

CJEU: not only trade factoring but also invoice factoring is VAT taxed

On October 23, 2025 the Court of Justice of the European Union ('CJEU') rendered its judgment in the Kosmiro case (C-232/24). The case focused on the VAT treatment of two types of factoring arrangements: factoring taking the form of a sale of debts ('trade factoring') and factoring taking the form of financing guaranteed by invoices ('invoice factoring'). The CJEU ruled that in both forms there is a single indivisible service the essential purpose of which is the collection of debts. That service is VAT taxed. The judgment is relevant for all parties offering or using factoring services or comparable financing solutions.

1. Background and points of law

The taxpayer in these proceedings was a Finnish company that acts as factor in factoring arrangements for business clients. These clients call on the factor so that they can have immediate access to the invoiced amounts and can outsource the activities for the management and collection of debts. This case concerned debts that were not yet fully due and payable, the payment deadline for which had not yet expired and that were not in dispute.

The factor offers two forms of factoring:

1) Trade factoring

In this form of factoring the factor purchases the debts of its clients, acquiring both the ownership of the debts and the default risk in the event the debtors become insolvent. On the basis of a client's risk profile and their debtors, the factor determines which debts it will accept to purchase, up to a certain maximum amount.

2) Invoice factoring

In this form of factoring the factor provides credit to the client in exchange for financing guaranteed by invoices. The client remains the owner of the debts and it bears the default risk in the event the debtors become insolvent. The client's debtors are informed that the debts have been pledged to the factor and that they must pay the factor directly when the debts become fully due and payable. The factor is responsible for sending payment reminders and initiating debt collection proceedings. If a debt is not paid within a certain period, the factor may deduct it from the total amount of credit provided to the client.

In both forms of factoring, the client pays different fees and commissions to the factor, including a factoring commission (usually expressed as a percentage of each debt) and an arrangement fee. The amount of the factoring commission depends on the creditworthiness of the client and its debtors, and the payment period. The arrangement fee covers the costs of setting up the factoring process. A large number of other potential fees are mentioned in addition to the above. The referring court did not ask any questions about this and it was not dealt with in the judgment.

According to the Finnish Tax Administration, the factoring commission and the arrangement fee charged by the factor constitute (at least partly) the consideration for a VAT-exempt financial service, i.e. the provision of credit. The factor did not agree and argued that the entire commission/fee relates to the collection and management of debts in respect of invoices, which is a VAT-taxed service.

The referring Finnish court had doubts about the VAT qualification of both forms of factoring. With regard to trade factoring, the referring court asked whether the factoring commission and arrangement fee have to be seen as an adjustment to the purchase price of the debts (so that, in this respect, the factor does not perform a service for a fee, but actually performs 'money-for-money' transactions that fall outside the scope of VAT) *or* as a separate fee for a VAT-relevant 'service'. And, if there is a service for consideration, whether this service is VAT exempt (as the provision of credit) or VAT taxed (as the collection of debts). According to the Finnish court, invoice factoring does in any case involve a service, but the court is not clear about whether this service is VAT taxed or (partly) VAT exempt.

2. CJEU judgment

The CJEU ruled that in trade factoring there is a VAT-relevant service falling within the scope of VAT. According to the CJEU, the factoring commission and the arrangement fee constitute the consideration for this service. In this context, the CJEU considered it relevant that the amount of the factoring commission depends on the risk profile and not on the economic value of the debts. The aim is therefore not to adjust the purchase price to the actual economic value, but to receive a fee for a service.

According to the CJEU, the judgment previously rendered in the GFKL case (C-91/10) does not alter this finding, because that case involved another situation. In GFKL, the price did not reflect the fee for a service, but was equal to the actual economic value of the debts, which was below that of the nominal value. Moreover, the Kosmiro case involved debts that were not yet fully due and payable, which, according to the CJEU, means there is no a priori reason to assume that these debts will not be fully repaid.

The CJEU then dealt with the question whether the factoring service in both forms of factoring is VAT taxed or VAT exempt. The CJEU found that in both trade factoring and invoice factoring there is a single indivisible service, the main feature and essential purpose of which is the collection of debts. The collection of debts is specifically excluded from the VAT exemption for the provision of credit and is therefore VAT taxed. The fees/commission paid relates to this specific debt collection service. The CJEU concluded from this that both the factoring commission and the arrangement fee are VAT taxed in both forms of factoring.

To reach this ruling, the CJEU referred to previous case law. For example, the CJEU considered that the first form (trade factoring) essentially has the same features as the 'true' factoring in the MGK-Kraftfahrzeuge-Factoring judgment from 2003 (C-305/01), where the CJEU ruled that there was a VAT-taxed service.

In true factoring the factor acquires the entire management of the debts, purchases the debts with full assumption of the default risk and pays (part of) the invoiced amount directly to the client. In 'quasi-factoring' the default risk remains with the client and the factor advances funds on the basis of the outstanding debts. However, if the debtor ultimately does not pay, the client must repay the amount it received in advance from the factor. The CJEU found that all forms of factoring, regardless of the way in which they are performed, are objectively aimed at collecting debts from third parties. According to the CJEU, there is therefore no reason to treat true factoring and quasi-factoring differently for VAT purposes. In both situations there is thus a VAT-taxed service.

