

Roadtrip through ECJ Cases

Focus on Fixed Establishments (Art. 44, 45 & 192a VAT Directive; Art. 10, 11, 22 & 53 Reg. 282/2011)

Update – October 2026 | 19 decided cases

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Why the fixed establishment concept matters

Place of supply, liability and refunds



Determines where B2B services are taxed

Under Article 44, services to a taxable person are taxed where the customer has established its business, unless they are provided to a fixed establishment elsewhere. Whether a fixed establishment exists decides which Member State collects the VAT.



Determines who must pay the VAT

Under Article 192a, a supplier with a fixed establishment in the Member State of taxation is treated as non-established unless that establishment intervenes in the supply. This decides whether the reverse charge applies or the supplier must charge local VAT.



Drives refunds and audit exposure

A fixed establishment can block a refund of VAT to non-established businesses and is a frequent audit angle, leading to assessments, penalties and double taxation between two Member States when tax authorities disagree.



VAT Directive – Articles 44 and 45

Place of supply of services – applicable since 1 January 2010 (Directive 2008/8/EC)

Article 44

The place of supply of services to a taxable person acting as such shall be the place where that person has established his business. However, if those services are provided to a fixed establishment of the taxable person located in a place other than the place where he has established his business, the place of supply of those services shall be the place where that fixed establishment is located. In the absence of such place of establishment or fixed establishment, the place of supply of services shall be the place where the taxable person who receives such services has his permanent address or usually resides.

Article 45

The place of supply of services to a non-taxable person shall be the place where the supplier has established his business. However, if those services are provided from a fixed establishment of the supplier located in a place other than the place where he has established his business, the place of supply of those services shall be the place where that fixed establishment is located. In the absence of such place of establishment or fixed establishment, the place of supply of services shall be the place where the supplier has his permanent address or usually resides.

Article 192a VAT Directive and Article 53 Regulation 282/2011

When does a fixed establishment of the supplier make it liable for local VAT?

Article 192a

For the purposes of this Section, a taxable person who has a fixed establishment within the territory of the Member State where the tax is due shall be regarded as a taxable person who is not established within that Member State when the following conditions are met:

- (a) he makes a taxable supply of goods or of services within the territory of that Member State;
- (b) an establishment which the supplier has within the territory of that Member State does not intervene in that supply.

Article 53

1. For the application of Article 192a of Directive 2006/112/EC, a fixed establishment of a taxable person shall be taken into consideration only when it is characterised by a sufficient degree of permanence and a suitable structure in terms of human and technical resources to enable it to make the supply of goods or services in which it intervenes.

2. Where a taxable person has a fixed establishment within the territory of the Member State where the VAT is due, that establishment shall be considered not to intervene in the supply of goods or services within the meaning of point (b) of Article 192a of Directive 2006/112/EC, unless the technical and human resources of that fixed establishment are used by him for transactions inherent in the fulfilment of the taxable supply of those goods or the supply of those services made within that Member State, before or during the fulfilment of that supply.

Where the resources of the fixed establishment are used only for administrative support tasks such as accounting, invoicing and collection of debts, they shall not be regarded as being used for the fulfilment of a supply of goods or services.

However, if an invoice is issued under the VAT identification number allocated by the Member State of the fixed establishment, that fixed establishment shall be regarded as having intervened in the supply of goods or services made in that Member State unless there is proof to the contrary.

Implementing Regulation 282/2011 – Articles 10 and 11

Place of establishment and definition of fixed establishment – applicable since 1 July 2011

Article 10

1. For the application of Articles 44 and 45 of Directive 2006/112/EC, the place where the business of a taxable person is established shall be the place where the functions of the business's central administration are carried out.
2. In order to determine the place referred to in paragraph 1, account shall be taken of the place where essential decisions concerning the general management of the business are taken, the place where the registered office of the business is located and the place where management meets. Where these criteria do not allow the place of establishment of a business to be determined with certainty, the place where essential decisions concerning the general management of the business are taken shall take precedence.
3. The mere presence of a postal address may not be taken to mean that the place of establishment of a business of a taxable person is at that address.

