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VAT'S UP

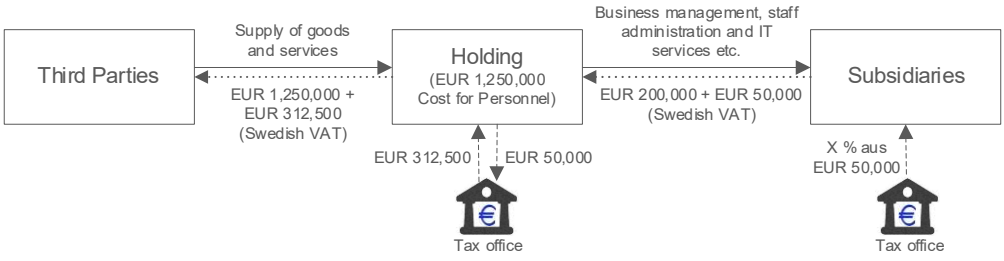
VAT NEWSLETTER

The ghosts summoned by the ECJ: Input VAT deduction for holding companies

21 I 2025

1 Case Facts ECJ, judgment of 3 July 2025 – Case C-808/23

The ECJ had to rule on a typical holding company case with regard to input VAT deduction. A Swedish parent company (holding company) provided services to all of its 19 subsidiaries. These services were all provided, for consideration, in the areas of business management, financial, real estate management, investment, IT and staff administration. In total, it invoiced its subsidiaries for approximately EUR 200,000 plus EUR 50,000 VAT. It calculated this amount using the cost-plus method. In other words, it calculated its own costs for providing the services to the subsidiaries and added a percentage profit margin. However, when calculating its own costs, the holding company did not take into account its total costs of approximately EUR 2,500,000 (about half of this amount was subject to VAT, and the other half represents items such as personnel costs). Instead, it allocated part of the services it received to 'shareholder costs' (annual accounts, auditing and the general meeting, as well as the cost of raising capital). The holding company did not provide any services to external third parties. It claimed the full input VAT deduction on its input services. The subsidiaries provided some VAT-exempt services. They were therefore not entitled to a full input VAT deduction.



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2 ECJ ruling

By choosing this approach, the holding company claimed the full input VAT deduction of EUR 312,500. However, only EUR 50,000 of the input VAT was excluded on a pro rata basis for the subsidiaries. The tax authorities attempted to increase the amount of services to be settled between the holding company and its subsidiaries to EUR 2,500,000 (namely their total costs) by applying the minimum VAT base. This would have meant that the input VAT exclusion would have had to be calculated on the basis of this higher amount. However, calculating the minimum VAT base on the basis of costs is only conceivable if there are no supplies, comparable to those provided by the holding company, on the free market.

If you take the individual elements of the holding company's services (company management, personnel administration, IT, etc.), these can be provided by third parties. However, if these elements have to be combined into a single service, it may only be possible for the holding company to provide this overall service. The ECJ therefore had to decide on the classic fundamental question: Does the holding company provide one single service to its subsidiaries or several individual services? In its decision, the ECJ follows the opinion of the Advocate General. The components are individual services that the holding company provides to its subsidiaries. Even a uniform price for all services does not change this. Therefore, the price of this service cannot be measured on the basis of the taxpayer's expenses.

3 Practical implications

The case concerns a typical holding company structure. The holding company provides services to its subsidiaries for consideration, but does not pass on all its costs. The tax authorities are attempting to use various arguments to arrive at a higher VAT base or an exclusion of input VAT deduction for the holding company. If the subsidiaries are subject to input VAT deduction restrictions, this attempt is understandable. The situation is different if the subsidiaries are entitled to full input VAT deduction. As the Advocate General correctly states in her Opinion, the fundamental problem in this context is the ECJ ruling itself: if the holding company were to be attributed the activities of its subsidiaries on the basis of an economic assessment, many problems (for the holding company or the tax authorities) would not arise at all.

In such cases, the tax authorities attempt, for example, to increase the VAT base for the holding company's services to its subsidiaries. Irrespective of whether this is possible under the wording of the national minimum VAT base rules, the ECJ makes it clear that, even if these rules are applied, the market remuneration for each of the individual services included in the holding company's services forms the assessment basis (i.e. market remuneration must be determined for the IT services, accounting, tax advice, etc.). If a cost-plus approach is used within the group, there is likely to be little scope for increasing the assessment basis.

Another approach taken by the tax authorities is to regard a taxable supply of services for consideration by the holding company to its subsidiaries to the extent that they are not passed on as costs. However, since the cost-plus method and transfer pricing constraints often result in all costs being passed on, this approach is flawed. There is no service (without consideration). The same applies to the tax authorities' argument that, in accordance with the Trick 17 ruling of the ECJ (see KMLZ VAT Newsletter 35 | 2022), input services that are not passed on are not eligible for input VAT deduction. The case decided by the ECJ concerned input services that were passed on 1:1 to the subsidiary. This means that, despite the incomplete passing on of costs, the holding company may be entitled to the full input VAT deduction.

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