



NEWS FLASH

Luxembourg asked to modify its VAT rules applicable to independent groups of persons

The European Commission has officially asked Luxembourg to amend its VAT rules applicable to independent groups of persons¹. The potential impact on holding, financing and private equity structures should be limited, but could be more substantial for banks and insurance companies.

(Article 44.1.y) of the Luxembourg VAT law (article 132.1.f) of the EU VAT directive) provides an exemption for services rendered to their members by “independent groups of persons” (“IGP”). The conditions for application of this regime are detailed in the Grand-Ducal Decree of 21 January 2004 and Circular n° 707 of 29 January 2004. The aim of this exemption is to allow the sharing of services in a VAT-neutral way between persons who could not or only partly recover VAT incurred on their costs. It is thus a tool that could be used by holding and financial companies, private equity structures, banks, insurance companies, doctors and some other professionals, public bodies or non-profit associations.

The main conditions for application of the Luxembourg IGP regime are:

1. the members of the IGP must have an activity which falls outside the scope of VAT (e.g. passive holding of shares or bonds), or is VAT-exempt (e.g. granting loans), with a tolerance of 30% of taxable turnover falling within the scope of VAT (per member). This ceiling could be increased to 45% under some conditions;
2. the services rendered by the IGP to the members must be directly necessary for the members’ activity; it could, for example, be administrative, accounting or IT services;
3. the remuneration of the services must be limited to the reimbursement of the costs incurred by the IGP.

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¹ IP/12/63, 26 January 2012

The Commission's three criticisms of the Luxembourg IGP regime are:

1. 30% of taxable turnover is tolerated.

The Commission argues that members should use the services of an IGP exclusively for their non-taxable or exempt activities. It is worth noting that France allows 20% of taxable turnover and Belgium 10%, and that these rules were applicable years before Luxembourg implemented the IGP. Hence the Commission's action now is rather late in the day.

2. Members are allowed to deduct the VAT incurred by the IGP on its costs up to their VAT deduction right and their part of the services received from the IGP

It allows for the IGP's complete neutrality for the member, who does not lose the benefit of the right to recover VAT on third-party supplies. It is thus perfectly justified from an economic viewpoint. In practice, the VAT deduction right of holding, financing and private equity structures is nil or very limited. This should thus not impact these structures.

3. Luxembourg's arrangements do not take account of the VAT rules in EU law applicable to operations by intermediaries

This statement by the Commission is rather vague. It might target the treatment by a member, on behalf of the group, of goods or services that are considered as contributed by the member to the group for a price including VAT. In any event, this point is purely technical and its impact seems quite limited.

Luxembourg now has two months to bring its IGP regime into compliance with the Commission's request. Otherwise the Commission will refer the matter to the European Court of Justice. It is, of course, impossible to predict the outcome of the procedure. However, even if the matter is referred to the Court, and whether the Court accepts Luxembourg's arguments or those of the Commission, the impact of the change should be limited for holding, financing and private equity structures, because in most cases they have no taxable turnover and no right to deduct input VAT. They should thus keep the benefit of the IGP regime. On the other hand, it might have more impact for banks and insurance companies, which often have such activities and often a (limited) right to recover input VAT. They might thus be excluded from the benefit of the IGP regime.

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