



EUROPEAN COMMISSION  
DIRECTORATE-GENERAL  
TAXATION AND CUSTOMS UNION  
Indirect Taxation and Tax administration  
**Value added tax**

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Brussels, 14 June 2016

**VALUE ADDED TAX COMMITTEE  
(ARTICLE 398 OF DIRECTIVE 2006/112/EC)  
WORKING PAPER NO 907**

**CASE LAW**

**ISSUES ARISING FROM RECENT JUDGMENTS OF THE  
COURT OF JUSTICE OF THE EUROPEAN UNION**

**ORIGIN:** Commission  
**REFERENCES:** Articles 14(1) and (2)(c), 24(1) and 148(a)  
**SUBJECT:** CJEU Case C-526/13 *Fast Bunkering Klaipėda*

## **1. INTRODUCTION**

The VAT Committee has with regard to supplies made involving vessels in international transport dealt with various questions concerning the scope of the exemptions provided for under Article 148 of the VAT Directive<sup>1</sup>. As a result, a series of guidelines were drawn up whereby the VAT Committee agreed, amongst others, that ‘*the exemption shall only apply to the supply of goods made directly to the taxable person operating the vessel, and shall not cover supplies made at an earlier stage in the commercial chain*’<sup>2</sup>.

This was put to its test in the case *Fast Bunkering Klaipėda*<sup>3</sup> where in its judgment the Court of Justice of the European Union (CJEU) once again confirmed that given that the exemption for export transactions applies exclusively to the final supply of goods exported by the seller or on his behalf and that goods supplied for the fuelling and provisioning of vessels in international transport are exempted as transactions equated with exports, the exemption as laid down in Article 148 of the VAT Directive applies only to the supply of goods to a vessel operator who will use those goods for fuelling and provisioning and it cannot, therefore, be extended to the supply of those goods effected at a previous stage in the commercial chain.

As such, the judgment confirms what is set out in the above guidelines but in arriving at its conclusions it may give rise to some further issues which the Commission services would like to discuss. Those are also issues evoked by some Member States (*see Annex*).

## **2. THE CIRCUMSTANCES OF CASE C-526/13**

The case at hand concerned fuel originating from outside the EU and stored under customs warehousing arrangements in Lithuania being supplied to vessels used for navigation on the high seas. The fuel on which payment of import VAT had been suspended was delivered to these vessels by a company, Fast Bunkering Klaipėda. When receiving an order, the corresponding fuel was taken from the customs depot by Fast Bunkering Klaipėda which also carried out all the necessary formalities and loaded into the vessels’ fuel tanks.

The orders for fuel sent to Fast Bunkering Klaipėda were not, however, issued by the ships’ operators. Instead, those orders came from intermediaries established in various Member States which acting in their own name, bought the fuel and sold it to the ships’ operators. It was also to those intermediaries that Fast Bunkering Klaipėda invoiced its supplies.

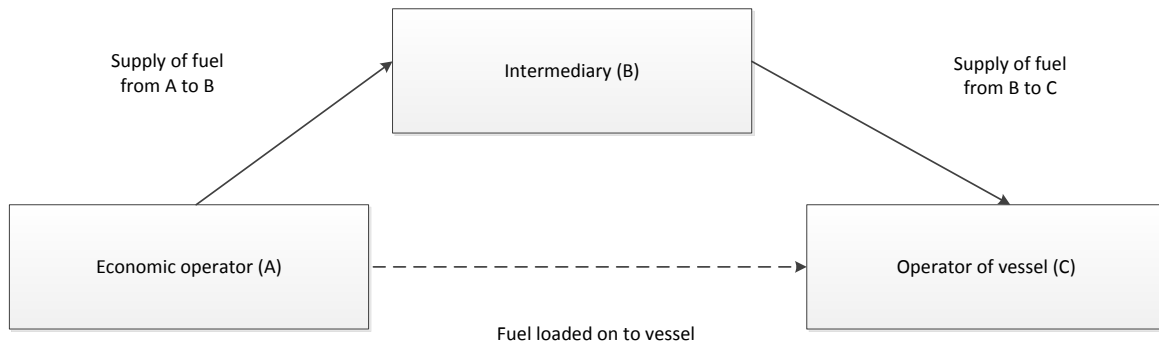
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<sup>1</sup> Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ L 347, 11.12.2006, p. 1).

<sup>2</sup> Included as part of the guidelines resulting from the 100<sup>th</sup> meeting of the VAT Committee (pp. 177-178):  
[http://ec.europa.eu/taxation\\_customs/resources/documents/taxation/vat/key\\_documents/vat\\_committee/guidelines-vat-committee-meetings\\_en.pdf](http://ec.europa.eu/taxation_customs/resources/documents/taxation/vat/key_documents/vat_committee/guidelines-vat-committee-meetings_en.pdf).

<sup>3</sup> CJEU, judgment of 3 September 2015 in case C-526/13 *Fast Bunkering Klaipėda*.

The involved parties perceived the supply chain as follows:



This meant that the economic operator (A) was seen as supplying goods to the intermediary (B) who in turn supplied those goods to the operator of the vessel (C).

