

VAT TREATMENT OF OPERATING LEASES IN THE CONTEXT OF ECJ JUDGMENT IN CASE C-164/16

This is to let you know of a break-through judgment of the Court of Justice of the European Union ("ECJ") dated 4 October 2017 in *Mercedes Benz* (case no. C-164/16), which relates to VAT treatment of operating leases.

ECJ held that an operating lease may be classified for VAT purposes as a supply of goods, rather than a supply of services as it was classified before.

In ECJ's opinion, if it can be inferred from the finance terms of a lease that exercising the option to purchase is the only economically rational choice the lessee will be able to make at the appropriate time, then such lease must be interpreted as a supply of goods under Directive 2006/112/EC. That may be the case in particular where:

- the aggregate of the contractual instalments corresponds to the market value of the goods, including the cost of financing, and
- the lessee will not be required, as a result of exercising the option, to pay a substantial additional sum.

ECJ held that where the purchase price is relatively low, the VAT effects of the lease should be similar to the effects of a finance lease. Accordingly, the asset (vehicle) would be considered sold already when delivered to the lessee and VAT on the supply would have to be paid already at the inception of the lease.

The Polish Ministry of Finance referred to ECJ case in a press release saying that the judgment does not offer a basis for upturning the current Polish practice of treating an operating lease as a supply of services for VAT purposes. According to the Ministry, the relevant Polish VAT Act regulations do not give rise to any construal concerns and are in conformity with EU law, while Polish businesses do not need to fear that their VAT compliance can be questioned on that account. However, the Ministry also said that the case is currently under analysis and might be relied upon to introduce changes to the VAT Act in future.

If this issue pertains to your business and you are interested in our assistance, please contact your WTS&SAJA consultant or our office.

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