

Input VAT newsletter

VAT: Supply of staff is subject to VAT even if without profit

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In its decision “San Domenico Vetraria Spa” (C-94/19), the Court of Justice of the European Union confirmed that the supply of staff is subject to VAT. Whether the remuneration of the service is limited to the reimbursement of the supplier’s costs is irrelevant. Concerned persons should consider all relevant facts and legal rules.

An Italian company, San Domenico Vetraria Spa, claimed a VAT deduction on the amount paid to its parent company to reimburse its costs relating to the supply of a director. The Italian VAT authorities stated that, under the Italian VAT law, such a supply is outside the scope of VAT.

The Italian labor law defines the supply of staff as follows:

“The temporary placing, by an employer, of one or more employees at the disposal of another person, for the purpose of carrying out a specific occupational activity in the employer’s own interests, constitutes secondment.

In the event of secondment, the employer shall remain legally and financially liable for the worker.”

The Court ruled that such supply is subject to VAT, even if only carried out to reimburse the related costs.

The Court reiterated some of the principles of its jurisprudence. A taxable transaction could only exist if there is a transaction for which a price or consideration exists. A legal relationship between the supplier and the beneficiary of a service assumes a reciprocal performance: i.e., the service provided by the supplier and the remuneration paid by the service’s beneficiary, which is *“(…) the value actually given in return for the service supplied to the recipient.”*

The Court stated that, even if the remuneration is limited to the reimbursement of costs, it is irrelevant for the purposes of VAT; provided that the amounts paid by the subsidiary to the parent company, on the one hand, and that lending or secondment, on the other, are interdependent. Since the amount invoiced to the subsidiary by its parent company was under the condition that the latter seconds the employee, and that the subsidiary paid this amount only in return for the secondment, the Court considers that such a direct link exists.

Regarding the quantum of the remuneration, the Court stated, *“The amount of the consideration, in particular the fact that it is equal to, greater or less than, the costs which the taxable person incurred in providing his service, is irrelevant (...)”*

The decision of the Court begs some comments.

Firstly, the decision of the Court should affect any supply where the remuneration is limited to the reimbursement of costs, which could be forgotten between companies of the same group.

We should also remind you that article 28.3. of the Luxembourg VAT law allows the authorities to reassess the value paid for goods and services between closely linked persons and claim the VAT on the normal value of these goods or services. The VAT authorities may probably argue that a third party would not have limited its price to the reimbursement of its costs and, therefore, claim the VAT. This would be a cost for any taxpayer, which may only partly recover VAT on its costs or not at all—such as banks, insurance companies, holdings, real-estate companies, etc.

Lastly, the supply of staff, as any other supply of services, would be disregarded for VAT if the two companies are part of a VAT group as foreseen by article 60ter of the Luxembourg VAT law. This would also be the case for services provided between the head office of a company and one of its fixed establishments (or between two fixed establishments of the same person), with the possible exclusion of this rule if the head office or the establishment is part of a VAT group.

Supply of staff (or any other supply) between group companies is, therefore, not neutral from a VAT viewpoint, even when not made for profit. Such supply may also lead to questions regarding the taxable basis and possible reassessment by the VAT authorities. When made within a VAT group or the same legal entity, the supply should not trigger VAT, but some exceptions may exist. In any case, concerned persons should be vigilant and take the full constellation of facts and legal rules into consideration..

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