Deloitte.

VAT alert
Belgium

European Court on VAT deduction for active holding companies

On 16 July 2015, the Court of Justice of the European Union (CJEU) issued an important decision confirming the possibility for active holding companies to recover VAT (C-108/14 and C-109/14). This decision is of importance for the Belgian VAT practice, as tax authorities have limited that recovery to a large extent by considering that holding companies carry out activities both within and outside the scope of VAT.

The Court case

Larentia + Minerva is a German company holding shares in two German subsidiaries, each one operating a vessel. It provided administrative and consultancy services to its subsidiaries, which gave it the status of VAT taxpayer. Larentia + Minerva incurred costs to fund the acquisition of the shares in its subsidiaries and claimed full input VAT deduction on these costs. The German VAT authorities denied this as they estimated that Larentia + Minerva was only entitled to a partial VAT deduction, considering that only part of its activities were within the scope of VAT.

The question raised to the CJEU concerned the calculation method to be used to determine a holding company's input VAT deduction.

Next to that, the CJUE was asked whether Member States may limit access to the VAT grouping regime solely to entities with legal personality.

VAT deduction calculation for active holding companies

Following the Advocate General's opinion in this case and also its earlier case law (CJEU, 27 September 2001, Cibo Participations SA, C-16/00), the Court held that Larentia + Minerva cannot be considered as performing non-economic activities. Indeed, when the holding of shares in subsidiaries is accompanied by involvement, through taxable supplies, in the management of those subsidiaries, a holding company has to be considered as a "management" holding company performing an economic activity for VAT purposes, also for its holding function. Activities of active holding companies should be distinguished from the passive holding of shares (by holding companies or other corporations), which is outside the scope of VAT.

Costs incurred by an active holding company for the acquisition of subsidiaries, to whom it renders taxable supplies, are directly and immediately linked with the economic activity of the holding. As a consequence, VAT incurred on those costs should be fully deductible, unless (part of) the services rendered to the subsidiaries should be considered as VAT exempt.

The Court therefore concluded that there is no need to apportion the VAT incurred on the costs between economic and non-economic activities and no need to develop a calculation method in this respect. The Court gives interesting guidelines on the VAT status of "partial" management holding companies (meaning holding companies actively managing some of their subsidiaries through taxable supplies but not all of them). In such cases, the VAT incurred by the holding company can

only be deducted in part, based on an investment formula, a transaction formula or any other appropriate formula.

Limitation to the VAT grouping regime

With respect to the second question, the CJEU concluded that the access to the VAT grouping regime may in principle not be limited to entities with legal personality. The CJEU however stated that restrictions to the VAT grouping regime may be imposed by the Member States, provided those restrictions constitute measures which are appropriate and necessary in order to achieve the objectives seeking to prevent abusive practices or behavior or to combat tax evasion or tax avoidance.

Importance for Belgian holdings and investors

This decision very clearly confirms the possibility for so-called active holding companies to claim full VAT deduction on costs related to the subsidiaries they actively manage through services against consideration. While that viewpoint was also embedded in earlier case law, national tax authorities, including in Belgium, have always considered that any holding activity is to be considered partly as a non-economic activity for VAT and therefore should lead to limited VAT deduction, preferably through the inclusion of dividends in the calculation of the VAT deduction prorata.

This case therefore is a positive development for holding companies and private equity investment funds which can improve their ability to recover VAT. This may allow to compensate the extra VAT cost that they will face as of 2016, when the management fees charged by incorporated company directors will become taxable.

Contacts

If you have any questions concerning the items in this alert, please contact your usual tax consultant at our Deloitte office in Belgium or:

- Johan Van der Paal, jvanderpaal@deloitte.com, +32 2 600 66 39
- Ivan Massin, imassin@deloitte.com, + 32 2 600 66 52
- Lionel Wellekens, lwellekens@deloitte.com, +32 2 800 27 34

For general inquiries, please contact:

bedeloittetax@deloitte.com, + 32 2 600 60 00

Be sure to visit us at our website: http://www.deloitte.com/be/tax

Deloitte Belgium
Berkenlaan 8A, 8B, 8C
1831 Diegem
Belgium