



VAT alert Belgium

Luxembourg exemption for Cost Sharing associations too broad says Advocate General

On 6 October 2016, Advocate General Kokott gave her Opinion in a pending case, following an action brought by the European Commission against Luxembourg (case C- 274/15) with respect to the exemption for Independent Groups (also known as "Cost Sharing Associations").

Ms. Kokott finds the Luxembourg exemption too broad since the exemption still applies even if the service provided by the Independent Group is not directly necessary for the member's exempt or non-taxable activity.

Ms. Kokott also believes that it is not acceptable for Luxembourg's legislation to allow members' deduction of VAT on invoices directed to the Independent Group, and objects to goods or services purchased by a member being allocated (recharged) to the Independent Group without VAT (outside scope).

The Advocate General's opinion is in line with the new article 44, §2, 1 bis of the Belgian VAT code that only allows an exemption for services directly required for the VAT exempt or non-taxable activity of group members. The Advocate General did not provide any further comments on the interpretation of "directly necessary for the VAT exempt or non-taxable activity".

The new article 44, §2, 1 bis of the VAT code entered into force on 1 July 2016. A transition period is currently in place until the end of 2016 for Independent Groups to comply with the new rules. The circular letter detailing the new exemption's conditions and formalities is expected in the coming days.

Contacts

If you have any questions concerning the items in this alert, please contact your usual tax consultant at our Deloitte office in Belgium

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