

European Commission

VAT rules for financial and insurance services today and tomorrow

Consultation on VAT rules for financial and insurance services - review

The most effective way to reform VAT rules in the short term is to fix problems created by ECJ rulings on VAT groups and CSAs. A proposal where the VAT exemption is not removed but made more aligned between the Member States would make VAT rules easier to apply and would have a positive effect on the competition with businesses in other Member States. In the long term, also the removal of the exemption should be further investigated.

Your experience with the current rules

20 – The exemption of financial and insurance services from VAT was introduced in 1977 as an exception to the general rule that VAT is to be levied on all services supplied for consideration by a taxable person. To what extent do you agree that the exemption is still needed?

Strongly agree

Agree

Neutral

Disagree

Strongly disagree

Not sure

21 – In general, how would you assess the functioning of the exemption of financial and insurance services?

The exemption...

... works very well

... works well, but could be improved

... works poorly and should be improved

... should be removed

22

Please indicate the reason(s) why.

The exemption...

... is too costly to apply

... is too complex in terms of notions (structural provisions and the definition of exempted services)

... is not clear in terms of notions (structural provisions and the definition of exempted services)

... may have a distortive effect on competition with businesses in other Member States

Other

No opinion

23

Please indicate which other reason(s).

The current VAT rules are complex and difficult to apply. The outdated ECJ practice has caused major issues in this field. Disadvantages are mainly legal uncertainty, non-neutrality, and barrier to economic efficiency.

24

How do you estimate the impact of the lack of input tax deduction and hidden VAT?

They create a price barrier to outsourcing

They undermine the level playing field between providers of outsourced services and in-house providers

They affect the business structures of those operating in the financial and insurance sector

They increase the costs for business customers

They increase compliance costs

They undermine the competitiveness of the sector

Other

Do not know

25

Please indicate which other reason(s).

26

The compliance with VAT rules can be more difficult when supplying financial and/or insurance services cross-border. How do the factors listed below contribute to that effect?

Possible answers:

Not at all, Somewhat, To a large extent, No opinion

Difficulty of finding information on VAT obligations in other Member States – somewhat

Different interpretations on definitions of exempted services – to a large extent

Different rules for opting to tax – no opinion

Availability of VAT grouping – to a large extent

Availability of cost-sharing arrangements – to a large extent

Different deduction methods – to a large extent

Different VAT obligations in other Member States - somewhat

Other

27

Please indicate which other factor(s).

28

Do you think that the current rules hinder the development of cross-border supplies of financial and insurance services?

Yes

No

Do not know

29

Please indicate the reason(s) why.

Regulatory ecosystem too complex

VAT rules for financial and insurance services too complex

Discrepancies across VAT treatment by Member States

Other

30

Please indicate which other reason(s).

Different reporting requirements by Member States

These questions can be answered only from a bank itself, not from an association.

31

To what extent are the foreign VAT rules for financial and insurance services important when deciding whether to establish your business in a specific Member State?

Very important

Important

Not very important

Not important at all

No opinion

32

Which of the structural provisions listed below do you apply?

Option to tax

VAT grouping

Cost-sharing arrangements

Proportional deduction

Other

None

33

Please indicate which other provision(s).

34

The exemption was put in place i.a. due to the technical difficulty to calculate the taxable amount. To what extent do you agree that progress in technology, enhanced transparency rules and experiences gained from other countries and from other indirect taxes could help overcome this issue?

Strongly agree

Agree

Neutral

Disagree

Strongly disagree

Do not know

35

Do the current VAT rules for financial and insurance services result in prices lower than those that would apply if these services were taxed?

Yes, but just for final non-taxable customers

Yes, for all customers

In part, due to other similar taxes

No

Do not know

36

To what extent are the current structural provisions effective in increasing the deduction of input tax and reducing the impact of hidden VAT?

Possible answers:

Not effective at all, Somewhat ineffective, Neither effective nor ineffective, Somewhat effective, Very effective, No opinion

Option to tax – no opinion

VAT grouping – somewhat effective

Cost-sharing arrangements – no opinion

Proportional deduction – not effective at all

37

VAT provisions related to financial and insurance services can be perceived as complex. For which of the current structural provisions is that correct?

