

CJEU RULING VAT – SECONDMENT OF STAFF BY A PARENT COMPANY TO ITS SUBSIDIARY

Based on EU rules reimbursements of secondment costs are subject to VAT (*)



Italian VAT treatment of secondment

The temporary placing, by an employer, of one or more employees at the disposal of another legal entity, 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, but the employment costs are charged to the receiving entity. With reference to the VAT treatment, the article 8 (35) of legge n. 67 — Disposizioni per la formazione del bilancio annuale e pluriennale dello Stato (legge finanziaria 1988) (Law No 67 laying down provisions for drawing up the annual and pluriannual budget of the State (Finance Law 1988)) of 11 March 1988 (Ordinary Supplement to GURI No 61 of 14 March 1988) ('Law No 67/88') provides:

"The lending or secondment of staff in respect of whom only the related cost is reimbursed shall not be regarded as relevant for the purposes of VAT"

The dispute in the main proceedings and the question referred for a preliminary ruling of CJEU

In 2004, Avir (Parent Co) seconded one of its directors to its subsidiary, San Domenico Vetraria, to hold the position of director of one of San Domenico Vetraria's establishments. In that context, San Domenico Vetraria received invoices from its parent company showing amounts corresponding to the costs incurred for the seconded manager. When reimbursing Avir for the costs relating to the secondment, San Domenico Vetraria applied VAT for the purposes of the subsequent exercise of the right to deduct.

The Italian tax authorities took the view that those reimbursements fell outside the scope of VAT since they did not concern supplies of services between a subsidiary and its parent company, with the result that

it made an adjustment in order to recover the VAT deducted in that regard.

Ruling of CJEU

The Court ruled that the Sixth Directive must be interpreted as precluding national legislation under which the lending or secondment of staff of a parent company to its subsidiary, carried out in return for only the reimbursement of the related costs, 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.

Which are the impacts of this decision

Based on the CJEU cases law a taxpayer can ask the judge to check if the national legislation is in accordance with the EU rules and the national judge should follow the CJEU ruling. The vice-versa i.e. the Italian tax authority asking the judge to follow the EU rulings is not allowed at the moment, considering the development of the CJEU case laws.

Nevertheless, this ruling should be considered to analyze the transaction flows in a group of companies.

For further information please contact
 Marcello Ascenzi – Principal - S-Actis
 Email: Marcello.ascenzi@sactis.it
 web: S-Actis