

On 5 July 2018, the European Court of Justice ("ECJ") issued its judgment in the case of Marle Participations Srl.

The decision of this case is of major significance as it:

- reaffirmed the right of holding companies to recover VAT paid for the acquisition of capital invested in their subsidiaries, where the holding company is involved in the management of its subsidiaries, and
- provided additional guidance on when a holding company is considered to be involved in the management of its subsidiaries

### **1. Summary of the Case**

In this case the ECJ held that a holding company is considered to be involved in the management of its subsidiaries for VAT purposes when it supplies any transaction constituting an economic activity for VAT purposes for consideration on a continuous basis.

This means that holding companies are entitled to recover any input VAT incurred in relation to the acquisition of such holding or which is a general cost when the provision of such services to the subsidiary or other entity to which it has a long term holding is done on a continuous basis for consideration and that services are not exempt from VAT.

### **2. Facts of the Case**

Marle Participations is the holding company of the Marle group, which is in the business of manufacturing orthopaedic implants. Marle Participation's objects include the management of shareholdings in several subsidiaries of the Marle group, to which it also let a building. Marle Participations conducted a restructuring operation which led it to make sales and acquisitions of securities. It deducted in full the VAT charged on various expenses connected with that restructuring operation. Following an audit of accounts, the tax authorities called into question the company's deduction of VAT and issued it accordingly with additional VAT assessments, on the ground that the expenditure in respect of which the company claimed deduction of VAT contributed to the implementation of capital transactions which fell outside the scope of the right of deduction. Marle 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 question referred to the ECJ was the following:

'Does the letting of a building by a holding company to a subsidiary constitute direct or indirect involvement in the management of that subsidiary, the effect of which being that the acquisition and holding of shares in that subsidiary are considered economic activities within the meaning of the VAT Directive, and, if so, under what conditions?'

### **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:

- the letting of a building by a holding company to its subsidiary amounts to 'involvement in the management' of that subsidiary, which must be considered to be an economic activity,
- the value added tax (VAT) on the expenditure incurred by the company for the purpose of acquiring shares in that subsidiary, where that supply of services is made on a continuing basis, is carried out for consideration and is taxed, meaning that the letting is not exempt, is deductible in full.
- 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.

## **5. Significance of judgement on input VAT recovery of holding companies**

With this judgment the ECJ has reaffirmed the position followed by the ECJ in the earlier cases of Larentia and Minerva as concerns the VAT deduction right of holding companies. More specifically, the ECJ re-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. With this Judgement the Court also shed some much needed light on the meaning of 'involvement in the management of subsidiary' by clarifying that the examples previously provided in the Case Law are not exhaustive and going on to confirm that even the letting of immovable property to the subsidiary can be regarded as involvement in the management of the subsidiary.

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

Holding companies providing any type of non exempt services on a continuous basis to companies in which they have long term shareholdings should reexamine whether they have claimed the input VAT they are entitled to on expenses to acquire such shareholdings and on general expenses.

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.

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