Article 11

1. For the application of Article 44 of Directive 2006/112/EC, a 'fixed establishment' shall be any establishment, other than the place of establishment of a business referred to in Article 10 of this Regulation, characterised by a sufficient degree of permanence and a suitable structure in terms of human and technical resources to enable it to receive and use the services supplied to it for its own needs.
2. For the application of the following Articles, a 'fixed establishment' shall be any establishment, other than the place of establishment of a business referred to in Article 10 of this Regulation, characterised by a sufficient degree of permanence and a suitable structure in terms of human and technical resources to enable it to provide the services which it supplies:
 - (a) Article 45 of Directive 2006/112/EC;
 - (b) from 1 January 2013, the second subparagraph of Article 56(2) of Directive 2006/112/EC;
 - (c) until 31 December 2014, Article 58 of Directive 2006/112/EC;
 - (d) Article 192a of Directive 2006/112/EC.
3. The fact of having a VAT identification number shall not in itself be sufficient to consider that a taxable person has a fixed establishment.

Implementing Regulation 282/2011 – Article 22

How the supplier identifies the customer's fixed establishment

Article 22

1. In order to identify the customer's fixed establishment to which the service is provided, the supplier shall examine the nature and use of the service provided.

Where the nature and use of the service provided do not enable him to identify the fixed establishment to which the service is provided, the supplier, in identifying that fixed establishment, shall pay particular attention to whether the contract, the order form and the VAT identification number attributed by the Member State of the customer and communicated to him by the customer identify the fixed establishment as the customer of the service and whether the fixed establishment is the entity paying for the service.

Where the customer's fixed establishment to which the service is provided cannot be determined in accordance with the first and second subparagraphs of this paragraph or where services covered by Article 44 of Directive 2006/112/EC are supplied to a taxable person under a contract covering one or more services used in an unidentifiable and non-quantifiable manner, the supplier may legitimately consider that the services have been supplied at the place where the customer has established his business.

2. The application of this Article shall be without prejudice to the customer's obligations.

Equivalent provision in the Sixth VAT Directive 77/388/EEC

Article 9(1) – general rule for the place of supply of services, applicable until 31 December 2006

Article 9(1): *The place where a service is supplied shall be deemed to be the place where the supplier has established his business or has a fixed establishment from which the service is supplied, or, in the absence of such a place of business or a fixed establishment, the place where he has his permanent address or usually resides.*

Sixth Directive 77/388/EEC	VAT Directive / Reg. 282/2011	Subject
Art. 9(1) Sixth Directive	Art. 43 (2007–2009)	General rule: supplier's place of business or fixed establishment from which the service is supplied
Art. 9(1) Sixth Directive	Art. 44 (from 2010)	B2B: customer's place of business or fixed establishment receiving the services
Art. 9(1) Sixth Directive	Art. 45 (from 2010)	B2C: supplier's place of business or fixed establishment from which services are provided
No direct equivalent	Art. 192a	Fixed establishment of the supplier disregarded unless it intervenes in the supply
No equivalent (case law only)	Arts. 10, 11, 22, 53 Reg. 282/2011	Codified definitions, applicable from 1 July 2011

The road map – cases by theme

19 decided cases, 1985 – 2024

Concept & criteria

C-168/84 (Berkholz)
C-231/94 (Faaborg-Gelting Linien)
C-190/95 (ARO Lease)
C-605/12 (Welmory)
C-931/19 (Titanium)

Group companies & economic reality

C-260/95 (DFDS)
C-547/18 (Dong Yang Electronics)
C-333/20 (Berlin Chemie A. Menarini)
C-232/22 (Cabot Plastics Belgium)
C-533/22 (Adient)

Head office – branch

C-210/04 (FCE Bank)
C-7/13 (Skandia America)
C-165/17 (Morgan Stanley)
C-812/19 (Danske Bank)

Refunds & tax representatives

C-390/96 (Lease Plan Luxembourg)
C-73/06 (Planzer Luxembourg)
C-318/11 (Daimler AG) & C-319/11 (Widex A/S)
C-323/12 (E.ON Global Commodities)

Supplier side & abuse

C-419/14 (WebMindLicenses)

The three cumulative conditions

1. Sufficient degree of permanence
2. Suitable human and technical resources
3. Capacity to receive and use (Art. 44) or to provide (Art. 45, 192a) the services



ECJ Cases – Decided

19 judgments – from Berkholz (1985) to Adient (2024)

C-168/84 (Berkholz)

First ECJ case on fixed establishments

Concept & criteria

Facts

Gerhard Berkholz, a German operator, installed gaming machines on board ferries sailing between Germany and Denmark. The machines were serviced and emptied occasionally by his staff, who were not permanently on board. The German tax authorities taxed the turnover in Germany, while Berkholz argued that the machines on board constituted a fixed establishment outside German territory, on the high seas.

