



## Italian Supreme Court rules on VAT regime of staff secondments

On March 2, 2021, the Italian Supreme Court issued its decision (“*Ordinanza*”) no. 5609 concerning the VAT regime of staff secondments.

The case dealt with the VAT ramifications arising from the secondment of employees by a parent company to its subsidiary. The parent company deemed that the consideration received for seconding the staff fell outside the scope of Italian VAT under Article 8(35) of Law 11 March 1988, no. 67. Pursuant to this statute, the secondment of employees is not a taxable transaction for VAT purposes if the company seconding the staff does not charge a fee that is in excess of the compensation paid to the employees.

The tax authorities challenged this approach because they argued that the parent charged an amount exceeding the compensation paid to the employees and, therefore, they claimed the application of VAT.

The Supreme Court held that, when the second-tier court decided in favour of the taxpayer, it did not adequately analyse whether the parent company met the condition of the mere recharge of the compensation. For this reason, the Supreme Court ordered that the case be re-examined by another chamber of the second-tier court.

However, the Supreme Court also indicated that the second-tier court shall also consider the interaction between the national provision and EU VAT law. In particular, the Italian Supreme Court stated that considering staff secondments as out of scope from Italian VAT could not comply with the EU VAT Directive because of the decision of the Court of Justice of the European Union in case C-94/19, *San Domenico Vetraria*. In this case the EU Court held that (i) the amount of the consideration paid is not relevant for the purposes of determining whether a supply of services falls within the scope of VAT and (ii) for a supply of staff to be relevant for VAT purposes it is sufficient to have a direct link between the secondment and the amounts paid by the subsidiary to the parent company.

The Supreme Court’s decision seems to endorse a direct effect of the CJEU decision into the Italian legislation, even though Article 8(35) is still in force. VAT ramifications of secondment arrangements should be carefully evaluated in order to monitor whether the conditions for falling outside or in the scope of VAT are met.

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