TOP-100 OF THE VAT ECJ CASE-LAW

Francisco Javier Sánchez Gallardo

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1. GENERAL PRINCIPLES: PRIMACY/DIRECT EFFECT (GENERAL)(1)

Van Gend en Loos, C-26/62:

The relationship between the EU Law and that of the Member States is governed by a principle of primacy of the former over the latter. This is what is known as the primacy of the EU law, which is one of its basic operating principles.

European citizens may invoke the EU law against their national rules, so that this is directly applicable to them.

1. GENERAL PRINCIPLES: PRIMACY/DIRECT EFFECT (GENERAL)(2)

Van Duyn, C-41/74:

The direct effect is also predicable of the Directives, so they can be invoked by the citizens in the same terms as the rest of the acts of the EU Institutions. Otherwise, they would be deprived of any kind of useful effect.

1. GENERAL PRINCIPLES (PRIMACY/DIRECT EFFECT GENERAL) (3)

Marshall, C-152/84:

When the Directives have not been transposed correctly, they can not be opposed to the citizens. On the contrary, citizens can invoke, to the extent that they are more beneficial, the Directives that their States have not transposed timely and adequately.

1. GENERAL PRINCIPLES: PRIMACY/DIRECT EFFECT (VAT RELATED) (1)

Becker, C-8/81:

The direct effect also applies to the Directives, even though they do not require more than a result and need its transposition to the internal law of the Member States. The complexity in the application of the EU regulations is not an obstacle for them to have said direct effect.

1. GENERAL PRINCIPLES: PRIMACY/DIRECT EFFECT (VAT RELATED) (2)

Dornier, C-45/01:

The exemption of health services established in the article 132(1)(b) can be invoked by taxpayers before a court to oppose the application of a rule of national law incompatible with this provision.

1. GENERAL PRINCIPLES: PRIMACY/DIRECT EFFECT (VAT RELATED) (3)

MDDP, C-319/12:

VAT borne in relation to exempt (educational) transactions is not deductible, even when an exemption established in national law is incompatible with Dir 2006/112.

However, the taxable person who is in such situation may invoke the incompatibility of the national rule with the Directive so that it is not applied when, even taking into account the margin of appreciation granted to the Member States, the referred taxpayer cannot objectively be considered as a body with purposes comparable to those of a public education body. In this last hypothesis, the educational services carried out by this taxpayer will be subject to VAT and may, therefore, qualify for the right to deduct VAT.

1. GENERAL PRINCIPLES: PRIMACY/DIRECT EFFECT (VAT RELATED) (4)

GMAC UK, C-589/12:

In cases of non-payment by customers, taxpayers have the right to reduce the VAT taxable base. This system cannot be replaced by another system that leads to a similar result, but not equivalent. This alternative route cannot deny the direct effect of the EU Law.

1. GENERAL PRINCIPLES: PRIMACY/DIRECT EFFECT (VAT RELATED) (5)

British Film Institute, C-592/15:

Article 132(1)(n) of the VAT Directive (cultural services) has no direct effect, so that, if it has not been transposed into domestic law, it cannot be directly invoked by an entity governed by public law, or by another cultural body recognized by the Member State concerned, which performs cultural services.

1. GENERAL PRINCIPLES: NEUTRALITY (1)

Gregg, C-216/97:

The exemption for social assistance services regulated by the article 132(1)(b) and (g) of the VAT Directive can also be applied to services rendered by private individuals, which cannot be considered excluded from the expressions "other duly recognized establishments of a similar nature" and " other bodies recognized by the Member State concerned as being devoted to social wellbeing".

1. GENERAL PRINCIPLES: NEUTRALITY (2)

Kügler, C-141/00:

The principle of fiscal neutrality precludes the economic operators who carry out the same operations from being treated differently in relation to the collection of VAT, which would be violated if the possibility of applying the VAT exemption would depended on the legal form by means of which the taxpayer exercises his activity.

Therefore, health care services are exempt under the article 132(1)(c) of the VAT Directive, both when provided by natural persons and by legal entities, since the exemption established in this provision does not depend on the legal form of the taxpayer that provides the services.

1. GENERAL PRINCIPLES: NEUTRALITY (3)

JP Morgan, C-363/05:

The investment funds referred to in the article 135(1)(g) of the VAT Directive, as regards the exemption from their management, may include both open-ended or contractual basis funds such as closed funds or statutory basis funds.

The Member States have the faculty to decide the investment funds whose management is VAT exempted; however, in this definition they must observe the principle of neutrality and guarantee the exemption of the management of collective investment formulas that compete with the collective investment institutions regulated in their specific regulations.

1. GENERAL PRINCIPLES: NEUTRALITY (4)

Kraft Foods Polska, C-588/10:

Article 90 of the VAT Directive allows the Member States to subordinate the modification of the taxable base in cases of non-payment to the existence of an acknowledgment of receipt in which it is proven that the client has received the corresponding rectified invoice. The principles of neutrality and proportionality are not opposed to the foregoing. However, when it is impossible or excessively difficult for the taxable person to obtain such acknowledgment of receipt, it cannot be prevented from demonstrating by other means, on the one hand, that he has observed the necessary diligence to make sure that its client has the rectified invoice in its possession and knows its content and, on the other hand, that the concerned transaction has been effectively carried out in accordance with what is stated in said rectified invoice.

1. GENERAL PRINCIPLES: ANCILLARY TRANSACTIONS (1)

CPP, C-349/96:

An operation can be considered as ancillary to a principal supply if it does not constitute an aim in itself, but a means of better enjoying the principal one. It is for the national court to determine whether transactions such as those in the main proceedings should be considered to consist of two separate supplies, namely an insurance supply, exempt, and a card registration supply, VAT taxable, or one of these two supplies is the main supply of which the other is ancillary, so that it shares the tax treatment of the main supply.

1. GENERAL PRINCIPLES: ANCILLARY TRANSACTIONS (2)

Levob Verzekeringen and OV Bank, C-41/04:

When two or more elements or acts that the taxpayer performs for the consumer, considered as an average consumer, are so closely linked that objectively form, from the economic point of view, a whole whose dissociation would be artificial, the set of such elements or acts constitutes a single supply for VAT purposes.

The supply of a standard software accompanied by an adaptation of the same to the needs of the client has to be considered, therefore, as a single operation, although different amounts are paid for delivery and adaptation.

1. GENERAL PRINCIPLES: ANCILLARY TRANSACTIONS (3)

Everything Everywhere, C-276/09:

The payment services provided by a telecommunications services company to its customers, where the latter pay for those services not by Direct Debit or by Bankers' Automated Clearing System transfer but by credit card, debit card, cheque or cash over the counter at a bank or authorized payment agent acting on behalf of that service provider, do not constitute consideration for a supply of services distinct and independent from the principal supply of services, consisting in the supply of telecommunications services. Therefore, they must follow the same conditions of taxation.

2. DIRECT LINK (1)

Aardappelenbewaarplaats, 154/80:

In order for a provision of services to be qualified as consideration and, consequently, to be subject to VAT, there must be a direct link between that service and its consideration. This must be able to be expressed in money and constitute the subjective value paid for the service.

It cannot be considered that there is a provision of services made for consideration when a cooperative provides its associates with storage services without charging anything for it. In such a case, there is no consideration for this service that can be considered a taxable base within the meaning of the article 73 of the VAT Directive.

2. DIRECT LINK (2)

Apple and Pear, C-102/86:

There being no proportionality between the hypothetical services provided and the consideration that is satisfied for them, the operations carried out by the governing body of a regulatory council that are financed with a mandatory contribution that is imposed on the farmers to cover their expenses do not have the consideration of services rendered for consideration for the purposes of the VAT Directive.

2. DIRECT LINK (3)

Tolsma, C-16/93:

For the purposes of the VAT Directive, the services of a musician who plays music on public roads and ask for a donation to pedestrians, without there being any obligation on the part of the latter to make the aforementioned donation, even if some money is obtained, the amount of which, however, is neither determined nor determinable, cannot be considered as an operation made for consideration.

2. DIRECT LINK (4)

Empire Stores, C-33/93:

The delivery of a good in exchange for the presentation of a new client must be considered as an operation carried out for consideration, not free of charge.

