



In principle, VAT on costs incurred in relation to a disposal of shares is not recoverable. However, the recent judgement of the European Court of Justice for the C&D Foods case (C-502/17) on 8 November 2018 opens possibilities for holding companies to recover VAT in connection with a disposal of shares.

### **A. Facts of the case**

C&D Foods is the holding company of the Arovit group and provides management and IT services to its sub-subsidiary Arovit Petfood. Kaupthing Bank acquired the group because of the group's failure to repay a loan granted to it and intended to sell the shares held by C&D Foods in Arovit Petfood, so as no longer to be the group's creditor. C&D Foods paid for consultancy services received for the proposed sale, which eventually did not happen because no buyer was found. The company sought to deduct the input VAT on the costs incurred, arguing that they were incurred within the context of its taxable activities (i.e. the provision of services to its sub-subsidiary). However, the Danish VAT Authorities refused the deduction.

### **B. Main question referred to the ECJ**

As a result of the above dispute, the following question has been referred to the ECJ:

Is a holding company entitled to a deduction of VAT on the costs of services related to due diligence performed in anticipation of an intended, but unrealized, sale of shares in a subsidiary for which the holding company carries out management and IT services?

### **C. Judgement**

***A share disposal transaction, envisaged but not carried out, such as that in the main proceedings, for which the direct and exclusive reason does not lie in the taxable economic activity of the company concerned, or which does not constitute the direct, permanent and necessary extension of that economic activity, does not come within the scope of value added tax.***

According to the Court, in order for a share disposal transaction to come within the scope of VAT, the transaction shall be carried out with a view to allocating the proceeds of that sale directly to the taxable economic activity of the parent company in question or to the economic activity carried out by the group of which it is the parent company. In the case of C&D Foods, the objective of the disposal of shares was to use the sale proceeds to settle the debts owed to Kaupthing Bank and thus VAT on the costs incurred was not recoverable.

### **D. Significance of the case**

The judgement in the C&D Foods case could provide supporting arguments for recovery of VAT on costs incurred in relation to disposals of shares, when the objective of the disposal lies in the company's taxable economic activities. It is particularly important for companies to prepare and keep accurate and timely documentation of the reasons for the share disposal and the intended use of the sale proceeds in order to protect their recovery right.

### **Way forward: how PwC can help you**

As the VAT recovery for share disposal costs depends on the specific facts of each case, our expert indirect tax team is at your disposal to discuss the above developments and how they may affect your business.

### **Your contacts for Indirect Tax matters in PwC Cyprus**

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