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Recent CJEU decisions (2) – *Update*

Supplement to VAT Insight Issue No. 2013/02
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Judgment of the CJEU in the *fiscale eenheid PPG Holdings BV* case

In our VAT Insight Issue No. 2013/02 we provided you with an overview of the facts, the questions referred to the Court of Justice of the European Union ('CJEU') for a preliminary ruling and the Opinion of the Advocate General ('AG') in the *fiscale eenheid PPG Holdings BV* case (C-26/12), which particularly relates to VAT and pension fund management. On 18 July 2013, the CJEU delivered its judgment in this case and, it is noteworthy to point out, did not follow the AG's Opinion. This Supplement to VAT Insight Issue No. 2013/02 provides a summary of the judgment delivered by the CJEU.

Deduction of input VAT

Upon being asked whether a taxable person who has set up a pension fund in the form of a legally and fiscally separate entity, in order to safeguard the pension rights of his (former) employees, is entitled to deduct the VAT he has paid on services relating to the management and operation of the fund, the CJEU reiterated its settled case-law that "*for a taxable person to be accorded the right to deduct input VAT, and in order to determine the extent of that right, the existence of a direct and immediate link between a particular input transaction and an output transaction or transactions giving rise to the right to deduct is, in principle, necessary*". A taxable person has however also a right to deduct "*where the costs of the services in question are part of his general costs and are, as such, components of the price of the goods or services he supplies. Such costs have a direct and immediate link with the taxable person's economic activity as a whole*".

As such, the Court had to ascertain whether, despite the fact that the fund set up by PPG is an entity that is legally separate from PPG, the existence of such a link is apparent from all the circumstances of the transactions under review.

PPG had acquired the services in question for the purpose of the administration of its employees' pensions and the management of the assets of the pension fund set up to safeguard those pensions. The Court considered that in so far as the costs of the services acquired by PPG in that connection form part of its general costs, they are, as such, component parts of the price of PPG's products, and concluded that "*a taxable person who has set up a pension fund in the form of a legally and fiscally separate entity in order to safeguard the pension rights of his (former) employees, is entitled to deduct the VAT he has paid on services relating to the management and operation of that fund, provided that the existence of a direct and immediate link is apparent from all the circumstances of the transactions in question*".

The concept of 'special investment fund'

In reply to the second question referred in this case (i.e. whether a pension fund set up with the objective of providing a pension for the participants thereto at the lowest possible cost, where assets are brought to and invested in the pension fund by or on behalf of the participants, and where the resulting proceeds are shared, may be classified as a 'special investment fund' the management of which is VAT exempt in terms of article 13B(d)(6) of the Sixth Directive), the Court simply referred to its judgment delivered in its *Wheels* case (C-424/11) on 7 March 2013. You may wish to refer, in this regard, to VAT Insight Issue No. 2013/01 .

Should you require any assistance, please do not hesitate to contact Mark Grech or your usual Deloitte Malta contact.

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