a Member State to exempt services rendered by lawyers under a national legal aid scheme
- See also ***C-335/14 – Les Jardins de Jouvence SCRL***

## ***Aspiro, C-40/15, 17 March 2016*** ***VAT exemption - Insurance transactions and related services of insurance brokers and insurance agents (article 135(1)(a) of the VAT Directive)***

### FACTS



See also judgments: CPP, C-349/96, §17; Taksatorringen, C-8/01 § 39-41 and 45; J.C.M. Beheer, C-124/07 §§ 9, 18 and 29; and Arthur Andersen, C-472/03, §§ 33 and 36.

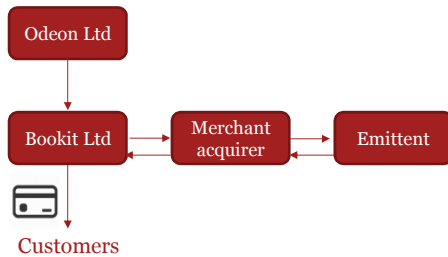
### DICTUM

**Article 135(1)(a) of the VAT Directive exempts 'insurance transactions':**

- transactions carried out by the insurers themselves;
- the provision of insurance cover by a taxable person who is not himself an insurer but procures such cover for his customers by making use of the supplies of an insurer who assumes the risk insured.
- In any case: the existence of a contractual relationship between the provider of the insurance service and the person whose risks are covered by the insurance (the insured party);
- **'services related' to 'insurance and reinsurance transactions' – 2 conditions:**
  - The services provider must have a relationship with both the insurer and the insured party;
  - The activities must cover the essential aspects of the work of an insurance agent.

## Bookit Ltd., C-607/14, 26 May 2016 VAT exemption for card processing services

### FACTS



See also: CJEU 28 July 2011, Case C-350/10, Nordea Pankki Suomi Oyj and CJEU 5 June 1997, Case C-2/95, Sparekassernes Datacenter (SDC)

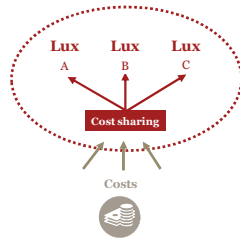
### DICTUM

- a **transfer** is a transaction consisting in the execution of an order for the transfer of a sum of money from one bank account to another;
- in order to be characterised as a transaction concerning transfers within the meaning of Article 135(1)(d) of the VAT Directive, the services must be fulfilling in effect the **specific, essential functions of a transfer and having the effect of transferring funds and entailing changes in the legal and financial situation ≠ the supply of a mere physical or technical service**;
- in particular, the extent of the **liability** of the supplier of services: restricted to technical aspects or **extends it to the specific, essential aspects** of the transactions?
- Therefore, the VAT exemption for transactions concerning payments and transfers is **not applicable** to 'card handling' services supplied by a taxable service provider where an individual purchases, via that service provider, a cinema ticket - which the service provider sells for and on behalf of another entity - and pays for it by debit card or by credit card.

See also: National Exhibition Center – C-130/15 – 26 May 2016

## EC v. Luxembourg – C-274/15 – Opinion of the Advocate-General of 6 October 2016 VAT exemption of supplies of services by independent groups to their members

### FACTS

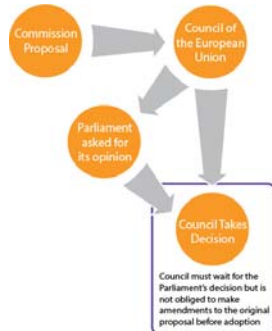


### OPINION

- Luxembourg has failed to meet its obligations under articles 2, (1), (c) and article 132, (1), (f) of Directive 2006/112/EC by adopting provisions that **exempt services of independent groups of persons to their members** if those services were **not directly necessary for the pursuit of their activity**.
- Luxembourg has failed to meet its obligations under articles 132, (1), (f) and 168, (a) of Directive 2006/112/EC by adopting provisions that provide a **right to deduct VAT to a member of an independent group of persons for services provided not to the member itself but to the group**.
- Luxembourg has failed to meet its obligations under articles 132, (1), (f) and 14, (2), (c) and article 28 of Directive 2006/112/EC by considering that the **billing of costs to the group is not relevant from a VAT point of view** when a member of the group purchases goods and services in his own name but on behalf of the group.
- See also: DNB Banka Case C-326/15

