



– Consultation response –

## VAT rules for financial and insurance services today and tomorrow

Brussels, 3 May 2021 | Europex welcomes the opportunity to contribute to the present consultation. In our response, we highlight that the regime on VAT rules for financial services subject to the exemption from VAT has generally proven complex and would benefit from a revision. Our main concern is the lack of clear and up-to-date definitions of the services subject to the exemption from VAT. As such, we strongly believe that there is a need to update, clarify and harmonise such definitions at EU and ideally international level.

Please find our full feedback to the Commission's questionnaire below.

**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?**

- Agree

**In general, how would you assess the functioning of the exemption of financial and insurance services? The exemption...**

- works well, but could be improved

**Please indicate the reason(s) why. The exemption...**

- 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

Our main concern is the lack of clear and up-to-date definitions of the services subject to the exemption from VAT. We strongly believe that there is a need to clarify and harmonise the definitions at EU and ideally international level.

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

- 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 undermine the competitiveness of the sector

**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?**

	Not at all	Somewhat	To a large extent	No opinion
Difficulty of finding information on VAT obligations in other Member States			X	
Different interpretations on definitions of exempted services			X	
Different rules for opting to tax			X	
Availability of VAT groupings		X		
Availability of cost sharing arrangements		X		
Different deduction methods			X	
Different VAT obligations in other Member States			X	

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

- No

**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?**

- No opinion

**Which of the structural provisions listed below do you apply?**

- Option to tax
- VAT grouping

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?

- Disagree

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

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

	Not effective at all	Somewhat ineffective	Neither effective nor ineffective	Somewhat effective	Very effective	No opinion
Option to tax				x		
VAT grouping					x	
Cost-sharing arrangements				x		
Proportional deduction				X		

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

- VAT grouping
- Proportional deduction

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.

- Agree

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

- Do not know

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

- Disagree

**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

**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?**

- No

**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
- Other

Drawing from experience, some of our members have remarked that within their respective Member States there are either too many or too few services listed under the financial services exemption definition, making the regime complicated to deal with. However, this problem could be solved if a more precise and harmonised definition of the services exempt from VAT were adopted across EU Member States and ideally also at an international level.

**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

**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.**

At first, it seems that imposing VAT on fee-based services would not lead to major practical difficulties. However, important details need to be considered beforehand and the implementation may prove challenging. The first priority should be on a harmonised definition of financial services in all EU Member States, which is currently a challenge as evidenced by the jurisprudence of the Court of Justice of the European Union.

For example, in the case of futures and options, there is no clear definition of the 'taxable amount', which causes serious practical problems when issuing invoices. This is because with

each price movement, there are different taxable amounts. This occurs especially for intermediaries, central counterparties and other kinds of clearing or clearing chains. Similar problems occur in relation to the fulfilment/delivery of the related underlyings.

**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?**

- No, it should be available in all Member States

**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?**

- Support

**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 mandatory

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

- No opinion

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

- No opinion

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

	Not beneficial at all	Somewhat detrimental	Neither beneficial nor detrimental	Somewhat beneficial	Very beneficial
It is optional			X		
Intragroup supplies are out of scope and therefore not taxed					X
VAT compliance costs are lower for the members of the group as they are pooling them				X	
It is easier to outsource the activity through a single taxable person				X	
VAT grouping increases the competitiveness of the sector by reducing hidden VAT					X

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

	Not effective at all	Somewhat ineffective	Neither effective nor ineffective	Somewhat effective	Very effective
Remove the exemption and tax financial and insurance services at a standard rate	X				
Remove the exemption and tax financial and insurance services at a reduced rate		X			
Tax only fee-based services at a standard rate	X				
Tax only fee-based services at a reduced rate		X			
Grant businesses the option to apply VAT					X
Grant businesses the right to constitute a VAT group in every Member state					X
Make cost sharing arrangements available to the sector in all Member States					X

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

We would like to highlight that the interpretation of the definitions of exempt financial services in the VAT Directive has proven complex. As a consequence, many related provisions have been subject to continuous disputes, both at a national and at an EU level. A reduction and/or concretisation and harmonisation of such tax exemptions should be considered, as it could help reduce the complexity of VAT rules overall.

Furthermore, some of our members consider that the VAT Directive on financial services is partly outdated and makes it difficult to apply it to new financial services. As an example, neither the EU VAT rules, nor many national VAT laws provide a definition for multiple new transactions and do not specify whether they qualify as VAT exempt services. Consequently, it is crucial to update, specify and harmonise the existing definitions and the list of financial services that are exempted from the VAT.

Caution is nevertheless required, in particular if the tax base for variable financial instruments is difficult to determine, as is the case for futures and options.

Likewise, it must be ensured that any changes to the existing regime are not detrimental to the overall regulatory framework and/or the financial services sector in general. This concerns in particular the possible impact on the functioning of key market infrastructure, such as CCP clearing houses and other clearing mechanisms.

## **About**

Europex is a not-for-profit association of European energy exchanges with 29 members. It represents the interests of exchange-based wholesale electricity, gas and environmental markets, focuses on developments of the European regulatory framework for wholesale energy trading and provides a discussion platform at European level.

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