

# ECJ Preliminary Ruling Request (VAT): *Companhia União de Crédito Popular* (Case C-89/23) – Supremo Tribunal Administrativo Submits Referral on VAT Treatment as Autonomous or as Ancillary Supply of Sale at Auction of Pledged Goods

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Report from Martha Caziero, VAT Associate, IBFD

On 30 May 2023, a preliminary ruling request lodged on 16 February 2023, was published in the Official Journal of the European Union. By this, the Supreme Administrative Court in Portugal (Supremo Tribunal Administrativo) made reference to the Court of Justice of the European Union (ECJ) for a preliminary ruling in the case *Companhia União de Crédito Popular, SARL v. Autoridade Tributária e Aduaneira* (C-89/23) on the VAT treatment of the sale at auction of pledged goods by the lender when the borrower defaults his payment obligations, specifically as to whether the sale of pledged goods at auction can be considered as ancillary to the principal activity of providing loans, which is exempt from VAT, or as an autonomous supply, subject to VAT.

The Supremo Tribunal Administrativo requested the ECJ to answer the following question:

"For the purposes of determining whether the 11% commission which the law (Article 25 of Decree-Law No 365/99 of 17 September 1999) allots to the lender for the sale of pledged goods is eligible for the exemption provided for in Article 135(1)(b) of the VAT Directive [[VAT Directive \(2006/112\)](#)] (corresponding to Article 9(27)(a) of the Código do Imposto sobre o Valor Acrescentado (Value Added Tax Code)), can the sale of the pledged goods (Article 19 et seq. of Decree-Law No 365/99 of 17 September 1999), where the borrower fails to pay in accordance with the legal conditions, be regarded as an ancillary service to the services provided by the lender (activity of lending secured by a pledge)?"