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**Opinion Statement FC 6/2014 of the CFE
on the VAT exemption for independent groups of persons
(also known as the cost-sharing exemption)**

Prepared by the CFE Fiscal Committee

Submitted to the European Commission and the European Court of Justice

in April 2014

CFE (Confédération Fiscale Européenne) is the umbrella organisation representing the tax profession in Europe. Our members are 32 professional organisations from 25 European countries (21 EU member states) with 180,000 individual members. Our functions are to safeguard the professional interests of tax advisers, to assure the quality of tax services provided by tax advisers, to exchange information about national tax laws and professional law and to contribute to the coordination of tax law in Europe.

CFE is registered in the EU Transparency Register (no. 3543183647-05).

We will be pleased to answer any questions you may have concerning CFE's comments outlined below. For further information, please contact Mr. Piergiorgio Valente, Chairman of the CFE Fiscal Committee, Petra Pospíšilová, Chairwoman of the Indirect Tax Sub-Committee, or Rudolf Reibel, Fiscal and Professional Affairs Officer of the CFE, at brusselsoffice@cfe-eutax.org.

Sincerely yours,

Confédération Fiscale Européenne

The CFE understands that the European Commission has decided to take Luxembourg to the Court of Justice of the European Union about its application of the exemption for independent groups of persons¹.

According to Article 132 (1)(f) of Directive 2006/112/EC, the Member States may exempt “ *the supply of services by independent groups of persons, who are carrying on an activity which is exempt from VAT or in relation to which they are not taxable persons, for the purpose of rendering their members the services directly necessary for the exercise of that activity, where those groups merely claim from their members exact reimbursement of their share of the joint expenses, provided that such exemption is not likely to cause distortion of competition;*”.

The Commission observes that under Luxembourg law, the services provided by an independent group to its members are free of VAT provided that the members' taxed activities do not exceed 30% (or 45% under certain conditions) of their annual turnover. Group members are also allowed to deduct the VAT charged to the group on its purchases of goods and services from third parties. Lastly, operations by a member in his or her own name but on behalf of the group are regarded as outside the scope of VAT.

The Commission considers that under EU law, in order to be exempt from VAT the services provided by an independent group to its members must be directly required for their non-taxable or exempt activities. The Commission considers that the Luxembourg rule providing for a ceiling for taxed operations does not fulfil this condition. Moreover, the Commission considers that group members should not be allowed to deduct VAT charged to the group.

¹ European Commission press release IP/14/161 of 20 February 2014: http://europa.eu/rapid/press-release_IP-14-161_en.htm.

The Commission concludes that these arrangements are not compatible with the EU's VAT rules. In addition, they would be likely to produce distortions of competition.

The CFE observes that :

- according to Article 131 of the Directive 2006/112/EC, the exemptions provided for in Chapters 2 to 9 shall apply without prejudice to other Community provisions and in accordance with conditions which the member states shall lay down for the purposes of ensuring the correct and straightforward application of those exemptions and of preventing any possible evasion, avoidance or abuse;
- by restricting the services rendered by such groups to beneficiaries that are performing exclusively VAT operations, the Commission is failing to pay due regard to the fact that, because of the restricted nature of the VAT exemptions, it is unusual for a business to perform exclusively VAT exempt activities;
- the services rendered by such groups to members of the group are frequently necessary for both taxable and VAT exempt activities of the group, although if the members activities are predominantly exempt they may primarily relate to the exempt activities;
- the structure put in place by Article 132(1)(f) of the Directive 2006/112/CE is intended to limit the negative impact of the distortions or competition caused by the VAT exemptions in general;
- the action of the European Commission does not explain why this scheme as implemented in Luxembourg is more likely to create distortions of competition than if a more extensive approach was taken to the VAT exemption in Article 132(1)(f);
- It is premature to launch the infraction procedure at a time when the Commission is generally reviewing the VAT exemptions.

The CFE considers that it would be helpful if the Commission published guidelines explaining how they consider that the exemption in Article 131 (f) should operate in practice given the fact that it is common for members of such groupings to undertake some, albeit frequently relatively minor, taxable activities and it is also common for some members of such groups to supply staff and services to the group and it is also common for such groups to provide services to some but not all their members². To suggest that the exemption does not apply in cases where the members have some, but very limited, taxable activity will in practice significantly limit its application. It would also not be consistent with the neutrality of the tax to allow the exemption when a member is wholly exempt but then to deny it in cases where there are relatively minor taxable supplies.

²In case C-407/07 *Stichting Centraal*, the ECJ judged that “Article 132 (1)(f) of [the VAT Directive 77/388/EEC] must be interpreted as meaning that, provided the other conditions in that provision are met, services supplied to their members by independent groups are covered by the exemption contained in that provision, even if those services are supplied only to one or several of those members.” This is contained in the text, but totally insufficient!

