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About this paper

This paper was written following the intervention that the author had at the conference held on May 27, 2022, at the University of Minho Law School, dedicated to the analysis of the practical and jurisprudential dimensions of VAT.

The taxable amount for VAT purposes – CJUE case law: *refresh and update*

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Abstract: The legal regime of value added tax (VAT) has been particularly given to interpretations and jurisprudential creations that mark very sharply the terms in which it is applied, with implications that are not concentrated in the national sphere. There is jurisprudence in the field of VAT, mainly originating from the Court of Justice of the European Union, which is paradigmatic, even today, and which, for this reason, deserves to be remembered. And we are also witnessing, at an accelerated pace, the constant emergence of new decisions, which Tax Law practitioners should be aware of.

The fact that this is a tax that is widely accepted at an international level allows the jurisprudential approach to be particularly rich, calling different experiences and solutions as to how to deal with taxation on consumption. It is in this sense that this paper deals with the taxable amount for VAT purposes - one of the most relevant dimensions in determining the VAT due -, in the light of the case law.

Keywords: value added tax, taxable amount, consideration, customs value, CJEU case law

Introductory notes

This article deals with the determination of the taxable amount for VAT purposes, in an analysis that essentially starts from CJUE (Court of Justice of the European Union) case law considered paradigmatic for the subject, from older decisions, which introduced very relevant lines of interpretation of the applicable provisions and that are taken as a reference until to the present day (from a *refresh* perspective), to more recent decisions, which introduce new factors for reflection (from an *update* perspective).

Neutrality is a key concept within VAT systems. The ability of taxable persons to deduct input tax ensures that all the actual VAT falls on the non-taxable person, normally the consumer. Thus, there are no distortions in the supply chain, which can be as long or as short as determined by the free market. This neutrality principle applies also to the way in which the tax is calculated on each supply made by a taxable person.

In most circumstances, the determination of the taxable amount for VAT purposes may correspond to a simple operation, which implies the application of the VAT rate to the value of goods or services, established in the light of the principles of contractual freedom and private autonomy. However, the calculation of the tax due may be difficult, considering the various dimensions to which the applicable legal regime requires compliance.

The determination of the taxable amount presupposes, in the first place, that the type of operation in question is identified. So, and summarily (articles 73 *et seq.* of VAT Directive*)*:

i. In respect of the supply of goods or services, as a general rule, the taxable amount shall include everything which constitutes consideration obtained or to be obtained by the supplier, in return for the supply, from the customer or a third party, including subsidies directly linked to the price of the supply;

ii. Where a taxable person applies or disposes of goods forming part of his business assets, or where goods are retained by a taxable person, or by his successors, when his taxable economic activity ceases, the taxable amount shall 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 the application, disposal or retention takes place;

iii. In respect of the supply of services, where goods forming part of the assets of a business are used for private purposes or services are carried out free of charge, the taxable amount shall be the full cost to the taxable person of providing the services;

iv. In respect of the supply of goods consisting in transfer to another Member State, the taxable amount shall 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 the transfer takes place;

v. In respect of the supply by a taxable person of a service for the purposes of his business, the taxable amount shall be the open market value of the service supplied;

vi. In respect of the intra-Community acquisition of goods, the taxable amount shall be established on the basis of the same factors as are used to determine the taxable amount for the supply of the same goods within the territory of the Member State concerned. In the case of the transactions, to be treated as intra-Community acquisitions of goods, the taxable amount shall 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 of the supply;

vii. In respect of the importation of goods, the taxable amount shall be the value for customs purposes, determined in accordance with the European Union provisions in force.

In this article, we will only explore jurisprudential issues concerning internal operations for the sale of goods, provision of services and imports.

1. Determining the taxable amount in internal sales of goods and provision of services

The taxable amount in the case of domestic supplies within a State is primarily done by applying the VAT rate to the consideration, where consideration is the amount, net of VAT, charged by the supplier and the amount payable by the customer to the

The existence of a consideration presupposes:

i. A direct link between the good delivered or the service provided and the consideration received - that is, there must be a dependence on the services and these must not necessarily be autonomous;

ii. That the consideration can be assessed in cash and has a subjective value, given that VAT should be levied on the remuneration actually received, and not on an amount determined on the basis of objective criteria, with a general principle of irrelevance of the objective price in force for the purposes of VAT.

