

# ECJ Preliminary Ruling Request (VAT): *rhtb* (Case C-622/23) – Oberster Gerichtshof Submits Referral on VAT Treatment of Unfinished Work Payment Due to Customer's Circumstances

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Report from Stefania Lotito Fedele, VAT Associate, IBFD

On 18 December 2023, a preliminary ruling request, lodged on 10 October 2023, was published in the Official Journal of the European Union. By this, the Oberster Gerichtshof (Supreme Court, Austria) made reference to the Court of Justice of the European Union (ECJ) for a preliminary ruling in the case of *rhtb: projekt gmbh v Parkring 14-16 Immobilienverwertung GmbH* (C-622/23), on whether the amount to be paid by a customer to a contractor when the service is not fully carried out due to circumstances attributable to the customer is subject to VAT in accordance with articles 2(1)(c) and 73 of the [VAT Directive \(2006/112\)](#).

In particular, the referring court points out that the parties had entered into a works contract and that the customer withdrew from the contract without a valid reason. Despite the incomplete work, the contractor is still entitled to compensation. Therefore, the referring court is unsure whether the amount of that compensation should be subject to VAT.

In this context, the Oberster Gerichtshof requested the ECJ to answer the following question:

"Must Article 2(1)(c) 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 73 of that directive be interpreted as meaning that the amount which a customer owes to a contractor even where the work has not been (fully) carried out, but the contractor was ready to provide the service and, through circumstances attributable to the customer (for example, cancellation of the work), was prevented from doing so, is subject to VAT?"