

The Cost Sharing Exemption

The Court of Justice of European Union's decisions and the way ahead

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VAT Exempt Cost Sharing Current legislation and CJEU judgments

The Cost Sharing Exemption

Relevant EU law

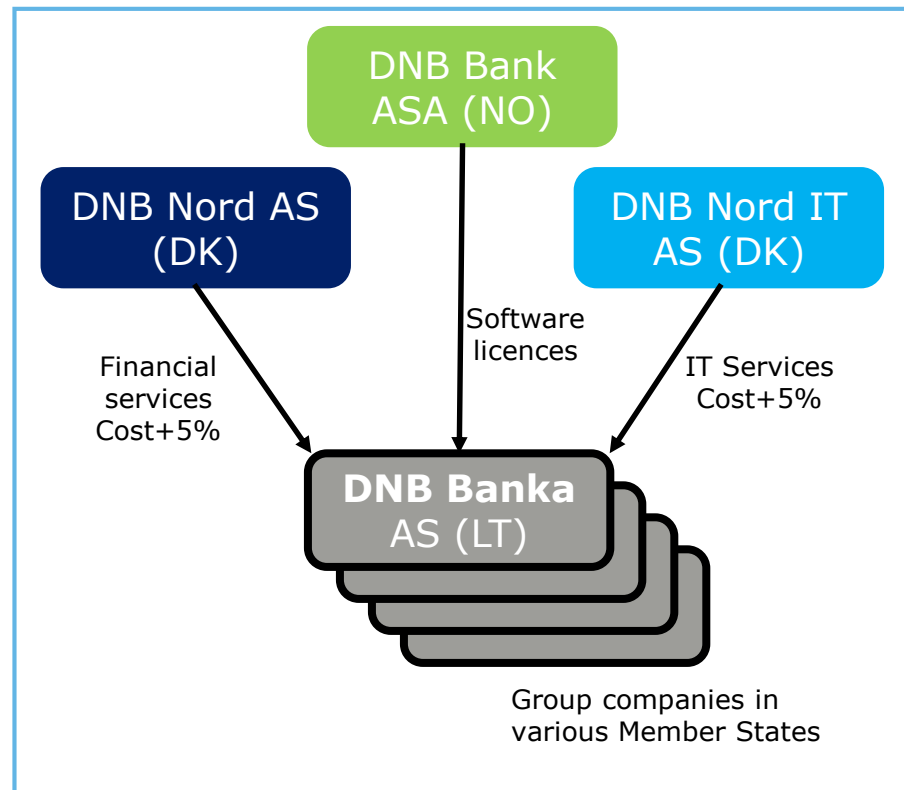
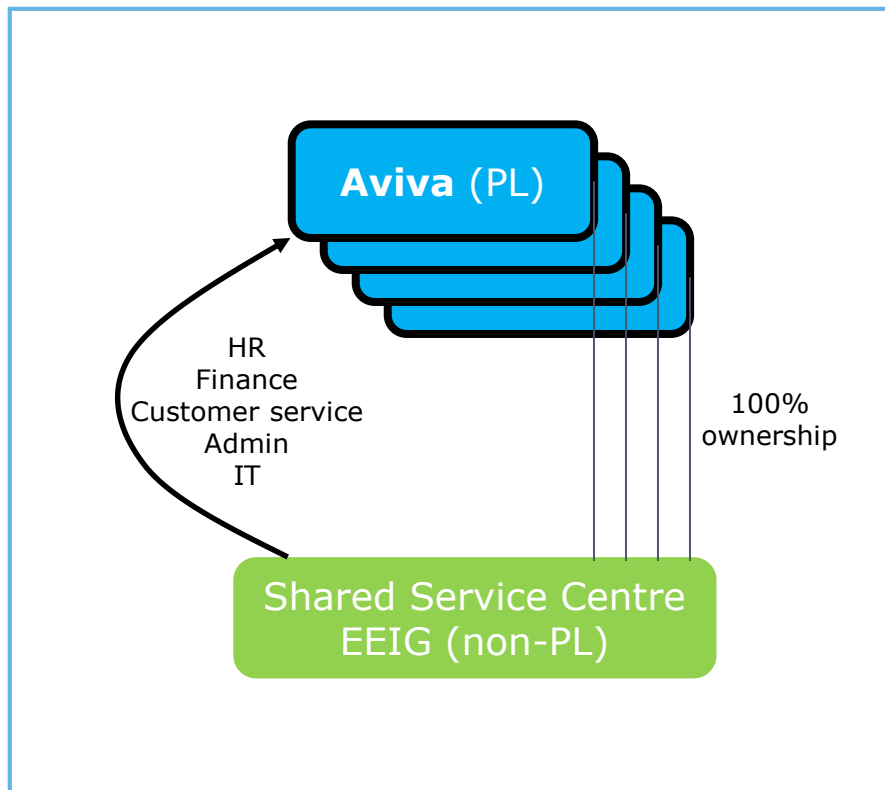
Article 132(1)(f) of the Principal VAT Directive (Dir. 2006/112/EC)

