ASEJ
Scientific Journal
Bielsko-Biala School of Finance and Law

Volume 26 | Number 3 | October 2022

ISSN2543-9103
eISSN2543-411X
www.asej.eu

Bielsko-Biala

Bielsko-Biala School of Finance and Law
Wyższa Szkoła Finansów i Prawa w Bielsku-Białej

Scientific Journal

Zeszyty Naukowe

Academic Quarterly Publication
Vol 26, No 3 (2022)

Bielsko-Biala 2022

Scientific Journal of Bielsko-Biala School of Finance and Law
The Journal is published by Bielsko-Biala School of Finance and Law; ISSN 2543-9103, eISSN 2543-411X.

The Journal is a quarterly publication with the scoring of 70 assigned by the Polish Ministry of Education and Science, prompting quality scientific work with local and global impacts, conducting a peer-review evaluation process and providing immediate open access to its content. The publication features original research papers as well as review articles in all areas of science, with particular emphasis on social sciences (including Finance, Economics, Business, Law, Internal Security) and technical sciences (especially IT).

The Scientific Journal Office
Bielsko-Biala School of Finance and Law University Press
ul. Tańskiego 5, 43-382 Bielsko-Biała;
tel. +48 33 829 72 42, fax. +48 33 829 72 21; http://www.wsfip.edu.pl; http://asej.eu

ISSN 2543 – 9103 eISSN 2543-411X

October – 2022

Contents

The problem of taxation leasing services and insurance of the subject of leasing

Agata Tarnacka[1]

[1]Jagiellonian University

Poland

Abstract— **The problem of joint taxation of the leasing service and the insurance service of the leased asset has been presented on the example of the analysis of the judgment of the Court of Justice of the European Union in the case C-224/11. This judgment, although issued more than ten years ago, is still under discussion. This ruling was issued in response to questions referred for a preliminary ruling by the Naczelny Sąd Administracyjny in Warsaw concerning two issues. The first, regarding the determination of the correct treatment of the leasing service and the insurance service of the leased asset, i.e. as one complex service or two separate ones, and the second, relating to the determination of the correct taxation of the leasing service and the insurance service for the leased asset (separate or joint) in the event that the lessee does not is a party to the insurance contract for the leased asset. The Court of Justice of the European Union ruled on separate treatment and taxation of these services, but indicated that their essence should be considered in each case separately.**

Keywords— leasing, tax, taxation, insurance.

I. INTRODUCTION

On January 17, 2013, the Court of Justice of the European Union (hereinafter: the CJEU) issued a judgment in the case no. C-224/11 (ECLI: EU: C: 2013: 15), in the case of BGŻ Leasing sp.z o.o. against the Director of the Tax Chamber in Warsaw. Despite the fact that the sentence was delivered more than ten years ago, it is still the subject of lively debate. The decision was issued in response to the following questions for a preliminary ruling from the Supreme Administrative Court in relation to the Council Directive 2006/112 / EC of 28 November 2006 on the common system of value added tax (Journal of Laws EU L 347): " 1. Is the provision of Art. 2 clause 1 lit. (c) of Directive [VAT] should be interpreted as meaning that the insurance service for the leased asset and the leasing service are to be treated as separate services or as one comprehensive leased complex service? 2. If the above question is answered that the insurance service of the leased asset and the leasing service should be treated as separate services, or Art. 135 sec. 1 lit. a) in connection with Art. 28 of [VAT] Directive should be interpreted as meaning that the service of insurance of the leased asset is exempt, where the lessor insures the asset, charging the lessee with the insurance costs?

The parties to the dispute before the Supreme Administrative Court were: lessor BGŻ Leasing Sp. z o.o. and the Director of the Tax Chamber in Warsaw. The subject of the dispute was the charging of VAT for the leasing service in conjunction with the insurance of the leasing subject. The insurance contract was concluded between the lessor and the insurer, and the lessor issued an invoice to the lessee for this insurance. Director of the Tax Chamber in Warsaw, BGŻ Leasing Sp. z o.o. Value added tax exemption for the activity of insuring the leased goods, due to its combination with the leasing service, which itself is subject to VAT.