2. DIRECT LINK (5)

Kennemer Golf & Country Club, C-174/00:

The regular fees paid by members of a sports club can be considered the consideration of sports services, although there are members who do not use these services.

2. DIRECT LINK (6)

Lajvér, C-263/15:

The operation of agricultural engineering works constitutes a supply of services for consideration, on the ground that said services are directly linked to the corresponding fees, provided that said fees constitute remuneration for the services supplied, notwithstanding the fact that performance of those services is a legal obligation.

In order to settle if these fees constitute the consideration for the provided services, it is necessary to ascertain that said fees does not only partly remunerate the services supplied and that its amount has not been determined as a result of other possible factors that could, depending on the circumstances (the reception of some subsidies), call into question the direct link between the services supplied and their consideration.

2. DIRECT LINK (7)

Bastová, C-432/15:

For the purposes of VAT Directive, the provision of a horse by its owner, who is a VAT taxable, to the organizer of a horse race for the participation in that race does not constitute a supply of services for consideration where it does not give rise to a payment awarded for participation or any other direct remuneration and where only the owners of horses which are properly placed in the race receive a prize, even if that prize is determined in advance.

On the contrary, such put a disposal constitutes a supply of services for consideration where it gives rise to the payment, by the organizer, of a remuneration irrespective of whether or not the horse in question is placed in the race.

3. FREE TRANSACTIONS (1)

Fillibeck Söhne, C-258/95:

The free transport of employees of a company from their homes to their place of work, without there being a link between the existence of such transport and the salary received, cannot be considered as a provision of services made for consideration for VAT purposes.

In principle, the free transportation of employees from their homes to the workplace serves for purposes other than those of his business, so it should be taxed as a free operation assimilated to a provision of services made for consideration. However, special circumstances, such as the difficulty of using other appropriate means of transport or changes in the location of the activity, may make it consider that this supply serves the business purposes of the company and, therefore, they are not subject to VAT.

3. FREE TRANSACTIONS (2)

Kuwait Petroleum, C-48/97:

The delivery of goods to the purchasers of fuel in exchange for vouchers or points that accumulate a certain volume, so that such vouchers or points are offered as such and their reception is irrelevant for the determination of the price of the goods together with which they are delivered, must be considered as free and, therefore, as an operation assimilated to a delivery of goods made for consideration, subject to VAT as such. Said operation is subject to the extent that the goods are not of low value.

3. FREE TRANSACTIONS (3)

Hotel Scandic Gåsabäck, C-412/03:

For VAT purposes, it cannot be considered that there are free transactions, assimilated to the operations carried out on an onerous basis and taxable as such, in the provision of meals to employees in exchange for a real consideration, even if such consideration is lower than the price of the cost of the good delivered or the service provided.

3. FREE TRANSACTIONS (4)

EMI Group, C-581/08:

Commercial samples not VAT subject when given free are those that have the same characteristics as the product they show, intended to promote its sales and that allow assessing the characteristics and qualities of that product without resulting in final consumption, other that is inherent in such promotional actions.

The aforementioned concept cannot be limited, in a general way, by national regulations to specimens presented in a form not available for sale or to the first of a series of identical specimens, unless that legislation allows account to be taken of the nature of the product and of the specific business context.

The concept of "gifts of small value", not taxable, does not preclude a national legislation which fixes a monetary ceiling for gifts made to the same person in a 12 months period or forming part of a series of gifts.

3. FREE TRANSACTIONS (5)

Astra Zeneca UK, C-40/09:

The provision of a retail voucher by a company to its employees in exchange for their giving up part of their cash remuneration constitutes a supply of services effected for consideration for VAT purposes.

3. FREE TRANSACTIONS (6)

BCR Leasing IFN, C-438/13:

It cannot be assimilated to a delivery of goods for consideration the fact that it is impossible for a leasing company to recover the assets subject to a financial lease contract due to the termination of the contract as a consequence of the user's fault due to non-payment or late payments, despite the actions of the leasing company aimed at recovering the assets and despite the lack of any consideration arising from the resolution of the contract.

4. TAXABLE PERSONS (GENERAL)(1)

Rompelman, C-268/83:

The purchase of the right to acquire immovable property to be built that is going to be subject to a subsequent assignment, subject to VAT, must be considered by itself as the beginning of an economic activity for VAT purposes and the acquisition of the condition of VAT taxable person. Consequently, the VAT paid for this operation is deductible. Any other interpretation would imply a discrimination between acquisitions prior to the start of active operations and those that take place later, contrary to the principle of neutrality.

4. TAXABLE PERSONS (GENERAL)(2)

Heerma, C-23/98:

A civil society which is not a legal person, constituted by two spouses, can be considered as the taxable person.

When a person has as sole economic activity, for the purposes of VAT, the lease of a tangible property to a civil society of which it is a member, it must be considered that said lease is made independently for VAT purposes and, as such, taxable. The facts that the lessee is not a legal person and the partner is jointly responsible for compliance with its obligations lacks of any relevance to this effect.

4. TAXABLE PERSONS (GENERAL)(3)

Fini H, C-32/03:

A taxable person who ceases in the activity, but cannot rescind the lease contract of the premises he has been using, can deduct the VAT paid for it, since it is a direct service and immediately related to the activity he developed, provided that there is no intention of fraud or abuse.

4. TAXABLE PERSONS (GENERAL)(4)

Trgovina Prizma, C-331/14:

A natural person that acquires plots of land, affecting a part of them to their economic activity and reserving others for their private assets, and develops active management of promotion of a shopping center on all of them, using means similar to those employed by a typical entrepreneur, such as, in particular, the carrying out of urbanization works in said land and the use of usual commercial means, must be considered that it is acting as a taxpayer in relation to them, resulting their sale subject to VAT.

4. TAXABLE PERSONS (PUBLIC BODIES)(1)

Comune di Carpaneto Piacentino and others, C-231/87 and C-129/88:

The non-taxation for operations carried out by public bodies refers to the activities they perform under their own legal regime, not to those they perform under conditions identical to those of private operators. It is up to the Member States to choose the legislative method for the transposition of the above.

Member States are obliged to consider public bodies as VAT taxpayers regarding the activities they carry out in the exercise of their public functions when these activities can also be exercised, in competition with them, by private individuals, when their non taxation could lead to serious distortions of competition, but they are not obliged to adapt their national law literally to this criterion or to specify the quantitative limits of non-taxation.

4. TAXABLE PERSONS (PUBLIC BODIES)(2)

Ayuntamiento de Sevilla, C-202/90:

A tax collector who works for a City Council from which he receives a collection premium, organizes his means and assumes the risk of the activity, acts independently for VAT purposes, for which reason it is considered a VAT taxpayer.

The non-taxation for the activities or operations carried out by public bodies is not applicable when the activity of a public authority is not directly carried out, but is entrusted to an independent third party.

4. TAXABLE PERSONS (PUBLIC BODIES)(3)

Câmara Municipal do Porto, C-446/98:

The lease of spaces for the parking of vehicles is an activity that can be considered not subject to VAT when exercised by a public body acting as a public authority if such activity is carried out within the scope of its legal regime. Such is the case when the development of said activity involves the exercise of prerogatives of public authority, such as the imposition of fines or the limitation of the parking time.

A Law that refers to the specification by the Ministry of Finance of the cases in which there is serious distortion of competition and, therefore, the non-taxation of the public entities cannot be applied is valid. For this, it is a necessary condition that the decisions taken can be submitted to the control of the National Courts.

4. TAXABLE PERSONS (PUBLIC BODIES)(4)

Cesky rozhlas, C-11/15:

For VAT purposes, public broadcasting activities funded by a compulsory statutory charge paid by owners or possessors of a radio receiver and carried out by a radio broadcasting company created by law, do not constitute a supply of services “effected for consideration”.

4. TAXABLE PERSONS (PUBLIC BODIES)(5)

Nagyszénás, C-182/17:

An activity whereby a non-profit company completely belonging to a municipality performs certain public tasks under a contract concluded between that company and said municipality, constitutes a supply of services effected for consideration and ordinarily VAT taxed.

As far as it no implies the use of public prerogatives, such an activity does not fall within the scope of the special non-taxation rule for public bodies settled for in the article 13 of the VAT Directive.