Option to tax

VAT grouping

Cost-sharing arrangements

Proportional deduction

None

38

To what extent do you agree or disagree with the following statement: The lack of input tax deduction is detrimental to the financial and insurance sector. It compels the sector to outsource services which are typically provided in-house, thus raising the costs.

Strongly agree

Agree

Neutral

Disagree

Strongly disagree

Do not know

This question can be answered only from a bank itself, not from an association.

39

Unless you make use of the option to tax, does your business incur any costs related to irrecoverable (hidden) VAT?

Yes

No

Do not know

My business is applying the option to tax

40

To what extent do you agree that the current VAT rules are fit to cover emerging trends in the industry (such as digitalisation)?

Strongly agree

Agree

Neutral

Disagree

Strongly disagree

Do not know

41

The VAT treatment of emerging trends under the current VAT rules for financial and insurance services can be problematic due to unclear definitions for VAT purposes. In connection with which of the emerging trends listed, do you consider this correct?

Services provided by means of fintech

E-money

Services linked to crypto-assets (such as mining)

Payment services

Other

Do not consider it problematic

Do not know

42

Please indicate which other trend(s).

There needs to be a level playing field between regulated financial entities and other service providers offering alternative solutions. ECJ and VAT rules in principle consider the essence of the service in question and tax treatment is based on that. However, as the court practice is variable and not implemented in law, various tax solutions apply. In addition, in the field of e.g.

non-life insurance, the new players are many times exempt from non-harmonized insurance premium taxes and have competitive advantage there.

Mediation and distribution services should be VAT exempt to the same extent as the underlying financial transaction, including any cross-border component.

Alternative risk transfer business: many services are close to non-life insurance services and thus avoid potential sales tax on insurance and utilize VAT deduction. E.g. in Denmark towing services are treated as insurance.

43

The regulatory framework in the financial and insurance sector (e.g. the Markets in Financial Instruments Directive (MIFID) and the Insurance Distribution Directive (IDD)) has strengthened the role of intermediaries. Do you consider the VAT exemption to be coherent with this development?

Yes

No

Do not know

Possible changes to the current rules

The Commission is intending to prepare a proposal that will seek to modernise the current VAT rules for financial and insurance services. Your answers will feed into the review of these rules.

44

In your view, which would be the best way to reform the rules on exemption?

Update definitions of exempt services drawing on the extensive CJEU case law in the field of VAT

As regards the definitions, refer to other EU regulations governing the financial and insurance sector

Removing the exemption, so that definitions will be no longer needed

Other

Do not know

45

Please indicate which other way(s).

Much could be done short term to fix some of the problems e.g., created by ECJ rulings on VAT groups and CSAs. A proposal where the VAT exemption is not removed but made more aligned between the Member States would have a positive effect on the competition with businesses in

other Member States. There should be no questions on how certain financial services (when looking at the nature of the service) are treated for VAT purposes. Adjusting Article 135 of the VAT Directive with the principles laid down by ECJ case law would improve the alignment of interpretations between the Member State. In the long term, the removal of the exemption should be further investigated.

46

The removal of the exemption for financial and insurance services could benefit the neutrality of the VAT system. What could be other effects of such a removal?

Simplification in the application of the VAT rules for financial and insurance services

Lower VAT compliance costs

Less distortive effect of the exemption on competition linked to suppliers from non-EU countries operating in the EU

Higher VAT compliance costs

Higher complexity of VAT rules

None

Other

47

Please indicate which other effect(s).

