

Insurance intermediary exemption

InsuranceWide and Trader Media

Background

These cases concerned the scope of the insurance intermediary exemption. Both taxpayers provided online introductory services between people seeking insurance and a panel of insurers. Customers were attracted to the taxpayers' websites because of their reputation in the market as facilitators for the obtaining of insurance.

Previously, the High Court found in favour of the taxpayers, confirming that both InsuranceWide and Trader Media qualified as insurance brokers/agents for the purpose of the VAT exemption and that the services they rendered were not mere advertising services.

The issue

In the Court of Appeal, HMRC argued that both InsuranceWide and Trader Media were not acting as an insurance broker or insurance agent, but merely providing a 'click through' facility. HMRC urged that the Court refer two questions to the ECJ:-

- 1) Can the intermediary exemption apply if there are no legal relations with the insurer and the insured?
- 2) Are any characteristic functions of a broker/agent required, in addition to the bringing together of the insurer and insured, in order for the VAT exemption to apply?

Held

Whether or not a person describes themselves as an insurance agent or broker is not relevant for the purposes of applying the VAT exemption. It is what they do, i.e. the nature of their activities, which is critical.

Insurance regulatory definitions should only be used for VAT purposes to the extent that they reflect legal realities and practice. Essential characteristics of an insurance broker or agent are that they put insurance companies in touch with potential clients or are acting as intermediaries between insurance companies and clients or potential clients.

There is no need for a person to be carrying out all the functions of an insurance agent or broker, in order to be VAT exempt.

The relevant law in these cases was clear and a referral to the ECJ was not necessary

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Why is this important?

The Court laid out a number of principles to be referred to as an aid to resolving liability issues of this kind in the future.

On applying these principles to the facts in these cases the Court had no difficulty in concluding that the supplies made by both InsuranceWide and Trader Media were exempt.

By moving away from regulatory definitions, the Court's decision, in line with the principle of fiscal neutrality, appears to ensure that the interpretation of the insurance VAT exemption keeps pace with commercial developments in the modern insurance world.

It is worth noting that the court acknowledged that the application of the exemption is highly fact dependent. Trader Media and InsuranceWide (in the later phases of its business model) were seen to do much more than provide a mere 'click through' service. The Judges specifically noted that the taxpayers were involved in selecting the most appropriate insurers for potential clients bearing in mind pricing, products and level of customer service.

What next?

Businesses who have accounted for VAT on services similar to those at issue in these cases should consider lodging VAT reclaims.

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