VAT News: Hot topics and issues in indirect taxation

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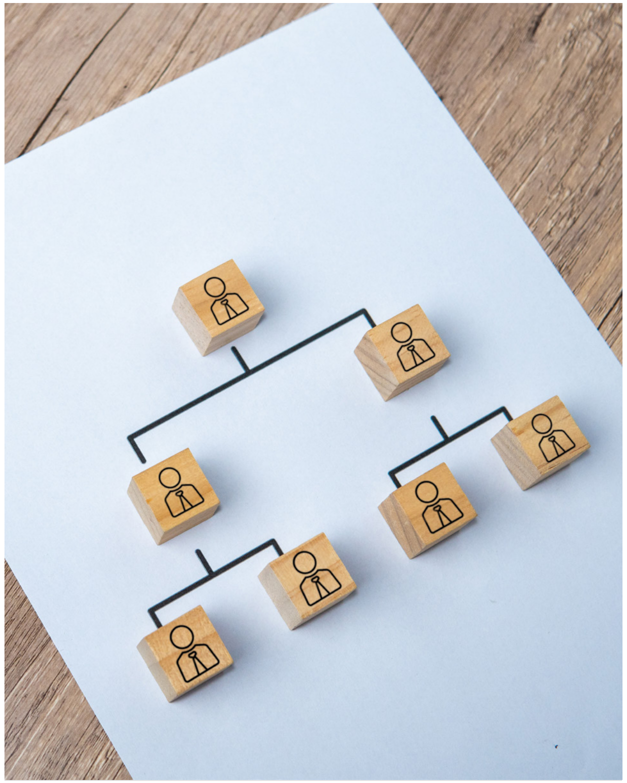
01 I VAT grouping and the 100 percent ownership condition

General Court of the European Union, judgment of 15 July 2026 – T-268/25 – Sampension Livsforsikring



The judgment concerns the interpretation of, and the possibility of relying on, Article 11 of the VAT Directive, which sets out the framework for the formation of national VAT groups (in Germany: Organschaft). The case focused on a Danish provision that made the formation of VAT groups conditional on one person in the VAT group directly or indirectly holding the entire capital of the other person in the group.

Facts of the Case

Sampension Livsforsikring (SL) is an insurance undertaking that provides life insurance and other financial services in the form of occupational pension schemes for specific sectors and companies. Some of these activities are exempt from VAT pursuant to Section 13 of the Danish VAT Act.

Until 1 January 2017, SL was registered as a single taxable person for VAT purposes together with the management company pursuant to Section 47(4) of the Danish VAT Act and therefore formed a "VAT group" with that company. The management company, which was responsible for the administrative tasks of SL and of two pension funds not belonging to that group, was held 100 percent by SL.

On 1 January 2017, the two pension funds whose administrative tasks were performed by the management company each acquired 3 percent of the share capital of the management company.

As a result of that acquisition, SL no longer held 100 percent of the capital of the management company. The VAT group that SL had formed with that company therefore came to an end, as the condition laid down in Section 47(4) of the Danish VAT Act was no longer satisfied. Under that provision, within a VAT group formed between persons carrying out activities requiring VAT registration and persons carrying out activities not requiring registration, one of the persons in the group must directly or indirectly hold 100 percent of the capital of the other persons in that group (the "100 percent ownership condition").

By letter of 15 January 2019, SL applied to the Danish Business Authority to be registered again as a single taxable person for VAT purposes together with the management company, taking the view that the 100 percent ownership condition was incompatible with EU law, in particular Article 11 of the VAT Directive.

The Danish tax authorities rejected that application. They held that SL could not rely on Article 11 of the VAT Directive, as that provision does not have direct effect.

The action brought against that decision led to a request for a preliminary ruling from the High Court of Eastern Denmark, which referred the following questions to the Court:

1. Is Article 11(1), read in conjunction with Article 11(2), of the VAT Directive to be interpreted as precluding legislation of a Member State such as that at issue in the main proceedings, under which the possibility of forming VAT groups that include persons carrying out activities not requiring registration or persons carrying out no economic activity is conditional on one person in the VAT group being the direct or indirect 100 percent owner of the other person or persons in the VAT group?
2. If the first question is answered in the affirmative: Does Article 11 of the VAT Directive then have direct effect in the Member States, such that taxable persons have a right vis-à-vis the Member State to be registered as a VAT group where the legislation of that Member State is not in conformity with that provision and cannot be interpreted consistently with it?

Grounds for the decision

Article 11 of the VAT Directive permits Member States to regard persons established in their territory who, while legally independent, are closely bound to one another by "mutual financial, economic and organisational links" as a single taxable person. At the same time, pursuant to Article 11(2) of the VAT Directive, Member States may adopt "any measures needed" to prevent tax evasion or avoidance.

The purpose of VAT grouping is administrative simplification and the prevention of certain abusive practices, such as the artificial splitting-up of undertakings. Although the requirement of close financial, economic and organisational links must be specified in national law, it must be interpreted autonomously under EU law. Article 11 of the VAT Directive does not allow additional substantive conditions beyond those links and the requirement of establishment (see already the judgments of 25 April 2013, Commission v Sweden, C-480/10, and of 25 April 2013, Commission v Finland, C-74/11).

