

Tax Alert

Calculation of pro rata for Value Added Tax of Holding Companies in subsidiary share transactions

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In May, the Supreme Court published two rulings - [STS 428/2020 18th May](#) and [STS 483/2020 19th May](#) - aimed at clarifying how the pro rata for value added tax of holding companies in certain transactions with their subsidiaries should be calculated.

In summary, both judgments, of practically identical text, determine which financial transactions deserve to be considered "ancillary" so that they can be excluded from the calculation of the pro rata for VAT deduction in application of the provisions of Article 174.2.b) of Directive 2006/112 and Article 104.Tres.4 of Law 37/1992, on VAT.

The doctrine of the Court of Justice of the European Union does not follow a single criterion to determine whether or not an activity is considered ancillary, since it weighs up the concurrence of all or some of these three circumstances:

- That the activity in question constitutes a direct, permanent, and necessary extension of the company's activity.
- The degree of use, in the activity in question, of the goods and services the acquisition of which has generated input VAT and the VAT on which is sought to be deducted.
- The extent to which the activity in question represents a proportion of the taxpayer's total turnover.

In view of the foregoing, the Supreme Court, relying on the case law of the Court of Justice of the European Union, concludes that in the specific case, the sale of shares in its related companies constitutes a principal and not an ancillary activity, since that activity is a direct, permanent and necessary extension of the company's main activity -that is, in the specific case, strategic planning, development and evolution of the group- since, as the Court argues, the company's principal activity includes repeated investment and disinvestment operations; purchases and sales and business restructuring operations.

Likewise, the Court clarifies that although one of the factors to be taken into account when considering whether an activity is ancillary or core is the volume of expenditure - which has been used as the only indicator when determining an activity as ancillary -, it is not the only one to be taken into account, but the other indicators already mentioned must be considered.



For all these reasons, the Court has considered that the sale of shares by a holding company in its subsidiaries does not merit the qualification of ancillary, but must be considered a principal activity, and therefore must be included in the calculation of the VAT pro rata rule.

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