

## **ECJ rules on the extent of the VAT exemption for the development, licensing and mediation of insurance products**

Insurance mediation is VAT exempt. Selling of insurance products is also VAT exempt. Is the licensing of an insurance product also VAT exempt? Does a VAT exemption, which applies to an ancillary service, if considered separately, but is not applicable to the main service, have an impact on the VAT treatment of the single supply?

Services provided by an insurer or an insurance agent are VAT-exempt under Article 135(1) (a) of Directive 2006/112/EC. The ECJ decided on the scope of this provision.

### **Background**

The plaintiff, Q-GmbH, is an underwriting agent who develops insurance products. Its services comprised of three elements: granting an insurer a right to issue insurance policies, intermediary activities and administrative services including claims handling. It charges a brokerage fee to insurers for these services.

The distinguishing element of the case is that the services at issue go beyond the services of an insurance agent, which are VAT-exempt under section 4 number 11 of the German VAT Act, but do not reach the level of the VAT-exempt insurance services in the sense of section 4 number 10 of the German VAT Act. An underwriting agent provides more services than an insurance agent, but less than an insurer (cf. BFH, decision of 5 September 2019, V R 58/17, DStR 2019, 2642, commented by *Heuermann*). Are his services a fortiori VAT exempt?

The German Tax Authorities were of the view that the services were each a separate supply, with only the intermediary service being exempt from VAT. Q-GmbH brought an action against the VAT assessment before the Fiscal Court Muenster. The latter considered the services to be a single non-VAT exempt service with licensing as main service. Upon further appeal, the German Federal Finance Court requested for a preliminary ruling.

### **Question referred**

Does a service related to insurance and reinsurance transactions that is performed with exemption from tax by insurance brokers and insurance agents within the meaning of Article 135(1)(a) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax exist if a taxable person who carries out intermediary work for an insurance company also provides that insurance company with the mediated insurance product?

### **Judgement**

The ECJ denied the question. Pursuant to the ECJ, the single supply as a whole does not meet the conditions for VAT exemption if the main supply is non-exempt licensing of an insurance product.

Considering the main service, the licensing, the ECJ assessed whether it fell within the exemption under Article 135(1)(a) of Directive 2006/112/EC. According to the ECJ, licensing is not a VAT-exempt provision of insurance coverage, because the grantor of the licence did not take on the risk of the insurance policies. The licensing is also not an exempt service of an insurance agent because at the time the licence is granted, the insurer needs to be introduced to a person to be insured. Insofar, the ECJ confirmed the principles of the case *Aspiro*. Accordingly, the characteristic element of VAT-exempt insurance mediation is the seeking of potential clients and bringing them together with the insurer. By granting the licence, Q-GmbH did not bring together persons seeking to enter into a contract of insurance.

The insurance mediation, which would be VAT-exempt, if regarded separately, does not affect this assessment, as it is an ancillary service.

### **Implications**

The ruling is especially relevant for underwriting agents, insurance intermediaries and insurers. Insurance intermediaries and underwriting agents who offer service packages

should closely consider this judgment. The provision of insurance intermediary services does not mean that all potentially insurance related services under the same contract are VAT-exempt. If the predominant element of a single service is not exempt from VAT, the service as a whole is not exempt. So, businesses providing services packages, that constitute a single service with a non-exempt main service, will not benefit from the VAT exemption.

In line with settled case law, the ECJ confirmed that the main service is decisive for the applicability of a VAT-exemption. An exemption, which would be applicable to a service element, if considered separately, does not apply to the overall single service, if the main service is not exempt. In accordance with common principles, the ancillary service shares the VAT treatment of the main service. This demonstrates the importance of the correct single supply analysis. Suppliers should be considering whether their services are indivisible or serve an independent purpose to assess whether there is a single supply. For the VAT analysis, it is also crucial to identify the main service to which other services are ancillary.

In light of the principles of the case *Aspiro*, confirmed by the ECJ, intermediaries who predominantly sell template insurance products to insurers, and apply the exemption, should be reviewing their position. As the characteristic element of VAT-exempt insurance mediation is bringing together the future parties to the contract, it is not sufficient for a service to be merely related to a contract of insurance for the VAT-exemption to apply.

### Legal Context

Article 135(1)(a) of the EU VAT Directive 2006/112/EU

Section 4 number 11 of the German VAT Act

### References

ECJ, judgement of 25 March 2021, Q-GmbH v Finanzamt Z, [C 907/19](#)

Federal Fiscal Court, request for a preliminary ruling, decision of 5 September 2019, [V R 58/17](#)

Fiscal Court Muenster, judgement of 17 October 2017, [15 K 3268/14 U](#)

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