



Reports of Cases

Case C-224/11

BGŻ Leasing sp. z o.o.

v

Dyrektor Izby Skarbowej w Warszawie

(Request for a preliminary ruling from the Naczelny Sąd Administracyjny)

(VAT — Leasing services supplied together with insurance for the leased item, subscribed to by the lessor and invoiced by the latter to the lessee — Classification — Single complex service or two distinct services — Exemption — Insurance transaction)

Summary — Judgment of the Court (Sixth Chamber), 17 January 2013

1. *Harmonisation of fiscal legislation — Common system of value added tax — Supply of services — Transactions comprising several elements — Leasing services supplied together with insurance for the leased item — Single transaction composed of two distinct services — Not included*

(Council Directive 2006/112, Arts 1 and 78)

2. *Harmonisation of fiscal legislation — Turnover tax — Common system of value added tax — Exemptions provided for in the Sixth Directive — Exemption for insurance and re-insurance — Concept — Lessor insuring the leased item — Included*

(Council Directive 2006/112, Art. 135(1)(a))

1. As is apparent from the second subparagraph of Article 1(2) of Directive 2006/112 on the common system of value added tax (VAT), in order to apply that tax, every supply must normally be regarded as distinct and independent. Nevertheless, in certain circumstances, several formally distinct services, which could be supplied separately and thus give rise, in turn, to taxation or exemption, must be considered to be a single transaction when they are not independent. There is a single supply, in particular, 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. Such is the case particularly where one or more elements are to be regarded as constituting the principal supply, while other elements are to be regarded, by contrast, as one or more ancillary supplies which share the tax treatment of the principal supply. In that regard, a supply must be regarded as ancillary to a principal supply in particular if it does not constitute for customers an end in itself but a means of better enjoying the principal service supplied.

In principle, that is not the case regarding the supply of insurance for a leased item and the supply of leasing services. In that connection, although it is true that, as a result of the insurance for the leased item, the risks faced by the lessee are normally reduced as compared with those incurred in a situation in which such insurance is lacking, it remains the case that that derives from the very nature of the insurance. That, in itself, does not mean that such insurance must be regarded as being ancillary to the leasing service of which it forms part. Although such insurance supplied to the lessee through the

lessor facilitates the enjoyment of the leasing service, in the manner described above, it must be held that constitutes essentially an end in itself for the lessee and not only the means to enjoy that service under the best conditions.

(see paras 29, 30, 41, 42, 48, 50, operative part 1)

2. Where the lessor himself insures the leased item and re-invoices the exact cost of the insurance to the lessee, such a transaction constitutes an insurance transaction within the meaning of Article 135(1)(a) of Directive 2006/112 on the common system of value added tax and must therefore be exempt from that tax.

Such a supply of insurance cannot be subject to VAT simply because the insurance costs are re-invoiced in accordance with the contract concluded between the parties to a leasing agreement. The fact that the lessor takes out insurance at the request of its clients with a third party and then passes the exact cost billed by the third party to those clients cannot invalidate that finding. In such circumstances, in so far as the supply of insurance at issue remains unchanged the amount re-invoiced constitutes consideration for that insurance and therefore there is no need to submit such a transaction to VAT.

(see paras 62, 70, operative part 2)