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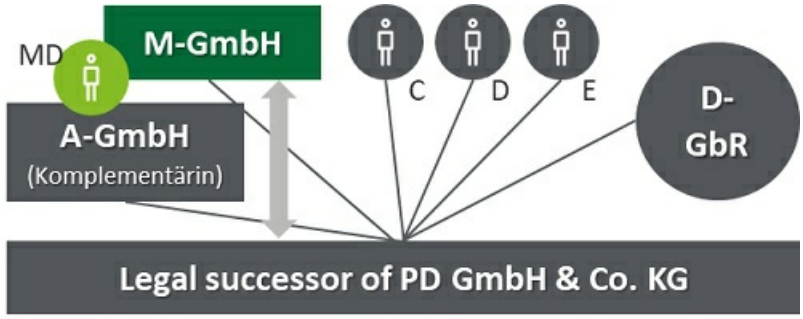
*German Tax and Legal News*

## CJEU decides on the German interpretation of the VAT group

The conditions under which Germany allows the financial integration of partnerships in a VAT group contradict European law.

**Background**
The Financial Court Berlin-Brandenburg has referred the question of the compatibility of the German provisions on the financial integration of partnerships to the CJEU based on the following facts:




The plaintiff (M-GmbH) was of the opinion that PD GmbH & Co. KG, a partnership under German civil law (or its legal successor) was financially integrated into its company. All shareholders of PD had one vote, regardless of the amount of the business share, the plaintiff had six votes. Resolutions were generally passed by simple majority, some resolutions required unanimity. As of December 2017, the plaintiff and A-GmbH were represented by the same managing director.

The competent tax office rejected a VAT group between the plaintiff and PD due to the lack of financial integration, because in addition to the plaintiff, natural persons also held shares in PD.

In the opinion of the V. Senate of the BFH (Federal Financial Court) and the tax authorities, a partnership can only be financially integrated into the business of the head of the VAT group as a controlled company if all other partners of the partnership are also financially integrated into its business (Section 2.8, para. 5a, sentence 1 UStAE (as of 15 March 2021). Only in this way can it be ensured that the possibility for the controlling company (head of the VAT group) to take action necessary for financial integration exists - irrespective of whether, in the individual case, the partners' resolutions at the level of the partnership are passed unanimously or by majority resolution.

**Decision**
The CJEU has ruled that the German practice violates the requirements of Art. 11 of the VAT Directive (Directive 2006/112/EC of 28 November 2006 on the common system of value added tax - VAT Directive). According to European law, membership in a VAT group may not be made dependent on the legal form, i.e. partnerships may not be excluded per se from a VAT group.

The German rule that partnership agreements can also be concluded or amended orally goes hand in hand with the legal form and is a matter of German civil law. It must not affect (European) tax law. Otherwise, this would add an inadmissible, further requirement to the prerequisites for a VAT group.

**Comment**
The CJEU has stated that, in its view, the limited conditions under which partnerships can be part of a VAT group violate European law (Art. 11 (1) VAT Directive). Whether this can be justified as a measure to prevent tax evasion by way of exception under Art. 11 (2) VAT Directive ultimately remains the decision of the Financial Court Berlin-Brandenburg to which the case now returns. But the CJEU has already given clear indications that, in its view, this is not the case either and that the referring Court itself has enumerated other, less restrictive

ways in which the goal of preventing tax losses could be achieved - such as, for example, the requirement to generally document all integration conditions in writing or the VAT group upon application with the tax authorities.

Following the CJEU's decision, Germany will have to re-regulate its principles on the VAT group with regard to the inclusion of partnerships. However, there are still two other cases pending that question the concept of the VAT group as Germany understands it (C-, submission of the BFH of and C-, submission of the BFH of), so that it is not unlikely that these will be awaited before a reform of the VAT group is implemented in German law. The federal-state working group "Reform der umsatzsteuerlichen Organschaft" (Reform of the VAT group), which was set up specifically for this purpose, has not yet published any (interim) results but is said to have finished its internal work.

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