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INTERNATIONAL VAT ASSOCIATION

Insurance services in VAT

— 70 Years of VAT & —
30 Years of IVA

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Who?

Päivi Utoslahti

- ❖ Claims Advisor for Business Customers
- ❖ M.Sc. in Economics and Business Administration
- ❖ Majored in Business Law
- ❖ Graduated with honors from Aalto University in May 2024
- ❖ My Master's thesis

“Insurance services in Value Added Taxation - Problem areas in the current legal state and alternative solutions for amendments to tax legislation”

Insurance Services in VAT

The concept of insurance service exempt from VAT is not defined in the VAT Directive (2006/112/EC)

Article 135(1)(a): “insurance and reinsurance transactions, including related services performed by insurance brokers and insurance agents”

On the basis of the CJEU case law, the essential conditions of an exempt insurance transactions are

- 1) **Consideration**, i.e. prior payment of an insurance premium
- 2) The insurer undertakes to assume the **risk** of the insurance transaction
- 3) The insurer undertakes to provide **compensation or assistance** in the event of materialization of the risk covered
- 4) **Contractual relationship** between the provider of the insurance service and the insured

The nature of the service,
not the status of the provider

Examples of Case Law

The EU

- Outsourced activities are not considered as exempt, even if those are essential to conducting insurance business and are important for the fulfilment of the insurer's obligations (e.g. C-240/99, *Skandia*)
- The conditions of contractual relationship and assuming risk are not fulfilled
- The parties are allowed to be linked indirectly only if the service has the characteristics of the activities of an insurance broker or an agent, and the service is provided by one

Finland

- The scope of the concept of insurance service is extended beyond VAT Directive and CJEU case law
- Some outsourced insurance services are treated as exempt against the CJEU interpretation
- Claims handling services performed for an insurance company (KHO 10.1.2007/18)

Sweden

- An insurance that is related to another service and the customer is not able to opt-out, is not considered as exempt insurance service (SRN 6-09/I, 2009-12-08)
- Outsourced claims handling services by an insurance broker are not considered exempt insurance services and the service does not have the characteristics of the activities of an insurance broker (SRN 4-08/I, 2008-09-29)

Problem Areas in the Current Legal State

Lack of Neutrality

Legal Uncertainty

Distortion of Competition



Lack of Neutrality

Wider scope of the exemption

Greater amount of input costs that are non-deductible

More expensive investments

Hidden VAT and cascading effect of taxes

Lack of fiscal neutrality



Lack of Neutrality

In-house claims handling services are exempt from VAT

Outsourced claims handling services, which are essential for providing the main insurance services, are not exempt from VAT

Same transactions are treated differently based on whether the service is produced within the group or by a third party

The VAT system favors vertical integration

Lack of neutrality between insurance operators



Legal Uncertainty

Significant especially when planning long-term operations and evaluating profitability

National law might be applied in violation of EU law

Principle of direct effect can be applied if the provision of a Directive is unconditional, sufficiently clear and precise, and results in a more favorable outcome for the taxable person

Differences in applying VAT Directive in national legislations may pose challenges for predicting the tax effects of future transactions

Distortion of Competition

Larger operators usually have the resources to produce certain elements of the insurance service in-house

Smaller operators often have to rely on subcontracting, resulting increase of non-deductible VAT burden

Smaller operators are seeking to pass on the cost of non-deductible VAT to customers as a hidden tax by higher pricing

Depending on the competition on the market, all of the hidden VAT may not be possible to pass on through pricing, leaving the cost to be borne by the owners

Competing companies are in different competition positions

Analysis of Methods

	Removing the exemption	Zero rating	Simplification of rules	Option to tax
Neutrality	✓	✓ ✗	✓ ✗	✓ ✗
Legal certainty	✓	✗	✓	✗
Neutral conditions of competition	✓	✗	✓	✗
What else?	<p>Right to deduct input VAT → Less hidden VAT.</p> <p>Taxing → More neutral VAT system.</p>	<p>Right to deduct input VAT → Less hidden VAT.</p>	<p>Outsourced claims handling exempt from VAT → In line with financial services (C-2/95, SDC). Burden of input VAT.</p>	<p>Implementation in every Member state</p>

