Case C-232/24 [Kosmiro] [i]

Request for a preliminary ruling

Date lodged:

27 March 2024

Referring court:

Korkein hallinto-oikeus (Finland)

Date of the decision to refer:

22 March 2024

Appellant:

A Oy

Intervener:

Veronsaajien oikeudenvalvontayksikkö

KORKEIN HALLINTO-OIKEUS (SUPREME ADMINISTRATIVE COURT) **Interlocutory order** […]

Subject	Request for a preliminary ruling to the Court of Justice of the European Union under Article 267 of the Treaty on the Functioning of the European Union (TFEU)
Appellant	A Oy
Intervener	Veronsaajien oikeudenvalvontayksikkö (Tax Recipients' Legal Services Unit)
Contested decision	Keskusverolautakunta (Central Tax Board) decision of 25 October 2022 No 47/2022

Order of the Supreme Administrative Court

The Supreme Administrative Court decided to stay the proceedings and to make a reference to the Court of Justice under Article 267 TFEU for a preliminary ruling

[i] The name of the present case is a fictitious name. It does not correspond to the real name of any party to the proceedings.

on the interpretation of Council Directive 2006/112/EC on the common system of value added tax. The reference for a preliminary ruling is necessary for the resolution of the dispute pending before the Supreme Administrative Court.

Subject matter and relevant facts

(1) A Oy ('the company') applied to the Central Tax Board for a preliminary ruling on the VAT treatment of the fees which it charges its clients for factoring. Before the Supreme Administrative Court, the company challenged the preliminary ruling of the Central Tax Board in so far as the latter held that the charges invoiced by the company constituted a consideration for the granting of credit, which was to be regarded as a tax-free financial service.

Presentation of the relevant facts of the request for a national preliminary ruling

(2) In the request for a preliminary ruling, the relevant facts were described as follows. It is for the Supreme Administrative Court to resolve the dispute on the basis of that description.

(3) A Oy provides financial services as part of its business activity. Factoring accounts for most of the company's business. A Oy is owned by the group's operational parent company, B AB, which is active in Sweden, engaging in similar activities for which authorisation is required.

(4) The company's clients typically operate in sectors where cash flow is low. Under the factoring agreement, the intention of the client company is to have the working capital it expects from the invoiced debts at its disposal immediately and not only after the expiry of the time limit for payment of the invoices. In addition, factoring relieves the company's corporate clients of the task of collecting and chasing invoice payments. The claims which are the subject of factoring are uncontested invoiced debts arising from the activity of the company's corporate clients.

Factoring taking the form of financing guaranteed by invoices ('invoice factoring')

(5) In invoice factoring, that is to say lending against outstanding invoices, the company finances its client by granting it credit, up to a certain overall limit, against debts. The maximum amount of the limit is based on the company's risk assessment of its client's business activity. The company has the right to choose the debts it accepts as collateral, that is to say for which it grants credit to its client. Where a debt is accepted in connection with the granting of credit, the company pays its client, at the agreed credit ratio, part of the value of the debts less the fee due to the company. The credit ratio may be either equal to or lower than the full nominal value of the debts.

(6) In invoice factoring, the client's debts serve as collateral for the financing provided by the company. The client remains the creditor of the debtors of the invoices, in other words the client's invoiced customers, and continues to bear the risk of default in the event of a debtor's insolvency.

(7) A declaration of assignment of debts to the company as collateral is sent to the client's invoiced customers, informing them that they are required to pay the company when the claim falls due. The amount of the credit granted by the company to its client decreases as the company receives payments from the invoiced customers.

(8) It is for the company to send reminders for the debts assigned to it and to ensure their extrajudicial collection. If, within a specified period, normally 18 days following the due date, the company does not receive any payment on a debts for which it has granted credit or considers that the debts is not being settled, it may deduct the debts from the sum of the debts which it accepted as collateral. Under the financing agreement, the client must provide the company with a payment corresponding to the final amount of the deducted debts.

