



# INSURANCE/FINANCIAL TRANSACTIONS IN THE ECJ VAT CASE-LAW

Francisco Javier Sánchez Gallardo



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# INSURANCE CONTRACTS. SCOPE FOR THE EXEMPTION (1)

## Card Protection Plan, C-349/96:

The exemption for the insurance services is based on their **objective characteristics**. For this purpose, it is irrelevant that in the event of loss there is a payment of a sum of money or of another nature.

The term "insurance" extends to the categories of **assistance activities** considered as such in the corresponding sectorial regulations.

# INSURANCE CONTRACTS. SCOPE FOR THE EXEMPTION (2)

## **Skandia, C-240/99:**

The commitment assumed by an insurance company with another according to which the first develops the set of activities of the second one, being that this second **bears the risks** of the insurance activity, in exchange for a remuneration that is the market price of said services, is not exempt from VAT. This transaction is not «insurance and reinsurance transactions, including related services performed by insurance brokers and insurance agents» for VAT purposes.

# INSURANCE CONTRACTS. SCOPE FOR THE EXEMPTION (3)

## Taksatorringen, C-8/01:

The **valuation** services in **damaged vehicles** provided by a group of insurers to their members cannot be considered as insurance operations or as operations carried out by insurance agents or brokers exempted as such.

# INSURANCE CONTRACTS. SCOPE FOR THE EXEMPTION (4)

## **Commission/Greece, C-13/06:**

**Roadside assistance** are exempt insurance services. For these purposes, it is irrelevant that the guaranteed supply is not monetary and that the service provider is not an insurance entity.

# INSURANCE CONTRACTS. SCOPE FOR THE EXEMPTION (5)

## **Swiss Re Germany Holding, C-242/08:**

A **transfer** for consideration, by a company established in one Member State, to an insurance company established in a third State, **of a portfolio of life reinsurance contracts**, with the consequence that the transferee company assumes, with the consent of the insured persons, all the rights and obligations resulting from those contracts, does not constitute either an insurance nor a financial transaction exempted as such.

# INSURANCE CONTRACTS. SCOPE FOR THE EXEMPTION (6)

## **BGZ Leasing, C-224/11:**

In a leasing contract in which the lessor offers, **together** with the lease, an **insurance** contract relating to the leased property, which the lessee may contract or not, it must be considered that the insurance is not an ancillary but an additional supply, whose treatment must be the one that corresponds according to its nature, exempted as such.



# INSURANCE CONTRACTS. SCOPE FOR THE EXEMPTION (7)

## **Mapfre asistencia and Mapfre warranty, C-584/13:**

A supply of services whereby an economic operator which is independent of a second-hand motor-vehicle dealer provides, in return for payment of a lump sum, a **warranty** covering mechanical breakdowns which may affect certain parts of that vehicle constitutes an exempt insurance transaction exempted as such.

A service such as the one described and the sale of the second-hand vehicle must be considered to be distinct and independent supplies, to be treated separately from the point of view of VAT.

# INSURANCE CONTRACTS. THIRD PARTIES' SUPPLIES (1)

## **Arthur Andersen, C-472/03:**

The **back-office** services are not insurance operations themselves or services of insurance agents, as they do not involve contacting policyholders and insurers, so they cannot be considered as exempt.

# INSURANCE CONTRACTS. THIRD PARTIES' SUPPLIES (2)

## **Beheer, C-124/07:**

The services provided by **insurance subagents** are VAT exempted. To this effect, the fact that a broker or insurance agent does not have a direct relationship with the parties of the insurance or reinsurance contract, but only an indirect one with them through another entity, who, in turn, has a direct relationship with one of said parties and to which this broker or insurance agent is contractually bound, does not deny the exemption.

# INSURANCE CONTRACTS. THIRD PARTIES' SUPPLIES (3)

## **Aspiro, C-40/15:**

The exemption for the insurance services does not apply to the **processing and settlement services** of claims provided by a third party in the name and on behalf of an insurance company, since it is not related in no way with the activity of seeking clients and putting them in relation with the insurer in order to conclude insurance contracts.

# FINANCIAL TRANSACTIONS. CREDITS AND TRANSFERS OF CREDITS (1)

## **Muys"en De Winter"s Bouw- en Aannemingsbedrijf, C-281/91:**

**Delay interests** corresponding to a period of time **prior** to the realization of a supply of goods or services are included in the taxable base of the corresponding operation.

On the contrary, interests that correspond to a period of time subsequent to the transaction must be qualified as the consideration for the granting of a loan, exempt in accordance with the VAT Directive.

The exemption for the granting of credits is **not reserved** for **financial or credit entities**.

