

# ECJ Advocate General Opines on VAT Treatment of Training Services in Execution of State Aid Schemes: *Latvijas Informācijas un komunikācijas tehnoloģijas asociācija* (Case C-87/23) (VAT)

7 March 2024

Report from Stefania Lotito Fedele, VAT Associate, IBFD

On 7 March 2023, Advocate General (AG) Kokott of the Court of Justice of the European Union (ECJ) gave her opinion in the case of *Biedrība 'Latvijas Informācijas un komunikācijas tehnoloģijas asociācija' v Valsts ieņēmumu dienests* (Case C-87/23) on whether a non-profit organization implementing State aid schemes funded by the European Regional Development Fund but not delivering the training services directly can be considered a taxable person, according to article 9(1), 2(1)(c) and 28 of the [VAT Directive \(2006/112\)](#). If so, the referring court seeks clarity on determining the taxable amount, as the organization issued tax invoices to aid recipients with only 30% of the service cost included, pursuant to article 73 of the [VAT Directive \(2006/112\)](#).

In this sense, the AG considered that, in order to determine whether the non-profit organization should be considered a taxable person, the interpretation of the second subparagraph of article 9(1) of the [VAT Directive \(2006/112\)](#) requires a comparison of the specific activity with that of an average taxable person within the relevant professional category, such as a provider of training services in this case. Thus, there is no doubt that the non-profit organization is carrying out an independent economic activity.

In addition, the AG stated that article 2(1)(c) of the [VAT Directive \(2006/112\)](#) does not require the supplier to personally provide the service, given that it may subcontract the provision of the service to an independent third party acting on its behalf. If there is a contract where a service is bought or sold in the name of the supplier, but on behalf of a third party, article 28 of the [VAT Directive \(2006/112\)](#) applies, being a commissionaire agent transaction.

Finally, the AG concluded that with regard to subsidies paid by a fund to specific service providers for a particular service, article 73 of the [VAT Directive \(2006/112\)](#) considers them to be part of the taxable amount.

On these grounds, the AG proposed the ECJ to answer the questions referred for a preliminary ruling as follows:

"1. The second subparagraph of Article 9(1) of the VAT Directive [[VAT Directive \(2006/112\)](#)] must be interpreted as requiring, in the context of an overall assessment, a comparison of the specific activity with that of a taxable person typical of the professional category in question (here, a provider of training services). The comparable manner of the provision of training services gives rise to no doubts in the case at hand about the performance of an independent economic activity.

2. Article 2(1)(c) of the VAT Directive [[VAT Directive \(2006/112\)](#)] does not require the supplier to provide the service in person. He or she may also use an independent third party as a subcontractor who performs the service in or under his or her name. If there is a contract under which a service is purchased or sold in his or her own name but on behalf of a third party, Article 28 of the VAT Directive [[VAT Directive \(2006/112\)](#)] applies, which changes the subject matter of the supply by the commission agent and, in the case of sales commission, also the direction of that supply.

3. The subsidies that a fund pays to particular service providers for a specific service are, under Article 73 of the VAT Directive [[VAT Directive \(2006/112\)](#)], included in the taxable amount as a payment by a third party which the supplier receives for that service."

---

European Union; Latvia - ECJ Advocate General Opines on VAT Treatment of Training Services in Execution of State Aid Schemes: Latvijas Informācijas un komunikācijas tehnoloģijas asociācija (Case C-87/23) (VAT) (07 Mar. 2024), News IBFD.

Exported / Printed on 10 Mar. 2024 by hkermadi@deloitte.lu.