KPMG

VAT Newsletter

Hot topics and issues in indirect taxation

July 2025

NEWS FROM THE CJEU

Assessment basis for holding companies

CJEU, judgment of July 3, 2025 - Case C-808/23 - Högkullen

The CJEU ruling concerns the paid, taxable activities of a controlling holding company whose expenses exceeded the income from its activities for the subsidiaries many times over. In this context, the question arose as to whether the minimum taxable amount between associated companies pursuant to Art. 80 (1) (a) of the VAT Directive could be applied in this respect.
VAT Directive can be applied or whether a normal value is to be determined on the basis of comparable prices for the individual supplies in accordance with Art. 72 (1) VAT Directive.

Facts of the case

Högkullen AB, a Swedish holding company and controlling parent company of a group, provides services for consideration to its subsidiaries, some of which carry out tax-free activities that exclude input VAT deduction. The Group's economic activity consists of the management of real estate by a total of 19 subsidiaries. The holding company's activities are limited to providing intra-group services to the subsidiaries under its control in return for payment and subject to tax. These are corporate management, financing, real estate, IT and personnel management services.

In 2016, the holding company invoiced its subsidiaries the equivalent of around EUR 210,000 for its services. It stated that it had calculated this amount by applying the so-called cost-plus method - a method developed for income tax law and, in particular, for transfer pricing. To this end, it had applied a distribution key according to which a certain proportion of its costs for company management, premises, telephone, IT, representation and travel was allocated to the output turnover.

In the year in dispute, the holding company's total expenses amounted to the equivalent of approx. 2.5 million euros. Around half of this was attributable to input services subject to VAT. The remaining amount was attributable to VAT-exempt input services and non-taxable transactions such as wage payments. The holding company deducted all input VAT amounts incurred from its VAT liability. This also applied to input supplies that were not taken into account when calculating the consideration for output supplies.

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When assessing the case, the Swedish tax authorities came to the conclusion that the consideration paid by the subsidiaries should not be used as the basis for assessment, but rather the normal value. The Swedish tax authorities reassessed the tax base of the holding company's services, as the holding company's expenses exceeded its income. The tax authorities determined the normal value on the basis of the holding company's cost price. As the holding company had deducted all input VAT incurred by it from its VAT liability, the tax authority considered all of the holding company's expenses to be the tax base for its output sales. This issue was referred to the CJEU by the Swedish court as part of a preliminary ruling.

From the reasons for the decision

The CJEU first pointed out that the taxable amount for supplies of goods and services not covered by Articles 74 to 77 of the VAT Directive must be based on the consideration agreed between the parties and actually received by the taxable person and not on a value estimated according to objective criteria such as the market value or a reference value determined by the tax authorities (cf. in this sense, judgments of November 7, 2013, Tulică and Plavoşin, C-249/12 and C-250/12, para. 33, and of November 25, 2021, Amper Metal, C-334/20, para. 28).

Article 80(1)(a) of the VAT Directive introduces an exception with the standard value in order to prevent tax evasion and avoidance insofar as this transaction (1.) is a supply of goods or services to recipients with whom there are family or other close personal ties, ties based on management functions or memberships as well as property, financial or legal ties, (2.) the consideration is lower than the standard value and (3.) the purchaser or recipient of the services is not entitled to full input VAT deduction.

In the case in dispute, the first and third conditions for the application of Article 80(1)(a) of the VAT Directive were indisputably fulfilled.

On the other hand, there were doubts regarding the application of the second condition concerning the "normal value".

This term is defined in the first sentence of Article 72 of the VAT Directive as "the total amount which a customer of a supply of goods or services would have to pay to an independent supplier of goods or services in the Member State in which the transaction is taxable in order to obtain the goods or services in question at that time under conditions of free competition at the same stage of sale as those at which the supply of goods or services takes place".

The tax authorities argued that, in principle, it was not possible to determine a normal value in accordance with Art. 72 sentence 1 of the VAT Directive, as the active management of subsidiaries by a parent company is a uniform and coherent service that has no equivalent between independent parties on the free market.

The CJEU does not agree with this view, referring to its established case law.

In the present case, the services provided by Högkullen for its subsidiaries were in particular services in the areas of company management, economics, real estate management, investments, IT and personnel management.

