

UKRAINE

Ukrainian Court Denies Characterization As Stewardship Expenses

by Alexander F. Peter

Payments to a Swiss parent entity for consulting services served a business purpose for its Ukrainian subsidiary and were therefore deductible, a Ukrainian administrative court has ruled.

In its decision in *Weidmann Malyn Isolation Components TOV v. State Tax Service* (No. 240/26506/23), dated May 31 and published June 5, the Ukrainian Administrative Court of the Zhytomyr District held that the taxpayer's submission of invoices and a memo from a Big Four accounting and tax advisory firm sufficiently proved that the company could not fulfill those activities itself. Therefore, the costs had an economic effect and were not incurred for a tax purpose, rendering them fully deductible.

"The tax authorities here challenged potential stewardship expenses through the business purpose provision that was introduced in 2020 — the year at issue for this part of the case," Ivan Shynkarenko of KM Partners' Kyiv office told *Tax Notes* on June 10.

"This is especially interesting because a number of our clients have received written questions from the tax authorities asking about the business purpose of particular transactions. Even though the court refers to a Big Four memo that the taxpayer provided in this respect, I don't see from the reported facts what the argumentative position of the tax authorities was," Shynkarenko said.

The Ukrainian limited liability company Weidmann Malyn Izolyatsijnyi Komponenty TOV (Weidmann TOV) is part of the Swiss-based Weidmann group, which manufactures technical products and services for electrical engineering, medicine, and pharmaceuticals. In 2012 the companies agreed on the provision of consulting services by the parent entity, Weidmann Electrical Technology AG (Weidmann AG), based in Switzerland, to Weidmann TOV. According to the contract, the purpose of the services was to improve the quality of the production process and quality standards and the level of competitiveness

of products through the advice rendered by Weidmann AG.

The appendix of the contract described in detail the consulting services, which ranged from financial planning, accounting, and transfer pricing policy to personnel management support activities and the backing of production innovation and research and development. The invoices had to spell out exactly what services were actually provided, pursuant to the agreement.

Well-Documented Business Purpose

After a 2021 audit regarding several deductions claimed on Weidmann TOV's corporate tax returns for 2017 to 2021, the tax authorities in 2022 denied around \$50,000 (UAH 1.4 million at 2020 conversion rates) in payments made in 2020 to Weidmann AG, saying they did not have a reasonable business purpose under section 14.1.231 of the Ukrainian Tax Code. A supervisory appeals body in August 2023 confirmed the assessment, holding that a memo of EY Ukraine explaining the business purpose was not sufficient to substantiate the deductions.

The Zhytomyr court accepted the taxpayer's petition for appeal in October 2023. The taxpayer said the appeals body never brought forward any counterarguments against the conclusions of the EY opinion; the memo stated that the services improved the general financial indicators of Weidmann TOV, introduced new production processes, and improved existing processes.

In its decision, the court noted that each party must prove its conclusions with proper evidence. A transaction has a business purpose if the taxpayer's assets could grow in value or be saved or if it creates conditions for future growth or savings. The opposite is true in dealings with nonresidents if the main or one of the main purposes of a transaction is the nonpayment (or incomplete payment) of the amount of taxes or a reduction in the amount of taxable income of the payer; under comparable conditions, a taxpayer would not purchase from or sell to independent persons those goods, works, services, intangible assets, etc., the court ruled.

The invoices for 2020 from Weidmann AG are commensurate with the agreement's requirement and describe the services supplied and list the

persons who performed the work as well as date and time of the provision of the services, the court noted. Weidmann TOV did not have employees on its staff who could fully perform the functions that the consulting services provided. It was also impractical for the taxpayer to buy the services from third parties because of their highly specialized nature. The court found that Weidmann TOV proved through submitted documents, its pleadings, and the EY memo that the services received had an economic effect and a business purpose. It therefore granted the appeal.

"I have no doubt that the tax authorities will appeal the administrative court decision. So, it will be interesting how the next court level will evaluate the case," Shynkarenko said. ■

UNITED KINGDOM

U.K. Conservatives Plan Further Cuts to Employee Taxes

by Sarah Paez

U.K. workers could see further cuts to National Insurance contributions (NICs) and the elimination of the main self-employed rate for National Insurance under a Conservative government.

According to the Conservative and Unionist Party manifesto published June 11, U.K. Conservatives have also pledged to cut tax for pensioners with a pension "triple lock plus," to abolish the stamp duty for homes under £425,000 for first-time buyers, and to not raise the corporate tax rate.

The United Kingdom, which is gearing up for a July 4 general election, is currently governed by the Conservative Party, which is polling behind the center-left Labour Party. The leader of the majority party in the House of Commons — either through a coalition or alone — will become prime minister.

"So more businesses can benefit, we will look to extend our [business] 'full expensing' policy to leasing, once the fiscal conditions allow," the manifesto says. "And we will not raise corporation tax. For the very smallest businesses, the four million people who are self-employed, we will abolish the main rate of National Insurance entirely by the end of the next Parliament," it adds.

According to a separate costings document, the Conservative manifesto contains over £17 billion in tax cuts to be realized by 2030, which the party hopes to achieve by cutting social welfare contribution costs.

Cutting NICs another 2 percentage points over the next three years is estimated to cost between £4.7 billion and £4.8 billion annually, and between £9.7 billion and £10.3 billion each year from 2027-2030, according to the document. The current Conservative plan is to reduce the NIC rate from 8 percent to 7 percent in April 2025 and then to 6 percent in April 2027.

Abolishing NICs for the self-employed is expected to cost the government between £417 million and £2.6 billion annually over the next five