

REVIEW OF VAT RULES ON FINANCIAL SERVICES

EFAMA COMMENTS ON THE EUROPEAN COMMISSION'S ROADMAP

REF. ARES(2020)5770956 FROM 22/10/2020

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EFAMA¹ is grateful for the opportunity to comment on some messages included in the aforementioned roadmap. **We believe that these comments should be made clear for all persons interested, especially to those who would like to participate in the upcoming public consultation.**

Section A (Box1 - Problem the initiative aims to tackle: the lack of tax neutrality)

- If the exemption mentioned in the roadmap leads to a lack of tax neutrality, it should however not missed out that **the exemption decreases the final cost for final consumers** such as individuals, public bodies, NGOs, activities in the public interest (hospitals, schools, etc.). This is also true when an activity (e.g. Fintech) implies massive investments subject to VAT such as IT.
- **By essence, the VAT due on the turnover is higher than the VAT recoverable on inputs** (except possibly when the turnover benefits from a reduced VAT rate). Indeed, the price of a service is determined based on all the costs of the supplier whether subject to VAT or not, including salaries, and on the expected profit. Because VAT would be applicable on the salaries paid and due to the internalisation of the business and the use of internet, **the risk of delocalisation of activities should also not be underestimated.**
- In the same box it is also mentioned that “(...) produces competitive disadvantage compared to business supplying compared to businesses supplying similar non-exempt services (...)”. We are surprised that similar services could be exempt or not. We believe that this situations might exist when two Member States have different interpretations but not, hopefully, within the same Member State. **Once again, it would be necessary to clarify that the competitive disadvantage between exempt and taxable services would vary whether the clients could or not recover VAT.**
- The paper refers to the non-EU businesses (“or to businesses operating outside the scope of VAT in third countries”). We agree that non-EU businesses is an important element to be taken into account. However, **we believe that the comparison with non-EU businesses is complex, should take into account that VAT exempt financial services open the right to recover VAT on costs and the variety of scenarios. Indeed, EU and non-EU services providers may perform services for EU or non-EU clients and the VAT consequences in these different scenarios would be different.**
- It is also necessary to take into account the differences of the VAT (or GST) rates applicable in the different jurisdictions. Very often the VAT (or GST) rates in non-EU jurisdictions are substantial lower than the standard VAT rates applicable in the EU that range from 17% to 27%, with an average of around 21%.
- For example², the VAT rate is 5% in China, 7% in Singapore, 8% in Switzerland (which also exempts financial services, 10% in Australia, etc. The USA have no VAT system and sales taxes usually do not apply to services. **Without any doubt, applying the high EU VAT rates would affect substantially the demand of financial services.** The extracts of the draft study presented by the consortium of consultants during the [26th meeting](#) of the VAT Expert Group (VEG) and the [32th meeting](#) of the Group on the Future of VAT (GFV) clearly evidence that point. As a summary, the difference between EU VAT and many non-EU Indirect Tax systems is so great as to make any directly comparison invalid.

¹ The European Fund and Asset Management Association, EFAMA, the voice of the European investment management industry, represents 28 member associations, 60 corporate members and 24 associate members. At end Q2 2020, total net assets of European investment funds reached EUR 17.1 trillion. These assets were managed by almost 34,200 UCITS (Undertakings for Collective Investments in Transferable Securities) and 29,100 AIFs (Alternative Investment Funds). More information available on www.efama.org

² <https://www.uscib.org/value-added-tax-rates-vat-by-country/>

- Another **key point** to be considered in any extension of taxation is that **the overall cost to final consumers / non-business recipients will be increased**, since VAT will continue further down the value chain. Any attempt to “level the playing field” has to be set against the overall cost to final consumers / non-business recipients.

