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Judgment of the Court of Justice in Case C-465/03

Kretztechnik AG v. Finanzamt Linz

A COMPANY MAY DEDUCT INPUT TAX ON SUPPLIES RECEIVED IN CONNECTION WITH A NEW SHARE ISSUE PROVIDED THAT ITS ECONOMIC ACTIVITIES ARE SUBJECT TO VAT

Although share issues do not themselves come within the scope of the VAT system, the supplies in question have a direct and immediate link with the whole economic activity of the taxable person. Those supplies form part of its overheads and are thus components of the price of its products.

The Sixth VAT Directive ¹ harmonises value added tax at Community level. The right to deduct input tax is an integral part of the VAT scheme and cannot in principle be limited. The deduction system is meant to relieve the trader entirely of the burden of the VAT payable or paid in the course of all his economic activities. Accordingly, a taxable person may deduct input tax on supplies received from the amount of tax which he has invoiced to his customers for output transactions.

Kretztechnik, a company limited by shares established in Austria, develops and sells medical apparatus. In January 2000, Kretztechnik resolved to increase its capital by issuing new shares. For that purpose, it was admitted to the Frankfurt Stock Exchange. It was required to pay VAT on the supplies it received in that connection (advertising, lawyers' fees, technical and legal advice). Subsequently, the tax authorities (Finanzamt Linz) refused to allow it to deduct VAT input tax on the ground that a share issue is a transaction exempt from VAT. Kretztechnik challenged the tax assessment before the competent Austrian court (Unabhängiger Finanzsenat, Außenstelle Linz – Independent Tax Tribunal, Linz), which asked the Court of Justice of the European Communities to rule as to whether a company carries out a transaction for consideration within the meaning of the Sixth VAT Directive when it issues shares for new shareholders against payment of an issue price upon being

¹ Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes – Common system of value added tax: uniform basis of assessment (Official Journal 1977 L 145, p. 1), as amended by Council Directive 95/7/EC of 10 April 1995 (OJ 1995 L 102, p. 18).

admitted to a stock exchange, and whether that directive confers a right to deduct input tax paid on the supplies of services connected with the share issue.

The fiscal nature of a share issue

The Court pointed out, first, that it is clear from the Sixth Directive that only activities of an economic nature are subject to VAT. According to settled case-law, the mere acquisition of financial holdings is not an economic activity in that sense. The same applies to sales of such holdings.

Moreover, the fiscal nature of a share issue does not differ depending on whether it is made by a company for the purpose of admission to a stock exchange or by a company not quoted on the stock exchange.

The Court then pointed out that, in the case of a partnership, the admission of a partner in return for a cash contribution does not constitute a supply of a service for consideration within the meaning of the Sixth Directive. The same applies to the issue of new shares. When a company increases its capital, its aim is to acquire capital and not to provide services. The shareholder's aim is to make an investment or to employ capital and payment of the requisite sums does not amount to payment of consideration. The Court therefore found that a new share issue is not an economic activity falling within the VAT system.

Deduction of VAT on supplies connected with the new share issue

The Court observed that the common system of VAT ensures complete neutrality of taxation of all a trader's economic activities, provided that those activities are themselves subject in principle to VAT. Thus, for VAT to be deductible, the input transactions must have a direct and immediate link with the output transactions conferring the right to deduct.

That link exists in the present case. Since a share issue is an operation not falling within the VAT system and since Kretztechnik carried it out in order to increase its capital for the benefit of its economic activity in general, the costs of the services which it obtained in that connection form part of its overheads and, as such, are components of the cost of its products.

The Court concluded that the Sixth VAT Directive allows deduction of all the VAT on expenditure incurred in respect of the various supplies received by a taxable person in connection with a share issue, provided that all the transactions undertaken by that taxable person in the context of his economic activity constitute taxed operations. If the taxable person carries out at the same time transactions that give rise to a right of deduction and transactions which do not, the deduction allowed is merely proportional.

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Languages available: DE, EN, FR

The full text of the judgment may be found on the Court's internet site

<http://curia.eu.int/jurisp/cgi-bin/form.pl?lang=en>

It can usually be consulted after midday (CET) on the day judgment is delivered.

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