



# KMLZ VAT NEWSLETTER

## ECJ: Holding company entitled to fully deduct input VAT

### 1. Introduction

In the joined cases C-108/14 *Larentia + Minerva* and C-109/14 *Marenave*, the ECJ already affirmed a full right to deduct input VAT in circumstances where a holding company intervenes in the management of its subsidiary and thereby renders supplies subject to VAT (see KMLZ Newsletter 19/2015). In the present case, the holding company only supplied leasing services to its subsidiaries. For this reason, the Conseil d'État decided to, once again, refer the question concerning the input VAT deduction of a holding company to the ECJ.

### 2. Facts

The plaintiff was a holding company whose corporate purpose was to manage shares in several subsidiaries. The holding company also leased buildings to its subsidiaries. As part of a restructuring, the holding company sold and acquired interests in its subsidiaries. It deducted the full input VAT from the costs in connection with this restructuring. The competent tax office denied the input VAT deduc-

### Input VAT deduction of a holding company

On 05.07.2018 the European Court of Justice ruled in the case *Marle Participations* - C-320/17 that a holding company is generally entitled to fully deduct input VAT from costs in connection with the acquisition of shares in its subsidiaries. The prerequisite is that the holding company intervenes in the management of its subsidiaries and, to this extent, carries out an economic activity. A holding company is already regarded as carrying out an economic activity when it provides rental services subject to VAT to its subsidiaries.

tion on the grounds that the costs were not related to an economic activity of the holding company.

The referring court asked the ECJ whether the leasing of a building by a holding company to its subsidiary constitutes an intervention in its management, which is to be regarded as an economic activity and therefore entitles the holding company to deduct input VAT.

### 3. Reasons for the decision

The ECJ first repeats its principles, from its established case law on holding companies, that the mere holding of shares does not, in principle, constitute an economic activity. The situation will only be otherwise if the investment involves direct or indirect intervention by the holding company in the management of its subsidiaries. The interventions constitute an economic activity if the interventions are supplies subject to VAT.



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In the present case, in the event of an effective option for VAT liability, the leasing services supplied by the holding company to its subsidiaries also constituted administrative intervention. This constitutes an economic activity of the holding company. Therefore, the ECJ concluded in its judgment that the holding company was generally entitled to the full deduction of input VAT from costs in connection with the acquisition of shares in its subsidiaries.

If the holding company intervenes in the management of all subsidiaries, the above costs are fully deductible as part of the holding company's general expenses. If the holding company intervenes only in the management of some subsidiaries, it can only deduct, as input VAT, the costs attributable to the business activity. There is no right to deduct input VAT if the holding company lets the buildings exempted from VAT to its subsidiaries (see sec 15 para 2 sent. 1 no. 1 of the German VAT Act).

The ECJ grants full input VAT deduction, even if the amount of the input supplies, from which the holding company claims the input VAT deduction, is disproportionate to the supplies, subject to VAT, to the subsidiaries. The ECJ justifies this, in particular, on the basis that the right to deduct input VAT may not be linked to the result of the economic activity of the taxable person.

#### 4. Consequences

The content of the ECJ ruling is convincing and very welcome and confirms its established case law on holding companies. Holding companies can be pleased about the full deduction of input VAT from costs incurred in connection with the acquisition of shares in their subsidiaries if they provide taxable services to these subsidiaries. This case law is also applicable to other costs of the holding company if they are directly related to its overall economic activity.

It is pleasing that the ECJ already finds taxable rental services to subsidiaries to be sufficient to establish an economic activity on the part of a holding company. Holding companies should ensure that they provide supplies subject to VAT (such as rental or management services) to their subsidiaries in some form.

Previously, it was unclear to what extent a holding company had to intervene in the management of its subsidiaries. This question has regularly led to past discussions with the tax authorities. Against this background, the clarification of the ECJ is to be welcomed, specifically that the question of input VAT deduction does not depend on the scope of the taxable supplies provided to subsidiaries. This should make discussions with the tax authorities on this issue a thing of the past, or at least make them more straight forward.