Section B (objectives and policy options)

- We agree with the comments regarding the **cost sharing agreements** foreseen by article 132.1.f) of the EU VAT Directive 2006/112. We agree that this instrument should be made again available to the financial services industry. We would also like to add that the **VAT group** foreseen by article 11 of the EU VAT Directive 2006/112 is another important tool for the financial services industry and the review should include improvements to this tool, such as: making it mandatory for the few Member States that have not yet introduced it in their legislation, harmonize the different national rules at the highest level and allowing it on a cross-border basis.
- Given that Cost Sharing Arrangements have been limited following the Commission vs Luxembourg case, further action will be required to facilitate VAT Grouping across the EU. Furthermore, given the prevalence of branch networks in many financial businesses, including fund management ones, a clearer and more standardised approach to the interaction of VAT Groups and branches would be welcome. If we wish to get a sensible outcome, The Commission should not be looking at the VAT exemptions, including the fund management exemption, in isolation to these wider VAT concepts.

Section C (Preliminary Assessment of Expected Impacts)

i. Likely social impacts.

- In the section entitled “**Likely social impacts**” it is indicated that the “*Indirect impacts would be positive*”. We believe that more details should be provided in this respect. Once again, we stress that, as mentioned above, **the taxation of financial services would imply an increase of costs for all persons who could not recover VAT**. Moreover, **as illustrated by the presentation of the draft consultant’s study during the GFV conference call of 25 May 2020, the taxation of financial services would affect negatively and substantially the demand of financial services**. This would also, most likely, affect in the same manner the employment in the financial services sector. We believe this should be reflected in the communication about the review.
- More specifically, we would also like to draw the attention on the impact of the taxation on investment management services. Compared to direct and individual investment, **collective investment presents the advantages that were already highlighted in our comments on working document No 89 that was discussed during the aforementioned meetings of the VEG and GFV**.
- **This exemption has substantial social impact by favouring savings of “retail” investors**. Most investors in retail and institutional funds are private persons or institutional investors in the pension sector (insurance companies, pension funds, CTAs etc.) **which themselves generally are not able to recover input VAT** due to the fact that they do not provide VATable services or provide VAT exempt financial or insurance services. **VAT on management services for investment funds would increase the tax burden for (retirement) savers**.
- Collective investment also offers different advantages to investors that have motivated legislators to exempt from VAT management services relating to collective investments. Investors need a clear and stable tax environment. The same reasons have motivated legislators to grant incentives for income tax purposes. **Removing the exemption for management services of EU funds would be a disruption for investors. Investors would suffer from the VAT incurred by investment funds**.
- **The management of collective investment implies the use of specialized service providers. Applying VAT to the remuneration paid for these specialized services will be detrimental to investors because this may increase price pressure and lead to less specialist input being sought. For this reason, the EU VAT Directive, as well as other non-EU VAT systems, foresees a VAT exemption for management services of collective investments**.

- The Court of Justice of the European Union (CJEU) has ruled³ that **the aim of the VAT exemption for management services is to facilitate the collective investment:**

*“In that regard it should be observed that the purpose of the exemption of transactions connected with the management of special investment funds is, particularly, to **facilitate investment in securities by means of investment undertakings by excluding the cost of VAT and, in that way, ensuring that the common system of VAT is neutral as regards the choice between direct investment in securities and investment through collective investment undertakings**.”*

- **The purpose of the exemption**, outlined above, **becomes even more critical when one considers the current pension savings gap in Europe.** The savings gap is defined as *“...how much more people retiring between 2017 and 2057 need to save each year to achieve an adequate standard of living in retirement.”*
- **A recent study estimates the current savings gap to be in the region of €2 trillion⁴.** It is clear therefore that the need to encourage investment through the removal of the VAT burden remains a priority.
- We would also like to emphasize that taxing investment management services would be in contradiction with the different national tax measures favouring long term investments (e.g. income tax deductions when participating to collective investment schemes, exemptions or at least reduced tax rates or deferral of taxation of the income and capital gains raised by individuals from these long term investments). It would also contradict the efforts of the European institutions to favour long term investments via e.g. the ELTIF or the PEPP.
- **Private investors being the ultimate investors would be penalized. This is true whether they invest directly in an investment fund or indirectly via a pension fund or insurance product (which invest themselves in investment funds).**

