

VAT treatment of outsourced claims handling services

The ECJ has recently ruled in the case of *Aspiro* (C-40/15) that insurance claims handling services outsourced to third party service providers do not fall within the insurance VAT exemption.

The ECJ held that the services could only benefit from the insurance exemption if they constituted "related services performed by insurance brokers and insurance agents". Although the services were found to qualify as "related services" for these purposes due to their connection with the insurance transaction, the ECJ ruled that the exemption could only apply if they were services of a type performed by an insurance agent or broker. This involved satisfying the following two conditions:

1. The service provider must have a relationship (whether direct or indirect) with both the insurer and the insured.
2. The activities of the service provider must cover the essential aspects of the work of an insurance agent or broker.

Aspiro was found to satisfy the first condition due to its direct contractual relationship with the insurer and its indirect relationship with the insured. However, *Aspiro* was found not to satisfy the second condition because its services did not involve the finding of prospective clients and their introduction to the insurer, which was an essential aspect of the work of an insurance agent or broker.

The judgment reflects the CJEU's earlier decision in the *Andersen* case (C-472/03) and brings back into the spotlight the fact that the UK's implementation of the insurance exemption (which specifically includes stand-alone services such as claims handling) is wider than the European position. Following *Andersen*, HMRC accepted that the UK exemption was too wide but delayed making any changes while the Commission was conducting a wholesale review of the finance and insurance exemptions (a process which has since stalled). In the meantime, HMRC gave businesses a choice as to whether to continue to rely on the wide UK rules or directly rely on the narrower EU position.

This latest decision makes it increasingly likely that the UK exemption will be brought into line with the European position sooner rather than later (assuming of course that events are not overtaken by a Brexit). We will be keeping a close eye on developments in this area, but insurance companies and providers of outsourced insurance services should start to consider the impact of a narrowing of the UK VAT exemption on their existing arrangements as well as keeping these issues in mind when entering into new outsourcing contracts.

Our VAT and insurance teams are here to help should you have any questions on the case or need assistance with understanding the potential impact on your business.

How we can help

- Clifford Chance has one of the largest international tax groups of any law firm and is ranked in the top tier in the UK (including top tier rankings for VAT), in Europe and in Global legal directories (Chambers 2016).
- Unlike many international law firms, Clifford Chance has dedicated VAT expertise. Our UK team is supported by specialist VAT units throughout our global network. We also possess contentious capability and often handle negotiations with tax authorities on VAT matters and, where necessary, litigation before national courts and the ECJ.
- Our global insurance practice is ranked in Band 1 (*Chambers Global*) and includes experts in outsourcing and financial services regulation to assist you with contract negotiation and navigating regulatory developments.

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