### **3. THE QUESTION REFERRED TO THE CJEU**

Following a tax inspection whereby it was established that fuel was not sold directly to the operators of the vessels, but instead to intermediaries acting in their own name, Fast Bunkering Klaipėda was refused exemption for its supplies. That decision was upheld on the grounds that the exemption may apply only at the last stage in the commercial chain of the goods concerned, when they are supplied to the operator of the vessel which will use them. Fast Bunkering Klaipėda brought action against that decision before the Tax Disputes Commission under the Government of the Republic of Lithuania which referred the following question to the CJEU for a preliminary ruling:

*Must Article 148(a) of Directive 2006/112 be interpreted as meaning that the provisions of that paragraph concerning exemption from VAT are applicable not only to supplies to the operator of a vessel used for navigation on the high seas, who uses those goods for the fuelling and provisioning of the vessel, but also to supplies other than to the operator of the vessel, that is to say, to intermediaries acting in their own name, where at the time of the supply the ultimate use of the goods is known in advance and duly established, and evidence confirming this is submitted to the tax authority in accordance with the legislative requirements?*

### **4. THE CJEU'S JUDGMENT**

The CJEU in response to this question concluded that Article 148(a) of the VAT Directive *'must be interpreted as meaning that the exemption provided for in that provision is not, in principle, applicable to supplies of goods for the fuelling and provisioning to intermediaries acting in their own name, even if, at the date on which the supply is made the ultimate use of the goods is known and duly established and evidence confirming this is submitted to the tax authority in accordance with the national legislation. However, in circumstances such as those at issue in the main proceedings, that exemption may apply if the transfer to those intermediaries of the ownership in the goods concerned under the procedures laid down by the applicable national law took place at the earliest at the same time when the operators of vessels used for navigation on the high seas were actually*

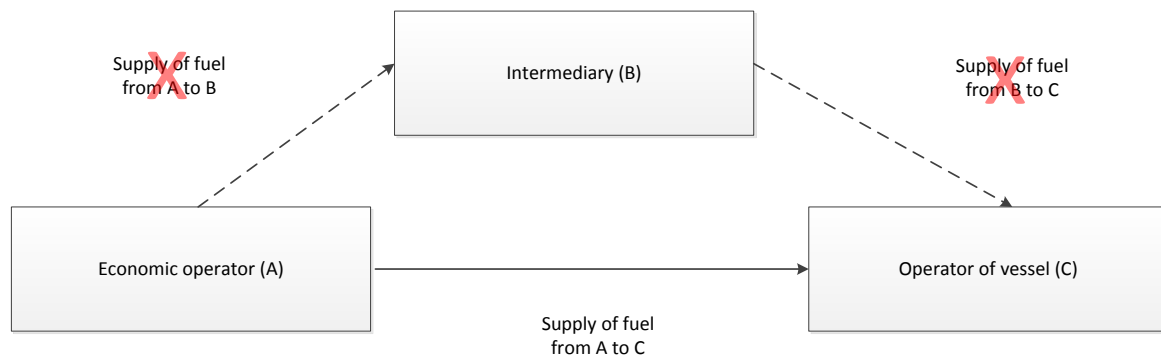
*entitled to dispose of those goods as if they were the owners, a matter which is for the national court to ascertain’.*

In dismissing that the exemption is applicable to supplies of goods for the fuelling and provisioning of vessels to intermediaries acting in their own name even if, at the date on which the supply was made the ultimate use of the goods was known and duly established and evidence confirming this had been submitted to the tax authority in accordance with the national legislation, the CJEU confirmed the doctrine by which the exemption only applies at the last stage in the commercial chain of the goods concerned, when they are supplied to the operator of the vessel which will use them.

The CJEU in reality validated that, as set out in the abovementioned guidelines, *‘the exemption shall only apply to the supply of goods made directly to the taxable person operating the vessel, and shall not cover supplies made at an earlier stage in the commercial chain’.*

As, in this particular case, the fuel had been supplied directly to operators of vessels who were entitled to dispose of it as owners and the intermediaries have at no time been in a position to dispose of the quantities supplied, the CJEU however concluded that no matter the transfer of ownership to the intermediaries, the actual supply of fuel was made by the economic operator to those vessels operators. That allowed for that supply to be exempted from VAT.

This saw the supply chain redefined as follows:



The CJEU with its decision took account of the opinion<sup>4</sup> of the Advocate General but went a step further by redefining the supply chain, affirming that whilst the supply from the economic operator (A) to the operator of the vessel (C) could be exempted, there was no access to exemption for the intermediary (B).

## **5. THE COMMISSION SERVICES’ ANALYSIS**

In *Fast Bunkering Klaipėda*, the CJEU faced the question whether the supply by an economic operator of fuel loaded on to vessels was exempt under Article 148(a) of the VAT Directive. That is a question that the CJEU has already had an occasion to examine and where exemption had been denied<sup>5</sup>. In the case of *Fast Bunkering Klaipėda*, it

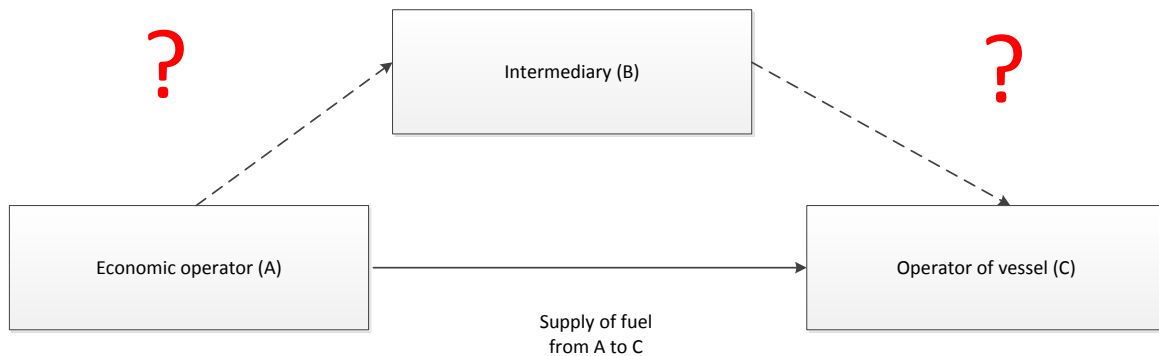
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<sup>4</sup> CJEU, opinion of Advocate General Sharpston of 5 March 2015 in *Fast Bunkering Klaipėda*.

