



VAT Update on Input VAT & Share Sales

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Input VAT and share sales

The Court of Appeal has released an important decision on the recoverability of input VAT incurred in connection with share sales in HMRC v Hotel La Tour Ltd [2024] EWCA Civ 564.

The Court of Appeal has reversed earlier tribunal decisions regarding Hotel La Tour's (HLT) entitlement to recover VAT on the costs of selling shares in a subsidiary company (HLTB) to raise funds for building a new hotel. Instead, the court unanimously decided that the various professional fees incurred by the hotel chain had a direct and immediate link to the sale of the shares—an exempt supply on which VAT is not recoverable.

The Hotel La Tour Case:

- Hotel La Tour Ltd (HLT) is a holding company and owned the whole of the share capital of a subsidiary, Hotel La Tour Birmingham (HLTB), with which it formed a VAT group. HLTB owned and operated a hotel in Birmingham and HLT provided HLTB with management services. In 2015, HLT decided to build a new hotel in Milton Keynes. The project was partially financed by the sale of shares in HLTB. In the course of the sale of HLTB, HLT incurred significant professional fees including marketing costs, solicitors' and accountants' fees and it sought to reclaim the VAT on the fees.
- **VAT Dispute:** HMRC disallowed VAT recovery on the professional fees on the basis that the costs were incurred in the course of making a supply of shares to a UK buyer—an exempt supply where VAT is not deductible. HLT appealed, arguing that the fees were actually the costs of raising funds for the new hotel, a taxable business for VAT purposes.
- **Earlier Tribunal Decisions:** In 2021, the First-tier Tribunal (FTT) ruled in favour of HLT, allowing VAT recovery due to a link to future taxable supplies by the seller of the shares. HMRC subsequently appealed to the Upper Tribunal. Upon review, the Upper Tribunal upheld the decision of the FTT, affirming the recoverability of input VAT.
- **Court of Appeal Decision:** The Court of Appeal has overturned this decision, supporting HMRC's view that HLT's deal costs were directly linked to the VAT-exempt share sale. Consequently, HLT cannot reclaim the VAT paid on those fees.

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»Impact on Other Businesses»

The decision will, of course, be disappointing to many businesses using an exempt share sale to raise finance for wider taxable activities. This decision affects not only the hotel sector but also any business hoping to recover VAT on the costs of selling a subsidiary to fund another taxable business activity.

It remains to be seen whether HLT may seek permission to appeal this decision to the Supreme Court.

»Considerations for Businesses»

It is recommended that all businesses involved in mergers and acquisitions should seek advice on their VAT position early in the planning stage of corporate finance deals.

**Speak to our VAT Consultant
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