



VAT NEWSLETTER

Federal Fiscal Court refines the requirements for financial integration within a German VAT Group

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1 Background

In recent years, both the European Court of Justice (ECJ) and the German Federal Fiscal Court (BFH) have issued a number of landmark rulings on German VAT grouping. They have clarified that, under German law, the controlling entity may be designated as the taxable person and that intra-group supplies are not taxable. They have also established that VAT grouping extends to the non-business activities of the controlling entity. According to the German Federal Ministry of Finance's letter dated 1 April 2026, this also applies to the non-business activities of the controlled entity. In addition, partnerships may qualify as controlled entities of a VAT group. The Annual Tax Act 2026 is intended to implement this case law regarding partnerships. Furthermore, VAT groups will, in future, only be possible upon declaration by the controlling entity (see KMLZ VAT Newsletter 26 | 2026). In its actual decision, the BFH does not, however, address any such "major" issues. Instead, it focuses on an important aspect of financial integration. Also, the BFH extends its previous procedural case law on the parties' inconsistent reliance on legal positions in VAT group arrangements, to the present case.

2 Case facts of the BFH judgment of 2 July 2026 – V R 36/24

The BFH had to determine whether a VAT group existed between N-GmbH and O-GmbH. Both entities had the same person as managing director. In addition, N-GmbH leased a business property to O-GmbH. Finally, N-GmbH holds 100% of the shares in O-GmbH. However, pursuant to a trust agreement with X-GmbH, N-GmbH held 40% of those shares as trustee for X-GmbH. N-GmbH granted X-GmbH a power of attorney to exercise the voting rights at O-GmbH's shareholders' meeting and was required to exercise those voting rights in accordance with X-GmbH's instructions. As a result, N-GmbH itself controlled only 60% of the voting rights at O-GmbH's shareholders' meeting. Nevertheless, shareholder resolutions at O-GmbH required a two-thirds majority.



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3 Legal opinion of the Federal Fiscal Court

The BFH held that a VAT group existed between N-GmbH and O-GmbH. The Court acknowledges that, under its previous case law, the requirement of financial integration would, in principle, not be fulfilled. Although N-GmbH held a majority shareholding, it was unable to impose its will at the shareholders' meeting because resolutions required a qualified two-thirds majority. However, the BFH referred to its change in case law in its judgment of 18 January 2023. In that case, the parent company held 51% of the shares but only 50% of the voting rights in the shareholders' meeting. Following a referral to the ECJ, the BFH nevertheless found financial integration to exist solely on the basis of the majority shareholding, despite the company holding only 50% of the voting rights. The particularly strong degree of organizational integration, evidenced by the identity of managing directors, compensated for the weaker degree of financial integration. The BFH applied the same reasoning to the present case. Here, too, a majority shareholding was found to exist. In addition, N-GmbH provided the sole managing director of O-GmbH. As a result, organizational integration was likewise particularly strong and compensated for the weaker degree of financial integration resulting from the absence of a qualified voting majority.

From a procedural perspective, the BFH also extended principles developed in earlier decisions to the present case. Accordingly, O-GmbH may rely on the VAT group treatment for prior periods only if N-GmbH, as the parent company, files a corresponding application for amendment of its own tax assessment. The BFH originally developed this principle in connection with its change in case law regarding partnerships acting as controlled entities (judgment of 16 March 2023). A partnership will typically invoke its status as a controlled entity where VAT has previously been directly assessed against it. In light of the principle of legitimate expectations, however, the tax assessment issued to the parent company could no longer be amended to its detriment without a corresponding amendment application, creating a risk of tax losses for the tax authorities. According to the BFH, the same applies in the present case. Because of the change in case law and the resulting protection of legitimate expectations afforded to N-GmbH, the VAT previously assessed against O-GmbH could not simply be reassessed against N-GmbH in the absence of an amendment application filed by the latter. This, too, would create a risk of tax losses. Absent a change in case law, however, such asymmetric reliance on differing legal positions remains possible, for example in cases involving an originally incorrect application of the law, even where tax losses may result.

4 Consequences for the practice

Previously, only an entity capable of prevailing in another company's shareholders' meeting could qualify as the controlling entity of a VAT group. Now a majority shareholding can be sufficient to establish financial integration. Since such a shareholding will ordinarily be accompanied by a majority of voting rights at the shareholders' meeting, the BFH's first decision on this issue had only limited practical relevance. Qualified majority requirements in the shareholders' meeting, which under the previous understanding could preclude financial integration despite a majority shareholding and voting majority, are of greater practical relevance. According to the BFH, financial integration will now also exist in such cases, provided that the managing directors are identical in both companies. Since the ECJ, when assessing the close financial links required for a VAT group, does not impose this additional condition relating to organizational integration, it remains to be seen whether the concept of financial integration may ultimately have to be interpreted even more broadly.

The BFH accepts the existence of economic integration on the basis of the lease of a business property without addressing this issue in any detail. In this respect, the BFH had recently taken a stricter approach, particularly with regard to the leasing of business real estate (see also sec. 2.8 para. 6 sentence 6 of the German Administrative VAT Guidelines). Under that approach, economic integration does not exist where the leased premises consist of readily interchangeable office space.