The essence of the case was the interpretation of Art. 2 clause 1 lit. c), art. 28 and art. 135 sec. 1 lit. a) Council Directive 2006/112/EC (hereinafter also: the VAT Directive). According to art. 2, point 1 of the VAT Directive, "VAT is subject to (...) the supply of services for consideration within the territory of a Member State by a taxable person acting as such." Article 28 of the VAT Directive provides that "where a taxable person, acting in his own name but for a third party, participates in the supply of services, it is assumed that the taxable person has received and provided these services himself." However, according to the provision of Art. 135, point 1 of the VAT Directive "Member States shall exempt (…) insurance and reinsurance

ASEJ - Scientific Journal of Bielsko-Biala School of Finance and Law
Volume 26, No 3 (2022), pages 4
https://doi.org/10.19192/wsfip.sj3.2022.6
Received: Jun 2022 Accepted: September 2022
Published: September2022

transactions, including related services provided by insurance brokers and insurance agents".

Therefore, it should be assumed that, first of all, BGŻ Leasing Sp. z o.o. was the provider of the service, secondly, and the insurance services are exempt from VAT. However, as already indicated above, the Director of the Tax Chamber in Warsaw refused BGŻ Leasing Sp. z o.o. Value added tax exemption for the activity of insuring the leased goods, due to its combination with the leasing service, which itself is subject to VAT. Therefore, BGŻ Leasing Sp. z o.o. filed a complaint against the decision of the Director of the Tax Chamber in Warsaw to the Provincial Administrative Court in Warsaw (hereinafter also: the Provincial Administrative Court).

As indicated by the Provincial Administrative Court in Warsaw, "pursuant to Art. 78 of the VAT Directive, the taxable amount for services also includes additional costs such as insurance costs required by the supplier from the buyer or customer. He also stressed that a supply covering a single service should not be artificially divided from an economic point of view in order not to disturb the functioning of the VAT system. " At the same time, he argued that "in the case of the provision of a leasing service together with insurance of the leased object, it should be defined as one service consisting of a leasing service and an insurance service. In addition to the rent, insurance costs should be included in the tax base for such provision of services, and the total value of such services should be subject to a uniform VAT rate applicable to the basic service, i.e. leasing services. Therefore, the Provincial Administrative Court assumed that these services constitute one complex service. BGŻ Leasing Sp. z o.o. lodged a cassation appeal against the judgment of the Provincial Administrative Court to the Supreme Administrative Court, arguing that the Provincial Administrative Court in Warsaw misinterpreted the provisions, in particular Art. 2 clause 1 lit. c), art. 24 sec. 1, art. 28, 73 and article. 78 lit. b) of the VAT Directive.

II. RESOLUTION OF THE CJEU

For the case to be properly resolved by the Supreme Administrative Court, it was necessary for the CJEU to interpret Art. 2 clause 1 lit. c), art. 28 and art. 135 sec. 1 lit. a) of the VAT Directive.

In judgment C-224/11 (paragraph 27), the CJEU stated that "the leased asset insurance service and the leasing service are, in principle, separate and independent services for the purposes of value added tax", and "[to] the referring court should whether, in the light of the particular circumstances of the main proceedings, the activities concerned are so closely related that they must be regarded as constituting a single service or, on the contrary, they constitute separate services'.

"If the lessor insures the leased object against the lessee with the exact cost of that insurance, in circumstances such as those in the main proceedings, such an activity constitutes an insurance transaction within the meaning of Art. 135 sec. 1 lit. a) Council Directive 2006/112 / EC of 28 November 2006 on the common system of value added tax".

