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By PwC Deutschland | 19 October 2022

Input VAT deduction in case of staff reduction costs

Services from so-called outplacement companies for individual support to permanent and indefinitely employed workers, in particular by means of so-called job application training, to help them find new employment relationships, qualify for an input VAT deduction. According to the Supreme Tax Court the entrepreneur is entitled to deduct input tax based on an overriding business interest while the employee's interest in the outplacement counseling is secondary.

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Background

Due to economic circumstances, the plaintiff (a corporation with several subsidiaries, all being part of a tax-group – "*Organschaft*") sought to make considerable cost savings in the years in dispute by reducing staff costs. However, most of its employees were equipped with indefinite (permanent) contracts under collective labor contracts which precluded dismissals for operational reasons or for other reasons and regulations. The intended reduction in personnel could therefore only be achieved on a voluntary basis and with the consent of the respective employees to terminate their employment or service contracts.

Therefore, the plaintiff (as well as its *Organschaft*-subsidiaries) engaged outplacement companies to assist in achieving the overriding goal to downsize staff. These counseling firms provided employees with individual support, specialist advice and organizational support in their search for a new job, so that they voluntarily gave up their previous employment relationships. This included basic counseling, a location analysis of the employee, perspective and motivation counseling, placement activities to establish a new employment relationship subject to compulsory social insurance, a so-called end-to-end placement with financial counseling, and a so-called new placement together with a counseling program. The costs were borne by the plaintiff and its subsidiaries. The plaintiff claimed the deduction of input VAT for the services provided and as invoiced by the outplacement companies.

The tax office only allowed the input tax deduction to the extent it related to general consulting and so-called performance (success) fees, but not regarding the personal consulting services. Reason: These services were specifically tailored to the future professional development of the employees through the individual coaching. The appeal before the Cologne Tax Court was granted.

Decision

The Supreme Tax Court dismissed the appeal brought by the tax office and reached its conclusion in accordance with Article 168 of the VAT Directive: "*In so far as the goods and services are used for the purposes of the taxed transactions of a taxable person, the taxable person shall be entitled, in the Member State in which he carries out these transactions, to deduct from the VAT which he is liable to pay (…) the VAT due or paid in that Member State in respect of supplies to him of goods or services, carried out or to be carried out by another taxable person (..)*"

The entrepreneur is entitled to deduct input VAT if he intends to use services for his business and thus for his economic activities for the provision of services against payment. There must be a direct and immediate connection between the input and output turnover, for example, in the context of the overall economic activity of the business.

In the case of dispute, the employee's interest in outplacement counseling is secondary to the primary and overriding business interest of the plaintiff. In the case of permanent employment, it can be assumed from the outset that the interest in establishing new employment relationship is not due to the employee's desire to change employers. Rather, the declared business objective is to convince employees whose current employment should be terminated for business reasons, but who could not be unilaterally terminated, to

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agree to a cancellation of the existing employment relationship.

The Supreme Tax Court went on to quote established ECJ case law: The fact that a third party (here: the employee) benefits from these (outplacement) services does not justify denying the taxable person (here: the plaintiff) the corresponding right to deduct the VAT billed to him for this service, if the benefit accruing to the third party as a result of these services is to be considered only incidental compared to the business related needs of the taxable person (ECJ judgment of 1 October 2020 in the case **C-405/19** *Vos Aannemingen* (para. 28 through 31).

Source:

Supreme Tax Court decision of 30 June 2022 (V R 32/20), published on 13 September 2022.

Keywords

input VAT deduction, staff