# FINANCIAL TRANSACTIONS. CREDITS AND TRANSFERS OF CREDITS (2)

## **MKG-Kraftfahrzeuge-Factoring, C-305/01:**

The **purchase of credits** assuming the risk of default is a «**debt collection**» activity excluded from the VAT exemption of financial transactions.

# FINANCIAL TRANSACTIONS. CREDITS AND TRANSFERS OF CREDITS (3)

## **GFKL, C-93/10:**

The **purchase of doubtful debts** for a price lower than their nominal value, assuming the insolvency risk, does **not** constitute a **supply of services** when the difference between the nominal value of these credits and their purchase price reflects the effective economic value of the aforementioned loans at the time of its assignment.

# FINANCIAL TRANSACTIONS. OTHER FINANCIAL TRANSACIONS (1)

## **Sparekassernes Datacenter (SDC), C-2/95:**

The exemption for the **transfer** and **payment** transactions applies to services changing the legal and factual situation of the intervening parties.



# FINANCIAL TRANSACTIONS. OTHER FINANCIAL TRANSACTIONS (2)

## First National Bank of Chicago, C-172/96:

**Currency exchange operations** in which one of the parties purchases an agreed amount of a currency and in exchange sells to the other party an agreed amount of another currency, so that both amounts are payable on the same value date, and in virtue of which the parties have agreed the corresponding currencies, the amounts of those coins that are bought and sold, which of the parties buys each coin and the date of value, constitute services provided for consideration for VAT purposes, although the remuneration obtained by them is the **margin** between the purchase and the selling price, exempted according to the VAT Directive.

# FINANCIAL TRANSACTIONS. OTHER FINANCIAL TRANSACTIONS (3)

## **AXA UK, C-175/09:**

For VAT exemption purposes, the **direct debit services** must be considered similar to those for collection management and, as such, excluded from the exemption of financial operations.

In particular, it is VAT taxed a provision of services that consists, essentially, in requesting a third party's bank to transfer to the service supplier's account, via the direct debit system, a sum due from that party to the service supplier's client, sending to the client a statement of the sums received, making contact with the third parties from whom the service supplier has not received payment and, finally, giving instructions to the service supplier's bank to transfer the payments received, less the service supplier's remuneration, to the client's bank account.

# FINANCIAL TRANSACTIONS. OTHER FINANCIAL TRANSACTIONS (4)

## **Everything Everywhere, C-276/09:**

**Payment services** provided by a telecommunications services company to its customers, where the latter pay for those services not by Direct Debit or by Bankers' Automated Clearing System transfer but by credit card, debit card, cheque or cash over the counter at a bank or authorized payment agent acting on behalf of that services provider, do not constitute consideration for a supply of services distinct and independent from the principal supply of telecommunications services, so they must follow the same conditions of taxation.

# FINANCIAL TRANSACTIONS. OTHER FINANCIAL TRANSACIONS (5)

## **Nordea Pankki Suomi, C-350/10:**

An **electronic messenger service** indispensable for carrying out international transfers but which, as such, does not meet the specific and essential characteristics of a transfer, cannot be considered exempt as a financial transaction.

# FINANCIAL TRANSACTIONS. OTHER FINANCIAL TRANSACTIONS (6)

## Hedqvist, C-264/14:

For VAT purposes, transactions consisting of the exchange of traditional currency for units of the «bitcoin» virtual currency and vice versa, in return for payment of a sum equal to the difference between, on the one hand, the price paid by the operator to purchase the currency and, on the other hand, the price at which he sells that currency to his clients,, constitute **supplies of services** carried out for consideration.

The **exchange of traditional currencies** for units of the «**bitcoin**» virtual currency and vice versa, performed in return for payment of a sum equal to the difference between, on the one hand, the price paid by the operator to purchase the currency and, on the other hand, the price at which he sells that currency to his clients, are transactions exempt from VAT.

# FINANCIAL TRANSACTIONS. OTHER FINANCIAL TRANSACIONS (7)

## **Bookit, C-607/14:**

The exemption for payments and transfers services does not apply to a **«card handling» service**, such as that at issue in the main proceedings, supplied by a taxable person, the provider of that service, where an individual purchases, via that service provider, a cinema ticket which the service provider sells for and on behalf of another entity, and which the individual pays for by debit card or by credit card.

The judgment of the same date National Exhibition Center, C-130/15, is of a very similar content.

# FINANCIAL TRANSACTIONS. OTHER FINANCIAL TRANSACIONS (8)

## DPAS, C-5/17:

The exemption for transactions concerning **payments** and **transfers** does not apply to a supply of services which consists for the taxable person in requesting from the relevant financial institutions, first, that a sum of money be transferred from a patient's bank account to that of the taxable person pursuant to a direct debit mandate and, second, that that sum, after deduction of the remuneration due to that taxable person, be transferred from the latter's bank account to the respective bank accounts of that patient's dentist and insurer.

