

The issue of shares is NOT a supply for VAT purposes Kretztechnik AG v Finanzamt Linz

The ECJ has ruled that the issue of shares is not a supply for VAT purposes. This means that VAT incurred on the costs of a share issue are overhead costs of the economic activity of the taxable person as a whole and are therefore fully recoverable if the business is fully taxable or are recoverable as residual VAT according to the partial exemption calculation.

UK law [VATA 1994, Sch9, Gp5, Itm6] currently treats the issue of shares as a VAT exempt supply and will therefore need to change. *Traders that have had VAT restricted within the past 3 years will be able to submit voluntary disclosures to recover the VAT.*

Implications

This ruling could have far reaching effects on all transactions associated with the issue of shares, debentures and other securities, becoming a member of the stock exchange (even if no new capital is involved) as well as transactions that combine issues of shares or securities with others, e.g. share for share exchanges and share for asset transactions. It will not however impact on actual sales by a shareholder of existing shares or lead to a deduction of input tax where a non-taxable person such as a passive holding company issues shares.

Fully taxable businesses

The decision will be particularly advantageous to fully taxable businesses since it means that all input tax incurred on share issues is residual and therefore wholly recoverable.

Partially exempt businesses

Previously, where shares have been issued to non-EU recipients, the supply has been treated as outside the scope of VAT with input tax credit. This has often meant that banks and insurers, etc with very low residual recovery rates have often benefited from relatively favourable VAT treatment in such circumstances. Following the ECJ ruling, however, all the input VAT is likely to be treated as residual input tax and so the non-EU benefit may be lost.

If this is the case, until UK law is amended to comply with EU law, partly exempt tax payers may wish to rely on the more advantageous UK treatment where this gives a superior VAT recovery.