

Feedback to DG TAXUD on ECJ ruling on taxability of internal transactions in VAT groupings.

Our reference:		Date:	15 March 2024
Referring to:			
Contact person:	Fabrizio Franco, Policy advisor, Personal Insurance & Taxation	E-mail:	franco@insuranceeurope.eu
Pages:	3	Transparency Register ID no.:	

Introduction – the ECJ’s ruling:

On 6 January 2023, the German fiscal court (*Bundesfinanzhof* - BFH) sought a preliminary ruling from the European Court of Justice (ECJ) on the taxability of internal transactions within a VAT grouping (see [here](#) for more information about the ECJ referral of 26 January 2023, V R 20/22, V R 40/19).

The ECJ is tasked with interpreting the *Sixth Council Directive on harmonization of the laws of the Member States relating to turnover taxes - Common VAT system: uniform taxable base* of May 17 1977 ([Directive 77/388/EEC](#)), and answering two specific questions posed by BFH:

- Does the grouping of several persons into one taxable person under the second subparagraph of Article 4(4) of Directive 77/388/EEC mean that the supply of services between those persons does not fall within the scope of the VAT under Article 2(1) of that Directive – and therefore is not taxable?
- Are supplied services between these persons subject to the scope of the VAT, if the recipient of the service is not (or only partially) entitled to deduct input tax, since otherwise would there be a risk of tax losses?

In March 2023, the ECJ published a summary of the preliminary ruling request (see [here](#)) and assigned the case number C-184/23. The ECJ will seek the guidance of an Advocate General in reaching its decision.

Description of the issue and Insurance Europe’s request:

Since the implementation of Directive 77/388/EEC, VAT grouping has been a crucial tool for insurers to address the challenge of non-deductible input tax. By providing services within the VAT group, insurers reduce any non-deductible input VAT on internal services, thus reducing the costs of their insurance products.

According to our understanding, it is common practice in many Member States to consider transactions within a VAT group as non-taxable. However, Insurance Europe has not yet conducted a comprehensive study to confirm

the presence of this practice in all Member States. Should the ECJ rule that internal transactions are taxable, VAT grouping would no longer be beneficial for insurers.

In the past, the European Commission (EC) has acknowledged the importance of VAT grouping for the financial services industry. The EC has also made two attempts to reform the European VAT system with regard to financial services. However, due to the complexity of the issue, the EC has not yet succeeded in developing a proposal for a directive that has been adopted by the Member States. If the ECJ was to rule that internal transactions are taxable, it would be crucial to reinstate a reform of the VAT grouping, if not of the entire VAT system.

Motivations behind Insurance Europe's request:

Insurance companies, like many other businesses, often operate across multiple entities within a single country. This organisational structure is designed to achieve economies of scale by centralising functions and catering to the unique needs of different business segments. Moreover, in the insurance industry, there is a mandatory requirement under the insurance supervisory laws of most EU Member States to separate life and health insurance business into distinct entities from other lines of business. This separation is intended to safeguard policyholders' interests.

Establishing VAT groups is crucial for the insurance industry because it allows companies to comply with the requirements of insurance supervisory law without being hindered by the distorting effects of VAT on intra-group transactions, where other industries would not necessarily be impacted.

A ruling that would make internal transactions within VAT groups taxable could have significant and unjustified economic consequences for the insurance industry due to the general inability to deduct input VAT. With the loss of VAT exemption for cost-sharing groups for financial services, VAT groups emerged as the only remaining tool to mitigate the significant burden of irrecoverable VAT on essential, internally supplied services.

This economic impact could be mitigated by restructuring the group organisation, the purchasing processes, and implementing other measures to minimise internal transactions. However, this would come at the cost of sacrificing some of the efficiency gains from the current structure and could have further tax implications, particularly in the corporate tax realm. Additionally, restructuring options are further constrained by the requirement to separate different lines of business into distinct entities. Ultimately, such a ruling would translate into higher insurance costs for consumers.

In the event that goods/services supplied within a VAT group fall within the scope of VAT, groups comprising entities that are ineligible for (full) input VAT recovery would be burdened with additional VAT expenses. This would contradict the taxable person's choice to structure their business without distortion and the principle stating that the impact of VAT should be neutral in the value chain. Companies in the insurance industry would face discrimination in their freedom to rearrange their organizational structure compared to companies in other sectors that are eligible for (near) full input VAT recovery.

An ECJ ruling that would make internal transactions within VAT groups taxable would also be inconsistent with the existing legislation:

- Article 11 of the VAT Directive (2006/112/EC) clearly states that all members of a VAT group are considered for VAT purposes as a single taxable person. As such, members of VAT groups no longer have the status of individual taxable persons for VAT purposes once they fulfill the VAT grouping criteria (in terms of financial, economic, and organisational ties). This principle aligns with ECJ decisions in cases like *Danske Bank* and *Skandia*. These rulings determined that when a VAT group forms a single taxable

person, supplies between the group and other entities of the same legal entity outside the group become taxable.

- Additionally, Member States that permit VAT grouping, as provided for under Article 11 of the VAT Directive, are required to submit their draft legislation on VAT groupings to the VAT Committee for prior approval. The VAT legislation enacted by Member States across the EU appears to share a common interpretation of the provisions outlined in Article 11 of the VAT Directive, as transactions within VAT groups are generally considered non-taxable.

Article 11 of the VAT Directive further stipulates that Member States may implement measures to safeguard against tax evasion through VAT grouping. In practice, Member States mitigate tax evasion by imposing stringent requirements that restrict VAT grouping to entities linked by financial, economic, and organisational ties. Member States routinely subject VAT grouping compliance to rigorous tax audits, particularly for industries with restricted input VAT deduction. The German Federal Fiscal Court's characterisation of non-taxability as "tax losses" in its request for a preliminary ruling appears unwarranted. This non-taxability applies solely to internally generated and consumed services.

Insurance Europe is the European insurance and reinsurance federation. Through its 34 member bodies — the national insurance associations — Insurance Europe represents all types of insurance and reinsurance undertakings, eg pan-European companies, monoliners, mutuals and SMEs. Insurance Europe, which is based in Brussels, represents undertakings that account for around 95% of total European premium income. Insurance makes a major contribution to Europe's economic growth and development. European insurers generate premium income of more than €1 100bn, employ almost one million people and invest almost €8 400bn in the economy.