



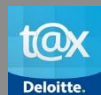
FSI tax alert Belgium

ECJ-case Aspiro limits VAT exemption for insurance claims handling

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In a 17 March 2016 ruling (Case C-40/15, Aspiro), the European Court of Justice (ECJ) stated that insurance claims handling outsourced by insurers, where it is not linked with the intermediation of insurance policies, cannot be exempt from VAT. The Belgian administrative guidance currently allows a broad application of the exemption even where insurance claims are handled by a party not involved in finding and introducing the

prospect to the insurer. Insurers may face an additional VAT cost following this judgment, as it is likely that the Belgian administrative guidance will be adapted accordingly.

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 payment quantum. The claims handling service also comprises activities such as processing claims, correspondence with the insured, preparation of photographic documentation, dealing with complaints and other administrative tasks.

When carrying out claims handling services, Aspiro acts in the name of and on behalf of the insurers, as an outsourcer. It did not have any contractual relationship with the policyholders.

Decision of the Court

In line with the Advocate General's opinion issued in December 2015, the Court decides that the services provided by Aspiro do not fall within the scope of the exemption for insurance and related services (article 135 (1)(a) of the VAT Directive).

Although the Court confirms that insurance claims handling forms an essential part of an insurance activity, it cannot be covered by the VAT exemption for the provision of insurance as this presupposes the supply of cover against risk.

The insurance claims handling services provided by Aspiro can, according to the Court, also not qualify as "insurance related services performed by insurance brokers and insurance agents", 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.

Implications in Belgium

Currently, VAT exemption is also accepted for claims handling in scenarios where the supplier had no involvement in the intermediation of the underlying insurance policy, and acts as a pure outsourcer. The exemption's broad application was provisionally allowed in 2007 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). As the project to adapt the VAT Directive on financial and insurance services was abandoned in December 2015, and given the clear judgment, it is expected that Belgium may soon change the current scope of VAT exemption for insurance claims.

Contacts

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