

Case Alert

Aviva – AG's opinion

Summary

The Advocate General of the Court of Justice has issued a second opinion in relation to the operation of cost sharing groups under EU VAT law.

Following on the heels of her earlier opinion in the case of DNB Banka AS, Advocate General Kokott has confirmed that, in her view, the cost sharing group exemption is not available to businesses that operate in different countries nor is it available to businesses that make supplies of insurance services falling within Article 135 of the VAT Directive.

We must wait until the full court gives judgment in this (and the DNB Banka case) to establish whether VAT law imposes such restrictions.

Court of Justice of the European Union

Advocate General Kokott has issued a second interesting opinion in relation to the operation of the cost sharing group VAT exemption. The Aviva case is a referral to the Court of Justice by the Polish courts which, essentially, asks the Court to confirm whether Polish law is incompatible with the principles of effectiveness, legal certainty and the protection of legitimate expectation.

Article 132(1)(f) of the VAT Directive mandates Member States to implement a VAT exemption for cost sharing groups. The exemption is conditional upon the group meeting certain conditions, one of which is that the granting of such an exemption does not cause distortion of competition. Polish law implementing the terms of this article fails to define what is meant by that term and the Polish court sought guidance from the CJEU on the question of whether the absence of such a definition infringed the above principles of EU law.

In her detailed opinion, Advocate General Kokott has said that, in her view, the absence of such a definition does not infringe those principles. She also confirms (as she did in the earlier opinion in the case of DNB Banka AS) that membership of a cost sharing group should be restricted to members which are subject to the same legal system (ie they should be established in the same country) and that the cost sharing exemption provided by Article 132(1)(f) is only available to those entities whose activities are regarded as being activities in the public interest and are covered by Article 132.

Comment – along with the DNB Banka case, this is only an Advocate General's opinion which may, or may not be followed by the full court when judgment is given in due course. The AG's view - that the cost sharing exemption is not available to those supplying financial or insurance services - has come as something of a bolt out of the blue and was not the expected outcome especially when in an earlier judgment on cost sharing groups, the full Court made no such distinction. Banks and other financial institutions will, no doubt, be eager for the full court not to follow the AG's opinion in this case.

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Contact

Stuart Brodie	Scotland	stuart.brodie@uk.gt.com	(0) 14 1223 0683
Karen Robb	London & South East	karen.robbs@uk.gt.com	(0) 20 772 82556
Vinny McCullagh	London & South East	vinny.mccullagh@uk.gt.com	(0) 20 7383 5100