

Flash News

VAT infringement procedure against Luxembourg

27 January 2012

The EU Commission calls on Luxembourg to change its rules on VAT in the case of independent groups of persons (cost-sharing arrangements)

In a press release published on 26 January 2012, the EU Commission has officially asked Luxembourg to change its rules on VAT in the case of independent groups of persons. The Commission considers that Luxembourg's current rules are incompatible with European Union law.

The text published by the Commission explains that “under Luxembourg law, the services provided by an independent group to its members are completely free of VAT provided that the members' taxed activities do not exceed 30% of their annual turnover (or 45% under certain conditions). Group members are also allowed to deduct the VAT charged to the group on its purchases of goods and services. Lastly, operations by a member in his or her own name but on behalf of the group are regarded as non-taxable.

The Commission considers that these arrangements infringe the strict rules set out in EU law, i.e. the corresponding provision of the VAT Directive 2006/112/EC (Art. 132 §1 f).

The Commission's request takes the form of a reasoned opinion (second step of EU infringement proceedings). If the rules are not brought into compliance within two months, the Commission may refer the matter to the European Court of Justice.”

What happens next?

The independent group of persons is not challenged as such. On the contrary, in other communications and initiatives, the EU Commission encourages Member States to facilitate the use of the exemption for cost-sharing arrangements, also in the financial sector.

Even if Luxembourg decides to follow the Commission's opinion, we believe this should only imply some adjustments in the Grand-Ducal Decree and the Circular-Letter regarding its practical implementation of the group.

If Luxembourg decides not to follow the Commission's opinion, this could be the start of a longer process, which could last several years.

Almost eight years after the Grand-Ducal Decree has come into force, this may be the opportunity and the time for a fresh look at the current way the existing groups are operating in Luxembourg and to seek clarification on a European level on how the Directive should be interpreted.

In any case, there should in principle be no retroactive effect of any changes in the Luxembourg rules.

What should you do?

Pending the response of the Luxembourg authorities and possible further proceedings by the Commission, there would appear no need for immediate change in the way groups currently operate.

In the meantime, do not hesitate to contact our experts for more background information, to hear more about possible evolutions and to discuss your specific situation.

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