

ECJ Rules on Taxable Person in Case of VAT Fraud



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News

On 30 January 2024, the ECJ ruled in [Case C-442/22 \(Dyrektor Izby Administracji Skarbowej w Lublinie\)](#) on the question who is the taxable person for VAT if fake invoices were issued.

In the case at issue, employees of a Polish petrol station collected discarded payment receipts and created new, false invoices for the quantities of fuel stated on them. They then sold the invoices to entities that unduly received VAT refunds. The corresponding VAT has not been paid into the State budget. The Polish tax authorities levied VAT from the company (the employer) as taxable person arguing that the fraudulent conduct was made possible due to the lack of adequate supervision and organisation within the company that hired the employees.

The referring Polish court asked who must be established to be "the person who enters the VAT" within the meaning of Art. 203 of the 2006 VAT Directive (and who is therefore liable to pay that VAT) if an employee has issued a fake invoice showing VAT using the employer's identity as a taxable person, without that employer's knowledge or consent.

The ECJ found that VAT cannot be payable by the apparent issuer of a false invoice if he is acting in good faith and the tax authorities know the identity of the person who actually issued the invoice. In this case, the actual person who issued the invoice is obliged to pay the VAT. In order to be considered to be acting in good faith, the employer must exercise due diligence reasonably required to monitor the conduct of its employees and thus prevent the issuing of false invoices by using its details. According to the ECJ, any other interpretation of the VAT Directive would run counter to the aim of combating tax evasion. It is now for the national authorities/court to assess, in the light of all the relevant factors, whether the employer has exercised such due diligence.

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