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URL: http://www.deloitte-tax-news.de/german-tax-legal-news/cjeu-rules-on-vat-deduction-of-a-holding-company.html

22.07.2015

German Tax and Legal News

CJEU rules on VAT deduction of a holding company

Input VAT incurred by a holding company on the acquisition of shareholdings in subsidiaries should be fully recoverable provided the holding actively manages the subsidiaries and makes no exempt supplies.

The CJEU released its decision in the joined cases of Larentia & Minerva and Marenave Schiffahrt (C-108/14 & C-109/14) regarding the input VAT incurred by holding companies on the acquisition of shareholdings in subsidiaries, taking the view that such input VAT should be recoverable in full provided the holding companies are actively managing these subsidiaries. The Court further held that unless national legislation is seeking to prevent abuse and combat tax evasion or avoidance, it cannot restrict the right to form a VAT group solely to entities with legal personality.

Background
Larentia & Minerva (GmbH & Co. KG) and Marenave Schiffahrt (AG), both German companies, claimed full VAT deduction on the share acquisition costs of their holding companies on the basis that the holding companies were carrying on an economic activity in the form of providing management services to the subsidiary companies from the time of the acquisition.

The German Tax Authority took the view that holding company providing management or other services to its subsidiaries (an “active” holding company) should be seen as performing both an economic (i.e. provision of such management/other services) and non-economic activity (i.e. the mere receipt of dividend income or loan interest). As a result, the German Tax Authority concluded that the VAT incurred on share acquisition costs by an active holding company is only proportionally recoverable to the extent of its actual or intended economic activity.

Questions
The German Federal Tax Court (BFH) referred the CJEU with the question how the proportion of recoverable VAT should be calculated. In addition, the German Supreme Court referred question, whether the German VAT provisions precluding partnerships from forming/joining VAT groups, are permissible.

CJEU judgment
The CJEU’s view is that where the holding company involves itself in the management of the acquired subsidiaries, the input VAT incurred with the acquisition of shares in those subsidiaries shall be regarded as its general expenditure. Thus, the input VAT should not be apportioned between economic and non-economic activities of the holding company (i.e. no ‘pro rata’ is applicable), and this VAT is, in principle, deductible in full, unless it makes exempt supplies, in which case partial deduction rules apply.

On the other hand, provided the holding company would not involve itself in management of all acquired subsidiaries, the input VAT incurred with respect to acquisition of shares in those subsidiaries would be recoverable only to the extent of economic activities (i.e. management/other services) performed by the holding company.

In relation to German VAT provisions precluding partnerships from forming/joining VAT groups, CJEU stated, that unless national legislation is aiming to prevent abuse and/or combat tax evasion or avoidance, it cannot restrict the right to form a VAT group solely to entities with legal personality (thereby excluding, for instance, partnerships), and entities that are subordinates of the controlling company of the group.

However, as CJEU further states, the taxpayer is not able to claim the benefit of the above stated against its Member State if the national legislation is not compatible with the Directive as the respective provision of the EU VAT Directive is not unconditional.

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