

DEBT COLLECTION, RESTRUCTURING & INSOLVENCY (DCRI)

VAT debt in case of arrangement with creditors: new perspectives of the ECJ

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Recently the Advocate General of the European Court of Justice (ECJ) expressed an opinion in case C-546/2014, *Degano Trasporti*, which was favourable to the extinguishment of debts arising from VAT in the case of composition with creditors.

ECJ case law has traditionally prohibited partial payment of VAT debts under the tax settlement procedure and established that this is also applicable in the context of arrangement proposals.

It appears that this position has been justified *inter alia* on the basis of the ECJ's interpretation of Article 4(3) TEU and of the present VAT Directive's predecessor, the Sixth Directive.

The ECJ has observed on several occasions that it follows from the common system of VAT that every Member State is obliged to implement all legislative and administrative measures necessary to ensure collection of all the VAT due in its territory. In that regard, Member States are required to check taxable persons' returns, accounts and other relevant documents, and to calculate and collect the tax due.

The Advocate General ultimately stated that according to the EU directive on the common system of VAT,



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there are no obstacles to national rules in allowing an undertaking in financial difficulties to enter into an arrangement with creditors involving liquidation of its assets without offering full payment on the State's claim in re-



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spect of VAT.

Nevertheless, an independent expert has to ascertain that no greater payment of that claim would be obtained in the event of bankruptcy and that the arrangement is validated by a court.

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