The Danish 100 percent ownership condition goes beyond what follows from the requirement of "close financial links". A 100 percent shareholding may constitute strong evidence of a close financial link, but it is not a necessary condition. Article 11 of the VAT Directive also allows VAT groups to be formed where the shareholding percentage is lower, provided that the persons concerned remain closely bound to one another by mutual financial, economic and organisational links. The condition requiring one member to hold the entire capital of the other group members cannot therefore be regarded as a mere specification of Article 11(1) of the VAT Directive.

Nor is the 100 percent ownership condition justified as a "measure needed" to prevent tax evasion or avoidance within the meaning of Article 11(2) of the VAT Directive.

The mere reduction in tax revenues resulting from the application of the statutory VAT grouping mechanism does not constitute tax evasion or avoidance within the meaning of Article 11(2) of the VAT Directive. Supplies between members of a VAT group are, by the very nature of the system, outside the scope of VAT; any resulting advantages are the consequence of the Member State's decision to apply the VAT grouping scheme. A purely abstract risk of tax avoidance is not sufficient to justify a general and absolute restriction on access, such as the 100 percent ownership condition.

Moreover, a measure must be appropriate and necessary in accordance with the principle of proportionality. The Danish requirement does not distinguish according to the actual risk of abuse, but solely according to the capital structure. However, the potential tax advantage exists irrespective of whether the shareholding is 100 percent or lower, provided that the conditions of close links within the meaning of Article 11(1) are satisfied. A blanket exclusion of groups with minority shareholdings may therefore go beyond what is necessary to prevent abuse.

Article 11 of the VAT Directive precludes a national provision such as Section 47(4) of the Danish VAT Act insofar as the possibility of forming a VAT group between taxable persons and exempt or non-economic persons is made mandatorily conditional on one group member holding the entire capital of the others, unless that condition can be justified in the individual case as a necessary and appropriate anti-abuse measure.

With regard to the second question referred, the Court confirmed its judgment of 16 July 2015 (Larentia + Minerva/Marenave, C-108/14, C-109/14). Accordingly, Article 11 of the VAT Directive does not have direct effect. In this respect, it should be noted that every national court hearing a case within its jurisdiction, as an organ of a Member State, is required to disapply any provision of national law that is contrary to a provision of EU law having direct effect in the dispute before it. By contrast, a provision of EU law that does not have direct effect cannot, as such, be relied upon in a dispute governed by EU law in order to exclude the application of a conflicting provision of national law (CJEU judgment of 24 June 2019, Popławski, C-573/17). However, according to settled case law, the principle of interpreting national law in conformity with EU law, under which it is for the national court to interpret domestic law, as far as possible, in line with the requirements of EU law, is inherent in the system of the Treaties, as it enables the national court, within the limits of its jurisdiction, to ensure the full effectiveness of EU law when adjudicating the dispute before it. This obligation to interpret national law in conformity with EU law requires the national court, where appropriate, to take into account the whole body of national law in order to assess to what extent it may be applied so as not to produce a result contrary to EU law. In light of the foregoing, the answer to the second question is that Article 11 of the VAT Directive must be interpreted as meaning that it cannot be regarded as having direct effect, such that taxable persons could rely on it against their Member State where that Member State's legislation is incompatible with that provision and cannot be interpreted in conformity with it.

Please note:

The judgment reinforces the limits imposed by EU law on national capital ownership requirements for VAT groups, particularly where exempt or non-economic entities are intended to be included. Requirements for a 100 percent shareholding are likely to be sustainable only where they can specifically be justified as a proportionate measure to combat tax evasion or avoidance.

Article 11 of the VAT Directive itself does not confer on taxable persons a right to rely directly on that provision against national law. Nevertheless, the CJEU requires national provisions governing the formation of VAT groups to be interpreted in conformity with EU law.

02 I Tax Liability of a Tax Representative under VAT Law

General Court of the European Union, judgment of 8 July 2026 – Case T-356/25 – Rapera

On 8 July 2026, the General Court of the European Union delivered a judgment of considerable practical significance concerning the liability of tax representatives under VAT law. The case focuses on Articles 204 and 205 of the VAT Directive and the EU law principle of proportionality. While the judgment specifically addresses the Greek VAT system, it is relevant for all Member States that have tax representative regimes.

Facts of the Case

AY acts as a customs agent and is registered in Greece as the tax representative of O, a company established in Italy. According to a special power of attorney filed with the competent tax authority in 2022, AY was appointed as O's "tax representative" in Greece. AY's responsibilities include the "tax representation of the company" before customs and tax authorities, the "submission of periodic VAT returns", the "payment, on behalf of the company and in the company's name, of amounts assessed by the customs and tax authorities", and the "completion of customs formalities of any kind relating to the customs clearance of consignments on behalf of the company before the country's customs authorities through the signing of the required documents".

O holds both an Italian and a Greek VAT identification number. Its principal activity is the distribution of cellulose, a raw material used in the production of toilet paper. For this purpose, the company stores goods originating from Finland in various warehouse facilities located within Greek territory.

In 2023, the Greek tax authority (AADE) carried out an audit covering the tax years 2020 to 2022. At the conclusion of the audit, the AADE found that O's Greek establishment had failed to remit VAT amounting to EUR 3,344,061.47 in total.

