

VAT Newsletter

October 2017

European Court of Justice VAT Decision:

Is your leasing agreement a supply of goods or services?



The Court of Justice of the European Union (CJEU) recently gave its judgment in relation to a lease contract and the factors to be taken into consideration before determining whether it constitutes a supply of goods or services. This landmark decision clarifies when leasing agreements will be classified as a supply of goods or a supply of services and brings possible associated cash flow implications for parties entering such contracts, due to differences in the VAT treatment with respect to the place where VAT is due and the timing of the VAT payments.

1. Key Decision Points

The CJEU in the *Mercedes-Benz Financial Services C-164/16* case held that the distinction between a supply of goods and services in leasing contracts depends on whether ownership will naturally pass to the lessee upon the final instalment payment.

A leasing contract will qualify as a supply of goods where:

- the agreement expressly provides for option to acquire ownership by the lessee, and
- as objectively assessed at the time when it is signed, ownership is intended to be acquired by the lessee if performance of contract proceeds for the full term.

Consequently, a supply of services arises where there is a genuine economic alternative for the lessee at the appropriate time either to opt to acquire the goods or return them to the lessor.

However, in case the option to purchase is the only economic rational choice through a symbolic purchase fee, a supply of goods exists with analogous VAT implications. All economic effects and agreement characteristics have to be taken into consideration before supply classification.

2. Implications for Businesses

Businesses involved in the market of motor finance, hire purchase products, leasing arrangements including yachts and aircrafts need to determine whether their offering qualifies as a supply of goods or services. The critical 2-step test set out by the CJEU needs to be applied by such entities before deciding whether their leasing arrangements constitute goods or services since place of supply rules and cash flow position will differ. In case the agreement comprises a supply of services, entities in the asset leasing sector will benefit from output VAT being due from receipt of each instalment. Regard should also be given to the decision in conjunction with current complexities of the Cyprus VAT Law on the matter and its upcoming amendments.

3. How EY Cyprus can assist

Our VAT team with extensive technical experience in leasing arrangements is equipped to contribute in significant VAT cost reductions and provide advice on the correct treatment of your agreements. We can help you through:

1. Structuring your agreements in a VAT-efficient way depending on what is optimal for your entity;
2. Confirm via ruling requests the VAT treatment of your current leasing scheme, minimising where applicable costs;
3. VAT Advisory on proposed and existing leasing arrangements.

For additional information, please contact our team:

George Liasis
Partner, Head of Indirect Tax Services
Phone: +357 22 209 759
E-mail: George.Liasis@cy.ey.com

Maria P. Raspa
Senior Manager, Indirect Tax
Phone: +357 22 209 712
Email: Maria.Raspa@cy.ey.com

Elpida Papachristodoulou
Manager, Indirect Tax
Phone: +357 22 209 907
Email: Elpida.Papachristodoulou@cy.ey.com

Simos Simou
Manager - Barrister, Indirect Tax
Phone: +357 22 209 894
Email: Simos.Simou@cy.ey.com

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