ii. Likely economic impacts

- Under the section **“Likely economic impacts”**, it is mentioned they will be: *“[m]ost likely positive”*. Furthermore it is mentioned *“[t]he measures envisaged will assist in strengthening the Internal Market and enhancing competitiveness, among other elements – through removing fiscal barriers to outsourcing. Tax compliance should be made easier”*. It is unclear what are the measures envisaged and the likely economic impacts. Thus, this part of the document should be nuanced and further detailed. **Regarding the measures envisaged, we believe that it should be distinguished between:** i) a **“limited reform”** where the principle of the VAT exemption would be maintained with some improvements; and ii) a **“systemic reform”** where financial services would become taxable.
- **We could agree that a “limited reform” that would consist in clarifying, modernizing and harmonizing the VAT exemptions and making available cost sharing agreements and VAT group on a cross-border basis may have these positive impacts.**
- In particular, cost sharing associations and VAT group would help to solve the question of VAT in case of insourcing but not in case of outsourcing, On the other hand, we emphasize that a **“systemic reform” where financial services would become taxable would imply**, as mentioned above and as evidenced by what is known from the consultants study, **a massive drop of the demand. This would thus have negative economic impacts.**
- **We strongly suggest the message on the economic consequences should be more clear by distinguishing whether financial services would remain exempt or would become taxable.**
- Also, it is mentioned that *“[a] systemic change in the VAT rules for the sector may also have a positive impact on VAT revenues”*. As we understand that by “systemic change”, it is meant “taxation”, we take

³ Staatssecretaris van Financiën v Fiscale Eenheid X NV cs, C-595/13, 9 December 2015, point 34

⁴ “Mind the Gap - Quantifying the pension savings gap in Europe” – Aviva, September 2016

the opportunity to comment this should be clarified – **EFAMA members would like to remind the additional revenue for States would imply an increase of costs for all persons (e.g. including end-investors) who could not recover VAT.**

- Regarding the potential economic impacts, we believe that it should also be taken into account that taxing fund management services would imply that less capital will be available for long term investments of businesses and public bodies. This will not only be because the taxation of fund management services will reduce the amounts available for investments but also because the **investors may switch to other investments, such as cash savings, implying less specialized service providers. Thus, the taxation of management services of EU investment funds would affect the level of savings and investment by decreasing the net return for the investors, who might therefore be reluctant to increase their investments. This would also have a negative impact on the amount funds could invest.**
- As mentioned in section A, **the taxation may favour non-EU services providers and imply delocalization of activities from the EU to non-EU jurisdictions.**

iii. Summary comments regarding social and economic impacts

- **Persons affected by any systemic changes to the fund management exemptions will be long-term, investors especially retail investors and all persons, businesses or public bodies, which need these investments.** This the exact population that otherwise should be encouraged to be saving. For EFAMA, these are points that deserve as much reiteration as possible. Furthermore, the economic impact (especially in a low-return investment world) cannot be anything other than significantly negative for final consumers / non-business recipients, and the level of private and public long term investments which surely offsets the increase in VAT revenues for the Member States that the EU is forecasting.

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About EFAMA:

EFAMA, the voice of the European investment management industry, represents 28 Member Associations, 60 Corporate Members and 24 Associate Members. At end Q2 2020, total net assets of European investment funds reached EUR 17.1 trillion. These assets were managed by more than 34,200 UCITS (Undertakings for Collective Investments in Transferable Securities) and 29,100 AIFs (Alternative Investment Funds). Including discretionary mandates, third-party regulated asset managers managed EUR 24.9 trillion in Europe at end Q2 2020

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