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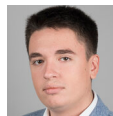
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Lifting of administrative burden related to the transfer of agricultural land

The strict regulation on the transfer of agricultural land has been annulled by the Constitutional Court of the Slovak Republic (the “Constitutional Court”) after an almost 4 years debate on its legality. In practice, the findings of the Constitutional Court will materialize mainly in the elimination of the statutory administrative proceeding encompassing an envisaged transfer of agricultural land by certain entities.



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Scope and extent of the regulation

The process of acquisition of agricultural land is provided within the Act No. 140/2014 Coll. on Acquisition of Ownership of Agricultural Land (*the “Act”*), which sets out strict regulation of conditions relating to the acquisition of ownership title of agricultural land. The regulation was, from its outset, subject to wide criticism from the expert public. Subsequently, the Constitutional Court has engaged in a review of the regulation and declared the regulation as unconstitutional. Its findings were published in the Collection of Laws on 11 February 2019 and as of this day, the Sections 4, 5, and 6 of the Act lost their effect.

Prior to the findings of the Constitutional Court, the Act provided for a specific regime of the transfer of ownership of agricultural land, namely with respect to the range of entities/individuals which could acquire the ownership without restrictions. The owner of an agricultural land could freely transfer the ownership without any specific restrictions set out by the Act to the following entities:

- a person carrying out agricultural production as business at least 3 years prior to the date on which the transfer of ownership of the agricultural land is concluded in the municipality where the agricultural land is located, or
- a co-owner of the agricultural land, in the event of a transfer of a co-ownership share under special regulations, or
- a relative.

Apart from these entities/individuals, the owner of the agricultural land was permitted by law to transfer its ownership with certain restrictions in the manner laid down in the abolished provisions of Sections 4, 5 and 6 of the Act.

Acquisition of ownership to agricultural land under the “new rules”

The above-stated findings of the Constitutional Court specifically result in the abolishment of the following statutory duties set out within the Sections 4, 5 and 6 of the Act:

1. **Obligation to publish an offer to sell the land** - within a specific register for at least 15 days and simultaneously on the information board in the municipality, where the agricultural land is located.
2. **Obligation to give preference to an acquiror from the municipality or the neighboring municipality** - even after the offer was published in the manner stated above, the transferor was obliged to prefer an acquirer from the municipality where the agricultural land is located and, in case of several candidates, the acquirer from the neighboring municipality was preferred up by the law the acquirer from another municipality.

3. **Obligation to request the relevant District Office, municipality and SPPK to verify the fulfilment of statutory conditions** - the obligation of the acquiror to prove that he has been engaged in agricultural production as a business in a municipality adjacent to the municipality in which the transferred land was located, alternatively beyond such place.
4. **Certain mandatory requirements of the Agreement on the Transfer of Ownership to Agricultural Land** - the obligation of the contracting parties to enclose documents certifying the fulfilment of the above-stated statutory obligations in order to authorize intabulation within the Cadastre of Real Estate.

Further developments

Although the aforementioned findings abolish the administrative and time-consuming nature of the transfer of ownership of the agricultural land, it cannot be excluded that the regulation in question will soon be subject to further legislative changes.

For the sake of completeness, we note that the aforementioned findings are without prejudice to the limitations of reciprocal prohibition on the acquisition of ownership of the agricultural land. These limitations apply to those entities/individuals that are subject to the law of such a State that does not allow Slovak entities/individuals to acquire ownership of the agricultural land in that State.

“Sale and lease back” transactions: CJEU has dealt with question of obligation to adjust the initially deducted VAT

On 27 March 2019, the Court of Justice of the European Union (CJEU) released its judgment in the case C-201/18 „Mydibel SA“, concerning the adjustment of a deduction of VAT on immovable property which was subject of a sale and lease back transaction.



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Background

The company Mydibel SA (“Mydibel” or “the Company”) is a taxable person for VAT purposes based on its economic activity (production of potato-based products). The Company owns several buildings used for its business activities, in respect of which it has deducted in full the VAT charged on construction, alteration and renovation invoices.

To increase its liquidity, Mydibel and two financial institutions entered into sale and lease back transactions, relating to those buildings. The Company and those financial institutions entered into two agreements as follows:

- an agreement establishing an emphyteutic right over those buildings in favour of the two financial institutions, for a period of 99 years,
- a real property leasing agreement in respect of the buildings, under which the financial institutions granted Mydibel the use of the buildings for a non-revocable period of 15 years, whereby Mydibel enjoys, on expiry of the lease, a purchase option at an agreed price.

The Belgian tax authorities disallowed, following a VAT inspection, the initial deduction of VAT applied on construction, alteration and renovation of the buildings, concerning that no VAT was applied on the transaction made by Mydibel. As a result of this, the tax authorities levied the related fine and calculated a default interest.

Prejudicial questions

- The prejudicial questions submitted to CJEU were whether:
- the Council Directive 2006/112/EC on the common system of value added tax (“VAT Directive”) imposes an obligation to adjust VAT on a building which was initially deducted correctly, where that property was the subject of a sale and lease back transaction without VAT as that in the mentioned circumstances,
- imposing an obligation to adjust the VAT initially deducted in the mentioned circumstances complies with the principles of VAT neutrality and equal treatment.

The Judgment

According to CJEU, it should be first examined whether an adjustment of the deduction of VAT is required under Articles 184 and 185 of the VAT Directive.

In the second place, it is necessary to consider whether the circumstances of the proceedings are covered by the specific rules for the adjustment of VAT deductions as regards capital goods, in particular Articles 187 and 188 of the VAT Directive.

