

VAT Act on independent group of persons to be amended (2/45/18)

After joining the EU, Latvia became bound by EU law, which comprises not only pieces of legislation but also case law included in rulings passed by the Court of Justice of the European Union (CJEU). The CJEU's rulings set out the general principles of law and the content of relevant provisions of law. A particular provision of EU law and its CJEU interpretation form a coherent whole, and provisions of Latvian law must not be contrary to the CJEU's case law. The CJEU's rulings bind the judiciary, the executive and the legislative branch, but they neither void nor cancel national provisions. If a provision has been passed into national law incorrectly, then appropriate amendments must be made. This article explores some expected changes to the Latvian VAT treatment of independent groups of persons in the light of CJEU rulings.

An independent group of persons (IGP)

Article 132(1)(f) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax includes a provision that exempts services an IGP provides to its members. This provision has been passed into article 52(3.2–3.4) of the Latvian VAT Act and exempts services an IGP member provides to other members if the following conditions are met:

- The IGP members are persons who constantly make either exempt supplies or supplies outside the scope of VAT;
- The services are necessary only for their exempt supplies or supplies outside the scope of VAT;
- The services are valued at cost, each IGP member covers their portion of the total cost, and an exemption is also available where an arm's length adjustment has been made for transfer pricing purposes;
- An exemption does not cause any significant distortions of competition;
- There is a written agreement between the IGP members for intragroup supplies of services;
- Latvia's taxable persons, another member state's taxable persons and non-EU taxable persons can all be IGP members;
- An appropriate record is kept if an IGP member makes also taxable supplies.

The cases of DNB Bank and Aviva

The CJEU's rulings of 21 September 2017 on cases C-326/15 DNB Banka and C-605/15 Aviva mainly apply to IGP coverage. However, IGP relief is available only to persons supplying exempt services in the public interest that are neither insurance nor financial services.

Advocate General Juliane Kokott also points out in both cases that there is no intention of creating any cross-border IGPs, and so an exemption is only available on an IGP's services to its members in the same member state. An exemption is not available if a taxable person's service fee involves adding a markup to the cost.

Amendments to the VAT Act

Being aware that the relevant provisions of the VAT Act are not consistent with the CJEU's interpretation of

the IGP rules, the Latvian Ministry of Finance has drafted proposals for amending the VAT Act.

The VAT Act does not bar financial and insurance service providers from setting up an IGP. According to the proposals aligned with the CJEU's case law, IGP relief will no longer be available to insurance, reinsurance, financial, gambling or lottery service providers. Persons supplying services related to investment in equities, financial derivatives or securities, investment funds or other funds, insurance companies or other investment portfolio managers, or persons trading in used real estate or providing residential tenancy services will be barred from setting up an IGP.

In future, a cross-border IGP cannot exist because only Latvian taxable persons can be IGP members, and an exemption will not be available on a service fee exceeding costs if the excess is due to compliance with transfer pricing rules.

The amendments are to come into force on 1 January 2019.