

## VAT Alert

### *Aspiro (formerly BRE Ubezpieczenia) – CJEU upholds Advocate General’s opinion – No VAT exemption for insurance claims handling*

The Court of Justice of the European Union (“CJEU”) has released its decision in the case of *Aspiro* (Case C-40/15).

#### Summary

The Court has followed the opinion of the Advocate General and concluded that the claims handling service provided by *Aspiro* does not fall within the insurance (and related services) exemption detailed in Art 135 (1)(a) of the VAT Directive.

This decision was widely anticipated given the CJEU’s previous decisions in respect of insurance related services (in particular *Arthur Andersen*, C-472/03).

#### Key points from the decision

The Court followed the opinion of the AG in most respects. It approached its decision in a methodical fashion and, repeating the wording of the Directive, confirmed that in order to access the exemption the services provided by *Aspiro* needed to fall within the definition of either “*insurance transactions*” or “*related services performed by brokers and agents*”.

The Court confirmed that the services provided by *Aspiro* were not “*insurance transactions*”, as the taxpayer had no contractual relationship with the insured party and it did not itself cover any risk.

With regard to “*related services performed by brokers and agents*”, the decision appears to reconfirm the key point in *Arthur Andersen*; that this aspect of the exemption is available only to service providers that perform the activities of insurance agents or brokers, which are described in the decision as “*the finding of prospective clients and their introduction to the insurer*”.

#### Implications for the UK

In the UK, the domestic law and HMRC’s current interpretation of the VAT exemption for insurance intermediary services is not in line with either this decision or that in *Arthur Andersen*. The UK law allows exemption to apply to claims handling or to assistance with the administration of insurance policies in scenarios where the supplier had no involvement in the sale of the underlying insurance policy.

HMRC has stated in its published guidance that, in the light of the *Arthur Andersen* judgment, it accepts the UK exemption for insurance related services in Group 2 of Schedule 9 is drawn too widely. However, it decided to defer any changes to UK legislation whilst the Commission was undertaking a wider review of the financial services exemptions in the Principal VAT Directive. We understand that review is no longer ongoing.

HMRC’s published position remains that “*amendments to the law will be made in due course*” and the timing of the *Aspiro* decision and the Commission’s review coming to a close means it is possible that HMRC will review their position in the near future.

We would expect HMRC to consult fully before implementing any changes and therefore the timing and nature of amendments to HMRC policy or the UK legislation remain uncertain. However, the likely outcome in due course appears to be that the UK insurance industry will no longer benefit from all elements of the current UK VAT exemption for insurance intermediary services.

## **Potential impact on the insurance industry**

It seems likely that a wide range of service providers in the insurance industry will be impacted in due course, including claims handlers, loss adjusters and providers of policy administration services. However, there may be scope for certain activities to fall within other exemptions. For example, a change to the UK legislation may reinvigorate interest in the so-called Cost Sharing Exemption and certain services, such as those concerning the payment of claims could remain exempt by virtue of the payment transfer exemption in Art 135 (1)(d) of the VAT Directive. Other options including re-examining supply chains may assist to mitigate the VAT cost, though wider VAT and non-tax implications will need to be considered.

## **Contacts**

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