Issue

Under Article 9(1) of the Sixth Directive, can an installation for a commercial activity, such as gaming machines on a ship sailing on the high seas, be a fixed establishment? And which criteria determine whether services are supplied from that installation rather than from the place where the supplier has established his business?

Decision

The place where the supplier has established his business is the primary point of reference. Another establishment is only considered where that leads to an irrational result or conflicts with another Member State. An installation is a fixed establishment only if it has a minimum size, with permanent presence of both the human and technical resources necessary to provide the services.



Articles discussed: Sixth Directive 77/388/EEC: Article 9(1).

C-231/94 (Faaborg-Gelting Linien)

Restaurant transactions on board ship – place of taxable transactions

Concept & criteria

Facts

Faaborg-Gelting Linien, a Danish company, operated a ferry service between Faaborg in Denmark and Gelting in Germany and supplied meals for consumption on board. The German tax authority in Flensburg taxed the restaurant transactions in Germany as supplies of goods. The company contested this, arguing that its transactions were services located in Denmark, where it had established its business.

Issue

Are restaurant transactions on board ferries supplies of goods or supplies of services under Articles 5 and 6 of the Sixth Directive? If they are services, where are they located under Article 9(1): at the place where the ferry operator has established its business, or at a fixed establishment formed by the ship and its restaurant facilities?

Decision

Restaurant transactions are supplies of services, because the food is only one component in a cluster of features in which services predominate. Applying Berkholz, they are located where the supplier has established its business. The ship is not treated as a fixed establishment, as the place of business offers a rational result for taxation.



Articles discussed: Sixth Directive 77/388/EEC: Articles 5, 6(1) and 9(1).

C-260/95 (DFDS)

Intermediary of a tour operator acting as fixed establishment

Group companies

Facts

DFDS A/S, a Danish shipping and tour operator, sold package tours to UK customers through its wholly owned UK subsidiary, which acted as its agent. The UK subsidiary had premises and staff in the United Kingdom. The UK Commissioners claimed that the margin scheme services were taxable in the UK, while DFDS argued that they were supplied from Denmark.

Issue

Under Article 26(2) of the Sixth Directive, where a tour operator established in one Member State provides travel services through a company acting as its agent in another Member State, are those services supplied from the tour operator's business establishment, or from a fixed establishment in the other Member State formed by that agent?

Decision

The services are taxable in the agent's Member State if the agent, acting as a mere auxiliary organ of the tour operator, has the human and technical resources characteristic of a fixed establishment. A legally independent subsidiary can therefore constitute a fixed establishment of its parent where economic reality shows it is wholly dependent on that parent.



Articles discussed: Sixth Directive 77/388/EEC: Articles 9(1) and 26(2).

C-190/95 (ARO Lease)

Place where the supplier has established its business / fixed establishment

Concept & criteria

Facts

ARO Lease, a Dutch car-leasing company, leased a large number of cars to customers resident in Belgium. Contracts were introduced by independent Belgian intermediaries, but were concluded and managed in the Netherlands. ARO had no office or staff in Belgium. The Dutch authorities considered that the leasing services were supplied from a fixed establishment in Belgium.

Issue

Does a leasing company established in one Member State have a fixed establishment in another Member State merely because it leases many vehicles to customers established there, through independent intermediaries? Where is the place of supply of the leasing services under Article 9(1) and Article 9(2)(e) of the Sixth Directive in that situation?

Decision

Leasing vehicles to customers in another Member State does not by itself create a fixed establishment there. A fixed establishment requires own staff and a structure with sufficient permanence to draw up contracts or take management decisions, so that the services can be supplied independently. Without these, the services are supplied from the Netherlands.



Articles discussed: Sixth Directive 77/388/EEC: Articles 9(1) and 9(2)(e).

C-390/96 (Lease Plan Luxembourg)

Impact of car-leasing services on determination of fixed establishments

Refunds

Facts

Lease Plan Luxembourg, a Luxembourg leasing company, leased cars to customers in Belgium and claimed a refund of Belgian VAT as a non-established taxable person. Belgium contested whether Lease Plan had a fixed establishment there. Belgian law also granted non-established persons interest on late refunds only after a formal notice, at a lower rate than for established persons.