In view of the case-law set out again in the judgment (paragraphs 26 to 30), it cannot be assumed that such services are in principle so closely connected that they objectively form a single economically indivisible service and thus a single supply.

As stated by the Advocate General in points 43 and 44 of her Opinion, those services have a distinct and recognizable character. Furthermore, the fact that each of the subsidiaries pays a total price to the parent company for all the services provided to it by Högkullen cannot be decisive in the case of intra-group supplies, since otherwise the group itself would be able to influence the VAT assessment of the supplies by means of the agreed payment arrangements.

In the light of the foregoing, Articles 72 and 80 of the VAT Directive must be interpreted as precluding the tax authorities from considering the services provided by a parent company to its subsidiaries in the context of the active management of those subsidiaries as a single supply in all cases, precluding the determination of their normal value in accordance with the comparative method provided for in the first sentence of Article 72 of the Directive.

Please note:
The CJEU states that the services of the holding company (corporate management, financing, real estate, IT and personnel management) should be assessed separately and should not be regarded as a single service. The normal value is to be determined

separately for each service on the basis of comparative prices.

According to the CJEU, it is up to the referring court to determine whether comparable prices can be determined on the free market for the holding company's services and, if so, how high they are. Since the services of the holding company are to be assessed separately, it should not be impossible to determine comparable prices.

Insofar as the holding company purchased the services provided to its subsidiaries from third parties, there is no evidence to suggest that the consideration paid by the holding company should not be regarded as a comparative price. This is because there is a presumption that a price paid among third parties corresponds to the market value of a service.

Joint and several liability

CJEU, judgment of July 10, 2025 - Case C-276/24 - KONREO

This case concerns the question of whether it is possible and proportionate, in the context of tax evasion, to hold a recipient jointly and severally liable for a tax and also to deny him the right to deduct input VAT from these supplies.

Facts of the case

From May to October 2013, FAU purchased fuel from Verami, another company under Czech law. Following tax audits, the tax authorities determined that the trade chain in which Verami and FAU were involved was affected by tax evasion. At the beginning of 2015, the tax authorities therefore issued supplementary payment notices against Verami, levying VAT on it and denying it the right to deduct input VAT on the purchase of the fuel it then continued to supply to FAU. However, Verami did not pay this VAT to the tax authorities. The tax authorities therefore collected the VAT owed by FAU and also denied it the right to deduct input VAT from the fuel invoices on the grounds that there was VAT evasion in the commercial chain to which the transaction carried out by FAU belonged. FAU appealed against this decision, which led the Nejvyšší správní soud (Supreme Administrative Court of the Czech Republic) to make a reference for a preliminary ruling to the CJEU.

From the grounds of the decision

The CJEU examined whether it is compatible with the principle of proportionality to deny a recipient of a taxable supply both the right to deduct input VAT and to make him jointly and severally liable for the VAT owed by the supplier.

Legal basis: Article 205 of the VAT Directive allows Member States to make a person other than the person liable for payment jointly and severally liable for VAT in order to ensure the effective collection of the tax. In doing so, the Member States must observe the principles of legal certainty and proportionality.

Proportionality: Measures to collect VAT must not go beyond what is necessary. The refusal of the right to deduct input VAT and joint and several liability are two different but complementary measures to combat tax evasion and to ensure the collection of tax.

The Court ruled that the simultaneous application of both measures did not infringe the principle of proportionality. The refusal of the right to deduct input VAT was justified if the recipient knew or should have known that he was involved in tax evasion.

The denial of the right to deduct VAT and joint and several liability under Article 205 of the VAT Directive would pursue two different and complementary objectives, which would be to combat tax evasion and to ensure the effective collection of VAT by the Treasury from the most appropriate persons in each situation, in particular in a fraud situation. To require the tax authorities to apply one or other of these measures as an alternative would lead to an at least partial abandonment of one of these two objectives, which cannot be justified in the case of taxable persons who knew or should have known that they were involved in tax evasion.

The reverse solution, which would be to prevent taxable persons who have been denied the right of deduction from being held jointly and severally liable under Article 205 of the VAT Directive, would mean that only taxable persons acting in good faith who are entitled to deduct input VAT on their taxable transactions could be designated under that Article as jointly and severally liable for the payment of the tax normally due by another taxable person. Taxable persons acting in good faith would therefore be treated less favorably than taxable persons who knew or should have known that they were involved in tax evasion.