Against this background, the AADE issued a decision against both O and AY, in AY's capacity as the company's tax representative, imposing immediate and urgent protective measures in the public interest. These measures included, in particular, the freezing of part of their deposits with credit institutions in Greece.

AY brought an action for annulment before the Administrative Court of Thessaloniki. In support of the action, AY disputed both the registration as O's tax representative and the legal basis for being held jointly and severally liable for the company's VAT debts. In particular, AY argued that the duties performed were limited to filing VAT returns relating to transactions carried out by O under its Greek VAT identification number and paying the corresponding VAT. AY neither maintained records nor concluded contracts on behalf of O, had no knowledge of O's transactions, and was not responsible for the transportation of the goods concerned or the payment of suppliers.

The AADE argued that, as O's tax representative, AY was jointly and severally liable for the fulfilment of the company's VAT obligations, both under Article 35(1)(c) of the Greek VAT Code, which treats tax representatives of taxable persons established outside Greece as persons liable for the tax, and under Article 55 of the Greek VAT Code, which concerns persons jointly and severally liable with the taxable person for payment of the tax. Accordingly, the AADE maintained that the protective measures had been imposed lawfully.

The dispute ultimately came before the Administrative Court of Thessaloniki, which referred the following questions to the Court for a preliminary ruling:

1. Must Article 205 of the VAT Directive and the principle of proportionality be interpreted as precluding a national provision such as Article 55(d) of the Greek VAT Code, under which a person is jointly and severally liable for the payment of VAT who, irrespective of being designated a "tax representative" under national law, is not required to keep records or provide information concerning the transactions of the principal, namely a taxable person established in another Member State, and neither keeps such records nor provides such information, but merely submits the relevant VAT returns, where the national provision in question does not allow either the tax authority or the competent court to examine whether that person (i) participated in the economic activity of the taxable person, (ii) knew or should have known that VAT would not be paid in relation to the transaction concerned or a preceding or subsequent transaction, and (iii) acted in good faith and took all reasonable measures within that person's power?
2. Under Article 204 of the VAT Directive, may the tax representative of a taxable person established in another Member State be held liable for the tax where that representative is not involved in the taxable person's activities? Does that provision preclude a national rule such as Article 35(1)(c) of the Greek VAT Code, under which the tax representative is automatically treated as the person liable for the tax, without allowing either the tax authority or the competent court to assess whether that person was involved in the taxable person's economic activity?
3. Does the answer to the preceding questions differ depending on whether the transaction giving rise to the VAT liability was carried out under the VAT identification number issued by the Member State in which the taxable person is established or under the VAT identification number issued by the Member State in which the VAT is due?
4. Must Articles 204(1) and 205 of the VAT Directive be interpreted as meaning that one and the same person may be liable simultaneously under both provisions, that is, as a person liable for the tax under Article 204(1) and as a person jointly and severally liable under Article 205?

According to the General Court, it follows from the request for a preliminary ruling and the discussions at the hearing that AY contends that neither the status of tax representative of O nor joint and several liability for O's debts can be attributed to AY.

Grounds for the decision

It follows from Article 204(1) of the VAT Directive that the provision specifically concerns appointed tax representatives who are liable for VAT. Accordingly, appointed tax representatives who are liable for the tax within the meaning of Article 204 of the VAT Directive must be distinguished from other intermediaries, such as tax representatives acting merely as intermediaries, in that they assume the status of a VAT taxable person on behalf of their principal.

While the VAT Directive does not lay down criteria for determining whether a tax representative is to be regarded as the person liable for the tax, including by reference to the nature of the activities carried out on behalf of the principal, it does not preclude national legislation from providing that such classification is based on an assessment of those activities. It is for the Member States to determine the conditions and arrangements governing such an appointment, which necessarily implies that its scope is defined by national legislation. However, any such appointment must comply with EU law and, in particular, the general principles of the common VAT system.

In light of those considerations, it is for the referring court to assess whether the factual conditions for the application of Article 204 of the VAT Directive are satisfied.

Article 204 of the VAT Directive must be interpreted as not precluding a tax representative of a taxable person established in another Member State from being regarded as the person liable for the VAT within the meaning of that provision, even where the tax representative is not involved in the taxable transactions carried out by that taxable person, provided that the representative has been appointed as such by that taxable person. However, the question referred concerns a tax representative who was not appointed within the meaning of Article 204 of the VAT Directive.

Article 205 of the VAT Directive, by contrast, neither determines who may be held jointly and severally liable nor specifies the circumstances in which such liability may arise. It merely grants Member States the power to determine the conditions and arrangements for the application of the joint and several liability provided for therein, while respecting, in particular, the principles of legal certainty and proportionality (see, to that effect, CJEU judgments of 20 May 2021, ALTI, C-4/20, and of 10 July 2025, KONREO, C-276/24).

It follows from the context of Articles 193 to 205 of the VAT Directive that Article 205 forms part of a set of provisions intended to identify the person liable for VAT in different situations. Those provisions are designed to ensure the effective collection of VAT by the tax authorities from the person best placed to account for the tax in the circumstances concerned, particularly where the contracting parties are not established in the same Member State or where the characteristics of a taxable transaction justify designating a person other than the person referred to in Article 193 of the VAT Directive.

