



Press and Information

Court of Justice of the European Union

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Judgment in Case C-219/12

Finanzamt Freistadt Rohrbach Urfahr v Unabhängiger Finanzsenat
Außenstelle Linz; Other party to the case: Thomas Fuchs

The operation of a private photovoltaic installation which is connected to the network may entitle its operator to deduct input VAT

The right to deduct that tax presupposes inter alia that the installation is being exploited for the purpose of obtaining income on a continuing basis

In 2005, Mr Fuchs had a photovoltaic installation fitted on the roof of his house, which he uses as a dwelling. As that installation has no storage capacity, he supplies the whole of the electricity produced thereby – less than that required to meet his household needs – to the network on the basis of a contract which was concluded with the company Ökostrom Solarpartner for an indefinite duration. The consideration for that supply is the market price; it is then subjected to VAT. Such electricity as is necessary to meet Mr Fuchs's household needs is bought back from Ökostrom Solarpartner at the same price as Mr Fuchs charges for supplying the electricity produced by his photovoltaic installation to the network. Mr Fuchs applied to the competent tax authority – the Finanzamt Freistadt Rohrbach Urfahr (Freistadt Rohrbach Urfahr Tax Office) (Austria) – for reimbursement of VAT which he had paid when purchasing the photovoltaic installation. The Finanzamt refused to reimburse Mr Fuchs's input tax on the ground that he had not carried out any economic activity by operating his photovoltaic installation. Mr Fuchs therefore brought an appeal before the Unabhängiger Finanzsenat Außenstelle Linz (Independent Finance Tribunal, Linz District); that appeal was upheld.

Appealed to by the Finanzamt, the Verwaltungsgerichtshof (Administrative Court, Austria) in that context asks whether, under EU law¹, the operation of a photovoltaic installation on or adjacent to a privately-owned house used for private residential purposes, which is designed such that the electricity produced is (i) always less than the electricity privately consumed by its operator and (ii) supplied to the network in exchange for income on a continuing basis, falls within the concept of 'economic activities'.

By its judgment delivered today, the Court of Justice answers that question in the affirmative.

The Court notes that the operation of a photovoltaic installation constitutes an 'economic activity' if it is carried out for the purpose of obtaining income on a continuing basis: the concept of 'income' must be understood as meaning remuneration received as consideration for the activity carried out. It follows that, for a finding that the exploitation of property is carried out for the purpose of obtaining income therefrom, it is irrelevant whether or not that exploitation is intended to make a profit.

Given that the installation on the roof of Mr Fuchs's house produces electricity which is fed into the network in return for remuneration, Mr Fuchs's exploitation of that installation is carried out for the purpose of obtaining income therefrom. By the same token, as the supply of electricity to the network is being carried out on the basis of a contract concluded for an indefinite duration, that income is obtained on a continuing basis. In view of those considerations, it is irrelevant that the

¹ Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes – Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1), as amended by Council Directive 95/7/EC of 10 April 1995 (OJ 1995 L 102, p. 18).

amount of electricity produced by that installation is always lower than the amount of electricity consumed by the operator in meeting his household needs.

The Court also makes reference to the fact that, according to the structure of the VAT system, input VAT on goods or services used by a taxable person for his taxable transactions may be deducted. The deduction of input taxes is linked to the collection of output taxes. Where goods or services are used for the purposes of transactions that are taxable as outputs, deduction of the input tax on them is required in order to avoid double taxation. In order to be classified as a 'taxable person', the person concerned must carry out some form of 'economic activity'.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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