

## **CJ rules on assessment of abusive practices and refusal to grant VAT deduction (Kuršū zeme)**



On 10 July 2019, the CJ delivered its judgment in the case *Kuršū zeme* (C-273/18). The Latvian company SIA Kuršū zeme deducted input VAT charged to it by another Latvian company, KF Prema, with regard to a local supply of goods. The goods concerned had first been sold by the Lithuanian UAB 'Baltfisher' to two Latvian companies. These two companies sold the goods to another Latvian company which resold them to KF Prema. Kuršū zeme acquired the factual possession of the goods from Baltfisher's warehouse in Lithuania. Kuršū zeme itself transported those goods from Lithuania to its factory in Latvia.

Further to a tax inspection, the Latvian tax authorities VID (the 'VID') found that the intermediary Latvian companies did not actually have any connection with the execution of the acquisitions of goods at issue. The VID could not find a logical explanation for the transaction chain and thus concluded that Kuršū zeme could not have been unaware of the artificial nature of that chain. The VID refused Kuršū zeme the right to deduct the input VAT on the local supply charged by KF Prema and stated that they should have reported an intra-Community acquisition instead. However, by doing so, the VID refused Kuršū zeme the right of deduction without establishing whether an undue tax advantage was obtained by the Kuršū zeme or any other persons in the transaction chain concerned. The dispute ended up before the Supreme Court of Latvia, which decided to refer questions to the CJ for a preliminary ruling.

The CJ considered that the fact that Kuršū zeme had acquired the physical disposal of the goods from a different supplier than the one stated on the invoice in connection with those goods does not in itself suffice to ascertain the existence of an abusive practice by any party in the transaction chain. The competent tax authorities, therefore, are required to ascertain the existence of an undue tax advantage obtained by Kuršū zeme or any other persons in the transaction chain concerned, in order to refuse the right to deduct input VAT incurred on the acquisition of the goods.