

Case Study: WebMindLicenses-case C-419/14 „substance over form”

01/10/2016

Madrid

Relevant facts

- WLM is a Hungarian software company
- WLM provided services to Lalib, Portugal
- Where is the place of supply?



Portugal
VAT 13%



Hungary
VAT 27%

Tax authority's decision

- After the inspection of Hun. Authorities → 68 M. € penalties due to abuse of rights
- Lalib has no capacity to operate the site
- Supplies were made by Hun. WML
- Illegally obtained evidence

Advocate General Opinion

- Using the Halifax abuse test → licensing agreement is fictitious? → created for tax evasion?
 - AG view:
 - Commercial reasons:
 - Hun. Bank system
 - Personal network
 - Appropriate expertise to operate the system
 - Acquired evidence:
 - w/o judicial authorization
 - w/o knowledge of the nature of evidence
- } Deficiencies

Judgment

- Substance over form approach
- Arrangements would be abusive only if:
 - wholly artificial
 - Concealed that the services were supplied in Hungary
- Relevant factors:
 - Where Lalib was physically based in terms of premises, staff, equipment
 - Economic activities in its own name, on its own behalf, own risk

Judgment

- What is not decisive:
 - the place of creation of the know-how, even if the creator had significant control
 - Location of back office function
 - Location of subcontractors

Evidence obtained in criminal investigation

- Have criminal proceedings been established yet?

NO

- Can that evidence be used in tax proceedings?

NO

Hungarian Court Decision

- Quashed the first and second instance decision
→ ordered the 1st tax auth. to reopen the proceeding
- Tax auth. didn't examine:
 - Lalib's place of business
 - Its structure, human & technical resources
 - Economic activity in its own name, own responsibility
- Court excluded the evidence obtained in criminal proceedings

Conclusion

- Carrying on a business from a member state with a lower VAT rate is not abusive
- Provided there are genuine commercial reasons for doing so

Thank you for your kind attention!
Any Questions?