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ADDED TAX: THE LEGAL PRACTICE OF THE EUROPEAN COURT OF JUSTICE SECURING VALUE

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Abstract

One of the most complex and important sources of the European fiscal legal framework is the activity of the European Court of Justice regarding the interpretation and application of directives. The judicial practice developed by the Court contains dozens of tax disputes, which include cases of violation and incorrect understanding of the provisions of the Value Added Tax (VAT) directives. Therefore, the Decisions of the European Court, related to the application of directives, represent themselves a stage of legislative creation, upon completion of which the directive becomes practically applicable. From the mentioned European judicial practice, we can conclude that the European Court of Justice has a special influence on the application of the rules of European law. The Court's rulings favored the development of European fiscal rules by interpreting directives and establishing prohibitions on actions that do not correspond to the principles of European law and the securing of European fiscal revenues. Finally, the elaboration of the directives, as a legal form of harmonization of the legal framework, as a principle and method of unification of the fiscal legislation of the member states, created sufficient legal conditions for solving the problems in the scope of the European fiscal policy and securing these revenues of the Union European.

Keywords: Value Added Tax, European Court of Justice rulings, European judicial practice in the field of taxation, interpretation of legal norms.

1. INTRODUCTION

The Value Added Tax (VAT) was first implemented in 1958, being applied in the fiscal field of France. This tax was replaced by the freight tax (first applied in Germany in 1918) [1], which was calculated on the basis of the price of the product applied. The introduction of VAT proposed an improved mechanism, which calculates only added by each producer.

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Compared to the tax on the movement of goods, which was calculated both from it added and with taxes calculated and applied by previous suppliers (called "tax" or "cascading tax"), VAT is calculated only from the value of each supplier, avoiding double taxation of the tax previously calculated and introduced by the supplier.

The value added includes salary expenses, payments in the social fund, calculated wear and tear (use), interest on credit, income, income tax paid, and other expenses.

The VAT application mechanism consists of the words: the seller of the raw material (goods) increases the price (this price is added to the product from which the VAT is calculated) by the amount of the tax and indicates this separate amount in the account. The seller of the finished product does the same, deducting from the amount of the tax calculated on this production the tax that was paid to the seller of the raw material and indicating these operations in the account. The difference is to be transferred by the seller to the budget. This mechanism called the indirect deduction method, relieves the taxpayer of the obligation to establish something added or a component of it. The quota, in this case, is applied to the indices which, indirectly, indicate something added, ie to the price of the goods. Therefore, this method allows the quota to be applied, even at the time of the sale-purchase deed. By payment terms, we mean: "the time of occurrence of the obligation corresponding to the time of delivery".

The delivery date is considered the date of delivery of the goods, the service of delivery, except in cases where the VAT invoice is issued or payment is received until the actual delivery and cases when the services are delivered regulated during a period stipulated in the contract, as well as in case of delivery of goods and services, such as a lease. In this case, the delivery time corresponding to the tax liability period is considered to be the date of issue of the VAT invoices or the date of receipt of the payment. Therefore, the time of delivery or the time of transfer of ownership of the property is irrelevant in the present case.

Currently, there is VAT in the state tax area is a mandatory condition for accession to the European Union (EU), considering that the financial payments from VAT are one of the main sources of formation of the EU budget. The Member States where the VAT was introduced shall determine the amount of the taxable amount within the limits laid down in European legislation.

According to Directive no. 6 VAT taxable items are the supply of goods and services in the territory of the Member States by taxable persons on the basis of remuneration; the importation of goods from countries outside the customs territory

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of the European Community (EC), the purchase of goods crossing the border of the Member States.

2. METHODOLOGY

The application of VAT to the supply of goods on the territory of the Member States is possible only by the presence of the conditions laid down in the integration legislation and in particular Directive no. 6 on VAT:

1. The goods delivered must be subject to VAT and not be included in the list of goods exempt from this duty;

2. The delivery of the goods must be made by the person who has the status of taxable subject;

3. The delivery of the goods must be a component part of the economic activity of the taxable person;

4. The delivery of the goods must be carried out or planned on the basis of remuneration;

VAT on goods crossing the border of EU member states is applied on the basis of the destination-based tax principle, thus, the tax is collected in the country of destination of the goods, ie in the country where it is imported. The payer is the person to whom the goods were delivered by import. Exceptions are some types of goods (goods obtained by mail, excise gods) and some types of means of transport (new means of transport), on which the principle of origin-based tax will work, ie VAT payment is applied at the place of production.

The application of VAT to goods imported from countries that are located outside the customs territory of the EU shall be carried out in accordance with the procedure analogous to the procedure for applying customs duty on imported goods.

