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By PwC Deutschland | 25. April 2012

No input tax deduction on share disposal

The Supreme Tax Court has held that the sale of an investment in a company is a non-business related activity and furthermore VAT-free as a sale of shares. The right to deduct the related input tax depends on the costs being not linked only to the sale.

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The German tax authorities consider that VAT related expenses incurred for the sale of shares is generally not recoverable since the expenses have a direct and immediate link with a transaction that does not give rise to VAT collection.

The Supreme Tax Court followed this approach and in a recent case sided with the tax office in its refusal to allow a German holding company full input tax deduction resulting from advisory fees in connection with a sale of an investment (sale of shares).

Input tax is only deductible to the extent that the expenditure is attributable to the economic activity of the taxpayer and to services subject to VAT. General expenses incapable of direct allocation (dual-use expenditure) must be apportioned accordingly. A German company (AG) pursued both types of services: On the one hand it provided management services to several subsidiaries and the fee earned was subject to VAT. One other, albeit main function was to "hold and acquire investments in other companies", a service clearly attributable to its non-economic activity. Nevertheless the holding company claimed full input VAT on general expenses (overhead expenses) as incurred for both fields of activity and also the input VAT charged with the advisory fees relating to the sale of the investment (share disposal) of one of its second tier-subsidiaries.

The Supreme Tax Court has confirmed the approach of the tax office and denied input VAT deduction on the directly linked advisory fees altogether: The holding of investments in general and the sale of an investment is a non-economic activity and also free of VAT. The exclusion of the input VAT from deduction would be derived from the specific attribution to a non taxable output, that is the proceeds. If the costs were more general, deduction would be available as part of the general expenses of the business. On these grounds, partial deduction of VAT incurred on overhead expenses was permissible in the view of the court: In lieu of a clear relation to any type of output services, allocation of the respective input VAT was thus to be estimated on a pro-rata basis (i.e. economic activities versus non-economic activities). (mh)

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