

Issue

The Dutch State Secretary has changed his view on fixed establishments and VAT grouping in the Netherlands and updated his VAT policy. The policy is described in the Dutch Decree on fixed establishment (known as 'Besluit vaste inrichting').

Application of ECJ decisions

The amended Decree is in line with the ruling of the ECJ in the cases of Danske Bank and Skandia. Based on this case law it is not possible to transfer services without VAT if one of the parties is included in a VAT group.

As a result, the Dutch VAT group and a foreign establishment will become separate taxable persons for VAT. This means that transactions between a head office and its branch will fall within the scope of VAT in case one of the sides is included in a VAT group in one of the Member States of the European Union and will therefore be taxed (unless an exemption applies or the place of supply is outside the EU).

In case both establishments are not part of a VAT group, services between both parties will still be considered out of scope of VAT.

Impact on Dutch practice

The Decree will enter into force on January 1, 2024. Anticipating on the change, we recommend to identify the way in which services are provided within the group. The change of view may have consequences for your compliance and administration (non-deductible VAT on internal services, additional compliance obligations, rearranging ERP-systems, etc.).

Questions?

If you have any questions, please contact:

b.kucukali@crowefoederer.nl