Factoring taking the form of a sale of debts ('trade factoring')

(9) In the case of trade factoring, the company undertakes to purchase the invoiced debts from its client. An overall limit, that is to say the maximum value of the debts that the company undertakes to purchase from the client, is agreed between the company and its client. The maximum amount of the overall limit is based on the company's risk assessment of its client's business activity.

(10) Under the agreement, the client communicates to the company the information identifying the debts which have not yet fallen due to it which it intends to sell to the company. The company has the right to choose the debts for which it accepts assignment. Once a debt has been accepted under the agreement, the company makes a payment to the client for the debt assigned to it, paying either the entire face value of the debt or part of the face value of the invoice, depending on the terms of the contract between the company and the client.

(11) In the case of trade factoring, ownership of the debts and the default risk in the event of debtors' insolvency pass to the company.

Factoring fees

(12) The contract concluded between the company and the client sets the fees which the company is to receive. The highest fees in monetary terms are the factoring commission and the arrangement fee.

(13) The *factoring commission* is a charge levied by the company, expressed as a percentage of each debts covered by the agreement. The commission is calculated on the basis of the payment term for the debts; the longer the payment term agreed between the client and its invoiced customer for the financed debts, the higher the

commission rate will be. The client's credit rating and that of its invoiced customer also affect the commission rate.

(14) In the case of invoice factoring, if, for example, a credit ratio of 100% applies, a commission rate of one per cent of the amount of each debts with a 30-day payment term may be agreed, which means that the company would grant its client credit of EUR 99 for every such debts with a face value of EUR 100 which is assigned to it. In that instance, the client would pay the company factoring commission of one euro. The company receives the balance, either directly from the invoiced customer once the assigned debts has fallen due or ultimately from the client.

(15) In the case of trade factoring, the amount of the factoring commission is calculated in the same way as for invoice factoring. Under both types of agreement, the company receives the commission in advance.

(16) The *arrangement fee* is a fixed remuneration paid by the client to the company for the activities associated with setting up and activating the factoring process, including compliance with obligations under money-laundering legislation.

(17) The company also charges other fees, which include the following:

- The *underwriting fee* is a percentage charge for the credit limit which the company has granted its client and which remains available to the client. The amount of the underwriting fee is calculated on the basis of the maximum credit limit. The fee remunerates the company for granting the credit limit to its client.

- The *monthly or annual service charge* constitutes remuneration for the day-to-day management of the agreement.

- The *invoice handling fee* is a fixed charge levied for each invoiced claim. That fee covers the costs incurred by the company for assigning and managing claims.

- The *annual client gateway fee* is a user charge for the web pages made available to the client. Clients who have opted for that service may use the gateway to consult financed or purchased invoices and receive communications such as billing reports.

- The *collection fee* is a payment for debt collection in respect of invoices; the company levies this fee primarily on debtors but in some cases on its own client too.

- The *rapid processing fee* remunerates the company for giving clients the opportunity to access the funds faster than the company's normal payment practice permits.

- The *credit check fee* is a charge for establishing credit ratings at the start of the company's relationship with its clients. This fee is levied for assessing the creditworthiness of both the client and its invoiced customers, in other words the debtors.

Preliminary ruling of the Central Tax Board of 25 October 2022 for the period from 25 October 2022 to 31 December 2023

(18) In the dispute, the Central Tax Board issued the company with a preliminary ruling with identical content regarding invoice factoring and trade factoring. It indicated that the fees which the company charged its clients were subject to VAT in so far as they constituted a consideration for the management and collection of debt. According to the Central Tax Board, the factoring commission charged by the company, the underwriting fee, the rapid processing fee, the credit check fee and the arrangement fee constitute, in part, the consideration for a VAT-exempt financial service.

(19) In its decision, the Central Tax Board stated that, once the debts had been assigned to the company as collateral for the credit granted to the client or the company had purchased the debts, valid payment of the invoices could be made solely to the company. The company thus managed the debts and oversaw the incoming payments relating to them. It could also perform tasks pertaining to debt collection. In that regard, both invoice and trade factoring were services subject to VAT.

