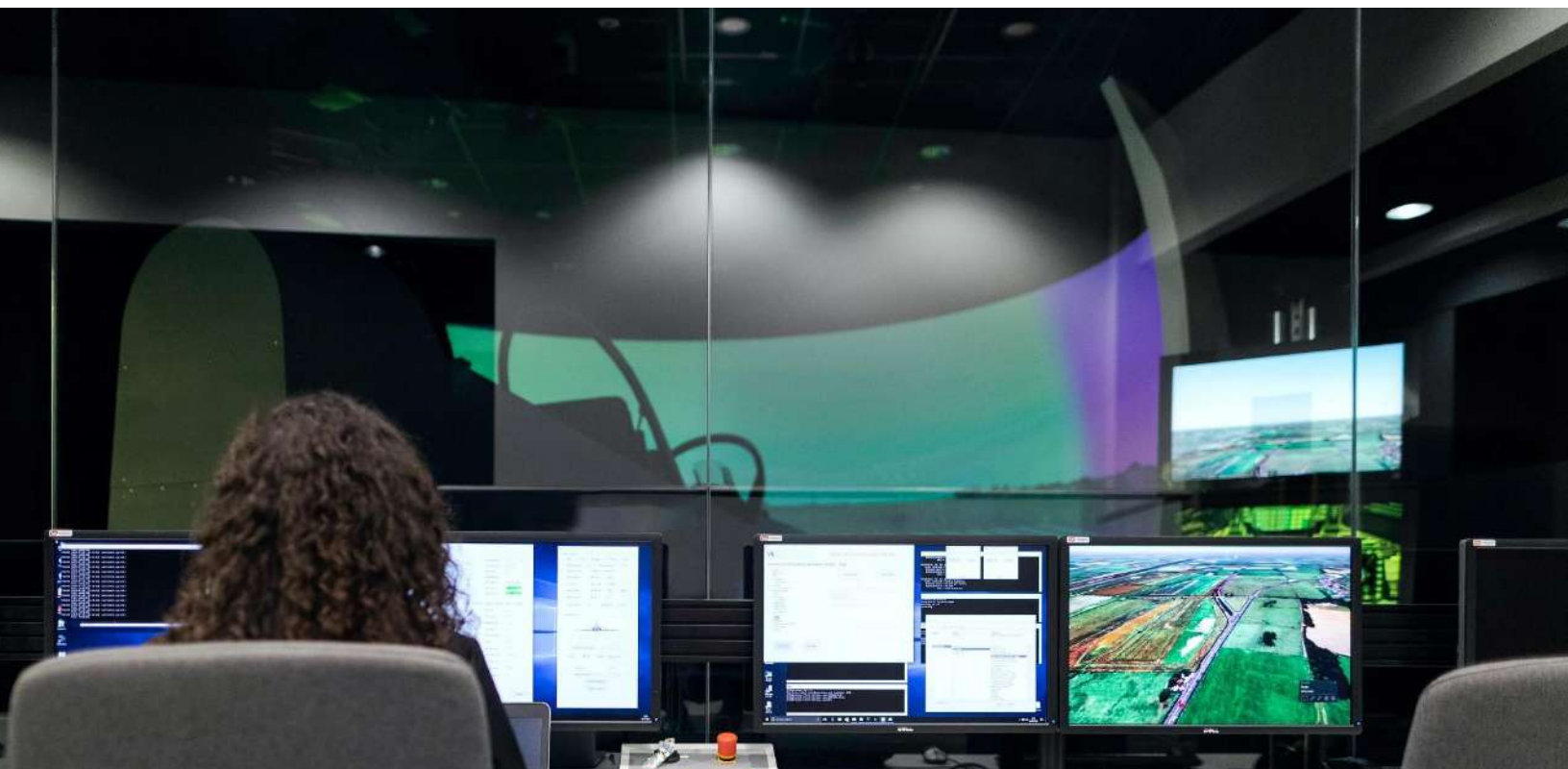


News Flash

November 2, 2020



ECJ Judgement: Supplies of services to the members and non-members from the VAT point of view

Supplies of services to the members and non-members from the VAT point of view

In accordance with the Council Directive 2006/112/EC on the common system of value added tax, exempted from VAT shall be the supply of services by independent groups of persons, who are carrying on an activity which is exempt from VAT or in relation to which they are not taxable persons, for the purpose of rendering their members the services directly necessary for the exercise of that activity, where those groups merely claim from their members exact reimbursement of their share of the joint expenses, provided that such exemption is not likely to cause distortion of competition.

In this publication of our News Flash, we would like to briefly introduce you the recent conclusion of the Court of Justice of the European Union (ECJ) in case where an independent group of persons supplied services to their members and to non-members as well.

Background of the case C – 400/18 Infohos

Infohos is an association that specializes in hospital information technology and in this area it provides services to hospitals that are members of this association.

Infohos concluded a cooperation agreement with the independent company IHC – Group NV to jointly develop innovative software. Infohos did not register as a taxable person for VAT purposes because it was of the opinion that it is not obliged to do so, and it provides tax exempted services.

After the tax audit, the Belgian Tax Authorities concluded that services supplied between Infohos and IHC – Group NV should be subject to VAT. **Moreover, subject to VAT should be also transactions provided to members of the Infohos association** and so the association was not eligible to apply an exemption from tax of services supplied to their members.

It is important to note that abovementioned provision of the Directive was transposed into Belgian law with an amendment which says that such activities are exempted from tax only in case

of their consideration as supply of services exclusively to their own members.

Question of exclusivity of the supply of services to members

The question that the ECJ dealt with is whether the respective provision of the Directive must be interpreted as allowing the EU Member States to implement such exclusivity condition for exemption from tax, through which the independent group of people which supplies services to non-members too, becomes fully taxable person for VAT purposes also in connection to services supplied to their members.

Judgment of ECJ

Considering that services which this case concerns directly contribute to carry out the activities of public interest and considering a context and what the aim of this Directive provision is, the ECJ decided that **even in case if the independent group of people, like Infohos is, supplies services also to subjects who are not the members, it does not affect the fact that it supplies services to own members which are exempted from tax.**

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