The jurisprudence under analysis will allow us to conclude in the following terms:

i. The taxable amount is influenced by the scheme of action adopted by taxable persons, under what is their contractual freedom.

ii. The taxable amount is not influenced by payment terms.

We proceed to densify each of these conclusions.

1.1. The taxable amount is influenced by the scheme of action adopted by taxable persons

We begin our approach with reference to the judgment of the ECJ "Naturally Yours Cosmetics", of November 23, 1988, case 230/87.

Naturally Yours was a beauty products wholesale company. These products were intended to be resold by the so-called "beauty consultants", who used friends and acquaintances (the "hostesses") to organize private meetings, during which Naturally Yours products were demonstrated and put on sale.

Beauty consultants bought products from Naturally Yours at wholesale prices and sold them, during private meetings, at retail prices recommended by the company. The difference between these two prices corresponded to the profit to which the consultants would be entitled. Beauty consultants were thus retailers, despite not being required to be registered for VAT purposes, considering that their turnover was less than the threshold established for cases of mandatory registration for taxable persons in the United Kingdom.

To reward the hostesses for organizing these meetings, the beauty consultants offered them one of the commercialized products (in this case, the "Natural Oasis Rejuvenating Cream"), as a "memorial bonus". When that product was used for this purpose, Naturally Yours would sell it to beauty consultants for UKL 1,50 instead of its normal wholesale price of UKL 10,14.

The UK tax authorities settled VAT on the basis of the normal wholesale price of UKL 10,14 per jar of cream, including jars intended as bonuses. In Naturally Yours' opinion, the taxable amount should correspond to the price actually paid by the beauty consultants for the products purchased as a bonus (1,50 UKL).

The analysis of the CJEU presupposed, therefore, to assess (i) whether there would be a direct link between the delivery of the good supplied at a price lower than the current price and the value of the service that was provided by the beauty consultants and, if so, (ii) what is the taxable amount associated with this supply.

Regarding the first question, it was understood that Naturally Yours' sales method was characterized by the intervention of beauty consultants in the context of private meetings that they organized through hostesses. This would be the reason why Naturally Yours agreed to sell the product intended to serve as a bonus at a very low price. Furthermore, when the beauty consultants did not provide the expected service, that is, they could not find a host to organize a meeting, the product (the rejuvenation cream) would have to be returned or paid at the current wholesale price. The ECJ therefore concluded that, in the specific case, there was a direct link between the delivery of the product at a very low price and the service provided by the beauty consultants.

If there is, then, a provision of services, what should be the taxable amount? The CJEU understood that it was necessary to comply with the provisions of [current] article 73 of the VAT Directive, under which the taxable amount comprises everything that constitutes the consideration that the supplier or provider has received or should receive in relation to the transaction in question, and the application of objective criteria to determine the value must be ruled out.

In the present case, the parties reduced the wholesale price of the product by a certain amount, in exchange for the provision of a service that was provided by beauty consultants (which then consisted of having the hostesses organize sales meetings by offering cosmetics as a bonus). In these circumstances, it was possible, in the opinion of the CJEU, to know the monetary value that the parties attributed to that service: this value should be considered as equal to the difference between the price actually paid (1,50) and the normal wholesale price (10,14). The value of the service provided by the beauty consultants to Naturally Yours would then be 8,64.

Therefore, the taxable amount is constituted by the sum of the monetary consideration (1,50) and the value of the service provided by the retailer (8,64), which consists of using the gift to guarantee the services of the third party or to reward him.

1.2. The taxable amount is not influenced by the payment terms

Let us now consider the judgment of the CJEU "Chaussures Bally", of May 25, 1993, case C-18/92.

Bally sold footwear and its customers paid the price of their purchases in cash, by check, or by credit card. For the latter case, Bally entered into contracts with various credit card issuers that provided for the following: when the customer, the credit card holder, purchases an item using that card, the card issuer would deliver to Bally the corresponding price, after deducting a commission, usually in the order of 5%, on the payments.

Bally, who was subject to VAT, had doubts as to whether the company should pay tax on the net amount it received from credit card issuers, after deducting the commission charged by them, or on the gross amount, that is, on the price of the good before deducting the said commission.

