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Non-business entity may be member of VAT group

The ECJ has upheld Irish legislation allowing a non-business entity, such as a holding company, to be a member of a VAT group.

Irish law provides for the tax authorities to establish that two or more closely related entities form a VAT group to be treated as a single taxable person. The close relationship is financial, economic and organisational. At least one of the group members must be a taxable person in its own right, but the others need not be. The European Commission brought a case against Ireland, claiming that the letter and spirit of the VAT Directive clearly required that all members of a VAT group be taxable persons seen individually.

The ECJ has accepted the Irish defence and rejected the Commission's suit. Contrary to the Commission's view, the wording of the VAT Directive did not restrict membership of VAT groups to taxable persons. Indeed the spirit and purpose of the legislation required the contrary, so that, for example, holding companies could be included. The court also pointed out excluding a closely related party from a VAT group because it would not be a taxable business as an independent entity, could increase the opportunity for evasion rather than reducing it. The finding thus helped in protecting the VAT system.

The ECJ case reference is C-85/11 *Commission v. Ireland*, judgment of April 9, 2013.

Keywords

VAT group, holding company, non-business