(20) On the other hand, in so far as the company offered its clients financing within a customised limit, both invoice and trade factoring constituted financial services relating to the granting of credit, which were exempted from VAT. The factoring commission, the underwriting fee, the rapid processing fee and the credit check fee were to be regarded as a consideration for the provision of those financial services.

(21) The arrangement fee was a charge for the provision of services linked to setting up and activating the debts-factoring process. The arrangement fee was thus the consideration for the provision of both a service subject to VAT and a VAT-exempt service, for which reason the Central Tax Board held that it should be divided into a part subject to VAT and a VAT-exempt part.

Subject matter of the dispute in the main proceedings

(22) By its appeal, *A Oy* asks the Supreme Administrative Court to annul the decision of the Central Tax Board in so far as the latter holds that the factoring commission charged by the company for invoice and trade factoring, the underwriting fee, the rapid processing fee, the credit check fee and the arrangement fee constitute, in whole or in part, a consideration for a financial service exempt from VAT under Paragraph 41 of the Arvonlisäverolaki (Law on value added tax). Accordingly, A Oy argues, it should be stated, in a new preliminary ruling, that the factoring commission and the other fees referred to

above constitute the consideration for debt collection, for claims management or for any other supply of services subject to VAT.

(23) In support of its argument, the company asserted that the main purpose of invoice factoring was to assist clients in managing their debts, to ensure payment of outstanding invoices and to recover debts. The factoring commission charged for those procedures and the other above-mentioned fees should be regarded in their entirety as a consideration for the supply of a service which was subject to VAT. If a particular part of the charges raised for those arrangements were to be regarded as a consideration for a VAT-exempt financial service, that could only be the case for the underwriting fee, since only that fee constituted remuneration for the credit limit granted to the client, in other words for the funding available to the client on request.

(24) According to the company, trade factoring does not constitute lending, since the company buys its clients' debts, and no debts or-creditor relationship is established between the company and the clients. In that service, capital is not placed at the client's disposal. Given the nature of that service, the company argues, the factoring commission and the other fees referred to above must be regarded in their entirety as payment charged for a service subject to VAT.

(25) The *Tax Recipients' Legal Services Unit* asks the court not to uphold the appeal. In its view, in invoice factoring the client grants the company a lien on its debts. The factoring commission and the underwriting fee, it argues, are based on the fact that the client is enabled to obtain credit from the company against the client's debts. The factoring commission levied in invoice factoring and the other charges in question constitute consideration for the granting of credit.

(26) According to the Tax Recipients' Legal Services Unit, when it comes to trade factoring the company levies charges as remuneration for purchasing the invoiced debts. In that respect, it argues, trade factoring amounts to a taxable collection of debts. On the other hand, in view of the scope of the service rendered, the factoring commission and the other fees in question could be regarded as VAT-exempt remuneration. In that respect, those charges represent the consideration for making capital available to the client. The fact that all the above-mentioned charges are connected with the transfer of money from the company to the client, the Tax Recipients' Legal Services Unit argues, constitutes an argument for their being exempt from VAT. The supply of services which they remunerate could be regarded as separate from the purchase of debts.

National legislation and case-law

Law 1501/1993 on value added tax

(27) Council Directive 2006/112/EG of 28 November 2006 on the common system of value added tax ('the VAT Directive') and its predecessor, Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes – Common system of value added

tax: uniform basis of assessment ('the Sixth Directive') were transposed in Finland by the Arvonlisäverolaki 30.12.1993/1501 (Law on value added tax – 'the AVL'), which entered into force on 1 June 1994, including its subsequent amendments. [1]

(28) Under point (1) of the first subparagraph of Paragraph 1 of the AVL, value added tax is payable to the state on sales of goods and services, in the conduct of business, which take place in Finland.

(29) Under the second subparagraph of Paragraph 18 of the AVL, sales of services mean the performance, or other supply, of services for a consideration.

(30) Under Paragraph 41 of the AVL, tax is not payable on the sale of financial services.

(31) Under point (2) of the first subparagraph of Paragraph 42 of the AVL, the granting of credit and other financial arrangements constitute financial services.

(32) Under point (3) of the first subparagraph of Paragraph 42 of the AVL, credit management by the person granting the credit constitutes a financial service.

