**AEL VAT Newsletter Q2 2013**

European News

Commission/Ireland

On 9 April 2013, the European Court of Justice gave its judgement on case C-85/11, Commission/Ireland concerning VAT groups. The court ruled that non- taxable persons can be included in a VAT group.

Rusedespred OOD

On 11 April 2013, the European Court of Justice gave its judgement on case C-138/12, Rusedespred OOD, concerning VAT refunds. The court ruled that a tax authority may not refuse the refund of VAT invoiced in error by a supplier of an exempt supply, on the ground that the supplier had not corrected the incorrect invoice, in circumstances where the tax authority had definitively refused the customer of the exempt supply the right to deduct that VAT invoiced in error and the possibility of correcting the invoice was no longer available.

Commission/Netherlands; Commission/United Kingdom; Commission/Czech Republic

On 25 April 2013, the European Court of Justice gave its judgement in case C-65/11, Commission Netherlands, case C-86/11 Commission/ United Kingdom and case C- 109/11, Commission/Czech Republic, concerning VAT groups. In accordance with its judgement in case C-85/11, Commission/Ireland, the court ruled that non-taxable persons can be included in a VAT group.

Commission/Finland; Commission/Sweden; Commission/Denmark

On 25 April 2013, The European Court of Justice gave its judgement in case C-74/11, Commission/ Finland, case C-480/10, Commission/Sweden and case C-95/11, concerning VAT groups. The court ruled that Finland, Sweden and Denmark can apply the VAT group scheme to only financial and insurance services.

Hristomir Marinov

On 8 May 2013, the European Court of Justice gave its judgement in case C-142/12, Hristomir Marinov, concerning the termination of an economic activity. The court ruled that the VAT Directive also applies to the termination of the taxable activity as the result of removing the taxable person from the VAT register. The taxable basis of a transaction upon terminating the taxable economic activity is the equivalent of the standard market value of the goods unless this value corresponds in practice to the remaining value of these goods on the date of termination and that the changes in value of these goods is taken into account between the day of their purchase and that of termination of the taxable activity.

Petroma Transports SA et al

On 8 May 2013, the European Court of Justice gave its judgement in case C-271/12, Petroma Transports SA et al., concerning the right to deduct and invoices within a group. The court ruled that a recipient of a taxable service can be refused the right to deduct VAT if they are in possession of incomplete invoices, even if these invoices are completed after the decisions to refuse the VAT deduction has been taken. The principle of tax neutrality does not stop the tax authority from refusing a refund of VAT paid by the service provider if the service recipients were refused the right to deduct because of the irregularities in the invoices issued by the service provider.

TNT Express Worldwide (Poland) sp. Z.o.o.

On 16 May 2013, the European Court of Justice gave its judgement in case C-169/12, TNT Express Worldwide (Poland) sp. Z.o.o. concerning the chargeable event and liability for VAT. The court ruled that a national rule according to which VAT for transport and dispatch services is owed on the date of receipt of the full price or part of it, but at the latest on the thirtieth day after the day when the services were rendered, is contrary to the EU VAT Directive (2006/112/EC).

Alakor Gabonatermelö és Forgalmazó Kft.

On 16 May 2013, the European Court of Justice gave its judgement in case C-191/11, Alakor Gabonatermelö és Forgalmazó Kft, concerning VAT groups. The court ruled that an EU Member State is allowed to refuse to refund part of the VAT that has been subsidised with support granted to the taxable person, which is financed by the European Union and that EU Member State together, on the condition that the economic burden caused by the refusal of the VAT deduction has been fully neutralised.

Paul Newey

On 20 June 2013, the European Court of Justice gave its judgement in case C-653/11, Paul Newey, concerning the economic and commercial reality of transactions and abuse. The court ruled that the contractual clauses do form a factor to be taken into consideration, but are not decisive in determining who the provider and recipient are of a "service". The contractual clauses can be disregarded when it appears that they do not reflect economic and commercial reality, instead forming purely artificial construction that bears no resemblance to economic reality and is only intended to obtain a tax advantage.

Thomas Fuchs

On 20 June, the European Court of Justice gave its judgement in case C-219/12, Thomas Fuchs, concerning the operation of a photovoltaic installation (solar panels). The court ruled that the operation of a photovoltaic installation on or near a home that is designed so that the amount of electricity produced is always less than the amount used by the operator in total for private purposes and is supplied to the electricity net in exchange for a long term yield, comes under the term "economic activity".

Rodopi-M 91 OOD

On 20 June 2013, the European Court of Justice gave its judgement in case C-259/12, Rodopi-M 91 OOD, concerning the late booking and declaration of the cancellation of an invoice. The court ruled that the principle of tax neutrality does not prevent the tax authority of a EU Member State from imposing a fine on a taxable person who does not meet his obligations by the nationally imposed deadline to book and declare data that influences the calculation of VAT he owes, where the fine amounts to the VAT not paid on time even if this taxable person subsequently made up for this mistake and paid the VAT owed, with interest, in full. It is up to the national judge to decide that the amount of the fine is not excessive in guaranteeing the correct collection of VAT and prevention of fraud, given the circumstances of the case, namely the period within the regularity is corrected, the seriousness of the irregularity and any fraud or evasion of the applicable rules that may have been attributed to this taxable person.