



Global Tax Update

Germany

Deloitte Tohmatsu Tax Co.

August 2015

CJEU rules on VAT deduction of a holding company

Input VAT incurred by a holding company on the acquisition of shareholdings in subsidiaries should be fully recoverable provided the holding actively manages the subsidiaries and makes no exempt supplies.

The CJEU released its decision in the joined cases of Larentia & Minerva and Marenave Schiffahrt (C-108/14 & C-109/14) regarding the input VAT incurred by holding companies on the acquisition of shareholdings in subsidiaries, taking the view that such input VAT should be recoverable in full provided the holding companies are actively managing these subsidiaries. The Court further held that unless national legislation is seeking to prevent abuse and combat tax evasion or avoidance, it cannot restrict the right to form a VAT group solely to entities with legal personality.

(1) Background

Larentia & Minerva (GmbH & Co. KG) and Marenave Schiffahrt (AG), both German companies, claimed full VAT deduction on the share acquisition costs of their holding companies on the basis that the holding companies were carrying on an economic activity in the form of providing management services to the subsidiary companies from the time of the acquisition.

The German Tax Authority took the view that holding company providing management or other services to its subsidiaries (an “active” holding

company) should be seen as performing both an economic (i.e. provision of such management/other services) and non-economic activity (i.e. the mere receipt of dividend income or loan interest). As a result, the German Tax Authority concluded that the VAT incurred on share acquisition costs by an active holding company is only proportionally recoverable to the extent of its actual or intended economic activity.

(2) Questions

The German Federal Tax Court (BFH) referred the CJEU with the question how the proportion of recoverable VAT should be calculated. In addition, the German Supreme Court referred question, whether the German VAT provisions precluding partnerships from forming/joining VAT groups, are permissible.

(3) CJEU judgment

The CJEU's view is that where the holding company involves itself in the management of the acquired subsidiaries, the input VAT incurred with the acquisition of shares in those subsidiaries shall be regarded as its general expenditure. Thus, the input VAT should not be apportioned between economic and non-economic activities of the holding company (i.e. no ‘pro rata’ is applicable), and this VAT is, in principle, deductible in full, unless it makes exempt supplies, in which case partial deduction rules apply.

On the other hand, provided the holding company would not involve itself in management of all acquired subsidiaries, the input VAT incurred with respect to acquisition of shares in those subsidiaries would be recoverable only to the extent of economic activities (i.e. management/other services) performed by the holding company.

In relation to German VAT provisions precluding partnerships from forming/joining VAT groups, CJEU stated, that unless national legislation is aiming to prevent abuse and/or combat tax evasion or avoidance, it cannot restrict the right to form a VAT group solely to entities with legal personality (thereby excluding, for instance, partnerships), and entities that are subordinates of the controlling company of the group.

However, as CJEU further states, the taxpayer is not able to claim the benefit of the above stated against its Member State if the national legislation is not compatible with the Directive as the respective provision of the EU VAT Directive is not unconditional.

Newsletter Archives

To see past newsletters, please visit our website.
www.deloitte.com/jp/tax/nl/eu

Contacts

Deloitte & Touche (Düsseldorf)

Mitsutoshi Sato, Senior Manager

misato@deloitte.de

Satoshi Kanai, Senior Manager

skanai@deloitte.de

Issued by

Deloitte Tohmatsu Tax Co.

Tokyo Office

Shin-Tokyo Building 5F, 3-3-1, Marunouchi, Chiyoda-ku, Tokyo 100-8305, Japan

T e l: +81 3 6213 3800

email: tax.cs@tohatsu.co.jp

Corporate Info.:

www.deloitte.com/jp/en/tax

Tax Services:

www.deloitte.com/jp/tax/s/en

Deloitte Tohmatsu Group (Deloitte Japan) is the name of the Japan member firm group of Deloitte Touche Tohmatsu Limited (DTTL), a UK private company limited by guarantee, which includes Deloitte Touche Tohmatsu LLC, Deloitte Tohmatsu Consulting LLC, Deloitte Tohmatsu Financial Advisory LLC, Deloitte Tohmatsu Tax Co., DT Legal Japan, and all of their respective subsidiaries and affiliates. Deloitte Tohmatsu Group (Deloitte Japan) is among the nation's leading professional services firms and each entity in Deloitte Tohmatsu Group (Deloitte Japan) provides services in accordance with applicable laws and regulations. The services include audit, tax, legal, consulting, and financial advisory services which are delivered to many clients including multinational enterprises and major Japanese business entities through over 8,500 professionals in nearly 40 cities throughout Japan. For more information, please visit the Deloitte Tohmatsu Group (Deloitte Japan)'s website at www.deloitte.com/jp/en.

Deloitte provides audit, consulting, financial advisory, risk management, tax and related services to public and private clients spanning multiple industries. With a globally connected network of member firms in more than 150 countries and territories, Deloitte brings world-class capabilities and high-quality service to clients, delivering the insights they need to address their most complex business challenges. Deloitte's more than 220,000 professionals are committed to making an impact that matters.

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee ("DTTL"), its network of member firms, and their related entities. DTTL and each of its member firms are legally separate and independent entities. DTTL (also referred to as "Deloitte Global") does not provide services to clients. Please see www.deloitte.com/about for a more detailed description of DTTL and its member firms.

All of the contents of these materials are copyrighted by Deloitte Touche Tohmatsu Limited, its member firms, or their related entities including, but not limited to, Deloitte Tohmatsu Tax Co. (collectively, the "Deloitte Network") and may not be reprinted, duplicated, etc., without the prior written permission of the Deloitte Network under relevant copyright laws.

These materials describe only our general and current observations about a sample case in accordance with relevant tax laws and other effective authorities, and none of Deloitte Network is, by means of this publication, rendering professional advice or services. Before making any decision or taking any action that may affect your finances or your business, you should consult a qualified professional adviser. The opinions expressed in the materials represent the personal views of individual writers and do not represent the official views of Deloitte Network. No entity in the Deloitte Network shall be responsible for any loss whatsoever sustained by any person who relies on this publication.