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German Tax and Legal News

BFH rules on input VAT recovery by management holding companies and on partnerships in a VAT group

An active holding company generally can recover input VAT and partnerships may be a controlled company in a VAT group

In response to the decision of the CJEU dated July 16, 2015 (joined cases of Larentia and Minerva and Marenave Schiffahrt, C-108/14 and 109/14 see GTLN) Germany's Federal Tax Court (BFH) issued a decision on January 16, 2016 (judgment published March 9, 2016) stating that active holding companies can in general fully recover input VAT regardless of the importance of their business activities. The percentage of input VAT recoverable depends on the percentage of taxable output supplies in the overall supplies.

Further, in line with the recent decisions of the 5th Senate of the BFH (see GTLN) but contrary to its own reasoning in the framework of the preliminary question referred to the CJEU, the BFH now concluded that in the light of EU provisions the German rules stating that only "legal entities" can be a controlled company in a VAT group need to be interpreted as including GmbH & Co KGs (i.e. limited commercial partnerships in which the general partner is a limited liability company).

Comments

VAT groups and company groups should be reviewed with regard to the new conditions for VAT grouping, and potentially restructured to ensure or to prevent VAT grouping in the future. In cases where previous VAT periods still are open for reassessment, groups may use the BFH's decisions to apply for input VAT refunds or include qualifying partnerships in their VAT groups. Company groups also should be aware of the risks of automatic VAT grouping, which could lead to a requalification of supplies within the group.

It is unclear whether the German legislator will decide to amend the underlying provision of the German VAT Act.

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