

## Renewed definition of supplies of goods in chain transactions which involve intermediaries

### Contacts

#### Patricia More

Partner, Indirect Tax  
PwC Geneva  
patricia.more@ch.pwc.com  
+41 58 792 95 07

#### Julia Sailer

Director, Indirect Tax  
PwC Zurich  
julia.sailer@ch.pwc.com  
+41 58 792 44 57

**The Commission Services (a working council of the European Commission) has recently published a working paper in which they provide their reasoning as to what makes up a supply of goods as a result of a judgment of the Court of Justice of the European Union (‘CJ EU’). The items discussed in this working paper are relevant for chain transactions in which intermediaries are involved who trade goods they do not actually dispose of as an owner.**

The working paper is issued in response to the questions raised by Lithuania on how the Fast Bunkering Klaipėda case of the CJ EU should be explained and applied in practice. Delegates of the EU Member States (who together form the VAT Committee) are now requested to give their opinion on the issues raised by the Commission Services.

### Issues raised

The Commission Services are of the view that the outcome of the CJ EU judgment Fast Bunkering Klaipėda court case could not be said to be particular to that specific case, but may also be relevant to other scenarios such as chain transactions.

As explained by the Commission Services, the CJ EU judgment has made clear that a supply of goods for VAT purposes is recognised in case someone is empowered actually to dispose of goods as if he/she were their owner. The (subsequent) transfer of legal ownership to anyone else (if applicable) would therefore, in principle, have to be disregarded. This was apparently the case for Fast Bunkering Klaipėda who supplied goods on a ‘free on board’ basis to an intermediary (who was acting in his own name) but directly loaded the fuel itself into the vessel’s fuel tank of the final recipient. In this situation the intermediary could not actually dispose of the goods as an owner, since at the moment he obtained legal title to the goods, the fuel oil was already loaded into the vessel and put at the disposal of the final recipient.

According to the CJ EU, in such case a direct supply of goods takes place from the first supplier to the final recipient (ignoring the involvement of the intermediary). In the working document the EC now raises the issue that the transaction performed by the intermediary should consequently be regarded as a supply of services, as he is not in the position to supply goods that are already supplied for VAT purposes to the final recipient.



It is noted by Commission Services that in as far as the intermediary acts on behalf of another party, the intermediary is still deemed to have purchased and onward supply the goods. Hence, where a commissionaire is involved, the above should not be applicable.



## ***Impact on businesses***

If the above position would be true, the impact on businesses would potentially be significant. In supply chains similar to the one of Fast Bunkering Klaipėda, the first supplier would from a VAT perspective no longer be supplying goods to his direct counterparty, but to the final recipient instead. At the same time, it should be determined to which party the intermediary is rendering its services. Obviously this would have an enormous impact on the invoice flows in the supply chain. Moreover, the intermediary would be forced to disclose his margin (i.e. the fee for his services), which might be an issue in practice.

In our view, the impact on businesses of the Fast Bunkering Klaipėda case and this working paper from Commission Services is limited to those supply chains whereby the transfer of legal ownership takes place at the same time as or after the disposal of the actual ownership takes place. In this respect, it could be questioned whether a transfer of goods to someone empowered actually to dispose of those goods as if he were their owner necessarily takes place at the same time that the goods are physically put at the disposal of a buyer or final recipient.

Particularly in commodity trade vessels might already have left the harbour, whereas the documents that represent ownership of the goods loaded in the vessels (e.g. bills of lading) are distributed throughout the supply chain thereafter. It could be that the Fast Bunkering Klaipėda case and this working paper from Commission Services therefore do not necessarily have an impact, as all parties in the supply chain normally receive (and onward distribute) the documents representing ownership of the goods loaded in the vessel (unless economic reality proves otherwise). This might be different for the situation whereby parties involved in the supply chain establish a so-called 'string', based on which a document by-pass takes place from the first supplier to the last recipient in the supply chain. In those circumstances the other parties involved do not receive the documents that represent ownership of the commodities and consequently are not empowered actually to dispose of those goods as if they were their owner. In such case, in principle the other parties necessarily render services to each other. However, we feel that there are situations in which the settlements by the other parties (of the differences between their sales prices and the 'by pass' price) could possibly qualify as cash settlements not subject to VAT. This is to be further established on a case by case basis.

## ***Way forward***

In order to assess the potential impact of the Fast Bunkering Klaipėda case and the working paper from the Commission Services, we recommend companies to investigate whether they are involved in supply chains whereby the transfer of legal ownership of the underlying goods takes place at the same time as or after the disposal of the actual ownership. If so, a more detailed analysis is required to identify possible issues and establish possible work-arounds. We are happy to assist you in this respect.

Further guidance is to be expected when the delegates of the EU Member States / VAT Committee have given their opinion on the issues raised.

## ***Legal status***

Although this working paper and the expected guidelines of the VAT Committee on the basis thereof are no legally binding decisions, they provide guidance on the application of the VAT Directive. It is our experience that EU Member States use such guidance as a starting point for taking their individual position. We will of course inform you accordingly once the view of the VAT Committee has been published.

*Sources: Working paper of the European Commission on the issues arising from recent judgments of the Court of Justice of the European Union, 107th meeting of 8 July 2016, taxud.c.1(2016)3438314 – EN and Judgment of the European Court of Justice, 3 September 2015, C-526/13 (Fast Bunkering Klaipėda UAB)*