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Judgment of the Court in Case C-442/22 | Dyrektor Izby Administracji Skarbowej w Lublinie (Fraud by an employee)

VAT fraud: Employee using her employer's details to issue fake invoices is liable for the amount of the taxes entered on them

That is the case provided that the employer, who is a taxable person for VAT purposes, has exercised the due diligence reasonably required to monitor the conduct of its employee

Between January 2010 and April 2014, the employee of a company established in Poland operating a petrol station issued 1,679 invoices that did not reflect actual sales of goods, for a total amount (expressed in Polish zlotys) of approximately €320,000. To that end, she used the details of her employer, a taxable person for value added tax (VAT) purposes, without its knowledge or consent. The fake invoices were not recorded in that company's tax returns. They were used by those who received them to obtain an undue refund of VAT, without the corresponding tax having been paid into the State budget.

Following an audit, the competent authorities issued a decision determining the amount of VAT payable by the company. According to the tax authorities, the fraudulent conduct was made possible by the lack of adequate supervision and organisation within the company that hired the employee.

The company is challenging that decision before the national court which, in turn, has referred the matter to the Court of Justice. The national court wishes to establish who, out of the company whose details were unlawfully used on the invoice and the employee who made use of those details in order to issue fake invoices, is the person who enters VAT on the invoice within the meaning of the VAT Directive ¹ and who is therefore liable to pay that VAT.

The Court holds that **VAT cannot be payable by the apparent issuer of a fake invoice where it is acting in good faith and the tax authority is aware of the identity of the person who actually issued the invoice**. In such a situation, it is that person who is liable for payment of the VAT. A different interpretation would be contrary to the objective of the VAT Directive, which is to prevent fraud and to stop individuals from fraudulently relying on the rules of EU law.

In order to be regarded as having acted in good faith, the employer is required to prove that it has exercised **the due diligence reasonably required to monitor the conduct of its employee** and, in so doing, to prevent its details from being used to issue fake invoices. In the absence of such proof, the employer must be regarded as having the obligation to pay the VAT indicated on the fake invoices. It is for the tax authority or the national court to assess, in the light of all the relevant factors, whether the employer has exercised such due diligence.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of EU law or the validity of an EU act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

Unofficial document for media use, not binding on the Court of Justice.

The [full text and, as the case may be, the abstract](#) of the judgment is published on the CURIA website on the day of delivery.

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Images of the delivery of the judgment are available on "[Europe by Satellite](#)" ☎ (+32) 2 2964106.

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¹ Article 203 of Council [Directive 2006/112/EC](#) of 28 November 2006 on the common system of value added tax.