**Rzecznik Praw Obywatelskich, C-390/15, 14 June 2016 (opinion)**  
*Equal treatment e-books, newspapers periodicals – legislative process*

**FACTS**



**OPINION**

- **Supply of digital books on a physical support**, on the one hand, and their **supply electronically**, on the other hand, are **comparable** in light of both the objective of the rules at issue and the principles and objectives of the field to which the rules relate.
- The **differing treatment of digital books depending on their means of transmission**, which results from point 6 of Annex III to the VAT Directive, in conjunction with Article 98(2) of that directive, in view of the reduced tax rate, is therefore **justified** and consequently does **not infringe the principle of equal treatment**.
- European Parliament was properly involved in the legislative procedure.

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**The influence of the Charter of Fundamental Rights**

## *EU Charter of Fundamental Rights*

- **Charter of Fundamental rights of the European Union**

- ✓ Legally binding since 1 December 2009 (Lisbon Treaty)
- ✓ Six chapters
- ✓ 54 articles
- ✓ Strong link with ECHR



## *EU Charter of Fundamental Rights*

- **Article 19 (1) TEU:**

*“The Court of Justice of the European Union shall include the Court of Justice, the General Court and specialised courts. It shall ensure that in the interpretation and application of the Treaties the law is observed. Member States shall provide remedies sufficient to ensure effective legal protection in the fields covered by Union law.”*

- **Charter of Fundamental rights of the European Union** no. 2012/C 326/02 of 10 October 2012
- Between 2009 and 31/12/2015: **355 judgements** related to the EU Charter of Fundamental Rights (16 related to VAT)
- Application in VAT cases - groundbreaking judgement: **CJEU 26 February 2013, C-617/10, Åkerberg Fransson**



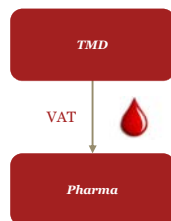
## Rights of the taxable person (Charter)

Charter	Case Law of the European Court of Justice
Article 3 (Right to integrity of a person)	<i>TMD Gesellschaft</i> – C-412/15 – 5 oktober 2016
Article 7 (Respect for private and family life)	<i>WebMindLicenses</i> - C-419/14 - 16 September 2015
Article 8 (Protection of personal data)	<i>WebMindLicenses</i> - C-419/14 - 16 September 2015 <i>Smaranda Bara</i> - C-201/14 - 1 October 2015 (opinion AG)
Article 17 (Right to property)	<i>Delphi Hungary</i> - C-654/13 – 17 July 2014 <i>Banca Antoniana Popolare</i> – C-427/10 – 15 September 2011 (opinion AG)
Article 20 (Equality before the law)	<i>VDP Dental</i> - Joined Cases C-144/13, C-154/13 and C-160/13 - 4 September 2014 (opinion AG) <i>David Hedqvist</i> - C-264/14 - 16 July 2015 (opinion AG) <i>Zimmerman</i> - C-174/11 - 19 July 2012 (opinion AG) <i>RPO</i> – C-390/15 – 8 September 2016 (opinion AG)
Article 41 (Right to good administration)	<i>WebMindLicenses</i> - C-419/14 - 16 September 2015
Article 47 (Right to an effective remedy and to a fair trial)	<i>Belvedere Costruzioni Srl</i> - C-500/10 - 29 March 2012 <i>Surgicare</i> - C-662/13 - 12 February 2015 <i>Ordre des barreaux francophones et germanophone e.a.</i> - C-543/14 - 28 July 2016 <i>European Commission v French Republic</i> - C-492/08 - 17 June 2010 <i>Petar Dzivev</i> – C-310/16 – lodged on 31 May 2016
Article 49 (Principle of legality and proportionality of criminal offences and penalties)	<i>Taricco and others</i> - C-105/14 - 8 September 2015 <i>Schoenimport "Italmoda"</i> - Joined Cases C-131/13, C-163/13 and C-164/13 - 18 December 2014
Article 50 (Right not to be tried or punished twice in criminal)	<i>Åkerberg Fransson</i> - C-617/10 - 26 February 2013 <i>Orsi</i> - C-217/15 - lodged on 10 July 2015 <i>Baldetti</i> - C-350/15 - lodged on 10 July 2015 <i>Luca Menci</i> - C-524/15 - lodged on 1 October 2015
Article 52 (Scope and interpretation of rights and principles)	<i>Smaranda Bara</i> - C-201/14 - 1 October 2015

