



Italy: VAT rules on staff secondment are in contrast with the VAT Directive

ECJ judgment in Case C-94/19

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Offices

Milan

Via Vittor Pisani 31, 20124
T: +39 02 676441

Ancona

Via I° Maggio 150/a, 60131
T: +39 071 2916378

Bologna

Via Innocenzo Malvasia 6, 40131
T: +39 051 4392711

Florence

Viale Niccolò Machiavelli 29, 50125
T: +39 055 261961

Genoa

P.zza della Vittoria 15/12, 16121
T: +39 010 5702225

Naples

Via F. Caracciolo 17, 80122
T: +39 081 662617

Padua

Piazza Salvemini 2, 35131
T: +39 049 8239611

Perugia

Via Campo di Marte 19, 06124
T: +39 075 5734518

Pescara

P.zza Duca D'Aosta 31, 65121
T: +39 085 4210479

Rome

Via Adelaide Ristori 38, 00197
T: +39 06 809631

Turin

C.so Vittorio Emanuele II 48, 10123
T: +39 011 883166

Verona

Via Leone Pancaldo 68, 37138
T: +39 045 8114111

On 11 March 2020 the ECJ passed judgment in Case C-94/19 ('San Domenico Vetraria SPA'), on the VAT treatment of staff seconded by a parent company to its subsidiary. For Italian taxpayers the judgment will have a considerable impact on the treatment of staff secondments.

According to current Italian law⁽¹⁾, the secondment of staff (i.e. the placing by an employer of one or more employees at the disposal of another person 'to carry out an activity in the employer's own interest') is regarded as 'outside the scope' of Italian VAT, if the other person only reimburses the exact costs incurred by the employer (salary, social security contributions, expenses, etc.).

In the case examined by the ECJ, Avir SpA (the parent company) seconded one of its directors to San Domenico Vetraria SpA (the subsidiary) to manage one of the latter's establishments. Italian VAT was added to the costs of the secondment reimbursed by San Domenico Vetraria, which recovered this VAT. The Italian tax authorities, arguing that those reimbursements fell outside the scope of VAT as they did not relate to supplies between the parent company and the subsidiary, disallowed the VAT recovered on those reimbursements. The Italian Supreme Court decided to refer to the ECJ the question of whether the secondment of staff in return for reimbursement of costs must be regarded as a taxable supply of services.

The ECJ has confirmed that a supply of services is made for consideration if, between the provider of the service and the recipient, there is a legal relationship that involves reciprocal performance. In the case at hand, it appears that the performance by each of the two parties was dependent on that of the other; therefore, the transaction should be regarded as being a supply of services for consideration. The amount of the consideration, i.e. whether it is equal to or greater or less than the costs incurred by the taxable person in providing the services, is irrelevant.

(1) Article 8(35) of Law no. 67 of 11 March 1988.

On the basis of this, the ECJ concluded that Italian legislation – which states that the secondment of staff is outside the scope of VAT if carried out only in return for the reimbursement of the costs – is contrary to article 2(1) of the Sixth VAT Directive.

The judgment marks a significant change in the Italian rules on staff secondment and goes against a consolidated body of case law and national practice. All Italian companies, or companies with a presence in Italy, that second staff to other taxpayers on a ‘cost-reimbursement’ basis will have to assess the significance of this judgment for their pricing and invoicing practices as (according to the ECJ decision) they will now have to treat these secondment charges as taxable supplies.

This decision might have a particular impact on the financial sector, in cases where the host company carries out exempt activities with limited or no right to recover input VAT.

It is reasonable to expect (pending Italian guidelines) that the judgment should not be retroactive, since that would be contrary to the principle of legal certainty, as repeatedly confirmed by the ECJ⁽²⁾.

(2) See, for example, Case C-326/15, DNB Banka AS.

Contacts

KPMG, Tax & Legal

Davide Morabito
Partner
Indirect Tax Services
E: dmorabito@kpmg.it
T: +39 045 811 4325

Elia Travagliati
Senior Manager
Indirect Tax Services
E: etravagliati@kpmg.it
T: +39 045 811 4111

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