For the Cost Sharing Exemption (CSE) to apply, five conditions (tests) should be met:

1. there must be an 'independent group of persons' (the cost sharing group, CSG) supplying the persons who are 'members';
2. each of the members must be engaged in exempt or non-taxable supplies;
3. the services supplied by the CSG must be directly necessary for the member's VAT exempt or non-VAT taxable activities;
4. the services supplied by the CSG must be exactly reimbursed; and
5. the application of the exemption must not distort competition

The Cost Sharing Exemption

Four judgments from the CJEU (2017)



Infraction proceedings in:

- *EC v Luxembourg* (threshold test for whether members' activities are exempt) and
- *EC v Germany* (restriction of CSE to medical profession)

The Cost Sharing Exemption

CJEU judgments

EU Case Law	Test 1	Test 2	Test 3	Test 4	Test 5
SUFA C-328/87	●		●		
Taksatorringen C-8/01			●		●
EC v Luxembourg C-274/15	●		●	●	
DNB Banka C-326/15		●			
Aviva C-605/15		●			
EC v Germany C-616/15		●			●

Tests

1. There must be an 'independent group of persons' supplying the persons who are 'members'
2. Each of the members must be engaged in exempt or non-taxable supplies
3. The CSG's services must be directly necessary for the member's exempt or non-taxable activities
4. The services supplied by the CSG must be exactly reimbursed
5. The application of the exemption must not distort competition

The Cost Sharing Exemption

What the Court didn't answer ...

Can the CSE work across borders ?

Can the group be established outside the EU ?

Can the cost base include a transfer pricing markup ?

Should a Member State allow the CSE for services where the group abroad enjoys VAT deduction?

Can a group of independent businesses qualify as a CSE ?

Must a group be a legal entity ?

What are relevant indicators for distortion of competition ?

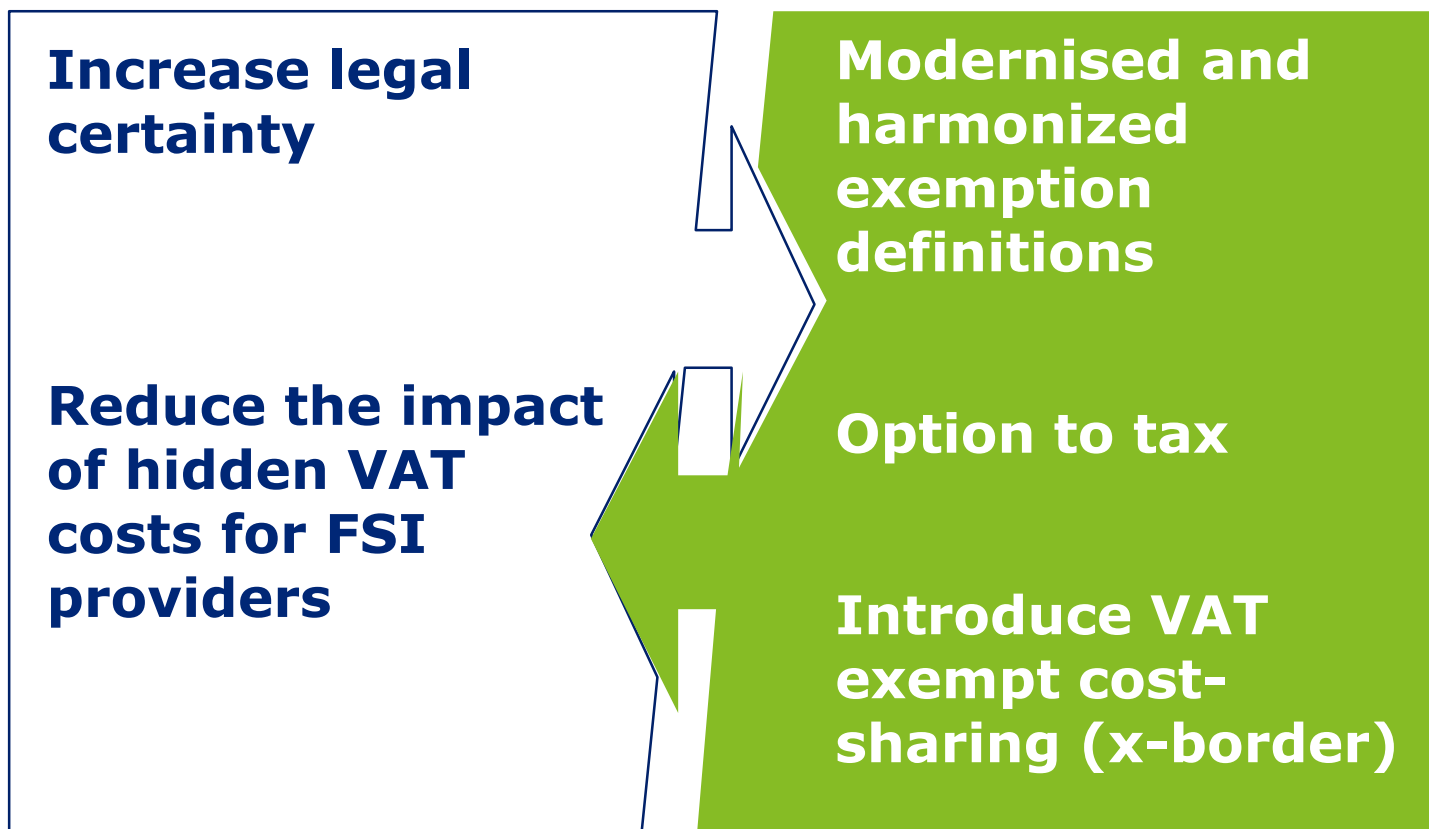
Does the CSE require reciprocity in crossborder situations ?

