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General Court: Adjustment of input VAT following the transfer of business and subsequent lease of premises to transferee

Following a request for a preliminary ruling from Belgium, the General Court of the EU held that a business owner must proportionally adjust the original input tax credit for a commercial building if he transfers the business and, at the same time, leases the building to the transferee on a VAT-exempt basis.

The applicant in the main proceedings, A&P Deco NV (A&P), operated a garden center. In 2013, it transferred that business to WR Woestijnroos BV (WR), except for the business premises which remained the property of A&P but were let almost entirely VAT free to WR. The latter continued to operate the garden center. The business premises were built in 2004 and 2005 and renovated between 2008 and 2011. A&P had applied for input VAT deduction in respect of the services received for that purpose. Following the transfer of the garden center, the Belgian tax authorities adjusted the input VAT deduction on a pro rata basis. A&P maintains that an input VAT adjustment depends on the transferee's use of the building. Since the transferee uses the building for the same activity subject to VAT the intended use of the building did not change.

In her opinion, **the Advocate General** Maja Brkan concluded that a taxpayer is still required to adjust the input VAT. Her conclusion has some degree of certainty insofar as under the principle of fiscal neutrality, in its interpretation as a requirement of equal treatment, that the transferor leaseholder is treated no differently from a third party who also lets a business property to the transferee and is likewise not entitled to any input VAT deduction in that regard.

The General Court confirmed that view and held that the prior input VAT deduction applied to the acquisition, construction, renovation or improvement of that immovable property must be corrected.

The fact that those immovable properties are no longer used to carry out taxable transactions leads to a change in circumstances in the hands of the applicant and must be taken into account to determine the right for deduction of input VAT. It follows that a proportional (pro rata) adjustment of the initial deduction of VAT must be carried out.

Requiring a deduction applied by the landlord of immovable property to be adjusted by his or her tenant of that property would be tantamount to requiring the latter to pay a tax debt pertaining to a transaction in which he or she had no involvement and which was carried out in connection with the economic activity of another taxable person.

If an initial input VAT deduction were still continued even though the goods in question are now being used to carry out transactions not subject to VAT, as in the present case of the letting of buildings, that fact would undermine the principle of neutrality of VAT.

Furthermore, the court went on to say that it cannot be considered that the distinction made between the letting of a building at the same time as the transfer of a business and the sale of such a building in the context of a transfer of an undertaking undermines the principle of fiscal neutrality. In the first situation, the transferor-landlord carries out, after the transfer of the business and the letting of the immovable property, by means of the letting of that building, an economic activity which is exempt from VAT and is, in that regard, in a situation comparable to that of a third party letting a commercial building to the recipient of the transfer of a totality of assets, who cannot deduct the input tax paid on the acquisition, construction, renovation or improvement of those buildings.

Source: General Court of the EU, judgment of 2 September 2026 **T?397/25** *A&P Deco*.

Keywords

VAT-free business transfer, input VAT deduction