5. TAX EVENT. SUPPLIES OF GOODS (1)

Shipping and Forwarding Enterprise Safe, C-320/88:

A "supply of goods" for VAT purposes is any operation constituting the transfer of the right to dispose of tangible property by which the powers attributed to its owner are transmitted to the recipient, even if there is no transfer of the legal ownership of the property.

5. TAX EVENT. SUPPLIES OF GOODS (2)

British American Tobacco International and Newman Shipping, C-435/03:

The disappearance of goods from a fiscal deposit is not a delivery of goods made for consideration for VAT purposes, being irrelevant to this effect that the merchandise is subject to excise duties.

5. TAX EVENT. SUPPLIES OF GOODS (3)

Mercedes-Benz Financial Services UK, C-164/16:

A leasing contract with a purchase option in which it can be inferred from its financial terms that exercising the option appears to be the only economically rational choice that the lessee will be able to make at the appropriate time if the contract is performed for its full term has to be considered, for VAT purposes, as a supply of goods.

5. TAX EVENT. SUPPLIES OF SERVICES (1)

KapHag Renditefonds, C-442/01:

The admission of a new partner into a partnership in exchange for a contribution in cash does not constitute a provision of services for consideration VAT taxable.

5. TAX EVENT. SUPPLIES OF SERVICES (2)

FCE Bank, C-210/04:

A fixed establishment that does not constitute a legal entity distinct from the company to which it belongs, established in another Member State, which does not bear any risk of the activities and to which the headquarter provides certain services, should not be considered as an independent taxable person because of the costs attributed to it. The reimbursements of expenses between headquarter and such a fixed establishments do not constitute consideration for the provision of services subject to VAT, since it is a single taxpayer.

5. TAX EVENT. SUPPLIES OF SERVICES (3)

Asparuhovo Lake Investment Company, C-463/14:

For VAT purposes, contracts for which advisory services are provided to a company, in particular of a legal, commercial and financial nature, in which the provider is at the disposal of the customer during the term of the contract, qualify as "provision of services".

5. TAX EVENT. INDEMNITIES (1)

Landboden- Agrardienste,C-384/95:

Not having an identified or identifiable recipient, the commitment assumed by a farmer to refrain from collecting 20% of his harvest in exchange for compensation paid by the public authorities does not constitute a provision of services subject to VAT.

5. TAX EVENT. INDEMNITIES (2)

Société thermale d'Eugénie-Les-Bains, C-277/05:

The amounts paid as a deposit in the framework of the provision of services, in the case that the customer desists from the service and who had the deposited amount acquires them, are not a consideration for services, but a compensation or indemnity not subject to VAT.

5. TAX EVENT. INDEMNITIES (3)

Air France, C-250/14:

For the VAT Directive purposes, the issuance of tickets by an airline is subject to VAT even if passengers have not used the tickets issued and cannot claim their refund. VAT paid by a passenger when he bought an airline ticket that he has not used is required from the moment the ticket price is collected, either by the airline itself or by a third party acting on the name and on behalf of it or by a third party acting in their own name but on behalf of the airline.

5. TAX EVENT. INDEMNITIES (4)

Meo-Serviços de Comunicações e Multimédia, C-295/17:

The predetermined amount received where a contract for the supply of services with a minimum commitment period is terminated early by its customer or for a reason attributable to the customer, which corresponds to the amount that the operator would have received during that period in the absence of such termination, must be regarded as the remuneration for a supply of services and VAT subject.

The facts that the objective of the lump sum is to discourage customers from not observing the minimum commitment period, that the remuneration received for the conclusion of contracts stipulating a minimum period of commitment is higher than that provided for under contracts which do not stipulate such a period, and that the amount is classified under national law as a penalty, are not decisive to these effects.

6. SUPPLIES LOCATION. FIXED ESTABLISHMENTS (1)

Berkholz, C-168/84:

The existence of a fixed establishment requires a minimum consistency and the permanent concurrence of material and human production means for the concerned transaction.

In general, the place where the business is located is the main connection point for the provision of services. The use of other connection points is only relevant when the previous criterion does not lead to an appropriate result.

6. SUPPLIES LOCATION. FIXED ESTABLISHMENTS (2)

DFDS, C-260/95:

A wholly-owned subsidiary company that has relationships with the parent company that go beyond those derived from participation in the share capital may constitute a fixed establishment of the parent company.

In this case, the services rendered through this subsidiary can be attributed to it as the provider fixed establishment.

6. SUPPLIES LOCATION. FIXED ESTABLISHMENTS (3)

Welmory, C-605/12:

In order to consider that a taxpayer has a fixed establishment for VAT purposes, it would need to hold a structure characterized by a sufficient degree of permanence, suitable, in terms of human and technical means, to enable it to receive and use the corresponding services for the purposes of its economic activity.

For the application of the general destination location rule for the supply of services, provided for in the VAT Directive article 44, priority should be given to the place where the seat of the activity is located. The linking of services to different fixed establishments is only appropriate when the previous criterion leads to a non-rational situation or to a conflict with another Member State.

6. SUPPLIES LOCATION. FIXED ESTABLISHMENTS (4)

WebMindLicenses, C-419/14:

In order to determine whether a licensing agreement concerning the making available of know-how enabling operation of a website by which interactive audiovisual services were supplied, concluded with a company established in a Member State other than that in which the company granting the license is established, arose from an abuse of rights designed to benefit from the fact that the VAT rate applicable to those services was lower in that other Member State, the fact that the manager and sole shareholder of the latter company was the creator of that know-how, that that same person exercised influence or control over the development and exploitation of that know-how and over the supply of the services which were based on it and that management of the financial transactions, staff and technical instruments necessary for the supply of those services was carried out by subcontractors, and the reasons which may have led the company granting the license to make the know-how at issue available to a company established in that other Member State instead of exploiting it itself, do not appear decisive in themselves.

It is incumbent upon the referring court to analyze all the circumstances of the main proceedings in order to determine whether that agreement constituted a wholly artificial arrangement concealing the fact that the services at issue were not actually supplied by the company acquiring the license, but were in fact supplied by the company granting it, examining in particular whether the establishment of the place of business or fixed establishment of the company acquiring the license was not genuine, whether that company, for the purpose of engaging in the economic activity concerned, did not possess an appropriate structure in terms of premises and human and technical resources and whether it did not engage in that economic activity in its own name and on its own behalf, under its own responsibility and at its own risk.

In the event of finding an abusive practice which has led to fixing the place of supply of services in a Member State other than that in which it would have been established in its absence, the fact that the VAT was paid in that other Member State does not preclude an assessment in the State from which the provision actually took place.

According to Regulation 904/2010, on VAT administrative cooperation, the tax authorities which control the VAT in respect of operations that have already been taxed in other Member States, are obliged to send a request of information to their tax administrations when said request is useful or even indispensable to determine that VAT is required in the first one.

6. SUPPLIES LOCATION. FIXED ESTABLISHMENTS (5)

Morgan Stanley, C-165/17:

To settle the deductible proportion applicable to the general costs of a branch registered in a Member State, which are used both for transactions of that branch and transactions of the principal establishment, established in another Member State, account must be taken, in the denominator of the fraction which makes up that deductible proportion, of the transactions carried out by both that branch and that principal establishment, it being specified that it is necessary that, in the numerator of that fraction, besides the taxed transactions carried out by that branch, solely the taxed transactions carried out by that principal establishment must appear, in respect of which VAT would also be deductible if they had been carried out in the State where the branch is registered.

6. SUPPLIES LOCATION RULES (1)

von Hoffmann, C-145/96:

The services included in article 59 of the VAT Directive are those that are usually developed by the professions mentioned in this provision. The reference to other similar supplies must be understood as related to other operations similar to the previous ones, but not as related to any common element that said professions could have.

In particular, the services provided by a member of an arbitration tribunal cannot be considered as being included in the objective scope of said article (judgment relating to events prior to the entry into force of Dir 2008/8).

6. SUPPLIES LOCATION RULES (2)

Design Concept, C-438/01:

In the provision of chain services, that is, in services provided and billed to an intermediate recipient who in turn invoices the advertiser, each of the services must apply the corresponding place of supply rule according to their characteristics.

