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Confirmation of the end of the VAT exemption regime for financial IGPs

Following the Luxembourg case C-274/15, the series of cases relating to the scope of the cost-sharing VAT exemption also referred to as “Independent Group of Persons” (“IGP”) continues with the release today of three judgements by the Court of Justice of the EU (“CJUE”): Aviva (C-605/15), DNB Banka (C-326/15) and European Commission v Federal Republic of Germany (C-616/15).

In these three cases, a major step has been taken as the CJUE puts an end to the current debate on the scope of the VAT exemption regime for IGPs and sends a shock wave through the current practice within the EU as regards to the use of IGPs in the financial and insurance sectors. The CJUE adopts the same position in the three cases by mainly addressing the issue of the scope of the IGP exemption foreseen under article 132, 1, f) of the EU VAT Directive: does this VAT exemption apply to IGPs whose members carry out financial or insurance activities? Without analysing the other questions raised, the judgements of the CJUE focus on the following elements:

- The CJUE clearly provides that the VAT exemption of article 132, 1, f) of the EU VAT Directive only covers members which carry out an activity in the public interest. Therefore, no VAT exemption on this ground shall apply to members running financial or insurance activities, even though they are mainly VAT exempt or fall outside the scope of VAT. Whereas the letter of the text does not contain such restriction, the CJUE refers to the context and the intention of the legislator to justify its position, following the Opinions of the Advocate General, Julianne Kokott delivered on 1st March 2017. Indeed, this VAT exemption is included under the Chapter 2 related to “Exemptions for certain activities in the public interest” whereas the Chapter 3 refers to “Exemption for other activities” including financial and insurance. As a result, the CJUE considered that the exemption applicable to IGPs has to be distinguished from the other exemptions and is exclusively dedicated to activities in public interest.
- As regards the particular point raised in the European Commission v Federal Republic of Germany case (C-616/15), the CJUE specified that the scope of the cost-sharing VAT exemption should not be limited to certain professions only (i.e. in the medical sector).
- As regards to the retroactivity of these judgements, the CJUE is conscious that the practice in some Member States has taken an opposite direction notably based on the interpretation of previous judgements taken (such as the case Taksatorringen (C-8/01)) and it therefore reiterates the principles of legal certainty and non-retroactivity to national jurisdictions.

These judgements radically change the IGP regime as used in Luxembourg so that they remove the main point of interest for the financial and insurance sector. Considering this, the question of the implementation of the VAT group system as set out under article 11 of the EU VAT Directive becomes a necessary alternative for Luxembourg and has to be further considered.

In any case, any cost-sharing arrangement currently in place should be reviewed and restructuring should seriously be envisaged.

For further guidance, please do not hesitate to contact [Bruno Gasparotto](#) or your usual contact within the team.

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