AG de la Tour delivered his Opinion in Case C-501/19, UCMR-ADA, concerning the VAT regime of fees for the licensing of copyrighted works received by collecting societies in their name, but on behalf of the authors (copyrights' owners)

On 1 October 2020, AG de la Tour delivered his Opinion in Case C-501/19, *UCMR-ADA*, referred to the Court of Justice of European Union ("CJEU") by the Romanian Supreme Court. The case concerns the VAT treatment of the fees received by collecting societies for the licensing of copyrighted works in their own name, but on behalf of the authors (copyright owners). For its service UCMR-ADA retained a commission from the amount of the royalties ultimately due to the copyright owners.

The UCMR-ADA is a collecting society appointed by the Romanian Copyright Office as the sole body responsible for collecting royalties for the public performance of copyrighted works. The question referred to the CJEU originated from a civil law claim proposed by UCMR-ADA for the recognition of its right to receive fees for copyrighted works from an association which acted as a promoter of a musical performance. UCMR-ADA obtained a positive decision before the Tribunal of Bucharest (civil court of second instance). However, in its decision the Tribunal of Bucharest stated that fees for copyright license paid to UCMR-ADA should not have been subject to VAT. The UCMR-ADA appealed the decision before the Supreme Court complaining that fees should be considered as the consideration for a supply of services within the meaning of Directive 2006/112/EC ("VAT Directive").

The Supreme Court stayed the proceedings and referred to the CJEU two preliminary questions, asking whether:

(i) The copyright owners of musical works can be deemed to supply services within the meaning of the VAT Directive in favor of promoters from which collecting societies – such as UCMR-ADA – collect royalties in their own name but on behalf of the copyright owners.

(ii) If the first question is answered in the positive, whether collecting societies when receiving a remuneration for the right to perform musical works shall be considered as a person acting in its own name but on behalf of another person (the copyright owner) taking part in a supply of services as referred in Art. 28 of the VAT Directive.

As far as the first question is concerned, AG de la Tour confirmed that the copyright owners carry out a supply of services consisting in the exploitation of an intangible property although the related remuneration is actually received by a the collecting society. The conclusion is grounded on the principle laid down by the CJEU (see Case C-51/18, *Republic of Austria vs Commission*) where it can

be inferred that the royalty payable to an author for making his/her works available constitutes a consideration for the rights of use and exploitation and, as such, a supply of services within the meaning of Art. 24 of the VAT Directive.

AG de la Tour also took the view that, since a collecting society acts in its own name but on behalf of the right owners, it shall be deemed to receive the supplies of services carried out by the copyright owners and to supply the same service to the organizer of the performance pursuant to Art. 28 of the VAT Directive. In this respect, the royalty received by the collecting society shall be subject to VAT as the consideration for a supply of services. With regard to the taxable base of such a supply, the AG recalls that the commission retained by the collecting society (which constitutes the remuneration for its service) shall not be invoiced separately to the performance promoter in the event it is part of the royalty invoiced.

For further information: **Maisto e Associati**

Milan
Piazza F. Meda 5
20121
T: +39.02.776931

Rome
Piazza d'Aracoeli 1
00186
T: +39.06.45441410

London
2, Throgmorton Avenue
EC2N 2DG
T: +44.207.3740299
