# ABILITY OF HOLDING COMPANIES TO RECOVER PAST PAID VAT

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The question of ability of holding companies to recover VAT on costs connected with the acquisition of shares in subsidiaries they manage has been decided by the European Court of Justice in the case of Larentia and Minerva.[1]

The questions referred to the European court concerned the following two significant issues:

- The input VAT recovery of holding companies involved in the management of their subsidiaries.
- The VAT grouping rules and the restrictions imposed by national law.[2]

[1] In re: Beteiligungsgesellschaft Larentia and Minerva GmbH & Co. KG (C-108/14).

[2] It may be recalled that in the EU only the Swiss VAT legislation considers the acquisition, holding and disposal of shares an economic activity and admits the VAT deduction right of holding companies irrespective of their involvement (passive or active) in the management of their subsidiaries.

The Court has allowed to flow of new light on the VAT deduction right of holding companies, for example:

- The Court confirmed that active holding companies should have the right to fully reclaim the input costs incurred in relation to the acquisition of shares in those subsidiaries. An apportionment of the input VAT is only required if the holding company makes VAT exempt supplies to its subsidiaries and
- Holding companies managing only some of its subsidiaries will now need to determine the calculation method for the deduction of their input VAT costs**,** based on an apportionment between economic and non-economic activities. There is a risk that tax authorities may consider re-assessing the input VAT previously deducted by these entities (up to the time limits applicable).

As per the facts of the case the contestants were the owner of 98% of the shares in two limited partnerships. Acting as a "management" holding company, Larentia and Minerva provided taxable supplies (i.e. administrative and consultancy services) for consideration to these subsidiaries. The holding company sought to recover the input VAT incurred in the frame of raising capital from a third party to fund the acquisition of the shares in its subsidiaries and the services provided to the latter.

Following a similar factual pattern, Minerva incurred input VAT on costs relating to raising capital through the issue of new shares. The capital raised was used to fund the acquisition of shares in four limited shipping partnerships to which Minerva provided management services for remuneration.

The German tax authorities in this background only permitted the partial deduction of the input VAT considering that the majority of the costs connected with the acquisition of shares in the subsidiaries should be attributed to a non-economic activity, namely the holding of shares in subsidiaries for which the

input VAT deduction is not allowed. In respect of Marenave, the German tax authorities denied the right to deduct the input VAT incurred for the issue of shares on grounds of lack of involvement of the holding company in the management of its subsidiaries.

The court found that the VAT grouping conditions implemented in Germany limiting the participation to a VAT group to corporate entities and requiring a relationship of control and subordination between the members of the group are too restrictive and go beyond the requirements set by the EU VAT directive. However, the court ruled that the provision of the EU VAT Directive on VAT grouping cannot have direct effect allowing taxable persons to claim a benefit.

The court has now confirmed that active holding companies should have the right to fully reclaim the input costs incurred in relation to the acquisition of shares in those subsidiaries. An apportionment of the input VAT is only required if the holding company renders VAT exempt supplies to its subsidiaries.

On the other hand, mixed holding companies may now face important risks regarding the determination of the calculation method for the deduction of their input VAT costs as the apportionment between economic and non-economic activities will be required. In addition, it cannot be overruled that tax authorities may consider re-assessing the input VAT previously deducted by these entities (up to the time limits applicable).[3]

The result of the decision would be that:

- Businesses with holding companies based in the EU will carefully review their corporate organization and monitor closely the new changes.
- Active holding companies having been prevented by tax authorities in the EU to deduct in full their input VAT costs in the past will assess the possibility of launching proceedings to reclaim input VAT in

[3] In light of this decision, various EU Member States are likely to revise their current practice on the VAT recovery of holding companies and the VAT grouping requirements imposed in their national legislation.

accordance with the conditions for such proceeding imposed by national law.

- Mixed holding companies will carefully analyze the impact of decision, especially in respect of their past entitlement to deduct input VAT.

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