6. SUPPLIES LOCATION RULES (3)

Rudi, C-166/05:

There is no priority between the general place of supply rule for services and the special rules. It is therefore appropriate to determine the scope of application of any of the special place of supply rules for services, and then to specify the place where a provision of services that can be deemed to be included in it should be considered. Consequently, the 47 of the VAT Directive should not be considered as an exception to a general rule or to be interpreted strictly.

Therefore, the cessions of fishing rights in a river are supplies of services related to real estate that must be subject to VAT where the rivers to which they refer are physically located.

6. SUPPLIES LOCATION RULES (4)

Athesia Druck, C-1/08:

For the purposes of the use and enjoyment provisions of the VAT Directive, to determine the place in which that the advertising services must be considered used or effectively exploited, the tax authorities can serve the State from which the advertising is disseminated.

6. SUPPLIES LOCATION RULES (5)

RR Donnelley Global Turnkey Solutions Poland, C-155/12:

For the purposes of article 47 of the VAT Directive (and the location where the immovable related properties are located), the provision of a complex storage service consisting of the reception of the goods in a warehouse, their accommodation in shelves appropriate, its conservation, its packaging, its delivery and its loading and unloading can only be within the scope of that article if the storage is the main supply of a single operation and if the beneficiaries of this supply are granted a right of the use of all or part of an immovable property expressly determined.

6. SUPPLIES LOCATION RULES (5)

Inter-Mark Group, C-530/09:

The services for designing and temporarily installing a place in a trade fair or exhibition should be considered as an advertising service when the place is used for the transmission of a message intended to inform the public about the existence and qualities of the product.

7. GOING CONCERNS (1)

Zita Modes, C-497/01:

The non-taxation of the sale of going concerns applies to any transfer of a commercial establishment or of an autonomous part of a company, with tangible and intangible elements that, jointly, constitute a company or a part of a company capable of developing an autonomous economic activity.

This provision would not apply if the recipient does not intend to exploit the commercial establishment, but to liquidate the business assets or stock received. The application of the non-taxation rule cannot be denied due to the fact that the purchaser does not have an authorization to establish the economic activity that this commercial establishment allows to exercise.

7. GOING CONCERNS (2)

Schriever, C-444/10:

The non-taxation of the transmission of going concerns applies to the transfer of stocks and commercial equipment of a retail trade, together with the lease of the premises it occupied, which was carried out for an indefinite period of time, but which can be resolved in a short term, provided that the goods transmitted are sufficient for the transferee to continue in a lasting way with an autonomous economic activity.

7. GOING CONCERNS (3)

SKF, C-29/08:

The transfer of all the shares in a company can be compared to the transfer of a going concern, in which case, and provided that this is provided in the national legislation, this will constitute a non-taxed transaction.

7. GOING CONCERNS (4)

X, C-651/11:

The transfer of 30% of the shares of a company, to which the transferor provided with VAT subject services, does not constitute a transmission of a going concern non VAT taxed, regardless of whether the rest of the shareholders transmitted almost simultaneously to the same person or entity the rest of the shares of this company and that this transfer is closely linked to the management activities carried out in favour of that same company.

8. INTRA-EU TRANSACTIONS (1)

EMAG Handel Eder, C-245/04:

In intra-EU chain operations in which there are two deliveries and a single transport, such transport can only be related to one of these deliveries. This delivery will be exempt and will result in the intra-EU acquisition in the destination Member State. This interpretation is valid regardless of which of the operators involved in the transactions owns the goods during their transport.

For the purpose of applying the place of supply rules for deliveries of goods with and without transportation, the place where the transfer of the power of disposal occurs is not relevant. In a transaction in which there are two deliveries of goods and a single transport, only the one that gives rise to the shipment or transport of the goods would be located at the origin Member State.

8. INTRA-EU TRANSACTIONS (2)

Teleos and others, C-409/04:

The taxation of intra-EU acquisitions of goods, as well as the exemption for the intra-EU deliveries, only apply if the goods have been transferred to the purchaser as the owner and the goods, on the occasion of delivery, have physically left the origin Member State to another Member State.

The submission of a declaration in the State of destination of the merchandise including the intra-EU acquisitions may be an evidence to be taken into account to justify that the goods have left the country of origin, but it does not constitute conclusive proof for the purposes of the exemption of the intra-EU supply.

The tax authorities cannot deny the exemption of intra-EU deliveries of goods applied by an operator who acted in good faith, with support in documentary evidence that, at first sight, justified the exemption but proved to be false, without having demonstrated that said operator participated in a fraud scheme, provided that the latter took all reasonable measures at his disposal to ensure that said participation did not exist.

8. INTRA-EU TRANSACTIONS (3)

Euro Tyre Holding, C-430/09:

When two chain supplies occur, the first one can be considered as intra-EU supply if the intention of the purchaser, confirmed by objective elements, allows to conclude that the goods will leave the State of origin. To do this, an overall assessment of all the particular circumstances must be carried out in order to determine which of these two deliveries meets all the requirements corresponding to an intra-EU supply.

However, if the aforementioned purchaser reports that, prior to the departure of the goods, these will be transmitted to a third party, the foregoing could be challenged.

8. INTRA-EU TRANSACTIONS (4)

VSTR, C-587/10:

The concepts of intra-EU supply and acquisition are objective and apply regardless of the purposes of operations. In intra-EU chain operations in which there is only one transport, only the operation to which the transport can be attributed can be considered as the intra-EU supply.

For the purposes of the exemption of intra-EU deliveries, Member States have the power to oblige the supplier of goods to provide proof that the purchaser is a taxable person, acting as such in a Member State other than the one of departure of the goods.

When a Member State obliges a supplier to declare the VAT number of its purchaser, it cannot be questioned whether that number is closely related to the status of taxable person of said purchaser. Although the VAT number proves the status of the taxpayer and facilitates the tax control of intra-EU transactions, it is a mere formal requirement, which cannot call into question the right to VAT exemption if the material requirements of an intra-EU delivery are met. As a result, the denial of the exemption cannot be justified by the fact that this obligation has not been fulfilled when the supplier cannot, in good faith, and after having taken all the measures that can be reasonably required, provide such VAT number and provides, on the other hand, indications that serve to demonstrate sufficiently that the purchaser is a taxpayer who acts as such (judgment prior to the quick-fixes).

8. INTRA-EU TRANSACTIONS (5)

Mecsek-Gabona, C-273/11:

The exemption for the intra-EU delivery settled for in the VAT Directive, article 138, can be denied when it is objectively proved that the provider knew or should have known that the transaction it carried out was involved in a fraud committed by the purchaser and that it did not take all reasonable measures within its reach to prevent its own participation in the fraud.

The exemption of an intra-EU supply cannot be denied due to the fact that the VAT number of the recipient has been retroactively withdrawn.

8. INTRA-EU TRANSACTIONS (6)

Schoenimport "Italmoda" Mariano Previti, C-131/13:

According to the VAT Directive, it is for the national authorities and courts to refuse a taxable person, in the context of an intra-EU supply, the deduction or the, exemption for VAT, even in the absence of provisions of national law providing for such refusal, if it is established, in the light of objective factors, that that taxable person knew, or should have known, that, by the transaction relied on as a basis for the right concerned, it was participating in evasion of value added tax committed in the context of a chain of supplies. To this effect, the fact that the evasion was carried out in another Member State is irrelevant.

8. INTRA-EU TRANSACTIONS (7)

Santogal M-Comércio e Reparação de Automóveis, C-26/16:

Article 138 of the VAT Directive precludes a national provision from making the recognition of the exemption of intra-EU supply of a new means of transport subject to the requirement that the purchaser is established or domiciled in the destination Member State.

The exemption of a delivery of a new means of transport cannot be refused in the supply Member State for the sole reason that such means of transport has been granted only of a temporary registration in the destination Member State, and that the seller is subsequently obliged to pay VAT if it is not proven that the temporary registration regime has been extinguished and that the aforementioned tax has been or will be paid in the destination Member State.

