

Input VAT deduction rights 3/2/25



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Businesses, especially those with cross-border operations, are not finding it easy to apply value added tax (VAT).

In the context of domestic as well as cross-border transactions, we have discussed more than once how a customer's free transfer of equipment to a service provider affects the amount of a subsequent supply of services. In practice, there are situations where a service provider lacks some specific equipment he needs for providing services to a customer, and the customer transfers the necessary equipment to the service provider free of charge. Also, there was uncertainty as to whether such a transactional structure affects the customer's right to deduct input VAT on the equipment.

In its recent judgment C-475/23 Voestalpine Giesserei Linz GmbH, the Court of Justice of the European Union (CJEU) has ruled on the right to deduct input VAT in such a transactional structure.

In this article we present the CJEU's perspective on this issue.

The circumstances of the case were as follows:

- Voestalpine, an Austrian company registered for German VAT, manufactures and sells large moulded parts.
- Voestalpine sent various parts to Romania for processing, testing, polishing, welding, heat treatment, etc. Because the parts were processed in Romania, from where they were often delivered direct to customers in other member states, Voestalpine was registered for Romanian VAT and reported the parts sent for processing as intra-Community supplies/acquisitions.
- Voestalpine indicated its Romanian VAT number on invoices issued to customers for goods sent from Romania after the processing service.
- Voestalpine has an agreement with Austrex for processing steel products in Austria and Romania with the right to use subcontractors for this purpose. In Romania, the processing is done by GEP, Austrex's Romanian subcontractor.
- To receive the necessary processing services, Voestalpine allowed Austrex to use a building it owned in Romania with the right to make it available to GEP. Under the terms of the agreement, Austrex was responsible for routine maintenance of the building and the equipment it contained, while Voestalpine was responsible for repairs in the event of serious damage or significant wear and tear.
- Voestalpine purchased a crane and installed it on the grounds of the Romanian building made available to Austrex and GEP. The crane enabled GEP to provide services to Voestalpine.
- Voestalpine deducted input VAT on the crane and incurred a VAT overpay.
- The tax authority claimed that Voestalpine was unable to prove the crane was linked to taxable supplies, as the premises had been transferred to Austrex free of charge. The tax authority also found that Voestalpine had failed to draw up a general balance sheet to show the income and expenses associated with its Romanian activities. So the tax authority refused to refund the overpaid VAT.

The dispute landed in the Romanian Court of Appeal, which chose to refer two questions to the CJEU for a preliminary ruling:

- May Voestalpine be denied the right to deduct input VAT on goods it has purchased and made available to a subcontractor free of charge to enable him to provide services to Voestalpine?
- May Voestalpine's failure to keep separate accounts for its fixed establishment be the basis for denying input VAT deduction?

The CJEU began by citing the basic principle of input VAT deduction: to the extent the taxable person uses the acquired goods (services) for his taxable supplies, he has the right to deduct the VAT payable or paid on those goods (services).

Accordingly, if an input VAT entitlement is to be recognised, there must be a direct and immediate link between a specific transaction carried out previously and one or more subsequent transactions giving rise to deduction rights. The right to deduct VAT on goods exists if their acquisition cost is part of the price of transactions on which VAT is payable in the future. Deduction rights are also recognised if the cost of those goods is part of the taxable person's general expenses and as such is included in the price of goods or services he supplies.

It's essential that all the circumstances in which transactions took place should be taken into account when assessing the right to deduct input VAT. Accordingly, the CJEU stated that the national court must primarily assess whether there is a direct and immediate link between the crane acquisition and one or more subsequent taxable supplies or economic activities carried out by Voestalpine.

The circumstances of the case indicate that the processing of moulded parts would not have been possible without Voestalpine's crane acquisition, and Voestalpine would not have been able to carry out its economic activity without purchasing the crane. The fact that Austrex and its subcontractor derive a direct benefit from the crane being made available to them free of charge, cannot affect Voestalpine's right to deduct VAT on the acquisition. Of course, the national court should establish whether the acquisition cost is part of the price of one or more taxable supplies subsequently made by Voestalpine. If there are no such supplies, the court should ascertain the extent to which the cost forms part of Voestalpine's general costs and is included in the price of goods and services it supplies in the course of business. The fact that GEP benefits from the crane free of charge cannot in itself justify denying Voestalpine the right to deduct VAT on those costs. It's irrelevant whether Voestalpine's crane acquisition cost affected the price of GEP services. However, the national court should ascertain whether the use of the crane was restricted to the sole purpose of providing services to Voestalpine. If the crane was used for other purposes too, an input VAT entitlement should be recognised only to the extent the crane was used for Voestalpine's taxable supplies.

In answering the second question, the CJEU states that the fundamental principle of VAT neutrality requires that input VAT deduction rights should be maintained even if the taxable person fails to meet certain formal requirements. This means, however, that the tax authority should have the necessary information to establish that the essential requirements for deducting input VAT are satisfied. Requirements relating to accounting, invoicing and tax compliance are formal requirements. Accordingly, the taxable person cannot be denied deduction rights if the tax authority is able to run the necessary checks to establish that the taxable person meets the essential requirements for deducting input VAT.

The CJEU has already ruled that restricting input VAT deduction rights is an excessive penalty for failure to comply with accounting and tax reporting obligations. The member states may impose administrative fines for non-compliance with formal requirements.