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By PwC Deutschland | 16 April 2014

No input tax deduction on employer’s canteen subsidy

The Supreme Tax Court has held that an employer’s subsidy to a commercial caterer charged with running the staff canteen is a taxable supply in respect of a free-of-charge employee benefit. There is therefore no input tax deduction.

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An employer entrusted a caterer with running the staff canteen. The two sides agreed an annual pricing and menu policy as well as an annual budget. The employer provided the facilities and also paid the caterer a subsidy based on the budget. The tax office saw the main supply as being by the caterer to the employees. The subsidy was subject to VAT as a payment by a third party, although the employer could not deduct the input tax as not being the recipient of the supply. The employer argued that the subsidy was paid in the interests of keeping his employees content and thus of improving his recruiting prospects. It was therefore a supply to him for his business and the input tax should be deductible.

The Supreme Tax Court has, in effect, come to the same conclusion as the tax office, although for a different reason. It accepted the employer's business motives for the subsidy as well as his involvement in the canteen planning. The payment was therefore taxable as a supply by the caterer to the employer for the latter's business purposes. However, the business purpose was to enable the employer to grant a free-of-charge benefit to staff – cheap meals – which led to the exclusion of an input tax deduction. As the court went on to point out, it was for each employee to arrange his own midday meal. If he took advantage of the staff canteen in doing so, that was his private affair. An employer subsidy thus contributed to a taxable supply by the caterer. The business interest of the employer was recognised, though, in contrast to meals provided at staff meetings, did not predominate. Thus it did not eclipse the private nature of the supply to the employee.

Supreme Tax Court judgment XI R 4/12 of January 29, 2014 published on April 16

Keywords

canteen, employee benefit, subsidy