Article 138 of the VAT Directive, and the principles of legal certainty, proportionality and protection of legitimate expectations, preclude that the seller of a new means of transport, transported by the purchaser to another Member State and registered in this State on a temporary basis, it is subsequently forced to pay VAT in case of tax fraud committed by the purchaser, unless it is demonstrated, on the basis of objective data, that the aforementioned seller knew or should have known that the operation was involved in a fraud committed by the purchaser and did not take all reasonable measures at its disposal to prevent its participation in that fraud. It is for the referring court to verify whether that circumstance is fulfilled by an overall assessment of all the facts and circumstances in the main proceedings.

8. INTRA-EU TRANSACTIONS (8)

Toridas, C-386/16:

An intra-EU made by a taxable person established in a first Member State is not exempt where, prior to entering into that supply transaction, the person acquiring the goods, who is identified for VAT purposes in a second Member State, informs the supplier that the goods will be resold immediately to a taxable person established in a third Member State, before he takes them out of the first Member State and transports them to that third taxable person.

The fact that the first person acquiring the goods is identified for VAT purposes in a Member State other than that of the place of the first supply or that of the place of the final acquisition is not a criterion for the classification as an intra-EU transaction.

To that effect, processing of the goods, in a supply chain, carried out on the instructions of the acquirer, has no effect on the conditions for the exemption of the first supply where that processing takes place after the first supply.

9. EXEMPTIONS (GENERAL CRITERIA) (1)

D. vs W., C-384/98:

The terms used to designate the exemptions provided in articles 131 to 137 of the VAT Directive must be interpreted strictly, since they are exceptions to the general principle that VAT should be received for each provision of services made for consideration by a taxpayer.

Equal statements are included in cases as **Eulitz, C-473/08** or **Klinikum Dortmund, C-366/12.**

9. EXEMPTIONS (SPECIFIC TOPICS) (1)

Comission vs. France, C-76/99:

Despite the strict sense with which the exemption cases are to be interpreted, and as regards services related to hospitalization or health care, this concept should not be interpreted as being particularly restrictive, since the purpose of the exemption is to ensure that the medical and hospital care is not made inaccessible.

Services of transmission of samples for the performance of clinical analyses that a laboratory renders to another, who is the one who performs the analysis itself, are VAT exempted.

9. EXEMPTIONS (SPECIFIC TOPICS) (2)

Hoffmann, C-144/00:

The exemption of cultural services applies to soloists who act individually, which, therefore, can be considered as "other [recognised] cultural bodies“ to this effect.

The only limitations that can be established for this exemption are those that derive from the article 133 of the VAT Directive (non-profit, managed with no interest, priced equally to other entities and non distorting the competition).

The title of the article 131 of the VAT Directive (exemption for certain supplies) does not imply by itself any limitation to the possibilities of exemption provided for in that provision.

9. EXEMPTIONS (SPECIFIC TOPICS) (3)

Zoological Society of London, C-267/00:

The requirement that an entity is managed in a philanthropic way, non retributed, which allows the exclusion of certain exemptions following to the article 133 of the VAT Directive, must be understood as referring to the members of said entity that, according to its statutes, are designated to assume its management at the highest level, as well as to other persons who, without being designated by the bylaws, effectively exercise their direction, in the sense that they ultimately adopt decisions regarding the policy of that body, especially in the economic sphere, and exercise superior control functions, but not to the rest of the employees.

9. EXEMPTIONS (SPECIFIC TOPICS) (4)

Unterpertinger, C-212/01:

As far as it does not have any therapeutical purpose, he issuance of an expert report on a person's state of health in order to support or exclude a claim for payment of a disability pension is not VAT exempt. The fact that the medical expert was instructed by a court or pension insurance institution is irrelevant in that respect.

9. EXEMPTIONS (SPECIFIC TOPICS) (5)

Kingscrest, C-498/03:

The meaning of “organisations recognised as charitable by the Member State concerned”, included in the article 132(1)(g) of the VAT Directive, does not exclude private profit-making entities, for the purposes of applying the VAT exemption for social assistance services.

In the exercise of this faculty of recognition, the principles of neutrality and equal treatment must be observed, taking into account of the content of the supplies of the concerned services, as well as the conditions for the provision.

9. EXEMPTIONS (SPECIFIC TOPICS) (6)

Eulitz, C-473/08:

The exemption for the educational services settled for in article 132(1)(j) of the VAT Directive applies to the teaching services provided by a qualified engineer in an education institute established as a private-law association for participants in advanced training courses, who already have at least a university or higher technical college qualification. Such activities may also constitute activities other than teaching in the strict sense, as long as they are carried out, essentially, in the context of the transfer of knowledge and skills between a teacher and pupils or students and cover school or university education.

9. EXEMPTIONS (SPECIFIC TOPICS) (7)

PFC Clinic, C-91/12:

The exemption of the health-care services can be applied to plastic surgery and other cosmetic treatments as far as those services are intended to diagnose, treat or cure diseases or health disorders or to protect, maintain or restore the human health.

The subjective status of the person who provides said services is not in itself decisive in order to determine whether that intervention has the required therapeutic purpose for the exemption.

9. EXEMPTIONS (FINANCIAL/INSURANCE TRANSACTIONS) (1)

CPP, C-349/96:

For VAT purposes, the concept "insurance" extends to the categories of assistance activities considered as such in the corresponding sectorial regulations.

The exemption of the insurance contracts cannot be restricted to the services provided by insurers authorized by specific laws, applying, therefore, to any operator that performs said operations.

A taxable person, not being an insurer, who, in the context of a block policy of which he is the holder, provides for his customers, who are the insured, insurance cover from an insurer who assumes the concerned risks, performs an insurance transaction that will be VAT exempt.

9. EXEMPTIONS (FINANCIAL/INSURANCE TRANSACTIONS) (2)

BGZ Leasing, C-224/11:

In a leasing contract in which the lessor offers, together with the lease, an insurance contract relating to the leased asset, which the lessee may contract or not, it must be considered that the insurance is not an ancillary supply but an additional and principal one, whose treatment must be the one that corresponds according to its own nature, exempted.

9. EXEMPTIONS (FINANCIAL/INSURANCE TRANSACTIONS) (3)

SDC, C-2/95:

The exemptions for the financial services apply independently of the supplier status and that they are provided electronically or otherwise.

Said exemptions apply equally to chain operations, so that operator A has a contractual relationship B, which is who is bound contractually with the final customer. For that, the concerned transactions must have a differentiated character, being specific and essential for the provision of the financial services. Making financial information available to banks and other users cannot be considered as exempt transactions.

9. EXEMPTIONS (FINANCIAL/INSURANCE TRANSACTIONS) (4)

FNBC, C-172/96:

Currency exchange operations in which one of the parties purchases an agreed amount of a currency and in exchange sells to the other party an agreed amount of another currency, agreeing the corresponding currencies, the amounts bought and sold and the date of value, constitute services provided for consideration for VAT purposes, although its remuneration is the margin between the purchase and the selling price.

Being exempted transactions, their taxable base is constituted by the margin obtained by reference to a certain period of time.

9. EXEMPTIONS (FINANCIAL/INSURANCE TRANSACTIONS) (5)

CSC, C-235/00:

The exemption of operations relating to securities established refers to operations that alter the legal status and of the intervening parties.

The exemption for the negotiation of financial transactions requires the existence of a third party that, as such, puts the intervening parties in contact so that said financial operations may be carried out.

9. EXEMPTIONS (FINANCIAL/INSURANCE TRANSACTIONS) (6)

Wheels, C-424/11:

The purpose of the exemption established for the management of common investment funds is to facilitate said common investment by excluding the cost of VAT, ensuring that VAT is neutral as regards the choice between direct investment in securities and investment through collective investment structures.

Said exemption only refers to mutual funds in which investors assume the risk of investment, being applicable to retirement pension schemes where their members bear the risk arising from the management of the fund.

9. EXEMPTIONS (FINANCIAL/INSURANCE TRANSACTIONS) (7)

Cardpoint, C-42/18:

It does not constitute an operation related to payments, exempt as such, the provision of services to a bank that operates ATMs consisting of making function and maintaining ATMs, supplying them with banknotes, installing computer equipment and programs to read the data of bank cards, transmit the requests for authorization to withdraw cash to the bank that issued the used bank card, proceed to deliver the requested cash and record the withdrawal operations.