Should possible distortion of competition be evaluated on local or crossborder level ?

Rewinding 10 years : modernising VAT in FSI

The Cost Sharing Exemption

Key objectives and components of the 2007 Proposals



The Cost Sharing Exemption

2007 Proposal text

Introduce new article 137b of the Principal VAT Directive (Dir. 2006/112/EC)

For the Cost Sharing Exemption (CSE) to apply, five conditions (tests) should be met:

1. the group itself and all its members are established or resident in the Community;
2. the group carries out an autonomous activity and acts as an independent entity towards its members;
3. members of the group are supplying services which are exempt under Article 135(1)(a) to (g) or other services in respect of which they are not taxable persons;
4. the services are supplied by the group only to its members and are necessary to allow members to supply services which are exempt pursuant to Article 135(1)(a) to (g);
5. the group claims from its members only the exact reimbursement of their share of the joint expenses, excluding any transfer-pricing adjustments made for the purposes of direct taxation."

Back to the future

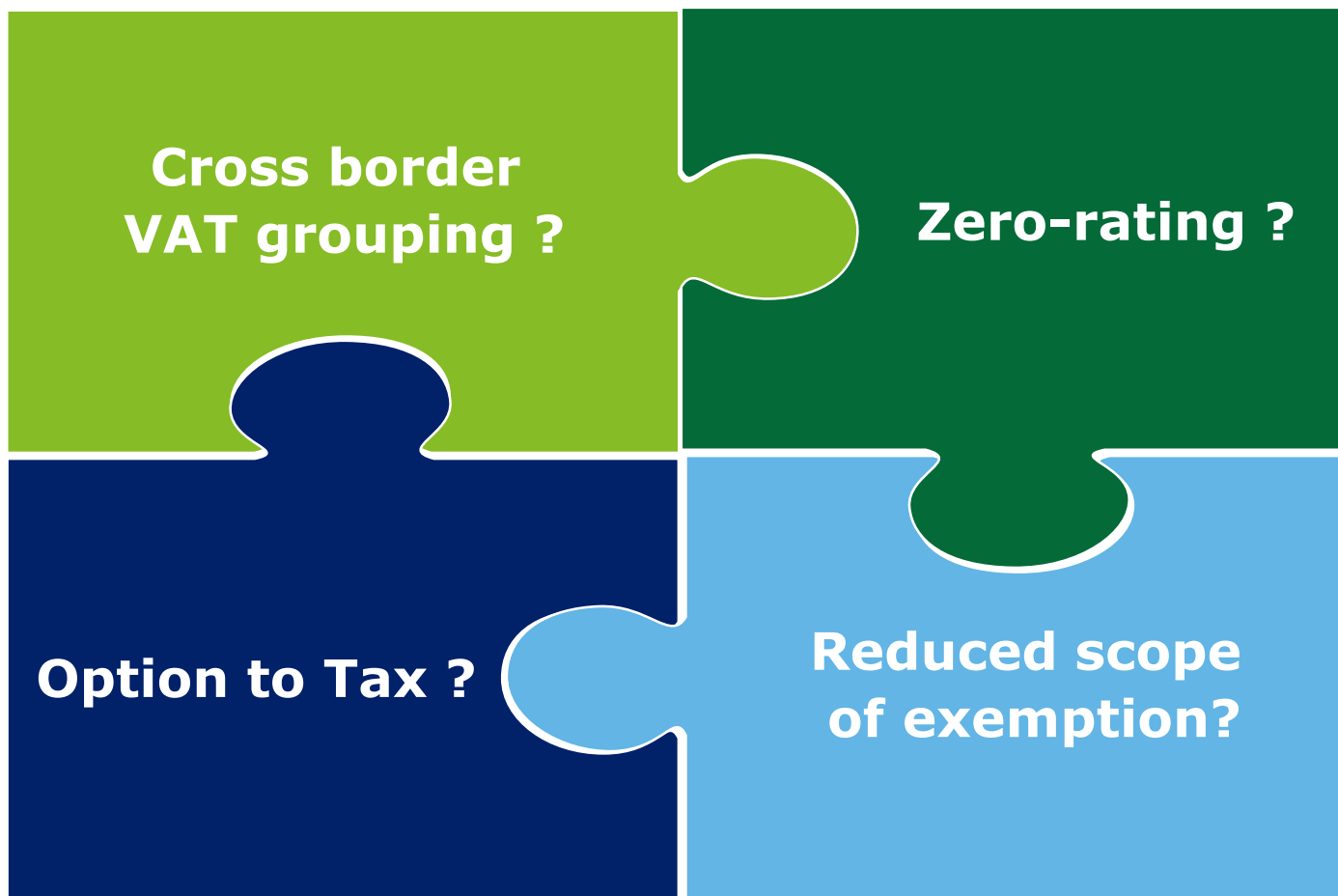
The Cost Sharing Exemption

How could it work in current context ?

- Neutrality :
 - No limitation for members' activity to be 100% VAT exempt
