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By PwC Deutschland | 02 August 2023

No input VAT deduction for staff outing costs

The Supreme Tax Court held that the input tax on staff outing costs (Christmas get-together) ranking as an employee benefit cannot be deducted. If the employer receives services for so-called staff events, he is only entitled to deduct the input VAT on the underlying costs if the services do not exclusively serve the private needs of the employees of the company but are caused by the special circumstances of the employers' business activity.

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Background

Employee staff outing costs rank as benefits in kind if they exceed €110 for each participant. Exceptions to this rule must be based on special circumstances justifying a contention that the outing was more or less solely in the direct interests of the employer. References to improving employee relationships and similar considerations (like, e. g., boosting the attitude towards work) are insufficient as a demonstration that the employees' own interests were completely "overshadowed" by those of the employer.

To hold the Christmas get-together for his staff, the plaintiff (a registered association) rented an appropriate cooking studio from an organizer for a special 2015 X-mas "cooking event". There, the participants prepared dinner together under the guidance of two chefs, which they then consumed together. In December 2015, the plaintiff was invoiced relating to the services for the "cooking event for 32 people": Drinks, two hours extra rental, two hours extra staff + the VAT. In his advance VAT return for December 2015, the plaintiff claimed deduction of the input VAT incurred on occasion of the Christmas party. The **tax office** rejected this.

The **lower tax court of Hamburg** rejected the claim: The plaintiff was not entitled to the requested input VAT deduction, as the services received as part of the Christmas party had not been performed for his company. Social company events such as Christmas parties are basically services related for private purposes and private needs of the staff, and in order to improve the working atmosphere. A mere indirect connection with the business of the plaintiff is not sufficient.

Decision

The **Supreme Tax Court** confirmed the decision of the court of first instance and rejected the plaintiff's appeal as unfounded.

The Christmas get together was not limited to the consumption of food and drinks in a festive setting, but rather took place in the framework of a "cooking event" in which the participants prepared the joint dinner themselves under the guidance of professional chefs. Such "teambuilding events" are generally known to be able and intended to improve the performance and motivation of employees within the respective department and between different departments. The participants work on a common goal, get to know each other better in the process, and thus develop a sense of togetherness that can lead to an improvement in the working atmosphere. The employee benefits provided in the course of the Christmas get-together were thus not made in the overriding interest of the employer (the plaintiff).

If the sole purpose of a social event is to improve the working atmosphere by organizing leisure time together, the services purchased for the company outing are exclusively related to the private needs of the staff and thus constitute a private consumption pursuant to Section 3 (9a) No. 2 of the German Value Added Tax Act (VAT Act), which does not entitle to an input VAT deduction. According to that provision the supply of services without consideration by the taxable person for purposes not connected with the business or for the private use of his employees is to be regarded as a (taxable) supply of service for consideration, unless they are regarded as a gift of small value. In such a case and due to the lack of a direct link to a specific

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output transaction, the deduction of input tax must be decided on the basis of the entrepreneur's overall economic activity (Supreme Tax Court decision of December 9, 2010, V R 17/10).

In years preceding the 2010 decision the Supreme Tax Court had accepted that the strict income tax approach does not necessarily have to be followed for VAT and allowed an input tax deduction for staff outing costs ranked as employee benefits on the grounds that employee morale boosting justifies treating the expense as part of the general admin costs of the business. In its judgment V R 17/10 of 9 December 2010 (published on 9 March 2011), however, the court no longer adhered to his case law and took a different view on this matter. It disallowed the input tax deduction on the costs of a staff outing of some €200-250 per participant because costs of this order must be seen as carrying at least an element of employee reward. The ECJ, at the time, had decided that employee benefits in kind substitute costs that an employee would otherwise have borne out of his own pocket, and so cannot lead to an input tax deduction for the employer without a taxable output (recharge to the employee or output tax on the benefit transferred). The Supreme Tax Court has followed suit, drawing the distinction between staff outings seen as employee benefits and those ranking as mere amenities on the income tax yardstick of €110 per participant. The input tax on costs ranking as amenities continues to be generally deductible, as does that for employee meetings and seminars held for an overriding business reason.

The Supreme Tax Court also refused to grant the input tax deduction in view of the employee who did not appear because the employer's total costs were to be divided equally among the participants present at the company event, not among the registered participants. Accordingly, the employee who did not attend in the case in dispute did not incur any expenses for which an input tax deduction could be considered.

Source:

Supreme Tax Court, decision of 10 May 2023 (V R 16/21), published on 27 July 2023.

Keywords

employee benefit, staff outings