

# Case Alert

## *DNB Banka AS – AG's opinion*

### *Summary*

Cost sharing groups (CSG's) are entitled to exempt supplies of services to members provided that the CSG meets a number of conditions.

In this Latvian referral to the Court of Justice, the Advocate General (AG) is asked to provide her opinion on a number of issues connected to the application of the VAT exemption. In particular, whether the CSG exemption provisions of the Directive are 'directly effective', whether a group of companies constitutes a CSG and whether a CSG can consist of members established in different countries. The AG has also given her opinion on whether the exemption for CSG's applies to businesses supplying financial services.

### Court of Justice of the European Union

Advocate General Kokott has issued an interesting opinion in relation to the operation of the cost sharing group VAT exemption. It should be stressed that this is an opinion that is sent to the full court after the hearing of the case and the court is not obliged to follow it when judgment is given.

In this case - referred by the Latvian courts – the Court of Justice has been asked to rule on a number of points. Firstly, where a group of companies provide services to each other does this structure constitute an eligible CSG. The AG has said that, in her view such a loose group of companies cannot be regarded as a CSG. A CSG must be a taxable person in its own right for it to be considered as a CSG. The AG then considered whether a CSG can include members incorporated in different countries. Again, the AG has said no! – Due to difficulties monitoring CSG's activities in different Member States, CSG membership is restricted to the territory of each Member State. Advocate General Kokott has also hinted that, in her view, CSG's cannot be formed between suppliers of financial services. In her view, CSG's can only be formed in circumstances where the exempt supplies undertaken by the CSG fall within Article 132 (both financial and insurance related services fall within Article 135).

The AG also addressed the question of whether Article 132(1)(f) has direct effect. This depends on whether the provision contained in the Directive is unconditional and sufficiently precise. In the AG's opinion the provision meets these conditions and, thus, has direct effect.

***Comment - the AG's opinion is not binding on the full court, so the opinion may be overturned when full judgment is made. If, however, the AG is correct, it seems that CSG's are not available to those businesses in the financial services and insurance sectors. The AG's opinion is clearly at odds with and completely undermines the way that both the UK and some other Member States have implemented the CSG exemption.***

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