VAT is one of the most important taxes in the category of indirect ones, the regulation of which is an essential condition for the development of the common market. In support of this idea, the bodies of the Member States have made a key effort to create a single mechanism for the functioning of VAT.

At the time of the entry into force of the Rome Agreement on road tax, applied in the Member States, the presence of different rates of taxation and the difference in the very structure of the tax were specific.

With the exception of VAT, applied in France, different systems for calculating these taxes were used in the Member States. This situation also generated art. 95 of the Agreement, meant to neutralize the negative influence of "diversity" in the field of taxation within the European Union. A number of

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measures have been taken and implemented in order to overcome the differences and difficulties in the operation of the road tax within EU borders.

Therefore, the draft solution to this problem included the following steps:

- The difference between the structure of the road tax and the tax rates of the Member States was leveled through the system of border compensation payments; frontieră;
- harmonization of the tax structure with the maintenance of different tax rates and the use of a more advanced border compensation system;
- establishing a single tax structure, harmonizing tax rates and canceling the compensation system.

In the context of the above, the issue of reflections on the judicial practice of the European Court of Justice of the European Union will be analyzed in the light of judgments establishing European practice in this area in the field of taxation, with reference to the most important income of the European Union. Value Added. It should be noted that direct taxes are usually left to the regulation of the member countries of the European Union and the emphasis is placed specifically on Value Added Tax, being considered the primary revenue for the budget of the European Union. As a result, a single space on the road tax has been formed. The realization of this plan has found its expression in the adoption of the following directives:

- *First Directive* (No 67/227 / EEC of 11 April 1967) on the harmonization of the laws of the Member States relating to road taxation;
- *Directive no. 2 (No 67/322 / EEC of 11 April 1967) on the harmonization of the laws of the Member States relating to excise duties on the structure and procedure for applying a single system of VAT;*
- *Directive no. 3 (No 69/463 / EEC of 09.12.1969) on the harmonization of the laws of the Member States relating to excise duties on the introduction of value-added tax in the Member States (this Directive allows Belgium and Italy to defer VAT until 1.01 .1972);*
- *Directive no. 4 regarding VAT (no. 71/401 / EEC of 20.12.1971);*
- *Directive no. 5 regarding VAT (no. 72/250 / EEC of 4.67.1972);*
- *Directive no. 6 on the harmonization of the legislation of the Member States on traffic taxes the single system of value added taxation: single conditions for calculating the tax (no. 77/288 / EEC of 17.05.1977).*

These and other Council directives, later adopted, established a single legal regime in the territory of the Member States of the European Union. The most important of them are Directive No. 1, no. 2, and no. 6 on VAT.

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The first directive established VAT in the Union and established its operating principles. The basic provisions of the Directive provided:

- the condition for Member States to replace the road tax with a single form of VAT;
- substantiation of the principle of VAT calculation, which is different from the one used in the case of the circulation tax;
- determining the order of implementation of the provisions of the given directive.

Directive no. 2 on VAT supplemented the provisions of directive no. 1, thus concretizing the way of realization.

The first directives laid the foundations for a single VAT system. At the same time, a number of issues remained unregulated, in particular, the determination of the scope of VAT (nomenclature of goods and services, in respect of which VAT applies). In accordance with those directives, this moment remained within the competence of the Member States, which independently determine the list of goods and services taxed with VAT and exempt from this tax.

After the approval in 1977 of Directive No. 6, the Council adopted a number of decisions amending and supplementing the first directives.

Based on the experience gained over 10 years, Directive No. 6 was to replace Directive No. 2 and to strengthen the system of rules establishing the single mechanism of operation of VAT at the Member State level. The provisions of this Directive have been implemented in the national legislation of the Member States within 10 years after its entry into force. The last country to make the necessary changes to its VAT legislation was Greece.

The basic tasks of Directive No. 6, have been decided and this is considered by law the basic act in the legal system of the Union governing VAT. As a result, the norms of Directive No. 6 as well as the very functioning system of VAT subsequently underwent a series of modifications and completions.

A number of directives have been adopted, which deal in detail with a wide variety of issues related to the application of VAT. For example, Directive no. 8 (No 79/1072 / EEC of 06.12.1979) on the harmonization of the laws of the Member States relating to road tax, rules on the application of VAT to persons outside the territory of the country; Directive no. 10 (No. 84/386 / EEC of 31.07.1984) on the harmonization of the legislation of the Member States on road taxes - the application of VAT to the leasing of movable tangible property.

