

# Case Alert

## *CJEU deals a VAT blow to FS Businesses*

*CJEU confirms cost sharing groups not available for providers of financial services*

### *Summary*

The Court of Justice of the European Union has issued its judgments in two separate cases concerning whether a bank (in the case of DNB Banka) or an insurance business (in the case of Aviva) could benefit from the cost sharing group exemption provided by the VAT Directive.

On 1 March 2017, Advocate General Kokott issued a surprise opinion in these two cases which stated that the exemption provided by the Directive was only available to businesses operating in the public interest. The full Court has now delivered its judgment and it has agreed with the views expressed by the Advocate General. The cost sharing group exemption is not available to businesses providing financial services.

### *Court of Justice Judgment – DNB Banka / Aviva*

DNB Banka (DNB) and Aviva provide banking and insurance services respectively. These services are exempt from VAT under the specific provisions of Article 135 of the VAT Directive. Both DNB and Aviva wished to form a separate cost sharing group which is an entity in its own right and which provides services (such as HR services, financial and accounting services, IT services and administration services) to the members of the group. Article 132(1)(f) provides an exemption from VAT for the supply of such services by a cost sharing group to its members. As both DNB and Aviva are engaged in exempt activities, structuring these supply of these services via a cost sharing group would have provided a significant VAT saving as the services would not have borne irrecoverable VAT.

When the Advocate General issued her opinion in March 2017, she caused something of a storm. In her view, as the provision of banking and insurance services are exempt under Article 135, the supply of services by a cost sharing group could not be exempt from VAT as this exemption is only available where the underlying services of the members are exempt from VAT under the 'public interest' provisions of Article 132.

The full Court has confirmed that the Advocate General's opinion was correct. A business which provides banking or insurance services covered by Article 135 is not entitled to benefit from receiving exempt supplies of services from a cost sharing group. Such supplies are therefore subject to VAT.

Comment – this is a major blow to the financial services sector. VAT on shared services is a major cost to banks and insurance businesses and forming a cost sharing group was seen as way of mitigating that cost. The judgments in these cases appear to contradict an earlier judgment of the Court (in the case of Taksattoringen) where a cost sharing group was allowed in an insurance context. Affected businesses may wish to reconsider their VAT strategy in light of these judgments.

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