Undoubtedly, in a situation where the lessor (BGŻ Leasing Sp.z o.o.) as the final customer of the insurer, not earning any money from the insurance service, but only re-invoicing it to the lessee at the price for which it was purchased, such service constitutes a separate insurance service. As noted by the CJEU, BGŻ Leasing Sp. z o.o. "Requires insurance of the leased items. For this purpose, BGŻ Leasing offers its clients the possibility of providing them with insurance. If they wish to take advantage of this option, BGŻ Leasing concludes an appropriate insurance contract with the insurer and re-invoices its cost on them "(paragraph 19 of the judgment C-224/11). BGŻ Leasing Sp. z o.o. thus obligatorily required from the lessees to insure the items they leased, but it did not impose the choice of insurance offered through its agency.

The interpretation presented by the CJEU was made in line with the very purpose of the VAT Directive, which in Art. 135 sec. 1 lit. a exempts all insurance transactions from VAT, leaving Member States the option of maintaining or introducing taxes on insurance contracts (Article 401). If, therefore, the insurance transaction relates only to activities performed by the insurers themselves, end consumers (e.g. lessees), then this service is tax-exempt.

III. GENERAL INTERPRETATION OF THE POLISH MINISTER OF FINANCE

After the publication of the judgment of the CJEU C-224/11, the Ministry of Finance presented the General Ruling No. PT3 / 033/1/101 / AEW / 13/63224 of the Minister of Finance (Journal of Laws of the Minister of Finance of July 2, 2013, item 22). , hereinafter: General Interpretation) regarding VAT in relation to insurance services of leased items, i.e. in the context of the provisions of the Act of March 11, 2004 on tax on goods and services (Journal of Laws of 2011, No. 177, item 1054 , as amended, hereinafter: the VAT Act) in the scope of exemption from tax on goods and services (hereinafter: VAT) "activities consisting in covering the goods that are the subject of the lease with insurance, if it is combined with the leasing service, in itself subject to VAT - pursuant to Art. 14a § 1 of the Act of August 29, 1997 - Tax Ordinance (Journal of Laws of 2012, item 749, as the rules constitute separate and independent services for the purposes of VAT taxation.

It should also be pointed out that the decision whether the activities are related to each other to such an extent that they should be treated as constituting one service, or on the contrary - they constitute separate services in the light of the provisions of the VAT Act, each time requires detailed and an objective analysis of the facts of a specific case. If the lessor insures the leased subject, charging the lessee with the exact cost, and the analysis of the facts of the case, taking into account the guidelines resulting from the judgment of the CJEU of 17 January 2013 in case C-224/11, leads to the conclusion that they

are are separate services in the light of the provisions of the VAT Act, this activity constitutes an insurance transaction within the meaning of Art. 43 sec. 1 point 37 of the VAT Act ".

The General Interpretation presents in detail the effects of the judgment of the Court of Justice of the EU in case C-224/11, in three areas, ie with regard to the prior settlement of output tax by lessors; for the prior settlement of the tax charged by lessors; for the prior settlement of the tax charged by lessees.

The effects of the above-mentioned the CJEU ruling on the prior settlement of tax due by lessors is presented in three possible cases:

- if, pursuant to the applicable regulations, the lessor issued a correction invoice as a result of complying with the thesis of the resolution of the Supreme Administrative Court of November 8, 2010, taxing the leasing insurance service as the leasing service and the additional VAT burden resulting from this adjustment was shifted to the lessee, the lessor may re-issue a correcting invoice and settle this adjustment in the current tax declaration, provided, however, that the lessee has previously returned the part of the price corresponding to the amount of VAT previously added to him;
- if, in accordance with applicable regulations, the lessor issued a correcting invoice as a result of complying with the thesis of the resolution of the Supreme Administrative Court of November 8, 2010, taxing the leasing insurance service as the leasing service and the correcting invoice took into account the gross amount, i.e. the price remained unchanged and thus, the lessor assumed the burden of tax in the corrected part, the taxpayer may issue a correcting invoice and account for this adjustment in the current tax declaration;
- while, as a result of complying with the thesis of the resolution of the Supreme Administrative Court of 8 November 2010, the lessor took over the tax burden and paid VAT (due to the taxation of leasing insurance services, as well as leasing services) and did not document this change with a correcting invoice , may correct the VAT and account for this adjustment either in the current tax return or by correcting the tax return in which he entered the original settlement".

