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By PwC Deutschland | 06 January 2022

Deduction of input VAT in cases of allegedly useless advertising

In an interesting Hungarian case, albeit with a somewhat predictable outcome, the ECJ was called to decide on the deduction of input VAT in cases where the value of the service provided is ostensibly disproportionate to the benefit which the service generates for the recipient in matters of sales revenue or increase in sales revenue. The ECJ held that, in general, such circumstances have no effect on the right to deduct input tax.

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Background

In 2014, Amper Metal (the plaintiff) concluded a contract with another local company (SR) for the provision of advertising services. This contract related to the application of advertising stickers with the logo of Amper Metal on vehicles during participation in an automobile race in Hungary. SR issued several invoices for these services totaling approximately EUR 133,230 plus 27% VAT of approximately EUR 35,970. Amper Metal deducted the input VAT paid for these services in its 2014 tax returns. The tax office did not allow the input tax deduction: Experts had come to the conclusion that the service was overpriced and, moreover, useless with respect to Amper Metal's customer base.

The core question to be clarified by the ECJ was therefore whether a taxable person with exclusively taxable activities can claim the deduction of input VAT only if he objectively proves the benefit of the service he has used based on concrete data.

Decision of the ECJ

The ECJ referred to Article 176 (1) of the VAT Directive and stated that - as a rule - the right to deduct VAT does not apply to expenses that are not strictly business in nature, such as luxury, entertainment, and representation expenses. Therefore, the expenditure incurred by the taxable person for the input transaction must be of a business nature and the goods or services purchased must be used for the purposes of taxable transactions.

However, neither that provision nor Article 168(a) of the VAT Directive makes the deduction of input VAT dependent to an increase in the taxable person's turnover or to a criterion of economic viability of the input turnover.

The fact that an economic activity is carried out at a price above or below the cost price and thus at a price above or below the normal market price is irrelevant when it comes to qualify as a taxable service, since such a circumstance cannot affect the necessary direct link between the service provided and the consideration received. The amount of remuneration is determined in advance and according to precisely defined criteria.

The ECJ concludes that it is now for the referring Hungarian court to assess on the basis of the objective content of the advertising services whether the input services in question were directly linked to specific qualifying output services or if they were directly and closely related to the entire economic activity of the plaintiff, or if the advertising services were in the nature of representation expenses without a strictly business character within the meaning of Article 176 (1) VAT Directive.

Source:

The ECJ case reference is C-334/20 *Amper Metal* judgment of 25 November 2021.

(**Note:** An English version of this judgment was not available at the time this article was posted)

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Keywords

input tax deduction, useless advertising, value of service