Finally, as the European Commission stated at the hearing before the Court, the joint and several liability of the taxable recipient of a supply of goods for consideration

to pay the VAT due by the taxable supplier of those goods does not, in a situation such as that in the main proceedings, result in unjust enrichment of the tax authorities.

By, first, denying the taxable recipient the right to deduct input VAT in a situation in which it knew or ought to have known that it was involved in tax evasion and, second, designating it as jointly and severally liable for payment of the VAT due by the taxable supplier, the tax authority confines itself to taking measures which may enable it to obtain payment of the various amounts of VAT due to it by both taxable persons.

In the light of the foregoing, the answer to the question referred is that Art. 205 of the VAT Directive must be interpreted in the light of the principle of proportionality as not precluding a national practice which imposes on the taxable recipient of a supply of goods for consideration a joint and several obligation to pay the VAT due by the supplier of those goods, even though the recipient of that supply of goods has been denied the right to deduct the input VAT due or paid on the ground that he knew or ought to have known that he was involved in VAT evasion.

Please note:
The CJEU maintains its strict view that different sanctions are possible and permissible or proportionate depending on the Member State in the event of tax evasion in the context of the taxable person not acting in good faith. In the dispute from the Czech Republic, this meant that the taxable person as the recipient of the service could be held liable for the VAT incurred and also denied input VAT deduction from the supply.

Tax-free universal postal services

CJEU, judgment of. June 19, 2025 - Case C-785/23 - Bulgarian posts

This case concerns a reference for a preliminary ruling from the Supreme Administrative Court in Bulgaria. It concerns the scope of the exemption of universal postal services under Article 132(1)(a) of the VAT Directive.

Facts of the case

The dispute is between the Bulgarian tax administration and "Bulgarian posts", a provider of universal postal services, regarding the VAT exemption for specific postal services. The question of whether postal services can be individually negotiated and individually priced was also to be clarified.

The tax authorities argued that some of the services provided were not universal postal services and could therefore not be exempt from VAT.

From the reasons for the decision

Only undertakings (public or private) which have undertaken to provide all or part of the universal postal service in a Member State, as defined in Art. 3 of Directive 97/67, could be eligible. However, it cannot be inferred from Article 132(1)(a) of the VAT Directive that all services provided by public postal establishments which are not expressly excluded from the scope of that provision are exempt, irrespective of their nature. Article 3(1) of Directive 97/67 defines the universal postal service as the provision of a permanent nationwide postal service of a specified quality at reasonable prices for all users.

However, since Article 3(3) and (4) of Directive 97/67 is limited to drawing up a list of services which must, as a minimum, form part of the universal postal service and, consequently, the Member States may extend the scope of that service to other services, with the exception, however, under Article 3(5) of that directive, of postal parcels weighing more than 20 kg, only the definition of 'universal postal service' in Article 3(1) of Directive 97/96 is to be regarded as decisive for determining whether a postal service is to be regarded as universal. 5 of that directive to postal parcels weighing more than 20 kg, only the definition of 'universal postal service' in Article 3(1) of Directive 97/96 must be regarded as decisive for determining whether a service may fall within the exemption provided for in Article 132(1)(a) of the VAT Directive.

The universal postal service does allow individual price agreements to be made with users. However, this does not mean that services whose conditions of supply, including the tariff conditions, are negotiated and which are therefore not identical to those offered to any user under comparable conditions are to be regarded as falling within the scope of this service.

The CJEU concludes that services which serve the specific needs of users and are not offered to all users are not exempt from VAT if they are supplied under conditions other than those authorized.

Please note:
The ruling clarifies that the VAT exemption for postal services only

applies to those that are provided as part of the universal postal service and serve the general needs of the population. Individually negotiated services that meet specific needs are excluded from the exemption if they are not offered under the approved conditions.