As further indicated in the General Interpretation, as the effects of the CJEU judgment in the field of prior settlement of input tax charged by lessors, taking into account "Art. 90 and 91 of the VAT Act, should be accepted as admissible or correcting the tax on an ongoing basis, or by appropriate assignment to sales from each year (e.g. from the years: 2008, 2009, 2010), by making appropriate changes in these deductions resulting from properly correct the aspect ratio. It is up to the lessor to choose one of the two methods above. '

The effects of the Court's judgment on the prior settlement of the tax charged by lessees "will depend on the fact that the lessee receives a correction invoice from the lessor. In the event of receipt of a correcting invoice, the lessee is obliged to correct the deducted input tax in the current tax return. "

At the same time, it was emphasized that "the taxpayer is bound by other requirements for tax deduction". As further noted, "lessors who meet the conditions for making an appropriate settlement adjustment in accordance with the judgment of the Court of Justice, may, but are not obliged to do so".

According to the resolution of the Supreme Administrative Court of November 8, 2010 (reference number I FPS 3/10) referred to in the General Interpretation, "In the light of Art. 29 sec. 1 of the Act of March 11, 2004 on tax on goods and services (Journal of Laws No. 54, item 535, as amended) in the legal state in force in 2006, the entity providing leasing services should include in the tax base of these services costs of insurance of the leased object ". This means that the Supreme Administrative Court decided that the service of leasing and insurance of the leased object is one complex service on which VAT should be paid. In its judgment C-244/11, the CJEU took a different position, ruling that the service of insuring the subject of leasing and the leasing service constitute separate and independent services for the purposes of VAT. As indicated by the General Interpretation, the indicated effects of the CJEU judgment C-244/11 should "be applied respectively to VAT settlements before the resolution of the Supreme Administrative Court of 8 November 2010, corrected in connection with the above-mentioned by resolution as well as for settlements made after the adoption of this resolution taking into account the interpretation made by the Supreme Administrative Court ". Accordingly, for lessees, the activities are conditional on receipt of a credit memo from the lessor. In a situation where he receives one, he will have to correct the deducted input tax in the current tax declaration. At the same time, other tax deduction requirements still apply to it (Leśniak 2013).

IV. SUMMARY

Currently, as a result of the CJEU judgment in case C-244/11, lessors in Poland are no longer required to pay VAT on the insurance of leased items, as the insurance service for the leased item and the leasing service have been recognized as - in principle - separate services . The tax exemption from tax on the insurance of the leased object is important because it was previously subject to tax at the standard rate of VAT of 23%.

As already indicated above, as a rule, the insurance service of the leased object and the leasing service are separate services. However, it should be remembered that the Tribunal has indicated how to assess whether this is actually the case in a given situation. Pursuant to the judgment of the CJEU, in order to determine whether the services constitute two separate services or one complex service, one should look for elements characteristic of the transaction in question. The Court emphasized that there is no absolute rule for determining the scope of a given service from the point of view of VAT, and therefore, in order to determine the scope of a given service, it

is necessary to take into account all the circumstances in which a given transaction takes place. The obligation to determine whether, in a given case, the benefits should be regarded as separate and to carry out an overall final assessment of the facts in this respect rests with the national courts.

It is worth adding that when the leasing contract does not provide for the transfer of ownership of the leased object to the lessee, therefore it has the characteristics of a lease, it should therefore be generally classified as the provision of services within the meaning of Art. 24 sec. 1 of the VAT Directive. In the Court's view, such services may, in certain circumstances, be regarded as the acquisition of capital goods, i.e. where "the leasing contract of a motor vehicle provides that the ownership of the vehicle is transferred to the lessee at the end of the contract or that the lessee possesses significant ownership attributes of the vehicle in question, in particular that most of the benefits and risks related to the legal title to the vehicle are transferred to him and that the updated sum of the installments is practically the same as the market value of the goods ".

