ECJ to rule on pro rata calculation of VAT

An article by the CMS CEE Tax Group

July 2011
**ECJ to rule on pro rata calculation of VAT**

Key VAT issues affecting companies with significant cross-border operations conducted through branch offices have been referred to the ECJ. The issues particularly affect the calculation of VAT pro rata by banks with operations in non-EU countries.

The case was initiated by Le Credit Lyonnais, a longstanding CMS client, when the French authorities refused to allow interest on loans granted by LCL’s French head office to its foreign branches to be taken into account when calculating LCL’s pro rata VAT deduction, on the basis that they were the same legal entity.

LCL argued that, if correct, this meant that pro-rata calculations should include its global operations, including turnover of its branch offices. This would significantly improve LCL’s pro rata VAT deduction in France, as its non-EU branch offices mainly cater for non-EU clients, for which a VAT deduction is available (unlike transactions conducted for EU clients).

The ECJ has now been asked for a preliminary ruling whether:

— pro rata for a tax payer’s head office should be calculated by reference to turnover from all branch offices in other member states

— pro rata for each EU country branch office should be calculated by reference to the taxpayer’s total turnover?

— pro rata for each non-EU country branch office should also be calculated by reference to the taxpayer’s total turnover, given the right to deduction related to financial operations where the recipient of the service is established outside the EU

— the method of calculating pro rata deductions can differ from one member state to another, depending on the details of implementing pro-rata calculation rules (such as the possibility of distinct business sectors)

— the application of global pro rata can be limited to head office costs incurred for the benefit of foreign branch offices

— turnover from a particular country can be taken into account according to the national rules applicable in the country where the branch office or head office is situated

**Law:** Council Directives 77/388/CEE and 2006/112/EC

---

For further information on this tax analysis and thought, please contact:

Eszter Kálmán  
Senior Associate – CMS Cameron McKenna LLP, Budapest  
T +36 1 483 4800  
E eszter.kalman@cms-cmck.com

Tamás Feher  
Associate – CMS Cameron McKenna LLP, Budapest  
T +36 1 483 4818  
E tamas.feher@cms-cmck.com

The views and opinions expressed in this article are meant to stimulate thought and discussion. They relate to circumstances prevailing at the date of its original publication and may not have been updated to reflect subsequent developments. This CMS article does not purport to constitute legal or professional advice.
CMS Legal Services EEIG is a European Economic Interest Grouping that coordinates an organisation of independent member firms. CMS Legal Services EEIG provides no client services. Such services are solely provided by the member firms in their respective jurisdictions. In certain circumstances, CMS is used as a brand or business name of some or all of the member firms. CMS Legal Services EEIG and its member firms are legally distinct and separate entities. They do not have, and nothing contained herein shall be construed to place these entities in, the relationship of parents, subsidiaries, agents, partners or joint ventures. No member firm has any authority (actual, apparent, implied or otherwise) to bind CMS Legal Services EEIG or any other member firm in any manner whatsoever.

**CMS member firms are:** CMS Adonnino Ascoli & Cavasola Scamoni (Italy); CMS Albiñana & Suárez de Lezo S.L.P. (Spain); CMS Bureau Francis Lefebvre (France); CMS Cameron McKenna LLP (UK); CMS DeBacker (Belgium); CMS Derks Star Busmann (Netherlands); CMS von Erlach Henrici Ltd. (Switzerland); CMS Hasche Sigle (Germany) and CMS Reich-Rohrwig Hainz Rechtsanwälte GmbH (Austria).


www.cmslegal.com