Tax exemption of cost-sharing groups

CJEU, Opinion of the Advocate General of July 10, 2025 in the joined cases Agrupació de Neteja Sanitària (C-379/24) and Educat Serveis Auxiliars (C-380/24)

These two references for a preliminary ruling concern the exemption of so-called cost-sharing groups under VAT law, which is governed by Article 132(1)(f) of the VAT Directive. Union law exempts the supply of services by a group to its members if the group merely passes on the exact costs of these services to its members. However, the tax exemption is subject to the proviso that "this exemption does not lead to a distortion of competition". The Advocate General has now commented on the latter characteristic.

Facts of the case

The present cost-sharing groups Agrupació de Neteja Sanitària and Educat Serveis Auxiliars were established in order to create a common infrastructure for the provision of comprehensive cleaning services in hospitals and educational establishments. Both plaintiffs contracted external companies to manage the cleaning staff. On this basis, these third parties assigned staff to premises and tasks, selected staff, prepared payrolls, dealt with incidents (including intervention and termination of employment), provided adequate training in accordance with legal requirements and supplied materials. The two contracts justify the subcontracting of this activity to the third parties on the basis that these third parties have the experience, knowledge and resources necessary to manage the cleaning services to be provided by both plaintiffs to their members. The Spanish tax authorities refused to grant tax exemption on the grounds that the services were not provided directly by the communities and were not exclusively linked to the exempt activities, which could lead to distortions of competition. The plaintiffs appealed against this decision and the Tribunal Superior de Justicia de Cataluña referred questions to the Court of Justice on the interpretation of the VAT Directive.

Legal assessment

The Advocate General held that the services provided by the Communities are necessary for the exempt activities of their members, even if they are not provided directly by the Communities. The VAT Directive does not require a direct link with a specific transaction, but a certain link with the exempt activity.

The tax exemption should not put smaller companies at a disadvantage compared to larger competitors. The exemption is justified if it compensates for the competitive disadvantage of smaller companies that do not have their own resources for such services. There is no distortion of competition if the services are usually provided as part of tax-exempt activities.

Improper application of the tax exemption: The Advocate General emphasizes that the tax exemption may not be applied improperly. Indications for an improper application could be that the association provides the services to a significant extent to non-members or does not provide services specifically tailored to the needs of the members.

Please note:
The Union law in Art. 132 para. 1 letter f of the VAT Directive was only fully transposed into German law by the insertion of sec. 4 no. 29 of the German VAT Act on January 1, 2020 (until then only partially by sec. 4 no. 14 letter d of the German VAT Act). In this respect, the CJEU had ruled that the previous implementation in sec. 4 no. 14 of the German VAT Act was too narrow and allowed a direct reference to Art. 132 para. 1 letter f of the VAT Directive (CJEU ruling of September 21, 2017, C-616/15).

With this provision, the EU legislator wanted to create the possibility for traders who are not entitled to deduct input VAT to obtain input services that are not subject to VAT. This is intended to make outsourcing economically equivalent to the provision of corresponding services within a company's own group of companies and thus eliminate a distortion of competition (intra-company provision of services). However, transactions that do not serve the public good, such as banking and insurance transactions, should not fall under sec. 4 no. 29 of the German VAT Act (see CJEU ruling of September 21, 2017 C-326/15).

Pursuant to sec. 4 no. 29 of the German VAT Act, domestic groups are exempt from VAT for supplies of services that they

provide to members on a cost price basis without distorting competition, which the member(s) use either to carry out non-VATable services or VAT-exempt services that serve the common good. In this respect, the association is not entitled to deduct input tax on the input side. As a result, the VAT on the input side represents an expense that the association can pass on to its members on a pro rata basis. In economic terms, the members of the group therefore bear the costs. In contrast to EU law, the application of the exemption provision is limited to domestic groups of persons whose members must also be domiciled in Germany.

In its decision of September 4, 2024, XI R 37/21, the Federal Fiscal Court made further statements on the interpretation of the elements of Section 4 no. 29 UStG in connection with a group practice consisting of doctors. It stated that the cleaning services in dispute were also provided directly for the purpose of carrying out tax-exempt activities (medical treatment).

