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C 182/32

Request for a preliminary ruling from the Bundesfinanzhof (Germany) lodged on 15 February 2021  
— Finanzamt R v W-GmbH

(Case C-98/21)

(2021/C 182/45)

Language of the case: German

Referring court

Bundesfinanzhof

Parties to the main proceedings

Appellant in the appeal on a point of law: Finanzamt (Tax Office) R

Respondent in the appeal on a point of law: W-GmbH

Questions referred

1.

Under circumstances such as those in the main proceedings, is Article 168(a) in conjunction with Article 167 of Council Directive 2006/112/EC (1) of 28 November 2006 on the common system of value added tax to be interpreted in such a way that a managing holding that supplies taxable output services for subsidiaries is entitled to deduction, also for services that it obtains from third parties and contributes to the subsidiaries in return for the grant of a share in the general profit, even though the obtained inputs are not directly and immediately linked to the holding's own transactions but instead to the (largely) tax-exempt activities of the subsidiaries, the obtained input services are not included in the price of the taxable transactions (supplied to the subsidiaries), and they do not form part of the general cost components of the holding's own economic activity?

2.

If Question 1 is answered in the affirmative: Does it constitute abuse of rights in the sense of the case-law of the Court of Justice of the European Union, if a managing holding is involved as an 'intermediary' in obtaining services for subsidiaries in such a way that it obtains services itself for which the subsidiaries would have no entitlement to deduction if services were obtained directly, contributes these services to the subsidiaries in return for participation in its profit, and then claims full deduction on the basis of the inputs on the grounds of its position as a managing holding; or can acting as an intermediary in this way be justified on grounds that fall outside the scope of tax

law, even though full deduction is in itself in conflict with the system and would result in a competitive advantage for holding structures over single-tier companies?

(1) Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1).