Issue

Does a company that leases vehicles to customers in another Member State have a fixed establishment there under Article 9(1) of the Sixth Directive? And is it compatible with the freedom to provide services to grant non-established taxable persons less favourable interest on late VAT refunds than taxable persons established in the Member State concerned?

Decision

Confirming ARO Lease, merely leasing vehicles to customers in another Member State does not create a fixed establishment there. Without own staff and a sufficiently permanent structure, there is no fixed establishment. The less favourable rules on interest for non-established taxable persons constitute discrimination contrary to the freedom to provide services under Article 59 of the EC Treaty.

 **Articles discussed:** Sixth Directive 77/388/EEC: Articles 9(1) and 9(2)(e); Eighth Directive 79/1072/EEC; Article 59 EC Treaty.

C-210/04 (FCE Bank)

A fixed establishment is not a legal entity distinct from the business itself

Head office – branch

Facts

FCE Bank plc, established in the United Kingdom, operated in Italy through a branch, FCE IT. The head office provided the branch with consultancy, management, training, data processing and software services, and charged the costs to the branch. The Italian tax authorities considered these internal charges to be consideration for taxable supplies, subject to Italian VAT under the reverse charge.

Issue

Under Articles 2(1) and 9(1) of the Sixth Directive, should a fixed establishment that is not a legal entity distinct from the company to which it belongs be treated as a separate taxable person, so that services supplied by the head office, with costs allocated to the branch, are taxable transactions? Does a double tax treaty affect this?

Decision

A fixed establishment that is not a legal entity distinct from the company, and to which the company supplies services, is not a taxable person separate from it. The internal allocation of costs is not consideration for a supply. Head office and branch form one single taxable person, so the transactions between them are outside the scope of VAT.



Articles discussed: Sixth Directive 77/388/EEC: Articles 2(1) and 9(1).

C-73/06 (Planzer Luxembourg)

Refund of VAT to non-established taxable persons – concept of fixed establishment

Refunds

Facts

Planzer Luxembourg, a subsidiary of a Swiss transport group, claimed a refund of German VAT on fuel under the Eighth Directive, supported by a Luxembourg certificate of taxable status. The German authorities found that the Luxembourg office had no real activity and treated Planzer as established in Switzerland, applying the stricter Thirteenth Directive and refusing the refund.

Issue

Is a certificate of taxable status issued by the Member State of establishment binding on the refunding Member State, or can that State verify where the business is actually established? How should the place where the business is established and a fixed establishment be identified for the purposes of the Eighth and Thirteenth Directives?

Decision

The certificate creates a presumption that the person is a taxable person in that State, but the refunding State may verify the economic reality. The place of establishment is where essential decisions on general management are taken and central administration functions carried out. A fixed establishment requires a minimum degree of stability, with permanent human and technical resources.



Articles discussed: Eighth Directive 79/1072/EEC: Articles 1 and 3(b); Thirteenth Directive 86/560/EEC: Article 1(1).

C-318/11 (Daimler AG) & C-319/11 (Widex A/S)

No refusal of Eighth Directive refund to businesses without local turnover

Refunds

Facts

Daimler AG, a German car manufacturer, had winter testing of vehicles carried out in Sweden, and Widex A/S, a Danish hearing-aid manufacturer, also had a presence in Sweden. Neither carried out taxable transactions in Sweden. Both claimed refunds of Swedish VAT, which the Swedish authorities refused on the ground that they had a fixed establishment in Sweden.

Issue

Can a taxable person established in another Member State be refused a refund under the Eighth Directive because it has a fixed establishment in the refunding Member State, where that establishment carries out no taxable transactions? What does it mean to have a fixed establishment from which business transactions are effected?

Decision

A refund cannot be refused on that ground. A taxable person has a fixed establishment from which business transactions are effected only where taxable transactions are actually carried out from it. A presence used only for technical testing or research, without taxable transactions, does not prevent a refund under the Eighth Directive.



Articles discussed: Eighth Directive 79/1072/EEC: Article 1; Thirteenth Directive 86/560/EEC: Article 1.

C-323/12 (E.ON Global Commodities)

A tax representative does not constitute a fixed establishment

Refunds

Facts

E.ON Global Commodities, a German energy trading company, was registered for VAT in Lithuania, where it had appointed a tax representative. It supplied electricity and gas to Lithuanian customers, who accounted for the VAT under the reverse charge. The Lithuanian authorities refused its claim for a refund of Lithuanian input VAT, treating it as established there.