However, as a rule, for the purposes of imposing VAT, each supply should be regarded as separate and independent (cf. Article 1 (2), second subparagraph, of the VAT Directive). Although it should be borne in mind that in certain circumstances, formally separate supplies that may separately lead to taxation or exemption should be considered as a single transaction if they are not independent of each other and cannot be performed separately.

V. REFERENCES

Dyrektywa Rady 2006/112/WE z dnia 28 listopada 2006 r. w sprawie wspólnego systemu podatku od wartości dodanej (Dz.U. L 347) https://eur-lex.europa.eu/legal-content/PL/TXT/PDF/?uri=CELEX:32006L0112&from=PL, [acess:15.02.2022].

Interpretacja ogólna Ministra Finansów z dnia 26 czerwca 2013 r., Nr PT3/033/1/101/AEW/13/63224 (Dz. Urz. Min. Fin. z dnia 2 lipca 2013 r. poz. 22).

Leśniak G., Minister finansów wyjaśnia skutki wyroku w sprawie BGŻ Leasing, artykuł z dnia; https://podatki.gazetaprawna.pl/artykuly/715317,minister-finansow-wyjasnia-skutki-wyroku-w-sprawie-bgz-leasing.html [acess: 16.02.2022].

Rozporządzenie Ministra Finansów z dnia 28 marca 2011 r. w sprawie zwrotu podatku niektórym podatnikom, wystawiania faktur, sposobu ich przechowywania oraz listy towarów i usług, do których nie mają zastosowania zwolnienia od podatku od towarów i usług (Dz. U. Nr 68, poz. 360 oraz z 2012 r. poz. 1428).

Wyrok Trybunału Sprawiedliwości Unii Europejskiej z 17 stycznia 2013 r. w sprawie C-224/11 BGŻ Leasing Sp. z o.o. przeciwko Dyrektorowi Izby Skarbowej w Warszawie,

https://eur-lex.europa.eu/legal-content/PL/TXT/PDF/?uri=CELEX:62011CJ0224&from=pl, [acess: 15.02.2022].

Wyrok Trybunału Sprawiedliwości Unii Europejskiej z wyrok z dnia 16 lutego 2012 r. w sprawie C-118/11 Eon Aset Menidjmunt v Direktor na Direktsia Obzhalvan

https://eur-lex.europa.eu/legal-content/PL/TXT/PDF/?uri=CELEX:62011CJ0118&from=pl [acess: 17.02.2022.]

WSFiP conducts research and educates students in the following fields:

Finance and Accounting
- Treasure Administration
- Banking
- Corporate Finance
- Accountancy
- Accounting and Finance in Public Sector Institutions
- Corporate Accounting and Controlling
- Audit
- Management and Finance in Real Estate

Law
- this program gives strong legal foundations to undertake further professional training for judges, prosecutors, atorneys, notaries, bailiffs.

Administration
- Fiscal Administration
- Local Government Administration

Logistics
- this program gives good preparation for work in logistics companies as well as in other economic and administrative units.

Cyberspace and Social Communication
- Communication and Image Creations
- Safety in the Cyberspace

Internal Security
- Administration and Management in Security
- Security and Public Order
- Security and Development in Euro-region
- Security of Information and Information Systems
- Security in Business
- Criminology and Investigative Studies
- Criminology and Forensics
- Protection of People and Property
- Public Order Agencies

Information Technology
- Databases and Net Systems
- Computer Graphics and Multimedia Techniques
- Design of Applications for Mobile Devices
- IT Services in Public Administration Units

Postgraduate courses
- Administrative studies
- Fiscal Administration
- Law and management in health service