
VAT deduction for transaction costs: ECJ decides in favour of active management holding companies

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In brief

The European Court of Justice (“ECJ”) decided that input VAT incurred on transaction costs by an active management holding company to be fully deductible and further that input VAT incurred on transaction costs by a mixed management holding company has to be allocated to the economic and non-economic activities. The ECJ left it to the Member States to decide which key is to be applied for the allocation.

Background

Based on EU VAT principles, passive holding companies (limiting their activities to the acquisition, holding and disposal of shares) are not considered to be a taxable person for VAT purposes and thus cannot deduct input VAT.

However, active management holding companies could generally deduct all input VAT, if they are involved in the management of their subsidiaries by providing VATable services (e.g. administrative, financial, commercial and technical supplies of services) to their subsidiaries.

In 2013, the German Federal Fiscal Court (“BFH”) questioned these principles. The court took the view that active management holding companies should only be entitled to a partial input VAT deduction. The background for this – in the reasoning of the BFH – is that the transaction services would not be rendered solely in connection with the later management services but also in connection with the non-taxable acquisition and holding of the shares.

ECJ decision

In its judgement, the ECJ decided against the BFH’s view and confirmed its standing jurisprudence.

According to the ECJ, a management holding company that provides VATable services to all its subsidiaries carries out an economic activity. Thus, all transaction costs are considered general expenses of the management holding, and thus the input VAT on these expenses is fully deductible.

If a management holding provides services only to some of its subsidiaries (“mixed management holding company”), the input VAT on transaction costs can only be deducted to the extent it can be allocated to the actively managed subsidiaries. The ECJ left it to the Member States how to allocate input VAT to the economic and non-economic activities of a mixed management holding company. In this regard the decision of the BFH is awaited.

Contact

Dr. Ralf U. Braunagel
Frankfurt

Tel.: +49 69 9585-6376

ralf.ulrich.braunagel@de.pwc.com

Nicole Dehnhard
Frankfurt

Tel.: +49 69 9585-2513

nicole.dehnhard@de.pwc.com

Alke Fiebig
Hamburg

Tel.: +49 40 6378-1318

alke.fiebig@de.pwc.com

Hansjoachim Köhler
Frankfurt

Tel.: +49 69 9585-5039

hansjoachim.koehler@de.pwc.com

Dr. Lars Lawall
Frankfurt

Tel.: +49 69 9585-6622

lars.lawall@de.pwc.com

Dr. Axel P. Mielke
Frankfurt

Tel.: +49 69 9585-6926

axel.mielke@de.pwc.com

Jürgen Scheidsteger
Frankfurt

Tel.: +49 69 9585-5150

juergen.scheidsteger@de.pwc.com

Christian Tempich
München

Tel.: +49 89 5790-6321

christian.tempich@de.pwc.com

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