



Providing guidance

Holding companies: Irish VAT deductibility of share acquisition costs

7 August 2019

On 24 July 2019, the Irish Revenue Commissioners (“**Irish Revenue**”) issued a new Tax and Duty Manual in relation to Irish VAT deductibility treatment for holding companies (the “**Manual**”).

Background

The publication of the Manual has been much anticipated and follows on from discussions between Irish Revenue and relevant industry stakeholders regarding Irish VAT deductibility rules in this area, in particular, regarding share acquisition costs (such as professional fees) incurred by holding companies.

Entitlement to deductibility

Having regard to caselaw from the Court of Justice of the European Union, in particular the decision in *Larentia + Minerva* (C-108/14 and C-109/14), the Manual states that in order for the right to deduct to arise for Irish VAT purposes, there is a requirement for the relevant costs to have either:

1. a ‘*direct and immediate link*’ between the costs incurred and a particular output transaction which is taxable or qualifying in nature; or
2. a ‘*direct and immediate link*’ to the taxpayer’s economic activities, or form part of the taxpayer’s general costs linked with its overall economic activities

Whether a ‘*direct and immediate link*’ exists between a cost incurred and a particular taxable or qualifying activity, or between a cost incurred and a taxpayer’s overall economic activity, is a matter of fact to be determined on a case-by-case basis. This will require an objective evaluation of all the taxpayer’s circumstances and the nature of the taxable and/or qualifying activities in question.

Where a taxpayer engages in both economic and non-economic activities, it will be necessary for an apportionment exercise to be carried out. The

method by which such apportionment is carried out should reflect the degree to which the relevant costs are used for the purposes of the specific economic activity or activities.

Holding companies

The Manual outlines the VAT deductibility treatment of share acquisition costs incurred by companies whose sole activity is the holding of shares in other undertakings. Broadly speaking, three types of holding companies have been considered in this regard:

Passive holding companies

These are companies whose sole purpose is to acquire and hold shares. This activity does not, in and of itself, constitute an economic activity and, as such, does not give rise to any entitlement to deductibility for Irish VAT purposes.

Active holding companies

These are companies which acquire a holding in other undertakings to which they provide taxable management services. As active holding companies are engaged in economic activities (being the provision of taxable management services), they are entitled to deduct VAT in respect of share acquisition costs where there is a direct and immediate link either to the provision of such services or to its economic activity, or those costs constitute general costs linked with the holding company’s overall economic activity.

A potential pitfall which can arise in this area is where the provision of management services to subsidiaries does not come within the scope of VAT.

For example, where management services are contingent on the profits, or ability to pay, of the subsidiary, the provision of such services would tend to fall outside the scope of VAT. However, Irish Revenue has confirmed that where the level of management fees charged to the subsidiary or subsidiaries is less than the acquisition costs incurred by the holding company this should not, in and of itself, impact adversely on the VAT deductibility of such costs (as outlined above).

Mixed holding companies

These are companies involved in both passive and active shareholding activities. Only those costs which have a direct and immediate link with the holding company's economic activities, or those general costs which have a link with that part of the holding company's economic activities as a whole, will give rise to a right to deduct in these circumstances. Where costs relate to both the economic and non-economic activity of a passive holding company, the VAT incurred should be apportioned such that VAT deductibility only arises in respect of the portion of those costs which relate to the taxable economic activity.

Comment

Notwithstanding the guidance set out in the Manual, certain practical aspects regarding the VAT deductibility of share acquisition costs incurred by holding companies, such as appropriate methods of apportionment in the case of mixed holding companies, and the treatment of active holding companies engaged in economic activities other than the management of its subsidiaries, will require further consideration for this purpose.

However, the clarification of Irish Revenue's position on this issue has provided some certainty in an area which, historically speaking, has been rife with uncertainty. As such, on balance, the new guidance is to be welcomed.

Key contacts

If you would like any further information in relation to the VAT deductibility for holding companies, please feel free to contact a member of our Tax Group.



Alan Connell

Partner and Head of Tax

+353 1 6644 217

alanconnell@eversheds-sutherland.ie



Robert Dever

Associate, Tax

+353 1 6441 478

robertdever@eversheds-sutherland.ie

Disclaimer

The information is for guidance purposes only and should not be regarded as a substitute for taking legal advice. Please refer to the full terms and conditions on our website.

Data protection and privacy statement

Your information will be held by Eversheds Sutherland. For details on how we use your personal information, please see our Data Protection and Privacy Policy.

[eversheds-sutherland.ie](https://www.eversheds-sutherland.ie)

© Eversheds Sutherland 2019. All rights reserved.

EVE.DUB.2309 08/19