Bally was acting in accordance with the first hypothesis and the tax authority was of the opinion that it should act in accordance with the second, taking into account that in the calculation of the taxable amount, commissions would not be deductible from the price. In other words: Bally had accounted for VAT on these credit card sales only to the extent of the actual value received from the credit card company, in this case 95. The tax authorities took the view that Bally should account for VAT on 100 as the 5 represented consideration for the service supplied by the credit card company and, as with the case of Naturally Yours, it could be readily identified.

In the interpretation of the CJEU, when the buyer pays the price of the goods by credit card, two operations would be triggered:

i. on the one hand, the sale of the goods by Bally to the final consumer, at a certain price, including VAT;

ii. on the other hand, the provision of services to Bally by the card issuing entity.

The purpose of this last operation was to guarantee payment for the goods purchased using the card; the promotion of the supplier's business through the possibility of reaching new customers; any advertising made in favour of the supplier or for any other purpose. The deduction made by the card issuer, thus, constituted consideration for a service that it offered to the supplier. This service was, in the opinion of the CJEU, the subject of an independent transaction, for which the buyer was a third party.

It was concluded, therefore, in the sense that the tax authority was right: when, in a sales operation, the price of the goods is paid by the buyer by credit card and delivered to the supplier by the card issuer, after withholding a percentage as a commission remunerating a provision of services by the latter to the supplier of the goods, this withholding must be included in the tax base that the taxable supplier must pay to the State, in line with the provisions of [current] article 73 of the VAT directive.

This approach lends support to the neutrality feature of VAT. The VAT accounted for by a supplier should be the same irrespective of the method of payment.

2. Determining the taxable amount on imports

In the light of the established case law of the CJEU, the European discipline on customs valuation aims to establish a fair, uniform and neutral system that excludes the use of arbitrary or fictitious customs values.

In accordance with Article 91(1) of the VAT Directive, the taxable value of imported goods is made up of the customs value, determined in accordance with the European provisions in force. These provisions essentially refer to the Union Customs Code (Regulation (EU) No. 952/2013) and the Implementing Regulation (Regulation (EU)

No. 2015/2447). So, for imported goods, the normal approach is to levy the VAT on the customs value, including any customs duties or levies that may be applied to the importation, excluding the VAT in itself.

However, the main basis for the customs value of goods is the transactional value, that is, the price actually paid or payable for the goods when they are sold for export to the customs territory of the Union, adjusted if necessary. The price actually paid or payable is the total payment made or to be made by the buyer to the seller or by the buyer to a third party for the benefit of the seller for the imported goods and comprises all payments made or to be made as a condition of the sale of the imported goods.

The customs value must, therefore, reflect the real economic value of an imported good and, therefore, take into account all the elements of that good that have economic value. Thus, although the price actually paid or payable for the goods forms, as a general rule, the basis for calculating the customs value, that price is a factor that must eventually be subject to adjustments when such an operation is necessary to avoid determining an arbitrary customs value or fictitious.

Before taking the jurisprudential approach that we propose to make, it is necessary to address a relevant issue associated with customs value and which is related to the determination of that value when a chain of transactions is involved, that is, when different and successive sales take place in the commercial chain. Let us consider the following example:

Let us consider the following example:

> *B, company located in the United Kingdom, purchases goods from A, company located in the United States. B sells the same goods to C, a company located in Portugal, where the goods arrive.*

What will be the transactional value to consider in this case?

In the light of Article 128(1) of the Implementing Regulation, the transaction value of goods sold for export to the customs territory of the Union is determined at the time of acceptance of the customs declaration on the basis of the sale that took place immediately before the goods are brought into that customs territory.

According to the aforementioned provision, the relevant transaction value for the purposes of determining the customs value corresponds to the value of the last sale that took place between the contracting parties before the goods even crossed the border of the Customs Union. Thus, in the case presented, the relevant value would correspond to the transaction carried out between B and C.

Article 128 (1), thus, introduced a new requirement with regard to the use of transaction value, sometimes also called the "*last sale for export*" rule. This rule is aimed at ending the "first sale of export", rule which was included in article 147 of the CCC Implementing Regulation.

