



FSI tax alert Belgium

Advocate General in CJEU Case *Aspiro* : no VAT exemption for insurance claims handling

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Background

The Polish company Aspiro provides an end-to-end claims handling service to insurance companies. This includes the assessment of claims made by policyholders to determine if a claim should be paid by the insurer and, if so, the quantum of the payment. The claims handling service comprises activities such as receiving and processing of claims for damage covered by the insurance policies; correspondence with the insured; preparation of photographic documentation; and dealing with complaints against the claims handling process as well as other administrative activities.

When carrying out the claims handling services, Aspiro acts in the name of and on behalf of the insurers and has itself no contractual relationship with the policyholders.

The Polish tax authorities took the view that only the review and processing of the claims should fall under the exemption whilst Aspiro's other activities should be taxable.

It is worth noting that under Polish VAT law, the exemption for insurance transactions also applies to outsourced services provided by third parties which are *distinctive in character* as well as *specific and essential* to the performance of an insurance transaction.

AG's Opinion

The AG suggests that the CJEU should find that the services provided by Aspiro do not fall within the insurance and related services exemption in Art 135 (1)(a) of the VAT Directive. She follows in this respect the viewpoint of the EU Commission, according to which:

- the services do not qualify as supplies of insurance or reinsurance;
- the principles established in the *Sparekassernes Datacenter*-case (C-2-95), whereby a service which is *distinctive in character* and *specific to*, and *essential for*, an exempt financial service can itself be exempt, cannot be applied to supplies of insurance. This is because a supply of insurance is essentially the provision of cover against risk and cannot be divided into various services; and
- the services do not qualify as exempt insurance related services as Aspiro does not carry out the 'core' activity of an insurance broker or agent, i.e. finding prospects and introducing them to the insurer.

The AG points out that other activities carried out by insurance brokers or agents may benefit from the exemption if they are connected to this core activity. It may be inferred from this comment that those who carry out the core activity may also obtain VAT exemption for claims handling in respect of the policies they have introduced. However, this point has not been clearly expressed.

Follow the links below to read the AG's opinion of 23 December 2015:

Implications for the Belgian insurance industry

In Belgium, the VAT- exemption is accepted also for claims handling in scenarios where the supplier had no involvement in the intermediation of the underlying insurance policy. This was foreseen in a specific decision from the Ministry of Finance in 2007, which followed the *Arthur Andersen*-case (C-472/03) and was deemed to be valid until new definitions of exempt financial and insurance services were decided at EU-level (Decision n° E.T.103.851/3 of 20.01.2007). In this respect, it is interesting to note that the EU Commission's legislative proposals on the VAT treatment of insurance and financial services, which featured an exemption for claims handling services, was repealed in December 2015.

It is worth noting that this is only an AG's opinion and the CJEU does not have to follow it. However, given the CJEU's previous decisions in respect of insurance related services, we consider it is highly likely that the CJEU will adopt the AG's approach.

In that case, we would expect that, in Belgium and in other countries which allowed the exemption for these services so far, changes to the VAT legislation or guidance would be considered. The likely outcome of this would be that the insurance industry may be faced with additional VAT costs.

We will of course provide a further update on release of the final judgment (expected in the first half of 2016).

Contacts

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