

# Indirect Tax Services

## Newsletter



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### **In Brief**

On 12 January 2017, the European Court of Justice delivered an Order of Court regarding the case of MVM Magyar Villamos Muevek Zrt (C28/16). The European Court of Justice (ECJ) has held that VAT on costs incurred by a holding Company related to the management of its subsidiaries cannot be deducted as input VAT where the holding company did not re-charge such costs.

This case highlights the importance for holding companies to charge their subsidiaries for the provision of management services based on the actual costs incurred on their behalf, in order to be eligible to deduct input VAT on related costs.

### **In Detail**

#### **1. Facts of the case**

MVM Magyar Villamos Muevek Zrt (hereafter referred to as "MVM") is a Hungarian state owned company operating in the energy sector. MVM was engaged in the leasing of power plants and fibre optic networks which are business activities for VAT purposes. In addition to the above, MVM was also engaged in the activity of holding of investments in its subsidiaries and its involvement in their strategic management, without charging management fees. During the preparation of its VAT returns, MVM claimed in full input VAT on legal, business management and public relation services received for its own benefit, its subsidiaries and the group as a whole.

The Hungarian Tax Authorities took the position that input VAT could be deducted only to the extent to which MVM had used those services in order to effect supplies or services. Based on this, the Hungarian Tax Authority refused the Company's right to deduct the VAT relating to those services where the services had been carried out in the interest of Group Companies (where management services were not provided) or where the services concerned business management services relating mainly to the acquisition of shareholdings.

#### **2. Questions referred to the ECJ**

The Hungarian Local Authorities took the following question to the ECJ Court:  
"Can a holding Company which plays an active role in the management of its subsidiaries, or of the Group Companies as a whole, but which does not pass on to its subsidiaries the cost of services carried out in relation to its active holding activity or the corresponding VAT be regarded as a taxable person for the purpose of VAT in respect of those services".

#### **3. Judgment of the Court**

The Court ruled that in so far as the involvement of a holding company, such as that at issue in the main proceedings, in the management of its subsidiaries, where it has charged those subsidiaries neither for the cost of the services procured in the interest of the group of companies as a whole or in the interest of certain of its subsidiaries, nor for the corresponding VAT, does not constitute an 'economic activity', within the meaning of that directive, such a holding company does not have the right to deduct input VAT paid in respect of those services in so far as those services relate to transactions falling outside the scope of that directive.

To conclude, the Court ruled that VAT on costs incurred by a holding Company related to the management of its subsidiaries cannot be deducted as input VAT where the holding Company did not on-charge the costs of those activities to its subsidiaries on the grounds that the mere involvement of a holding company in the management of its subsidiaries without carrying out any taxable transaction cannot be considered as an economic activity for the purpose of VAT.

#### **4. Significance of the case and other considerations**

In the light of the above case, we would like to bring to your attention the following:

- (a) If a holding company does not charge its subsidiaries a management fee for the services granted and/or for the corresponding costs suffered for those specific subsidiaries, the right to deduct input VAT in respect to those services may be restricted.
- (b) The holding company's right to deduct input VAT incurred on the receipt of services may be deductible only if it constitutes a cost component of the output transactions, being the provision of management services to the holding company's subsidiaries.

#### **5. Way forward: how PwC can assist**

PwC can assist in closer examining the VAT position of holding companies that are actively involved in the management of their subsidiaries and verify entitlement to deduct VAT or best structure a holding Company's VAT recoverability position. The dedicated team of VAT professionals at PwC is ready to assist you further on this matter.

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