Issue

Can a taxable person established in another Member State be refused a refund of input VAT because it is registered for VAT and has appointed a tax representative in the Member State of refund? Does supplying electricity and gas, for which the customer is liable for the VAT, prevent the supplier from obtaining a refund?

Decision

Registration for VAT and the appointment of a tax representative do not constitute a fixed establishment. Supplies of electricity and gas located in the Member State of refund, for which the customer is liable for VAT, do not prevent a refund. The supplier keeps its right to a refund under the refund procedure for non-established taxable persons.



Articles discussed: Eighth Directive 79/1072/EEC: Article 1; VAT Directive 2006/112/EC: Articles 38, 171, 192a and 195 – to be checked against the judgment.

C-7/13 (Skandia America)

Supplies by a third-country head office to its branch in a VAT group are taxable

Head office – branch

Facts

Skandia America Corporation, established in the United States, purchased IT services externally and supplied them to its Swedish branch, which was a member of a Swedish VAT group. Costs were recharged by internal invoices with a mark-up. The Swedish tax authorities considered the supplies to be taxable services received by the VAT group, subject to reverse charge VAT.

Issue

Do supplies of services from a head office established in a third country to its branch in a Member State constitute taxable transactions where the branch belongs to a VAT group in that Member State? If so, who is liable for the VAT on those supplies under the reverse charge mechanism provided for in the VAT Directive?

Decision

Yes. Through its membership of the VAT group, the branch becomes part of a single new taxable person, the VAT group, distinct from the head office. The services supplied by the head office to the branch are therefore supplies to the VAT group, taxable in Sweden. The VAT group is liable for the VAT under the reverse charge.



Articles discussed: VAT Directive 2006/112/EC: Articles 2, 9(1), 11, 56, 193 and 196.

C-605/12 (Welmory)

Sufficient permanence and suitable structure to receive and use services

Concept & criteria

Facts

Welmory Ltd, a Cypriot company, operated an online auction platform for goods sold by Welmory sp. z o.o., a Polish company. The Polish company supplied the Cypriot company with premises, staff, advertising and other services. The Polish authorities considered that the Cypriot company had a fixed establishment in Poland, so that the services were taxable in Poland.

Issue

Under Article 44 of the VAT Directive and Article 11 of the Implementing Regulation, when does a company established in one Member State, receiving services from a company in another Member State, have a fixed establishment in that other Member State? Can that fixed establishment be formed using resources made available by the service provider itself?

Decision

Such a fixed establishment exists where the recipient has, in that other Member State, a structure with a sufficient degree of permanence and suitable human and technical resources to receive and use the services for its own needs. The national court must verify this, taking into account, for example, that the Cypriot company's servers were located outside Poland.



Articles discussed: VAT Directive 2006/112/EC: Articles 44 and 73; Implementing Regulation (EU) No 282/2011: Article 11.

C-419/14 (WebMindLicenses)

When are services supplied from a fixed establishment?

Supplier side & abuse

Facts

WebMindLicenses, a Hungarian company, licensed know-how for operating an adult-content website to Lalib, a company established in Madeira, where the VAT rate was lower. The Hungarian authorities considered the arrangement artificial: in their view, WebMindLicenses itself exploited the know-how from Hungary, so that the electronic services were taxable in Hungary rather than in Portugal.

Issue

Is it abusive to license know-how to a company in another Member State with a lower VAT rate? How should the national court determine whether the services were actually supplied by Lalib from its place of business in Madeira, or from Hungary? Can evidence obtained in parallel criminal proceedings be used in the tax assessment?

Decision

Licensing to a company in a lower-rate Member State is not abusive in itself. The national court must examine whether Lalib actually exploited the know-how from Madeira, with its own human and technical resources, or whether the arrangement was artificial. Evidence from criminal proceedings may be used, subject to the rights guaranteed by the Charter of Fundamental Rights.



Articles discussed: VAT Directive 2006/112/EC: Articles 2(1)(c), 24(1), 43, 56(1)(k), 57 and 273 – to be checked against the judgment.

C-165/17 (Morgan Stanley)

Deduction of input VAT by a fixed establishment and application of pro rata

Head office – branch

Facts

The Paris branch of Morgan Stanley & Co International plc, established in the United Kingdom, carried out banking and financial transactions in France. It incurred expenditure used both for its own transactions, some of them taxed, and for transactions of its UK head office. The French tax authorities limited the branch's deduction of the input VAT on those costs.

