

## FACTS (I)

In its judgment of 24-3-2021, C-907/19, Q, the ECJ refers again to this issue. Q developed, marketed and sold insurance products. As part of its activities, said company entered into a contract with an insurance company, F. This contract included three **benefits supplied** by Q:

- a) By means of a non-exclusive use license, the put at the disposal of F an insurance product designed to cover special risks.
- b) Making insurance sales for that insurance company, adjusting the policies if necessary and assessing the risks. The insurance contracts were concluded between the insurer and the policyholders.
- c) The management of said contracts and processing and settlement of claims.

These services were remunerated by F in the form of **brokerage fees**.

The question raised has been whether, in accordance with the VAT Directive article 135(1)(a), services provided by a taxable person that include making an insurance product available to an insurance company and, incidentally, sell that product on behalf of the aforementioned company, as well as manage the insurance contracts concluded, must be classified as a **single transaction** for VAT purposes and **exempted** as such.

## REASONING (I)

The first analysed issue has been the consideration of benefits as a **single operation**, recalling the **usual criteria**:

- a) All the circumstances in which the operation in question is carried out must be taken into account. In general, each operation must be considered different and independent for VAT purposes.
- b) At the same time, an artificial breakdown of operations has to be ruled out when they are so closely linked that they objectively form a single, indissociable economic benefit.
- c) A service must be considered as an accessory to a main service when it does not constitute an end in itself for customers, but rather the means of enjoying the main service in the best conditions.

The reference of these criteria to the case has led the ECJ to conclude that it does not seem that the mediation services provided are essential for the distribution of the insurance or that they improve the use of the same by the insurer, so it could rather be concluded that they constitute **independent benefits**. The same conclusion has been reached regarding management services (this being said without prejudice to its specific analysis by the corresponding national court). If this is the case, each of the benefits would have its own treatment.

In the hypothesis that the different services provided by Q form a **single benefit**, the ECJ has entered to analyse their **possible exemption**, considering the granting of the license for the use of an insurance product constitutes the main service performed by Q.

## REASONING (II)

The possible consideration as an **insurance** exempted transaction has been ruled out, as it lacks the contractual relationship between the provider of the insurance service and the person whose risks are covered by the insurance, that is to say, the insured party (judgment of 17-3-2016, Aspiro, C-40/15).

Similarly, the exemption has been excluded as “services related to [insurance] transactions performed by insurance **brokers and insurance agents**”. Admitted that it was a benefit related to insurance operations, it was recalled that the need for it to be carried out by an insurance broker or agent should be interpreted according to the content of those benefits, not so much to the condition of the provider (also by reference to the Case C-40/15).

The activity that, as such, has a place in this concept is that which covers the essential aspects of the insurance agent's function, such as looking for clients or putting them in relationship with the insurer in order to conclude insurance contracts.

This was not the case in Q's granting of licenses for the use of an insurance product. The fact that Q additionally provides mediation services has been considered irrelevant for these purposes.

## CONCLUSION

In view of all the foregoing, it has been concluded that if the services provided by Q form a single service, this could not be exempt from VAT pursuant to the VAT Directive art.135(1)(a), since the main benefit is not included in the scope of this.

## RELATED TOPICS (I)

1<sup>st</sup>. 1st. The exemption in mediation for the distribution of insurance contracts depends on the **objective characteristics** of the supplied services, not on those who provide them. This exemption refers to customer search tasks or their contact with the insurer in order to enter into the respective contracts. The fact that the concerned services are supplied direct or indirectly lacks relevance (judgment of 3-4-2008, Beheer, C-124/07).

2<sup>nd</sup>. The **reference** made in the VAT Directive art.135(1)(a) to **insurance brokers and agents** must be interpreted in these terms. In other words, there is no subjective exemption applicable to the activity of these professionals (consistent application of the principle of neutrality, as has also been done in other areas).

## RELATED TOPICS (II)

3<sup>rd</sup>. This approach between the parties can be done by conventional means, in which case it does not raise major doubts. More controversial is the assumption of the use of technological tools, which has been admitted, again, in relation to health services (judgment of 5-3-2020, X, C-48/19). This use, as such, should not in itself exclude the exemption; however, it should be proven that the services provided allow this contact between insurers and potential clients with a view to signing a contract, excluding other similar services, such as advertising.

4<sup>th</sup>. The fact that the activities carried out fall within the scope of the insurance distribution regulations on insurance distribution lacks, as such, of relevance for these purposes (judgment of 17-3-2016, Aspiro, C-40/15).

## RELATED TOPICS (III)

5<sup>th</sup>. Similarly, the **need** for the service for the insurance activity is irrelevant, as may be the case in the controversial case, relating to a license. Curiously, in other areas the ECJ has been more flexible when it comes to extending the application of exemptions to essential inputs for carrying out exempt operations (judgments of 9-2-2006, Stichting Kinderopvang Enschede, C-415/04, or of 14-6-2007, Horizon College, C-434/05).

6<sup>th</sup>. Other **mediation** schemes, in which the mediator acts on **his own name**, should be analysed in the light of judgments such as those of 25-2-1999, CPP, C-349/96, or of 8-3-2001, Skandia, C-240/99.

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

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