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By PwC Deutschland | 25 April 2013

Non-business entity may be member of a VAT group - II.

The ECJ has followed up its April 9 judgment with a further six decisions against the Commission on the same lines. It has also held that a member state may restrict a VAT group to a specific industry in the interests of curbing evasion and fraud.

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On April 9, the ECJ held in favour of an Irish provision accepting a non-business entity as a VAT group member. The example cited in the judgment was that of a non-managerial holding company that did not pursue active business of its own. However, it would suffer input tax on its expenses incurred on behalf of the group.

The ECJ has now followed up with a further six judgments in the same vein in favour of member states seen by the Commission as having failed to properly transpose the VAT Directive. The example of a minor subsidiary with only occasional outside turnover as a non-business member of a group has been added to that of the holding company, and the advantages of bringing non-business, but controlled, entities into VAT groups in the struggle against evasion and fraud, have also been reiterated.

The Commission took the opportunity to add a further objection to its case against Finland – that Finland restricts her VAT groups to the financial services and insurance industries. This left the Commission arguing both for and against a widely defined group in the same case. It lost both arguments. It objected to the Finnish restriction to the financial services industry on the assertion of a breach of fiscal neutrality. The ECJ pointed out, though, that fiscal neutrality referred to relationships between competitors, and this was not relevant to the present question of a special rule for a particular industry or activity. The restriction did breach the general principle of equal treatment throughout the business sphere, though that breach could be accepted as the Commission did not refute the assertion that it was justified in the struggle against evasion and fraud.

The ECJ also decided on the same day an earlier case brought against Sweden, this time solely concerned with the Swedish restriction of VAT groups to businesses in financial services and in insurance. As in the Finnish case, it accepted the Swedish contention that the financial supervision to which such businesses were subject offered additional safeguards against evasion and fraud, and found this to be sufficient justification of the unequal treatment experienced by other businesses denied the privilege of forming a VAT group. It reached this finding in the absence of any convincing counter-argument by the Commission.

The ECJ case references are C-480/10 (*Commission v. Sweden*), C-65/11 (*Commission v. Netherlands*), C-74/11 (*Commission v. Finland*), C-86/11 (*Commission v. UK*), C-95/11 (*Commission v. Denmark*) and C-109/11 (*Commission v. Czech Republic*), judgments of April 25, 2013. The previous case was C-85/11 (*Commission v. Ireland*) judgment of April 9.

Keywords

VAT group