Issue

How should a branch in one Member State determine its right to deduct input VAT on expenditure used exclusively for transactions of its head office in another Member State? And which pro rata applies to expenditure used both for the branch's own transactions and for the head office's transactions, given that the two are in different Member States?

Decision

For costs used exclusively for the head office's transactions, the branch deducts VAT as if those transactions had been carried out in its own Member State, provided they also give a right to deduct in the head office's Member State. For mixed costs, the pro rata must reflect the transactions of both the branch and the head office.



Articles discussed: Sixth Directive 77/388/EEC: Articles 17(2), (3) and (5) and 19(1); VAT Directive 2006/112/EC: Articles 168, 169, 173, 174 and 175.

C-547/18 (Dong Yang Electronics)

A subsidiary is not automatically a fixed establishment of its parent

Group companies

Facts

Dong Yang Electronics, a Polish company, supplied assembly services for printed circuit boards to LG Display Korea, established in South Korea. The assembled goods remained in Poland, where they were used by LG Display Poland, the Korean company's Polish subsidiary. The Polish authorities considered that LG Display Korea had a fixed establishment in Poland through its subsidiary.

Issue

Can a supplier conclude that a company established outside the EU has a fixed establishment in a Member State merely because it has a subsidiary there? Must the supplier investigate the contractual relations between the non-EU company and its subsidiary to determine whether the services were supplied to a fixed establishment of that non-EU company?

Decision

The mere existence of a subsidiary in a Member State does not mean that the parent company has a fixed establishment there. Classification as a fixed establishment cannot depend solely on legal status. The supplier is not required to investigate the contractual relations between the non-EU company and its subsidiary, but must examine the nature and use of the services.

 **Articles discussed:** VAT Directive 2006/112/EC: Article 44; Implementing Regulation (EU) No 282/2011: Articles 11 and 22.

C-812/19 (Danske Bank)

Head office in a VAT group and its foreign branch are separate taxable persons

Head office – branch

Facts

Danske Bank A/S, established in Denmark and a member of a Danish VAT group, operated in Sweden through a branch that was not part of any Swedish VAT group. The head office provided IT services to the Swedish branch and allocated the costs to it. The Swedish authorities considered these services taxable in Sweden under the reverse charge.

Issue

Does the Swedish branch of a bank constitute a taxable person separate from its head office where the head office is part of a VAT group in another Member State, while the branch is not, and the head office supplies services to the branch and imputes the costs? This is the mirror situation of the Skandia case.

Decision

Yes. The head office, forming part of a VAT group in its Member State, and the branch established in another Member State must be regarded as separate taxable persons where the head office supplies services to the branch and imputes the costs. The supplies are therefore taxable, and the FCE Bank principle does not apply in this situation.



Articles discussed: VAT Directive 2006/112/EC: Articles 2(1), 9(1) and 11.

C-931/19 (Titanium)

No fixed establishment if the owner of the property has no own staff

Concept & criteria

Facts

Titanium Ltd, established in Jersey, owned two properties in Vienna that it let to Austrian businesses. An Austrian property management company handled the day-to-day management, while Titanium itself took the key decisions, such as concluding leases and deciding on investments. The Austrian authorities treated the properties as a fixed establishment of Titanium in Austria.

Issue

Does a property let in a Member State constitute a fixed establishment of its owner where the owner has no staff of its own in that Member State, and the management of the property is carried out by a third-party service provider, while the important decisions are taken by the owner from outside that Member State?

Decision

No. A property let in a Member State which does not have human resources enabling it to act independently does not constitute a fixed establishment. A structure without its own staff cannot fall within the concept of fixed establishment, even if the property itself has a sufficient degree of permanence. Both human and technical resources are required.



Articles discussed: VAT Directive 2006/112/EC: Article 43 (version applicable before 2010); Implementing Regulation (EU) No 282/2011: Article 11 – to be checked against the judgment.

C-333/20 (Berlin Chemie A. Menarini)

No fixed establishment via an affiliate rendering services on an exclusive basis

Group companies

Facts

Berlin Chemie AG, a German pharmaceutical company, sold medicinal products in Romania through Romanian distributors using its Romanian VAT number. Its Romanian affiliate provided it, on an exclusive basis, with marketing, regulatory, advertising and representation services. The Romanian authorities considered that Berlin Chemie AG had a fixed establishment in Romania through the affiliate's resources.

