

Case Alert

Is VAT reclaimable? Yes says the CJEU

CJEU overturns Advocate General Kokott's opinion

Summary

The issue in this case was whether a developer could reclaim VAT incurred on the supply of repair and renovation works carried out on infrastructure belonging to a third party.

The developer had been granted permission to develop a holiday park by the local Municipality. However, the development would need to use the existing water treatment works owned and operated by the Municipality. The developer undertook to upgrade the plant at its own expense and reclaimed the VAT charged to it by its sub-contractor.

Overruling the Advocate General, the CJEU has ruled that the input VAT is reclaimable by the developer.

Court of Justice Judgment - Iberdrola

It is not often that the full court overturns an opinion of one of its Advocates General. This is one of those rare cases where the court has taken no account of the previous opinion – issued in this case by Advocate General Kokott. In her opinion issued in May 2017, the Advocate General considered that VAT (input tax) incurred by the taxpayer on the refurbishment of a water pumping station could not be reclaimed. This was on the basis that, in her view, there was no direct or immediate link between the costs incurred and the taxpayer's taxable activity of operating a holiday park. AG Kokott considered that as the pumping station was owned by the local municipality, which paid no money for the works performed by the taxpayer business, the direct and immediate link was with a free supply of services by Iberdrola to the municipality. In her view, such a supply for no consideration meant that the VAT incurred by Iberdrola on the cost of the works could not be reclaimed.

In a fairly short judgment, the full court has taken the unusual step of ignoring the Advocate General's opinion. The Court considers that where, as here, the taxpayer will use the asset in question for the purposes of its own business, the input VAT incurred on the works can be reclaimed in full. In this case, it was clear that Iberdrola would connect its holiday homes to the water pumping station and that without the works being undertaken to upgrade it, it would be unable to carry on its economic activity of letting holiday homes. In other words, the expenditure was necessary for it to carry on its taxable economic activity. In the court's view, therefore, there was the necessary direct and immediate link between the expenditure (input) and the taxable supplies (output) to be made by Iberdrola. The fact that the local municipality would also use the pumping station for the purpose of its own economic activities did not preclude Iberdrola from being able to recover the VAT charged to it by its sub-contractor.

Comment – we said at the time of the AG's opinion that it was a 'strange' opinion. Thankfully, the Court has restored some sanity. There was some concern that s106 agreements may be impacted but the court has made it clear that where services are to be used by a business, are necessary for its own economic activity and the cost is included in the value of its own outputs, the input VAT incurred can be reclaimed in full even if another person also uses those services. Although there remains a question mark over what is "necessary" the case lends welcome support to UK policy in this area.

© 2017 Grant Thornton UK LLP. All rights reserved.

'Grant Thornton' refers to the brand under which the Grant Thornton member firms provide assurance, tax and advisory services to their clients and/or refers to one or more member firms, as the context requires.

Grant Thornton UK LLP is a member firm of Grant Thornton International Ltd (GTIL). GTIL and the member firms are not a worldwide partnership. GTIL and each member firm is a separate legal entity. Services are delivered by the member firms. GTIL does not provide services to clients. GTIL and its member firms are not agents of, and do not obligate, one another and are not liable for one another's acts or omissions.

This publication has been prepared only as a guide. No responsibility can be accepted by us for loss occasioned to any person acting or refraining from acting as a result of any material in this publication.

grant-thornton.co.uk

Contact

Stuart Brodie	Scotland	stuart.brodie@uk.gt.com	(0)14 1223 0683
Karen Robb	London & South East	karen.robbs@uk.gt.com	(0)20 772 82556
Vinny McCullagh	London & South East	vinny.mccullagh@uk.gt.com	(0)20 7383 5100