

## Input statement

# Concept, causes and cases of VAT double taxation



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## The concept of VAT double taxation



- Focal point: transactions ( $\neq$  double income taxation: items of income)
- **Juridical VAT double taxation:**
  - *Ruppe 1983: "an international transaction is subject to turnover tax [...] in several countries, regardless of whether it concerns the same taxpayer or not"*
  - Multiplication of places of supply
  - Not necessary that final consumer has to bear more than VAT levied by one state
- **Economic VAT double taxation:**
  - Output taxation by one state – denial of input VAT credits or refunds by another state
  - *Rendahl: "cumulative effects"* → supplier unable to fully transfer tax burden onto the purchaser



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# The concept of VAT double taxation

- Transactions only involving "a group of countries that is **bound by a common legal framework** for their consumption tax systems" (OECD)
  - Transactions only involving EU states
    - = "intra-EU constellations"
    - Example: supply of goods/services by an Austrian taxable person to a German recipient
  - Also other groups of countries, e.g. VAT agreement of GCC countries
- Transactions involving countries that are **not bound by a common legal framework**
  - Transactions involving EU states and non-EU states
    - = "mixed constellations"
    - Example: supply of goods/services by an Italian taxable person to an Australian recipient
  - Transactions involving only non-EU states
    - Example: supply of goods/services by a Russian taxable person to a Japanese recipient



# Causes of VAT double taxation

- Double taxation due to **divergent rules:**
  - Mixed constellations:
    - Lack of harmonisation of VAT systems
  - Intra-EU constellations:
    - Diverging domestic implementation of provisions of the VAT Directive
      - Example: TOMS
    - Limits to harmonisation
      - Options and derogations
- Double taxation despite **identical rules:**
  - Diverging interpretation of identical rules
  - Diverging interpretation of circumstances of a case



## Case study: *Faaborg-Gelting Linien* (ECJ 2.5.1996, C-231/94)

- Danish company operating ferries between Faaborg (Denmark) and Gelting (Germany)
  - Meals provided aboard the ferries
- Conflicting views on applicable place of supply rule:
  - German tax authorities: supply of goods → taxable where the goods are when the supply takes place → (partially) **Germany**
  - Danish tax authorities: supply of services → taxable where Danish company has established its business → **Denmark**
  - **Juridical double taxation**
- **ECJ:**
  - supply of services → place of supply: Denmark

## Case study: *KrakVet Marek Batko* (ECJ 18.6.2020, C-276/18)

- Company established in Poland sells products for animals to customers in Hungary via webshop
- Conflicting views on applicable place of supply rule:
  - Polish tax authorities: distance-selling regime not applicable
    - Place of supply: **Poland**
  - Hungarian tax authorities: distance-selling regime applicable
    - Place of supply: **Hungary**
  - **Juridical double taxation**
- **ECJ:**
  - Distance-selling regime applicable in such case → place of supply: Hungary
  - *"It must be stated that the correct application of Directive 2006/112 makes it possible to avoid double taxation and to ensure fiscal neutrality [...]. Therefore, the existence in one or several other Member States of different approaches to that prevailing in the Member State concerned must not, in any event, lead to a misapplication of the provisions of that directive."* (para. 50)

# Case study: *Eurodental* (ECJ 7.12.2006, C-240/05)

- Luxembourg company provides dental prostheses to customers based in Germany
- Article 13A para. 1 letter e Sixth Directive: supply of services by dental technicians and supply of dental prostheses is tax exempt
  - Article 28 para. 3 letter a Sixth Directive: member states can choose not to apply this exemption
  - Germany: does not apply the exemption → transaction is taxed
  - Luxembourg: does apply the exemption → no input VAT credit
  - **Economic double taxation**
- **ECJ:**
  - "[T]he Community system of VAT is the result of a gradual harmonisation [...] this harmonisation [...] is still only partial." (para. 50)
  - "The fact that the maintenance of the derogating and transitional arrangements [...] may [...] give rise to distortions of competition [...] cannot in any way authorise that Member State to create itself distortions of competition [...]." (para. 56)

## The elephant in the room





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