The case-law of the Supreme Administrative Court

(33) The case which culminated in decision KHO 2013:129 of the Supreme Administrative Court [2] concerned a company primarily engaged in factoring. It purchased debts invoiced by its clients and bore the risk of debt or default. As remuneration for the factoring service, it charged its clients an annual fee for access to the company's services, a fixed administration charge per invoice and a payment expressed as a percentage of the total volume of purchased debts. In the light of the provisions of Directive 2006/112/EC (the VAT Directive) which relate to the sale of financial services and debt collection and the case-law of the Court of Justice interpreting them, the Supreme Administrative Court held that the company's activity was the taxable collection of debts, to which the exemption of financial services within the meaning of the AVL and the VAT Directive did not apply. The company, it ruled, had to pay VAT on the annual fee, the administration charge and the percentage payment levied on the clients.

(34) In the case which culminated in decision KHO 2022:17 of the Supreme Administrative Court, [3] a company was engaged in what is known as 'quasi-factoring', in which the client assigned its debts arising from supplies and services

1 https://www.finlex.fi/fi/laki/ajantasa/1993/19931501?search%5Btype%5D=pika&search%5Bpika%5D=arvonliS%C3%A4vero laki [consolidated version in Finnish; an English translation of the Law, as at 1 July 2003, is available at https://www.finlex.fi/en/laki/kaannokset/1993/en19931501_20021071].

2 https://www.finlex.fi/fi/oikeus/kho/vuosikirjat/2013/201302530 (case report in Finnish).

3 https://www.finlex.fi/fi/oikeus/kho/vuosikirjat/2022/202200313h (case report in Finnish).

and the company paid it a sum corresponding to the assigned debts, less the remuneration charged for the supply of services. The debts arising from the supplies and services were used by the company as collateral for the amount paid to the client. The invoices assigned to the company were settled by payment into the company's account, and the company also assumed responsibility for sending reminders and for recovery in the event of debts or default. The risk of default remained with the client, and the company was entitled to recover the amount of the claim from its client if the assigned claim in respect of supplies and/or services had not been settled within 14 to 30 days after the due date, depending on the terms of the agreement. As a consideration for the provision of its service, the company charged the client a percentage of the value of the debts, in other words commission, and, where appropriate, an administration charge per invoice.

(35) In its decision KHO 2022:17, the Supreme Administrative Court explained that, as a result of the company's service, capital had been made available to its client which corresponded to the amount of its debts for supplies and services, even though the client's own customer had not yet paid for them. In that regard, the company's activity, by its nature, amounted to the granting of credit within the meaning of point (2) of the first subparagraph of Paragraph 42 of the AVL or within the meaning of Article 135(1)(b) of the VAT Directive. The Supreme Administrative Court held that the lending service provided by the company could not be regarded as ancillary to the debt-collection service and that the quasi-factoring service, which included both granting credit and collecting debts, could not be regarded, for VAT purposes, as a single indivisible economic service. The tax treatment of those services was determined separately and independently. It followed that the company was not required to pay VAT on the commission collected from the customer in so far as the commission was a consideration for the granting of credit.

Relevant EU provisions and case-law

Directive 2006/112/EC (VAT Directive)

(36) Under Article 2(1)(c) of the VAT Directive, the supply of services for consideration within the territory of a Member State by a taxable person acting as such is subject to VAT.

(37) The first subparagraph of Article 9(1) of the VAT Directive defines a 'taxable person' as any person who, independently, carries out in any place any economic activity, whatever the purpose or results of that activity. Under the second subparagraph, any activity of producers, traders or persons supplying services, including mining and agricultural activities and activities of the professions, is to be regarded as 'economic activity'. In particular, the exploitation of tangible or intangible property for the purposes of obtaining income therefrom on a continuing basis is to be regarded as an economic activity.

(38) Under Article 24(1) of the VAT Directive, 'supply of services' means any transaction which does not constitute a supply of goods.

(39) Under Article 135(1)(b) of the VAT Directive, Member States are to exempt the granting and the negotiation of credit and the management of credit by the person granting it.

