



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 8 November 2010**

**15578/10**

**LIMITE**

**FISC 129**

---

**Interinstitutional File:  
2007/0267 (CNS)**

---

**NOTE**

---

from: Presidency  
to: COREPER/Council  
Subject: Proposals for a Council Directive and Regulation as regards the VAT treatment of insurance and financial services  
= Orientation debate

---

With the view to an orientation debate of the Council (ECOFIN) on 17 November 2010, this Presidency note explains the background and the state of play of the discussions on the VAT treatment of insurance and financial services and invites the Ministers to discuss and endorse orientations for future work. The Presidency has taken into account a number of comments made by the delegations at the meeting of the Working Party on Tax Questions on 5 November 2010.

*A. Background and state of play of the discussions.*

1. In December 2007 the Commission presented to the Council a Proposal for a Council Directive amending Directive 2006/112/EC on the common system of value added tax, as regards the treatment of insurance and financial services together with a Proposal for a Council Regulation laying down implementing measures for Directive 2006/112/EC on the common system of value added tax, as regards the treatment of insurance and financial services.
2. The proposals seek:
  - Firstly, to increase legal certainty for both taxpayers and tax administrations and thereby reduce their administrative costs in correctly applying the VAT exemption to insurance and financial services. Legal certainty would secure the taxing rights of the Member States and would reduce opportunities for aggressive tax planning.
  - Secondly, to ensure a more consistent application of the tax and to deliver a level playing field in the pan-EU internal market for financial services and insurances, at least as far as VAT is concerned.
  - Thirdly, to allow businesses to manage better the impact of non-deductible VAT on their activities, whilst ensuring equal access to tax relief to all participants in the pan-EU market for financial services and insurances.

3. To deliver on these objectives, clarification and modernisation of the definitions of exempt financial and insurance services was proposed by the Commission. The aim is to ensure consistent interpretation so that an interpretation applied in one Member State would be valid in other Member States. For businesses seeking to expand and operate in the internal market, having to renegotiate the interpretation of the exemption with each Member State individually is a major cost and is a barrier to pan-European expansion. Moreover, inconsistent application of the exemption is at odds with the requirement of the VAT Directive that the common system of VAT should result in neutrality in competition.
4. In addition, two further measures to help the financial and insurance industries to better manage the impact of non-recoverable VAT on their costs were proposed by the Commission. These involve modifications to the existing rules in the VAT Directive for cost sharing and for the option to tax. Improvements here could be seen as contributing to a reduction in costs attributable to non-recoverable VAT, making the companies concerned more profitable or reducing the cost of their services.
5. The proposals have been discussed extensively in the Council's Working Party on Tax Questions on numerous occasions over the last three years under successively the Slovenian, French, Czech, Swedish and Spanish presidencies and progress was achieved.
6. As far as relief for cost sharing is concerned, progress was made in so far as it was ascertained that the existing provisions on cost sharing relief as set out in Article 132 (1) (f) of the VAT Directive are already applicable to financial and insurance services. This would remove at least at this point in time the need for further work at the Council level on the specific rules in this area for financial and insurance services.

7. The views expressed by delegations on the extension and the tightening of the option to tax as proposed by the Commission have shown that there is virtually no support for modifying the VAT Directive along those lines. A number of delegations were of the opinion that the development of common rules on the computation of the taxable base is one of the major prerequisites for any change in the existing regulatory framework. It might therefore be appropriate for the Commission to further pursue that work and explore accordingly any solution allowing to depart from the existing VAT exemption, in collaboration with the Member States.
  
8. The most important progress has been achieved so far in the discussions on the modernisation of definitions of exempt financial and insurance services. The majority of definitions seem to be acceptable, though some further precision might be necessary, in particular as regards the VAT exemption to the constituent elements of the exempt services, exemption for the management of investment funds and financial derivatives. Arriving at a satisfactory outcome to the current negotiations is more important than ever given the crises in global financial markets and the resultant stress to financial and insurance institutions which could only be resolved by means of a significant and costly support from all taxpayers. Discussions on definitions will therefore have to be finalised against the background of the global evolutions taking place in the financial environment both with respect to the overall tax burdens on the financial industry and the development of an enhanced financial regulatory framework.

\* \* \*

**B. Orientations for future work.**

9. Against the background of the work undertaken so far, the Council (ECOFIN) is invited to discuss and endorse the following orientations for future work:

- as regards cost sharing, note should be taken of the discussions so far, which lead to the conclusion that currently there is no need for further work at the Council level;
- as regards option to tax, the Commission could be invited to pursue further work on the option to tax, including inter alia on identifying the tax base for financial services, in order to explore possible solutions allowing to depart from the existing VAT exemption, in collaboration with Member States;
- as regards modernisation of the definitions of exempt services, the work should be pursued as a priority with due consideration being given to a level playing field between operators and between Member States, to the overall competitiveness of the financial and insurance sector of the European Union and to the budgetary implications; more specifically, the following should be taken into account:
  - in addition to a harmonised approach across Member States, the modernisation of the definitions of the exempt financial and insurance services should achieve neutrality and consistency in the application of the VAT exemption to the constituent elements of all exempt services;

- the harmonised and modernised definition of the exemption for the management of investment funds should ensure that it can be applied in a neutral and consistent way throughout the EU, requiring a thorough analysis of the scope of the concept of investment funds and pension funds. Moreover, it should take account of a thorough assessment of regulatory changes for these industries as reflected in EU legislation. In this respect, the Commission is invited to report to the Council on the overall effect, as far as VAT is concerned, of the changes in the regulatory climate for these funds so that the Working Party may consider available options;
  
  - for financial derivatives, the measures to be adopted should ensure that the inherent taxable nature of goods or services is not frustrated and also that, in the final outcome, actual exemption is limited to transactions which can be considered effectively as exempt financial or insurance services.
-