<sup>5</sup> CJEU, judgment of 26 June 1990 in case C-185/89 *Velker International Oil Company*.

followed the same approach but also found that, under certain specific factual and legal circumstances, which it would be for the national judge to verify, the exemption could apply.

In reaching that conclusion, the CJEU decided that whilst the legal ownership was transferred to intermediaries, the economic operator had in fact supplied the fuel to the operators of vessels to whom delivery was made and who were the ones having the power to dispose of that fuel. In looking at the conditions for having a supply of goods within the meaning of Article 14(1) of the VAT Directive, it concluded that the transactions carried out by the economic operator could not be classified as supplies made to intermediaries acting in their own name, but instead had to be regarded as supplies made directly to the vessels operators.



That leaves certain questions unanswered such as:

- i. How should the transactions involving the intermediary be qualified, notably that involving the operator of the vessel?
- ii. Could the judgment be seen as having a wider scope, i.e. should supplies (other than the supply of fuel to a vessel) in chain transactions be treated as supplies of goods only where intermediaries (in the supply chain) actually gain a right to dispose of the goods as if they were owners?

Those are the questions at the centre of this analysis.

### **5.1. Transactions of intermediaries**

The first question to be addressed is how transactions in which intermediaries are involved should be qualified given the decision taken by the CJEU in *Fast Bunkering Klaipėda*.

The transactions consisting for the economic operator of responding to orders for fuel received from intermediaries had in the case in question been treated as supplies of goods made to the intermediaries. Those were intermediaries who, both with regard to the economic operator and to the operators of the vessels, acted in their own name. Even though the ownership of the fuel was formally transferred to the intermediaries, the CJEU nevertheless found that those transactions could not be classified as supplies made to the intermediaries but should be regarded as being supplies made directly to the operators of vessels<sup>6</sup>. In fact, the intermediaries had at no time been in a position to dispose of the

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<sup>6</sup> *Fast Bunkering Klaipėda*, paragraph 53.

quantities supplied since the power to dispose of the fuel belonged to the operators of the vessels as soon as it was loaded on to the vessel by the economic operator.

Article 14(1) of the VAT Directive defines the concept of supply of goods as being ‘the transfer of the right to dispose of tangible property as owner’. According to settled case-law, as confirmed once again by the CJEU, this concept ‘does not refer to the transfer of ownership in accordance with the procedures prescribed by the applicable national law but covers any transfer of tangible property by one party which empowers the other party actually to dispose of it as if he were its owner’<sup>7</sup>.

Where goods are transferred to someone empowered actually to dispose of those goods as if he were their owner, it seems that the transfer of legal ownership to anyone else would, in principle, have to be disregarded. That is so unless goods are being transferred pursuant to a contract under which commission is payable on purchase or sale whereby an intermediary undertakes to carry out in his own name one or more legal transactions on behalf of a third person. If so, the transfer to the intermediary would, pursuant to Article 14(2)(c) of the VAT Directive, be regarded as a supply.

In the particular case of *Fast Bunkering Klaipėda*, the intermediaries involved in the supply of fuel were found not to have acted on behalf of someone else and since the fuel had been loaded directly into the fuel tanks of the vessels, any transfer of legal ownership could, at the earliest, be seen to have taken place at the same time as the operators of vessels were actually entitled to dispose of the fuel, in fact, as if being the owners. This led the CJEU to conclude that supply of the fuel by the economic operator had in fact been made directly to those operators of vessels.

Whilst a right to dispose of goods as owner could be exercised by several persons in conjunction, it is not conceivable that once the supplier has transferred the right to one (or several) person(s), he could then transfer that same right to other persons. In other words, the supplier cannot supply the same goods several times over as once the right to dispose is transferred, those goods are no longer his to be supplied. In a case such as this, it is therefore of the essence to determine to whom the right to dispose of the goods as owner is transferred.

With that in mind and given the decision of the CJEU in *Fast Bunkering Klaipėda*, it should be clear that despite arrangements put in place the intermediaries could not be seen as having supplied fuel to the operators of vessels as the fuel was seen as having already been supplied to them by the economic operator. The reality was that the right to dispose of that fuel as owner had been transferred to the operators of vessels rather than to the intermediaries. In that respect, the CJEU made a particular point of the fact that the invoice was sent to the intermediary after the fuel had been loaded onto the vessel as only then the exact amount of fuel supplied could be determined<sup>8</sup>.

This all leads to the conclusion that as the intermediaries were not in a position to have supplied the fuel to the operators of vessels, they could only be regarded as having supplied services. In that regard, it should be kept in mind that according to Article 24(1) of the VAT Directive, the supply of services ‘shall mean any transaction which does not constitute a supply of goods’.

