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Unrestricted VAT deduction for active holding companies

On 5 July 2018, the Court of Justice of the European Union (“CJEU”) released a welcome decision in the *Marle Participations* case (C-320/17) concerning the deduction of input VAT by a holding company on costs incurred in relation to acquisitions and sales of shares in subsidiaries.

Background

The background was the following. Marle Participations (“**Marle**”) is the holding company of the Marle group. In addition to its shareholding activities, Marle also rents out buildings to group subsidiaries. In the context of a group restructuring, Marle was involved in acquisitions and sales of shares in subsidiaries. In this respect, Marle applied a full input VAT deduction right on expenses relating to this restructuring which was later rejected by the French tax authorities. Marle brought the case before the *Conseil d’Etat* which referred to the CJEU on the question of the input VAT deduction on restructuring expenses by a holding company performing taxable real property lease activities for its subsidiaries.

Decision

The CJEU first drew attention to its well-established case-law whereby a holding company benefits from an input VAT deduction right in the event that it is involved directly or indirectly in the management of its subsidiaries through the supply of transactions subject to VAT such as administrative, accounting, financial, commercial, information technology and technical services. In this respect, the Court further specified that these examples of activities are however not exhaustive meaning that the term “*involvement in the subsidiary’s’ management*” should be understood as covering all transactions constituting a taxable economic activity.

As a result, a holding company which provides property lease activities to its subsidiaries should be considered to be involved in the management of its subsidiaries if (i) the supply of letting services is made on a continuing basis, (ii) the supply is taxable and (iii) it is carried out for consideration implying the existence of a direct link between the services rendered and the considerations received.

With regard to the extent of the holding company's input VAT deduction right, the CJEU referred to its settled case-law:

- if a holding company is involved in the management of all its subsidiaries, expenses connected with the transactions in subsidiaries' shares are deemed to form part of the company's general costs implying that the input VAT on such expenses would be fully deductible;
- if a holding company is only involved in the management of some of its subsidiaries, expenses connected with the transactions in subsidiaries' shares should only be regarded as partially belonging to the general expenses meaning that the deduction of input VAT on such expenses should be limited accordingly.

Moreover, when assessing any limitation of the input VAT deduction right of a holding company, the CJEU emphasized that neither the taxable turnover of the holding company nor the income derived from the holding of subsidiaries' shares should be taken into account.

End of the story?

Through this case-law, the CJEU finally clarified the never-ending story of the VAT deduction of active holding companies as follows:

1. involvement in the management of subsidiaries can be achieved through the permanent performance of any kind of economic activity, provided it is taxable and duly remunerated;
2. if a holding company is involved in the management of all its subsidiaries, it should benefit from a full input VAT deduction right in respect of general expenses (such as expenses incurred in relation to transactions in subsidiaries' shares); and
3. provided the conditions are met, holding companies should benefit from a full input VAT deduction right, irrespective of the result of their economic activity (i.e. with no regard to the importance of the taxable turnover compared to the general expenses).

At first view, this case-law is of the utmost importance as it supports the full VAT recovery on acquisition, disposal and recurring costs incurred by active holding companies (irrespective of the importance of the activation of the company).

Our VAT team is at your disposal to further discuss into details any positive consequences this case-law could mean for your past and current files and how to deal with it in practice.

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