9. EXEMPTIONS (REAL ESTATE) (1)

Lubbock Fine, C-63/92:

The exemption for the rental of real estate covers the case where a tenant surrenders his lease and returns the immovable property to his immediate landlord. Therefore, the waiver by a lessee of his rental rights has to be deemed, as regards the exemption, to the lease itself.

The possibility to apply further exclusions to the scope of the exemption for the letting of immovable property, does not authorize the EU Member States to tax the consideration paid in connection with the surrender of the lease when the rent paid under the lease was exempt from VAT.

9. EXEMPTIONS (REAL ESTATE) (2)

Maierhofer, C-315/00:

The lease of a building constructed with prefabricated elements incorporated into the ground so that they are not easily removable constitutes an exempted lease of immovable property, even if the building is to be dismantled at the end of the lease and used again in another land and, under German Law, can not be considered as an immovable property.

For the purpose of this exemption, it is irrelevant that the land on which they are built is owned by the lessee or not.

9. EXEMPTIONS (REAL ESTATE) (3)

Temco Europe, C-284/03:

Transactions by which one company, through a number of contracts, simultaneously grants associated companies a license to occupy a single property in return for a payment set essentially on the basis of the area occupied and by which the contracts, as performed, have as their essential object the making available, in a passive manner, of premises or parts of buildings in return for a payment linked to the passage of time, are transactions comprising the 'letting of immovable property', exempted as such.

9. EXEMPTIONS (REAL ESTATE) (4)

Field Fisher Waterhouse, C-392/11:

In a lease contract in which an income is paid for the occupation of some premises, the costs of property insurance and certain additional services of mandatory provision for the lessor, such as water supply, heating, repairs of structures and machinery, cleaning of the common parts and surveillance, it is possible to consider that there is a unique provision.

In this context, the power attributed to the lessor to terminate the lease in case of non-payment by the lessee of the charges for said services is an indication in favor of the assessment of the existence of a single supply.

The fact that the aforementioned services could be provided by third parties does not allow to conclude that they cannot constitute, in the circumstances of the main proceedings, a single supply.

9. EXEMPTIONS (REAL ESTATE) (5)

KPC Herning, C-71/18:

The supply of land on which, at the time of delivery, a building still in use is erected, which the purchaser intends to demolish, cannot be classified as delivery of a "building land", not exempt, when such operation is financially independent of other supplies and does not form, together with them, a single operation, even if the intention of the parties was the total or partial demolition of the building in order to make room for a new building.

10. TAXABLE BASE (GENERAL) (1)

Bertelsmann, C-380/99:

The taxable base in operations whose consideration is non-monetary includes the main supply and the ancillary supplies that may occur, as may be the case of home delivery of "gifts" for the presentation of new customers.

10. TAXABLE BASE (GENERAL) (2)

Lisboagás GDL, C-256/14:

A tax for the occupation of the subsoil is not part of the taxes that, as such, must be included in the taxable base of VAT corresponding to the gas distribution, since it does not tax the same taxable event. However, it must be included in this amount as a higher amount of the consideration obtained by the provider of a gas distribution service that uses a network for which said tax is accrued.

10. TAXABLE BASE (SUBSIDIES) (1)

OPW, C-184/00:

The concept of "subsidies directly linked to the price of the supply", VAT taxable, should be interpreted as including subsidies that constitute the total or partial consideration of deliveries of goods or services and that are paid by a third party to their provider, which will have to be assessed by the national judge in response to the circumstances of the case.

10. TAXABLE BASE (SUBSIDIES) (2)

Keeping Newcastle Warm, C-353/00:

A fixed subsidy that is paid for the provision of technical assistance services in the field of heating and that does not depend on the intensity or extent of these services is part of the VAT taxable base thereof.

10. TAXABLE BASE (SUBSIDIES) (3)

Commission/Italy, C-381/01:

The subsidies granted for the drying of forages do not form part of the VAT taxable base of VAT as they do not influence its price, which is intended to follow the global markets.

10. TAXABLE BASE (SUBSIDIES) (4)

Le Rayon d'Or, C-151/13:

In accordance with the article 73 of the VAT Directive, a lump-sum payment such as a "healthcare lump sum", established based on standard scales for the payment of accommodation and residential care for the elderly dependent people, falls within the scope of VAT and it is to be considered as the taxable base for VAT.

10. TAXABLE BASE (DISCOUNTS) (1)

Elida Gibbs, C-317/94:

Discounts granted after carrying out operations reduce the taxable base. For these purposes, it is irrelevant that the discount is granted by the manufacturer and that it does not affect all the operations of the distribution chain until the product reaches the final consumer.

Consequently, in a scheme in which the manufacturer issues discount vouchers, which will be redeemed to the retailer by the manufacturer, these vouchers are distributed to customers within the framework of sales promotion campaigns and can be accepted by the retailer when the customer buys a specific type of item, the manufacturer has sold these items directly to the retailer at the "original supplier's price", the retailer accepts the voucher from the customer when selling said articles, then submits them to the manufacturer and receives the indicated amount; the taxable base for the delivery of goods made by the manufacturer is the sales price invoiced for this minus the amount indicated on the voucher and refunded.

The interpretation is the same if the manufacturer first sold the items to a wholesaler, instead of selling them directly to a retailer.

10. TAXABLE BASE (DISCOUNTS) (2)

Primback, C-34/99:

In a commercialization scheme in which the buyer who purchases a merchandise subscribes a loan with an entity other than the seller, being that entity who finances the sale price, although the interest is charged to the seller, since what happens is that it receives a lower amount than the one paid by the buyer, the taxable base of the delivery of the financed goods is determined by the total price, without detraction of the part that remains the entity that grants the loan.

10. TAXABLE BASE (DISCOUNTS) (3)

Ibero Tours, C-300/12:

The principles defined by the CJEU in the case Elida Gibbs, C-317/94 do not apply when a travel agent, acting as an intermediary, grants to the final consumer, on the travel agent's own initiative and at his own expense, a price reduction on the principal service provided by the tour operator.

Consequently, the discounts granted by a commission agent who acts on behalf of others and who, with a charge to their commission, allows to reduce the amount paid by the client to the one who sells trips organized and marketed by travel agencies do not reduce the taxable base.

10. TAXABLE BASE (DISCOUNTS) (4)

Boehringer Ingelheim Pharma, C-462/16:

In the light of the principles defined in the case Elida Gibbs, the discount granted, under national law, by a pharmaceutical company to a private health insurance company results, for the purposes of that article, in a reduction of the taxable amount in favour of that pharmaceutical company, where it supplies medicinal products via wholesalers to pharmacies which make supplies to persons covered by private health insurance that reimburses the purchase price of the medicinal products to persons it insures.

10. TAXABLE BASE (NON-PAYMENTS) (1)

Goldsmiths, C-330/95:

The power to exclude the rectification of the taxable base in cases of non-payment must be limited to exceptional cases. This possibility cannot be ruled out by the mere fact that the consideration is non-monetary when it has been admitted for monetary considerations.

10. TAXABLE BASE (NON-PAYMENTS) (2)

UniCredit Leasing, C-242/18:

Under the VAT Directive, the non-payment of part of the installments due on a financial lease agreement corresponding to the period between the cessation of payments and the non-retroactive termination of the contract, on the one hand, and the non-payment of the required compensation in the event of early termination of the contract and corresponding to the sum of all unpaid installments up to the expiration date of said contract, on the other hand, constitute an event of non-payment and not of cessation of the transaction, unless the taxable person proves a reasonable probability that the debt will not be paid.

10. TAX ACCRUAL (PAYMENTS ON ACCOUNT)

BUPA Hospitals, C-419/02:

There is no accrual for advance payment when a lump sum is paid to account for some goods indicated in a general way in a list that can be modified at any time by mutual agreement between the buyer and the seller and from which the buyer can choose, where appropriate, articles under an agreement that can be resolved unilaterally at any time, recovering the entire unused advance payment.

11. DEDUCTIONS (GENERAL) (1)

Lennartz, C-97/90:

The determination of whether, in a particular case, a taxable person has acquired some goods for its economic activities is a matter of fact that must be assessed taking into account all the circumstances of the case, including the nature of the referred goods and the period between the acquisition of these and their use for the economic activities of the taxpayer.