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<sup>7</sup> *Fast Bunkering Klaipėda*, paragraph 51.

<sup>8</sup> *Fast Bunkering Klaipėda*, paragraph 47.

How transactions are qualified in contractual terms is irrelevant for the application of the VAT Directive if economic reality tells another story. In *Fast Bunkering Klaipėda* the transactions involving the intermediaries had been qualified as supplies of goods but this was overtaken by what the CJEU perceived as economic reality leading it to set this aside and rule that the fuel had in fact been supplied to the operators of vessels.

In its decision, the CJEU seems to have been inspired mainly by what is set out in the Opinion of the Advocate General where focus was on the scope of the exemption provided for in Article 148 of the VAT Directive. Recognising that the exemption applies exclusively to the final supply of goods and excludes previous stages in the commercial chain, Advocate General Sharpston went on to examine the supply made by the economic operator in the particular case<sup>9</sup>. Seeking to establish whether that supply could be seen as the final supply and thus qualify for exemption, the Advocate General briefly looked at the concept of ‘supply of goods’<sup>10</sup>.

That concept is defined by Article 14(1) of the VAT Directive as ‘the transfer of the right to dispose of tangible property as owner’ and driven by the particular circumstances of the supply made by the economic operator and possibly in a desire to pave the way for exemption, this was taken to mean that the supply in question had been made to the operator of the vessel.

Irrespective of there being a transfer of the right to dispose as owner, account should however also be taken of certain other transactions which likewise are to be regarded as a supply of goods. That includes ‘the transfer of goods pursuant to a contract under which commission is payable on purchase or sale’ as set out in Article 14(2)(c) of the VAT Directive. It compares to Article 28 of the VAT Directive according to which a taxable person acting in his own name but on behalf of another person takes part in a supply of services is deemed to have received and supplied these services himself.

In cases which feature a supply chain involving one or more intermediaries it is relevant, according to the Commission, to factor in Article 14(2)(c) of the VAT Directive. Although in the case of *Fast Bunkering Klaipėda* the argument was made for there being a supply of goods from the economic operator to the intermediary, this was dismissed by the Advocate General who seemed satisfied with limiting her analysis to the definition given of the concept of supply of goods without giving further consideration to other transfers which are also to be regarded as a supply of goods. This might in part be due to what was a perceived lack of information on the arrangements between the intermediary and the different operators<sup>11</sup>.

The ensuing change in qualification, if borne out by the facts which are left for the national court to ascertain, would see the intermediary unable to charge the operator of the vessel as final customer for the supply of the fuel (as the final customer is being supplied by the economic operator). Any impact that this may have on intermediaries whose profit margin could then be exposed could not put into question that qualification.

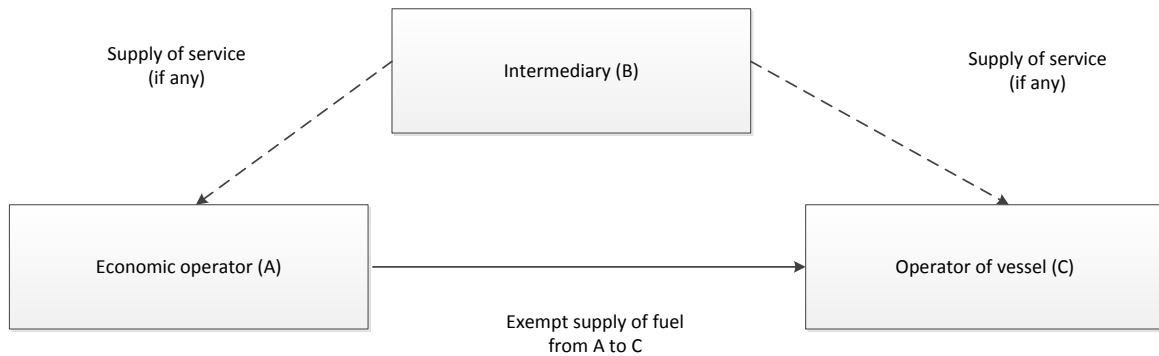
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<sup>9</sup> *Fast Bunkering Klaipėda*, see in particular points 44 to 46.

<sup>10</sup> *Fast Bunkering Klaipėda*, see in particular points 55 to 57.

<sup>11</sup> *Fast Bunkering Klaipėda*, point 25.

For the supply chain, the impact would be as follows:



For a transaction to be subject to VAT, it has to be made for consideration. That in turns requires that there is a direct link between the supply made and the consideration actually received by the taxable person. It is settled case-law that for such a direct link to be established there must be a legal relationship between the supplier and the recipient pursuant to which there is reciprocal performance, the remuneration received by the supplier constituting the value actually given in return for the supply to the recipient<sup>12</sup>.

Where an intermediary is an undisclosed agent acting in his own name but on behalf of another person, there will be a legal relationship between the intermediary and his principal as well as between the intermediary and the third party with whom the supply is contracted. Neither could be said to result in a reciprocal performance between the principal and the third party which usually would be required for there to be a taxable supply.

In other cases, the CJEU has acknowledged that two successive supplies of goods may take place where an intermediary in his own name mediates, even if that intermediary never actually had the goods in his hands nor any power to dispose of those goods<sup>13</sup>. Where there is a transfer of goods pursuant to a contract under which commission is payable on purchase or sale which, according to Article 14(2)(c) of the VAT Directive, is to be regarded as a supply, this would qualify as a supply of goods in its own right.

