

# ECJ DECIDES AGAINST VAT EXEMPTION FOR OFFSHORE JACK-UP DRILLING RIGS

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## OFFSHORE JACK-UP DRILLING RIGS DO NOT BENEFIT FROM THE VAT EXEMPTION IN ARTICLE 148 OF THE EU VAT DIRECTIVE FOR VESSELS.

### Introduction

In a recent decision, the European Court of Justice (ECJ) ruled that offshore jack-up drilling rigs, which are used predominantly in a stationary position and not for the purposes of navigation on the high seas, do not benefit from the VAT exemption in Article 148 of the EU VAT Directive for vessels which are engaged in the international shipping and maritime transport sector.

"The VAT exemption for the shipping and aviation sector in Article 148 is to promote the international transport of persons and goods. It grants a full exemption from VAT whilst allowing the deduction of input VAT from connected services and supplies received."

### The EU VAT Directive

The EU VAT Directive (Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax) defines in Chapter IX several exemptions from the general rule of VAT-liable supplies and services performed in Member States of the EU. The VAT exemption for the shipping and aviation sector in Article 148 is to promote the international transport of persons and goods. It grants a full exemption from VAT whilst allowing the deduction of input VAT from connected services and supplies received.

### The ECJ Case

In the decided case, three offshore jack-up drilling rigs were sold. Each of them was constructed as an offshore mobile drilling unit consisting of a floating pontoon fitted with several mobile legs that are raised while it is being towed to the drilling site.

When it is in the drilling position, the unit is raised to 60-70 meters above sea level

using the legs, which are extended and rest on the seabed, in order to form a static platform. When sold by the claimant in 2008, the rigs were engaged in drilling for hydrocarbon deposits in the Black Sea.

In its reasoning, the ECJ pointed out that the VAT exemption for ‘vessels used for navigation on the high seas’ in Article 148(a) of the EU VAT Directive should be interpreted uniformly from the wording, context and objectives of the EU VAT Directive. The ECJ ruled that a vessel cannot be regarded as being ‘used’ for navigation unless it is put to use, at the very least primarily or predominantly, for the purpose of movement in the maritime space. Furthermore, the context of the VAT exemption for vessels in the EU VAT Directive refers to the purpose of cross-border transport, which has to be interpreted strictly as it is an exemption from the general rule of VAT-liable supplies within the EU.

## Practical consequences

Shipowners and charterers of vessels within the offshore industry should consider whether their vessels are primarily or predominantly used in a stationary position on the sea rather than in transport services in connection with the high seas. The principles of this decision are not necessarily limited to drilling rigs but could also refer to other vessels engaged in the offshore oil and gas or wind farm industries, such as jack-up installation vessels for the erection of offshore wind farms.

## ECJ Decision dated 20 June 2019 – C-291/18 – *Grup Servicii Petroliere SA*

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