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Of course, the rulings of the European Court played an important role in establishing and correctly applying the legal system governing VAT (as in other branches of European law).

Therefore, the existence of the Value Added Tax in the fiscal system of each state is the obligatory condition for joining the union, having as an argument that the financial payments from VAT represent one of the main sources of formation of the budget of the European Union. The Member States where the VAT was introduced set the amount of the taxable amount within the limits set out in European legislation. (Article 12, Directive 6) [2].

According to Directive No. 6 [3]. Taxable items include the supply of goods and services within the territory of the Member States by taxable persons on the basis of remuneration, the importation of goods from countries outside the customs territory of the Union, and the purchase of goods crossing the border of the Member States.

The application of VAT to the supply of goods on the territory of the Member States is possible only by the presence of the conditions laid down in the integration legislation and in particular Directive no. 6 [4] on VAT:

- the goods delivered must be subject to VAT and not be included in the list of goods exempt from this tax (art. 13 16) [5];
- the delivery of the goods must be made by the person who has the status of taxable subject (art. 2, 4) [6];
- the delivery of goods must be part of the economic activity of the taxable person;
- the delivery of the goods must be made or planned on the basis of remuneration;

VAT on goods crossing the border of the member states of the union is applied based on the destination-based tax principle, thus, the Value Added Tax is collected in the country of destination of the goods, ie in the country where it is imported. The payer is the person to whom the goods were delivered by import. Exceptions are some types of goods (goods obtained by mail, excise gods) and some types of means of transport (new means of transport), on which the principle of origin-based tax will work, ie VAT payment is applied at the place of roduction.

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Of course, the rulings of the European Court played an important role in establishing and correctly applying the legal system governing VAT (as in other branches of European law). The first VAT dispute was examined in 1975.

3. RESULTS

At the moment, the judicial practice contains dozens of litigations that include cases of breach and misunderstanding of the provisions of the VAT directives. For example, when determining the conditions necessary for the application of VAT, a series of disputes arose regarding the correct interpretation of the notions of "remuneration" (consideration), "economic activity", etc. Those comments were prepared by the European Court. These as well as other judgments, in which the Court concretizes or completes the VAT legislation, represent an integral part of the legal basis governing VAT because they contain provisions, which determine the mechanism for applying the directives.

One of the most complex and important sources of European tax law is the work of the European Court on the interpretation and application of directives (in particular Directive 6) [7]. The decisions of the Court, related to the application of the directives, represent in themselves a stage of legislative creation, at the end of which the directive practically becomes perfect.

In the following, we will present for example some court cases, thus demonstrating the degree of influence of the European Court in the formation of separate legal institutions as well as European law.

For example, File no. 268/83 The Court established that the person, who obtained a building whose construction is unfinished, not predestined for commercial activity, must be considered as a "taxpayer" in the context of art. 4 (1), Directive no. 6 [8]. The person in question benefits from VAT tax exemptions from the moment this property started to bring taxable income.

In File No. 235/85 The Court established that the provision of services by notaries can be considered, in the context of Directive no. 10 on VAT [9], as an economic activity, exercised independently and thus subject to VAT taxation.

In the same vein, in the Court's view, VAT payers and tax collectors are empowered to collect taxes at the local level, in cases where their activity is organized and remunerated as an independent economic activity and is not regarded as enforcement. functions of public bodies.

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In one of its judgments, the European Court explained the rules of Directive No. 6 which provide for the application of VAT to the activity of public administration bodies. The VAT mechanism set out in the directives has been interpreted by the European Court. Thus, in File no. 89/81 by the judgment of 01.04.1982, the Court determined: Directive no. 1 establishes the principle of the single VAT system, which consists of the application of the tax strictly proportional to the price of the goods and the service and without depending on the number of phases in the process of creation and realization of the goods. It follows from this scheme that the tax does not apply until that time until all stages of the creation of the price of the goods have been completed. Respectively, the tax is paid by the final consumer.

This judgment of the Court determined the structure of the VAT mechanism: trader A buys goods from B in order to resell them. A pays B the price increased by the amount of VAT determined in proportion to the price of the goods. Subsequently, A sells the goods to C who obtains them for final use. The price proposed for payment to C contains the price of the goods, increased by the calculated VAT amount. A pays VAT to the budget (tax authorities) with the withholding of the amount, which was paid by B. In this scheme, A who paid the VAT with the withholding of VAT included in the price of B's goods represents a taxpayer from a legal point of view. The final consumer does not have the status of taxpayer, but at the same time is the real payer who thus suffers the burden of the tax.

