

ECJ Decides on Right to Deduct Input VAT on Basis of Fictitious Activities: *Global Ink Trade* (Case C-537/22) (VAT)

11 January 2024

Report from IBFD Knowledge Centre

On 11 January 2024, the Court of Justice of the European Union (ECJ) gave its decision in *Global Ink Trade Kft. v. Nemzeti Adó- és Vámhivatal Fellebbviteli Igazgatósága* (Case C-537/22) based on a number of grounds.

On those grounds, the Court (First Chamber) hereby rules:

1. The principle of the primacy of EU law must be interpreted as requiring a national court or tribunal which has exercised the power conferred on it by article 267 [TFEU](#) to depart from the legal assessments made by a higher national court or tribunal if, having regard to the interpretation of a provision of EU law given by the Court of Justice in the form of a judgment or reasoned order under article 99 of its Rules of Procedure, it considers that those assessments are not in accordance with EU law. However, that principle does not preclude national legislation which merely requires lower courts to give reasons for any departure from those assessments.
2. Articles 167, 168(a) and 178(a) of Council Directive [2006/112/EC of 28 November 2006](#) on the common system of value added tax, read in the light of the principles of fiscal neutrality and legal certainty, must be interpreted as not precluding a practice whereby the tax authorities refuse to allow a taxable person to deduct value added tax (VAT) on purchases of goods supplied to him on the ground that the invoices relating to those purchases are unreliable because of circumstances indicating a lack of care attributable to that taxable person, circumstances which are, in principle, assessed in the light of a circular published by that authority for the attention of taxable persons, provided that:
 - that practice and that circular do not call into question the obligation on that administration to provide sufficient objective evidence to enable it to conclude that that taxable person has committed VAT evasion or that he knew or ought to have known that the transaction in question formed part of such evasion;
 - that practice and that circular do not impose on the taxable person itself the burden of a complex and in-depth investigation of his contractual partner;
 - the rules applied by the same administration are consistent with those laid down in the same circular; and provided that
 - the circular published for the attention of taxpayers was unambiguous in its wording and its application was foreseeable by those subject to it.

3. Directive 2006/112 must be interpreted as meaning that:

- it precludes a tax authority which intends to deny a taxable person the right to deduct input VAT on the ground that he has been involved in carousel VAT fraud from merely proving that that transaction forms part of a circular invoicing chain;
- it is for that tax authority, first, to identify with precision the constituent elements of the fraud and to prove the fraudulent conduct and, second, to prove that the taxable person actively participated in that fraud or that he knew or ought to have known that the acquisition of the goods or services relied on in support of that right was part of that fraud, which does not necessarily entail identifying all the persons involved in the fraud and their respective conduct.

(Unofficial translation by IBFD Knowledge Centre)

For a previous TNS regarding the case, see [ECJ Preliminary Ruling Request \(VAT\): Global Ink Trade \(Case C-537/22\) – Fővárosi Törvényszék Submits Referral on Right to Deduct Input VAT on Basis of Fictitious Activities, Issuance of Invoices \(15 November 2022\)](#).

A more substantial report containing details of the ECJ's decision will be published in the ECJ Case Law collection in due course.

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