

ECJ Case C-94/19: Secondment of Staff Without Mark-up is Subject to VAT

By **Pasquale Della Corte**

The Italian Supreme Court requested a preliminary ruling concerning the interpretation of the Articles 2 and 6 of the Sixth Council Directive 77/388/EEC, since Italian VAT law provides that the lending or secondment of staff, in respect of whom only the related cost is reimbursed, shall not be regarded as relevant for the purposes of VAT.

The European Court of Justice (ECJ) ruled that the Article 2, point 1, “must be interpreted as precluding national legislation under which the lending or secondment of staff of a parent company to its subsidiary, carried out in return for only the reimbursement of the related costs, is irrelevant for

the purposes of VAT, provided that the amounts paid by the subsidiary to the parent company, on the one hand, and that lending or secondment, on the other, are interdependent.”

In clarifying that, in the above-mentioned case, lending or secondment of staff is also to be subjected to VAT. The ECJ based the judgement on detailed, settled case-law.

In general, taxable transactions presuppose the existence of a transaction between the parties in which a price or consideration is stipulated. In addition, a supply of services is “for consideration” if there is a legal relationship between the provider of the service and the recipient, pursuant to



which there is reciprocal performance, with the remuneration received by the provider of the service, constituting the value actually given in return for the service supplied to the recipient. That is the case if there is a direct link between the service supplied and the consideration received. Moreover, there is a direct link where two services are mutually dependent on each other.

The circumstance that, according to Italian VAT law, made the transaction not relevant for VAT purpose (i.e. that the price was a cost reimbursement only), was not considered relevant by the ECJ.

The fact that the consideration amount is equal to, greater, or less than, the costs which the taxable person incurred in providing his service is not such as to affect the direct link between the services supplied and the consideration received.

The decision of the ECJ will cause the need to redesign the structure of the ‘groups’ for business not allowed to fully deduct VAT.

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Pasquale Della Corte is a Chartered Accountant and has about ten years of experience in VAT and international tax advising foreign companies with subsidiaries and branches in Italy. He is also a member of the Study Commission for Non-Profit Institutions of the Institute of Chartered Accountants of Rome.