

ECJ Preliminary Ruling Request (VAT): *Finanzamt T II* (Case C-184/23) – Bundesfinanzhof Submits Referral on Taxability of Internal Transactions Within a VAT Group

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Report from Martha Caziero, VAT Associate, IBFD

On 3 July 2023, a preliminary ruling request lodged on 22 March 2023, was published in the Official Journal of the European Union. By this, the Bundesfinanzhof (German Federal Fiscal Court) made reference to the Court of Justice of the European Union (ECJ) for a preliminary ruling in the case *Finanzamt T v. S* (C-184/23), on additional clarifications on the principles expressed by the ECJ in its previous judgement [Finanzamt T I](#) (C-269/20). More specifically, in *Finanzamt I*, the ECJ clarified that article 4(4) of the Sixth VAT Directive (77/388) does not preclude a Member State from designating, in certain circumstances, as a single taxable person for VAT purposes, not the VAT group itself but the controlling company of that group, provided that that designation does not entail a risk of tax losses. In the case at issue in the current preliminary ruling request, the referring court is unsure as to whether the internal transactions within a group of companies bound by financial, economic and organizational links fall within the scope of VAT. Furthermore, the referring court asks whether such internal transactions are in any event within the scope of VAT when the recipient of the internally provided services does not have a full right to deduct VAT as, otherwise, there would be a risk of tax losses, in breach of the findings of the ECJ in the case *Finanzamt T I*.

In this context, the Bundesfinanzhof requested the ECJ to answer the following questions:

"1. Does the bringing together of several persons into a single taxable person, as provided for in the second subparagraph of Article 4(4) of Directive 77/388/EEC [Sixth VAT Directive (77/388)], have the effect of removing supplies of goods or services made for consideration between those persons from the scope of value added tax as defined in Article 2(1) of that directive?

2. Do supplies of goods or services made for consideration between those persons fall within the scope of value added tax in any event in the case where the recipient of the supply of goods or services is not (or is only partly) entitled to deduct input tax, as there is otherwise a risk of tax losses?"

