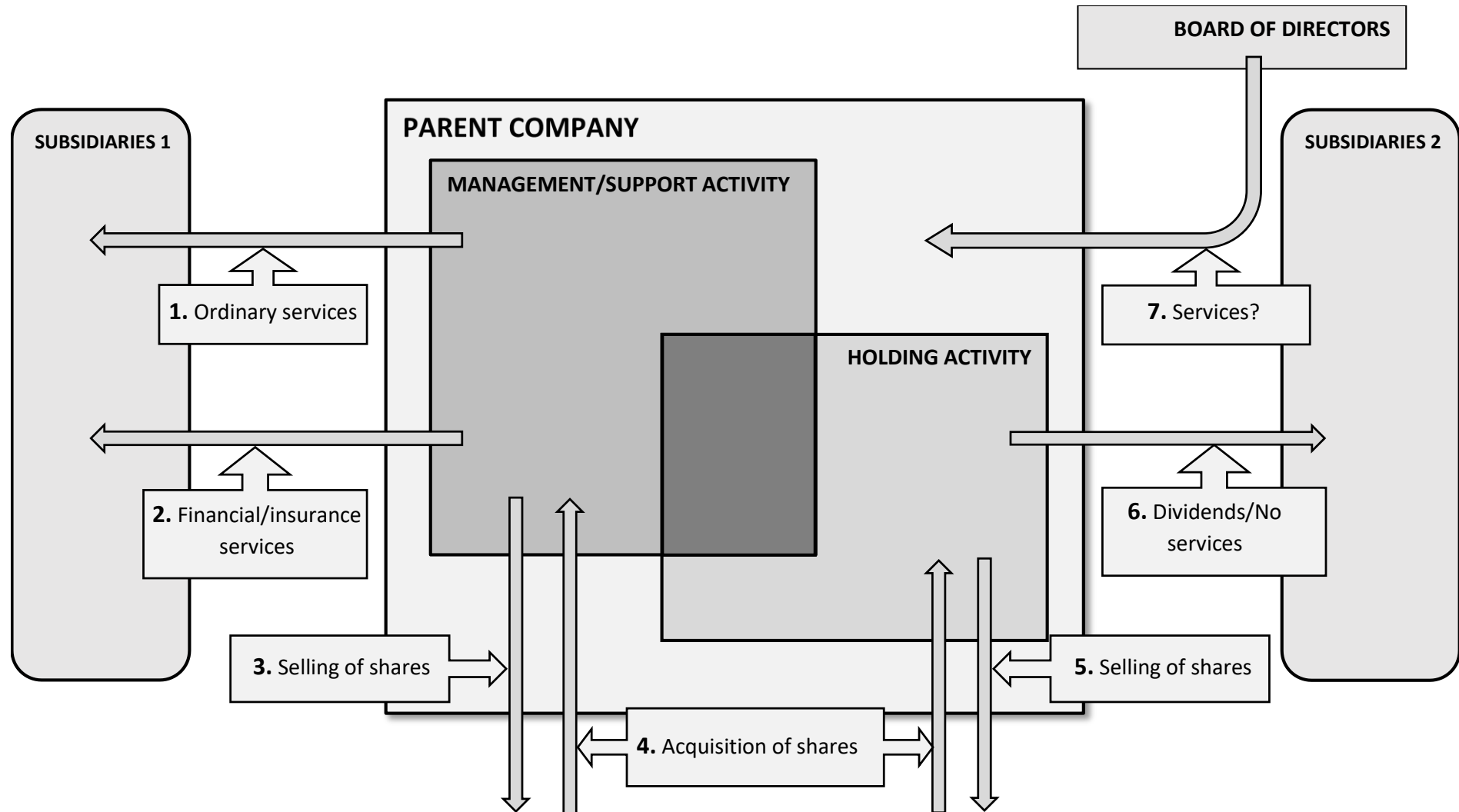


# PARENT COMPANIES-SUBSIDIARIES RELATIONS AND VAT



# 1. ORDINARY SERVICES (I)

- **General approach.** The concept of **service supply**:
  - **Bilateral** legal relationship (ECJ, 5-2-1981, C-154/80, Coöperatieve Aardappelenbewaarpplaats, 3-3-1994, C-16/93, Tolsma, or 10-11-2016, C-432/15, Bařtová)
  - **Proportionality** between the consideration and the services provided (ECJ, 21-3-2002, C-174/00, Kennemer Golf & Country Club, or 3-9-2015, C-463/14, Asparuhovo Lake Investment Company). Identification/qualification of the service provided.
  - Other issues:
    - Generation of **utility** in the recipient (ECJ, 9-10-2001, C-409/98, Mirror Group, or 27-10-2011, C-93/10, GFKL Financial Services). Provision of services versus imputation of own expenses
    - Simple **re-invoicing of expenses** as supply of services (ECJ, 11-3-2020, C-94/19, San Domenico Vetraria).
    - The concept of **economic activity** (ECJ, 12-5-2016, C-520/14, Gemeente Borsele).