 - But : group would be a mixed VAT taxpayer :
 - VAT exempt services to members for their exempt activities
 - VAT taxable services to members for their VAT taxable activities
- Independence : not a separate legal entity, but an independent group
- Transparency :
 - Limitation of scope to EU necessary for group and members ?
 - Reporting requirements to allow testing VAT exemption in practice :
 - VAT registration as mixed VAT taxpayer or otherwise
 - Standard reporting set to Member State where group is established
 - Sharing towards Member State of recipient members (place of taxation)
- Pooling and support nature instead of @cost test ?
- Distortion of competition : relevant restrictions ?

Other options for reducing hidden VAT cost

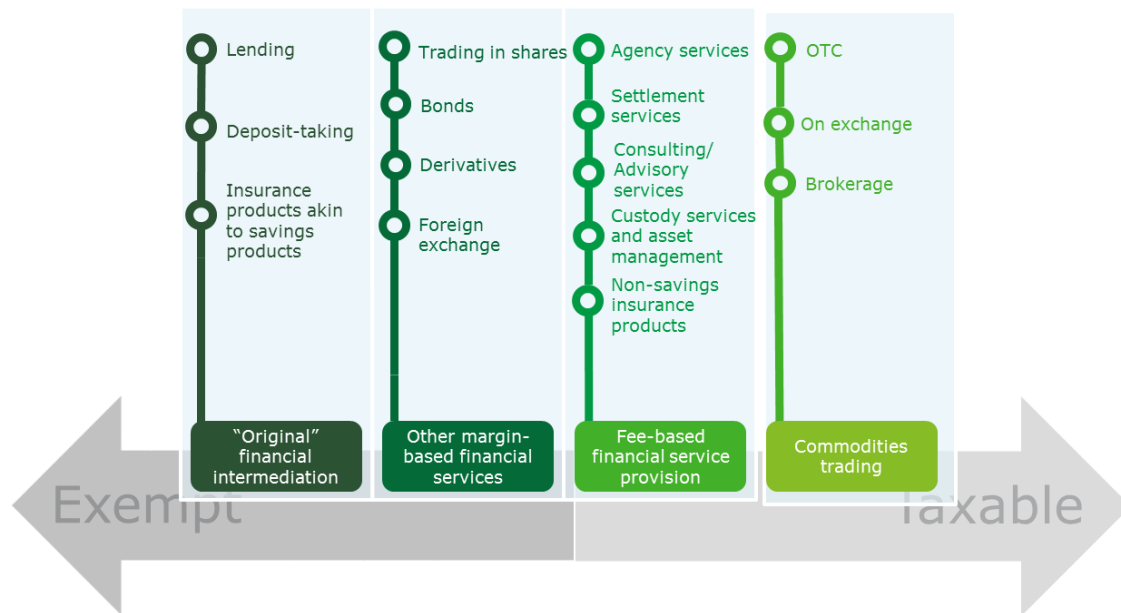
Potential areas for reflection



Other options for reducing hidden VAT cost

Transformative thinking ?

- New entrants / Fintech
- Innovation
- Digital intermediaries
- Cost of regulation
- Peer to peer
- Third party capital
- ...



Global VAT Guidelines direction

FSI regimes in emerging VAT territories



(Optional) taxation of most financial services

Reduced rates for consumer services ?

Zero rating for interbanking services

Reformatted VAT deduction methods

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