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Landmark decision on holding companies' VAT deductions



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🕒 **Introduction**

🕒 **Case 77/2012**

Introduction

For many years, tax authorities have rejected holding companies' right to deduct input value added tax (VAT); however, the European Court of Justice (ECJ) has recently issued a number of decisions that have enabled a slow but unequivocal paradigm shift towards so-called 'active or mixed holdings' (ie, holding companies which are directly or indirectly involved in the management of subsidiaries and provide them with taxable services).

In Portugal, the Arbitral Court's judgment in *Case 77/2012-T* constitutes a landmark decision in this context through its:

- analysis of the ECJ's guidance set out in several relevant decisions; and
- innovative approach of combining the relevant reasoning behind these decisions to provide a comprehensive legal overview.

Case 77/2012

Drawing on ECJ decision C-496/11 (*Portugal Telecom SGPS*), the Arbitral Court recognised that if a holding company's resources are used in the context of activities which grant the right to deduct input VAT, such input VAT is deductible regardless of the relative weight of value generated by such activities in the context of the company's total revenue (for further details please see "Changing ECJ case law on input VAT deductions for holding companies").

Further, the Arbitral Court considered that the holding company in question could deduct all input VAT relating to goods and services acquired which had an immediate and direct link with the services that the company rendered to its subsidiaries. The Arbitral Court found that VAT on expenditure with a direct link to the holding company's economic activity could be deducted.

The Arbitral Court concluded (based on ECJ decision C-408/98 (*Abbey National*)) that input VAT should be deducted from expenses that the holding company had incurred through the liquidation of a subsidiary, as they were deemed to be expenses relating to the company's economic activity as a whole. Expenses incurred for the development of a holding business abroad were considered a general expenditure with repercussions for the prices charged by the

holding company for services rendered to its subsidiaries (for further details please see "Changing ECJ case law on input VAT deductions for holding companies").

Finally, drawing on ECJ decision C-77/01 (*EDM*), the Arbitral Court found that due to the ancillary nature of the company's granting of loans to its subsidiaries, the interest received on those loans was irrelevant for the calculation of deductible VAT (for further details please see "Changing ECJ case law on input VAT deductions for holding companies").

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