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By PwC Deutschland | 27. November 2022

ECJ: Refusal of input VAT deduction in case of fraud also for second purchaser of goods

Both the first and the second purchaser in a supply chain may be denied the deduction of input VAT in the full amount if they were aware of a VAT fraud. The alternative brought by the referring German Tax Court to limit the non-deductible input VAT amount to the actual tax loss suffered by the State was rejected by the ECJ.

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Background

The applicant purchased from C, who claimed to be W, a used car for the purposes of his business. W knew that C was pretending to be him and consented. C issued to W an invoice in the sum of EUR 52 100 plus VAT of EUR 9 900 for the supply of the car, while W subsequently furnished the applicant with an invoice in the amount of EUR 64 700 plus VAT of about EUR 12 300. W issued that invoice to C, who in turn forwarded it to the applicant. The applicant paid C a total of EUR 77 000, made up of EUR 64 700 in respect of the value of the car plus EUR 12 300 accounting for the corresponding VAT. C retained these amounts for himself. In his books and tax returns, C included the sales price at EUR 52 100 plus VAT of around EUR 9 900, as shown on the invoice issued by him to W. C therefore actually paid of only EUR 9 900. W, for his part, neither recorded the transaction in his books nor in his tax.

For the purchase of the car at issue, the applicant claimed the sum of EUR 12 300 as input VAT as the amount paid by him. However, the tax office held that he could not claim the input VAT deduction because he should have known of the tax evasion committed by C.

In those circumstances, the referring Nuremberg Tax Court was inclined to favor a limitation of the refusal of the right to deduct input VAT to the tax loss suffered by the State. That loss should be calculated by comparing the amount of the tax legally due in respect of all the services with the amount of tax actually paid. According to that approach, the applicant would be entitled to deduct a VAT amount EUR 9 900. Only the deduction for the remainder, the sum of EUR 2 400 corresponding to the fiscal loss suffered by the State, should be disallowed.

ECJ decision

First, the ECJ notes that the second acquirer in the supply chain may also be barred from deducting the input VAT, even though the first party to the sale was also aware of the evasion.

On the foremost question, the ECJ ruled **that the second acquirer** of goods with which a fraudulent transaction had been effected at a stage of turnover prior to that acquisition and which represented only a part of the total VAT due on the transaction **must be denied the right to deduct VAT in its entirety** if he knew or should have known that the acquisition related to a tax evasion.

That conclusion is justified by the objectives to be pursued by refusing the right to deduct the VAT where a taxable person knew or ought to have known that the transaction was connected with fraud. As is apparent from the case-law of the ECJ, that requirement is intended in particular to require taxable persons to carry out the steps which could reasonably be asked of them in any economic transaction in order to satisfy themselves that the transactions in which they are involved do not result in tax evasion (to that effect, order of 14 April 2021, *Finanzamt Wilmersdorf*, **C?108/20**, paragraph 28 and the case-law cited).

Such an objective could not be effectively achieved if the refusal of the right to input VAT deduction were limited solely to the proportion of the sums paid by way of VAT due and corresponding to the amount of the fraud. In doing so, taxable persons would only be encouraged to take appropriate measures to limit the

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consequences of possible fraud, but not necessarily those which make it possible to ensure that the transactions which they carry out do not result in their participation in tax evasion.

Finally, the ECJ did not fail to point out, that the fact that a taxable person has acquired goods or services and at the same time being aware that he or she was participating in a fraudulent transaction at a preceding stage is sufficient to deprive him or her of the benefit of a VAT deduction, without it even being necessary to establish the existence of a risk of loss of tax revenue (ECJ-decision of 11 November 2021, **C?281/20** *Ferimet*; paragraph 56).

Source

ECJ judgment of 24 November 2022 **C?596/21** *Finanzamt M*

Schlagwörter

VAT fraud, input VAT deduction