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By PwC Deutschland | 29 November 2024

ECJ: Obligation to pay total agreed amount in case of premature termination of contract by customer subject to VAT

Following the request for a preliminary ruling from the Austrian Supreme Court, the European Court of Justice held that the amount contractually due following the termination, by the recipient of a supply of services, of a contract validly concluded for that supply of services where the supplier had already started and was also prepared to complete the work, must be regarded as constituting the remuneration for a supply of services for consideration.

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Background

In March 2018, rhtb (the plaintiff in the main proceedings) and Parkring concluded a contract for services under which rhtb was to carry out a building project in an amount of some €5,000,000 including VAT. After works had started Parkring informed rhtb in June 2018 that it no longer wished it to carry out that project for reasons not attributable to rhtb. In accordance with the relevant provision in the General Civil Code rhtb, in December 2018, requested from Parkring payment of the agreed amount less the costs saved on account of the unjustified termination of the contract for services in question.

The court of first instance granted rhtb's application, stating that Parkring had unjustifiably withdrawn from that contract and stated that the amount due for the works which could not be carried out as a result of the termination of the contract was subject to VAT. The appeal court, however, held that no VAT was payable on the amount due in respect of the works not carried out since there had been no exchange of services between the parties to the contract.

ECJ decision

The ECJ decided that the amount contractually due following the termination by the recipient of a supply of services of a contract validly concluded for that supply of services must be regarded as constituting the remuneration for a supply of services for consideration within the meaning of the VAT Directive.

In that regard, it should be added that, as is apparent from the case-law of the ECJ, a predetermined amount received by an economic operator where a contract for the supply of services for a certain period is terminated early by its customer, or for a reason attributable to the customer, which corresponds to the sum that that operator would have received for the remainder of that period in the absence of such termination, must be regarded as the remuneration for a supply of services for consideration and subject, as such, to VAT, even though that termination entailed, inter alia, the deactivation of the services referred to in that contract before the expiry of the agreed period (see, to that effect, judgment of 11 June 2020, *Vodafone Portugal*, **C?43/19**, para. 33 and the case-law cited).

In the present case, there is indeed an identifiable supply of services and the supplier had, moreover, begun the agreed works and was prepared to carry them out in their entirety in order to bring the contract to a successful conclusion. If this was not the case, it is because the recipient no longer wished to use the services of that supplier for reasons not attributable to the supplier. Furthermore, the amount due to that supplier of services corresponds to that contractually provided for the performance in full of the supply of services after deduction of the amounts saved on account of the non-completion of the work. That amount cannot therefore be regarded as constituting fixed compensation intended to compensate for loss suffered.

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ECJ, judgment of 28 November 2024 **C?622/23** *rhtb: projekt gmbh*.

Keywords

supply of services