The measures that Member States may adopt must not go beyond what is necessary to safeguard the revenue interests of the public treasury. In particular, national measures that effectively establish a system of unconditional joint and several liability exceed what is necessary to achieve that objective. This is especially the case where a person other than the person liable for the VAT is required to pay the VAT due without being able to escape such liability by demonstrating that the actions of the person liable for the tax are unrelated to that person's conduct. It would be manifestly disproportionate to attribute, unconditionally, the loss of tax revenue caused by the actions of an independent taxable third party, over whom that person has no control.

By contrast, EU law does not preclude requiring a person other than the person liable for the tax to take all measures that could reasonably be expected in order to ensure that his or her activities do not result in participation in VAT evasion. Accordingly, whether that person acted in good faith, exercised the diligence of a prudent economic operator, took all reasonable measures available, and whether any participation in fraud is excluded are relevant criteria when determining whether that person may be held jointly and severally liable for the VAT due.

In those circumstances, it would be disproportionate to attribute the loss of tax revenue caused by the conduct of a taxable person established in another Member State to a tax representative who has not been appointed as the person liable for the VAT due from that taxable person, without allowing either the national tax authorities or, where appropriate, the competent court to examine whether that representative participated in the taxable person's economic activity. Such participation may be relevant, in particular, when assessing the measures that the representative could have taken, the representative's knowledge of the conduct of the taxable person and, more generally, the representative's good faith and diligence.

Accordingly, the answer to the first question is that Article 205 of the VAT Directive, read in the light of the principle of proportionality, must be interpreted as precluding the joint and several liability of a tax representative who has not been appointed as the person liable for the VAT due by a taxable person established in another Member State, but who is merely entrusted with fulfilling VAT compliance obligations on behalf of that taxable person, without being required to keep records or provide information regarding that taxable person's transactions, where neither the tax authorities nor the competent court are permitted to examine whether that representative participated in the taxable person's economic activity, knew or should have known that the VAT would not be paid, and acted in good faith while taking all reasonable measures to ensure compliance with VAT obligations.

In that regard, it is irrelevant whether the transaction giving rise to the VAT liability was carried out under the VAT identification number issued to the taxable person by the Member State in which it is established or under the VAT identification number issued by the Member State in which the VAT is due.

Article 205 of the VAT Directive, read in conjunction with Article 204(1) thereof, must be interpreted as meaning that a person liable for the tax under Article 204 cannot simultaneously be held jointly and severally liable under Article 205 of the VAT Directive.

Please note:

A tax representative whose role is limited to fulfilling VAT reporting obligations, who is not required to maintain accounting records, and who has not been appointed as the person liable for the VAT pursuant to Article 204 of the VAT Directive, cannot automatically and unconditionally be held jointly and severally liable for the VAT liabilities of the taxable person represented. Instead, the national rules must allow both the tax authorities and the courts to examine:

- whether the representative participated in the taxable person's economic activity;
- whether the representative knew or should have known that the VAT would not be paid; and
- whether the representative took all reasonable measures to ensure compliance with the obligation to remit VAT.

Such an assessment was not permitted under Article 55 of the Greek VAT Code and was therefore incompatible with Article 205 of the VAT Directive when interpreted in accordance with the principle of proportionality.

For tax representatives, customs agents and other fiscal representatives, the judgment confirms that appointment as a person liable for VAT under Article 204 of the VAT Directive is permissible even where the representative has no direct involvement in the underlying transaction.

At the same time, Member States may not impose unconditional joint and several liability for another person's VAT debts where the representative merely performs formal compliance functions and has no actual ability to influence the activities giving rise to the VAT liability. National legislation must therefore provide for a case-by-case assessment of participation, knowledge and good faith.

03 I Allocation of Input VAT for Mixed-Use Buildings

BFH, Order of 23 June 2026 – V B 28/25

The preceding judgment of the Berlin-Brandenburg Fiscal Court has not yet been published, and the facts of the case cannot be derived from the BFH order. The case concerns the deduction of input VAT relating to the construction of an extension to a mixed-use building (used for both exempt and taxable activities), where the extension itself was leased exempt from VAT.

The BFH admitted the appeal on points of law in order to clarify whether, and to what extent, input VAT incurred on services relating to the extension of a building previously leased both on a taxable and VAT-exempt basis is deductible where the extension areas are leased and subsequently sold exempt from VAT, but the construction work also benefits the existing building through improvements to its structural integrity and utility infrastructure.

Please note:

Against the background of Article 168 of the VAT Directive (right to deduct input VAT on goods and services used for taxable transactions) and Article 168a of the VAT Directive (special provisions relating to capital goods), the key question is how to classify a construction project that both creates new VAT-exempt areas and enhances the technical functionality of an existing mixed-use building. Relevant considerations may include:

- whether the input transactions can be directly attributed to the VAT-exempt extension areas or to the existing mixed-use building;
- whether a single "capital good" should be assumed and assessed as a whole; and
- which allocation method (e.g. floor-space ratio or turnover-based ratio) is appropriate.

04 I Recipient Perspective in the Classification of Work Supplies

BFH, Order of 29 June 2026 – V B 43/25

At its core, the case appears to concern the VAT classification of a transaction involving the manufacture of beverages. The question is whether the provision of water by the supplier, while all other ingredients are supplied by the customer, results in a work supply (Werklieferung) within the meaning of Section 3(4), first sentence, of the German VAT Act, or whether the transaction should merely be classified as a supply of services.