## Article 3 – Right to integrity

*TMD* – C-412/15 – 5 October 2016

### FACTS



### DICTUM

Article 132 (1)(d) of Directive 2006/112 must be interpreted to the effect that **supplies of human blood** which Member States are required to exempt by virtue of that provision do **not include supplies of plasma obtained from human blood** where that plasma is intended to be used, not for direct therapeutic purposes, but **exclusively for the manufacture of medicinal products**.



## Article 17 – Right to property

CJEU 14 July 2014, C-654/13, *Delphi Hungary*

§36

« S'agissant plus particulièrement du principe d'équivalence, il ressort de la demande de décision préjudicielle qu'il existait, dans le droit hongrois, à la date des faits pertinents au regard du litige au principal, une réglementation nationale portant sur les intérêts de retard qui s'appliquait aux demandes fondées sur la violation du droit administratif national, dans le cas où l'administration fiscale procédait de manière tardive au remboursement de la TVA récupérable. »

## Article 20 – Equality Before the Law

CJEU 4 September 2014, C-144/13, C-154/13, C-160/13, *VDP Dental (opinion AG)*

Such differences in the treatment of Member States and the consequential differences in the treatment of the taxable persons established in them may be justified for a transitional period with a view to the attainment of an objective of harmonisation. In the present case, however, no time-limit is prescribed for the derogation provided for in Article 370 of the VAT Directive. Consequently, the different powers exercised by the Member States in relation to the application of the exemption provided for in Article 132(1)(e) of the VAT Directive have been in place since the Sixth Directive first came into force, in other words for more than 36 years.

§84

However, the question of the compatibility of Article 370 of the VAT Directive with Article 20 of the Charter of Fundamental Rights and Article 4(2) TEU goes beyond the subject-matter of the present requests (sic) for a preliminary ruling.

§85

Also: CJEU 16 July 2015, C-264/14, *Hedqvist (opinion AG)*; CJEU 14 July 2014, C-654/13, *Delphi Hungary* and ECJ 19 July 2012, C-174/11, *Zimmermann (opinion AG)*

## Article 47 – Right to an Effective Remedy and Fair Trial

CJEU 12 February 2015, C-662/13, *Surgicare*

§ 26

"(...) it is for the domestic legal system of each Member State, in particular, to designate the authorities responsible for combatting VAT fraud and to lay down detailed procedural rules for safeguarding rights which individuals derive from EU law provided that **such rules are not less favourable than those governing similar domestic actions (principle of equivalence) and that they do not render impossible in practice or excessively difficult the exercise of rights conferred by the EU legal order (principle of effectiveness) (...)**"

§ 28

"As regards, first, the principle of effectiveness, it should be recalled that every case in which the question arises whether a national procedural provision makes the exercise of rights arising under the EU legal order impossible or excessively difficult must be analysed by reference to the role of that provision in the procedure, its progress and its special features, viewed as a whole, before the various national bodies."

## Article 47 – Right to an Effective Remedy and Fair Trial

CJEU 12 February 2015, C-662/13, *Surgicare*

§ 29

"It follows from those elements that the national procedure in question is favourable to the person suspected of having committed an abuse of rights, inasmuch as it seeks to guarantee the observance of certain fundamental rights, in particular the right to be heard."