The current solution translates into a less advantageous effect for economic operators, because the further we move away from what is the first operation, the value tends to be higher. Until the last of the operations, several factors (*e.g.*, transport) were added to the value.

Let us now consider another example:

> *A (based in UK) moves the goods from outside the EU into EU without any sale. The goods are placed in a customs warehouse in Germany and delivered (sold) to B (transaction 1). B declares the goods for free circulation and afterwards sells them to C (transaction 2).*

In this case, the customs value should be based on the transactional value of the sale that took place between A and B – when the sale is made at a time when the goods were still in storage. Here, there is not sale for export. When A introduces the property into the EU, he did not do so as a sale - it was just a transfer of stock.

Having clarified these basic dimensions that are associated with the determination of customs value, we will now dedicate ourselves to identifying some jurisprudential decisions that we consider to be relevant and that will allow us to reach the following conclusions:

i. The customs value is influenced by the existence of intangible goods;

ii. The customs value is influenced by the existence of royalties;

iii. The customs value is influenced by the statistical average of the purchase prices in the importation of similar goods;

iv. The customs value is influenced by the type of relationship maintained between economic operators.

We proceed to densify each of them.

2.1. The customs value is influenced by the existence of intangible goods

In this regard, let us consider the judgment of the CJEU of September 10, 2020, case C-509/19.

At issue was the BMW company, which manufactures vehicles that contain control devices. These devices come from different third countries and resemble an on-board system that controls physical devices inside vehicles. It was BMW itself that developed — or had it developed by European Union companies contracted for the purpose — a computer program that would ensure fluid communication of a vehicle's applications and systems. This software was necessary to carry out various technical operations carried out by the vehicle's control device.

As the owner of the software, BMW does not pay any royalties for it.

This software is made available free of charge to manufacturers of control devices. They use it to carry out a functional test before delivery of the control devices. The test report proves that the interaction between the control device and the computer program is carried out correctly. It also makes it possible to determine whether errors have occurred in delivery, as a result of transport or in the implementation of the computer program.

The entire process is the subject of contracts between BMW and the manufacturers of control devices, with BMW importing them and putting them into free circulation within the Union, including the software installed on the latter outside the Union by the manufacturer, but which has been developed, as has been said, in the Union.

In a customs inspection carried out by the customs authorities, it was found that BMW indicated, as part of the customs value of imported control devices, the price paid to the manufacturers of control devices, not including the costs of developing the software. Considering that these costs should be integrated into the customs value, the customs authorities established an additional assessment of customs duties for the goods released for free circulation in January 2018.

The intervention of the CJEU made it possible to assess whether the costs of developing a computer program developed in the European Union, made available free of charge to the seller by the buyer and installed in the imported control device, should or should not complement the transactional value of the imported goods, if they are not included in the price actually paid or payable for the goods.

The doubt arises, considering the provisions of article 71, no. 1, subparagraph b), of the UCC, which requires that the price actually paid or payable for imported goods be complemented by the value of certain products and services supplied directly or indirectly by the buyer, free of charge or at a reduced cost, and used in the course of production and sale for export of the imported goods, insofar as this value has not been included in that price.

The CJEU concluded that it will be up to the national court to determine whether the fact that the computer program allows, on the one hand, to test the operation of the control devices and, on the other hand, to verify whether there were errors in the delivery, transport or implementation of the aforementioned computer program is capable of giving control devices a real value greater than their transactional value.

On the other hand, the CJEU pointed out that contractual provisions cannot be invoked with a view to limiting the possibilities of correction provided for in customs legislation, under penalty of violating case law according to which the customs value must reflect the real economic value of a imported goods and, accordingly, take into account all the elements of that goods that have an economic value. This is because the contractual terms could have been developed with the purpose, precisely, of avoiding these adjustments to the customs value, which would, from the outset, constitute a fiscally abusive behaviour.

The CJEU understood that it is therefore irrelevant, for the purposes of determining the customs value of the imported goods, that the product whose value must be added is an intangible good, such as a computer program. Indeed, it follows from the wording of article 71, paragraph 1, subparagraph b), of the UCC - which expressly refers to "products" or "services" - that its scope is not limited to material goods.

