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By PwC Deutschland | 24. Oktober 2025

Update: ECJ judgment on statutory minimum fee payable by third party in the event of a successful outcome subject to VAT

In a reference for a preliminary ruling from Bulgaria the European Court of Justice is asked whether – in absence of consideration for a service due to the uncertainty of a contingency fee - the advice given by a lawyer against statutory minimum fee payable by the unsuccessful opposing party in the event of a successful outcome is a taxable transaction within the meaning of the VAT Directive. The Advocate General considers this to be a transaction subject to VAT in contrast to the ECJ case law which, in her opinion, has led to some uncertainty and likely misinterpretations in practice.

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Facts of the case

How should the assessment be performed for the purposes of VAT if a lawyer provides services to his or her client (here: T.P.T.) free of charge but nevertheless receives a statutory minimum fee from the unsuccessful opposing party in the event of a successful outcome? Can that service be regarded as a (non-taxable) service supplied free of charge if, as in the case of the main proceedings, a third party is instead obliged to settle the minimum fee and makes the payment in respect of the service provided by the lawyer representing the successful party (T.P.T.)?

In the opinion of Advocate General (AG) Juliane Kokott a great deal of uncertainty in practice has resulted from the reasoning set out in the decision of the ECJ in *Baštová* in 2016 in view of the fact that – at least on a superficial reading – it was based solely on the uncertainty ('a degree of uncertainty') of the remuneration for the purposes of justifying that a prize for the winner of a competition was not remuneration for a service. In the event of such uncertainty, the link between the service provided and any payment received could be broken (ECJ judgment of 10 November 2016, *Baštová* **C?432/15**, paragraphs 29 and 35 which concerned a prize won on a horse at a horse race).

Opinion of AG Kokott

The AG suggested the Court decide that Article 2(1)(c) of the VAT Directive tax must be interpreted as meaning that a service provided by a law firm to its clients free of charge, but in respect of which a statutory fee is payable by the unsuccessful party in the event of success, **is provided for consideration** and therefore **constitutes a taxable transaction**. **Neither the uncertainty** as to whether a fee will be paid, and the amount thereof, **nor the fact that the fee is payable by operation of law**, **nor the fact that a third party is required to pay the fee**, preclude the service provided by the law firm from being subject to VAT based on the amount of the fee actually received.

The uncertainties associated with a consideration will, at most, be relevant for the purposes of determining the amount of a tax, or the time at which the tax arises, but are not relevant as regards the question of whether there is a supply of goods or services for consideration. Despite all the associated uncertainties, variable fees (for example 10% of an as yet uncertain purchase price), fees subject to certain conditions (for example, contingency fees) or implied fees (in the absence of a specific agreement, the law assumes that the customary fees are deemed to have been agreed upon) have no bearing on whether there is a supply of services for consideration in relation to which the respective fee is paid.

Thus, the conclusion in *Baštová* is correct because the prize does not relate to an activity (for example, participation in a race), but is solely an award or prize given for winning. However, winning a game or race is not a service, that is to say, it is not a consumable benefit that the winner can provide to another person.

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More details of the Opinion in the ECJ case C-744/23 *Zlakov* to be found **here**.

Update (24 October 2025)

The ECJ agreed with the AG's assessment and decided that "*the representation of a party in court by a lawyer constitutes a supply of services for consideration, in circumstances where that supply is provided free of charge, but where the legislation of the Member State concerned provides that the opposing party, in the event that the latter is ordered to pay the costs, is also ordered to pay that lawyer fees, the amount of which is regulated by that legislation".*

As regards the question whether a supply of services such as that at issue in the main proceedings constitutes a supply of services carried out ‘for consideration’, it is settled case-law that classifying a supply of services as a transaction ‘for consideration’ requires only that there be a direct link between that supply and the consideration actually received.

In the present case, first, it is apparent that there is a contract between T.P.T. and that party’s lawyer, whose subject matter is the provision of legal assistance free of charge under Article 38(1)(2) of the local statute (ZA). Secondly, since T.P.T. was successful in the relevant legal proceedings, the opposing party was ordered, under Article 38(2) of the ZA, to pay that lawyer the lawyer’s fees, the amount of which was set according to the arrangements provided by law, by reference to the minimum amounts of lawyer’s fees. Consequently, the existence of a direct link between the legal assistance provided by T.P.T.’s lawyer and the lawyer’s fees paid to him is evidenced both by a contract and by law.

ECJ judgment of 23 October 2025 **C?744/23** *Zlakov*.

Schlagwörter

contingency obligation, fees