(40) Under Article 135(1)(d) of the VAT Directive, Member States are to exempt transactions, including negotiation, concerning deposit and current accounts, payments, transfers, debt, cheques and other negotiable instruments, but excluding debt collection.

Case-law of the Court of Justice

Recovery of debts, in particular true factoring, and sale of claims

(41) In its judgment of 6 March 2003 in *MKG-Kraftfahrzeuge-Factoring* (C-305/01, EU:C:2003:377), the Court examined the VAT treatment of factoring. That case concerned the activity known as true factoring, in which the default risk associated with the purchased debts passes to the factoring company without it having any right of recourse against its client. The judgment also contains findings relating to quasi-factoring.

(42) According to the judgment, Sixth Directive 77/388/EEC must be interpreted as meaning that a business which purchases debts, assuming the risk of the debtors' default, and which, in return, invoices its clients in respect of commission pursues an economic activity for the purposes of Articles 2 and 4 of that directive. Furthermore, an economic activity by which a business purchases debts, assuming the risk of the debtors' default, and, in return, invoices its clients in respect of commission, constitutes 'debt collection and factoring' within the meaning of the final clause of Article 13B(d)(3) of the Sixth Directive and is therefore excluded from the exemption laid down by that provision.

(43) It is apparent from paragraphs 15, 17 and 18 of that judgment that the company had to remunerate the client by paying the face value of the debts purchased. A factoring commission fee of 2% of the face value and a *del credere* fee of 1% were deducted from the payment. The client also agreed to pay interest to the company. The *del credere* took effect if a dealer failed to pay the relevant invoice 150 days after the due date.

(44) According to paragraphs 49, 50 and 52 of the judgment, the company provided the customer with a service consisting essentially in relieving him of the debt-recovery operations and of the risk of the debts not being paid. The factoring commission and the fee were the actual consideration for an economic activity engaged in by the company, namely the services which it had provided to the client. True factoring such as that at issue in Case C-305/01 had to be regarded as falling within the scope of VAT.

(45) Reference is made in paragraph 75 of that judgment to the need for a broad interpretation of exceptions to the derogating provision on tax exemption. The term ‘factoring’ referred to in the final clause of Article 13B(d)(3) of the Sixth Directive in its English and Swedish versions covers both true factoring and quasi-factoring. It is made clear in paragraph 77 of that judgment that the term ‘debt collection’ used in the other language versions must also be interpreted as covering all forms of factoring because, in accordance with its objective character, the essential aim of factoring is the recovery and collection of debts. Therefore, factoring must be regarded as constituting merely a variant of the more general concept of ‘debt collection’, whatever the manner in which it is carried out.

(46) In the case-law of the Court of Justice, the term ‘debt collection and factoring’ within the meaning of Article 13B(d)(3) of the Sixth Directive refers to financial transactions designed to obtain payment of a pecuniary debt (see judgment of the Court of Justice of 28 October 2010, *Axa UK plc* (C-175/09, EU:C:2010:646, paragraph 31), and judgment C-305/01 cited above, paragraph 78).

(47) According to the judgment of the Court of Justice of 14 July 2011 in *GFKL Financial Services* (C-93/10, EU:C:2011:700), Article 2(1) and Article 4 of the Sixth Directive must be interpreted as meaning that an operator who, at his own risk, purchases defaulted debts at a price below their face value does not effect a supply of services for consideration within the meaning of Article 2(1) and does not carry out an economic activity falling within the scope of that directive when the difference between the face value of those debts and their purchase price reflects the actual economic value of the debts at the time of their assignment.

(48) In paragraphs 21 and 22 of the judgment, the Court of Justice referred to its decision in *MKG-Kraftfahrzeuge-Factoring* and pointed out that, in the context of the assignment of debts that was at issue in the case giving rise to that judgment, the assignee of the debts had undertaken to provide factoring services to the assignor, in return for which it had received payment, namely factoring commission and a *del credere* fee. It is apparent from the account of the facts in *GFKL Financial Services*, however, that, in contrast to the facts of the dispute that had given rise to the judgment in *MKG-Kraftfahrzeuge-Factoring*, the assignee of the debts received no consideration from the assignor, and therefore did not carry out an economic activity within the meaning of Article 4 of the Sixth Directive or effect a supply of services within the meaning of Article 2(1) of that directive.

