

ECJ ruling Andersen case



For a more detailed elaboration on the facts of this case and the Opinion of the AG we refer to earlier issues of the PwC Financial Services VAT Alert: Report on ECJ Hearing Andersen case: VAT Treatment of Insurer's Back Office Activities (2004/1) and Opinion AG Andersen case: Red Flag for Outsourcing in the Insurance Sector (2005/1).

On March 3, the European Court of Justice delivered its decision regarding the Andersen/Accenture case (C-472/03) concerning the VAT status of back office activities provided to an insurer.

1. Background

Accenture (formerly Arthur Andersen Consulting) provided back office services to Universal Life, a Dutch insurance company. The services provided to the insurance company included the following:

- ◇ handling insurance applications;
- ◇ assessing the risks to be insured;
- ◇ determining whether a medical examination is required;
- ◇ deciding whether to accept the risk where such an examination is deemed unnecessary;
- ◇ issuing, managing and rescinding insurance policies and making amendments to contracts and modifying premiums;
- ◇ receiving premiums;
- ◇ managing claims;
- ◇ setting and paying commission for insurance agents and maintaining contact with them; and
- ◇ handling aspects relating to reinsurance and supplying information to insured parties and insurance agents and to other interested parties, such as the tax authorities.

Accenture considered that the services provided are VAT exempt under Article 13B(a) EC Sixth VAT Directive. This article stipulates that "insurance and reinsurance transactions, including related services performed by insurance brokers and insurance agents" are VAT exempt.

The Dutch Supreme Court referred the question to the ECJ and requested whether Accenture's activities qualify for the exemption of Article 13B (a) EC Sixth VAT Directive.

2. Ruling ECJ

The European Court of Justice ruled (in line with the opinion of the AG) that Accenture's 'back office' activities do not qualify for the exemption of article 13B(a) EC Sixth Directive.

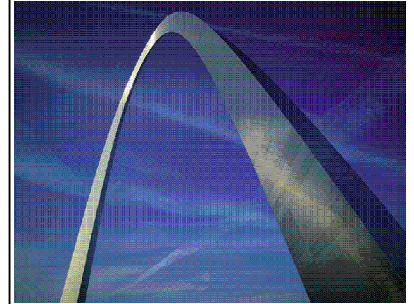
The European Court of Justice considers that in order to qualify as an insurance agent it is not sufficient to be skilled in the field of insurance or to perform activities that are related to insurance transactions. The Court notes that, although Accenture's activities do contribute to the essence of the activities of an insurance company, they can not be regarded as services that typify an insurance agent. Essential aspects of the work of an insurance agent, such as the finding of prospects and their introductions to the insurer, are clearly lacking in the present case.

Furthermore, as Accenture has an exclusivity clause in favour of Universal Life they do not have complete freedom as to choice of insurer, a characteristic of the professional activity of an insurance agent as described in EC Directive 77/92.

Accenture's activities for Universal Life must be regarded as subcontracting and constitute a division of Universal Life's activities and not the services as carried out by an insurance agent.

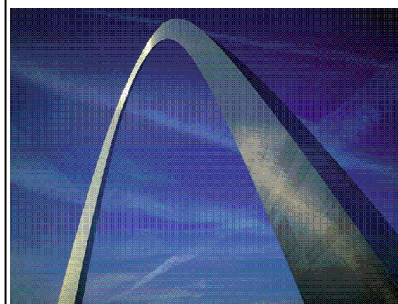
3. Comments and Practical Implications

This decision has a huge impact on existing outsourcing contracts with insurance and insurance intermediary companies. The outsourcing of back-office activities to a third party seems less likely qualified as exempt intermediary services. It is therefore important to reconsider existing contracts as they can lead to an extra VAT burden. The same applies for other parties operating in the insurance sector.



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