

# ECJ Advocate General Opines on VAT Taxable Amount Adjustment with Unchanged Price: *B. sp. j.* (Case C-606/22) (VAT)

16 November 2023

Report from Stefania Lotito Fedele, VAT Associate, IBFD

On 16 November 2023, Advocate General (AG) Kokott of the Court of Justice of the European Union (ECJ) gave her opinion in the case of *Dyrektor Izby Administracji Skarbowej w Bydgoszczy v B. sp. j.* (Case C-606/22) on whether a taxable person may adjust the taxable amount and claim a refund where it has paid an excess of VAT which was not due because it erroneously calculated its price at too high and, consequently, the state is entitled to keep the excess VAT or whether it must repay it to the same taxable person, in accordance with article 1(2), 73 and 78 of the [VAT Directive \(2006/112\)](#).

The AG opined that the VAT is incurred and due, even if an incorrect tax rate was applied. The price agreed or received, which includes the correct amount of VAT, is the decisive factor. In addition, the AG noted that the final consumers paid an incorrectly calculated higher final price, consequently containing a higher proportion of VAT and, as a result, a smaller profit margin. However, this does not prevent the tax from being refunded. Furthermore, this does not result in any unjust enrichment of the taxable person if a fixed price was previously agreed.

In this case, the AG suggested to give answer to the referred question as follows:

"Article 1(2) and Article 73 of the [VAT Directive \(2006/112\)](#), in conjunction with Article 78(a) thereof, preclude a practice of the national tax authorities whereby an adjustment of the tax owed in the tax return is considered inadmissible if supplies of goods and services to consumers were made at an excessive VAT rate and only cash register receipts – that is to say no VAT invoices – were issued. In any event, the taxable person is not unjustly enriched in the case of a fixed amount agreed with a final consumer".