



CONFEDERATION
FISCALE
EUROPEENNE

**Opinion Statement of the CFE
on the ECJ Case Auto Lease Holland BV**

Submitted to the European Institutions in November 2009

This is an Opinion Statement prepared by the Fiscal Committee of the Confédération Fiscale Européenne (CFE), the European association of national tax advisory organisations with 32 members representing over 180,000 tax advisers.

In the Case C-185/01, Auto Lease Holland BV, the Court ruled that a lessor of a vehicle did not make a supply of fuel to the lessee when the lessee fills up his car, which was subject to the leasing contract, at filling stations. This was the position even if the vehicle is filled up in the name of and at the expense of that lessor.

Based on a submission by the Commission, the Court considered that the supplies were affected at Auto Lease's expense only ostensibly. The Court considered that the monthly payments made to Auto Lease constituted only an advance. The actual consumption, established at the end of the year was the financial responsibility of the lessee who, consequently, wholly bore the costs of the supply of fuel. Accordingly, the Court concluded that the fuel management agreement was not a contract for the supply of fuel, but rather a contract to finance its purchase. The Court considered that Auto Lease did not purchase the fuel in order subsequently to resell it to the lessee; instead the lessee purchased the fuel, having a free choice as to its quality and quantity, as well as the time of purchase. The Court accordingly concluded that Auto Lease just acted as a supplier of credit vis-à-vis the lessee.

The CFE observes that:

- the fuel supplier does not issue an invoice to the lessee and does not receive a payment from the lessee;
- the fuel supplier does not know the lessee but only the lessor;
- the supply of the car generally includes other services like the maintenance as well as the fuel;
- because the lessee cannot easily obtain an invoice, the lessee is in practice prevented from obtaining a refund of input VAT.

Furthermore, the Directive states that where a taxable person acting in his own name but on behalf of another person takes part in a supply of goods and services, he shall be deemed to have received those goods and services himself (article 14(2)(c) and 28 of the VAT Directive). The judgment does not suggest that any account was taken of these provisions.

The CFE observes that the judgment is also contrary to the common business practice and it is in fact not implemented by many Member States.

The CFE invites the Commission to request the Court to reconsider the position in the light of articles 14(2) (c) and 28, which the decision suggests were not considered by the Court and because of the way in which it impacts on the neutrality of the VAT system because it in practice has the effect of preventing or at least complicating the recovery of input tax on the transactions.