Every taxpayer who uses goods for an economic activity will have the right to deduct the VAT paid at the time of acquisition, however small the proportion of its use for professional purposes.

11. DEDUCTIONS (GENERAL) (2)

Reemtsma Cigarettenfabriken, C-35/05:

The refund procedure to non-established taxable persons is not applicable to the VAT charged and invoiced by mistake.

It is compatible with the principles of neutrality, effectiveness and non-discrimination a national legislation that only allows the provider of a service the claim the amounts of VAT unduly paid and the recipient of the services can exercise an action of civil law to claim from the provider the amounts paid in excess. However, in case it is excessively difficult or impossible, this claim must also be allowed to the recipient of the operation that has borne the VAT unduly charged.

The above conclusions are independent of the national regulation for the purposes of direct taxes.

11. DEDUCTIONS (GENERAL) (3)

Loyalty Management UK and Baxi Group, C-53/09:

The gifts made within the framework of a loyalty program in which there is a third party that pays its price must be considered operations carried out for consideration, although the person who receives them do not pay any amount for them. However, it is for the referring court to verify whether those payments also include the consideration of a provision of services consisting of a separate obligation.

The VAT charged to the third party that pays these gifts is not deductible, but it would be deductible the VAT charged for advertising services, if applicable.

11. DEDUCTIONS (GENERAL) (4)

Sveda, C-126/14:

Article 168 of the VAT Directive grants a taxable person the right to deduct the input VAT paid for the acquisition or production of capital goods, for the purposes of a planned economic activity related to rural and recreational tourism, which are (i) directly intended for use by the public free of charge, and may (ii) enable taxed transactions to be carried out, provided that a direct and immediate link is established between the expenses associated with the input transactions and an output transaction or transactions giving rise to the right to deduct or with the taxable person's economic activity as a whole.

11. DEDUCTIONS (GENERAL) (5)

Iberdrola Inmobiliaria Real Estate Investments, C-132/16:

A taxable person has the right to deduct input VAT in respect of a supply of services consisting of the construction or improvement of a property owned by a third party when that third party enjoys the results of those services free of charge and when those services are used both by the taxable person and by the third party in the context of their economic activity, in so far as those services do not exceed that which is necessary to allow that taxable person to carry out the taxable output transactions and where their cost is included in the price of those transactions.

11. DEDUCTIONS (HOLDINGS) (1)

Polysar Investments Netherlands, C-60/90:

It is not a VAT taxable person a holding company whose sole purpose is to acquire holdings in other companies, without involving itself directly or indirectly in the management of those companies, without prejudice to its rights as shareholder.

A holding company that lacks the status of VAT taxpayer does not have the right to the deduction of the input VAT.

11. DEDUCTIONS (HOLDINGS) (2)

Cibo Participations, C-16/00:

The involvement of a holding company in the management of its subsidiaries constitutes an economic activity insofar as it entails carrying out transactions which are VAT taxed, such as the provision of administrative, financial, commercial and technical services.

Dividends received from a subsidiary cannot be considered consideration for the services rendered nor included in the terms of the deduction pro rata.

Expenses incurred by a holding company for the services used in connection with the acquisition of shares in a subsidiary are part of its general expenses and, therefore, have in principle a direct and immediate relationship with the whole economic activity, being eligible for deduction.

11. DEDUCTIONS (HOLDINGS) (3)

EDM, C-77/01:

Transmissions of shares, participations in investment funds and other securities that do not involve commercial management, do not fall within the scope of VAT. Consequently, the volumes of operations corresponding to the above activities should not be computed for the purpose of calculating the deductible proportion.

It is within the scope of application of VAT the granting of interest-bearing loans to the subsidiaries, as well as the placements in bank deposits or in securities, such as Treasury notes or certificates of deposit, even if they are exempt financial transactions.

The amount of financial operations that are to be considered as ancillary and, therefore, not considered in the calculation of the proportional deduction, insofar as they only imply a very limited use of goods or services for which VAT is incurred. Although the magnitude of the income generated by financial transactions may be an indication that these operations should not be considered ancillary, the fact that such operations generate income higher than those produced for the activity indicated as principal cannot exclude, by itself, the qualification of those as “ancillary transactions”.

11. DEDUCTIONS (HOLDINGS) (4)

Securenta, C-437/06:

If a taxable person indifferently performs economic, taxed or exempt, activities, and non-economic activities, the deduction of the VAT paid on the occasion of the issuance of shares is only admissible insofar as said expenses can be imputed to the economic activities.

Although the determination of the methods and the criteria for allocating the input VAT falls within the discretion of the Member States, they must take into account the purpose and structure of the VAT Directive and establish a calculation method that objectively reflects the part of the expenses incurred that is really attributable to each of these two activities.

11. DEDUCTIONS (HOLDINGS) (5)

SKF, C-29/08:

A shares transmission that is exempt from VAT does not generate the right to the deduction.

However, this interpretation is valid only if there is a direct and immediate relationship between the services received for which the VAT is paid and the exempt delivery of shares. If, on the other hand, such a relationship does not exist and the cost of the operations for which the VAT is borne is included in the prices of products of the selling company, the deductibility of the input VAT should be admitted as general overheads.

11. DEDUCTIONS (HOLDINGS) (6)

Larentia + Minerva, C-108/14:

The expenditure connected with the acquisition of shareholdings in subsidiaries incurred by a holding company which involves itself in their management and which, on that basis, carries out an economic activity must be regarded as belonging to its overheads. The corresponding VAT must, in principle, be deducted in full (unless certain output economic transactions are exempt from VAT or the management services are provided only of some of those subsidiaries and not the others).

11. DEDUCTIONS (HOLDINGS) (7)

MVM, C-28/16:

Insofar as the involvement of a holding company in the management of its subsidiaries, where it has charged them neither for the cost of the services acquired in the interest of the group of companies as a whole or in the interest of certain of its subsidiaries, nor for the corresponding VAT, does not constitute an 'economic activity', within the meaning of the VAT directive, such a holding company does not have the right to deduct input VAT paid in respect of those services (this is an ECJ order, not a judgment).

11. DEDUCTIONS (HOLDINGS) (8)

Marle Participations, C-320/17:

The letting of a building by a holding company to its subsidiary must be considered as 'involvement in the management' of that subsidiary, and must, therefore, be understood as an economic activity, giving rise to the right to deduct the VAT paid by the company for the services related with the acquisition of the shares in that subsidiary, where that letting is made on a continuing basis, is carried out for consideration and is taxed, meaning that the letting is not exempt, and there is a direct link between the service rendered by the supplier and the consideration received from the beneficiary. Such an expenditure has to be regarded as belonging to its overheads and the VAT paid on that expenditure must, in principle, be capable of being deducted in full.

11. DEDUCTIONS (FORMAL REQUIREMENTS) (1)

Terra Baubedarf-Handel, C-152/02:

The exercise of the right to deduct is subordinated to the provision of an invoice that meets the requirements established for that purpose. In case of receipt of said invoice after the end of the settlement period in which the operation was made, it will be when the invoice is received when the right to deduct may be exercised, not before.

11. DEDUCTIONS (FORMAL REQUIREMENTS) (2)

Ecotrade,C-97/05:

An expiration term whose termination has the effect of penalizing the taxpayer with the loss of the right to deduct cannot be considered incompatible with the EU Law, provided that this period is applied in the same way to similar rights in tax matters based on national law (principle of equivalence) and that it does not make in practice impossible or excessively difficult to exercise the right to deduct (principle of effectiveness). It is compatible with the principle of equal treatment that the expiration period begins for the tax authorities at a later date than the start of the expiration period for the taxpayer to exercise his right to the deduct.

The aforementioned principle of effectiveness is not infringed by the mere fact that the tax authorities have a deadline to proceed to the collection of unpaid VAT longer than the period granted to taxpayers to exercise their right to deduct.

In cases of inadequate compliance with formal obligations, invoice provision and registration, in intra-EU acquisitions, and since the tax authorities have the necessary data to determine that the taxpayer is liable for VAT, as the recipient, they cannot impose additional requirements that may have the effect of the absolute impossibility of exercising the right to deduct.

