



Case alert

Ryanair Ltd

October 2018

Summary

The Court of Justice of the European Union (CJEU) has issued its judgment in this referral from the Irish courts.

This is another case about the recovery of input tax by a holding company. In this case, Ryanair incurred substantial costs in relation to the proposed takeover (by the acquisition of shares) of its main rival the former state airline Aer Lingus.

The EU blocked the takeover on competition grounds and, ultimately, the takeover was abandoned. The Irish Revenue Commissioners took the view that the VAT incurred on professional fees associated with the bid could not be reclaimed. This was on the basis that Ryanair's intention to provide taxable management services to Aer Lingus post acquisition – which would have provided Ryanair with the right of deduction – was not fulfilled.

Ryanair argued that right to reclaim the input tax should remain even though the taxable management services were not actually provided as there was a clear intention formed at the time of the proposed acquisition. The CJEU has agreed with Ryanair.

Court of Justice of the European Union

The CJEU has released its judgment in the case of Ryanair Ltd. The case was referred to the CJEU by the Irish courts and the question to be resolved was whether Ryanair was entitled to reclaim input VAT it had incurred on an aborted takeover of its Irish airline rival Aer Lingus.

Ryanair announced that it was intending to take over Aer Lingus by acquiring its share capital. It incurred substantial fees in relation to that proposal and sought to reclaim the VAT on those fees on the basis that it intended to have direct involvement in the management of Aer Lingus through the provision of management services. As the provision of such management services were themselves taxable supplies, Ryanair argued that, in accordance with the CJEU's earlier case law, it was entitled to recover the input VAT incurred. However, the takeover did not go ahead. The European Commission blocked the takeover on competition grounds and on that basis, the Irish Revenue Commissioners argued that, as Ryanair's intentions could not be fulfilled, there was no 'involvement' (direct or otherwise) by Ryanair in the management of Aer Lingus. As a consequence, the Commissioners denied Ryanair's input VAT claim.

The Advocate General issued an opinion in May 2018. That opinion stated that, in line with earlier case law of the Court, direct or indirect involvement in the management of a bid target (by the provision of taxable management services) was sufficient to provide the acquiring entity with a right of recovery. The only stipulation to this right being that the acquirer must be acting as a taxable person at the relevant time. On the facts of this case it was clear to the Court that there was objective evidence to support Ryanair's claim that it intended to make taxable supplies of management services. As such, the fact that the takeover of Aer Lingus did not actually take place did not preclude Ryanair's right to recover the input VAT. The Court confirmed that acts preparatory to the commencement of an economic activity must be regarded as part of the economic activity itself. Where the economic activity is taxable – giving rise to the right of deduction, the same treatment must also be conferred on the preparatory acts. This is the case even if, as here, the intention to carry on a taxable economic activity does not take place due to the abandonment of the intended takeover.

Comment – This is yet another case involving a holding company and a tax authority seeking to deny the recovery of input tax. Interestingly, the Court focused solely on the question of whether the holding company intended to be involved in the management of the target company and it was clear from the evidence before the Court that that was the case. As a consequence, and in line with earlier judgments in cases such as Larentia and Minerva and Marle Participations, the Court has concluded that denial of input VAT recovery where there is a clear intention to provide taxable management services would infringe the neutrality of the VAT system.

In previous cases, the Court has also held that where objective evidence exists to support a persons intention to make taxable supplies, it does not affect that persons right of deduction if, for whatever reason, that intention is not fulfilled or is frustrated. Clearly, in Ryanair's case the intention to make taxable supplies of management services was frustrated by the EU's blocking of the takeover bid but this should not mean that the input VAT incurred on the proposed acquisition of Aer Lingus could not be reclaimed.

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