Although the removal of the exemption could simplify the application of the VAT rules and thereby lower VAT compliance costs, the VAT exemption would not only decrease compliance. It could also increase it in many ways. For example, more invoices should be issued. For most of the fees today no invoice/receipt is currently sent out to the client (fee relating to bank account, withdrawal of money, transfer of shares etc.) – these are mentioned in the (electronic) account statement or similar. The number of receipts and invoices needed would increase dramatically. If the plans to introduce real-time reporting of invoice and receipt data would materialise, this would exponentially increase the amount of data that is needed for reporting. Furthermore, if there would still be VAT exemption for some services, the compliance in calculating the VAT recovery pro rata on input deductions would still be applicable. Final costs for the FS sector depend on how the exemption is removed, e.g., standard rate, and no other adjustments of adjacent taxes such as insurance premium tax, payroll duties etc. The removal of the VAT exemption would also lead to massive IT costs.

48

If only fee-based financial services were to be taxed, in relation to which of them would it be difficult to determine the taxable amount?

Please explain.

Definition of fee – especially relating to loan products – is not clear. There would be difficulties in e.g., qualifying a fee from interests if an upfront fee is charged instead of a higher interest rate.

49

Financial service providers may currently opt for taxation and obtain the right of deduction, but it is up to each Member State to introduce such option. Should Member States keep that discretion?

Yes

No, it should be available in all Member States

No opinion

50

Not having a right of deduction when supplying exempt financial and insurance services impairs the neutrality of VAT. To what extent would you support or oppose the introduction of a fixed rate of input tax deduction to remedy that effect?

Strongly support

Support

Oppose

Strongly oppose

No opinion

51

If a fixed rate of input tax deduction was introduced, should such a rule remain optional for operators or, alternatively, should it be mandatory?

It should be optional

It should be mandatory

No opinion

52

Should cost-sharing agreements be made available to the financial and insurance services sector?

Yes

No

No opinion

53

In your view, should businesses established in other Member States be allowed to form part of the cost sharing arrangements?

Yes

No

No opinion

54**Please indicate the reason(s) why.****To achieve a more level playing field for businesses**

To boost competitiveness of financial and insurance service providers

To reduce the tax burden and the administrative costs of businesses operating at cross-border level

Other

55**Please indicate which other reason(s).**

The lack of cross border CSAs or VAT groups increases VAT cost for entities operating cross border compared to those operating only in one member state. This is a trade barrier hindering freedom of services and capital movements.

CSAs should be reintroduced at least for branches of an entity and companies in a same group, preferably also between independent parties cross border. To ensure that the CSA's would actually help, they should be consistently introduced between member states. Some elements that we see important to include in this sense are:

- The CSA should be used either locally or gross-border
- The entity sharing costs could be a separate legal entity or e.g. a foreign branch of one of the companies belonging to the group
- The CSA should be able to be used for all kinds of "support" services needed in the financial sector (for solely VAT exempt activities)

These questions should be answered from tax administrations, not from an association.

56**Please indicate the reason(s) why.**

To open up the cost sharing arrangements exemption cross border would negatively affect the revenues of Member States having introduced the exemption

Because cost sharing arrangements mostly operate in the national market of their own Member State

To open up the cost sharing arrangements exemption may encourage cross-border operations and establishments in Member States whose tax administration are more flexible and, consequently, increase the competition between Member States

To open up the cost sharing arrangements exemption would increase administrative costs for stakeholders and Member States' tax administration, derived from increased controls and audits

Other

57

Please indicate which other reason(s).

58

Which is the most beneficial aspect of establishing VAT groups for providers of financial and insurance services?

Possible answers:

Not beneficial at all, Somewhat detrimental, Neither beneficial nor detrimental, Somewhat beneficial, Very beneficial, No opinion

It is optional – neither beneficial nor detrimental

Intragroup supplies are out of scope and therefore not taxed – very beneficial

VAT compliance costs are lower for the members of the group as they are pooling them – very beneficial

It is easier to outsource the activity through a single taxable person – neither beneficial nor detrimental

VAT grouping increases the competitiveness of the sector by reducing hidden VAT – very beneficial

Other

59

Please indicate which other aspect(s).

60

Which is the most effective way to reform the rules for financial and insurance services in your country?