NEWS FROM THE BFH

No adjustment of the assessment basis in the event of insolvency of the "paying agent"

BFH, ruling from April 30, 2025, XI R 15/22

The BFH ruling concerns the requirements for the reduction of the tax base due to the irrecoverability of a receivable

Facts of the case

The plaintiff, operator of a pharmacy, had carried out VAT-liable supplies of medicines and remedies to statutory health insurance funds in 2020. He invoiced the VAT according to agreed charges. These supplies were invoiced via X GmbH, a computer center that acted as a paying agent. The payments from the health insurance funds were collected by the computer center but were not forwarded to the plaintiff due to insolvency proceedings. The plaintiff applied for an adjustment of the VAT as he had not received the payments. The tax court dismissed the claim as the payments to the computer center were deemed to be fulfillment of the plaintiff's claim for remuneration.

From the reasons for the decision

The BFH found that the computer center acted as the plaintiff's paying agent and that the payments made by the health insurance companies were deemed to be fulfillment of the plaintiff's claim for remuneration. Under civil law, the plaintiff's claim was therefore extinguished with the payment to the computer center.

Under VAT law, the plaintiff had "received" the amount paid by the service recipients to the data center as the paying agent for the services it provided (see BFH ruling from 12.02.2015, V R 38/13). The irrecoverability of the remuneration was therefore ruled out. The plaintiff had to take into account the fact that it had commissioned the data center to collect the receivables and that the health insurance funds had subsequently paid the purchase prices owed to the data center with discharging effect.

The insolvency-related payment default, i.e. the non-forwarding of the payments collected for the plaintiff to him, relates to the legal relationship between him and the data center. Withholdings or payment defaults in that legal relationship, which must be considered separately, could not affect the assessment basis for the plaintiff's supplies to the health insurance funds.

Under EU law, it also depends on whether the supplier has received the remuneration. This was to be affirmed in the case in dispute. The health insurance funds had paid the remuneration in full to the computer center at the behest of the plaintiff.

Please note:
In principle, the VAT liability of an entrepreneur who pays tax according to agreed consideration (Section 13 para. 1 no. 1 letter a UStG, "debit taxation") is reduced if the consideration is irrecoverable, in accordance with Section 17 UStG. However, the ruling makes it clear that the insolvency of the paying agent does not justify an adjustment of the taxable amount, as the payments are deemed to have been received. The plaintiff must allow the payments to the data center to be attributed to him.

NEWS FROM THE BMF

Changes due to the BEG IV and the JStG 2024

BMF, letter dated July 8, 2025 - III C 2 - S 7295/00005/003/080

In its letter dated July 8, 2025, the BMF refers to the following legal changes:

With the **Fourth Bureaucracy Relief Act** (BEG IV), the following amendment to the UStG, among others, had been passed:

The retention period for invoices in accordance with Section 14b (1) sentence 1 UStG has been reduced from ten to eight years.

"The shortening of the retention periods applies regularly to all invoices whose retention period has not yet expired on December 31, 2024. According to the new legal situation, invoices that were issued before January 1, 2017 (start of the retention period according to Section 14b (1) sentence 3 UStG in these cases: December 31, 2015 or December 31, 2016) no longer need to be stored. For credit institutions, insurance companies and securities institutions, however, this only applies to invoices whose retention period has not yet expired on January 1, 2026.

Corresponding to the shortening of the retention period in accordance with Section 14b (1) UStG, Section 26a (2) no. 2 UStG has also been amended. The above explanations apply analogously to the assessment of the criteria for the existence of an administrative offense pursuant to sec. 26a para. 2 no. 2 UStG.

However, according to sec. 14b para. 1 sentence 3 UStG in conjunction with sec. 147 para. 3 sentence 5 AO, the retention period does not expire if and as long as the documents are relevant for taxes for which the assessment period has not yet expired. This also applies to invoices that are relevant for an input tax adjustment in accordance with Section 15a UStG in property cases.

In such cases, the retention period only ends when the assessment period for the last year of the ten-year correction period in accordance with Section 15a (1) sentence 2 UStG has expired.

The retention periods for VAT records (e.g. in accordance with Section 22 (1) UStG or Section 22f (1) to (4) UStG) have not been shortened; they must continue to be kept for ten years."

With the German **Annual Tax Act 2024** (JStG 2024), the following amendment to the UStG was adopted, among others:

Credit notes to a non-entrepreneur or to an entrepreneur who has not actually carried out the supply of goods or supply of services may (again) fall under Section 14c (2) UStG.