11. DEDUCTIONS (FORMAL REQUIREMENTS) (3)

Nidera Handelscompagnie, C-385/09:

Taxpayers are obliged to declare the beginning, modification and cessation of their activities. In the event that such declaration is not submitted, EU Member States are not authorized to delay the exercise of the right to deduct until the actual commencement of the taxed operations or to deprive the exercise of this right to the taxpayer.

If the exercise of the right to deduct VAT was not subject to any temporary limitation, legal certainty would not be fully respected. The obligation for taxpayers to identify themselves for VAT purposes could result meaningless if the Member States could not impose a reasonable period of time for that purpose.

On the contrary, the VAT Directive opposes the exclusion of the right to deduct due to the fact that the claiming taxpayer is not registered for the purposes of VAT before it uses the goods acquired in its economic activity, assuming that it is registered for VAT purposes within a reasonable period of time from the beginning of the operations that give rise to the right to deduct and without prejudice to the possibility for the tax authorities to impose an administrative sanction on the taxpayer who does not comply with this formal requirement.

11. DEDUCTIONS (FORMAL REQUIREMENTS) (4)

Polski Trawertyn, C-280/10:

VAT paid by the members of a partnership, before the creation and registration of such partnership, must be deductible by the latter, regardless of whether the corresponding invoices are issued in the name of the partners and not of the company, although the invoice has an important documentary function, since it can contain verifiable data, there are circumstances in which the data can be validly verified by means other than an invoice.

The VAT Directive precludes a national regulation that does not allow neither the members of a partnership nor the latter to exercise the right to deduct the VAT borne by the expenses made by said partners for the needs and with a view to carrying out the economic activity of said partnership before the creation and registration thereof.

11. DEDUCTIONS (FORMAL REQUIREMENTS) (5)

Idexx Laboratories Italia, C-590/13:

The requirements of invoicing and registering the borne VAT are formal requirements of the right to deduct, whose non-compliance, in the event of carrying out intra-EU acquisitions of goods, cannot result in the loss of that right.

11. DEDUCTIONS (FORMAL REQUIREMENTS) (6)

Senatex, C-518/14:

The VAT Directive is opposed to a national regulation by virtue of which the rectification of an invoice to include a mandatory data, namely the VAT identification number, does not have retroactive effects, so that the right to deduct the mentioned tax on the rectified invoice can be exercised only in the year in which the initial invoice has been rectified, and not in the year in which it was originally issued.

11. DEDUCTIONS (FORMAL REQUIREMENTS) (7)

Astone, C-332/15:

The VAT Directive does not preclude national legislation that provides for a preclusive period for the exercise of the right to deduct, provided that the principles of equivalence and effectiveness are respected, which is a matter for the referring court to verify.

The same Directive is not opposed to a national regulation that allows the tax authorities to deny a taxable person the right to deduct VAT when it has been proved that the latter fraudulently failed most of the formal obligations incumbent on him to enjoy that right.

11. DEDUCTIONS (FORMAL REQUIREMENTS) (8)

Geissel and others, C-374/16 and C-375/16:

The VAT Directive precludes a national legislation which makes the exercise of the right to deduct input VAT subject to the condition that the address where the issuer of an invoice carries out its economic activity is indicated on the invoice.

12. TAX PROCEDURES (1)

Halifax and others, C-255/02:

Transactions regarding the possible consideration of a certain bargaining structure as abusive must be classified as deliveries of goods, deliveries of services and economic activity, respectively, when they meet the objective criteria on which those concepts are based, although they have been carried out for the sole purpose of obtaining a tax advantage, without any other economic objective. The foregoing must be considered without prejudice that the application of the corresponding anti-abuse clauses.

VAT paid on transactions is not deductible when the operations on which this right is based are constitutive of an abusive practice.

In order to verify that there is an abusive practice it is required to determine that, despite the formal requirements established in the Directive and in national legislation, the operations result in a tax advantage that would be contrary to the objective pursued by such provisions. This can also result from the set of objective elements existing if they prove that the essential purpose of the operations is to obtain a tax advantage.

In its regularization, the tax authorities cannot sanction the behavior of the taxpayer, but have to limit themselves to restoring their taxation to the one that would have resulted from not carrying out said abusive practices.

12. TAX PROCEDURES (2)

Marks & Spencer, C-309/06:

The principle of equal treatment is applicable to a situation in which economic operators have a VAT credit, seek reimbursement from the tax authorities and see how their refund request is treated differently depending on their initial creditor or debtor situation, against the Public Treasury, regardless of the competitive relationship that may exist between them.

The general principle of equal treatment is opposed to a discrimination between "payment traders" and "repayment traders", which is not objectively justified. The above considerations are not influenced by the evidence that the economic operator for which the refund of VAT unduly collected was refused has not suffered an economic loss or disadvantage.

In the case of taxes paid in contravention of the EU law, the taxpayer must be compensated for the economic damage suffered as a result of the undue payment, even if the total amount of the tax has been charged to the recipients.

12. TAX PROCEDURES (3)

Bonik, C-285/11:

The establishment of a system of strict liability is incompatible with the EU Law.

The fight against fraud, tax evasion and possible abuses is a recognized objective promoted by the VAT Directive. The parties involved cannot take advantage of the rules of the EU law in an abusive and fraudulent manner, corresponding to the authorities and national courts to deny the right to the deduction when it is proven, through objective data, that this right is intended to be exercised in a fraudulent or abusive way.

Given that the denial of the right to deduct is an exception to the application of a fundamental principle, it is for the competent tax authorities to prove, on the basis of objective evidence, that the taxable person knew, or should have known, that the transaction relied on as a basis for the right of deduction was connected with VAT fraud committed upstream or downstream in the chain of supply – a matter which it is for the referring court to determine.

12. TAX PROCEDURES (4)

Newey, C-653/11:

The concept of the provision of services has an objective character, applied independently of the purposes and results of the transactions.

For VAT purposes, contractual stipulations, even when they should be taken in consideration, are not determinative to identify the provider and the recipient of a "service provision". In particular, stipulations may be dispensed with when they are shown not to reflect economic and commercial reality, but constitute a purely artificial assembly, lacking economic reality, made with the sole purpose of achieving a fiscal advantage, which must be appreciated by the national court.

12. TAX PROCEDURES (5)

Cussens and others, C-251/16:

The principle of prohibition of abusive practices is capable, regardless of the national regulations, of being applied directly in order to refuse to exempt from VAT sales of immovable goods carried out before judgment of 21-2-2006, Halifax and Others, C-255/02. The principles of legal certainty and of the protection of legitimate expectations do not preclude this.

If a transactions should be redefined pursuant to anti-abuse regulations, the transactions which do not constitute such a practice may be subject to VAT on the basis of the relevant provisions of national legislation providing for such liability.

The principle of prohibition of abusive practices means that, in order to determine whether the essential aim of the transactions is to obtain a tax advantage, account should be taken of the objective of the leases preceding the sales of immovable property in isolation.

The same principle means that supplies of immovable property are liable to result in an unacceptable tax advantage where the properties had, before their sale to third party purchasers, not yet been actually used by their owner or tenant.

12. TAX PROCEDURES (6)

PORR Építési Kft., C-691/17:

Neither the VAT Directive nor the principles of fiscal neutrality and effectiveness preclude a practice according to which, without suspicion of fraud, the right to deduct VAT is denied that a company, as a recipient of services, has paid in error to the provider of said services, when the reverse charge should have been applied, without the tax authority:

a) before denying the right to deduction, examine whether the issuer of the invoice could return the amount of the VAT paid improperly to the recipient of the invoice and could rectify the invoice and regularize it, in accordance with the applicable national regulations, to recover the tax paid in error, or

b) decide to return to the recipient of said invoice the tax improperly paid to the issuer of the invoice and that the latter subsequently entered improperly.

However, these principles require, in the event that it is impossible or excessively difficult for the service provider to reimburse that VAT, in particular in the event of insolvency of the provider, that the recipient of services has the possibility to request a refund directly to the tax authority.

ADITIONAL INFORMATION

Additional information about some of those topics can be found in the book **"ECJ case-law on VAT"**, **available electronically** and whose link is attached:

https://www.efl.es/catalogo/manuales-juridicos/ecj-case-law-on-vat