

## Input VAT newsletter

### VAT & Costs Sharing Exemption

21 September 2017

**On 21 September 2017, the Court of Justice of the European Union (CJEU) has delivered the rulings on three cases regarding “independent group of persons” (IGP) regime. This regime allows the sharing in a VAT free manner of services such as administrative, accounting or IT ones between persons who could not or only partly recover VAT on their costs. It is thus often used by the financial sector. These rulings substantially narrow the scope of the IGP and prohibit the financial sector to use it. It is therefore necessary that Luxembourg introduce the VAT group regime (unité TVA), already in use in several other Member States.**

Article 132 § 1(f) of the VAT Directive (article 44.1.y) of the Luxembourg VAT law exempts from VAT services rendered by independent groups of persons to their members, where those services are used by the members in the furtherance of activities that are either VAT exempt (i.e. insurance, banking, fund management), or do not fall within the scope of VAT (i.e. non-business activities). To be exempt, the services must be “directly necessary” to the activities of the Members. In practice, services of IGP’s are often of a support nature i.e. IT, accounting, administrative ones.

The drafting of the exemption in the VAT Directive is rather vague, and it is left to the individual Member States to determine how best to adapt the practicalities of the exemption to their national VAT regimes. As a result, the CJEU had to examine the scope of this exemption several times.

As a reminder, some of the Luxembourg rules have now been found to be contrary to the VAT Directive by the Court of Justice of the European Union on 4 May 2017 in Case C-274/15 European Commission v Luxembourg. Due to this ruling, the Luxembourg government has decided to repeal its Grand-Ducal decree regarding the IGP regime with effect as of 31 December 2017.

Nevertheless, the story does not end here, with the CJEU having faced a further three cases addressing the scope of the IGP exemption.

The first addresses infraction proceedings brought by the European Commission against Germany (Case C-616/15), challenging the exclusion from the scope of the exemption in the German legislation members operating in any industry other than the medical industry (primarily, but not solely, hospitals). Advocate General Wathelet’s opinion in this case argued that such a restriction was not justifiable within the scheme of the VAT Directive. The CJEU decided that the German position is too restrictive.

In addition, in cases C-326/15 DNB Banka and C-605/15 Aviva, the CJEU decided that the exemption should only be available for activities of general interest, excluding financial activities. Leaving the following questions unanswered: a) could an IGP include members established in different Member States and b) could an IGP apply an uplift to the price of its services, which is required under the legislation on direct taxation of his Member State.

These decisions imply that the benefits of the IGP **will be strictly narrowed to activities of general interest and that the financial sector could no longer benefit from this regime.**

It is thus of great importance that Luxembourg implement a VAT grouping regime (unité TVA), in line with a number of other Member States, which would allow taxpayers who are significantly impacted by the narrowed scope of the IGP exemption to offset some of the difficulties. The basic principle of a VAT group is that a number of independent entities are considered to form a single taxable person, meaning that all intra-group transactions fall outside the scope of VAT. However, the introduction of the VAT grouping regime implies a modification of the Luxembourg VAT law and a consultation of the EU VAT Committee. Consequently, the introduction of this regime will take some months.

# Your contacts

## **Raphael Glohr**

Partner – VAT

T +352 451 452 665

[rglohr@deloitte.lu](mailto:rglohr@deloitte.lu)

## **Christian Deglas**

Partner – VAT Leader

T +352 451 452 611

[cdeglas@deloitte.lu](mailto:cdeglas@deloitte.lu)

## **Joachim Bailly**

Partner – VAT

T +352 451 452 824

[jbailly@deloitte.lu](mailto:jbailly@deloitte.lu)

Deloitte Luxembourg

560, rue de Neudorf

L-2220 Luxembourg

Tel: +352 451 451

Fax: +352 451 452 401

[www.deloitte.lu](http://www.deloitte.lu)

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