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VAT NEWSLETTER

Application of establishment-specific tax exemptions within a VAT group

29 I 2026

1 Background

The VAT group is, once again, in the spotlight of Union jurisprudence – this time the issue concerns the application of establishment-specific VAT exemptions. Taxable persons providing VAT-exempt supplies can, unquestionably, act as both the controlling company and a controlled company of a VAT group. According to the VAT regulations, the taxable activity of the legally independent controlled company is deemed to be part of the controlling company's taxable activity, provided that the requirement of close financial, economic and organisational link is met. Hence, the controlled companies are regarded as being non-independent and can no longer act as independent taxable persons alongside the controlling company.

By contrast, VAT exemptions for certain activities in the public interest are not generally linked to the status as a taxable person as such, but are determined by specific status of the establishment supplying those services. In this context, the term "establishment" or "body" does not refer to the undertaking as a whole, but to a distinct aggregation of human and material resources. German law provides to the status of the establishment, eg, in the case of bodies governed by public law or other organisations recognised by the Member State concerned as being devoted to social wellbeing.

Against this background, it was for the General Court (Case T-444/25) to clarify the implications of membership of a VAT group for the application of VAT exemptions linked to specific status of the supplier, such as recognition as a establishment or body within the meaning of Art. 132 para. 1 lit. b and g of the EU VAT Directive. In the General Court's view, a strict distinction must be drawn between the question of who is regarded as being the taxable person and the conditions under which a VAT group may apply a VAT exemption.

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2 Facts of the case and the question referred

The case concerned a VAT group made up of two foundations and three limited liability companies governed by Netherlands law. All members were involved in various aspects of care for people with intellectual disabilities. However, only one of the foundations was recognised as a beneficiary body within the meaning of the VAT exemption provisions. By contrast, one of the limited liability companies provided services to the people receiving care, consisting of supervising them round the clock. However, that company itself did not meet the conditions for recognition as a body within the meaning of the relevant VAT exemption provisions. Against this background, the question arose as to whether the services provided by that company were exempt from VAT if another member of the VAT group met the conditions for VAT exemption, but the specific services were provided to third parties by a non-beneficiary member.

3 General Court decision

The General Court clarifies that a VAT group may only rely on the VAT exemptions under Art. 132 para. 1 lit. b and g of the EU VAT Directive if the supplies of services are rendered by a member which itself meets all the conditions for the relevant VAT exemption. Admittedly, a group member cannot be regarded individually as a taxable person separate from the VAT group. Rather, services rendered by a member to third parties are deemed to be services rendered by the VAT group. Nevertheless, it is possible to assess the conditions for the VAT exemption with regard to the specific supplier. The assessment therefore depends on the person who actually renders the services in question. The personal requirements for the VAT exemption should therefore not be assessed at the level of the group as a whole, but in relation to the member providing the supply. If that member does not meet the conditions, the VAT exemption cannot be granted, even if another group member is the beneficiary.

4 Consequences for the practice

The decision has considerable practical significance, including for German VAT law. Whilst there are differences between a VAT group under Union law and a German VAT group under the German VAT Act, the underlying assessments are transferable, meaning that the decision is also relevant to German practice. The VAT group does not extend the scope of the VAT exemption beyond the respective establishment or body.

For groups of affiliated entities, this results in an increased need for scrutiny regarding supply relationships with third parties. It must be clarified which specific establishment or body provides the services to third parties. If services are made outside the eligible establishment or body, the VAT exemption does not apply in that respect. At the same time, however, this also creates scope for structuring the supply relationships: If services are initially provided by a non-eligible establishment or body to the eligible one, these constitute non-taxable internal supplies. Internal supplies are not problematic as long as the external supply can be attributed to the eligible establishment or body.

Finally, the decision also has implications for the scope of application of sec. 2b of the German VAT Act. The application of the regulation depends on whether the supplier is a legal entity under public law. If the decision is applied to this area, the integration of an entity under private law into the activities of a public law body does not result in that entity being able to rely on sec. 2b of the German VAT Act. Application is only possible under the restrictive conditions set out in the *Saudaçor* jurisdiction. Alternative structures must therefore be considered, such as integrating a legal person governed by public law (Anstalt des öffentlichen Rechts) as a controlled company.

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