The case also raises the question from whose perspective the assessment should be made: that of a business customer or that of a non-taxable final consumer. The preceding judgment of the Fiscal Court of Saxony-Anhalt of 21 November 2024 (2 K 458/21) has likewise not yet been published.

The BFH admitted the appeal on points of law in order to clarify whether water procured by the supplier for the manufacture of a beverage, while all other ingredients are supplied by the customer, constitutes merely an ingredient or ancillary element such that no work supply exists within the meaning of Section 3(4), first sentence, of the German VAT Act. The BFH will also examine whether the relevant assessment should be made from the perspective of an average business recipient supplying the finished beverage to its customers or from the perspective of an average non-business final consumer consuming the beverage.

Please note:

The key aspect of the order is the recognition of the fundamental significance of the questions concerning the classification of water as either an ingredient or an ancillary element and the determination of the relevant recipient perspective. The BFH's decision on the merits may be relevant for numerous toll manufacturing and contract manufacturing arrangements, particularly in the food and beverage sector.

05 I Pass-Through of Group Bonuses

Münster Fiscal Court, judgment of 19 May 2026 – 15 K 3483/18 U

Following the remand by the Federal Fiscal Court (BFH) in its judgment of 23 October 2024 (XI R 6/22), the Münster Fiscal Court once again had to consider the case of an affiliated purchasing entity (Anschlusshaus). In this context, central settlement entities frequently act as intermediaries between affiliated purchasing entities and suppliers. Three separate contractual relationships exist, namely one between the central settlement entity and the supplier, one between the central settlement entity and the affiliated purchasing entity, and one between the affiliated purchasing entity and the supplier.

According to the BFH in the above-mentioned judgment, discounts granted by a central settlement entity to its affiliated customers for the purchase of goods from specific suppliers do not reduce the taxable amount of the supplies giving rise to the customer's right to deduct input VAT. The requisite supply chain is lacking. Accordingly, the deduction of input VAT on purchases made by affiliated purchasing entities should generally not be adjusted where group bonuses are granted by the central settlement entity. The Fiscal Court applied these principles in the present case, in which the claimant sought the reversal of a reduction of input VAT deducted in relation to supplies of goods.

Facts of the Case

U traded, inter alia, in sanitary products and held an interest in X GmbH, which acted, among other functions, as a central settlement entity. U purchased goods from contractual suppliers and deducted input VAT shown on the corresponding invoices.

Contracts entered into between X GmbH and the suppliers, without the claimant's involvement, provided for certain commercial conditions. Under those arrangements, X GmbH was entitled to receive so-called bonuses from the suppliers, as well as del credere and central settlement fees. The bonuses were distributed in full to the claimant and the other shareholders. In addition, the suppliers were required to grant cash discounts and rebates directly to the purchasers.

Initially, the claimant reduced its input VAT deduction in respect of the bonuses, cash discounts and rebates pursuant to Section 17(1), second sentence, of the German VAT Act. Subsequently, it applied for a reversal of that input VAT adjustment. The BFH (XI R 6/22) largely ruled in the claimant's favour and referred the case back to the Fiscal Court.

Grounds for the decision

The BFH had held that an adjustment of input VAT deduction requires the existence of a supply chain. Such a supply chain is absent where the contractual supplier supplies the affiliated customer directly and the central settlement entity provides a separate service, in particular intermediary or contract administration services, to the supplier in return for consideration.

Consequently, an intermediary cannot reduce the consideration for its intermediary service by granting a discount to the customer of the transaction it has arranged.

Since the central settlement entity was not part of the supply chain in the present case, the bonuses received by the claimant originated from the intermediary services supplied by the central settlement entity to both the contractual suppliers and the claimant. Accordingly, the adjustment of the taxable amount and the corresponding adjustment of input VAT deduction made by the tax authorities under Section 17(1), first and second sentences, of the German VAT Act in relation to the claimant's transactions with the contractual suppliers was incorrect and had to be reversed.

The payment of the group bonuses did not result in an adjustment of the taxable amount or the corresponding input VAT deduction under Section 17(1), first and second sentences, of the German VAT Act in respect of transactions between the central settlement entity and the claimant.

It was undisputed between the parties that supplies existed between the central settlement entity and the affiliated purchasing entities, including the claimant, in relation to which the payment of the group bonuses could potentially constitute a reduction of the taxable amount. The central settlement entity invoiced the claimant for flat-rate cost contributions and marketing contributions. It also invoiced EDI documents and scanned documents on a per-item basis, charging VAT.

However, the mere fact that the central settlement entity provided services for consideration and that payments subsequently flowed back to the claimant, in this case in the form of group bonuses, does not in itself result in a reduction of the taxable amount under Section 17(1), first and second sentences, of the German VAT Act.

There is no VAT principle requiring incoming payments to be offset against the consideration for unrelated transactions and thereby reduce their taxable amount. Rather, there must be a direct link between the supply made and the repayment. The repayment must be connected to the transaction in such a way that it constitutes a partial or total refund of the consideration previously paid. That was not the case here.

First, the payment documentation underlying the distribution of the group bonuses contained no reference to services previously supplied by the central settlement entity to the claimant. There was therefore no evidence that the central settlement entity intended those payments to constitute a refund of consideration for previously supplied services.

