

ECJ Advocate General Opines on Right to Deduct VAT Where Minimum Threshold for Taxable Output Transactions Is Not Met: *Feudi di San Gregorio Aziende Agricole SpA v. Agenzia delle Entrate* (Case C-341/22) (VAT)

28 September 2023

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On 28 September 2023, Advocate General (AG) Collins of the Court of Justice of the European Union (ECJ) gave his opinion in the case of *Feudi di San Gregorio Aziende Agricole SpA v. Agenzia delle Entrate* (Case C-341/22) on whether Member States can enact legislation that restricts the possibility to carry forward the VAT credits of a taxable person designated as non-operational, when it fails to meet a minimum threshold for VAT taxable output transactions for 3 consecutive tax years, in accordance with article 9 of the [VAT Directive \(2006/112\)](#) and the principles of legal certainty, legitimate expectations, neutrality and proportionality.

The AG answered the questions by stating that the status of taxable person cannot be refused to an individual who has conducted active transactions relevant for VAT purposes for 3 consecutive years, even if those transactions are deemed inconsistent with the income that can be reasonably expected from their assets. Nevertheless, a national legislation that restricts the company's deduction of VAT, when it cannot prove the presence of objective circumstances that explain the low outcome, does not breach the principles of neutrality, proportionality, legal certainty or protection of legitimate expectations.

In this case, the AG suggested to give answer to the referred questions as follows:

"(1) Article 9(1) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax [[VAT Directive \(2006/112\)](#)]

must be interpreted as meaning that the status of taxable person may not be refused where, in three consecutive years, the relevant transactions for VAT purposes carried out are of a value which is deemed not to be commensurate with the income which the available assets may be reasonably expected to yield.

(2) The principle of VAT neutrality and the principle of proportionality

must be interpreted as meaning that they do not preclude national legislation under which the right to deduct input VAT paid on purchases or to be reimbursed such VAT or to use such VAT in a subsequent tax period may be refused where, in three consecutive tax years, the relevant transactions for VAT purposes carried out are of a value which is not deemed commensurate with the income which the

available assets may reasonably be expected to yield and the taxable person concerned is unable to provide evidence of objective circumstances to explain that result. The conditions under which that evidence may be adduced must not make it virtually impossible or excessively difficult for the persons concerned to exercise the right to deduct VAT, which is a matter for the referring court to verify.

(3) The principle of legal certainty and the principle of the protection of legitimate expectations

must be interpreted as meaning that they do not preclude national legislation under which the right to deduct input VAT on purchases or to be reimbursed such VAT or to use such VAT in a subsequent tax period may be refused where, in three consecutive tax years, the relevant transactions for VAT purposes carried out are of a value which is not deemed commensurate with the income which the available assets may reasonably be expected to yield and the taxable person concerned is unable to provide evidence of objective circumstances to explain that result."

A more substantial report containing details of the AG's reasoning will be published in due course.

European Union; Italy - ECJ Advocate General Opines on Right to Deduct VAT Where Minimum Threshold for Taxable Output Transactions Is Not Met: Feudi di San Gregorio Aziende Agricole SpA v. Agenzia delle Entrate (Case C-341/22) (VAT) (28 Sep. 2023), News IBFD.

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