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By PwC Deutschland | 16 October 2013

Input tax on transfer agents’ fees not automatically deductible by club

The FIFA rules for international football require that only registered transfer agents may generally act as such on behalf of players and clubs. They are prohibited from acting for both sides in the same deal. The Supreme Tax Court has held that a club may only deduct the input tax in an agent’s invoice if it is clear from the facts that the agent was truly acting on the appointment and on behalf of the club.

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Most professional footballers appoint managers to run their business affairs. Typically a manager is either a well-connected close relative, or a registered transfer agent. Under FIFA rules a club must appoint a registered transfer agent if it requires agency services in seeking new talent; a player seeking support in negotiations with a club must also look for a registered transfer agent if he is unwilling to have himself represented by a close family member or a lawyer. Registered agents are prohibited from acting for both sides in any given case. The Supreme Tax Court was recently called upon to adjudicate on the VAT input tax consequences of a manager's contract with his player which specified that the manager use his best efforts to get the club's agreement to accept the player's management charge or, at least, to boost the player's remuneration to cover it.

In the event, the club had accepted a fee invoiced on behalf of nearly every player, be it for support in negotiating the player's contract extension, be it for the recruitment of new players. However, the tax office refused to allow an input tax deduction in respect of the agent's fees. It argued that it was unclear from the circumstances for whom the agent was truly acting.

The Supreme Tax Court adopted the argument of the tax office. If the club had appointed the agent to act on its behalf, the club would be entitled to deduct the input tax on the agent's fee. If, however, it had merely agreed to accept a fee charged for services rendered to the player under an agreement with the player, it would not have incurred the input tax for its own business activity. The tax would not be deductible. It was thus important to review each case individually. However, the court made two further points. Firstly, it was highly improbable that a player's family member or lawyer would be acting for anyone but the player, and secondly it was highly probable that in any given case an agent would not be acting for both sides. To do so would be to risk the agent's license and therefore his livelihood. The court did, though, add the rider to the second point that the German Football Association had publicly stated that a club's transfer agent could advise a player in general terms without breaching the prohibition on acting for two principals.

Supreme Tax Court judgment XI R 4/11 of August 28, 2013 published on October 16

Keywords

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