



UK VAT groups are still recognized after Brexit

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On 4 November 2021, in response to a request filed by KPMG's Italian VAT team, the Italian Tax Authority ('ITA') published Ruling no. 756/2021 on the VAT treatment of services between an Italian branch and a UK head office belonging to a UK VAT group.

In the ruling the ITA confirmed that UK VAT groups are still recognized after Brexit; therefore, following the principles established in ECJ Cases C-7/13 ('Skandia') and C-812/19 ('Danske Bank'), a UK VAT group is a separate taxable person for VAT purposes, and services between a fixed establishment located in Italy and the UK head office belonging to a UK VAT group are relevant for VAT purposes (although, based on the general B2B place of supply rules, outside the scope of Italian VAT).

The VAT grouping provision in Italian VAT law

Article 11 of EU Directive 2006/112/EC (the 'Principal VAT Directive') lays the foundation for the VAT grouping provisions introduced into the national legislation of EU Member States.

Italian VAT grouping provisions have implemented the principles laid down by the Skandia case, according to which head office to branch charges are no longer disregarded for VAT purposes when the head office or the branch belongs to a VAT group in Italy or in another EU jurisdiction.

The UK VAT grouping provisions after Brexit

The above provisions also applied to UK VAT groups while the UK was an EU Member State. However, following the UK's exit from the EU as a result of the Brexit referendum, two questions arose:

- i. Whether UK VAT groups should still be considered 'VAT groups' according to article 11 of the Principal VAT Directive.
- ii. Consequently, whether the Skandia and Danske Bank principles should also apply to transactions involving branches or head offices belonging to UK VAT groups or whether those transactions should be disregarded for VAT purposes because a branch and its head office are the same legal entity and should be treated as a single taxable person for VAT purposes, under the FCE principles established by the ECJ in Case C-210/04.

The ITA ruling

The question involved an Italian branch of an entity established in the UK and belonging to a UK VAT group. The branch provided services to the UK head office and asked whether, following Brexit, those services would (i) still fall outside the scope of Italian VAT under article 44 of the VAT Directive (based on the general B2B place of supply rules for generic services) or (ii) fall outside the scope of Italian VAT because they were rendered within the same legal entity (under the FCE principles).

In the ruling the ITA stated that, even though the UK is no longer an EU Member State following Brexit, the principles established by the Skandia case continue to apply in relation to UK VAT groups, as long as the UK VAT grouping rules are in line with the principles laid down in article 11 of the Principal VAT Directive.

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