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Mr Stephen QUEST
Director-General
DG TAXUD – Directorate-General for Taxation and Customs Union
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Email : [REDACTED]

Subject: Call for an amendment of the EU VAT Directive as regards services supplied by independent groups of persons (IGP)

Dear Mr Quest,

As a result of recent decisions of the Court of Justice of the European Union (hereafter the "CJEU" or the "Court")¹, the scope of application of the VAT exemption set out in article 132, 1, f) of the Council Directive 2006/112/E (referred to hereinafter as the "VAT Directive") and related to the services supplied to their members by independent groups of persons ("IGPs") has been strictly limited, seriously affecting European banks.

This restriction specifically refers to the material scope of application of the exemption. The CJEU indeed stated that article 132, 1, f) of the VAT Directive does not apply to companies active in the insurance and/or financial sector, but only to those carrying out activities linked with the public interest. According to the Court, the VAT exemptions available to such persons should be specified under another provision of the VAT Directive (namely article 135). In its case law, the CJEU also underlines the fact that article 132, 1, f) is applicable to all categories of professions linked with the public interest. This appears to derive from the location of this article under Title IX "Exemptions", Chapter 2 "Exemptions for certain activities in the public interest".

The afore-mentioned case law will lead to a significant increase of the cost of supplies of services between companies active in the financial and insurance sector, since VAT will be applicable on such services and the above mentioned taxable persons usually only benefit from limited input VAT deduction rights². As a result, banks will be confronted with the absence of being able to outsource functions without friction of VAT which raises serious problems in terms of organisational flexibility or exploitation of synergies. It should be kept in mind that many European financial institutions, trusting in the legality of the IGP regime have organised the providing of services (including outsourcing staff) using this specific regime. In many cases restructuring will not be possible or feasible. This problem

¹ In the cases DNB Banka (C-326/15), Aviva (C-605/15) and Commission v. Germany (C-616/15),

² We are of the opinion that the banking and financial sectors are the most confronted with this problem, insofar as the companies active in such sectors often have a low (or nil) input VAT deduction right.

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currently faced by banks is particularly damaging since the digitalisation of the economy requires all companies to adopt more reactive and mobile structures.

Similarly, we support the fact that the key objective for a bank, when creating an IGP, is to enable economies of scale in a VAT neutral environment in order to be able to cope with the challenges of a constantly changing economy. In this respect, possibility to pool support resources (i.e. administrative, organizational, etc.) in an IGP, without being exposed to an additional VAT charge is a key element to ensure a level playing field between smaller and bigger actors of the financial sector.

Finally, we believe that amending the VAT directive would reflect the original aim of the provision under review³, its underlying purpose and the evolution of the economical context since the enactment of the Sixth VAT Directive in 1977.

All in all, it is essential to secure the continued applicability of the IGP regime on the financial and insurance sectors, as this regime represents a flexible and economically adapted mechanism for a significant proportion of European banks. A corresponding amendment to the VAT Directive should thus constitute a key priority.

Against this background, we urge the Commission to submit draft legislation to amend the wording of the VAT Directive to that effect.

We would very much welcome your feedback regarding this important matter at your earliest convenience. We remain at your disposal either by conference call or in the framework of a meeting in Brussels.

Yours sincerely,



Wim Mijs
Chief Executive Officer

³ Based on the working documents which led to the adoption of the Sixth Council Directive (Directive 77/388/EEC), it seems that the original scope of this VAT exemption was initially limited to healthcare activities.

However, it results from the Presidency Notes from the Council of the European Union (the "Council") of 1976, that the Council instructed the Permanent Representatives Committee ("COREPER") to prepare an analysis of the scope of the VAT exemption provided under article 13, A, 1, f) of the Sixth Directive. Further, the COREPER analysed the possible application of this VAT exemption to groups other than those active in the health sector and came to the conclusion that its scope should be extended to include other professional groups, without restriction, i.e. not limiting itself to the public sector.

On a total of 9 delegations, a majority agreed to the proposed extension based on the text tabled by France.

Hence, in the final text of the article 13 A 1 f) of the Sixth Directive and further article 132, 1, f) of the VAT Directive, the limitation to the "medical" and "paramedical" scope of the VAT exemption was removed, even though its positioning remained unchanged under "exemptions linked with public interest".