



Press and Information

Court of Justice of the European Union

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Judgment in Case C-274/15  
Commission v Luxembourg

## **Luxembourg has transposed in too wide a manner the rules in the VAT Directive on independent groups of persons**

Under EU law, the services provided by taxable persons (companies or individuals) are usually subject to VAT. The VAT Directive<sup>1</sup> nevertheless provides, under certain conditions, for an exemption for services supplied by 'independent groups of persons' (IGPs or IGP, that is to say, a group of undertakings or persons which supplies goods or services to its members independently).

Under the Luxembourg legislation, the services rendered by an IGP to its members are exempt from VAT not only where those services are directly necessary to the non-taxable activities of the members, but also where the share of the members' taxed activities (activities subject to VAT) does not exceed 30% (or even 45%) of their total annual turnover excluding tax. Furthermore, under that legislation, the members of the group are permitted to deduct the VAT invoiced to the group in respect of purchases of goods or services supplied not to the members, but to the group itself. Lastly, the Luxembourg legislation provides that the transactions carried out by a member in his name but on behalf of the group fall outside the scope of VAT for the group.

The Commission found that the Luxembourg legislation is not consistent with the rules established by the VAT Directive in relation to independent groups of persons, and brought proceedings before the Court of Justice seeking a declaration that Luxembourg had infringed those rules.

In today's judgment, **the Court** essentially upholds the action for failure to fulfil obligations brought by the Commission and **declares that the Luxembourg legislation on independent groups of persons does not comply with the VAT Directive.**

The Court recalls, first of all, that any exemption from VAT constitutes an exception to the general principle that all services supplied for consideration by a taxable person are subject to that tax.

The Court finds, next, that, according to the clear wording of the VAT Directive, **only the services rendered by an IGP and directly necessary for the exercise of the exempt activities of its members may fall outside the scope of VAT.** It follows that, by providing that the services rendered by an IGP to its members are exempt from VAT where the share of the members' **taxed activities** does not exceed 30% (or even 45%) of their annual turnover, Luxembourg has not correctly transposed the VAT Directive.

Moreover, the Court recalls that the **IGP is an independent taxable person** which provides services independently to its members from which it is separate. In the light of the IGP's independence from **its members**, the latter **may not**, contrary to what the Luxembourg permits, **deduct from the amount of VAT which they are liable to pay the VAT payable or paid in respect of goods or services provided to the IGP** (and not to those members directly). It follows that, in this respect also, Luxembourg has not correctly transposed the VAT Directive.

<sup>1</sup> Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1), as amended by Council Directive 2010/45/EU of 13 July 2010 (OJ 2010 L 189, p. 1).

In the third place, the Court finds that, because of the IGP's independence from its members, **any transaction between the IGP and one of its members** must be regarded as a transaction between two taxable persons and thus as **falling within the scope of VAT**. It follows that Luxembourg has, in this respect, again failed properly to transpose the VAT Directive by providing that the transactions carried out by a member in his name but on behalf of the group may fall outside the scope of VAT for the group.

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**NOTE:** An action for failure to fulfil obligations directed against a Member State which has failed to comply with its obligations under European Union law may be brought by the Commission or by another Member State. If the Court of Justice finds that there has been a failure to fulfil obligations, the Member State concerned must comply with the Court's judgment without delay.

Where the Commission considers that the Member State has not complied with the judgment, it may bring a further action seeking financial penalties. However, if measures transposing a directive have not been notified to the Commission, the Court of Justice can, on a proposal from the Commission, impose penalties at the stage of the initial judgment.

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*The [full text](#) of the judgment is published on the CURIA website on the day of delivery.*

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