



Case alert

Marle Participations SARL

July 2018

Summary

This case - a referral to the Court of Justice by the French court - delivers the judgment of the European Court with regard to the recovery of input VAT on expenditure incurred by Marle Participations SARL ('Marle'). The company sought to recover input VAT on expenditure incurred on expenses relating to a corporate restructure. The tax authorities denied input VAT recovery on the grounds that the expenditure related to activities that were capital in nature and so fell outside the scope of VAT (thereby precluding VAT recovery). Marle argued that the letting of property by the holding company to a subsidiary amounted to 'involvement in the management' of the subsidiary. This involvement constituted an 'economic activity' so enabling VAT to be recovered on the restructuring costs.

The Court has ruled that the letting of property to its subsidiary amounted to 'involvement in the management' of that subsidiary. As such it constituted an 'economic activity' carrying the right, in principle, to input VAT recovery. Such input VAT recovery was to be regarded as general expenditure of Marle (and therefore subject to the normal rules governing VAT recovery). Providing the letting services were supplied by Marle on a continuing basis, for consideration, the services were taxable and Marle could demonstrate a direct link between those services to its subsidiary and the consideration it received, input VAT could be deducted in full.

Court of Justice of the European Union (CJEU)

The Court of Justice has delivered a judgment on 5 July 2018 in the case of Marle Participations SARL ('Marle'). Marle sought to recover input VAT on costs relating to a corporate restructure, including the acquisition of shareholdings in a subsidiary. It argued that the letting of a property by Marle to its subsidiary was an economic activity, allowing VAT on the restructuring costs to be recovered. The Court was asked to consider whether the letting of property by a holding company to a subsidiary was sufficient to establish the holding company's 'involvement in the management' of that subsidiary. If so, did that activity constitute an 'economic activity' that conferred in principle the right to VAT recovery?

Marle is the holding company of the Marle group, a manufacturer of orthopaedic implants. Marle's objects include the management of shareholdings in several subsidiaries of the Marle group, to which it also let a building. Commencing in 2009, Marle conducted a restructuring of the group as part of which it made sales and acquisitions of securities. It was the VAT recovery on these expenses that was in dispute.

In ruling in favour of the taxpayer, the Court reaffirms that expenditure incurred on the acquisition of shareholdings in subsidiaries (by a holding company which involves itself in the management of those subsidiaries and thus undertakes an 'economic activity' that is itself subject to VAT) is to be treated as part of the general expenditure of the holding company. In such circumstances, this VAT is recoverable in principle. In the Court's judgment, provided that certain conditions are present, the letting of property to a subsidiary does amount to 'involvement in management'. In particular, the letting must be continuous, must be made for consideration and must also be taxable. It is also essential that the income generated by the letting is regarded as 'remuneration' thus conferring the status of taxable person on the holding company. In the case of Marle, these tests were ruled to have been met and the input VAT was thus deductible in full.

This case embeds the principles established in earlier cases (eg Cibo Participations and Larentia + Minerva and, more recently, in Ryanair Ltd) that the simple act of holding shares does not constitute taxable business activity but where additional activities are undertaken, for example, managerial, financial and technical services, these supplies will, if the above conditions are met, confer taxable person status on the holding company.

Comment - The VAT landscape around holding companies continues to evolve in favour of the taxpayer with this most recent judgment. It is interesting to note that on this occasion the Court felt no need to seek an Advocate General's opinion, instead moving directly to a judgment. This could be taken as a general acceptance that the definition of the phrase 'involvement in management' has been too narrowly drawn and we may now see the end to these challenges being brought before the Courts? It is important to note, however, that the AG does specifically restrict VAT recovery to expenditure incurred where economic activity takes place, in this case, between the holding company and those subsidiaries who were party to the letting arrangement. Where a holding company lets property to some subsidiaries but not to others, the Court considers that an apportionment of input tax would be required. Holding companies affected by this judgment will need to review their VAT recovery position.

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