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ECJ: Participation in VAT fraud and refusal of input VAT deduction

The right to deduct input VAT is denied not only if the taxable person himself commits an evasion, but also if he is aware that he participated with his acquisition in a tax evasion. In the latter case the refusal of the input tax deduction is a consequence of the failure to comply with the responsibilities in suspect cases. The taxable person who knew or should have known that he or she was participating in a fraudulent transaction assists the perpetrators of that fraud and becomes an accomplice thereto. The European Court of Justice (ECJ) confirms its previous case law on this issue.

Background

The request for a preliminary ruling by the Lower (district) Tax Court of Berlin-Brandenburg relates to the refusal of the right to deduct input value added tax (VAT) paid on the acquisition of drinks. In 2009 and 2010 HR, together with her spouse, operated a wholesale drinks business. In her VAT returns for those years, she deducted the input VAT paid in respect of invoices issued by P GmbH. In two judgments by a criminal court it was found that P had acquired the drinks supplied to HR while committing several counts of VAT fraud. According to the findings of that court, HR's husband provided P with significant quantities of different beverages, a turnover of approximately EUR 80 million, without issuing invoices for those supplies. An employee of P issued sham invoices relating to the purchase of those goods and P wrongfully claimed the deduction of input VAT. After the discovery of those fraudulent facts, the tax authorities not only refused the right to deduct VAT for P but did the same with regard to HR, taking the view, that HR, together with her business, was part of the supply chain in which the VAT violations were committed. The referring Lower Tax Court had expressed doubts whether the plaintiff with her sales was still part of the fraudulent supply chain because HR, by asserting her right to deduct the input VAT paid on supplies by P, did not herself commit VAT fraud in connection with the transactions at issue.

Decision

Contrary to the referring court's interpretation it is without doubt for the ECJ that the mere fact that the taxable person has acquired goods even though he or she knew, in any way whatsoever, that he or she was participating in a fraudulent transaction is a participation in that fraud. According to the case-law of the ECJ, a taxable person who should have known that, by his or her purchase, he or she was participating in a transaction connected to VAT fraud in the chain of supply or services is also deprived of the right to deduct input VAT. It is the failure to take certain precautionary steps which justifies the denial of input VAT deduction.

The ECJ went on to say that it is not in contrast to EU law to require that a trader take every step which could reasonably be expected to satisfy himself or herself that the transaction which he or she is carrying out does not result in the participation in tax evasion. The determination of the measures which may, in a particular case, reasonably be required of a taxable person wishing to exercise the right to deduct VAT in order to satisfy himself or herself that his or her transactions are not connected to fraud committed by a trader at an earlier stage of a transaction depends essentially on the circumstances of that particular case.

Source:

The ECJ case reference is [C-2108/20 Finanzamt Wilmersdorf](#) order of 14 April 2021.

Keywords

[Tax evasion](#), [VAT fraud](#)