

# News Flash

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**Application of VAT when providing the  
subscription gift to new subscribers**

## Application of VAT when providing the subscription gift to new subscribers

In this edition of our News Flash, we present you a case concerning with application of value added tax (VAT) when **providing the subscription gift to new subscribers**.

The European Court of Justice (ECJ), in its judgment C-505/22 of October 5, 2023, addressed of whether free supply of a tablet or smartphone in exchange for a new subscription should be considered as a part of a single transaction respectively a supply that is ancillary to the principal transaction (the subscription to the magazine), where consideration is payment of subscription, or whether this transaction is different from a subscription and shall be considered as a free supply of goods.

### The Portuguese Tax Office collected VAT from the provided tablets and smartphones

The judgment concerns the company **Deco Proteste – Editores Lda**, a Portuguese magazine publisher. During promotional campaigns to attract new customers, the company offered new subscribers a gift, which could be a tablet or smartphone with the unit price always below EUR 50. The condition for obtaining the gift was the payment of the initial subscription fee, which the customer could subsequently cancel at any time, as there was no minimum subscription period.

According to Portuguese legislation, magazine subscriptions are subject to a reduced VAT rate, while the free supply of

goods for business purposes is not considered a supply of goods for consideration and it is not a subject to VAT, if the limits for the unit price (50 EUR) and the annual turnover (the value of the gifts must be less than 0.5% of the total annual turnover) are met. In Slovakia, the equivalent of these limits is the unit price of EUR 17. In case of exceeding the legal limits, even the free delivery of goods for business purposes is subject to VAT.

During the tax audit for the years 2015 – 2018, the Portuguese tax authorities found that the subscription gifts met the unit price condition, but their total value exceeded the legal turnover. As a result, the transactions were considered as a free supply of goods and were subject to VAT. This led to VAT being charged on **donated**

**tablets/smartphones which together with related penalties amounted to almost EUR 3 million.**

The case reached the Tribunal Arbitral Tributário in Portugal, which decided to suspend the proceedings and ask the ECJ preliminary questions. In these preliminary questions, it is asked whether the providing of a gift for a magazine subscription should be considered as the **supply of goods for consideration** (i.e. part of the subscription) or whether this transaction is different from the subscription, i.e. it should be considered as **a free supply of a goods**.

The company pointed out that donated tablets or smartphones enabled new subscribers to better use the principal service, i.e. **subscription in the digital version**. In the judgment, the ECJ repeated that transaction should be considered as a ancillary to a principal service if it does not constitute for customers an end in itself but only a means of better enjoying the principal service supplied.

## **The ECJ decision regarding the correct interpretation of the provision of a subscription gift**

In this specific case, the ECJ decided that **the provision of a subscription gift in return for taking out a subscription to periodicals represents a supply that is ancillary to the principal service** of supplying periodicals. Providing gift falls within **the concept of ‘supply of goods for consideration’** together with the subscription, **and shall not be considered as a free supply of goods**.

In practice, this case means that in certain cases, even the delivery of a gift that exceeds the limit established by law (in the context of the Slovak Republic, the unit price of EUR 17) can be consider as a supply that is ancillary to the principal service. The substantial element of the judgment remains the fact that the ancillary supply should be a means to better use of the principal service.

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A photograph of a modern building's facade, featuring large glass panels and dark structural elements, set against a clear blue sky. The image is positioned at the top of the page, above the main content area.

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