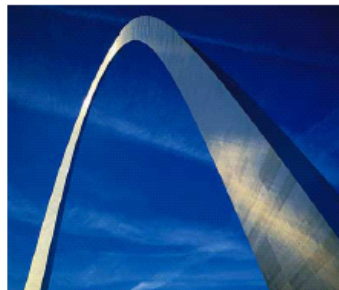


Report on ECJ Hearing Andersen case: VAT Treatment of Insurer's Back Office Activities



We are very pleased to present you with the first PwC Financial Services VAT Alert containing the latest VAT news on Financial Services. This Alert is intended as an easy tool for you to keep track of the ever changing world of VAT in the Financial Sector. If you have any queries or need assistance, please contact us. You will find the appropriate contact details in the attachment.

European Court of Justice: Hearing Andersen case (C-472/03)

The European Court of Justice held the hearing in the Arthur Andersen case (C-472/03) on 11 November 2004. In this case a preliminary ruling was requested by the Dutch Supreme Court. The issue at hand is whether the back office activities Arthur Andersen provided to the insurer Universal Life NV ("UL") are VAT exempt according article 13B(a) EC Sixth Directive.

The back office activities Accenture (former Arthur Andersen Consulting) provided contained amongst others the following services:

- Acceptance of requests for insurance
- Handling of requests for mutations in the insurance policies
- Handling of claims
- Termination of insurance policies
- Calculation and payment of commissions to insurance agents
- Building and management of IT systems

During the hearing held at the European Court of Justice on 11 November 2004 the parties involved made the following statements:

Accenture stated that they had always acted in the name and for the account of UL and were also authorised to close contracts that were binding for UL. They further explained that their activities were absolutely necessary for the provision of the insurance services by UL and that they were acting as an intermediary between insurer and insured, although not always directly but sometimes via the insurance agents of UL. They also claimed that their activities went much further than in the ECJ case CSC (C-235/00) and their services were covered by the directive 77/92/EEC and therefore qualified as VAT exempt according to article 13B(a) Sixth Directive.

The **Dutch government** claimed that Accenture did not act independently and never disclosed to third parties that it acted as an agent, but acted the same way as employees of UL, therefore it could not act as an agent or a broker in the sense of 13B(a). The services it provided were not ancillary services to the insurance services but just administrative services. Furthermore, the Dutch government stated, that the services provided by Accenture did not match the description in neither Directive 77/92/EEC nor Directive 2002/92/EEC.

The fact that the services provided by Accenture were necessary for UL was not sufficient to apply the VAT exemption of 13B (a) EC Sixth Directive. There was no breach of fiscal neutrality as the services provided by Accenture were in fact comparable to the hiring of personnel, which is subject to VAT.

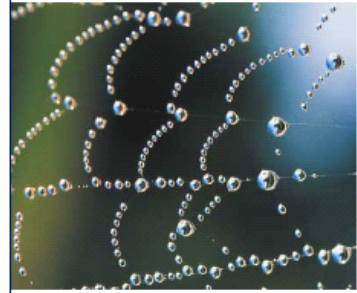
The **European Commission** used some of the arguments brought forward by the Dutch government but stressed in particular that Accenture could not qualify as an agent or broker because it was not actively trying to acquire clients for UL but just provided back office activities and in this function acted in the same way employees of UL would have acted. The Commission explicitly quoted paragraphs 39 and 40 of the CSC case to point out that a sub-contracting of functions did not meet the criteria for negotiation. Furthermore, paragraph 27 of the Advocate General's opinion in the Skandia case was mentioned to outline the activities covered by 13B(a) EC Sixth Directive. These requirements were in the present case not fulfilled.

The **Advocate General's** opinion is to be published on 12 January 2005.

Based on the facts and opinions presented, one might expect that the European Court of Justice could decide that the services provided by Accenture will not fall under article 13B(a) of the EC Sixth Directive and therefore be subject to VAT.

The decision by the European Court of Justice will have far reaching effects for the Financial Sector in the European Union. It will be decisive to define which services that are typically outsourced to third parties, are VAT exempt and which services will create an additional VAT burden.

It will probably also clarify the impact the new Directive 2002/92/EEC for insurance intermediaries will have on the VAT treatment. This directive has to be implemented by all member states by 15 January 2005.



The decision by the ECJ will be decisive for the VAT treatment of outsourcing and intermediary services in the Financial Sector.

If you would like to discuss the consequences for your business or if you are interested in the full text of the hearing documents please contact:

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Clients receiving this newsletter should take no action without first contacting their usual PricewaterhouseCoopers Indirect Tax adviser. If you would like to share your views on this FS VAT Alert or any other PricewaterhouseCoopers' initiatives, please contact Frans Oomen at frans.oomen@nl.pwc.com.

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