



Indirect Taxes NEWS



**Brexit,
e-commerce
and a VAT
presence in the
Netherlands –
at what cost?**
and other updates

Newsletter
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ECJ Case C-405/19: VAT deduction for procured services that have also benefited third parties

By  **Pasquale Della Corte**

The Belgium Supreme Court requested a preliminary ruling concerning the interpretation of Article 17(2) (a) of the Sixth Council Directive 77/388/EEC about a case related to the deductibility of VAT charged on the acquisition of estate agency, advertising and administrative services.

ECJ ruled that Article 17(2) (a) *“must be interpreted as meaning that the fact that expenditure incurred by a taxable person, a property developer, in respect of advertising costs, administrative costs and estate agents’ commission, in connection with the sale of apartments, also benefits a third party, does not preclude that taxable person deducting in full the input VAT paid on that expenditure where, firstly, there is a direct and immediate link between that expenditure and the taxable person’s economic activity and, secondly, the benefit to the third party is ancillary to the taxable person’s business purposes”*.

Moreover, the deduction is not precluded in cases where the above-mentioned *“expenditure does not relate to the taxable person’s general overheads but constitutes costs attributable to particular output transactions, in so far as those costs maintain a direct and immediate link with the taxable person’s taxable transactions”*.

In this context, the fact that a third party also derives a benefit from services supplied to the taxable

person cannot have the effect of limiting the scope of the taxable person’s right to deduct VAT. However, it remains important to evaluate every element to determine the scope of the taxable person’s right to deduct VAT.

In fact, according to the ECJ, the circumstance in which a taxable person may pass on to a third party part of an expenditure gives some support to the conclusion that a part of the cost relates, not to the output transaction carried out by the

taxable person but, to the transaction carried out by the third party.

After this decision, companies should revise (reconsider) their pricing policy, especially with reference to inter-group transactions.

GGI member firm
COMMA 10
Chartered Accountants & Lawyers
Advisory, Auditing & Accounting,
Corporate Finance, Tax
Milan, Italy

T: +39 02 481 9258

W: comma10.it

 **Pasquale Della Corte**


E: pasquale.dellacorte@comma10.it

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Pasquale Della Corte

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 **Pasquale Della Corte** is a Chartered Accountant and has over 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.

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