By PwC Deutschland | 26 March 2015

Partnerships to be eligible for VAT groups?

An ECJ advocate general has suggested that management holding companies be allowed an input tax deduction in proportion to the taxable/total turnover of their subsidiaries and that partnership subsidiaries should not be excluded from joining a VAT Group.

Two German partnerships held shipping partnership subsidiaries to which they provided management services for a fee. Because the VAT Act does not allow partnerships to join a VAT group as subsidiaries and also restricts membership of VAT groups to financially, managerially and economically integrated subsidiaries, the respective tax offices refused to allow them more than a minimal input tax deduction in respect of their expenses incurred in raising capital and acquiring investments. The official argument was that the main activity of the holding partnerships was to hold investments in other partnerships, that is, a “non-economic” activity *per se*.

The ECJ advocate general has now published his opinion on the joined cases brought by the two partnerships with their claims that the German rules were more restrictive than those of the Sixth (VAT) Directive and should therefore be disapplied. More precisely, he addressed three questions. Firstly, to the effect that a managing partnerships’ costs of raising capital and to acquire investments were incurred in connection with its economic activity as a whole. There was thus no relevant “non-economic” activity, so that the input tax at issue should be deductible in full, unless the partnership also achieved VAT-free turnover alongside the VAT-able management fees. He then suggested that the Sixth Directive precludes the exclusion of a subsidiary from a VAT group solely on the basis of its legal form (partnership), unless that exclusion were justified by the need to prevent abuse. However, he also made the point that he could not see how the prevention of abuse could possibly be affected by the legal form of an enterprise, although the question would be a matter for the national court. His third point was that national legislation requiring the formal integrational links of the German provisions went beyond the requirements of the Sixth Directive, although the national court might, in these cases, be able to justify the additional restriction with the need to protect the VAT system from criminal activity.

The ECJ case references are C-108/14 *Laurentia* and C-109/14 *Marenave* joint opinion of March 26, 2015.

Keywords

Shipping, VAT group, management fees, partnership