"The new version of sec. 14c para. 2 sentence 2 of the German VAT Act stipulates that a person may owe incorrectly reported VAT even if the tax is shown in a credit note to a person who is not a trader. The provision in the new number 1 corresponds to the previous legal situation. Number 2 now regulates the situation where the unauthorized tax statement is made in a credit note.

A person is now also liable for the amount of tax shown if he does not immediately object to a document with a separate tax statement issued as a credit note in accordance with a prior agreement, even though he is not an entrepreneur or does not carry out a supply of goods or supply of services. If the tax is shown in a credit note to an entrepreneur for a service for which the entrepreneur is not entitled to show tax (e.g. when selling an asset outside their business), they are already liable for the tax in accordance with Section 14c (2) sentence 1 UStG.

Since a credit note that is not issued for the supply of a trader is not equivalent to an invoice according to the BFH ruling of 27 November 2019 - V R 23/19 (V R 62/17), such situations are not covered by sec. 14c para. 2 of the old version of the German VAT Act." Following the amendment to the law, the ruling is no longer applicable for situations occurring from 6 December 2024 (the day after the promulgation of the JStG 2024)."

With the BMF letter of July 8, 2025, the corresponding text passages in the UStAE have also been amended (including sections 14.3, 15.1 UStAE).

E-invoicing - planned national reporting system (platform)

On May 7, 2025, the Federal Ministry of Finance invited representatives of the leading trade associations and other associations to a workshop in order to record the key requirements, specific needs, opportunities and challenges in the context of the planned reporting system from the perspective of the business community and to incorporate these into the further development of the detailed concept.

The national reporting system for domestic supplies in the B2B sector is to be launched at the earliest at the same time as the EU-wide reporting system for cross-border supplies **from July 1, 2030**, which is part of the VAT in the Digital Age ("ViDA") package. The umbrella organizations of the commercial sector subsequently presented the most important topics discussed in the workshop to the BMF in writing.

In the view of the associations, companies require **a lead time of at least two years** after the announcement of the legal and technical requirements for the transmission of e-invoices as part of the future reporting obligation.

When establishing a government and/or private sector **e-invoicing platform**, it should be borne in mind that the transfer of certain functions and tasks to this body could be qualified as an outsourcing under data protection and supervisory law and that this would give rise to various follow-up questions and effects.

For the acceptance of the e-invoice and the reporting system by the wider business community, a state platform for the free creation, validation and transmission of the e-invoice is necessary, which will later also take over the reporting.

The requirements for **certification as a platform** should be simple and practical in order to enable broad market access for service providers and companies participating as independent providers. The same applies to the registration criteria for companies on a platform.

According to the ViDA Directive, Member States may allow other data formats to be used for the transmission of national reporting data in addition to the e-invoicing standard EN 16931 and the list of syntaxes in accordance with Directive 2014/55/EU, provided that the other data formats ensure interoperability with the EU standard. The national criterion of interoperability of other data formats with the EU standard should also apply to European reporting.

The introduction of a so-called **acquisition report** at both EU and national level is viewed critically.

The fundamental alignment of the national reporting system with the ViDA Directive with the aim of creating only one reporting system for all domestic and intra-Community transactions simplifies the establishment of the new processes and systems for companies. Nevertheless, the scope and depth of data for the national reporting system should be limited in order to reduce bureaucracy.

The introduction of a reporting system should urgently be combined with measures to reduce bureaucracy, which will lead to tangible relief for companies.

Listen in now: VAT podcast "VAT to go" - Episode 9 - VAT on compensation payments

Whether and when VAT is due on compensation payments is often a contentious issue. This is shown by numerous rulings by various courts on this issue. In the latest episode of the "VAT to go" podcast, Kathrin Feil, Head of Indirect Tax at KPMG, and Rainer Weymüller, former presiding judge at the Munich Fiscal Court and VAT expert, discuss how the courts justify their rulings, what regulations there are in the German VAT Application Decree (UStAE) and what the definition of "exchange of services" has to do with the decision as to whether VAT is due on compensation payments or not. Listen now: **VAT to go - the VAT podcast: Episode 9 - VAT on compensation payments - when does it apply? - KPMG on air | Podcast on Spotify**

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EVENTS

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