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VAT NEWSLETTER

Intra-group invoicing: ECJ decides on input VAT deduction for subsidiary

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1 Facts of the case

Foserco SA is part of the Weatherford group. However, it is not part of a VAT group. Foserco, like other Weatherford group companies, received general administrative services (IT, human resources, marketing, accounting and consultancy) from other Weatherford companies based outside Romania. In this respect, Foserco, as the recipient of the services, declared VAT liabilities according to the reverse charge scheme. The tax authorities refused to allow Foserco to make an input VAT deduction because it had not submitted any documents proving the link between the administrative services received and its taxable output supplies. Furthermore, the tax authorities argued that the services were provided to several group companies and, thus, other members of that group or the group as a whole benefited. And the tax authorities considered the procured services to be not necessary for Foserco.

2 ECJ decision, judgment of 12 December 2024 – case C-527/23

The right to input VAT deduction requires a direct and immediate link between the procured goods and services and the recipient's output supplies. This is the case with so-called general expenses, where there is a link to the entire economic activity of the taxable person. Such general costs are – as such – a cost element of the output supplies. The ECJ emphasises that the objective content of the supplies is what matters. In this respect, the actual use of the supplies, taking into account the reason for the acquisition, is crucial. According to the ECJ's previous jurisprudence, there is no right to input VAT deduction if the procured goods and services are passed on to a subsidiary (e.g. as a shareholder contribution) without remuneration and used for its purposes.

Dr. Michael Rust
Lawyer

+49 (0) 89 217 50 12-74
michael.rust@kmlz.de

In the specific case, the ECJ considered it irrelevant that the corresponding supplies of services were provided to several recipients at the same time. The question of whether the acquisition was necessary or appropriate for the recipient was also irrelevant. However, the referring court has to determine whether the portion of the costs borne by Foserco actually corresponded to the services that Foserco utilised for its taxed supplies. The ECJ found that it was Foserco who would be responsible for bearing the burden of proof for this if doubts arise, as well as for all other facts on which the input VAT deduction was based.

3 Consequences for the practice

It is beyond doubt that the provision of similar services to several recipients within a group does not, per se, preclude input VAT deduction. For example, a parent company (holding company) often provides administrative services (bookkeeping, tax advice, rights, etc.) to various (all) subsidiaries. There is no reason why this distribution of a service to several subsidiaries should preclude input VAT deduction. It is also correct that, at the level of the recipient of the services, it is not necessary to check whether the goods or services are necessary or appropriate. The taxable person decides for themselves which procured goods and services they think they need. The latter is not specific to input VAT deduction in a group, but applies to all taxable persons.

It is not clear what the ECJ intends by its statement that the portion of costs borne must correspond to the services used. The ECJ makes this statement only when providing the grounds for its judgment, and not in its actual answer to the question raised itself. It probably means that the services for which the costs are charged must actually have been provided. Otherwise, the recipient is not allowed to make an input VAT deduction. This information is not new. Simply passing on costs from the holding company, without any supplies being provided to the subsidiary that bears the costs, is not enough to provide taxable supplies. Furthermore, it must not be 'just' a shareholder contribution.

What the ECJ's statement cannot imply, however, is a general examination of the appropriateness of remunerations. Therefore, intra-group allocation keys (just like absolute amounts) do not have to be examined in terms of their 'appropriateness' or similar when it comes to input VAT deduction at the subsidiary. These keys are often based on necessities in the area of transfer pricing. In this case, they should also be beyond reproach in terms of VAT law. The same must apply if the holding company itself develops an appropriate key and allocates the costs to the recipient subsidiaries accordingly.

In abstract terms, the ECJ mentions that general costs are a cost element of output supplies. This is correct. Insofar as a procured good or service is part of the general costs, it is a cost element of a large number of output supplies. Checking whether a procured good or service has been taken into account in a cost calculation or the like is not a prerequisite for input VAT deduction. This also corresponds to the abstract statement of the ECJ. It is therefore not necessary to prove that a corresponding calculation or suchlike has been made. Consequently, the ECJ does not mention the requirement of a cost element in its rendering of the specific case.

In practice, the tax authorities regularly question the parent company's (i.e. the holding company's) input VAT deduction. The subsidiaries mentioned here are less often the objective of such measures. However, the judgement shows that certain aspects must be taken into account when invoicing supplies of a holding company to other group companies in order not to jeopardise the input VAT deduction.

KMLZ Rechtsanwaltsgesellschaft mbH | www.kmlz.de | office@kmlz.de
D-80331 München | Unterer Anger 3 | Tel.: +49 89 217501220 | Fax: +49 89 217501299
D-40221 Düsseldorf | Speditionstraße 21 | Tel.: +49 211 54095320 | Fax: +49 211 54095399