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News Flash

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**ECJ Judgement: Identification of
real supplier for VAT deduction**

Identification of the real supplier is essential for deduction of VAT

In this issue of our News Flash, we would like to briefly outline two recent cases of the European Court of Justice (ECJ), which both concern the refusing of a right to deduct VAT in cases where the real supplier of goods or services has not been identified.

Is the realization of the supply not sufficient for VAT deduction?

In cases C-281/20 from 11th November 2021 and C-154/20 from 9th December 2021 is ECJ dealing with the similar question, whether the Council Directive on the common system of value added tax must be interpreted **that in case of undeniably realized supply of goods/services** it is necessary, among other things, to prove and identify real supplier of such goods/services, in order to exercise a right for deduction of the input tax.

The first case concerns a Spanish company Ferimet that acquired goods and the company itself issued invoice for this supply, where it has been proven that the supplier stated on the invoice is not the real supplier of goods. The real supplier of goods has not been identified. Goods were supplied in tax regime of „reverse charge“ when Ferimet taxed acquisition of goods but deduction of tax was not allowed.

The second case concerns a Czech company Kemwater ProChemie that was refused to deduct a VAT paid in respect of advertising services provided during a golf tournament. Managing director of services supplier stated that he had no knowledge of the fact that those services had been provided, and also company Kemwater ProChemie was not able to demonstrate that the mentioned company was indeed the supplier of those services.

What conditions need to be examined for VAT deduction?

As results from the settled case-law of the ECJ, the right to deduct VAT is subject to compliance with material as well as formal conditions where the fundamental principle of VAT neutrality

requires deduction of input VAT to be allowed if the material conditions are satisfied, even if the taxable person has failed to comply with some of the formal conditions.

ECJ further added that even though the naming of the supplier on the invoice relating to the goods or services on the basis of which the right to deduct VAT is exercised, is a formal condition for the exercise of that right, on the other side, **the status of the supplier of the goods or services as a taxable person is among the material conditions for the exercise of that right.**

ECJ declared in both mentioned cases that the taxable person must be refused the right to deduct VAT if, taking into account the factual circumstances and despite of the evidence provided by that taxable person, the information necessary to verify that the real supplier of goods or services had the status of taxable person is lacking, because one of the material conditions of allowing the right to deduct VAT is that the goods or services on the basis of which the right to deduct VAT is exercised, have been actually supplied by taxable person.

Impact of a non-existing tax advantage

Additionally, in Ferimet case, ECJ dealt with the question whether the non-existence of a factual tax advantage has any impact on the company's right to deduct VAT. **ECJ stated that a non-existing factual tax advantage or fact if VAT payable on the prior or subsequent supplies of the goods concerned has or has not been paid to the treasury is irrelevant to the right of the taxable person to deduct VAT. A finding of a risk of loss of tax revenue is not, therefore, necessary in order to justify such refusal of right to deduct VAT.**

Recommendation

For exercising the right to deduct VAT is important not only the fact if the goods or services have been supplied, but also knowing by whom they have actually been supplied. Importance of identification of the factual supplier shall not be underestimated. **We recommend to taxable persons, for the purpose of possible later tax audit, to secure all available evidence proving by whom the goods or services have actually been supplied.** Burden of proof lies on taxable person.

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