CJEU judgment : The VAT liability of supplies of electronic books

The Court of Justice of the European Union (CJEU) has today handed down its judgment concerning the reduced rate of VAT applied to electronic books (e-books) in France and Luxembourg. This alert sets out the background to the case and the implications of the decision.

The CJEU held that e-books should be subject to the standard rate of VAT on the basis that e-books are electronically supplied services.

Businesses in the publishing and e-commerce sectors and other entities making supplies which benefit from a reduced rate of VAT on e-books in EU Member States may wish to consider the implications of the judgment further.

Background

Books have traditionally been subject to reduced VAT rates in almost all the EU Member States.

According to the EU VAT Directive, Member States may apply a reduced VAT rate to the supply of books on "...all physical means of support" (as amended in 2009 by Directive 2009/47/EC).

The evolution of technology has however allowed the development of the supply of books in formats other than paper e.g. CDs, DVDs, cards, etc., as well as in digital format downloaded via the Internet (so-called e-books).

The development of these new means of supplying books has given rise to debate regarding the applicable VAT treatment, particularly with regard to the interpretation of "all physical means of support". Questions have therefore inevitably arisen on whether the reduced VAT rate applicable to paper books should also be applied to audio books and e-books.

The uncertainties with regard to the applicable VAT rate on books have already led the CJEU to provide guidance on the VAT liability of books supplied on other physical formats. In the K Oy (C-219/13) judgment, released on 11 September
2014, the CJEU held that national legislation which applies different VAT rates to printed books and books supplied on other physical media is compatible with EU law, provided that the principle of fiscal neutrality is upheld. If, on the other hand, the customer believes the purchase is of a book, regardless of the medium it is delivered on, then the comparable reduced rate should apply.

The question regarding the VAT rate applicable to e-books raised in the current case is connected to that already submitted to the CJEU in the K Oy case but has slightly different legal grounds. For VAT purposes, e-books fall to be treated as electronically supplied services. According to the EU VAT Directive, reduced VAT rates cannot be applied to electronically supplied services.

Despite this, France and Luxembourg equalized the treatment of printed books and e-books applying to both super-reduced VAT rates (3% in Luxembourg and 5.5% in France as from January 2013) on the grounds that e-books and books are similar goods and should thus enjoy similar VAT treatment. The European Commission disagreed with the VAT liability applied by France and Luxembourg and launched formal infringement proceedings.

The CJEU judgment

The CJEU has held that e-books should be subject to the standard rate of VAT on the basis that e-books are electronically supplied services. Affected businesses may wish to consider the implications of the judgment without delay.

Implications

Member States such as Italy and Malta have recently followed France and Luxembourg in applying the reduced VAT rate to the supply of e-books. In addition, since 1 January 2015, business-to-consumer (“B2C”) supplies of e-books are subject to VAT where the consumer belongs.

Businesses supplying e-books in Member States which have adopted reduced rates or making supplies of e-books cross border to such countries should consider the implications of the judgment.

Specifically, ERP systems will need to be updated to ensure that VAT is accounted for correctly on a prospective basis. The retrospective implications of the judgment should also be considered further and corrective action should be taken where appropriate.
Further information

We have a global indirect tax practice which is experienced in providing support in relation to technical VAT issues.

The EY Indirect Tax network has considered the implications of the judgment on a pan European basis. If you would like to discuss the implications of the judgment further, please speak to your usual EY contact or one of the people below.

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