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VAT'S UP

VAT NEWSLETTER

VAT group: indirect economic integration

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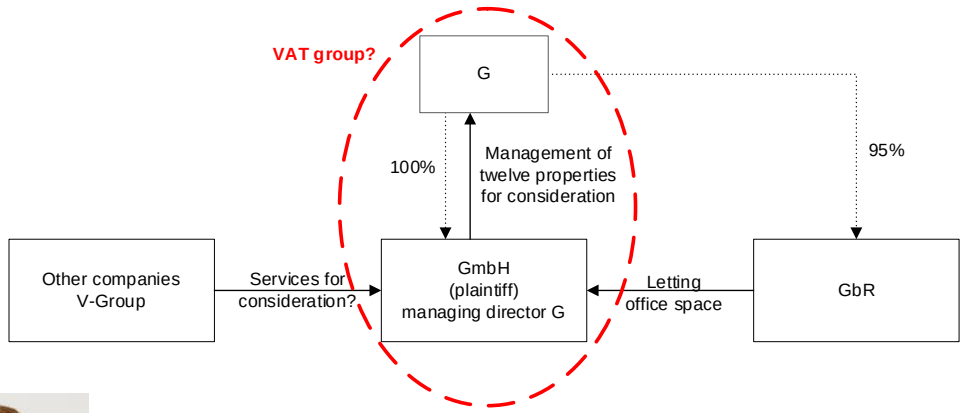
1 Facts

The object of G's sole proprietorship was the acquisition of real estate assets. G was the sole shareholder and managing director of the plaintiff, a limited liability company (GmbH). The plaintiff's business objective was the letting and management of real estate. The plaintiff managed (in addition to approximately 1,828 other units) the twelve residential buildings owned by G and took over the special management of a further 1,805 third-party properties. On the input side, the plaintiff rented office space from a GbR, 95% of whose shares were held by G. The plaintiff, for its part, was part of the "V-Group". The V-Group consisted of several companies which offered various services in the real estate sector. The Fiscal Court left open the question of whether V-Group companies rendered services to the plaintiff for consideration. The Fiscal Court assumed that the plaintiff was not a company controlled by G due to a lack of economic integration. In particular, it left open whether other V-Group companies were integrated into G.



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2 Reasons for the decision

In view of the plaintiff's clear financial and organisational integration into G, the economic integration need not be so clear. All that is required is a reasonable economic link. The activities of both the parent company and the subsidiary must be coordinated, and they must promote and complement each other. The crucial factor here is the interrelationship of the respective economic activities (but not the allocation of the participation by the parent company to its economic activities). The German Federal Fiscal Court (BFH) also understands sec. 2.8 para. 6 sentence 2 in conjunction with sec. 2.3 para. 2 [probably para. 3] sentence 5 no. 2 of the German Administrative VAT Guidelines (UStAE) to be interpreted in the latter sense.

The BFH followed the Fiscal Court insofar as it considered the property management services carried out by the plaintiff to G to be, in principle, insufficient for economic integration. These were standardised services (similar to the accounting) for which there were numerous, interchangeable providers. Only if these supplies to G were of considerable importance to the plaintiff, could economic integration result from this. Since the Fiscal Court only determined the number of units managed by the plaintiff vis-à-vis G and third parties for the first day of the three-year period in dispute, the BFH could not conclusively assess this.

In addition, the Fiscal Court still has to clarify, in the second instance, whether other V-Group companies may have promoted the plaintiff's business activities in a way that could meet the requirements of economic integration. In this case, the plaintiff's economic integration into G's company would be given, if the said V-Group company into which the plaintiff is economically integrated, was part of a VAT Group with G. Supplies carried out by G to the other V-Group companies can only justify their economic integration into G, but not the plaintiff's integration into this particular V-Group company.

3 Consequences for the practice

After a series of decisions on the admissibility of the German VAT group per se and the integration of partnerships, the BFH has now again dealt with economic integration. Significant in this respect are the BFH's comments on indirect economic integration. Both the controlling company and the controlled company, together, constitute one taxable person. The controlled company's supplies of services are, for VAT purposes, assigned to the controlling company. Therefore, if a V-Group company, which is a company controlled by G, justifies the economic integration of the plaintiff, e.g. by rendering services to the plaintiff for consideration, this has the same effect as if the services wwere rendered by G. Therefore, such services, which are not directly carried out by the controlling company under civil law, but rather by one of its controlled companies, can also constitute grounds for economic integration into the controlling company. In this context, the BFH does not mention the GbR's letting of property to the plaintiff. It should not be ruled out that the GbR is also one of G's controlled companies and that the letting of office space constitutes grounds for economic integration.

Most recently, the BFH had limited the possibility of economic integration through letting (see KMLZ VAT Newsletter 36 | 2022). In such cases, the letting only constitutes grounds for economic integration if the let premises are specially equipped for use by the controlled company and are therefore not interchangeable. With the present decision, the BFH does not continue such a restrictive interpretation. Rather, it confirms its previous line with regard to indirect integration. In its decision of 13 June 2017 (15 K 2617/13), the Fiscal Court of Münster applies this BFH jurisprudence to circumstances in even more far-reaching constellations.