

ECJ Preliminary Ruling Request (VAT): *Dranken Van Eetvelde* (Case C-331/23) – Rechtbank van eerste aanleg Oost-Vlaanderen Afdeling Gent Submits Referral on Unconditional Joint and Several Liability for Participation in VAT frauds

4 September 2023

Report from Martha Caziero, VAT Associate, IBFD

On 4 September 2023, a preliminary ruling request, lodged on 25 May 2023, was published in the Official Journal of the European Union. By this, the Rechtbank van eerste aanleg Oost-Vlaanderen Afdeling Gent (First-tier tribunal of East Flanders, Gent, Belgium) made reference to the Court of Justice of the European Union (ECJ) for a preliminary ruling in the case of *Dranken Van Eetvelde NV v. Belgische Staat* (C-331/23) on the compatibility with the principles of proportionality and neutrality of a national provision providing for the unconditional joint and several liability for VAT frauds. Furthermore, the referring court is unsure as to whether a national provision that allows the cumulation of administrative and criminal penalties is compatible with the principle of *ne bis in idem* (according to which the same person cannot be tried a second time in criminal proceedings for the same offence, after a first definitive trial of a criminal nature).

For these reasons, the Rechtbank van eerste aanleg Oost-Vlaanderen Afdeling Gent requested the ECJ to answer the following questions:

- "1. Does Article 51bis(4) of the WBTW infringe Article 205 of Directive 2006/112 [[VAT Directive \(2006/112\)](#)] in conjunction with the principle of proportionality in so far as that provision provides for unconditional overall liability and does not allow the court to assess liability on the basis of each person's contribution to the tax fraud?
2. Does Article 51bis(4) of the WBTW infringe Article 205 of Directive 2006/112 on the common system of VAT [[VAT Directive \(2006/112\)](#)], read in conjunction with the principle of VAT neutrality, if that provision is to be interpreted as meaning that a person is jointly and severally liable to pay VAT in the place of the legal debtor, without any account having to be taken of the deduction of VAT that can be claimed by the legal debtor?
3. Must Article 50 of the Charter of Fundamental Rights of the European Union [[Charter of Fundamental Rights of the European Union](#)] be interpreted as not precluding national legislation which permits the cumulation of (administrative and criminal) penalties of a criminal nature, resulting from different proceedings, in respect of offences which are materially identical yet occurred over consecutive years (but which, in criminal law, would be regarded as a continuing offence with unity of purpose), and where

the offences are subject to administrative prosecution in respect of one year and criminal prosecution in respect of another year? Are those offences not regarded as inseparable because they occurred over consecutive years?

4. Must Article 50 of the Charter of Fundamental Rights of the European Union [[Charter of Fundamental Rights of the European Union](#)] be interpreted as not precluding national legislation under which proceedings may be brought against a person for the imposition of an administrative fine of a criminal nature in respect of an offence for which he or she has already been finally convicted under criminal law, the two sets of proceedings being conducted entirely independently of one another and the only guarantee that the gravity of the entirety of the penalties imposed is commensurate with the gravity of the offence in question consisting in the fact that the tax court may carry out a substantive review of proportionality, even though the national legislation does not lay down any rules in that regard, nor does it lay down any rules allowing the administrative authority to take account of the criminal penalty already imposed?"

Belgium; European Union - ECJ Preliminary Ruling Request (VAT): Dranken Van Eetvelde (Case C-331/23) – Rechtbank van eerste aanleg Oost-Vlaanderen Afdeling Gent Submits Referral on Unconditional Joint and Several Liability for Participation in VAT frauds (04 Sep. 2023), News IBFD.

Exported / Printed on 9 Mar. 2024 by hkermadi@deloitte.lu.