Granting of credit

(49) Under the case-law of the Court of Justice, the transactions exempted under Article 135(1)(b) of the VAT Directive are defined in terms of the nature of the services provided and not in terms of the person supplying or receiving the service, so that the application of those exemptions is not dependent on the status of the entity providing those services (see, for example, judgment of the Court of

Justice of 17 December 2020, *Franck d.d. Zagreb*, C-801/19, EU:C:2020:1049, paragraph 34).

(50) In particular, under paragraph 35 of the judgment in *Franck* (C-801/19), the expression 'granting and negotiating credit' in the said provision must be interpreted broadly, which means that its scope cannot be limited to loans and credits granted by banking and financial institutions only. Such an interpretation, the Court stated, is supported by the objective of the common system established by the VAT Directive, which is, inter alia, to ensure the equal treatment of taxable persons.

(51) According to paragraph 36 of that judgment, it follows from the case-law of the Court that the granting of credit, within the meaning of Article 135(1)(b) of the VAT Directive, consists, inter alia, in the provision of capital against remuneration. Under paragraph 37 of the judgment, if such remuneration is ensured, inter alia, by the payment of interest, other forms of consideration cannot be excluded.

(52) In paragraph 38 of the judgment of 6 October 2022, *O. Fundusz Inwestycyjny Zamknięty reprezentowany przez O S.A.,*(C-250/21, EU:C:2022:757), the Court of Justice held, with regard to a sub-participant under the contract at issue in that case, that the fact that the sub-participant was exposed to potential losses and thus bore the credit risk was inherent in any grant of credit, regardless of whether that risk stemmed from non-payment by the debtors of the debts from which the proceeds were transferred to it or from the insolvency of its direct co-contractor.

Composite transactions and indivisibility of transactions or independence of services

(53) In several judgments, the Court of Justice has dealt with the question whether, for the purposes of the application of the VAT Directive, features or acts forming part of a transaction are to be regarded as a single supply or more than one supply and how that impacts, for example, on the taxability of a sale. See, for example, judgments of the Court of 19 July 2012, *Deutsche Bank* (C-44/11, EU:C:2012:484); of 2 July 2020, *Blackrock Investment Management (UK)* (C-231/19, EU:C:2020:513); and of 25 February 1999, *Card Protection Plan Ltd (CPP)* (C-349/96, EU:C:1999:93).

The need for a preliminary ruling

(54) The Supreme Administrative Court assumes that invoice factoring is to be regarded as a supply of services for a consideration falling within the scope of the VAT Directive. However, the Supreme Administrative Court considers that it is not clear, to some extent, how the provisions of the VAT Directive relating to exemption from VAT of the various fees charged for such a service are to be interpreted.

(55) In the view of the Supreme Administrative Court, the VAT treatment of trade factoring, which is at issue in the present case, is in particular need of interpretation in the light of the various provisions of the VAT Directive and the case-law of the Court of Justice relating to their interpretation. The need for interpretation relates in particular to whether it is to be assumed that the factor who purchases the debts from his client should be regarded at the same time as selling to the client supplies of services falling partly within the scope of the Directive.

(56) The judgment in Case C-305/01, *MKG-Kraftfahrzeuge-Factoring*, and the interpretation already adopted by the Supreme Administrative Court in decision KHO 2013:129 suggest that the commission charged by the company for trade factoring relates to the collection of debts and is therefore subject to VAT. That interpretation, however, is problematic in several respects.

(57) Under the judgment in Case C-93/10, *GFKL Financial Services*, an operator who, at his own risk, purchases defaulted debts at a price below their face value does not effect a supply of services for consideration within the meaning of Article 2(1)(c) and Article 9 of the VAT Directive and does not carry out an economic activity falling within the scope of that directive. Although the trade factoring at issue in the present case does not relate to defaulted debts but to debts which will fall due in the future, it remains unclear to the Supreme Administrative Court whether that fact can serve to explain the divergent outcomes in Cases C-305/01 and C-93/10. The same is true of the formal question whether a particular remuneration is agreed separately by the parties or whether it is directly incorporated into the purchase price of the debts.