Also: CJEU 29 March 2012, C-500/10, *Belvedere Construzioni Srl*; CJEU 10 March 2016, C-543/14, *Ordre des barreaux francophones et germanophones e.a. (opinion AG)*; CJEU 1 June 2010, C-492/08, *European Commission v. French Republic*; CJEU 3 December 2015, C-312/14, *Banif Plus Bank*; CJEU 16 December 2010, C-89/09, *Commission v. France*.

## Article 49 – Legality and Proportionality of Criminal Penalties

CJEU 8 September 2015, C-105/14, *Taricco and others*

- § 55 “However, subject to verification by the national court, the sole effect of the disapplication of the national provisions at issue would be to not shorten the general limitation period in the context of pending criminal proceedings, to allow the effective prosecution of the alleged crimes, and to ensure, if necessary, that penalties intended to protect the financial interests of the European Union and those intended to protect the financial interests of the Italian Republic are treated in the same way. Such a disapplication of national law would not infringe the rights of the accused, as guaranteed by Article 49 of the Charter.”
- § 56 “(...) On the contrary, the acts which the accused are alleged to have committed constituted, at the time when they were committed, the same offence and were punishable by the same criminal penalties as those applicable at present.”
- § 57 “(...) Thus, according to that case-law, the extension of the limitation period and its immediate application do not entail an infringement of the rights guaranteed by Article 7 of that convention, since that provision cannot be interpreted as prohibiting an extension of limitation periods where the relevant offences have never become subject to limitation”

Also: CJEU 18 December 2014, C-131/13, C-163/13, C-164/13, *Schoenenimport “Italmoda”*

## Article 50 – Non Bis In Idem

CJEU 26 February 2013, C-617/10, *Åkerberg Fransson*

Also check Opinion AG for a clear application of EU Charter of Fundamental Rights

- § 33 “Application of the ne bis in idem principle laid down in Article 50 of the Charter to a prosecution for tax evasion such as that which is the subject of the main proceedings presupposes that the measures which have already been adopted against the defendant by means of a decision that has become final are of a criminal nature.”
- § 34 “(...) Article 50 of the Charter does not preclude a Member State from imposing, for the same acts of non-compliance with declaration obligations in the field of VAT, a combination of tax penalties and criminal penalties.”
- § 35 “Next, three criteria are relevant for the purpose of assessing whether tax penalties are criminal in nature. The first criterion is the legal classification of the offence under national law, the second is the very nature of the offence, and the third is the nature and degree of severity of the penalty that the person concerned is liable to incur.”

Pending on this subject: CJEU C-217/15, *Orsi*; CJEU C-350/15, *Baldetti*; CJEU C-524/15, *Luca Menci*

## Exchange of information and the “hunt” for budget

### *Tax authorities love big data*

VAT Action plan

*Immediate measures to tackle VAT fraud under the current rules*

**Towards a robust single European VAT area**

**2016** Measures to improve cooperation between tax administrations and with customs and law enforcement bodies and to strengthen tax administrations' capacity

*Council Directive (EU) 2016/2258 of 6 December 2016 amending Directive 2011/16/EU as regards access to anti-money-laundering information by tax authorities*

