

ECJ Preliminary Ruling Request (Excise): *Dyrektor Izby Administracji Skarbowej w Bydgoszczy* (Case C-266/23) – Naczelny Sąd Administracyjny Submits Referral on Exemption from Excise Duties on Consumption of Electricity for Energy-Intensive Businesses

7 August 2023

Report from Martha Caziero, VAT Associate, IBFD

On 7 August 2023, a preliminary ruling request lodged on 26 April 2023 was published in the Official Journal of the European Union. By this, the *Naczelny Sąd Administracyjny* (Supreme Administrative Court, Poland) made reference to the Court of Justice of the European Union (ECJ) for a preliminary ruling in the case of *A. S.A. v. Dyrektor Izby Administracji Skarbowej w Bydgoszczy* (C-266/23), on the interpretation of article 17(1)(a) of the [Energy Taxation Directive \(2003/96\)](#), giving the Member States the option to introduce tax reductions from excise duties on the purchase of electricity for energy-intensive businesses. More specifically, the referring court wonders whether it is possible to subject the benefit of the exemption from excise duties to the fulfilment of the additional condition that the business does not benefit from any other exemption provided for by national law. Additionally, the referring court is unsure as to whether the sentence "actual cost of energy purchased" used in article 17(1)(a) should include only the purchase price of the electricity itself or the cost of all goods and services which are necessary for its purchase as, for example, distribution charges.

The *Naczelny Sąd Administracyjny* requested the ECJ to answer the following questions:

"(1) Can Article 17(1)(a) of Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity [[Energy Taxation Directive \(2003/96\)](#)] be understood as meaning that only the purchase price of the electricity itself, to the exclusion of any additional charges, for example a distribution charge, which must be borne under the legislation in force in a Member State in order to purchase electricity, must be included in the actual cost of the energy purchased?

Must Article 17(1)(a) of Directive 2003/96 [[Energy Taxation Directive \(2003/96\)](#)] be interpreted as precluding the exclusion of an exemption from excise duty on the purchase of electricity for an energy-intensive business [Article 31d(1) of the *Ustawa z 6 grudnia 2008 r. o podatku akcyzowym* (Law of 6 December 2008 on excise duty (Dz. U. of 2022, item 143))] in the event that that business benefits from an object-specific exemption from excise duty under national legislation (Article 30(7a) of the Law on excise duty), when that business demonstrates that, in relation to the same energy, it does not benefit from those two exemptions simultaneously, and assuming that the total amount of the exemptions does not exceed the amount of excise duty paid for the same period of time?"

Poland; European Union - ECJ Preliminary Ruling Request (Excise): Dyrektor Izby Administracji Skarbowej w Bydgoszczy (Case C-266/23) – Naczelny Sąd Administracyjny Submits Referral on Exemption from Excise Duties on Consumption of Electricity for Energy-Intensive Businesses (07 Aug. 2023), News IBFD.

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