

## TAXABLE BASE OF DEEMED SUPPLY OF GOODS UPON VAT DEREGISTRATION

### Case C-142/12 – Hristomir Marinov v NRA

#### SUMMARY

*The taxable base of the deemed supply of goods which are retained by a taxable person when he ceases to carry out a taxable economic activity, that including the person's VAT deregistration, cannot be the open market value of the assets unless that value corresponds to the residual value of those goods at that date after taking into account the change in the value of those goods between the date of their acquisition and the date of the cessation of the taxable economic activity.*

#### INTRODUCTION

When a taxable person ceases to carry out an economic activity, including the case when the person is removed from the VAT register, but retains certain goods, the VAT legislation treats the retention of those goods available with the person upon the cessation of his activities as a taxable supply of the goods. The purpose of the provision is to avoid a situation where the final consumption of the goods, on which the VAT was deducted by the taxable person, remains untaxed following the deregistration of the person.

The main question which arises in this situation concerns the taxable base of this deemed supply of the retained goods and whether it should be equal to the open-market value of those goods, as the Bulgarian VAT Act provides.

#### FACTS AND QUESTIONS REFERRED FOR A PRELIMINARY RULING

Hristomir Marinov acting on behalf of Lampatov-H – Hritomir Marinov ("Marinov") was removed *ex-officio* from the Bulgarian VAT register with effect from 4 November 2009 for non-payment of the VAT owed on the basis of the VAT declarations for the period from April to July 2009.

Following a tax audit for the period from 1 January 2007 to 4 November 2009 it was established by the revenue authorities that at the time of his VAT deregistration Marinov was in a possession of several vehicles in respect of which VAT had been deducted. Therefore, the tax authorities concluded that at the time of his VAT deregistration Marinov had carried out a taxable supply of those available vehicles taking the taxable amount for VAT in respect of the vehicles on the basis of their 'open market value', determined following an expert's report.

Marinov appealed the tax assessment claiming that the taxable base of the deemed supply of the retained goods should have taken into account the depreciation in the value of those assets since their acquisition.

When the administrative appeals instance dismissed the appeal, Marinov lodged an appeal with Varna Administrative court. In those circumstances, the Administrative court decided to stay the proceedings and to refer the case to the Court for a preliminary ruling and to ask the

Court of the EU whether Directive 2006/112/EC (the “VAT Directive”) is to be interpreted as precluding a provision of national law under which, in the event of the cessation of the taxable economic activity, the taxable amount of the transaction is to be the ‘open market value’ of the assets in existence at the time of that cessation and no account is taken of the change in value of those assets between the date of their acquisition and the date of the cessation of the taxable economic activity.

#### **JUDGMENT OF THE COURT**

As the relevant provision of the VAT Directive – Art. 18 (c) under which the retention of goods may be treated as a taxable supply of goods for consideration refers to cessation of economic activities, the Court first examined whether that provision also covers a cessation of economic activities resulting from the VAT deregistration of a person.

Considering the main objective of Art. 18 (c) of the VAT Directive to make sure that any final consumption of goods following a cessation of economic activities is taxed, regardless of the causes of the cessation, the Court concluded that the provision of Art. 18 (c) also covers the cessation of economic activities resulting from removal of the taxable person from the VAT register.

Afterwards, the Court considered the questions concerning the taxable base of the supply of the retained goods at the time of the VAT deregistration of Marinov.

The Court reiterated that in accordance with the Court’s case-law, the cases, where the taxable base of a transaction shall be its open-market value, are exhaustively listed in Art. 80 of the VAT Directive and they are confined to transactions carried out between connected persons one of whom does not have the right of VAT deduction. In view of this, the Bulgarian national legislation cannot provide that the taxable amount is to be the open market value of the transaction in cases other than those listed in Art. 80 of the VAT Directive.

Instead, according to the Court, the relevant provision as regards the taxable base of the transaction is Art. 74 of the VAT Directive which provides that, for transactions such as that at issue in the present case, the taxable amount is to be the purchase price of the goods or of similar goods or, in the absence of a purchase price, the cost price, determined at the time when those transactions take place.

The Court also clarified that ‘the purchase price, determined at the time of allocation’, for the purposes of Art. 74 of the VAT Directive, refers to the residual value of the goods at the time of allocation, account being taken of the change in the value of those assets between their acquisition and the cessation.

Here, it has to be specified that this interpretation of the VAT Directive provisions does not in itself annul the application of an open-market value to the transaction, provided however that the open-market value corresponds in practice to the residual value of goods at the date of the cessation of the taxable economic activity.

In view of the above, the Court of the EU concluded that the relevant provisions of the VAT Directive are to be interpreted as precluding a provision of the national law under which, in the event of the cessation of the taxable economic activity, the taxable amount of the transaction is to be the open market value of the assets in existence at the time of that cessation, unless that value corresponds in practice to the residual value of those goods at that date and account is thus taken of the change in the value of those goods between the date of their acquisition and the date of the cessation of the taxable economic activity.

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