

ECJ Preliminary Ruling Request (Excise): *DISA* (Case C-743/22) – Tribunal Supremo Submits Referral on Differentiated Excise Duty Rates for Same Product Within Different Territories of Same Member State

3 April 2023

Report from Fernanda Santos Moura, VAT Associate, IBFD

On 3 April 2023, a preliminary ruling request, lodged on 1 December 2022, was published in the Official Journal of the European Union. In the request, the Tribunal Supremo (Supreme Court of Spain) made reference to the Court of Justice of the European Union (ECJ) for a preliminary ruling in the case *DISA SUMINISTROS Y TRADING, S. L. U. (DISA) v. Agencia Estatal de la Administración Tributaria* (Case C-743/22) on whether article 5 of the [Energy Taxation Directive \(2003/96\)](#) precludes, within a Member State, the setting of territorially differentiated excise duties rates for the same product (mineral oils).

The Tribunal Supremo requested the ECJ to answer the following question:

"Must [Council] Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity [[Energy Taxation Directive \(2003/96\)](#)], in particular Article 5 thereof, be interpreted as precluding a national provision, such as Article 50^{ter} of Ley 38/1992 de Impuestos Especiales (Law 38/1992 on excise duties) of 28 December 1992, which authorised the autonomous communities to set differentiated rates of the excise duties on mineral oils for each territory in respect of the same product?"