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General Court: Input VAT adjustment upon transfer of developed real estate from sole proprietorship to GmbH

The European General Court of the EU handed down its preliminary ruling on the VAT treatment of the contribution of immovable property to a wholly owned company. The court found, among others, that EU members generally cannot restrict the no-supply treatment for full asset transfers unless justified to prevent competition distortion, tax evasion, or tax avoidance.

The request from the Austrian Administrative Court for a preliminary ruling seeks clarification, i. a., whether the contribution of developed properties by a taxable person who has previously used those properties, through rental, for the purposes of transactions subject to VAT and for which input VAT deduction is thus possible, to a company of which he or she is the sole shareholder (with the result that no additional company shares are issued for that contribution) is to be regarded as the supply of goods for consideration.

Background: The case involves an Austrian entrepreneur who transferred rental properties from his sole proprietorship to a company he established and where he is the sole shareholder. The tax authority contested whether this constituted a taxable "supply of goods" and demanded a correction of previously claimed input VAT.

In brief, this is what the General Court had to say:

1. **The first paragraph of Article 19 of the VAT Directive has direct effect**. Taxpayers can invoke the rule- with the result that a taxable person may rely on, before a national court, the rule that no supply of goods has taken place upon the transfer of a totality of assets or part thereof to a taxable person - directly against national tax authorities.

(The national legislation relating to the no-supply rule predates Austria's accession to the European Union in 1995, bearing in mind that it does not appear that that legislation is covered by one of the standstill clauses laid down by the VAT Directive, which would have allowed Austria to maintain its own interpretation of the no-supply rule.)

2. **Article 19 precludes national laws that restrict the "no supply" treatment** only to assets intended to generate certain types of income, unless the restriction is justified by one of the grounds set out in the second paragraph of Article 19 (to prevent distortion of competition, tax evasion or tax evasion).

3. Contributing developed rental properties without receiving new shares (and where previously VAT was deductible) to a wholly owned company does not qualify as a taxable supply of goods for consideration under the general rule of Article 2 (1) (a).

4. **However**, such a contribution without consideration **shall be viewed as a withdrawal**, **i. e. as a supply for purposes other than those of the business**, and it must, as such, be treated as a supply of goods for consideration under Article 16 (1) of the VAT Directive.

Source: General Court, judgment of 2 September 2026 T?413/25 *Peckeger*. – The complete judgment to be found **here**.

Keywords

VAT adjustment, contributions, immovable property, input VAT