# FINANCIAL TRANSACTIONS. TRANSACTIONS RELATING TO SECURITIES (1)

## **CSC Financial Services, C-235/00:**

The exemption of transactions relating to securities refers to operations that alter or affect the **legal status** and of the parties.



# FINANCIAL TRANSACTIONS. TRANSACTIONS RELATING TO SECURITIES (2)

## **Kretztechnik, C-465/03:**

The **issuance of new shares** by legal entity does not imply the performance of any VAT taxed transaction.

# FINANCIAL TRANSACTIONS. TRANSACTIONS RELATING TO SECURITIES (3)

## **SKF, C-29/08:**

The **transfer of all the shares** in a company must be exempt under the VAT Directive. Said transfer can be compared to the block transfer of a going concern, not VAT taxed as such.

# FINANCIAL TRANSACTIONS. TRANSACTIONS RELATING TO SECURITIES (4)

## **Skandinaviska Enskilda Banken, C-540/09:**

Services supplied by a credit institution in the form of an **underwriting guarantee** to a company wishing to issue shares, where under that guarantee the credit institution undertakes to acquire any shares which are not subscribed within the period for subscription, constitute VAT exempted services.

# FINANCIAL TRANSACTIONS. TRANSACTIONS RELATING TO SECURITIES (5)

## Deutsche Bank, C-44/11:

A **securities-based assets management service**, in which the supplier, on the basis of his own discretion, takes decisions on the purchase and sale of securities and implements those decisions by buying and selling the securities, consists of two elements which are so closely linked that they form, objectively, a single economic supply. This service is not covered by the VAT exemption for financial transactions. The execution of purchase orders that are made together with said services must be considered ancillary thereof and follow the same treatment.

# FINANCIAL TRANSACTIONS. TRANSACTIONS RELATING TO SECURITIES (6)

## DTZ Zadelhoff, C-259/11:

The exception to the exemption provided for transfer of shares in **companies concerning immovable property** held in those companies is not applicable if the Member State has not availed itself of the possibility of considering shares or interests equivalent to shares giving the holder thereof de jure or de facto rights of ownership or possession over immovable property to be **tangible property**.

# FINANCIAL TRANSACTIONS. TRANSACTIONS RELATING TO SECURITIES (7)

## **Granton Advertising, C-461/12:**

It is not VAT exempted the commercialization of some cards that enable the obtaining of discounts for its owners, since neither can be considered commercial effects or securities for these purposes.

# FINANCIAL TRANSACTIONS. MANAGERMENTS OF COMMON INVESTMENT FUNDS (1)

## **Abbey National, C-169/04:**

The purpose of the exemption of the management of common investment funds is to **facilitate investment** in securities for small investors by means of investment undertakings, ensuring that VAT is fiscally neutral as regards the choice between direct investment in securities and investment through undertakings for collective investment. It follows that the exempted operations are those which are specific for collective investment.

Therefore, the **administrative** and **accounting management services** of mutual funds are exempt. On the contrary, the **deposit** services of these institutions are not exempt as far as they are not part of their management, but of the control and monitoring of their activity, since the aim is to ensure that the management of undertakings for collective investment is properly carried out.

# FINANCIAL TRANSACTIONS. MANAGERMENTS OF COMMON INVESTMENT FUNDS (2)

## JP Morgan, C-363/05:

The investment funds which qualify for the exemption of their management may include both **open-ended** and funds under the law of **contract** or **trust law** or under statute.

The Member States have the faculty to decide the investment funds whose management is exempt; however, in this definition they must observe the principle of **neutrality** and guarantee the exemption of the management of collective investment funds which are in competition with other special investment structures.



# FINANCIAL TRANSACTIONS. MANAGERMENTS OF COMMON INVESTMENT FUNDS (3)

## **Wheels, C-424/11:**

The exemption established for the management of common investment funds only refers to mutual funds in which investors assume the risk of investment, being applicable to **retirement pension schemes** where their members bear the risk arising from the management of the fund.

# FINANCIAL TRANSACTIONS. MANAGERMENTS OF COMMON INVESTMENT FUNDS (4)

## **GfBk, C-275/11:**

**Advisory** and **information** services **on investments** provided by a third party to a capital investment company, which manages a mutual fund, may be considered VAT exempt.

# FINANCIAL TRANSACTIONS. MANAGERMENTS OF COMMON INVESTMENT FUNDS (5)

## **ATP PensionService, C-464/12:**

Pension funds which are funded by the persons to whom the retirement benefit is to be paid, if the funds are invested using a **risk-spreading principle**, and if the pension customers bear the investment risk.

