

Indirect Tax Services

Newsletter

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On 16 July 2015 the European Court of Justice delivered its Judgement in the joint cases of Larentia + Minerva (C-108/14) and Marenav (C-109/14):

The significance of these two cases is two fold as it clarified:

- The right of holding companies to recover VAT paid for the acquisition of capital invested in their subsidiaries, and
- Whether VAT groups can be restricted to corporate bodies only.

1. Summary of the Case

In these cases the ECJ has held that holding companies which actively manage all their subsidiaries are entitled to recover the input VAT incurred in relation to that activity. However to the extent that they do not manage some of their subsidiaries they must apportion their input VAT to acknowledge this fact.

The ECJ also held that Member States cannot restrict VAT grouping to corporate bodies or bodies under common control except to prevent abuse, but the EU VAT grouping provisions are not sufficiently specific and unconditional to have direct effect.

2. Facts of the Case

Both Larentia + Minerva (C-108/14) and Marenav (C-109/14) hold investments in subsidiaries, to which they provide administrative and business services for consideration. Both holding companies incurred input VAT on expenses for the procurement of capital used for the acquisition of their subsidiary and deducted such input VAT in full.

The VAT Authorities in Germany argued that such the VAT is only partially recoverable and must be allocated between business and non-business activities.

The taxpayers objected and further to proceedings at national court the matter was referred to the ECJ.

3. Questions referred to the ECJ

As a result of the above dispute the questions referred to the ECJ were the following:

- (a) Which method should holding companies use for the calculation of the recoverable input VAT (attributed to business activities) incurred on expenses relating to the acquisition of subsidiaries, when such holding companies are also engaged in the supply of various taxable services to their subsidiaries?
- (b) Could entities with no legal personality (e.g. partnerships) be members of a VAT group which is considered as a single taxable person for VAT purposes?

4. Judgement of the Court

The Judgement of the Court was based on the interpretation of the relevant articles of the VAT Directive and ruled the following:

4.1. Input VAT deduction by Holding Companies

- VAT incurred by holding companies on the acquisition of subsidiaries can be reclaimed in full provided that the holding company is involved in the management of all of its subsidiaries, on the basis that this constitutes an economic activity.
- VAT incurred by holding companies on the acquisition of subsidiaries which is involved in the management of only some of these subsidiaries, should be considered as common to all the activities of the company and therefore recoverable only to the extent that it is attributable to the acquisition of those subsidiaries to which the holding company offers management services.

4.2 VAT Groups

- The ECJ has confirmed that the EU VAT Directive does not prevent the admission of non-legal persons (e.g. partnerships, branches etc) in a VAT group which is considered for VAT purposes as a single taxable person.
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- However, the Member States have discretion to lay down rules relating to the formation of VAT groups if they consider it necessary to prevent avoidance or abuse. To this end, taxable persons cannot request to be part of a VAT group solely based on the provisions of the EU VAT Directive, if the national legislation is not compatible with the above provisions of the EU Directive.

5. Significance of the case and other considerations

5.1. Input VAT recovery of active holding companies

With this judgment the ECJ has shed new light on the VAT deduction right of holding companies. More specifically, the ECJ confirmed that active holding companies should have the right to **fully** reclaim the input costs incurred in relation to the acquisition of shares in those subsidiaries. However some level of uncertainty still exists in relation to the following:

- What is required level of involvement and what type of services should a holding company offer to its subsidiaries in order to be considered as "active" holding company?
- Could the right for full deduction of input VAT be extended to cover also other costs incurred by holding companies in relation to their subsidiaries, in addition to acquisition costs?

Holding companies managing only some of its subsidiaries will now need to determine the calculation method for the deduction of their input VAT costs, based on an apportionment between economic and non-economic activities.

As this is an important area which can have a significant impact on the way that a holding company can be used in a group structure, it is highly recommended that a detailed review of the status of the holding companies is carried out for identifying any opportunities for saving in VAT .

5.2. VAT grouping provisions

The ECJ confirmed that an EU Member State cannot restrict membership to a VAT group only to corporate bodies, unless that condition is necessary to prevent abusive practice. This is important for Cyprus VAT grouping provisions which also restrict membership to corporate bodies and thus it remains to be seen whether the Law will have to be amended to remove this specific restriction in line with the ECJ judgement.

Way forward: how PwC can help you

The dedicated team of VAT professionals at PwC is ready to assist you with potential obligations and VAT saving opportunities arising from the above cases, including:

- Reviewing your corporate organisation structure and advise on optimising your VAT recoverable position.
- Assess the possibility of "active" holding companies submitting claims for refund of input VAT which was previously restricted by Tax Authorities.
- Assist holding companies which are only managing some of their subsidiaries to determine the method for the apportionment of the input VAT deduction for the future
- Review the group structure and assess whether the VAT grouping provisions may be utilised to simplify VAT reporting and improve the VAT cash flow position of the group.

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