



## VAT alert Belgium

### **CJEU: Advocate General widens scope for VAT recovery on costs related to (aborted) share transactions**

*On 3 May 2018, Advocate General Kokott (the "A-G") delivered a favourable opinion in the Irish case involving Ryanair Ltd ([C-249/17](#)), regarding the deduction of input VAT incurred in relation to the airline's aborted takeover of Aer Lingus.*

*The A-G takes the prolonged discussions on VAT recovery on share transactions a step further by allowing VAT deduction where there is a functional link between the acquisition of shares and the (intended) table turnover of the business. If the CJEU follows the Advocate General's opinion, this will make it easier for businesses to achieve VAT neutrality when engaging in share deals.*

#### **Background**

In 2006, Ryanair made a takeover bid for Aer Lingus, another Irish airline, with the former's intention of making the latter more profitable by bringing its expertise and experience there after the takeover. This would result in VAT taxable services to the newly acquired company.

There was no discussion on the fact that Ryanair intended to provide taxable management services to Aer Lingus. Nevertheless, the Irish High Court held that the deduction of input VAT on professional fees paid by Ryanair in relation to

the takeover negotiations was not allowed since the bid was unsuccessful and no taxable supplies were eventually made by Ryanair to Aer Lingus.

The Irish Supreme Court referred questions to the CJEU to resolve the matter. The A-G has consequently released her opinion on this case.

## Scope of VAT deduction on share deals according to the A-G

The A-G's opinion favours Ryanair.

According to the A-G, costs incurred by the acquiring company in connection with achieving such a strategic takeover have a direct and immediate link with its taxable activity. The fact that the acquisition ultimately did not proceed and the intended VAT taxable activities were not performed does not impact the VAT recovery position. As a result, the VAT paid on professional fees is to be deducted in accordance with that activity, i.e. the costs qualify as general costs and VAT is recoverable.

This A-G opinion is another step in a long history of CJEU cases where VAT deduction of share transactions was discussed. The most recent decisions in that respect were favourable to taxpayers, allowing VAT deduction where the shareholding was accompanied by direct or indirect involvement in the management of the target company, through administrative, financial or commercial services against consideration.

The A-G also seems to allow VAT recovery had the costs been incurred by a pure holding company if such holding company would have had the intention to perform (management) services to the target company after takeover. In this respect, she takes the view that the only crucial factor is the intention to commence an economic activity for VAT purposes, supported by objective evidence.

## Impact in Belgium

Tax authorities in many EU Member States (including Belgium) take a restrictive view when it comes to the right to deduct VAT on acquisition costs for holding companies, particularly if there is no direct and immediate link between the costs and an outgoing turnover realised with the target company.

If the ultimate judgment (expected in about six months) is favourable towards Ryanair, it opens opportunities for the VAT recovery on costs related to acquisition, even if they did not ultimately proceed. This is particularly important where the costs were incurred for periods for which the VAT deduction right is not yet prescribed (in Belgium: 2015 and later years).

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