

To: Taxation Working Group  
From: Alexandru Ciungu  
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Subject: ECJ rules that cost sharing groups in the financial sector are not entitled to a VAT exemption

## Summary

On 21 September, the European Court of Justice (ECJ) issued three rulings related to the application of Article 132(1)(f) of Council Directive 2006/112/EC (The VAT Directive).

Two of these rulings, [Case C-605/15 Minister Finansów v Aviva](#) and [Case C-326/15 DNB Banka v Valsts ienemumu dienests](#) explicitly state that cost sharing groups (CSGs) in the financial sector cannot benefit from a VAT exemption. This will result in an additional VAT burden for insurers who rely on CSG schemes to mitigate VAT leakage. According to the ECJ, the exemption from VAT is limited to CSGs whose members conduct activities in the public interest (e.g. education, healthcare). The full ruling in both cases reads as follows:

*Article 132(1)(f) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted to the effect that the exemption provided for in that provision relates only to independent groups of persons whose members carry on an activity in the public interest referred to in Article 132 of that directive and that, therefore, the services supplied by a group whose members carry on an economic activity in the area of financial services, which does not constitute such an activity in the public interest are not entitled to that exemption.*

Previously, it had been understood that CSG schemes can cover services provided by CSGs to their members that are directly necessary for the VAT exempt activities of these members, regardless of the type of VAT exempt or out of scope activities conducted by the members.

Given that that the ECJ's ruling does not correspond to the European Commission's position on this topic, the Commission may be forced to revisit its proposal to clarify the VAT treatment of financial services, at least on the topic of CSG schemes in the financial sector. Insurance Europe has requested a review of the VAT Directive to address this and other issues, most recently in [November 2016](#).

The ECJ's third ruling in [Case C-616/15 Commission v Germany](#) was that *by restricting the VAT exemption to IGPs whose members exercise a limited number of professions, the Federal Republic of Germany has failed to fulfil its obligations under Article 132(1)(f) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax.*