(58) The factoring commission charged by the company in Case C-93/10 increases with the length of the agreed payment term for the invoiced debts which is to be financed. It is possible to regard the two forms of factoring as an interest-type item and, like the Central Tax Board, to conclude that the factoring commission for both forms of factoring constitutes the consideration for a financial service. Alternatively, it would also be possible to take the view, as regards trade factoring, that, for VAT purposes, the factoring commission is not a fee charged by the company to the client but an adjustment item with which the purchase price of the debts is adapted to its discounted present value, in other words to its real economic value.

(59) The Supreme Administrative Court points out that, in Case C-305/01, *MKG-Kraftfahrzeuge-Factoring*, the factoring company had still charged its client interest even after billing it for set fees. A reciprocal legal relationship had therefore continued to exist between the factoring company and the client. In the case at hand, ownership of the debts, together with the default risk, passes directly from the client to the company in trade factoring, after which the company no longer levies interest or any other charges on the client. The company’s recovery measures thereafter relate to its own claim.

(60) The Supreme Administrative Court also points out that none of the language versions of the current VAT Directive 2006/112/EC still refer explicitly to factoring in addition to debt collection.

(61) In the view of the Supreme Administrative Court, Case C-305/01, *MKG-Kraftfahrzeuge-Factoring*, and Case C-175/09, *Axa UK*, in respect of tax exemptions in connection with financial services, concerned the interpretation of Article 13B(d) of the Sixth Directive, and particularly point 3 of that provision. That provision corresponds to Article 135(1)(d) of the current VAT Directive. By contrast, the judgments did not examine the provision on tax exemption for the granting of credit corresponding to Article 135(1)(b) of the VAT Directive.

(62) In the view of the Supreme Administrative Court, there is a need to interpret whether, in particular, the part of factoring in which the remuneration obtained by the company is an interest-type payment is also to be regarded as a service subject to VAT. In Case C-305/01, *MKG-Kraftfahrzeuge-Factoring*, the ruling sought did not concern the question whether interest paid on the daily debit balance was subject to VAT.

(63) According to the information obtained in the present case, notwithstanding decision KHO 2013:129 of the Supreme Administrative Court, factoring is regarded in Finnish tax practice partly as debt collection subject to VAT and partly as tax-exempt granting of credit or other provision of finance. The preliminary ruling of the Central Tax Board appears to be consistent with the tax practice followed in Finland.

(64) In its decision KHO 2022:17, the Supreme Administrative Court held, with regard to quasi-factoring, that it cannot be inferred from the case-law of the Court of Justice that the granting of credit in the context of factoring forms part of a supply of services for VAT purposes and that the service sold under the name of factoring is subject to VAT in all cases. Whether it is an activity subject to VAT or a financial service which is wholly or partly exempt has to be determined on a case-by-case basis, taking into account the nature of the activity.

(65) It is conceivable that the factoring service is essentially a partly credit-type form of financing which is not so closely linked to the taxable service of managing or collecting debts sometimes associated with factoring that they constitute a single indivisible service. That applies in particular to invoice factoring. To regard factoring as an activity fully subject to VAT would also lead to different VAT treatment of the various financing and lending activities.

(66) In the view of the Supreme Administrative Court, the VAT treatment of factoring is not uniform in the various Member States. There are evidently differences in tax treatment, for example, between Finland and Sweden.

(67) Before the Supreme Administrative Court, the company challenges the opinion of the Central Tax Board in so far as the latter holds that the factoring commission charged to the client undertaking and the other charges constitute the

consideration for a tax-free financial service relating to the granting of credit. According to the company, both invoice factoring and trade factoring amount entirely to the management and collection of debts, which are subject to VAT.