If, in the case of *Fast Bunkering Klaipėda*, there would be such a supply, it could be seen as taking place when the intermediary orders the delivery of the fuel in which case there would in reality be two successive supplies. Where that would be the case, it seems evident that, as also confirmed by the CJEU<sup>14</sup>, the first supply could not be exempted under Article 148 of the VAT Directive.

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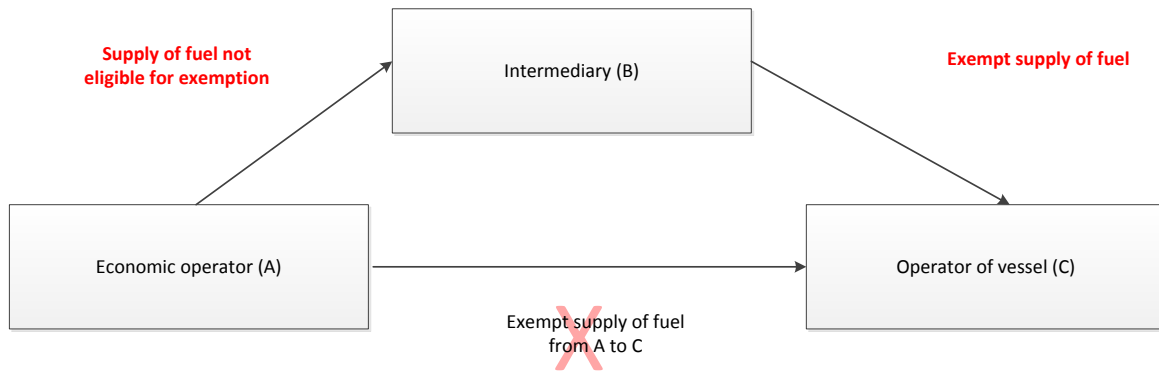
<sup>12</sup> See, *inter alia*, CJEU, judgment of 3 September 2009 in case C-37/08 *RCI Europe*, paragraph 24, and of 3 May 2012 in case C-520/10 *Lebara*, paragraph 27.

<sup>13</sup> CJEU, order of 6 February 2014 in case C-33/13 *Jagiello*, paragraph 32, and of 15 July 2015 in case C-123/14 *Itales*, paragraph 36.

<sup>14</sup> *Fast Bunkering Klaipėda*, paragraphs 35 and 36



That would see the supply chain looking like this:



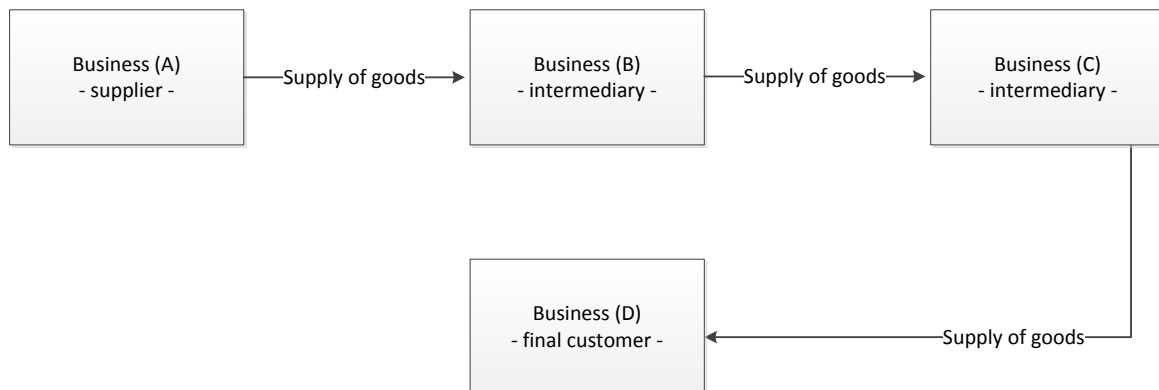
What this case perhaps illustrates most of all is that, to avoid outcomes that are difficult to reconcile with the long-held doctrine of the CJEU on the requirements to be met for there to be a taxable transaction, it is essential first of all to analyse if, based on Article 14 of the VAT Directive, there is a taxable supply of goods and to whom the supply is made before examining more in detail whether that supply may be exempted.

## 5.2. Scope of the judgment

Following on from the decision of the CJEU in *Fast Bunkering Klaipėda*, it may also be useful to look at the wider picture. A question arising, as it does in many other instances, is whether conclusions reached in one such specific case could possibly apply also to other cases.

Obviously, as with any case, the CJEU based its decision on the factual circumstances as presented. Whilst that decision cannot, therefore, be applied directly to other cases each of which would need to be assessed based on the facts that they themselves present, the reasoning as employed by the CJEU could still have an impact. It is the extent of this impact that remains to be examined in more detail.

The case as presented in *Fast Bunkering Klaipėda* basically featured a chain involving the economic operator, an intermediary and the operator of a vessel. With the decision to set aside the transfer of ownership by the economic operator to the intermediary and regard the operator of the vessel as the one to whom the fuel had actually been supplied, the question is whether the same could (and should) be relevant for other chain transactions.

