



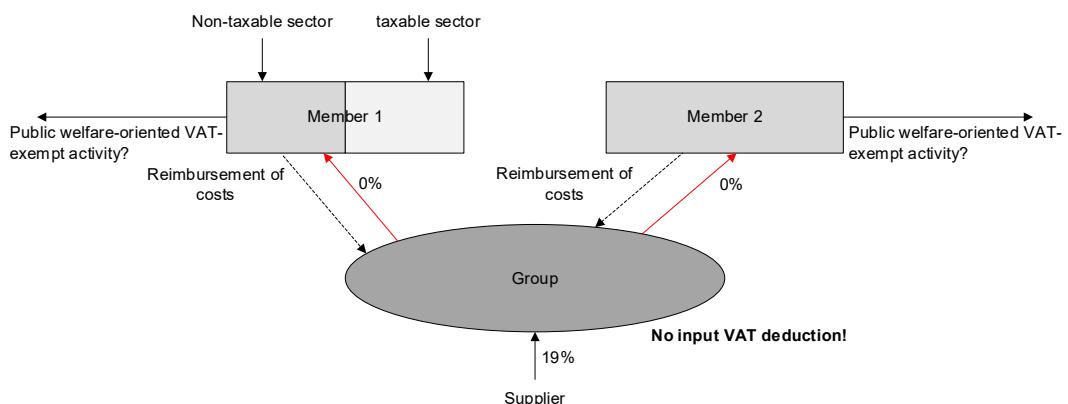
VAT NEWSLETTER

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ECJ: VAT exemption for cost sharing groups

1 Background

Cooperation between different companies generally leads to a supply for consideration which is subject to VAT. An exception applies in the case of VAT groups. Transactions within the VAT group are considered internal supplies and are therefore not taxable. Without a parent company holding a majority stake in its subsidiary, no VAT group exists. A way out of VAT liability is then the so-called cost sharing group pursuant to sec. 4 no. 29 of the German VAT Act (Art. 132 para. 1 lit. f of the EU VAT Directive). Services rendered by the 'group' to its members (not vice versa!) may be VAT-exempt if the criterion of 'immediacy' is met and, in addition, distortions of competition can be ruled out. The basic structure of a cost-sharing group can be outlined as follows:



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It is no secret, that the Federal Ministry of Finance (BMF) is particularly critical when it comes to assessing the requirements of sec. 4 no. 29 of the German VAT Act (BMF, letter dated 19 July 2022). It is therefore good that the ECJ is there to act as a corrective force.

2 Facts of the case

The dispute concerned the VAT treatment of cleaning services provided by the two companies, ANS and Educat, to their respective members. ANS was founded with the aim of creating a joint infrastructure for cleaning services in hospitals, medical centres and other buildings where its members carry out activities in the health and social medicine sector. Educat pursues similar objectives for its members' institutions in the education sector, particularly for nurseries, schools and vocational training establishments.

A special feature of the case was that neither company provided the cleaning services itself but instead used external subcontractors who possessed the necessary technical and organisational expertise. The Spanish tax authorities regarded this as a problem and therefore classified the services provided by ANS and Educat to their members as being subject to VAT. In addition, they stated that there was no direct and exclusive link between the cleaning of buildings and the VAT-exempt activities carried out by the respective members. A VAT exemption could therefore lead to distortions of competition.

3 ECJ Judgment

In its judgment of 22 January 2026 – C-379/24, the ECJ clarified that Art. 132 para. 1 lit. f of the EU VAT Directive also covers general services provided for the direct purposes of the VAT-exempt activities of the members. An indispensable contribution to a specific transaction or activity is not required. The service must merely directly contribute to VAT-exempt activities. The decisive factor is whether the services are usually supplied by such a group to its members because they are necessary for the exercise of the VAT-exempt activity. Accordingly, general services, such as cleaning may be regarded as directly necessary in both the health and education sectors. However, the prerequisite remains that the supplies are used exclusively for the VAT-exempt activities of the members and do not serve other purposes. Even if the VAT exemption extends to general services, this does not automatically lead to distortions of competition. Such a restrictive interpretation would be contrary to the meaning and purpose of Art. 132 para. 1 lit. f of the EU VAT Directive. It is possible to refuse VAT exemption in cases of abuse. However, the allegation of abuse must not be based on blanket assumptions.

4 Consequences for the Practice

On a positive note, it is important to highlight that the ECJ has confirmed the recent ruling of the Federal Fiscal Court (BFH) on cleaning services provided by a joint practice (BFH, decision of 4 September 2024, XI R 37/21). This is good news, and the tax authorities would also do well to reconsider their previous strict interpretation of general administrative services (BMF, letter dated 19 July 2022, section II. 1.4.). Fortunately, the tax authorities have not taken too strict a view of the criterion of no distortion of competition and have limited its application to cases of abuse (BMF, letter dated 19 July 2022, section II. 2.). According to the ECJ, additional concrete evidence is required for such cases. A blanket refusal of VAT exemption is not sufficient.

Particularly in the non-profit sector or in the case of legal entities under public law, cost sharing groups, pursuant to sec. 4 no. 29 of the German VAT Act, can be an interesting – and legally permissible – structuring tool. This applies, in particular, to labour-intensive services, as input VAT exclusion, pursuant to sec. 15 para. 2 sentence 1 no. 1 of the German VAT Act, regularly applies here.