

Landmark ECJ ruling on a Romanian case involving deduction of VAT on abandoned investments

On 12 November, the ECJ issued its decision in case C-734/19 ITH Comercial Timisoara SRL (ITH) involving the input VAT recovery for goods and services no longer used by the taxpayer (i.e. pertaining to abandoned real-estate projects).

The Court ruled that the right to deduct input VAT on goods and services acquired with a view to carrying out taxable operations is maintained when the investment projects initially planned have been abandoned due to circumstances beyond the control of the taxable person.

The situation that gave rise to the main proceedings was the applicant's failure to complete two building projects, which it had begun in 2006 and 2007 in accordance with agreements with a company manufacturing lifts and escalators.

In subsequent periods, the company incurred expenditures in connection with various preparatory steps (for which input VAT was deducted), such as applying for a building permit and concluding various technical consultancy agreements. Due to the background of the economic crisis, the projects were put on hold during 2008 and finally written-off in 2015 financial statements.

Romanian tax authorities assessed additional VAT on the two building projects and based their judgement on the grounds that ITH was aware since the launch of the first project of elements that might lead to its non-completion, in so far as a local urban plan had already been approved and that ITH had assumed the risks arising from not having its project included in this plan.

Unsurprisingly, the Court's ruling that the right to deduct input VAT on goods (in this case on real estate assets) and services acquired with a view to carrying out taxable operations is maintained when the investment projects initially planned have been abandoned due to circumstances beyond the control of the taxable person means that there is no need to adjust this VAT if the taxable person still intends to use the goods for a taxable activity.

The takeaway in our view is that the Court once again stated that it is not for tax authorities to assess the merits of the reasons compelling a taxable person to abandon the economic activity originally envisaged. The court did not accept the argument that ITH knew there was a risk of non-approval by a public authority for a necessary zonal urban plan and that it did not constitute "circumstances beyond the control of the taxable person".

As this case shows, there are still situations where the Romanian tax authorities question the reasons behind the abandonment decision, irrespective of the taxpayer showing proof that actions were taken towards completing the investment. We hope that this judgement will limit such assessments.

For more information on this ECJ ruling, contact CMS experts **Roxana Popel, Andrei Tercu** and **Ramona Tudor**.