

By PwC Deutschland | 12. Oktober 2026

VAT group and financial integration

In a recently published decision, the Supreme Tax Court took the opportunity to clarify and further develop the established principles regarding financial integration as a requirement for the existence of a VAT group within the meaning of Section 2(2) Number 2 of the German Value-Added Tax Act.

The particular aspect of the case in dispute was that, under the subsidiary's articles of incorporation, a two-thirds majority was required for shareholder resolutions, and the parent company held only a 60 percent interest. Nonetheless, the Supreme Tax Court confirmed the financial integration. The case law as amended by the Supreme Tax Court in its decision of 18 January 2023 - XI R 29/22 (XI R 16/18) played a decisive role (see our [blog post of 27 March 2023](#)).

The parties in the case of dispute were in disagreement over the existence of a VAT-group in 2012 between N-GmbH, as the sole parent company, and O-GmbH, as the subsidiary. N, as the controlling shareholder, held 60% of the shares in O-GmbH and kept the remaining 40% of the shares on behalf of another company under a trust agreement. Effective 12 October 2012, N-GmbH purchased all rights under the trust agreement from the trustor. The articles of organization of O-GmbH provided that, as a general rule, all resolutions of the company must be adopted by a two-thirds majority of the votes cast at the shareholders' meeting and that, if there is only one managing director, that person shall represent the company alone.

Change in case law calls for more sophisticated approach

According to previous case law of the Supreme Tax Court, financial integration as defined in Section 2(2) Number 2 VAT Act required that the parent company hold a majority of the voting rights provided that no higher qualified majority was required to pass resolutions in the subsidiary.

In its decision of 18 January 2023, the Supreme Tax Court changed this case law and held that financial integration also exists if the shareholder holds only 50% of the voting rights but the required enforcement of his own will in the controlled company is ensured by the fact that he holds a majority interest in the capital of the controlled company and that he is the sole managing director of the controlled company.

Asserting the will in subsidiary is fundamental to financial integration

Based on the (old) case law of the Supreme Tax Court prior to the decision of 18 January 2023, there was no financial integration because N-GmbH did not have the two-thirds majority required for the resolution.

However, according to the case law as amended this alone is no longer relevant. Pursuant to the Supreme Tax Court's decision of 18 January 2023, it is sufficient that N-GmbH held a majority stake in the capital of O-GmbH and appointed the sole managing director of O-GmbH. Both conditions are met in the case at hand. Hence, a blocking minority (in the case decided: 60% of the voting rights with a two-third quorum) could prevent the shareholders' meeting from issuing instructions to the managing director, who was, after all, appointed by the parent company.

However, a revocation of the tax assessment for O-GmbH based on its status as a controlled entity as a result of the decision of the Supreme Tax Court of 18 January 2023 in the case XI R 29/22 (XI R 16/18) can only be granted if N-GmbH applied, prior to the expiration of the assessment period, to include O-GmbH's turnover prior to 12 October 2012 in its tax assessment and thereby waived its right to protection of legitimate expectations under Section 176 of the General Tax Code. This matter has now yet to be examined by the lower tax court in the second instance.

As to the period prior to 12 October 2012, the lower tax court merely concluded that N-GmbH had not yet filed an amended tax return. However, it did not determine whether this is still possible because the assessment period in the case at hand may not yet have been statute barred.

Source:

Supreme Tax Court, judgment of 2 July 2026 (V R 36/24) published on 8 October 2026.

Schlagwörter

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