2.2. The customs value is influenced by the existence of royalties

Another judgment that seems pertinent to mention here concerns the inclusion, in the transactional value, of royalties. Pursuant to Article 71(1)(c) of the UCC – the price actually paid or payable for the imported goods is supplemented by royalties and license fees relating to the goods to be valued, which the buyer is obliged to pay, directly or indirectly, as a condition of sale of the goods to be valued, insofar as these royalties and license rights have not been included in the price actually paid or payable.

Hence, it follows that royalties will be included in the customs value if:

i. The payment of royalties is a condition of sale of the goods to be evaluate;

ii. Royalties are related to the goods to be valued;

iii. Royalties have not already been included in the price paid or payable.

It is article 136 of the Implementing Regulations that implements the provisions of article 71 (1) (c) of the UCC.

Thus, and regarding the first assumption indicated, royalties and license rights are considered paid as a condition of sale of imported goods, under the terms of paragraph 4 of article 136, when any of the following conditions are met:

i. The seller or a person related to the seller asks the buyer to make such payment;

ii. Payment by the buyer is made to satisfy an obligation of the seller in accordance with contractual obligations; or

iii. Goods may not be sold or purchased by the buyer without payment of royalties or license fees to a licensor.

As for the second assumption indicated, royalties, under the terms of paragraph 1 of that disposition, are related to the imported goods, in particular, when the rights transferred under the royalty agreement are incorporated in the goods. The method of calculating the amount of royalties or license fees is not the deciding factor. What becomes relevant here, then, is determining why royalties are charged.

The country in which the recipient of the royalties or licence fees payment is established is not a material consideration.

Let us therefore pay attention to the judgment of the CJEU of July 9, 2020, C-76/19, still related to the previous customs legislation, but which is nonetheless interesting in view of the factual matter in question.

Curtis Balkan, a company based in Bulgaria, is wholly owned by Curtis Instruments Inc, a company based in the United States ("Curtis USA"). The legal relationships between these companies are governed, in particular, by two contracts:

– the first, signed on 1 February 1996, concerning the right to use a patent;

– the second, signed on 26 November 2002, relating to the provision of management services.

Pursuant to the patent usage agreement, Curtis USA assigns to Curtis Balkan, at standard prices, fuel tank gauge manufacturing kits and high frequency cruise control manufacturing kits, based on its own patented technology.

Curtis Balkan has the right to produce, using these components, and to sell engine speed governors and electric vehicle elements, in respect of which it pays a fee for the right to use the patent.

In accordance with the service agreement, Curtis USA undertakes, inter alia, to provide Curtis Balkan with the operational activity, namely management, including marketing, advertising, budgeting, financial reporting, information systems and human resources, in return for an agreed monthly remuneration.

During an inspection of the customs declarations made by Curtis Balkan concerning the importation of goods from third countries, the Bulgarian customs authorities found that the imported goods, "parts and components", were used by Curtis Balkan for the manufacture of products for which this partnership pays royalties to Curtis USA in performance of the contract relating to the right to use the patent. It was also found that the declared customs value of the imported goods did not include these duties.

In this context, both Curtis USA and Curtis Balkan provided explanations, which resulted, inter alia, that Curtis USA controls the entire production chain, from the negotiation and centralized procurement of the components necessary for production to the sale of the finished products. The components incorporated into the products are manufactured to specifications imposed by Curtis USA and designed specifically for these products. In addition, the selection of another supplier must be approved by Curtis USA. However, for any order with a value not exceeding US$100.000 (USD) (approximately €85.000), Curtis USA's notification or approval is not required.

Curtis Balkan, not agreeing with the settlement of customs duties under the established terms, reacts judicially, until the matter reaches the CJEU. The question was whether the provisions relating to the determination of customs value must be interpreted as meaning that a proportionate share of the amount of royalties paid by a company to its parent company in exchange for the provision of know-how for the manufacture of finished products must be added to the price actually paid or payable for imported goods, when those goods are intended to form part of, among other things, the said finished products and are purchased by the first company from sellers other than the parent company.

