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By PwC Deutschland | 31 March 2011

VAT group parent must hold shares

The Supreme Tax Court has held that a VAT group parent must be the qualifying shareholder of its subsidiaries.

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A VAT group (*Organschaft*) is defined as a group of financially, organisationally and economically integrated businesses. Financial integration presupposes the parent holds more that 50% of the voting rights in each subsidiary, or, indirectly, in each sub-subsidiary. Organisational integration requires a degree of common management as typified by one or more common directors, and economic integration is deemed to exist where the business activity of the subsidiary supports that of the parent. The Supreme Tax Court has previously held that the financial integration requirement can be met by a partner in a partnership acting as the lead management vehicle of the main group business. However, it has now changed its view and disregarded a VAT group in which the sole general partner in a partnership held the shares in a subsidiary managed through the partnership as the main trading entity.

The proprietor was not, himself, a business operator and thus did not qualify as a group parent in his own right. His holding in the subsidiary and his management rights over the partnership enabled him to run the two businesses as an integrated entity, but this did not mean that one business owned the other. Rather, they would have ranked as fellow subsidiaries, had the partnership been incorporated. Since VAT is a tax on turnover independent of the legal form of the business operator, the court felt unable to attribute a shareholding to a partnership, when it could not have done so to a corporation.

Supreme Tax Court judgment XI R 43/08 of December 1, 2010 published on March 30, 2011

Keywords

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