Furthermore, the claimant correctly pointed out that any reduction of the taxable amount would have to be rejected because it would result in a negative amount, as the bonuses significantly exceeded any consideration charged.

The pass-through of the group bonuses also did not constitute consideration for supplies made by the claimant to the central settlement entity.

The central settlement entity did not pay the group bonuses as consideration for any supply by the claimant. Neither (i) the claimant's purchase of goods from contractual suppliers, nor (ii) compliance with the non-compete obligation contained in the shareholder agreement, nor (iii) accession to the company itself constituted a supply to the central settlement entity. Nor could a supply sui generis be assumed as consideration for the group bonuses on the basis of an overall assessment of all conceivable aspects of performance.

The purchase of goods from contractual suppliers, referred to by the tax authorities in part as the "provision of turnover", did not give rise to a reciprocal legal relationship involving a supply in exchange for the group bonuses.

Neither the shareholder agreement of the central settlement entity nor any oral arrangements between the claimant and the central settlement entity gave rise to specific civil-law obligations enforceable before the courts that would have required the claimant to purchase goods from contractual suppliers.

According to the Fiscal Court, the granting of a "consumable advantage" is likewise not subject to VAT within the meaning of Section 1(1), first sentence, no. 1 of the German VAT Act where that advantage merely constitutes a by-product of the recipient's own business activity. This requires that the taxable person acts primarily in its own economic interest and that such interest predominates over any benefit conferred on a third party.

The claimant acquired ownership and possession of the goods from the contractual suppliers in order to carry on its own business activity, namely the resale of those goods to retailers and trade businesses. By acquiring those goods, the claimant pursued the objective of conducting its own trading activities. The central settlement entity acquired neither ownership, possession nor any other legal position in respect of those goods because, as already noted, it was not part of the supply chain, neither before nor after the claimant.

The relevant transactions were therefore driven by the objective of acquiring goods for the claimant's own business purposes. The group bonuses initially granted to the central settlement entity and subsequently passed through to the claimant were merely a secondary, albeit welcome, consequence. Where a consumable advantage is granted merely as a collateral effect ("reflex"), as in the present case, the reciprocal relationship required for a taxable supply within the meaning of Section 1(1), first sentence, no. 1 of the German VAT Act is absent.

Assuming, contrary to the foregoing, that the provision of turnover constituted a supply by the claimant, the claimant's actions would in any event be non-taxable as a "genuine shareholder contribution".

The tax authorities were correct to state that there was a certain connection between the group bonuses and the volume of turnover generated by the claimant with the contractual suppliers. However, the fact that, in the past, the central settlement entity had in fact passed on group bonuses to the claimant in proportion to the turnover generated was not, in itself, sufficient to establish the direct link required for a reciprocal supply. In this respect, based solely on the oral arrangements between the affiliated purchasing entities and the central settlement entity, it had not been established that the group bonuses would also have had to be passed on in the event of a loss.

Compliance with the non-compete obligation agreed in the shareholder agreement also did not constitute a supply for consideration in the form of the group bonuses. It was not apparent from the non-compete obligation that the group bonuses were paid specifically for complying with that obligation. There was no quantitative link between the non-compete obligation and the group bonuses. In addition, the non-compete obligation did not relate to purchases from contractual suppliers not affiliated with the central settlement entity, but rather to joining another, or an additional, central settlement entity. Furthermore, the existence of a contractual penalty for breach of the non-compete obligation argued against a direct link. Since compliance with the non-compete obligation was already secured by a monetary sanction, it could not be assumed that the same compliance was also rewarded through the payment of group bonuses.

Nor did accession to the company itself have any reciprocal relationship with the group bonuses. The opposite was true: the claimant was required to make a shareholder contribution in the amount of a minimum capital contribution as a limited partner's contribution, pursuant to Section 7 no. 2 of the shareholder agreement, and to pay a non-refundable admission fee of an unspecified amount in order to become a shareholder. This did not constitute either a supply by the claimant to the central settlement entity or a supply in the opposite direction. The payments themselves were not even services in an economic sense capable of triggering VAT.

If the accession itself were regarded as a supply in exchange for the group bonuses, all future group bonuses, uncertain both in principle and in amount, would have to be taxed already at the time the shareholder status commenced, see Section 13(1) no. 1(a) of the German VAT Act, because the claimant would already have rendered its supply at that time.

The Fiscal Court was also unable to identify, on the basis of an overall assessment of all acts and omissions of the claimant, a single complex supply sui generis directly linked to the payment of the group bonuses. The Fiscal Court was convinced that an overall assessment of the purchases from contractual suppliers, the participation in the central settlement entity and compliance with the non-compete obligation did not reveal a single whole. The Court did not consider itself compelled to make such an assumption in order to ensure VAT treatment consistent with the underlying principles. This was because the principle of neutrality was also respected if such a reciprocal supply was rejected.

The principle of VAT neutrality requires that a taxable person be relieved entirely of the burden of VAT due or paid in the course of its economic activity through the system of input VAT deduction. The common VAT system ensures such neutrality as regards the tax burden on all economic activities, whatever their purpose or results, provided that those activities are themselves subject to VAT.