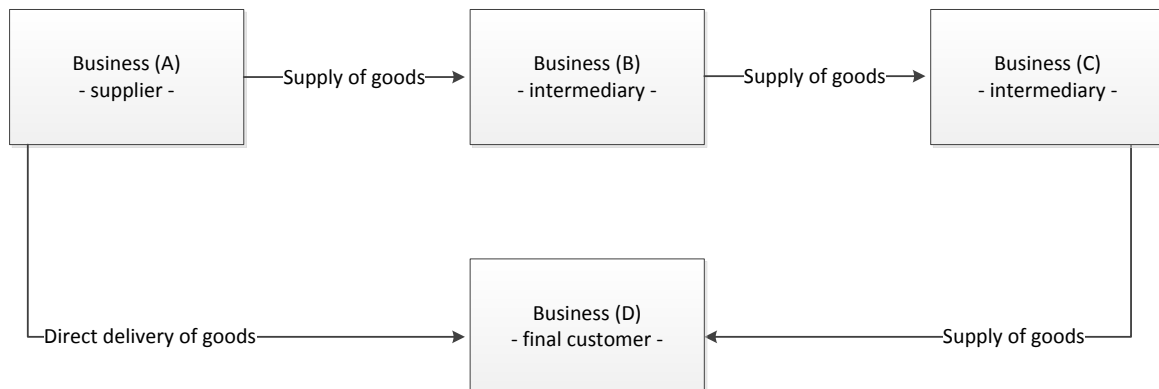


Evidently, whilst one scenario will differ from the other, each one includes features such as those put to a test in *Fast Bunkering Klaipėda*, namely goods being supplied through a chain of transactions before ending up with the final customer.

Some may argue that the circumstances in *Fast Bunkering Klaipėda* were rather exceptional but that does not take away from the fact that in its ruling the CJEU once again confirmed that the concept of ‘supply of goods’ referred to in Article 14(1) of the VAT Directive does not refer to the transfer of ownership in accordance with the procedures prescribed by the applicable national law but covers any transfer of tangible property by one party which empowers another party actually to dispose of it as if he were its owner<sup>15</sup>.

The point made by the CJEU is relevant beyond the specific facts of this case and would, according to the Commission services, need to be taken on board whenever there is a transfer of tangible property to someone other than the one to whom legal ownership is transferred and that transfer empowers that other person actually to dispose of it as if he were its owner.

Those are situations prone to happen where several operators are involved in the supply as is for example the case when goods are the subject of chain transactions. In such cases, it could be that the goods are transferred by the (original) supplier into the hands of someone other than the (first, or second, etc...) intermediary such as those of the final customer.



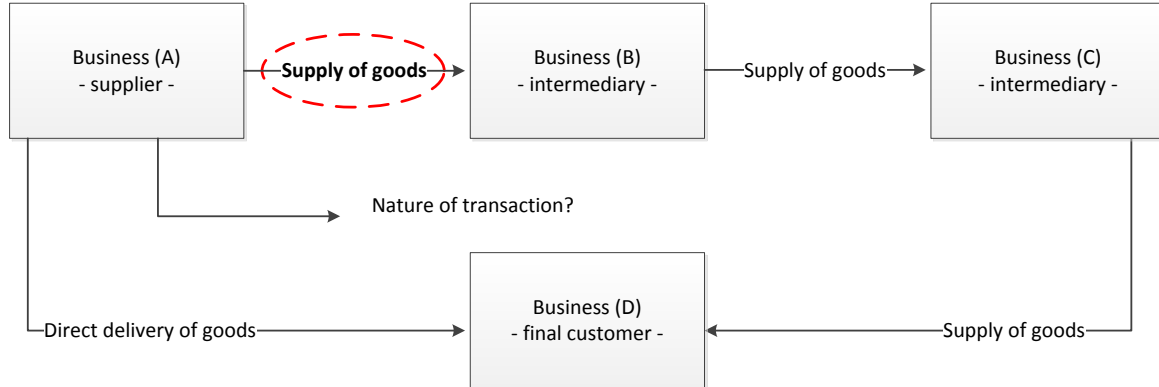
If, as in the above case, goods would for example be delivered directly to the final customer, there could be a need to examine whether, in VAT terms, the goods are being supplied to the intermediary or to the final customer. That is not to say that the outcome will necessarily be the same as that reached in *Fast Bunkering Klaipėda* in all circumstances. In determining the consequences in any such situation, it will be necessary to look at all the elements governing the relevant supply. It is only based on the facts as a whole that a decision can be taken as to whom the goods must be seen as having been supplied to. Unless the goods are transferred pursuant to a contract under which commission is payable on purchase or sale, this will be determined by whom the right to dispose of the goods is transferred to.

In this context it could be necessary to examine whether there is a transfer of the right to dispose of tangible property as an owner. Transfer of legal ownership in itself is not

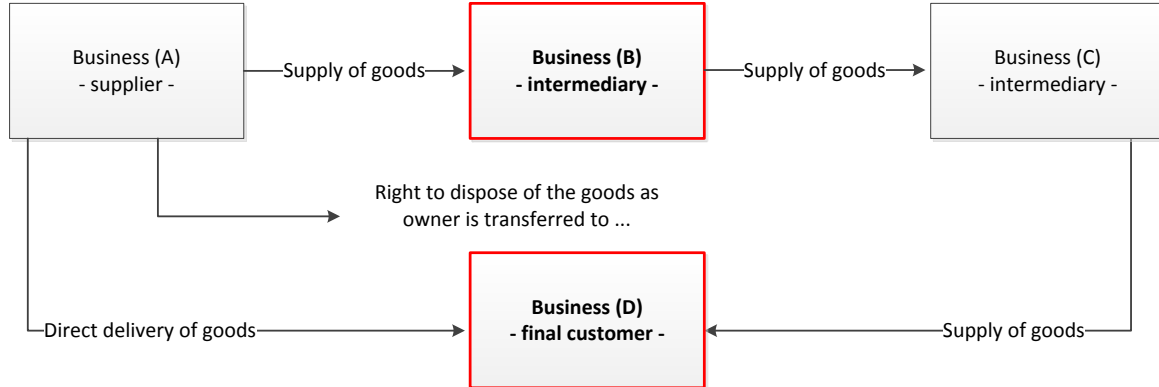
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<sup>15</sup> *Fast Bunkering Klaipėda*, paragraph 51 and the case-law cited.

