

**VAT recovery by holding companies**  
*Securenta Göttinger*

**The Issue**

Securenta is a company that raised capital by issuing shares and admitting silent partners. The question was how VAT incurred on the costs of raising this capital should be treated. Unlike Kretztechnik, where the ECJ concluded that all VAT incurred on the issue of shares could be classed as an overhead of the business because the capital supported only taxable business activities, (Kretztechnik being a fully taxable business with no non business activity) Securenta had non business, taxable and exempt activities.

The ECJ has concluded that the VAT incurred by Securenta in raising the capital was not solely attributable to taxable business activities as there was a link between the costs and all of the company's activities, including the non business ones. In such circumstances only the VAT on the proportion of the expenditure that is a component of the cost of taxable sales is deductible and hence some apportionment of the VAT incurred is needed.

**Why is this important?**

The UK's current policy for VAT registered holding companies, as set out in Press Notice 59/93 allows VAT on share acquisitions, restructuring, investment and bid defence costs to be claimed as business overheads without any non business apportionment first even though case law confirms that such activities by passive holding companies are non business. Similarly the approach of many other Member States who allow the VAT on the costs of all holding company activities, including share sales, to be deductible as a business overhead, if the company is VAT registered also seems inconsistent. The ECJ has in this decision reinforced the cost component approach to input tax recovery and the judgment is a useful summary and reiteration of the case law on input tax recovery.

Essentially VAT is incurred and then has to be linked to activity. If it can be linked to activities that are business and non business, taxable and exempt then the VAT must be apportioned to identify how much is a component of the cost of taxable business activities and can be deducted. The determination of business/non business apportionment methods is in the discretion of the Member States as the Directive does not specify how such a calculation should be carried out, (unlike partial exemption methods where there is significant information in the Directive). However, when exercising this discretion Member States must have regard to the aims of the Directive and principles like fiscal neutrality. VAT should not be a cost of making taxable supplies.

**What now?**

If the UK changes its policy this could significantly increase the running costs of companies which have passive holding company activity. As well as potentially impacting on all VAT registered holding companies, this will be of particular importance in the M&A sector where new holding companies are often formed to head up new groups and which will often meet all the deal fees, where the VAT involved can be significant. The costs of any policy change can be mitigated by making any such holding company take an active role in the management of its subsidiaries so as to create the necessary link between the cost and taxable business activities. However this does not automatically mean the company will be able to treat all the VAT it incurs on deal fees as overhead VAT. If the company also has non business activities and there is a link between the costs and these activities some of the VAT will still be disallowed. Advice should then be sought on the best apportionment method to use.

It would appear that this case is also capable of affecting other areas including private equity and PFI, and fund structures where ownership of the investment is held by a passive investment vehicle.

At this point in time it is not clear how HMRC will respond to the decision. However, if there is a change of policy, we would not anticipate any retrospective change but anyone contemplating incurring holding

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company type costs on deals, restructuring etc in the near future through a holding company that is VAT registered should seek advice on how best to manage the VAT costs efficiently.