

ECJ Decides on Determination of Taxable Amount when Wrong VAT Rate is Included in Invoices for Sale of Second-Hand Motor Vehicles: *Sancra* (Case C-377/23) (VAT)

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The Court of Justice of the European Union (ECJ) gave its decision in the case of *DC v. Autoridade Tributária e Aduaneira* (Case C-377/23). The ECJ held that, when determining the taxable amount of a transaction carried out by a taxable person for VAT purposes, the price or amounts indicated on the invoices must be regarded as already including VAT, unless the taxable person has the possibility to pass on the VAT to the final consumers and to recover it from the tax authorities after the application of the correct VAT rate has been applied.

According to the ECJ, in circumstances such as those in the dispute in the main proceedings, when recalculating the VAT charged on the invoices issued for the sale of second-hand motor vehicles to final consumers because the wrong VAT rate was considered (in this case 0%, whereas the correct VAT rate to apply was 23%), the VAT must be calculated by deducting from the invoiced sales price the amount of VAT due to the tax authorities. This only applies when, according to national law, the supplier does not have the possibility to recover the VAT from the purchaser of the vehicles for being a final consumer.

This decision was adopted by the Seventh Chamber of the ECJ after hearing the Advocate General and considering that this case could be solved by a reasoned order because the answer to the question referred by the preliminary ruling request, lodged on 14 June 2023, can be clearly deduced from previous case law, namely joined cases C-249/12 and C-250/12 *Tulică* and *Plavoşin*, and case C-521/19 *CB*.

On these grounds, on 5 February 2024, the Court (Seventh Chamber) ruled:

"Article 73 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax [[VAT Directive \(2006/112\)](#)], read in conjunction with Article 78(a) and Article 2, paragraph 2(b) of that directive, must be interpreted in the sense that:

when a taxable person for VAT purposes wrongly indicated a zero VAT rate on the invoices sent to its final consumers, whereas a higher rate was applicable, the price or the amount indicated on those invoices must nevertheless be considered as a price already including VAT, unless the taxable person has the option under national law of passing on the VAT to its final consumers and to recovering it from the tax authorities when the correct VAT rate is applied."

(Unofficial translation)

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