

Case Alert

Hotel la Tour Limited

TC 08335 3 December 2021

Tribunal Confirms VAT incurred on costs of selling a subsidiary is recoverable

The First Tier Tribunal has found in the case of Hotel la Tour, that VAT incurred on professional fees associated with selling a subsidiary to a UK buyer is recoverable.

Hotel la Tour needed funds to invest in a new hotel in Milton Keynes. Its directors decided the hotel it operated through a subsidiary in Birmingham had reached the stage where it could not grow any further, so put it up for sale.

The intention was to sell the shares, obtain funds to pay off the loan secured against the hotel, and borrow additional funds for the new hotel development. The sale of the shares was completed successfully, and the new owner was allowed to continue to use the Hotel La Tour name for a limited time.

The holding company and its subsidiary were VAT registered together as a VAT group and originally reclaimed the VAT incurred on professional fees, but HMRC rejected the claim, and the dispute proceeded to the First Tier Tribunal.

The Tribunal found in favour the hotel group, saying that the VAT had been incurred for the purposes of the downstream taxable activities of running the new hotel in Milton Keynes. Its judgement was supported by cases in the Court of Justice as well as the Supreme Court to the effect that fiscal neutrality allowed it to look through the exempt share sale to the future intended taxable income streams, so the VAT was recoverable.

Comment: *This decision runs contrary to HMRC's general policy that input VAT incurred on costs relating to a UK share sale cannot be recovered, due to a "direct and immediate link" to a VAT-exempt transaction. The Tribunal found that in certain "fund-raising" scenarios this policy ought not to apply; such that input VAT recovery may be possible. This is an important case for businesses that have restricted input VAT claims when costs have been incurred in selling shares in subsidiaries and this opens up potential for additional claims of input VAT incurred over the last 4 years, in the right circumstances. If you are in this position, we would be delighted to help.*

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