

Indirect Tax Services

Newsletter



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VAT opportunity for employers with pension funds - Right to deduct input VAT on services relating to the administration of pension funds

ECJ Judgement in Fiscale eenheid PPG Holdings BV *cs te* Hoogezand(PPG) (C-26/12)

The European Court of Justice (hereafter referred to as "ECJ") issued its judgement in the PPG case concerning the right of the employer who established a separate pension fund for its employees, to recover input VAT incurred on services procured from third parties for the day-to-day administration of the fund and the management of the fund's assets.

Case Facts

In compliance with Dutch national law, the PPG Group had set up a pension fund to provide for retirement pensions for its employees. As required by the applicable Dutch legislation, the pension fund was set up as a separate entity and did not form part of the PPG group for VAT purposes. The companies in the PPG Group paid contributions into the fund and the pension payments and financing costs were met from those contributions and from investment income. The employees made no contributions themselves into the fund, however, upon retirement they received a defined benefit (pension) from the fund.

One of the companies of the PPG Group had contracted with third party providers for administration and asset management services to be provided to the fund, and took responsibility for paying for those services, including the VAT charged. The VAT suffered was claimed as recoverable by the PPG VAT group.

The Dutch VAT authority considered that the above mentioned VAT was not recoverable and issued an assessment. PPG appealed the assessment but this was dismissed and the dispute proceeded to the referring court.

PPG argued that the expenditure, being for the benefit of its employees, formed part of the overheads of its taxable economic activity and should thus be recoverable, or alternatively that the fund should be considered as a 'special investment fund' for VAT purposes, in which case its management should be exempted from VAT.

The national court referred the following questions to the ECJ:

- whether a taxable person who, pursuant to national pensions legislation, has established a separate pension fund for the purpose of safeguarding the pension rights of his employees, can recover the VAT which he has paid on services supplied to him in respect of the implementation of the pension obligation and the operation of the pension fund
- whether a pension fund, established for providing a pension for its participants, and where assets are brought to and invested in the fund by or on behalf of its participants, and where the resulting proceeds are shared between the participants, can be classified as a 'special investment fund' for VAT purposes.

ECJ Judgement

The ECJ confirmed that a right to recover input VAT exists on costs which are either a component of a business' taxable transactions or a general overhead cost of the business and are incorporated into the charges it makes for its taxable supplies of goods and services.

Even though the pension fund had been established as a separate entity, it was necessary to consider whether the VAT incurred by PPG on costs relating to the fund was a cost component or general overhead cost of PPG.

The Court considered that PPG in compliance with its legal obligations, had incurred the costs for the purpose of the administration of its employees' pensions and the management of the assets of the pension fund. Therefore, insofar as the costs incurred formed part of PPG's general overhead costs, they were component parts of the price of PPG's products.

The ECJ considered that the national court would need to determine the extent to which the input VAT formed part of the general overhead costs of PPG. However, the ECJ held that it was open to the national court to find that the sole reason for an employer to incur input services of this kind was for the employer's taxable activities and therefore that there was a direct and immediate link with its taxed transactions.

The ECJ also commented that PPG's decision to establish the fund as a separate entity should not prevent it from recovering the input VAT suffered, as that would offend the principle of fiscal neutrality. That conclusion was not affected by the availability of adopting alternative pension fund arrangements, which did not involve a separate entity. Taxpayers must be free to adopt the arrangements which are appropriate for their business's circumstances and limit their tax liabilities.

The ECJ did not answer directly the second question referred but indicated that it is identical in substance to the question answered by the ECJ in Case C-424/11 *Wheels Common Investment Fund Trustees and Others*. In that case, the ECJ took the position that an investment fund pooling the assets of a retirement pension scheme is not a 'special investment fund' where the members of the scheme do not bear the risk arising from the management of the fund and the contributions which the employer pays into the scheme are a means by which he complies with his legal obligations towards his employees.

PwC comments:

The ECJ decision may have a beneficial impact for companies that may have not been claiming recovery of input VAT suffered for costs they incurred for the day-to-day administration and investment management services for pension / provident funds set up for the benefit of their employees. In this respect, such companies may need to consider whether there is scope to file VAT refund claims.

In addition, the companies may also need to reconsider the structuring of the pension arrangements made for their employees, in light of the decision.

Way forward: how PwC can help you

Our teams are ready to discuss the impact of the above case for your business and offer support with respect to any compliance or planning steps that you may decide to take.

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