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By PwC Deutschland | 16 December 2024

ECJ: Input VAT deduction on intragroup administrative services only if used for own taxable output

Following a preliminary request from Romania, the European Court of Justice (ECJ) had to deal with the refusal of the local tax authorities on the right to input VAT deduction if services are not used for taxable transactions. Specifically, it refers to the VAT deduction for intercompany consultancy and administrative services with a supplier located in a country different than Romania.

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Background

Weatherford Atlas Gip is part of the Weatherford group of companies, which specializes in oil services. In June 2016, Weatherford Atlas Gip took over, through a merger by acquisition, Foserco SA, a Romanian company. The business activity of Foserco consisted in supplying ancillary services for the extraction of oil and natural gas.

In 2015 and in 2016 Foserco had provided drilling services in Romania to two customers, OMV Petrom and Petrofarc. To provide those services, Foserco had purchased general administrative services from companies in the Weatherford group, such as, inter alia, IT services, human resources, marketing, accounting and consultancy services. Those general administrative services were provided by entities established outside Romania and the reverse charge procedure was used to calculate the VAT on those services.

The Romanian tax authority refused the right to deduct the input VAT paid by Foserco in respect of the administrative services purchased, on the ground, first, that no act or document had been produced to demonstrate the link between the services purchased and the activity of the taxable person and, second, that (i) the nature of the services provided, (ii) the identity of the persons who provided those services, (iii) the period during which they were provided, and (iv) the need for those services for Foserco did not emerge from the documents produced.

Decision

The CJEU held that national legislation cannot deny the VAT deduction on the grounds that services were simultaneously supplied to other group companies or deemed unnecessary or not appropriate, provided the services are used for the taxable person's own transactions which are subject to VAT.

The Court emphasized that the right to deduct VAT is a fundamental principle of the VAT system which cannot be limited if services are used for taxable transactions. It is not relevant if services are simultaneously provided to other companies within the group.

The question whether the purchase of the administrative services at issue in the main proceedings was necessary or appropriate also seems irrelevant since the VAT Directive does not make the exercise of the right of deduction subject to a criterion of the economic profitability of the input transaction. The common system of VAT is intended to ensure neutrality of taxation of all economic activities, whatever their purpose or results, provided that they are themselves subject in principle to VAT.

The ECJ noted that it is the taxable person’s responsibility to prove eligibility for VAT deductions, and the national courts must assess all facts and circumstances to determine the link between services acquired and taxable transactions. They may thus require the taxable person to produce the evidence they consider necessary for determining whether the deduction requested should be granted.

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ECJ, judgment of 12 December 2024 **C-527/23** *Weatherford Atlas Gip*.

Keywords

input VAT deduction, intracompany transaction