The non-taxable pass-through of the group bonuses ultimately had the same VAT effects for the claimant and the central settlement entity as would have arisen if there had been a supply subject to VAT for which the claimant could have issued invoices and on which the central settlement entity could have deducted input VAT. If, in the case at hand, the outcome was not fiscally neutral but instead resulted in a negative VAT balance to the detriment of the tax authorities, this may have been due to an incorrect adjustment of the taxable amount at the level of the contractual supplier on account of the payment of the group bonuses, which that supplier should not have made in the absence of a direct link with the supplies to the affiliated purchasing entities. However, any incorrect application of VAT law by a third party does not require an adjustment of the principle itself, but rather a correction at the level at which the potential error occurred.

Please note:

The Fiscal Court judgment has again been appealed to the BFH (pending case before the BFH: V R 21/26). Existing BFH case law will therefore be supplemented by further aspects concerning the existence of a reciprocal supply.

This is unlikely to be welcome news for the taxable person, which had already brought its first action before the Münster Fiscal Court in 2018. The BFH will now also have to address the finding that the central settlement entity did not pay the group bonuses as consideration for a supply by the claimant.

The Fiscal Court held that neither the claimant's purchase of goods from contractual suppliers, nor compliance with the non-compete obligation under the shareholder agreement, nor accession to the company itself constituted a supply to the central settlement entity. Nor could a supply sui generis be assumed as consideration for the group bonuses on the basis of an overall assessment of all conceivable aspects of performance.

By contrast to the case at hand, a distinction must also be drawn between voluntary, contractually agreed arrangements and legally mandatory rebates in favour of parties not involved in the supply chain. In the case of legally mandatory rebates, a reduction of the taxable amount may, in principle, be considered pursuant to the judgment in "Boehringer Ingelheim" (CJEU judgment of 20 December 2017 – C-462/16).

06 I Input VAT Refunds in Respect of Work Supplies to Private Individuals and Transition to the General VAT Assessment Procedure

Cologne Fiscal Court, judgment of 25 February 2026 – 2 K 2009/24, final and binding.

The case concerned the question whether refund applications submitted by a Dutch B.V. had been filed within the applicable time limit. Ultimately, the Fiscal Court held that, even if compliance with the deadline could be assumed on the basis of reinstatement into the previous procedural position, the substantive requirements for an input VAT refund were not met.

Facts of the Case

The claimant operates an installation business and, in 2023 and 2024, applied for refunds of German VAT for the refund periods April to June, July to September, and October to December 2022.

Following an exchange of emails, the Federal Central Tax Office (Bundeszentralamt für Steuern – BZSt) informed the claimant of the formal requirements and suggested that a deadline extension until 18 December 2023 was available, although such an extension was in fact not legally possible. The refund applications subsequently submitted electronically were rejected by the defendant.

During the proceedings, the tax authorities additionally argued that an input VAT refund under the special refund procedure was not available. Since, in August 2022, the claimant had carried out work supplies (Werklieferungen) and/or other supplies to private individuals in Germany for which the recipients were not liable for VAT under Section 13b of the German VAT Act, the claimant had become subject, from that point onwards, to the general VAT assessment procedure pursuant to Sections 16 and 18(1) to (4a) of the German VAT Act before the competent German tax office.

Where a non-resident taxable person failed to claim input VAT incurred during a VAT reporting period for which the general VAT assessment procedure was not yet applicable through the special refund procedure, such input VAT could only be claimed through the general VAT assessment procedure from the date on which that procedure became applicable.

As all refund applications at issue were submitted only after August 2022, the tax authorities argued that the claimant was required to apply the general VAT assessment procedure consistently for all periods concerned.

Grounds for the decision

The claimant's applications for input VAT refunds under the special refund procedure within the meaning of Section 18(9) of the German VAT Act in conjunction with Sections 59 et seq. of the German VAT Implementation Regulation were time-barred.

Even if the filing deadline had been met, the claimant would not have had a substantive entitlement to the refund because the input VAT should have been claimed through the general VAT assessment procedure.

Pursuant to Section 18(9) of the German VAT Act in conjunction with Section 61(1), first sentence, of the German VAT Implementation Regulation, a taxable person established elsewhere within the European Union must submit the refund application, using the prescribed electronic format and through the designated electronic interface, via the electronic portal established by the Member State in which the taxable person is established.

Under Section 18(9) of the German VAT Act in conjunction with Section 61(2), first sentence, of the German VAT Implementation Regulation, the refund application must be submitted within nine months after the end of the calendar year in which the refund claim arose. Accordingly, the filing deadline for the 2022 refund period expired on 30 September 2023.

The claimant first submitted an application for the July to September 2022 refund period on 3 November 2023 (date received by the defendant), an application for the April to June 2022 period on 20 November 2023, and an application for the October to December 2022 period on 7 August 2024. All applications were therefore submitted after expiry of the applicable deadline.

The claimant's prior inquiry regarding the procedure and the submission of invoices on 11 September 2023, eighteen days before expiry of the deadline, neither preserved the deadline nor suspended its running. Those steps were insufficient because they did not constitute a refund application submitted in the prescribed electronic format as required by Section 18(9) of the German VAT Act in conjunction with Section 61(1), first sentence, of the German VAT Implementation Regulation and therefore did not amount to a valid electronic application.

The nine-month filing period constitutes a statutory exclusion period and cannot be extended pursuant to Section 109(1) of the German Fiscal Code.

