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ECJ: Transactions between members of VAT group not taxable

Following yet another preliminary ruling regarding the German regulations of consolidated tax groups for VAT purposes the European Court of Justice held that a VAT group’s internal transactions do not fall within the scope of value added tax and remain non-taxable.

Background

In a case previously dealt with by the European Court of Justice (C-269/20 *Finanzamt T*) the Supreme Tax Court saw the need for yet another preliminary ruling regarding the present practice that internal transactions between members of the same VAT group are not VATable. This has raised some doubt during the first preliminary request: In January 2022, Advocate General Medina expressed the opinion in the course of the first reference (**C-269/20** - *Finanzamt T*) that a VAT group is essentially limited to the submission of a joint VAT return and that so-called internal supplies "could" be subject to VAT. Although the ECJ did not explicitly confirm this view in its **subsequent ruling**, it did not rule it out either.

In addition, the Supreme Tax Court in the current referral also asked the ECJ whether those internal services are (at least) subject to VAT if the recipient is not or only partially entitled to input VAT deduction as otherwise there would be **a risk of tax losses**. Those doubts arose from the original judgments in *Finanzamt T* (C-269/20) and *Norddeutsche Gesellschaft für Diakonie* (C?141/20) in which the ECJ held that the second subparagraph of Article 4(4) of the Sixth Directive does not preclude the organization of a VAT group such as that at issue under German law, in which the controlling company is designated as the single taxable person, but **only provided** that **this entails no risk of tax losses**.

In his Opinion the Advocate General (AG) had proposed to decide that supplies of services for consideration between persons being part of a VAT group do not fall within the scope of VAT, even where the recipient of the supply of goods or services is not (or is only partly) entitled to deduct input VAT (see **blog post of 17 May 2024**).

ECJ decision

The ECJ followed the Opinion of the AG and held *that supplies made for consideration between persons belonging to one and the same VAT group, which consists of legally independent persons, who are closely linked by mutual financial, economic and organizational relationships and are designated by a Member State as the sole taxable person, are not subject to VAT even if the VAT due or paid by the recipient of these supplies may not be deducted as input VAT.*

The fact that, under the second subparagraph of Article 4(4) of the Sixth Directive, a VAT group is treated as a single taxable person precludes the members of the VAT group from continuing to submit separate VAT returns and from continuing to be regarded as taxable persons within and outside their group, since only the single taxable person is authorized to submit those returns (with the allocation of only one VAT identification number).

From this, it follows that a supplier belonging to a VAT group cannot himself be regarded as a taxable person separate from that group. Therefore, it is not necessary to determine whether he satisfies the condition of self-employment within the meaning of Article 4(1) of the Sixth Directive if he supplies a service for consideration to another entity in that group. Consequently, such a supply cannot fall within the scope of VAT.

With regard to **the question of the "risk of tax losses**", the ECJ points out that, in the case of a VAT group, the right to deduct the VAT belongs to the group itself and not to its members. The judgments *Norddeutsche Gesellschaft für Diakonie* (C-141/20) and *Finanzamt T* (C-269/20) referred to by the Supreme Tax Court related - according to the ECJ - to a question other than the one examined in the present case (details in paragraphs 43 - 46 of the current judgment).

Source:

ECJ, judgment of 11 July 2024 (**C?207/23**), *Finanzamt T II*.

Keywords

VAT group, intracompany transaction