

# VAT DEDUCTION RIGHT IF COSTS ARE NOT FULLY RECHARGED

## Court of Cassation confirms potential input VAT recovery



In case of a recharge of services received, the VAT authorities are used to challenge the VAT taxable person's right to deduct the VAT on the costs which are not recharged on the basis that this part is not a cost component of the turnover, which would entitle the person to recover VAT.

In case CAS-2021-00028 dated 17 March 2022, the Court of Cassation confirmed that, under certain circumstances, there is a right to deduct the input VAT even if the amount of the services received are not fully included in the turnover.

However this case does not change the following rules regarding the deduction right.

There is a right to deduct input VAT on costs incurred if there is a direct and immediate link between a particular input transaction and a particular output transaction(s), giving the rise to the entitlement to deduct.

A VAT taxable person also has the right to deduct the input VAT even where there is no direct and immediate link between a particular input transaction and output transaction(s) giving rise to the right to deduct, where the costs of the services in question are part of his overhead costs and are, as such, a price component of the goods or services which he supplies.

In case of recharges of services, if the amount of the recharges is less than the amounts of the services received, there should be a full right to deduct input VAT if:

- ▶ The remaining part of the costs, which are not recharged, can be considered as part of the general costs of the company. This can be the case if the VAT taxable person performs another activity other than the recharge of costs, which entitles it to recover input VAT Or
- ▶ All services received were recharged but the amount of the recharges is less than the costs of the services received, as was the situation in the above mentioned court case

The right to deduct input VAT would be limited if it should be considered that not all services were recharged and the company does not use these services for an activity, entitling the right to deduct input VAT. This for instance, could be the case if the company has no other activity other than the holding of shares and the recharging of costs.

There should be a right to recover input VAT on acquisition costs, if following the acquisitions, the company would be involved in the management of the new subsidiaries, i.e., by invoicing services. However in this case the right of deduction depends upon the use of the costs. If it could be economically justified that the costs were incurred only in order to render management services, there should be a full right to deduct input VAT. However if the acquisition costs were incurred not only to render management services to the acquired subsidiaries, but for instance, in order to obtain in the future a gain when the subsidiaries are sold, the authorities would take the point of view that the costs were incurred in the scope of the holding activity and thus limit the right to recover input VAT.

## HOW WE CAN HELP?

Our network of dedicated indirect tax professionals can provide amongst others the following services:

- ▶ Analyze the link between the costs incurred and the recharges of these costs and (assist to) prepare the reconciliation table between costs incurred and recharged costs
- ▶ In case costs are not fully recharged, if applicable, prepare a file, evidencing that the non recharged costs are part of the general costs of the company, entitling a right to recover input VAT
- ▶ With regard to VAT on acquisition costs, analyze whether the costs were incurred to perform an activity, which entitles to recover input VAT, hence not in the scope of an activity, exempt from or falling outside the scope of VAT

## OUR TEAM



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