

VAT Alert

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European Court of Justice clarifies VAT grouping rules

Following a first case, the European Court of Justice (hereafter referred to as the CJEU) ruled today in a series of court rulings that a non-taxable person (i.e. an entity without an economic activity of its own such as a passive holding company) is entitled to join a VAT group. This results from a series of infringement actions by the European Commission against EU Member States that allow such entities to enter in a VAT group. In a separate case however, the CJEU stated that national VAT legislation is entitled to limit VAT grouping to a certain industry such as the financial industry, as long as this is driven by the need to prevent tax evasion or avoidance.

Series of judgements on the membership of non-taxable persons

Several Member States were brought to the CJEU on the European Commission's initiative because their national legislations allowed non-taxable entities to be a member of a VAT group.

The CJEU concluded that the VAT Directive allows non-taxable persons to become a member of a VAT group.

This judgment impacts the Belgian VAT legislation in so far as Belgium, through its Royal Decree n° 55, precludes non-taxable entities, such as passive holdings and public authorities acting as such, to enter into a VAT group.

VAT grouping can be limited to prevent tax evasion or avoidance

Swedish and Finnish VAT legislation restricts the availability of VAT grouping to economic operators in the financial and insurance sector. It was questioned whether this limitation was in breach of European VAT legislation.

The CJEU recalled that the VAT Directive allows VAT grouping for "any person" established within Member State territory, provided that these persons have close financial, economic and organizational links. There are no other limitations in the provision.

However, this does not prevent member states to limit VAT grouping to a certain industry such as the financial industry, where the aim is to combat tax evasion or avoidance. Sweden justified the application of the VAT grouping scheme to the financial and insurance sector since VAT on operations internal to the group are particularly onerous in that sector and because it is a sector under regulatory supervision.

According to the Court, the VAT directive allows Member States to adopt any measures needed to prevent tax evasion or avoidance through the use of VAT grouping. The Commission has failed to show convincingly that, in the light of the need to combat tax evasion and avoidance, the measures were not well founded. The combined reading of different cases gives a varied image of the power that Member States have to limit VAT grouping. Without the clear objective of tax evasion or avoidance prevention, such limitation is not possible.

Sources: CJEU 9 April 2013, C-85/11, *European Commission v Ireland*; 25 April 2013, C-65/11, *European Commission v Kingdom of the Netherlands*, C-86/11, *European Commission v United Kingdom*, C-95/11, *European Commission v Kingdom of Denmark*, C-109/11, *European Commission v Czech Republic*, C-74/11, *European Commission v Republic of Finland* and C-480/10, *European Commission v Kingdom of Sweden*.

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