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By PwC Deutschland | 18 November 2022

ECJ: No output VAT on the value of reward retail vouchers offered to high-performing employees

The European Court of Justice held that the issue of vouchers for third-party retailers to employees by a taxable person as part of a recognition program for high-performing employees do not constitute a supply “for the private use of the entrepreneur or for that of his staff or, more generally, for purposes other than those of his business” within the meaning of Article 26(1)(b) of the VAT Directive.

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Background

Under **Article 26(1) b VAT Directive** the supply of services carried out free of charge by a taxable person for his private use or for that of his staff or, more generally, for purposes other than those of his business' are to be treated as a supply of services for consideration (and subject to VAT).

Facts and circumstances of the case

The applicant (GE Aircraft Engine Services Limited - GEAES) - a member of the worldwide General Electric ('GE') group of companies based in the United States - operated an employee recognition program called "Above & Beyond." In the case of awards consisting of shopping vouchers, the nominee was sent a link to a website operated by Globoforce Limited ("Globoforce"), a provider of social recognition services. The provision of vouchers to the employee took place as follows: Initially, Globoforce purchased the vouchers directly from the relevant retailers and sold them to an affiliated US company (GE USA). GE USA then sold the vouchers to GE U.S. Headquarters (GE HQ). GE HQ then made a cross-border delivery of the vouchers to several GE companies in the United Kingdom. Each of these companies, including the applicant, in its capacity as employer, provided the vouchers to nominated employees under the Above & Beyond program. The tax authorities assessed the plaintiff for undeclared output VAT on the value of the vouchers provided under the Above & Beyond program.

Since the offer of retail vouchers in the case of dispute was carried out free of charge it was therefore necessary to determine whether that supply of services is made for the private use of the taxable person or for that of his or her staff or, more generally, for purposes other than those of his or her business. The referring U.K. court saw reasonable doubts as to the interpretation of the expression 'for his private use or for that of his staff or, more generally, for purposes other than those of his business', within the meaning of Article 26(1)(b) of the VAT Directive. In contrast and because the retail vouchers were provided free of charge to employees and for personal use outside the context of GEAES's commercial activity, the local tax authorities argued that the conditions for the application of Article 26(1)(b) of the VAT Directive to be satisfied. The ECJ took a different view.

ECJ decision

The ECJ interprets Article 26(1) b VAT Directive as **not applying** to a supply of services under which a company provides its employees with shopping vouchers free of charge as part of a program set up to recognize and reward those employees who have rendered the most services and performed the best, and which ultimately was of benefit for their company.

A voucher obtained by nominated employees by its nature is no more than a document evidencing the obligation assumed by the referenced retailers to accept that retail voucher, instead of money, at its face value. Since GEAES, as the employer, does not intervene in the choice of goods or services made by the employees from those retailers it seems clear at first that the retail vouchers at issue could be regarded as being for the employees' private use. However, the ECJ notes that the award of those retail vouchers is not exclusively for the employees' private use, because they have no means of ensuring with certainty that they

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will receive them. The initiative for awarding them is in the hands of other employees of the company and is made based on strictly professional criteria and only where the employees appointed are considered to merit a prize classified at the intermediate level of prizes.

Furthermore, it is common ground that GEAES awarded the retail vouchers at issue without remuneration or in return for any consideration on the part of the recipient employees, the cost of those vouchers being borne by GEAES itself. The program itself gives GEAES an advantage in the form of the prospect of increasing its turnover because of the greater motivation of its employees and, as a result, an improvement in their performance. Therefore, the personal advantage which employees derive from such a supply appears to be merely incidental compared to the advantages for the business itself.

Therefore, and subject to the verification of the referring court, the ECJ held that GEAES's award free of charge of the retail vouchers to employees nominated under the 'Above & Beyond' program is intended to increase the performance of its employees and, therefore, leads to the proper functioning and profitability of the business, and therefore, it must be found that the supply of services is not carried out for purposes other than those of the business and, therefore, does not fall within the scope of Article 26(1)(b) of the VAT Directive.

Finally, the ECJ points out that, since the retailers themselves declared output VAT on the value of the retail vouchers and the program itself does not fall within the scope of Article 26(1)(b) of the VAT Directive, the **principle of fiscal neutrality** is not infringed.

Source:

The ECJ case reference is **C?607/20**, *GE Aircraft Engine Services Ltd* judgment of 17 November 2022.

Keywords

private use, voucher