

EUROPEAN COURT — CASE NOTE

ECJ T-366/25 (Szytelbiecka)

Donation of an undertaking in two equal half-shares is not a transfer of a totality of assets under Article 19 of the VAT Directive

Judgment

General Court (Fifth Chamber, five Judges) — 9 September 2026

Reference from the Naczelny Sąd Administracyjny (Poland) — Language of the case: Polish



CONTEXT

Legal framework and the dispute

Reference under Article 267 TFEU – Common system of VAT – Transfer of a totality of assets or part thereof – Article 19 of Directive 2006/112/EC, read with Article 2(1)(a) and the second subparagraph of Article 1(2).

Polish implementing law: Article 6(1) of the Law on VAT of 11 March 2004 (option exercised — the Law does not apply to the disposal of an undertaking or an organised part thereof) and Article 2(27e) (definition of an “organised part of an undertaking”), read with Article 55 of the Civil Code.

Dispute: D.B. v Dyrektor Krajowej Informacji Skarbowej, on a tax ruling of 26 June 2020 refusing the Article 19 no-supply regime to a planned donation of undertaking “Przedsiębiorstwo B.” in half shares to the donor’s two daughters, who intend to contribute those shares to a general partnership (P.) that they own and which would continue the business unchanged. No Charter provision was at stake.

**Article 19, first paragraph**

Member States may treat a transfer of a totality of assets as no supply of goods, the transferee being the successor to the transferor.

**Facts in outline**

Donor retains no assets and ceases business; each daughter receives 50%; contribution in kind to their partnership occurs later.

QUESTION REFERRED

The single question referred



Must Article 19 of the VAT Directive be interpreted as meaning that a transfer of a totality of assets also occurs where a taxable person transfers, without consideration, a half share each of a totality of assets to two individuals who are not taxable persons and who intend to contribute those shares immediately as a contribution in kind to a business partnership of which they are partners?

Admissibility

- Commission suggested the question might be hypothetical, the donation being without consideration.
- Presumption of relevance applies to questions referred in the national court's own factual and legal context.

AG Opinion

- Delivered at the sitting on 13 May 2026 by AG J. Martín y Pérez de Nanclares.
- Point 65: as the transactions are distinct, the independence test must be assessed per daughter. Full text not available in the source.

DECISION OF THE COURT

Judgment — Article 19 does not cover the donation

The first paragraph of Article 19 of Directive 2006/112/EC must be interpreted as meaning that the transfer, without consideration, of an undertaking to two natural persons, each receiving a half share, who intend to make an immediate contribution in kind of those shares to a company carrying on an economic activity of which they are partners, does NOT constitute a transfer of a totality of assets or part thereof within the meaning of that provision.

FORM OF RULING

Judgment (not a reasoned Order),
General Court, Fifth Chamber with
five Judges

ADMISSIBILITY

Request declared admissible; the
question is not manifestly
hypothetical

EFFECT

A Member State exercising the Article
19 option may treat such a donation
as outside the no-supply regime

ARGUMENTATION — I

Single transaction or distinct transactions?



Effect of the Article 19 option

Where the option is exercised, the transfer is not a supply of goods and falls outside Article 2 of the VAT Directive — against the background that VAT applies to each transaction of production or distribution, after deduction of input VAT.



Each transaction distinct and independent

Under the second subparagraph of Article 1(2), each transaction is normally distinct. A single supply arises only where the elements are so closely linked that splitting them would be artificial; the national court assesses this qualitatively.



Application to the facts

Each daughter is sole owner of her half share and may dispose of it without the other's consent; the later contribution to the partnership is neither conditional on nor linked to the donation. The transactions are therefore separate.

ARGUMENTATION — II

The two cumulative conditions of Article 19

Purpose of Article 19: to facilitate transfers of undertakings and to prevent the transferee's cash resources from being overburdened by a disproportionate tax charge which would in any event be recovered through input VAT deduction (Mailat, C-17/18).

Condition 1 — independent activity	NOT MET	Condition 2 — intention to operate	NOT EXAMINED
- Assessed separately for each daughter, the transactions being distinct. - A half share is not an autonomous unit of assets; neither daughter could separately carry on an independent economic activity. - Their intention to contribute the shares to the partnership is irrelevant to this test.		- The transferee must intend to operate the business or part transferred, and not merely to liquidate the activity immediately. - The conditions being cumulative, failure of the first rules out Article 19. - The Court therefore did not examine this condition.	

Both conditions derive from settled case-law (X, C-651/11, paragraph 32; Mailat, C-17/18, paragraph 15).

AUTHORITIES CITED

References to other ECJ case law

CASE	PRINCIPLE FOR WHICH IT WAS CITED
C-81/24, Jenec	Presumption of relevance of preliminary questions; limited grounds for refusing to rule
C-651/11, X	VAT applies to each transaction after deduction; effect of the Article 19 option; the two cumulative conditions
C-427/23, Határ Diszkont	Each transaction is normally distinct; criteria for a single indivisible economic supply
C-349/96, CPP	Each supply must normally be regarded as distinct and independent
C-432/15, Baštová	Formally distinct transactions may form one supply where splitting would be artificial
C-41/04, Levob Verzekeringen and OV Bank	Overall assessment is for the national court; EU Courts supply interpretative elements
C-224/11, BGŻ Leasing	Same division of tasks in assessing single or multiple supplies
C-17/18, Mailat	Purpose of Article 19; elements transferred must suffice for an independent economic activity

AT A GLANCE

What the Court held

**Distinct transactions**

The donation of the half shares and the later contribution in kind to the partnership are separate and independent transactions under Article 1(2).

**No autonomous unit**

A 50% share is not an autonomous set of assets enabling either transferee to carry on an independent economic activity.

**Article 19 inapplicable**

The first condition failing, the no-supply regime does not apply, whatever the transferees' onward intentions.

General Court (Fifth Chamber, five Judges), 9 September 2026 — reference transmitted under Article 50b of the Statute.