From the analysis of the judgment, the following method is taken for the purposes of determining the customs value, in order to assess whether to include royalties or not:

(i) Firstly, it will be necessary to assess whether or not the royalties and license rights are actually involved – in this case, the operating rights in question paid by Curtis Balkan to its parent company, Curtis USA, in consideration for the supply by the latter of the know-how for the manufacture of the products in which the imported goods were incorporated. Thus, these exploitation rights were considered to be a payment for the use of rights relating to the use of the imported goods;

(ii) Secondly, it will be necessary to check whether the aforementioned assumptions are fulfilled. In this case, it was considered that:

- Curtis Balkan did not include those royalties in the price actually paid or payable for the imported goods at issue in the main proceedings;
- It was for the national court to verify whether there was a sufficiently close link between the know-how provided under the license agreement concluded between Curtis Balkan and Curtis USA and the imported goods and to determine whether the royalties paid by first to second relate to those goods, and it is important to take into account all relevant elements, including the legal and factual relationships between the persons involved. In this regard, it was held that the mere fact that a good is incorporated into a finished product does not lead to the conclusion that the license fees paid in return for the supply, on the basis of a license agreement, of the know-how for the manufacture of that finished product are related to that good. On the other hand, a sufficiently close link is required between those license rights, on the one hand, and the goods in question, on the other. Such a link will exist, in the opinion of the CJEU, when the know-how provided under the license agreement is necessary for the manufacture of the imported goods. It is an indication to that effect that the goods were specifically designed to be incorporated into the product subject to the licence, without any other reasonable use being contemplated. On the other hand, the fact that the know-how is necessary only for the finishing of the products covered by the license makes it possible to conclude that there is not a sufficiently close link;
- As for the requirement relating to the condition of sale, in the current Implementing Regulation, the legislator clarifies the terms in which it must be considered. In the present case, the company to which Curtis Balkan paid royalties, namely Curtis USA, was different from those from which it acquired the goods in question. And looking at the conditions listed in article 136, paragraph 4, it would be difficult to consider that any of them, in the specific case, was fulfilled. However, the CJEU considered that although the price of the imported goods does not depend on the payment of the exploitation rights at issue in the main proceedings and that it is

> not up to the licensor to limit or restrict its activities at an operational level, it could not, without further ado, exclude that the payment of those duties would constitute a condition of the sale, since the decisive question is whether, taking into account all the relevant factors, in the absence of such payment, the conclusion of the sales contracts in the chosen form and, consequently, delivery of the goods would or would not have taken place.

In conclusion, the CJEU ruled that a proportionate part of the amount of royalties paid by a company to its parent company in return for the supply of know-how for the manufacture of finished products must be added to the price actually paid or payable by imported goods, when such goods are intended to form part of, among other things, the said finished products and are purchased by the first company from sellers other than the parent company, provided that:

i. Royalties have not been included in the price actually paid or payable for said goods;

ii. The royalties relate to the imported goods, which implies that there is a sufficiently close link between the exploitation rights and those goods;

iii. Payment of the royalties constitutes a condition for the sale of said goods, so that, in the absence of such payment, the conclusion of the sales contracts relating to the imported goods and, consequently, their delivery would not have taken place; and

iv. It is possible to make an adequate distribution of royalties based on objective data.

2.3. Customs value is influenced by the statistical average of purchase prices on imports of similar goods

In the judgment of the CJEU of July 16, 2016, C-291/15, it was concluded that Union law does not preclude the practice of customs authorities in which the customs value of imported goods is determined according to the transactional value of goods similar – therefore, moving away from the transactional value method – when the declared transaction value, compared with the statistical average of purchase prices on imports of similar goods, is considered to be disproportionately low.

In this case, a company based in Hungary imported products originating in the People's Republic of China. After the partial physical inspection of the goods, the customs authority authorized their release for free circulation and then ordered an *'a posteriori'* control of that declaration, which dictated an additional assessment of customs duties and VAT, not being able to apply the method of transactional value.

The customs authority compared the commercial invoice presented to it with the accounting records, with proof of payment from the importer and the attached bank guarantee, and verified that the sum resulting from these documents was in accordance with the content of the customs declaration. However, considering that the customs value of the imported goods for each kilogram of net weight referred to an exceptionally low invoiced price compared to the average statistical values for similar goods, the customs authority questioned the accuracy of the customs values of certain goods (in this case, "cotton kitchen gloves" and "microfiber cloth cleaning cloths").

The company was then notified to prove that the customs value of the goods in question was correct, but it did not do so, merely stating that it had paid its Chinese partner the price shown on the invoice.

