

ECJ Preliminary Ruling Request (VAT): *Finanzamt X* (Case C-207/23) – Bundesfinanzhof Submits Referral on VAT Treatment of Supply of Heat Free of Charge Used for Taxable Activities

17 July 2023

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On 17 July 2023, a preliminary ruling request, lodged on 29 March 2023, was published in the Official Journal of the European Union. By this, the Bundesfinanzhof (Federal Finance Court, Germany) made reference to the Court of Justice of the European Union (ECJ) for a preliminary ruling in the case of *Finanzamt X v Y KG* (C-207/23) on the interpretation of articles 16 and 74 of the [VAT Directive \(2006/112\)](#) in order to determine whether a taxable person making heat and supplying the heat free of charge to a taxable person to enable the latter to carry on its economic activity may be regarded as a supply of goods in the form of a "supply free of charge" for VAT purposes. Accordingly, it must be determined whether the taxable person receiving the heat uses it for purposes which would entitle him to deduct input tax and whether the cost price must be calculated solely on the basis of the costs subject to input tax.

In this context, the Bundesfinanzhof requested the ECJ to answer the following questions:

"If a taxable person makes heat from its company available to another taxable person for the latter's economic operations free of charge (in this case: allocation of heat from the cogeneration plant of an electricity provider for the benefit of an agricultural company for the purpose of heating asparagus fields), is this to be regarded as an 'application by a taxable person of goods forming part of his business assets' in the form of a 'disposal free of charge' within the meaning of Article 16 of Directive 2006/112/EC [[VAT Directive \(2006/112\)](#)]?"

Is the answer to this question dependent on whether the taxable person receiving the heat uses it for purposes that would entitle that person to a deduction of input tax?

In the case of an application of goods (within the meaning of Article 16 of the VAT Directive), is the cost price within the meaning of Article 74 of the [VAT Directive \(2006/112\)](#) to be calculated solely on the basis of those costs that are subject to input tax?

Does the cost price include only direct production or generation costs, or does it also include only indirectly attributable costs such as financing costs?"

Germany; European Union - ECJ Preliminary Ruling Request (VAT): Finanzamt X (Case C-207/23) – Bundesfinanzhof Submits Referral on VAT Treatment of Supply of Heat Free of Charge Used for Taxable Activities (17 July 2023), News IBFD.

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