Possible answers:

Not effective at all, Somewhat ineffective, Neither effective nor ineffective, Somewhat effective, Very effective, No opinion

Remove the exemption and tax financial and insurance services at a standard rate, no opinion

Remove the exemption and tax financial and insurance services at a reduced rate, no opinion

Tax only fee-based services at a standard rate, no opinion

Tax only fee-based services at a reduced rate, no opinion

Grant businesses the option to apply VAT, no opinion

Grant businesses the right to constitute a VAT group in every Member State, no opinion

Make cost-sharing arrangements available to the sector in all Member States, no opinion

Other

61

Please indicate which other reform(s).

The most effective way to reform VAT rules in the short term is to fix problems created by ECJ rulings on VAT groups and CSAs. A proposal where the VAT exemption is not removed but made more aligned between the Member States would make VAT rules easier to apply and would have a positive effect on the competition with businesses in other Member States. In the long term, also the removal of the exemption should be further investigated.

Further comments

62

If you wish to add further information within the scope of this questionnaire, please feel free to do so here.

In our view, the main advantages and disadvantages of the VAT exemption are:

Advantages:

The way how financial and insurance industry provide their services is currently built based on the VAT exemption.

- The VAT-system has provided means for groups providing these services to organize themselves in a manner that reduces the amount of hidden VAT costs for institutions providing these exempt services. These means include, e.g., the VAT-groups. **VAT-groups have been an efficient way to allow financial services to operate in groups instead of individual companies.**
- Going back historically, the exemption on these services was based largely on a technical issue that for several services provided by the sector, **it is difficult to find the tax base** (such as interest charges). This argument still holds to this day, as for some services it is difficult to find the VAT base.

- **The exemption can also be justified on social reasons:** It is also an advantage for the customer that their cost for financial services / insurance services is lower. This is an advantage to end consumers: **Everyone should afford insurance and financial services**, (e.g .mortgages, pensions, insurances, savings) and levying VAT on top of these services would make the services more costly. However, it should be noticed that this only applies to consumers and other possible insurance takers that are not liable for VAT themselves (if the end client is liable for VAT, hidden VAT costs included in the pricing of services not subject to VAT create additional costs for the end client).

Disadvantages:

Disadvantages are mainly legal uncertainty, non-neutrality, and barrier to economic efficiency.

- **The amount of irrecoverable VAT for FS businesses is large.** The directive that names tax exempt services has been around for decades, but the business has evolved and interpretations on tax exempt services on e.g., outsourcing are leading to more irrecoverable VAT being paid. Hidden VAT is a major non-neutrality issue and decisions by tax administrations and rulings of the courts increase this cost to businesses.
- **The outdated ECJ practice in VAT groups and CSAs has caused major issues in this field.** There is legal uncertainty and variable interpretations throughout the EU. ECJ rulings like Skandia C-7/13 and Danske Bank C-812/19 also cause major problems. ECJ ruling removing CSA from financial industry caused several issues even if the usage of that exemption was very limited.
- **There needs to be a level playing field between regulated financial entities and other service providers offering alternative solutions.** Financial entities have already burden from the regulatory rules (capitalization, reporting), but also tax treatment has importance. ECJ and VAT in principle considers the essence of the service in question and tax treatment is based on that. However, as the court practice is variable and not implemented to law, various tax solutions apply.
- **Although VAT is harmonized, it must be mentioned that various member states impose other taxes that are not harmonized instead of VAT** (e.g., insurance premium taxes and financial activity taxes). These taxes are often based on claims that tax exempt services would enjoy a large benefit from being tax exempt. However, a benefit can be assumed only in cases of the client being a consumer or a business that offers non-taxable services (as in these cases the hidden VAT cost can be assumed lower than having to pay the VAT). For clients that offer taxable services, the hidden VAT cost creates no advantage at all. These taxes further lead to a distortion of competition. In Finland it should be mentioned that insurance premium tax (IPT) is payable on certain non-life insurances and the level if IPT has followed the general VAT rate (24 % tax on insurance premium).

63

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Please note that the uploaded document will be published alongside your response to the questionnaire, which is the essential input to this open consultation. The document is an optional complement and serves as additional background to better understand your position.

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