

KMLZ VAT NEWSLETTER

No VAT deduction for players' agent commissions?

1. Facts

A German professional soccer club in the 1st German national league carried out transfers of professional soccer players and contract extensions with their current players in the years 2000 and 2001. The soccer players were primarily advised by players' agents who had been granted the necessary license by FIFA.

The transfer of a new soccer player or the contract extension began with the soccer club contacting the respective players' agent. Immediately after the soccer player had signed an employment contract, the soccer club and the players' agent concluded a written "payment agreement". By concluding this agreement, the soccer club and the individual player's agent agreed that the agent would receive a general fee for the "consultancy and support for the transfer or the contract extension".

Thereafter, the players' agent issued an invoice to the soccer club with a separate VAT amount. The soccer club claimed the VAT amounts as input VAT.

German Federal Fiscal Court on soccer clubs

The German Federal Fiscal Court passed its judgment (XI R 4/11) regarding VAT deduction for players' agent commissions on 28 August 2013. The key question is whether the players' agents render services to the soccer club. The German Federal Fiscal Court considers an exchange of services to be given only in exceptional cases. The German Federal Fiscal Court could not determine whether such an exchange of services did occur in this particular legal case. The German Federal Fiscal Court has remitted this case back to the tax court of first instance.

2. Tax office – tax court

Following a VAT audit, the tax authorities considered that the soccer club was not entitled to deduct input VAT from the players' agents' invoices.

The tax court Düsseldorf decided in favour of the soccer club. Due to the transfer and consultancy, the players' agents were found to have rendered a service to the soccer club.

3. The German Federal Fiscal Court's judgment

The German Federal Fiscal Court has remitted the legal case back to the tax court Düsseldorf. According to the German Federal Fiscal Court, the factual finding carried out by the tax court is not sufficient for a final decision. It is doubtful whether there is a contract between the soccer club and the players' agents. Indeed, the FIFA players' agent regulations do not allow for the players' agents to represent both sides, namely the soccer player and the soccer club.