Issue

Does a company established in one Member State have a fixed establishment in another Member State where its affiliate there provides marketing, regulatory and advertising services exclusively to it? Is the fact that the company supplies goods in that Member State relevant to determine whether it can receive and use the services there?

Decision

No. A fixed establishment exists only if the recipient has the human and technical resources of the affiliate at its disposal as if they were its own. An exclusive contract is not sufficient on its own. The supplies of goods made by the company in that Member State are irrelevant when assessing whether it receives the services there.



Articles discussed: VAT Directive 2006/112/EC: Article 44; Implementing Regulation (EU) No 282/2011: Articles 11 and 53 – to be checked against the judgment.

C-232/22 (Cabot Plastics Belgium)

Toll manufacturing with ancillary services does not lead to a fixed establishment

Group companies

Facts

Cabot Plastics Belgium carried out toll manufacturing, almost exclusively, for its Swiss affiliate Cabot Switzerland, which owned the raw materials and finished products. It also provided ancillary services, such as storage and logistics support. The Belgian tax authorities considered that Cabot Switzerland had a fixed establishment in Belgium through the resources of its Belgian affiliate.

Issue

Does a company established outside the EU have a fixed establishment in a Member State because an affiliated company there supplies it, under an exclusive long-term contract, with toll manufacturing and ancillary services? Can the same human and technical resources be used both to supply the services and to receive them within a fixed establishment?

Decision

No. The recipient must have the provider's resources at its disposal as if they were its own, and exclusivity is not decisive on its own. The same resources cannot be used both to supply and to receive the same services. Ancillary services, such as logistics, do not change this, as they are separate from the core services.



Articles discussed: VAT Directive 2006/112/EC: Article 44; Implementing Regulation (EU) No 282/2011: Article 11.

C-533/22 (Adient)

No fixed establishment solely because two companies belong to the same group

Group companies

Facts

Adient Germany contracted Adient Romania, a group company, to manufacture seat upholstery components from raw materials that Adient Germany owned throughout the process. Adient Romania also provided ancillary services such as storage and logistics. Adient Germany used its Romanian VAT number for purchases and sales of goods, but the Romanian authorities claimed that Adient Germany had a fixed establishment in Romania.

Issue

Can a group company be a fixed establishment of another group company merely because of shareholding links or an intra-group service contract? Is the supplier's subsequent supply of goods relevant? Can a fixed establishment exist where the human and technical resources used to supply the services are the same as those used to receive them?

Decision

No fixed establishment arises solely from group membership or an intra-group contract. Subsequent supplies of goods are irrelevant to whether services are received there. Where the resources used to supply and to receive the services are the same, or are involved only in preparatory or auxiliary activities, there is no fixed establishment receiving the services.



Articles discussed: VAT Directive 2006/112/EC: Article 44; Implementing Regulation (EU) No 282/2011: Articles 11 and 53 – to be checked against the judgment.



ECJ Cases – Pending

No pending ECJ or General Court cases on the concept of fixed establishment identified as at October 2026.

Watch national case law: e.g. UK Upper Tribunal, Barclays Services Corporation v HMRC [2026] UKUT 211 (TCC) – fixed establishment for VAT grouping.

Key takeaways for practice

1

Seat first, fixed establishment second

The place of business is the primary point of reference; a fixed establishment only takes over where the services are actually provided to or from it (Berkholz, Faaborg).

2

Both human and technical resources

Permanence plus own staff and equipment are required; equipment or property without staff is not enough (ARO Lease, Planzer, Titanium).

3

A subsidiary is not automatically a fixed establishment

Group links, exclusive contracts and toll manufacturing do not create a fixed establishment unless resources are available as if one's own (Dong Yang, Berlin Chemie, Cabot, Adient); DFDS remains the exception.

4

Head office and branch: one taxable person – unless a VAT group intervenes

Internal recharges are out of scope (FCE Bank), but VAT groups split the entity (Skandia, Danske Bank); deduction follows both sides' transactions (Morgan Stanley).

5

Protect refunds and document intervention

A VAT number or tax representative is not a fixed establishment (E.ON, Art. 11(3) IR); document per supply whether a fixed establishment intervenes (Art. 192a, Art. 53 IR).