(68) Under point (2) of the first subparagraph of Paragraph 42 of the AVL, not only the granting of credit but also other financial arrangements are regarded as VAT-exempt financial services.

(69) In the provision of the VAT Directive on exemptions, no reference is made to other financial arrangements. If the Directive were to be interpreted as meaning that the exemption does not extend to the remunerations at issue in the present case, it might not be possible to interpret the national law in full conformity with the Directive. In that case, it might also be necessary to examine whether the relevant provisions of the Directive are so clear and unconditional that they must be recognised as having direct effect if the taxable person so requests.

(70) Since the outcome of the pending dispute requires an interpretation of Articles 2(1)(c), 9(1) and 135(1)(b) and (d) of the VAT Directive, it is necessary to request a preliminary ruling from the Court of Justice.

(71) The request for a preliminary ruling can be limited to the factoring commission and the arrangement fee. If clarity is established on the correct interpretation of the relevant European Union law, the Supreme Administrative Court will be able to assess the observations regarding the other forms of remuneration on the basis of that interpretation.

(72) A Oy and the Tax Recipients' Legal Service Unit have been heard on the request submitted to the Court of Justice for a preliminary ruling.

Questions referred

1. Where a factoring company acquires from a client invoiced debts not yet due so that the default risk relating to those debts is transferred from that client to that company (factoring taking the form of a sale of debts, 'trade factoring'):

(a) is the factoring commission which is charged by that company consisting of a percentage of each invoiced debts covered by the agreement, to be regarded as an adjustment to the purchase price of the acquisition of the debts or as another item outside the scope of the VAT Directive, or

(b) are Articles 2(1)(c) and 9 of the VAT Directive to be interpreted as meaning that that same company provides its client, in return for the factoring commission referred to in question 1(a) above, with a supply of services for reward falling within the scope of the VAT Directive?

2. Is the fixed arrangement fee which is charged to the client for setting up and activating the factoring arrangement in the context of trade factoring

to be regarded as a consideration for the supply to the client of a service falling within the scope of the VAT Directive?

3. Where the fees referred to in questions 1 and 2 above which are charged in the context of trade factoring are to be regarded as a consideration for a supply of services falling within the scope of the VAT Directive:

(a) is Article 135(1)(b) of the VAT Directive, relating to the granting of credit, or Article 135(1)(d) of that directive, relating to transactions concerning payments or debts, to be interpreted as meaning that the factoring commission or the arrangement fee charged to the client are to be regarded as consideration for the supply of a tax-exempt service, or

(b) is Article 135(1)(d) of the VAT Directive to be interpreted as meaning that it is the consideration for debt collection, which is to be regarded as a taxable supply of services, or, as the consideration for another taxable service?

4. Where a factoring company finances its client by granting it credit so that that client's invoiced debts is used as collateral for the finance provided by that company (factoring taking the form of financing guaranteed by invoices, 'invoice factoring'):

(a) is Article 135(1)(b) of the VAT Directive, relating to the granting of credit, or Article 135(1)(d) of that directive, relating to transactions concerning payments or debts, to be interpreted as meaning that the factoring commission charged to the client, consisting of a percentage of each invoiced debt covered by the agreement, and the fixed arrangement fee for setting up and activating the factoring agreement must be regarded, at least in part, as a consideration for the supply of a tax-exempt service, or

(b) is Article 135(1)(d) of the VAT Directive to be interpreted as meaning that it is the consideration for debt collection, which is to be regarded as a taxable supply of services, or the consideration for another taxable service?

5. If the factoring commission or arrangement fee charged in the context of trade factoring or invoice factoring is to be wholly regarded, on the basis of the answer to question 3 or 4 above, as the consideration for a taxable service-, is the taxation of that service in application of the VAT Directive so clear and unconditional such that, where the taxable person so requests, that taxation be recognised as having direct effect even though the exemption from VAT provided for by the national VAT law covers, besides the granting of credit, other financing arrangements?

After receiving a preliminary ruling from the Court of Justice on the foregoing questions, the Korkein hallinto-oikeus (Supreme Administrative Court) will give its final judgment on the present case.

Supreme Administrative Court:

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