



VAT alert Belgium

Luxembourg VAT exemption for Independent Groups considered too broad by CJEU

On 4 May 2017, the CJEU rendered its judgment in case C-274/15 European Commission v Luxembourg ([Dutch](#) | [French](#) | [English](#)). In essence, the European Commission challenged the Luxembourg VAT exemption as being incompatible with article 132(1)(f) of the EC VAT Directive 2006/112 on the following three points:

- The Luxembourg VAT exemption is applicable to services provided by an Independent Group to its members, even when these services are used for the purposes of the members' taxed transactions (these transactions should remain below a 30% threshold).
- Under the Luxembourg VAT exemption, members who carry out taxable transactions can deduct the input VAT on invoices issued to the independent group.
- Lastly, Luxembourg VAT legislation allows goods and services previously acquired in the members' own name but on behalf of the independent group, then recharged by members to the independent group, to be considered as outside the scope for VAT purposes.

The decision of the CJEU

In its ruling on each of the above three points, the CJEU followed the opinion of Advocate General Kokott in this case:

- On the first point, the Court finds that according to the clear wording in the VAT Directive, only services rendered by an independent group towards its members, and which are directly necessary for the exercise of their exempt (or non-business) activities, can be exempt from VAT under the cost sharing exemption. Contrary to Luxembourg's submissions with respect to this challenge, the Court does not consider the independent group's restriction in this manner to deprive the exemption of its intended effect. Although it held that "the application of the exemption is not restricted to groups whose members exercise exclusively an activity which is exempt from VAT or in relation to which they are not taxable persons" it considered that, in such cases, the exemption only applied to the supplies made by the independent group of "services [which] are directly necessary for those members' exempt activities or activities in relation to which they are not taxable persons."
- Regarding the possibility for members to recover the input VAT incurred by the independent groups, the CJEU noted that the group must be seen as an independent taxable person. Hence, the VAT incurred on supplies provided to the independent group is not deductible by the members.
- Finally, regarding the contributions by members to the independent group, the CJEU reiterated its settled case law that the transfer of goods and services between independent taxable persons must fall within the scope of VAT. Hence, these contributions cannot be considered as outside the scope for VAT purposes.

Impact on scope of Belgian VAT exemption for cost sharing associations?

It is unlikely that this Court Case will impact the Belgian exemption scope for Independent Groups, as this exemption was redesigned with effect from July 2016, and in its current form appears to meet the requirements set out in the court case. Other Member States which apply thresholds allowing the exemption of all services by the independent group towards a member which uses them for mixed purposes, may need to take action to align with EC v Luxembourg.

Based on the current VAT exemption, which was interpreted by the Belgian VAT administration in an extensive Circular Letter, services (or supplies of goods) by an Independent Group which are not directly necessary for the member's exempt activity, will be subject to VAT. Independent Groups are allowed to perform such taxable activities if the annual turnover related to the taxable service activities remains below 50% of the total turnover.

While the outcome of this case will presumably have limited impact on the Belgian VAT exemption, there are currently three more pending CJEU cases regarding cost sharing arrangements: Aviva, DNB Banka, and EC v Germany. Judgments in these three cases are expected later this year

and may bring further developments on how the 'cost sharing exemption' applies.

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