# 1. ORDINARY SERVICES (II)

- **Valuation** of operations between **related entities** and VAT:
  - **Application** ex article 72 and 80 of the VAT Directive:
    - **IMPORTANT: No automatic application.** Difference with Income Tax. Application when there is some kind of “advantage” for the parties due to the agreed consideration, no in other situations (ECJ, 9-6-2011, Campsa Estaciones de Servicio, C-285/10).
    - **Open market value.** Application in systems not linked to transactions?
  - **Interaction** with situations of non-consideration (self-consumption):
    - General rule versus special rule?
    - Valuation at cost or valuation at market price?

## 2. FINANCIAL/INSURANCE SERVICES

- In particular, **financial and insurance operations**:
  - Nature of **mediation** (ECJ, 25-2-1999, C-349/96, CPP, 3-9-2015, C-526/13, Fast Bunkering Klaipeda, and of 15-5-2019, C-235/18, Vega International Car Transport and Logistic — Trading).
  - Incidence on the **right to deduction**:
    - Adequacy of the inclusion of operations: Accessory nature of operations in the case of financial companies (ECJ, 11-7-1996, C-306/94, Régie Dauphinoise, or 29-4-2004 , C-77/01, EDM). No extension to insurance.
    - In addition:
      - Existence of **different areas** of activity.
      - Amount to compute: **Gross** or **net** income?

# 3/5. SELLING OF SHARES

- **Exemption/out of scope** transaction, depending on the type of transferring entity (direction holding or pure holding) (ECJ, 29-10-2009, C-29/08, SKF, or 30-5-2013, C-651/11, X)
- **Effect on deductions:**
  - Pro rata, inclusion when support/other services were provided (ECJ, 29-10-2009, C-29/08, SKF)
  - Real use/other modalities following to every Member State decision.
- **Other issues:**
  - Exemption of **mediation services** in the purchase and sale pursuant to article 135(1)(f) of the VAT Directive.
  - Possible consideration as a **going concern**, not VAT taxable ex article 19 and 29 of the VAT Directive (ECJ, 29-10-2009, C-29/08, SKF, and of 30-5-2013, C-651/11, X).
  - Possible application of articles 15(2) and 135(1)(f) of the VAT Directive, qualification as **supply of goods** and exclusion from the exemption (ECJ, 5-7-2012, DTZ Zadelhoff, C-259/11).

## 4. ACQUISITION OF SHARES

- **Deduction** of VAT borne when support/other **services will be provided** to the new subsidiary (ECJ, 5-7-2018, C-320/17, Marle Participations).
- Existence of the right to deduct even in **frustrated acquisitions** (ECJ, 17-10-2018, C-249/17, Ryanair).

## 6. DIVIDENDS. NO SERVICES

- Distinction between **direction holdings** and **pure holdings** (ECJ, 16-7-2015, C-108/14, Larentia + Minerva):
  - **Provision of services** to subsidiaries (ECJ, 5-7-2018, C-320/17, Marle Participations):
    - Reality and relevance. Nature/proportion/anti-abuse
    - Need to require a consideration for the services (ECJ, order of 12-1-2017, C-28/16, MVM).
  - **Consequences** on the right to the deduction:
    - Pro rata versus affection to the economic activity. Possibility of existence of mixed entities, depending on the concerned subsidiaries in question (ECJ, 13-3-2008, C-437/06, Securenta, or 16-7-2015, C-108/14, Larentia + Minerva).

# 7. BOARD OF DIRECTORS. SUPPLY OF SERVICES?

- **General requirements** for the existence of supplies of services:
  - Legal link/proportional consideration
  - Existence/lack of a dependence relationship with the company
- No VAT taxation for the members of a surveillance board (ECJ, 13-6-2019, C-420/18, IO)



# ADITIONAL INFORMATION

Additional information about some of those topics can be found in the book "**ECJ case-law on VAT**", also **available electronically** and whose link is attached:

<https://www.efl.es/catalogo/manuales-juridicos/ecj-case-law-on-vat>