



Mercedes Benz Italia S.p.A. - Cjeu Case 378/15 Italian Tax Alert

On 14th December 2016, the Court of Justice of the European Union (CJEU) delivered its judgment in reference to Mercedes Benz Italia Spa Case (C-378/15).

The referral was focused on whether Italian domestic legislation about the turnover-based calculation to determine recoverable overhead VAT was compatible with EU law. According to the Italian law, when the taxpayer performs both taxable and VAT exempt supplies, this calculation (which works out the proportion of taxable supplies to total by value) should apply to VAT on all the costs incurred by the taxable person (irrespective of the specific use of goods and services).

According to the AG, the calculation should not have applied to all the costs incurred by the taxable person, but only to the mixed costs, i.e. those used for carrying out both exempt and taxable transactions.

The CJEU delivered its judgment in Case C-378/15, departing from the opinion of the Advocate General. According to the aforementioned judgment:

- The application of the turnover calculation according to the Italian law (article 19(5) and 19-bis of the Italian VAT Act) is not contrary to the EU VAT Directive. As a consequence it appears it may be applied to VAT on all the costs incurred by the company, and not only to VAT on the mixed costs.
- The EU VAT Directive must be interpreted as not precluding national rules and practice, which require a taxable person: *'to apply to all goods and services which he has acquired a deductible proportion based on turnover, without providing for a method of calculation which is based on the nature and actual destination of each of the goods and services acquired and which objectively reflects the portion of the expenditure actually to be attributed to each of the taxed and untaxed activities; and,*

to refer to the composition of his turnover in order to identify transactions which may be classified as 'incidental', in so far as the assessment carried out for that purpose also takes account of the relationship between those transactions and the taxable activities of that taxable person and, as the case may be, of the use which they entail of the goods and services which are subject to VAT'.

Should you require any further information please do not hesitate to [contact us](#).

Kind regards,

Italian Tax Alert Team

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