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By PwC Deutschland | 09 September 2022

ECJ: No input VAT recovery for management holding company

The European Court of Justice decided that a holding company with taxable output services to its subsidiaries is not entitled to deduct input tax if the input services received are not directly and immediately related to the holding company's own sales, but rather to the largely tax-exempt activities of the subsidiaries.

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Background

The plaintiff, a private limited company (GmbH), held an interest in two partnerships (KGs). Both KGs built certain housing properties and sold the respective residential units predominantly free of VAT. GmbH provided to both KGs certain services free of charge. It also provided accounting and management services for which a fee plus VAT was charged. Explicitly excluded from the agreed management services were those services which the GmbH had to provide in its capacity as shareholder. GmbH provided these shareholder services partly with its own personnel and equipment and with the support of other companies against a fee which the latter charged to the GmbH. These services do not have a direct and immediate link with the holding company's own transactions but instead, to a large extent, to the tax-exempt activities of the subsidiaries Furthermore, the services are not included in the price of taxable transactions to the subsidiaries and do not form part of the general cost components of the holding company's own economic activity.

The tax office refused deduction of input VAT as the shareholder services were not attributable to the business activities of the GmbH and thus led to the exclusion of input tax deduction. The Supreme Tax Court has asked the European Court of Justice (ECJ) for a preliminary ruling. In his Opinion of 3 March 2022, the Advocate General (AG) suggested the ECJ to decide that a managing holding company is not entitled to deduct input VAT. The AG further pointed out that - in case the ECJ should see things different and rule otherwise - such a structure would in his view constitute an abuse of rights.

A more detailed view on the ECJ referral to be found in our **updated blog post** of 18 August 2022.

ECJ decision

The ECJ confirmed the line drawn by the AG and held that the holding company is not entitled to deduct input VAT, if the services received (input services)

- are not directly and immediately related to the holding company's own turnover but to the largely to the tax-exempt activities of the subsidiaries,

- are not included in the price of the taxable turnover supplied to the subsidiaries and do not form part of the general cost elements of the holding company's own economic activity.

More specifically, in answer to the questions referred, the ECJ summarized that

Articles 167 and 168 of the VAT Directive 2006/112/EG must be interpreted as meaning that:

a holding company which carries out taxable output transactions to subsidiaries does not have the right to deduct input VAT for services which it purchases from third parties and contributes to the subsidiaries in return for a share in the general profit, if, first, the purchased inputs are not directly and immediately related with the holding company's own turnover, but with the largely tax-free activities of the subsidiaries,

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secondly, these input services are not included in the price of the taxable transactions made to the subsidiaries and, thirdly, these services are not part of the general cost elements of the holding company's own economic activity.

Considering the overall circumstances of the case it is evident for the ECJ that there is no direct and immediate connection between the costs of the services obtained by GmbH and its own economic activity. These costs are also not part of the general cost elements of the management and accounting services provided by GmbH to its subsidiaries.

This conclusion could not be refuted by the GmbH on grounds that its subsidiaries were able to maintain their own activities only because of the shareholder contributions and, as a result, have a demand for accounting and management services. Assumed this to be the case the ECJ went on to say that these services do not demonstrate a direct and immediate link of such services to the economic activities of the GmbH. The purpose of the procurement of the input services was to facilitate a shareholder contribution which cannot be considered as a transaction having its exclusive and immediate cause in the economic activity of GmbH, i.e., the taxable provision of accounting and management services to its subsidiaries.

Source

The ECJ case reference is C?98/21 *Finanzamt R* judgment of 8 September 2022.

Note: An official English version of the judgment was not (yet) available on the **ECJ website** at the time this article was published.

Keywords

economic activity, input VAT deduction, management holding