The CJEU ruled that, both from the perspective of the client and the factor, there is a single economic transaction whose main purpose is to transfer the collection of a client's debts to a third party. According to the CJEU, the fact that in invoice factoring the debts are not transferred, but are only provided as collateral in exchange for financing, does not lead to a different conclusion. The CJEU did acknowledge that a financing element is present. However, although funds are made available to the client in exchange for pledged debts, according to the CJEU the essential purpose of factoring is the outsourcing of the collection of debts. According to the CJEU, splitting these elements into VAT-taxed debt collection and VAT-exempt lending would be artificial. As a final point the CJEU noted that financing is not separate from debt collection, but a logical consequence thereof.

Lastly, the CJEU confirmed in response to the fifth question posed by the referring court that the exemption provisions and the exclusions contained therein are sufficiently precise to have direct effect, so that taxpayers can invoke them.

3. Importance for the Dutch practice

In many cases, it is favorable to regard factoring services as VAT taxed, because this leads to a VAT recovery right for the factor and because in most cases the recipient of the factoring service can recover the VAT. However, this is different if the factoring is performed for clients with a limited VAT recovery right (for example medical service providers).

In the Netherlands, the Factoring Decree from 2017 applies, in which the Deputy Minister of Finance determined that the 'factoring commission' for 'traditional' factoring arrangements (true factoring via the sale of debts) constitutes a fee for a service that is VAT taxed. The CJEU confirmed in its judgment that traditional factoring (factoring via the sale of debts) must be regarded as a VAT-taxed service. The CJEU's ruling with regard to this form of factoring is thus in accordance with the Dutch decree, at least for situations in which the factor explicitly charges a factoring commission. For situations in which no commission is explicitly charged, but the debts are acquired for an amount below the nominal value, the CJEU's ruling seems to be less clear as to whether there is a (VAT-taxed) service. The Factoring Decree is sometimes interpreted restrictively in

practice. The CJEU's ruling can therefore work out favorably if, for example, less favorable agreements have currently been made with the Dutch tax authorities.

With regard to the VAT treatment of invoice factoring, the CJEU's ruling seems to be further removed from current Dutch practice. The judgment may therefore directly impact the VAT treatment of (forms of) invoice factoring in the Netherlands.

The CJEU seems to have reasoned that if a form of factoring, such as invoice factoring, sufficiently corresponds to traditional factoring, it must also be treated as such. The CJEU found, without referring to or assessing the facts in detail, that financing is a logical consequence of debt collection. We have doubts about this reasoning. For example, the CJEU seems to have completely ignored the financing that takes place in invoice factoring.

Based on this judgment, it seems less likely that factoring and factoring-like financing solutions can be qualified as VAT-exempt or as falling outside the scope of VAT. This is especially the case if there is a financing solution where the collection of debts is (also) acquired. As soon as the collection of debts is outsourced, that, according to the CJEU, seems to be the main element of the service and there would more likely be a VAT-taxed service. Still, as far as we are concerned, it remains important to assess on a case-by-case basis whether another element, such as the financing element, constitutes the main element, such as in the case of ordinary credit agreements. That will depend on the facts and circumstances of the financing solution in the specific case. After all, those facts and circumstances are ultimately decisive for the VAT treatment.

The judgment does not offer answers to all VAT questions about the transfer of debts and financing solutions. For example, it remains unclear when exactly in the case of a transfer of debts at a value below the nominal value there is or is not a VAT-relevant service. In other words: whether in such transactions there is a service that falls within the scope of VAT (such as in the MGK-Kraftfahrzeuge-Factoring and Kosmiro cases) or that falls outside the scope of VAT (such as in the GFKL case).

The CJEU now only seems to have made an exception for debts acquired at their economic value, assuming that this is below the nominal value. In general, that will only be the case with debts that – at the time of transfer – have been fully due and payable for some time. In its judgment, the CJEU seems a priori to assume that the economic value of a debt is the same as the nominal value as long as debt is not yet fully due and payable. The CJEU referred, among other things, to its previous judgment in the GFKL case, where fully due and payable but unpaid debts were purchased at the economic value. In those proceedings, the economic value was below the nominal value and the price that was paid corresponded to that economic value. Where relevant, the (objective) economic value of the transfer of debts can be questioned. In such cases, it can be asked whether there is a (VAT-taxed) service and, if so, what is then the taxable amount. This judgment does not provide a clear answer for such cases. In practice, it therefore remains important to assess on a case-by-case basis whether there is a

service falling within the scope of VAT, especially if the purchase price differs from the economic and/or nominal value.

4. In conclusion

The CJEU's judgment makes clear that if factoring involves acquiring the management and collection of debts, there will very likely be a VAT-taxed service. In the case of other financing solutions, it is also important to critically assess whether and to what extent there are services falling within the scope of VAT and, if so, whether these are VAT-taxed or VAT-exempt. That will always depend on the particular case and the specific facts and circumstances, and thus requires careful assessment. The judgment necessitates that you examine how you currently treat these types of transactions for VAT purposes.

The advisors of KPMG Meijburg & Co's Indirect Tax Group would be happy to help you further if you have any questions or comments about this. Feel free to contact one of them or your usual advisor.

KPMG Meijburg & Co
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