Adjustment of the initially deducted VAT

Based on Article 184 of the VAT Directive, the initial VAT deduction must be adjusted where it is higher or lower than that to which the taxable person was entitled. Under Article 185 of the VAT Directive, an adjustment must, in particular, be made where, after the VAT return is made, some change occurs in the factors used to determine the amount to be deducted.

The respective buildings were from the beginning intended for use within the Company's business activities. They were used by Mydibel for these activities in an uninterrupted and permanent manner, even after the sale and lease back transactions had taken place.

While the transactions gave rise to an emphyteutic rent to be paid immediately to Mydibel, that Company for its part undertook to pay to the financial institutions concerned a quarterly rent during a 15-year period, the total amount of which corresponds to that of the emphyteutic rent, plus interest.

It thus appears, according to CJEU, that Mydibel continued to use the transactions carried out for the purpose of the construction, alteration or renovation of the buildings for its transactions subject to output VAT. This indicates, according to CJEU (subject to verification by the national court) that there were no changes in the factors used to determine the amount of the deductions made after the VAT return was made.

CJEU argues that the creation of an emphyteutic right does not in itself have the effect of breaking the close and direct relationship between the right to deduct input VAT and the use of the goods or services concerned for taxable output transactions.

CJEU concluded that (subject to verification by the national court) the VAT Directive does not require an adjustment of the initial deduction of VAT in the abovementioned circumstances.

Input VAT recovery adjustment under the capital goods scheme

In accordance with Article 188(1) of the VAT Directive, if, during a period for adjustment of the VAT deduction, a VAT payer supplies capital goods subject to VAT or with VAT exemption with the possibility of VAT deduction, until the lapse of this period for adjustment such capital goods are treated as if used for business purposes with the right for VAT deduction.

If, during a period for adjustment of the tax deduction, capital goods supplied as exempt from VAT without the possibility of VAT deduction, until the lapse of this period for adjustment such capital goods are treated as if used for purposes of business activities exempt from VAT without the right to deduct VAT.

Referring to its previous judgments, CJEU has pointed out that the concept of 'supply of goods' does not refer to the transfer of ownership in accordance with the procedures prescribed by the applicable national law but covers any transfer of tangible property by one party which empowers the other party actually to dispose of it as if he were its owner.

In the case at hand, CJEU held that it is necessary to determine whether the grant of the emphyteutic right for the benefit of the financial institutions and of the leasing of real property to Mydibel must be considered separately or together.

According to previous CJEU judgments, there is a single supply where two or more elements or acts supplied by the taxable person to the customer are so closely linked that they form, objectively, a single, indivisible economic supply, which it would be artificial to split.

In this case, the sale and lease back transactions are purely financial transactions designed to increase Mydibel's liquidity, whereby the buildings remained in the possession of Mydibel, which used them in an uninterrupted and permanent manner for the purposes of its taxable transactions.

CJEU argued that those facts appear to indicate that (subject to verification by the national court) the mentioned operations form a single transaction, since the creation of the emphyteutic right over the buildings is inseparable from the lease of real property covering those buildings.

In those circumstances, those transactions cannot be, according to CJEU, classified as 'supplies of goods' in so far the civil

law emphyteutic rights reduced by the rights of Mydibel stemming from the leases of real property, do not empower them to dispose of the buildings as if they were their owners.

In the light of the foregoing, and subject to verification by the referring court, the VAT Directive does not, according to CJEU, require an adjustment of the initial deduction of VAT in the abovementioned circumstances.

Principles of VAT neutrality and equal treatment

Having regard to the abovementioned conclusion, the question of adherence to the principles of VAT neutrality and equal treatment arises only if the referring court, after verification, considers that the sale and lease back transactions constitute:

- a change in the factors used to determine the amount of the deductions which were made after the VAT return was made, or
- a supply of capital goods,

and that there is therefore an obligation to adjust the VAT initially deducted.

In CJEU's view, such an obligation to adjust the VAT initially deducted complies, in any event, with the principles of VAT neutrality and of equal treatment.

CJEU argues that in that regard, it suffices to observe that, in those circumstances, a taxable person who has entered into such a transaction without VAT concerning a building which he owns is not, for VAT purposes, in a comparable situation to that of a taxable person who has remained the owner of a building without interruption since the completion of the works which gave rise to the right to deduct input tax.

It is up to the referring court to finally assess the transactions. However, this judgment contains reasonings which are based inter alia on circumstances under which CJEU considers that no supply of goods has taken place. In this respect, CJEU considered the characteristics of the transactions notwithstanding their contractual structure.

CJEU made a reference to its previous judgments related to assessment, whether a single supply made up of several elements should be considered as a single supply or of several distinct and independent taxable supplies which must be assessed separately from the VAT point of view. However, the previously assessed cases have normally been related to two or several supplies made by one VAT payer, whereby the single supply rule was in this case applied to transactions of two independent VAT payers. Therefore, the extent of application of this principle and its practical consequences to VAT treatment of transactions should be considered as well.

Financial Directorate issued a Decree on recreational contribution

Financial Directorate issued a Decree on taxation of recreational contribution as well as its claiming as a tax deductible expense. The Decree contains the respective legislative framework including several illustrative examples on the topic covered. Please refer to our article for more information about recreational contribution.



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The Slovak Parliament repealed the Act on special levy of supermarket chains

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The Slovak Parliament repealed the Act on special levy of supermarket chains regarding which we have informed in our [article](#). The repeal of this Act is a response of the Slovak Parliament to the interim measure of the European Commission which has suspended the application of the special levy of supermarket chains.

Following the cancellation of the special levy, the transitional provision of the Slovak Income Tax Act stipulates that a special levy of supermarket chains paid before 4 April 2019 should be included in the tax base.

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