sufficient if the person to whom the transfer is made at no time is in a position to dispose of the goods<sup>16</sup>. In order for a transaction to be classified as a supply of goods for the purposes of VAT, the transaction must have the effect of authorising the person to actually dispose of them as if he was their owner. Should that not be the case, the transaction in question would have to be qualified as a supply of services.



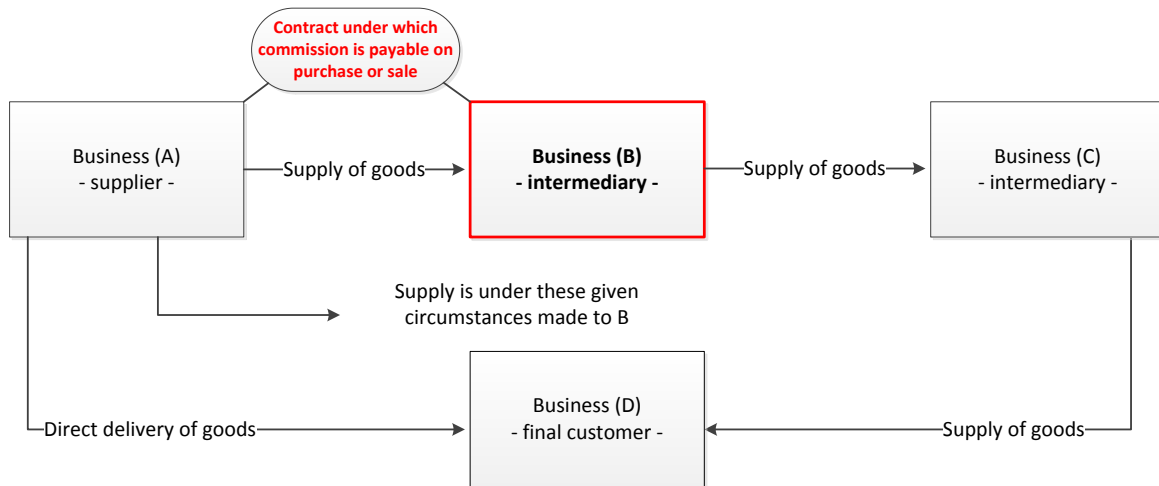
Further, as to the goods in question, there will be a need to determine to whom the right to actually dispose of tangible property as an owner is transferred. In this context, it is relevant to look at when the transfer takes place and at what point the person to whom the goods are supposedly supplied is able to dispose of those goods. Particular attention should be paid to cases where delivery is made to someone other than the person to whom the goods are ‘legally’ supplied empowering that other person to actually dispose of the goods as an owner.



The question to whom the right to dispose of the goods as owner is transferred, is not relevant where there is a transfer of goods pursuant to a contract under which commission is payable on purchase or sale. In that case, the recipient of the supply would be the person to whom that transfer is made.

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<sup>16</sup> *Fast Bunkering Klaipėda*, paragraph 50.



### 5.3. Conclusions

From the above, the following can be concluded:

- the reasoning as to what makes up a supply of goods could not be said to be particular to the specific case with which the CJEU was faced but may also be relevant to other scenarios such as chain transactions;
- in any assessment of such scenarios, it would however be necessary to take account of any supply resulting from goods having been transferred pursuant to a contract under which commission is payable on purchase or sale;
- it is only where there is no such other supply that the goods could be seen as supplied to someone other than the person to whom legal ownership is transferred in case the right to dispose as owner is transferred to that other person;
- in such circumstances, any other transaction would have to be classified as a supply of services.

## 6. DELEGATIONS' OPINION

The delegations are requested to give their opinion on the issues raised.

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### Question from Lithuania

Pursuant to the provisions of Article 398(4) of Council Directive 2006/112/EC of the common system of value added tax (hereinafter – the Directive), we would kindly like to request the VAT Committee to discuss the issue of exemption of the supply of goods for the fuelling and provisioning of the vessels referred to in Article 148(a) of the Directive in the context of the implications of Court of Justice of the European Union in Case C-526/13.

