



**THOMPSON
HINE**

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**INTERNATIONAL TAX AND
CORPORATE UPDATE**

VAT and the Transfer of Shares in Europe

According to a recent decision of the European Court of Justice (ECJ), under certain circumstances companies may reclaim value-added tax (VAT) incurred, for example on advisers' fees, in connection with the sale of shares in subsidiary companies.

VAT AND SHARE TRANSACTIONS

According to Directive 112/2006/EC, transactions in shares, although technically qualifying as a supply falling within the scope of the VAT system, are exempt from VAT and consequently none is due on the transaction.

The position of many EU member states has always been that the VAT incurred relating to the transfer of shares cannot be reclaimed because there is a "direct and immediate link" between the VAT costs incurred (e.g., advisers' fees) and the VAT-exempt share transaction. Indeed, according to the principles laid down in Directive 112/2006/EC, input VAT related to VAT-exempt output transactions cannot be recovered.

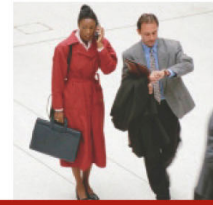
However, with regard to the issue of shares, the ECJ already accepted that VAT costs attributable to the issuance of new shares (e.g., to raise capital) can be fully recovered to the extent that the company conducts a taxable economic business and the issuance of new shares is aimed at supporting that business. Based on this reasoning, VAT is recoverable in the same way as VAT on general overhead expenses.

DECISION OF THE ECJ

In the case of *Skatteverket v. AB SKF* (Case C-29/08), the ECJ has now ruled that under certain circumstances, VAT incurred in relation to the sale of shares in a subsidiary can be fully recovered if there is no direct and immediate link to the VAT-exempt sale of shares, but instead forms part of the overhead costs of the business as a whole.

The ECJ reconfirmed that according to Directive 112/2006/EC, the sale of shares must be VAT-exempt. Furthermore, the ECJ ruled that there is a right to deduct input VAT on services supplied in relation to the sale of shares, if there is a direct and immediate link between the costs associated with the input services and the overall economic activities of the taxable entity.

The question of whether the VAT incurred is likely to be incorporated in the price of the shares sold, or if the VAT is directly and immediately linked to the company's taxable economic activities, is a question of fact to be determined by the national court.



CONSEQUENCES

This decision is extremely important and, following the jurisprudence with regard to the deduction of VAT attributable to the issuance of new shares, opens the door to recovery of VAT paid in connection with share transfers. Based on this decision, companies that recently sold shares in a subsidiary, and in relation thereto incurred VAT in Europe, should consider submitting claims under national law in order to reclaim the VAT incurred. The national time limits to recover the VAT will apply.

FOR MORE INFORMATION

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