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By PwC Deutschland | 17 July 2026

General Court: Requirement of 100% ownership for VAT group not in accordance with EU law

In a most recent judgment, the General Court of the EU decided that national legislation requiring a 100 percent ownership interest to qualify for a VAT group to be incompatible with EU law unless that condition is a necessary and appropriate measure to achieve the objectives of combating tax evasion or avoidance. The Court also found that taxpayers cannot directly invoke the provisions of the VAT Directive.

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Background

The request for a preliminary ruling concerns an insurance company (V) that wishes to form a VAT group with a management company (VG). V's activities include financial services that are exempt from VAT. VG was 94% owned by V and 6% by two pension funds which were also managed by VG. VG provides management services to V for a fee and would therefore be required to charge VAT. However, V cannot fully deduct the VAT charged on these services as input tax in light of its VAT-exempt financial services.

The application for registration as a single VAT entity was rejected by the Danish tax authorities because V did not hold a 100% interest in VG which is a requirement under the national VAT Act. V challenged the refusal, claiming that this provision was incompatible with Article 11 of the VAT Directive.

Decision

Legislation of a Member State which makes eligibility to form a VAT group subject to the condition that one person in the VAT group owns, directly or indirectly, all of the capital of the other person or persons in that VAT group is incompatible with Article 11 of the VAT Directive unless that requirement constitutes a necessary and appropriate measure for attaining the objectives of combating tax evasion or avoidance. It is for the referring court to finally ascertain whether these latter conditions are fulfilled.

The Danish Government argues that the 100% ownership condition is intended to prevent the loss of tax revenue and the windfall effects which may result from the inclusion of persons carrying out activities exempt from VAT or not engaged in economic activity in VAT groups. This allows, inter alia, to acquire goods and services from the other members of the group without paying VAT.

This generalizing approach was vehemently contradicted by the Court. The mere existence of a tax advantage resulting from the implementation, by a Member State, of the VAT group scheme cannot, in itself, be considered tax evasion or avoidance within the meaning of the second paragraph of Article 11 of the VAT Directive. A purely theoretical risk of tax evasion or avoidance cannot form the basis of a general and absolute rule which restricts access to the VAT group scheme.

Second, a measure can be an appropriate means of securing the achievement of the objective pursued only if it genuinely reflects a concern to secure the attainment of that objective in a consistent and systematic manner. That might not be the case as regards the 100% ownership condition since the tax advantage which may result from the inclusion in a VAT group of a person carrying out a VAT exempt activity or not engaged in economic activity is the same – whether 100% or less of the capital of that person is owned by another member of the group – as far as the condition of close financial links (financial integration) is met.

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Finally and in answer to the second question, the Court held that **Article 11 of the VAT Directive** must be interpreted as **not having direct effect** allowing taxable persons to rely on it against their Member State in the event that that State's legislation is not compatible with that provision and cannot be interpreted in a manner consistent with it.

Source: General Court of the EU, judgment of 16 July 2026 **T?268/25** *Sampension Livsforsikring*. (as of yet only published as preliminary version / "provisional text")

Keywords

VAT group, ownership