



This Newsletter refers to a recent judgment of the European Court of Justice case c-707/18 regarding the right to deduct the input VAT in relation to the costs occurred for the first registration of immovable property during the sale of the property.

Facts of the case

The case involved the sale of immovable property which is not included in the national Land Register. The purchaser, who is a taxable person had a contractual obligation to carry out, at his own expense, the necessary steps for its first registration in the Land Register. Under Romanian law, the first registration obligation lies on the vendor. The costs linked to the first registration of that land in the Land Register, were not re-invoiced to the vendor of the property.

Questions referred to the Court

The Court was asked, *inter alia*, to interpret the VAT Directive in light of the following:

1. Whether the costs of administrative operations relating to immovable property must necessarily be borne by the vendor or instead may such costs be borne by the purchaser pursuant to their bilateral agreement which will result to an entitlement to the purchaser to deduct the VAT; and
2. Whether the purchaser in the above transaction carries out a supply of services to the vendor, or instead a purchase of services relating to his investment in immovable property and hence, he is entitled to deduct VAT.

Judgement

The ECJ ruled that the VAT Directive must be interpreted as follows:

1. The VAT Directive does not preclude the parties to a transaction, from agreeing a clause according to which the future purchaser will incur some or all of the costs of the administrative formalities relating to that transaction, in particular those connected with the first registration of that property in the national land register. However, the mere presence of such a clause in a bilateral promise for the sale of immovable property is not determinative in order to ascertain whether the future purchaser is entitled to deduct the VAT relating to the payment of the costs arising from the first registration of the property in the Land Register.

2. The future purchaser — a taxable person — was deemed to have supplied the services in question to the future vendor, even though the parties to the contract agreed that the sale price of that property does not include the value of the land-registration operations.

Implications

Following the delivery of the aforementioned judgement, when a taxable person incurs expenses that are legally liable to be incurred by another person, then it may be assumed that Article 28 of the Directive will be applicable. In this instance, the taxable person will be deemed liable to pay VAT, even if he does not recharge/re-invoice those expenses.

How PwC can help you

Our designated team of Indirect Tax Specialists is at your disposal to discuss the potential impact of the case in your business and assist in the correct application of the rules.

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