As the customs authority continued to have doubts as to the accuracy of that value, it verified, on the basis of statistical data, the unit price at which Hungarian importers purchased products of this type and determined their customs value according to the "transactional value" of similar goods.

The Hungarian company, in turn, maintained that the taxable amount should correspond to the transactional value, as this lower price was only achieved because of the good commercial relations it maintains with the Chinese partner. The CJEU, however, supported the customs authority.

It should be noted that the Customs Authority did not contest or otherwise question the authenticity of the invoice or transfer certificate presented to justify the price actually paid for the imported goods.

It is, therefore, in our view, a decision that can be seen as contrary to the protection of the principles of private autonomy and contractual freedom, as guiding principles of international trade.

2.4. The customs value is influenced by the type of relationship maintained between economic operators

Similar to what happens in internal operations, also in imports, questions related to the possibility of the operation value being influenced by the existence of special relationships arise: the transaction value is applicable as long as certain conditions are cumulatively fulfilled, among them the need for the buyer and seller to be unrelated or for the binding relationship not to have influenced the price.

Pursuant to article 127 of the Implementing Regulation: two persons are considered to be related if they satisfy one of the following conditions:

i. they are officers or directors of the other person's business;

ii. they are legally recognised partners in business;

iii. they are employer and employee;

iv. a third party directly or indirectly owns or controls or holds 5% or more of the outstanding voting stock or shares of both of them;

v. one of them directly or indirectly controls the other;

vi. both of them are directly or indirectly controlled by a third person;

vii. together they control a third person directly or indirectly;

viii. they are members of the same family.

In light of the judgment of the CJEU of January 21, 2016, C-430/14, the risk of related persons influencing the selling price of imported goods exists when the seller is a legal person within which a relative of the buyer has the power to influence the selling price for the benefit of the latter.

At issue was A. Stretinskis, who imported second-hand clothing from the United States with a view to releasing it for free circulation in the territory of the Union. In the customs documents he completed for that purpose, A. Stretinskis calculated the customs value of those goods using the transactional value method, based on the total price indicated on the invoices issued by Latcars LLC and Dexter Plus LLC, as well as the cost of transport by sea.

After analysing the documents submitted by A. Stretinskis and carrying out an inspection of its premises, the tax authority expressed doubts as to the accuracy of the values thus declared, based, in particular, on the fact that the director of the selling companies is brother of A. Stretinskis, considering that they were related persons.

The CJEU held that when a natural person has, within the legal person, the power to influence the price of the sale of imported goods, for the benefit of a buyer of whom he is a relative, the seller's status as a legal person does not constitute an obstacle to the buyer and seller of those goods can be considered related. In order to assess whether the buyer's relative has such a power within the selling legal person, the functions he performs in that legal person or, where appropriate, the fact that he is the only one to carry out an activity there, constitute relevant elements that customs authorities should take into account. It is therefore up to the competent customs authorities to examine, if necessary, the specific circumstances of the sale in question and admit the transactional value, provided that the relationships have not influenced the sale price of the imported goods.

Conclusive notes

It is in the determination of the taxable amount that tax savings can, to a large extent, be obtained. Therefore, the way in which this matter is dealt with is of great importance for economic operators and for the State itself, requiring special care.

The proper determination of the taxable amount presupposes, firstly, that the transaction in question is adequately qualified and, only then, it is important to assess which amounts should or should not be considered. It is in this operation that special care must be taken.

The matter of the taxable amount for VAT purposes, as we have seen, can become particularly complex. And this complexity is compounded if we consider the discrepancy between the VAT legal regime and the regime appli-

cable to taxation on profits (specifically, in terms of transfer pricing). A purposely short presentation like the one we set out to make here is not compatible with this dimension, but it is important to warn about it. Despite not being a new topic, there is still no solution for the incompatibility of legal regimes.

Moreover, we cannot forget that VAT represents one of the pillars of the welfare state and is one of the most relevant own resources of the European Union. The provisions relating to the determination of the taxable amount for VAT purposes cannot therefore be interpreted or applied abusively. The State and the European project itself largely depend on fiscally consistent behaviour with the legislator's intention: to guarantee the neutrality of the tax, without jeopardizing revenue collection.

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