Against that background, the defendant's communication of 16 October 2023, which appeared to grant the claimant a deadline extension until 18 December 2023, could not, as a matter of law, constitute a valid extension of a statutory exclusion period.

The instruction to the claimant to withdraw the incorrect applications and submit new applications in compliance with the statutory requirements by 18 December 2023 could, at most, be taken into account when assessing whether the claimant should be granted reinstatement into the previous procedural position (Wiedereinsetzung in den vorigen Stand) in respect of the filing deadline pursuant to Section 110 of the German Fiscal Code.

However, the Court considered it unnecessary to determine whether sufficient grounds for reinstatement were in fact present in the case at hand. Even if reinstatement were to be granted, this would merely remove the claimant's failure to meet the deadline and would not ultimately result in the claim being successful.

The claims asserted against the defendant would in any event fail because the applications, even if treated as having been filed in due time, concerned a procedure whose substantive requirements were not met in the circumstances of the case.

One of the conditions for applying the special refund procedure under Section 59 no. 1 of the German VAT Implementation Regulation is that the applicant must not have carried out taxable transactions in Germany within the meaning of Section 1(1) nos. 1 to 3 and 5 of the German VAT Act, except for exempt transactions within the meaning of Section 4 no. 3 of the German VAT Act or transactions for which the recipient is liable for the VAT under the reverse charge mechanism (Section 13b of the German VAT Act).

It was undisputed between the parties that the claimant had supplied taxable services to private individuals established in Germany in August 2022. Those supplies constituted domestic transactions for which the claimant, as the supplier, was liable for German VAT.

As a consequence of those domestic supplies, the claimant had carried out "disqualifying domestic transactions" for the purposes of the special refund procedure, since the VAT was payable by the supplier, and not by the recipient. A transfer of the VAT liability to the recipient under Section 13b of the German VAT Act was not possible because the recipient was, without dispute, a private individual. This fact alone precluded application of the special refund procedure under Sections 59 et seq. of the German VAT Implementation Regulation.

Where the general VAT assessment procedure applies instead of the special refund procedure, requiring the filing of an annual VAT return with the competent regional tax authority pursuant to Section 18(3) of the German VAT Act, a refund under the special refund procedure is no longer available for the entire calendar year, provided that no refund has yet been granted under that procedure.

Accordingly, in the present case, the general VAT assessment procedure under Sections 16 and 18(1) to (4a) of the German VAT Act applied uniformly to all refund periods at issue, and not only to the July to September 2022 period during which the disqualifying domestic transaction occurred. Jurisdiction therefore rested not with the defendant, but with the competent regional tax authority.

This approach is consistent with established BFH case law. In its judgment of 28 August 2013 (XI R 5/11), the BFH held that a non-resident taxable person required to file an annual VAT return pursuant to Section 18(3), first sentence, of the German VAT Act is both entitled and obliged to claim all input VAT incurred during that calendar year in the annual VAT return.

Any misconduct allegedly committed by officials of Tax Office J could not be attributed to the defendant and did not form part of the subject matter of the proceedings. To the extent that the claimant argued that the conduct of Tax Office J should at least constitute grounds for reinstatement into the previous procedural position, the Court held, for the reasons set out above, that even reinstatement into an incorrect procedure would not have resulted in a successful claim.

Please note:

The Cologne Fiscal Court's judgment highlights two key points:

The nine-month filing deadline under Section 61(2) of the German VAT Implementation Regulation constitutes a strict exclusion period. Applications that fail to comply with the formal requirements, or that are not submitted electronically, do not preserve the deadline.

Once a non-resident taxable person carries out "disqualifying" taxable transactions in Germany for which the reverse charge mechanism under Section 13b of the German VAT Act does not apply, the general VAT assessment procedure under Section 18(3) of the German VAT Act applies for the entire calendar year. Input VAT must then be claimed through the annual VAT return filed with the competent tax office. The two procedures cannot be applied in parallel, and a subsequent return to the special refund procedure is excluded.

Events

NEW – Our VAT News Talk

Following the successful launch on 23 April 2026, Rainer Weymüller, former Presiding Judge at the Munich Fiscal Court and Of Counsel at KPMG, and Dr. Oliver Buttenhauser, Partner at KPMG, will continue to provide further insights into the topics covered in this newsletter and discuss their practical implications together with participants.

Please save the following dates:

17 September 2026

19 November 2026

18 February 2027

(11:00 a.m. – 12:00 p.m. CET in each case)

You can register directly here:

https://www.events.kpmg.de/vat-news-talk

TaxNewsFlash Indirect Tax

KPMG articles on indirect taxes from around the world

You can find the following and other articles here.

29 July – Bangladesh:
Tax measures in National Budget FY 2026-2027

29 July – Costa Rica:
Increased excise tax rates for non-alcoholic beverages, perfumed soap

29 July – Ghana:
Mid-year budget review outlines customs, excise, and VAT measures

29 July – Germany:
Real-time VAT reporting to combat tax fraud

29 July – Saudi Arabia:
E-invoicing mandatory for taxpayers with revenue above SAR 187,500

29 July – Türkiye:
Expansion of electronic tax notification system and extension of temporary earthquake zone VAT relief; updated guidance on accommodation tax implementation

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