

# ECJ Preliminary Ruling Request (VAT): *B2 Energy* (Case C-676/22) – Nejvyšší správní soud Submits Referral on Conditions for Intra-Community Supply Exemption

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On 6 February 2023, a preliminary ruling request, lodged on 2 November 2022, was published in the Official Journal of the European Union. Through this request, the Nejvyšší správní soud (Supreme Administrative Court, Czech Republic) made reference to the Court of Justice of the European Union (ECJ) for a preliminary ruling in the case of *B2 Energy s.r.o. v. Odvolací finanční ředitelství* (Case C-676/22) on whether (i) an intra-Community supplier of goods, in order to be VAT exempt, needs to declare and provide evidence that the goods were received by a specific recipient that had the status of a taxable person; or (ii) it suffices that the facts of the case indicate that the goods were accepted in another EU Member State by another recipient and that it had (or it is evident from the facts of the case that it must have had) the status of a taxable person.

The Nejvyšší správní soud requested the ECJ to answer the following question:

"Must Article 138(1) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax [VAT Directive (2006/112)] be interpreted in accordance with the judgment of the Court of Justice of the European Union of 9 December 2021 in [Case C-154/20, Kemwater ProChemie](#), EU:C:2021:989, such that a claim for exemption from value added tax (VAT) upon the supply of goods to another EU Member State must be denied, without the tax authorities needing to prove that the supplier of the goods was involved in VAT fraud, if the supplier has failed to prove supply of goods to a specific recipient indicated in the tax documents and having the status of a taxable person in the other Member State, even though, with a view to the facts of the case and the information provided by the taxable person, there is data available to verify that the actual recipient in the other EU Member State did indeed have that status?"