

Summary: Judgment of the Supreme Administrative Court of 19 June 2018, I FSK 2078/14

Value added tax – Reduced tax rate for pastry products – Directive 2006/112/EC – Implementation of CJEU's judgment – Principle of procedural autonomy of the member states – Recommendations from the CJEU's judgement

In the subject case, the applicant company filed motions to be provided with written interpretation of the tax law in an individual matter, asking whether it is possible to apply a reduced VAT rate to the pastry products manufactured by it, with the minimum best-before or use-by date exceeds 45 days.

In connection with the question referred for the preliminary judgement by the Supreme Administrative Court, CJEU issued the judgement C-499/16 on 9 November 2017. In the judgment, CJEU stated that Article 98 of the Council Directive 2006/112/EC does not preclude — provided that the principle of fiscal neutrality is complied with, which is for the referring court to ascertain — national legislation, such as that at issue in the main proceedings, which makes the application of the reduced VAT rate to fresh pastry goods and cakes depend solely on the criterion of their 'best-before date' or their 'use-by date.' In the context of respecting the tax neutrality principle, CJUE indicated that it is for the referring court to assess if, on the Polish market, there are pastry goods or cakes whose shelf life does not exceed 45 days but which nevertheless are similar in the eyes of that consumer to pastry goods and cakes which have a best-before date exceeding 45 days, such as those produced by the applicant, and which are interchangeable with the latter.

While implementing the subject judgment, the Supreme Administrative Court noted that the CJEU judgment C-499/16 is binding as to its interpretation of Article 98 of the Council Directive 2006/112/EC, which means that the Polish provisions on the application of reduced tax rates to foodstuffs (pastry goods and fresh cakes) with various use-by dates are compliant with the EU law. In turn, as regards the analysis of the conditions for respecting the neutrality principle, the Supreme Administrative Court noted that due to the procedural restrictions applicable to that Court as a national court, the Court is not able to – without violating the national legal order – perform the instructed review. In terms of the procedural restrictions, the Supreme Administrative Court emphasized that administrative courts do not carry out evidentiary proceedings and do not determine the state of the facts. Moreover, taking into account the specific nature of the proceedings related to tax interpretations, the Supreme Administrative Court emphasized that the preferences of the consumer while purchasing pastry products and cakes do not concern any doubts related to the law, but require answering the question of meeting the conditions that are of significance for the proper process of subsumption. Thus, the tax authority, while providing the individual interpretation in a matter like the instant one, may limit itself only to interpreting the tax legislation considering the state of the facts presented in the request for interpretation without the need to conclude whether, potentially, the principle of neutrality may be violated, depending on the preferences of the consumers.

In its conclusion, the Supreme Administrative Court emphasized that the interpretation of the EU law made by the CJEU in its judgment responding to the question referred for preliminary judgment by a national court is binding on that court, and the recommendations of the CJEU to that court in terms of making the relevant arrangements with respect to the proper application of that law are binding to the extent in which they allow that court to implement them within the national constitutional order within the established cognition – considering the procedural autonomy of the member states.