For this purpose, it is irrelevant that the contributions are paid by the employer, that the amount paid in is based on collective agreements between labour-market organisations, that there are different ways of paying out the funds invested, that contributions are deductible under income tax law or that it is possible to add an insurance element which is ancillary to the other services provided.

The exempted management covers **services** of establishing the rights of pension customers through the opening of accounts in the pension scheme system and the crediting to such accounts of the contributions paid. That term also covers accounting and account information services.

# FINANCIAL TRANSACTIONS. MANAGERMENTS OF COMMON INVESTMENT FUNDS (6)

## **Fiscale Eenheid X, C-595/13:**

**Investment companies** in which capital is pooled by several investors who bear the risk connected with the management of the assets assembled in those companies with a view to purchasing, owning, managing and selling immovable property in order to derive a profit therefrom may be regarded as «special investment funds» within the meaning of that provision, provided that the Member State concerned has made those companies subject to specific State supervision.

The exempted management to this effect does not contemplate the **effective exploitation** of the **real estate** of a mutual fund investment.

# FINANCIAL TRANSACTIONS. NEGOTIATION (1)

## **CSC Financial Services, C-235/00:**

The exemption of mediation in relation to financial transactions requires the existence of a **third party** that, as such, puts the intervening parties in contact so that said financial operations may be carried out.

On the contrary, the exemption does not refer to services that are limited to **providing information** about a financial product and, where appropriate, to **receiving and processing applications** for subscription of the corresponding securities, without issuing them.

## FINANCIAL TRANSACTIONS. NEGOTIATION (2)

### Ludwig, C-453/05:

There may be exempt mediation in the conduct of financial transactions even if the mediator is not **contractually bound** with the party who grants the credit or with the borrower, but with **another entity** who is the one who, as such, has the contractual relationship with the financial institution and receives its commissions from it.

# FINANCIAL TRANSACTIONS. OUTSOURCING (1)

## SDC, C-2/95:

The exemption for the financial transactions apply to **chain operations**, so that operator A has a contractual relationship B, which is who is bound contractually with the final customer. It is not an impediment to the exemption, therefore, the fact that the services are provided by a computer centre.

Said exemptions apply to **outsourced services** that have a differentiated character and are specific and essential for the provision of said services. Services that consist in making financial information available to banks and other users are not exempt.

# FINANCIAL TRANSACTIONS. OUTSOURCING (2)

## Cardpoint, C-42/18:

It does not constitute an operation related to payments, exempt as such, the provision of services to a bank that operates ATMs consisting of **making function and maintaining ATMs**, supplying them with banknotes, installing computer equipment and programs to read the data of bank cards, transmit the requests for authorization to withdraw cash to the bank that issued the used bank card, proceed to deliver the requested cash and record the withdrawal operations.



# FINANCIAL TRANSACTIONS. OTHER RELATED ISSUES (1)

## **Skandia Ameria (USA), C-7/13:**

The qualification as **single taxpayer** of the different entities included in a VAT group makes that the services provided to a fixed establishment that is part of a group, from a headquarter which is established outside the State in which the fixed establishment is located, are subject to VAT.

# FINANCIAL TRANSACTIONS. OTHER RELATED ISSUES (2)

## **Banco Mais, C-183/13:**

To settle the **deductible proportion**, for the determination of the extent to which goods that are ceded to third parties under **financial leasing contracts** involve the use of the general resources, the EU Member States may consider exclusively the amount of the financial burden or interests of said operations, not the total of the lease payments.

# FINANCIAL TRANSACTIONS. OTHER RELATED ISSUES (3)

## Morgan Stanley, C-165/17:

To settle the **deductible proportion** applicable to the **general costs** of a **branch** registered in a Member State, which are used both for transactions of that branch and transactions of the **headquarter**, established in another Member State, account must be taken, in the denominator of the fraction which makes up that deductible proportion, of the transactions carried out by both branch and headquarter, it being specified that it is necessary that, in the numerator of that fraction, besides the taxed transactions carried out by that branch, solely the taxed transactions carried out by that headquarter must appear, in respect of which VAT would also be deductible if they had been carried out in the State where the branch is registered.

# FINANCIAL TRANSACTIONS. OTHER RELATED ISSUES (4)

## **Vega International Car Transport and Logistic, C-235/19:**

In circumstances such as those in the main proceedings, the making available, by the head of a group, of its **fuel card** subsidiaries by a parent company, which allows the subsidiaries to supply fuel to the vehicles they transport, can be classified as a VAT exempted **credit granting service**.

# ADDITIONAL INFORMATION

Additional information about some of those topics can be found in the book **"ECJ case-law on VAT"**, **available electronically** and whose link is attached:

<https://www.efl.es/catalogo/manuales-juridicos/ecj-case-law-on-vat>