



## A closer look

### Ryanair gets European court backing in VAT refund claim

On 17 October 2018, the Court of Justice of the European Union (“**CJEU**”) delivered its much anticipated **judgment in the Ryanair VAT recovery case**. This related to VAT expended by Ryanair on professional services arising from its failed takeover attempt of Aer Lingus. The ruling will have implications for takeover activity not just in Ireland but across the EU.

#### Background

Ryanair paid VAT on professional service fees when it unsuccessfully attempted to acquire shares in Aer Lingus in 2006. Ryanair subsequently sought a VAT refund from the Irish Revenue Commissioners on the basis that it had intended to take an active role in the management of Aer Lingus, as opposed to being a passive investor. Ryanair argued that the VAT was incurred in pursuance of an ‘*economic activity*’ and, as such, the VAT attributable to that economic activity should be recoverable. The Irish Revenue Commissioners, the Appeal Commissioners and the High Court all rejected Ryanair’s argument.

On appeal to the Supreme Court, **the case was referred to the CJEU**. On 3 May 2018, Advocate General Kokott opined that Ryanair was entitled to recover the VAT incurred on professional services fees in connection with the failed takeover bid due to the ‘*direct and immediate link*’ that existed between the proposed share acquisition and Ryanair’s intended future supply of taxable management services.

#### Questions answered

The questions referred to the CJEU by the Irish Supreme Court were as follows:

- Does a future intention to provide management services to a target constitute an economic activity such that VAT incurred by the acquirer for the purposes of the acquisition can be considered as a deductible input to such activity?

- Is there a sufficient direct and immediate link between professional services rendered in the acquisition of the target, if successful, and the provision of management services to the target such that a VAT deduction in respect of those services should be permitted?

In answering both of these questions in the affirmative, the CJEU was satisfied that Ryanair had intended to pursue an economic activity consisting of the provision of taxable management services to Aer Lingus. As such, the CJEU held that Ryanair had a right to deduct, in full, input VAT incurred in respect of the professional service fees notwithstanding that the proposed economic activity was not ultimately carried out.

#### Implications flowing from the CJEU ruling

The next step is for the Supreme Court to formally decide Ryanair’s case based on the answers provided by the CJEU to the questions referred. However, the ruling will have a wider impact on recovery of VAT costs incurred by acquirers in M&A transactions generally, whether successful or not, throughout the EU. In addition to clarifying that the provision of management services to a target amounts to an economic activity, the CJEU has by its ruling helped in bridging the gap with a separate line of CJEU authority that an economic activity will exist where it is intended to supply taxable goods and/or services.

#### For further information, please contact:



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