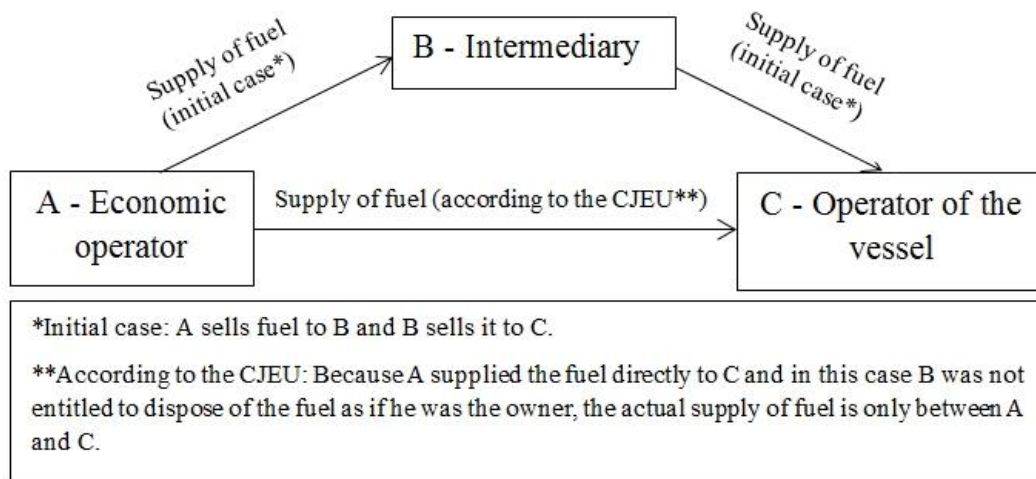
We would like to recall that the issue has been discussed in the VAT Committee. After discussions in the VAT Committee, Guidelines (agreed almost unanimously) resulting from 100<sup>th</sup> meeting of 24-25 February 2014 (Document taxud.c.1(2014)204931 – Working paper No 788, hereinafter – the Guidelines), were prepared according to which, the exemption shall only apply to the supply of goods made directly to the taxable person operating the vessel, and shall not cover supplies made at earlier stage in the commercial chain.

However, on the 3rd of September, 2015 CJEU gave its judgment in *Fast Bunkering Klaipėda UAB v. Valstybinė mokesčių inspekcija prie Lietuvos Respublikos finansų ministerijos* (Case C-526/13). According to the CJEU judgment, *Article 148(a) of Directive 2006/112 must be interpreted as meaning that the exemption provided for in that provision is not, in principle, applicable to supplies of goods for the fuelling and provisioning to intermediaries acting in their own name, even if, at the date on which the supply is made the ultimate use of the goods is known and duly established and evidence confirming that is submitted to the tax authority in accordance with the national legislation. However, in circumstances such as those at issue in the main proceedings, that exemption may apply if the transfer to those intermediaries of the ownership in the goods concerned under the procedures laid down by the applicable national law took place at the earliest at the same time when the operators of vessels used for navigation on the high seas were actually entitled to dispose of those goods as if they were the owners, a matter which is for the national court to ascertain.*

According to the CJEU arguments, in order for the supply between intermediary and final customer to take place the intermediary should have been actually entitled to dispose of the goods as if he was the owner (please see a simplified situation in Example 1). *In those circumstances, it is conceivable that the transfer of ownership of the fuel to those intermediaries takes place only at the end of loading. If that is the case, which is a matter for the national court to ascertain, it must be held that such a transfer of ownership has taken place at the earliest at the same time as the operators of the vessels are actually entitled to dispose of the fuel, in fact, as if they were the owners* (Case C-526/13, paragraph 48). *Consequently, it must be held that, in such circumstances, although, according to the procedures laid down by the applicable national law, the ownership of the fuel was formally transferred to the intermediaries and those intermediaries are deemed to have acted in their own name, those intermediaries have at no time been in a position to dispose of the quantities supplied, since the power to dispose of the fuel belonged to the operators of the vessels as soon as FBK had loaded it.* (Case C-526/13, paragraph 50).

In paragraph 52 the CJEU stated that the supply of the fuel by the economic operator was made directly to the operators of vessels (the same seems to be repeated in the ruling part of the judgment where the CJEU just speaks about passing of legal ownership but does not repeat arguments that passing of legal ownership is not enough to treat supply as supply of goods under the Directive), however the CJEU did not explain what kind of supply to the operators of vessels was made by the intermediary. *It follows that, in the situation mentioned in paragraph 48 of the present judgment, the transactions carried out by an economic operator, such as FBK, cannot be classified as supplies made to intermediaries acting in their own name, but should be regarded as being supplies made directly to the operators of vessels, which may, on that basis, benefit from the exemption laid down in Article 148(a) of Directive 2006/112 (Case C-526/13, paragraph 52).*

Example 1



Having in mind the aforementioned, we are kindly asking to consider the following questions in the VAT Committee:

1. How should the supply made by the intermediary to the operators of the vessels be treated in Case C-526/13?
2. Should the aforementioned judgment in Case C-526/13 be treated as having a wider scope, i.e. supplies (other than supply of fuel to the vessel) in chain transactions should be treated as supplies of goods only where intermediaries (in the supplies chain) actually gain a right to dispose of goods as if they were the owners?

**Lithuania's view**

1. From our point of view it seems that if the supply of intermediary cannot be qualified as supply of goods it should be qualified as supply of services. The taxable amount of such supply then would be the margin between the purchase and sale prices (as the intermediary's price for the fuel was higher than purchase price when the supply was treated as supply of goods). However, it should be noted that in this case the intermediary has not contractually provided any service and would experience a negative impact because he would be forced to reveal his remuneration to the operator of the vessel.

2. Due to the fact that the circumstances in Case C-526/13 are very exceptional, in our opinion, the judgment in this case should not be treated as having a wider scope. However, having in mind that usually in chain transactions the majority of intermediaries are never in physical possession of the goods and the goods are delivered straight from the premises of the first supplier to the premises of the last buyer who can be very far down the chain it can be argued that based on the judgment in Case C-526/13 those transactions should also not be treated as supply of goods.