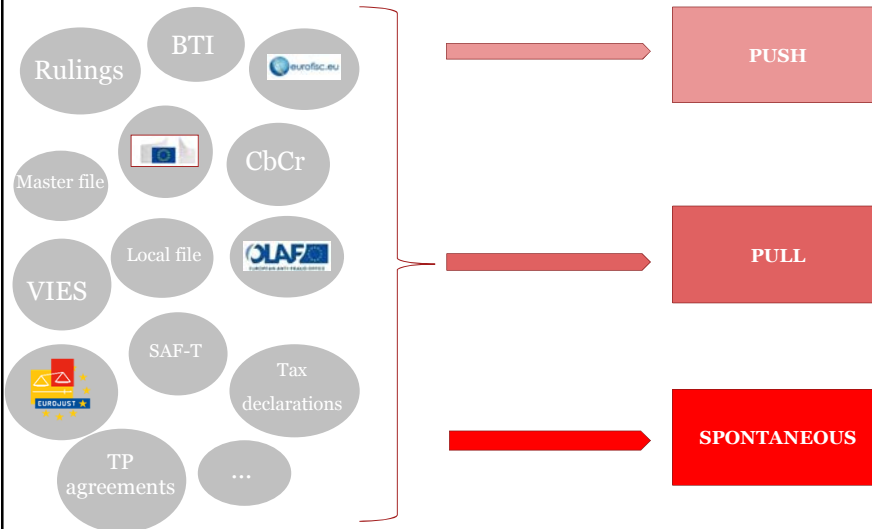
OECD, 25 August 2016

*Multilateral Convention for tax co-operation breaks through the 100 mark*

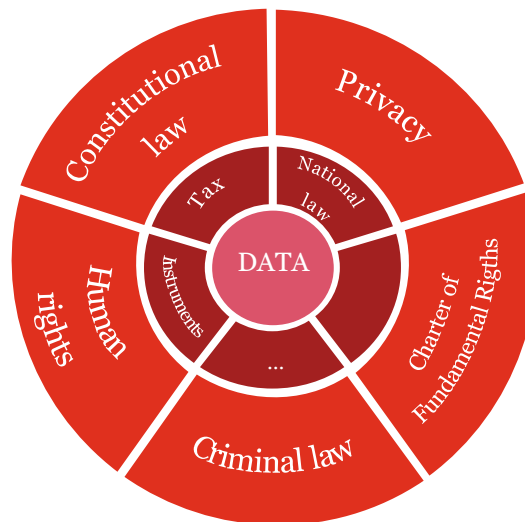
Council conclusions on the VAT action plan and on VAT fraud, 25 May 2016

*Improvement of information exchange could result in a clear improvement of efficiency in the fight against VAT fraud*

## Tax data is big data



## Boundaries



## Smaranda Bara - – C-201/14 – CJEU 1 October 2015

### Prior notification of transfer and processing of personal

#### FACTS



Exchange of data on the basis of:

- Law describing the principle of transfer of personal data;
- Not official published protocol describing the definition of transferable information and the detailed arrangements for transfer of information.

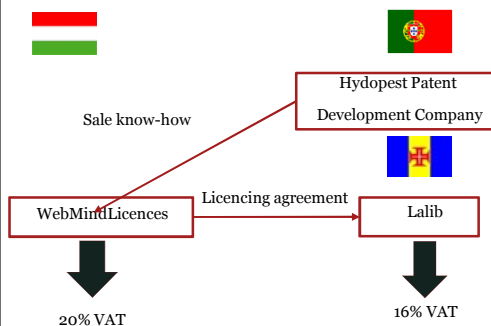
#### DICTUM

- Data subjects from whom data is transferred and subsequently processed between public administrative bodies must be informed beforehand of the transfer/processing;
- Unless an restrictions are foreseen by legislative measures and appropriate safeguards are taken.

## WebMindLicences – C-419/14- 16 September 2015

### Abuse – Obligation to ask administrative cooperation to other Member States – Seizure of data can be infringing article 7 and 8 of the Charter of Fundamental Rights of the EU

#### FACTS



#### DICTUM

- To declare the licensing agreement **abusive**, it has to be determined whether it constituted a **wholly artificial arrangement** concealing the fact that the services at issue were not actually supplied by the company acquiring the licence.
- **Tax authorities of a Member State** which are examining whether value added tax is chargeable in respect of supplies of services that have already been subject to that tax in other Member States **are required to send a request for information to the tax authorities of those other Member States.**
- **The use of evidence obtained without the taxable person's knowledge** in the context of a parallel criminal procedure that has not yet been concluded **is allowed BUT rejected if obtained in violation of the rights guaranteed by the EU law (especially the CFREU).**

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**Conclusions**

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**Thank you**

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