

Input Vat on Fees Relating to the Investment of Donations and Endowments



On 3 July 2019, the ECJ published a judgment (Câ€™316/18 University of Cambridge v HMRC) clarifying whether input VAT relating to fees, paid by a not-for-profit educational establishment in the context of the investment of donations and endowments in a fund, may be deducted. The case concerned the University of Cambridge, which finances itself in part through donations and endowments, which are placed into a fund with the aim of generating resources. That fund is managed by a third party. In March 2009, the University of Cambridge submitted a claim requesting the deduction of the VAT relating to the fees paid for the management of the relevant fund, arguing that the income generated by that fund had been used to finance the whole range of its activities, including not only educational services, but also VAT taxable operations such as, for example, the sale of publications, advice and lease of material and installations. The Commissioners rejected that claim on the ground that the costs were directly and exclusively attributable to the investment activity, which does not fall within the scope of VAT.

In this context, the ECJ was requested to clarify whether input VAT, paid in respect of the costs associated with the investment of donations and endowments in a fund with the aim of generating resources intended to finance the whole range of activities of an educational establishment, is deductible.

In its response, the ECJ recalled that Article 168 of the Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (the “VAT Directive”) clearly provides that the right to deduct arises only in so far as the goods and services are used for the purpose of taxable transactions. By way of exception, a taxable person also has a right to deduct even where there is no direct and immediate link between a particular input transaction and a taxable output transaction, if the costs of the goods or services in question are part of his general costs and are, as such, components of the price of the goods or services which he supplies.

However, in the case at hand, the ECJ found that the donations and endowments were not consideration for any economic activity. The investment of the donations and endowments may be directly linked to their collection and, consequently, was considered a direct continuation of that non-economic activity by the ECJ.

The ECJ conceded that costs which are incurred in the context of a non-economic activity may give rise to deduction to the extent these costs are incorporated into the overall price of goods and services provided by the taxable person in the context of its economic activity. However, given that the costs at issue were used to generate resources, financing all of that university’s output transactions, thus allowing the price of the goods and services provided by the latter to be

reduced, the ECJ concluded that those costs cannot be considered to be components of those prices and, consequently, do not form part of the taxpayer's general costs.