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First VAT EU case law on the cost-sharing VAT exemption

The question of the scope of the **cost-sharing VAT exemption**, also referred to in the Council **Directive** 2006/112/EC of 28 November 2006 as amended ("EU VAT Directive") as "Independent Groups of Persons" or "**IGPs**", is currently being debated at the Court of Justice of the EU ("**CJEU**") in several cases.

Last Thursday marked the first milestone regarding this specific VAT exemption since the CJEU released its judgment in the case Commission v Luxembourg (C-274/15).

In this judgment, the CJEU essentially upheld the action for failure to fulfil obligations brought by the Commission and declared that the Luxembourg legislation on IGP does not comply with the VAT Directive for the following 3 reasons:

> according to the wording of the VAT Directive, only the services rendered by an IGP and directly necessary for the supply of the exempt activities of its members may fall outside the scope of VAT. By providing that the services rendered by an IGP to its members are exempt from VAT under the condition that the share of the members' taxed activities does not exceed 30% (or even 45%) of their annual turnover, Luxembourg has not correctly transposed the VAT Directive. That does not mean that the IGP VAT exemption regime is limited to members who perform exclusively VAT exempt services or activities outside the scope of VAT; the CJEU considers that the eligible members are still allowed to perform taxable activities but the services of the IGP should be directly necessary for the VAT-exempt activities or for the non-VATable activities;

> considering the IGP's independence from its members, the latter may not, contrary to what Luxembourg permits, deduct from the amount of VAT which they are liable to pay the VAT payable or paid in respect of goods or services provided to the IGP;

> because of the IGP's independence from its members, any transaction between the IGP and one of its members must be regarded as a transaction between two distinct taxable persons and thus as falling within the scope of VAT. In this respect, Luxembourg has again failed to properly transpose the VAT Directive by providing that the transactions carried out by a member in his name but on behalf of the group may fall outside the scope of VAT for the

group. As a result, the allocation to the IGP, by one of its members, of expenses incurred by that member in his name but on behalf of the IGP is a transaction which falls within the scope of VAT.

And now?

With this decision confirming that Luxembourg has failed to fulfil its obligations, the Luxembourg IGP regime will have to comply with the judgement without delay. Should this not be the case, the EU Commission can bring further action seeking financial penalties.

This case law is important as it will open a new area in the field of cost-sharing arrangements. In particular, it is time now to analyze the possible introduction of the concept of VAT grouping into national law or any other alternatives in Luxembourg which would replace to some extent the current IGP model severely attacked by the EU Commission and by the CJEU.

In any case, any cost-sharing arrangement currently in place should be reviewed in the light of these new elements and restructurations should certainly be envisaged.

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

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