Directive No. 6 pursues 2 basic goals, such as:

a) harmonization of the road tax in such a way as to exclude barriers to trade within the Union;

b) to increase the Union budget by one of its own types of revenue, in accordance with the Council Decision of 21.04.1970 [10].

According to the rules of the Directive, VAT is the only type of traffic tax chosen to achieve the proposed purposes. This idea is stipulated in art. 33 of the Sixth Council Directive 77/388 / EEC of 17 May 1977 and confirmed in a number of judgments of the European Court of Justice. At the same time, by an amendment made to the mentioned Directive No. 91/680 / EEC [11], it is argued that the Directive does not contain provisions that would restrict the possibility of the operation and inclusion of new types of tolls. The issues of determining the place of supply of services and the place of payment of the fee, respectively, were also the subject of the disputes examined by the Court.

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One of the most important was File No. 168/84 the decision on which it was pronounced on 04.04.1985. Thus, the Court mentioned that the essence of art. 9 of Directive no. 6 is to assist Member States in determining for each type of service a concrete criterion for determining the place of taxation. The provision of the article stipulates that the place of provision of services is considered the place where the person (providing) has set up his business or has a permanent representation, the place of permanent address or domicile of the person providing services. In its judgment, the Court determined "the place, where / from where the activity of the entrepreneur is exercised". The Court interpreted the provision of art. 9 and in its other decisions. Thus, in File no. Article 283/84 provided that, in the case of the provision of transport services, even if part of the route of the means of transport passes outside the national territory, the Member State may require payment of VAT in full provided provided that it does not run counter to state.

The subject of the examination in the European Court was also the issue of determining the tax base. One of the most important decisions in this regard is the one pronounced as a result of the examination of File No. 16/84.

The essence of the problem was to determine the VAT base in case of repeated sales (resale) of the good. This issue more often arose in the car sale and purchase agreement, as was the case in the dispute between the Commission and the Netherlands. Analyzing the case, the Court recalled the principle of the single VAT system which consists in the fact that the common tax on goods is applied to goods and services, established in proportion to the price of the good or service, not taking into account the number of stages of production. The basis for taxation is the delivery of the goods by the taxpayer on the condition of mutual remuneration. [12]

4. CONCLUSIONS

Practically all aspects of the application of VAT have been examined by the European Court, whose decisions interpret not only the provisions of the directives governing indirect taxes but also the general principles of European law on VAT. For example, according to ex-art. 95 (currently art.114) of the Treaty on the Functioning of the European Union (consolidated version) [13], Member States are prohibited from taking action, which could lead to discrimination in the field of taxation. This principle also affects the setting of deadlines for the payment of taxes. For example, Danish law has set different deadlines for paying VAT on domestic (2.5 months) and imported (1.5 months) goods.

The Court, examining in File no. 42/83 the action regarding the contradiction with the provisions of ex-art. 95 (current art.114) of the Treaty on the Functioning

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of the European Union (consolidated version), established that taking into account the fact that VAT on goods of domestic origin is calculated according to a more complicated method, the existence of 2 different terms was justified [14].

Thus, the Member States, by setting different deadlines for the payment of VAT on domestic and imported goods, do not, in the Court's opinion, commit acts of discrimination in the context of ex-art. 95 (current art.114) of the Treaty on the Functioning of the European Union (consolidated version).

From the above, we can conclude that the European Court has a special influence on the application of the rules of European law. The decisions of the Court favored the development of fiscal legislation by interpreting the legal norms and establishing prohibitions for actions that do not correspond to the principles of European law and of *the security of the European fiscal incomes*.

The effective regulation of taxes presupposes first of all the correct choice of legal forms and methods for securing the revenues of the European Union. The elaboration of directives as a legal form and the determination of harmonization as a principle and method of unification of the fiscal legislation of the member states have created sufficient legal conditions for solving the problems in the sphere of European fiscal policy and securing these revenues of the European Union.

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10. Note: whereas this transition took place only on 21-22 April 1970, when the Luxembourg European Council decided to discontinue national contributions and to introduce a new financing system based on two genuine own resources - agricultural taxes and customs duties - supplemented by a the third resource based on value-added tax (VAT).

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11. Article 33 of the Sixth Council Directive 77/388 / EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes - the common system of value added tax: the single basis of assessment, as amended by Council Directive 91/680 / EEC of 16 December 1991 must be interpreted as precluding the possibility for a Member State, when purchasing undeveloped land, to include future construction works in the tax base used for the calculation transfer and transaction taxes - such as the 'Grunderwerbsteuer' provided for by German law and thus subject to the operation to which value-added tax applies according to that directive and to other taxes, provided that the latter do not have the character of value-added taxes .
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