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Hotel La Tour Supreme Court Ruling: Final Confirmation on VAT Recovery for Share Sale Adviser Fees

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In a unanimous judgment, the UK Supreme Court has given final confirmation that VAT incurred on adviser fees connected with an exempt share sale is not recoverable, endorsing the Court of Appeal's strict application of the "direct and immediate link" test. The decision brings finality to an area that had generated uncertainty following earlier tribunal decisions.

The case concerned Hotel La Tour Ltd (HLT), which sold the shares in its subsidiary, Hotel La Tour Birmingham Ltd (HLTB), an entity owning a hotel. The sale was undertaken to raise funds for the development of a new hotel business that would carry on VATable activities. In connection with the share sale, HLT incurred VAT on a range of professional services, including legal, financial, tax and commercial advice aimed at identifying buyers and maximising sale proceeds.

HLT sought to recover the input VAT on those adviser fees, arguing that the costs were sufficiently linked to its wider VATable activities. HMRC disagreed, contending that the costs were directly attributable to the VAT exempt sale of shares and that the VAT was therefore irrecoverable.

A high-level summary of the Supreme Court's decision is set out below. For further detail on the background and earlier decisions, please see our prior *UK Tax Round Up*.

The Supreme Court confirmed that the correct approach to determining input VAT recovery is a strict two-stage test. The first question is whether the costs have a direct and immediate link with a specific transaction constituting an economic activity. Only if no such link can be identified should consideration be given to whether the costs instead relate to the taxpayer's general economic activity. In doing so, the Court expressly rejected the "modified approach" previously adopted by the First-tier Tribunal and Upper Tribunal, under which VAT recovery had been permitted by reference to the intended use of the share sale proceeds.

Applying that analysis, the Supreme Court agreed with the Court of Appeal that the adviser fees incurred by HLT had a direct and immediate link with the exempt sale of the HLTB shares. As a result, the VAT incurred on those fees was not recoverable and it was unnecessary to consider any wider connection with HLT's taxable activities. The Court also rejected arguments based on VAT grouping and the *Kretztechnik* case, confirming that disregarded intra-group supplies do not alter the character of a share sale or the attribution of costs incurred in carrying it out. The judgment therefore closes the door on arguments that adviser costs incurred on an exempt share sale can be treated as general overheads simply because the sale is undertaken to fund taxable activities.

The decision confirms that VAT recovery on adviser fees incurred in connection with a share sale will be determined primarily by the nature of the transaction giving rise to the costs, rather than the commercial purpose of the transaction or the use of the sale proceeds. While the scope for VAT recovery in this context remains narrow, careful scoping of adviser mandates may still be important to ensure that costs genuinely attributable to taxable activities are not inadvertently treated as part of an exempt share sale. For businesses undertaking share disposals, the judgment underscores the importance of early VAT analysis, as irrecoverable VAT on adviser fees should be factored into transaction planning and pricing from the outset.

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