



FS/MT
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Brussels, 6 June 2012

Mr Vassos SHIARLY
Minister of Finance of the Republic of Cyprus

Subject: *Comments on the European Commission Proposals for a Council Directive and Regulation as regards the VAT treatment of insurance and financial services*

Dear Minister Shiarly,

Over the last years the European Association of Co-operative Banks (EACB), the European Association of Public Banks (EAPB), the European Banking Federation (EBF), the European Fund and Asset Management Association (EFAMA), Insurance Europe and the European Federation of Insurance Intermediaries (BIPAR) have been strongly committed in supporting the efforts towards reaching modernization and harmonisation of the VAT treatment of insurance and financial services across Europe. It is in the pursuit of this commitment that we ask the Cypriot Presidency to continue to work towards reaching resolution in this area.

During more than 4-years of work in the Council's Working Party on Tax Questions, the proposals for a Directive and Regulation have been discussed extensively under the Slovenian, French, Czech, Swedish, Spanish, Belgian, Hungarian and Polish Presidencies, and progress was made. The Hungarian Presidency identified four outstanding issues of political importance i.e. transfer of insurance and reinsurance contract portfolios, outsourcing, management of investment funds and derivatives.

Taking into account the Hungarian Presidency approach, the Polish Presidency continued to work on the two proposals and reached conclusions –as noted in the Presidency progress report approved by the Council on 19 December 2011– that the work aiming at reaching a compromise in this dossier should be continued. However, the Danish Presidency has taken the decision not to continue any further work on the Directive.

In this respect, we would like to raise our profound concern that the key VAT issues for the insurance and financial industry remain unresolved. These unresolved issues over the Directive leave Member States uncertain as to whether to implement changes based on case law and the draft Directive or remain with the dated current law. Moreover, we are ultimately concerned that holding up discussions on the VAT Directive as consequence from the lack of work during the Danish Presidency could possibly mean that the entire work could be dropped and no further work will be done to implement it.

This review of the VAT Directive originally started as it was recognized that the current VAT law in the financial services sector was not fit for purpose any longer and there was a need not only to amend it, but to do so in such a manner that it would cover any future changes in financial services. If no further work is considered following the Danish Presidency, then there is a possibility that this amendment Directive will fail, leaving the financial services sector to cope with different treatments of the same service in different Member States often leading to double or non-taxation and the associated administrative burden. The result would be competitive distortions between insurance and financial services supplied across different Member States, and between EU and non- EU businesses.

Also we would kindly remind you that on 17 November 2010 during the Belgian Presidency, the ECOFIN Council required that further work on the definitions of exempt financial and insurance services should be pursued as a priority. This request followed the Council decision to stop working on the other two pillars of the reform, i.e. *the option to tax* and *cost sharing arrangements*, which the industry had to accept although these two pillars were considered as important as the modernization of the definitions in order to allow businesses to better manage the impact of non-deductible VAT on their activities.

Given the importance of the issues at stake, the rationale behind the review and the considerable effort expended to date on the review, we ask the Cypriot Presidency to continue the work done by the previous Presidencies towards reaching resolution in this area as industry needs the new Directive and Regulation to enable greater harmonisation of the tax as well as greater surety of treatment within the insurance and financial services industry.

We kindly also draw your attention to the attached annex (*see D0933B-2012*) where you will find a brief description of what we consider the most significant points of concerns for the insurance and financial industry.

We sincerely hope that you will find our comments useful and kindly express our entire disposal to continue our cooperation on this vital subject for businesses across the EU.

Yours sincerely,



Michaela Koller
Director General
Insurance Europe



Guido Ravoet
Chief Executive
EBF



Peter De Proft
Director General
EFAMA



Nic De Maesschalck
Director General
BIPAR



Hervé Guider
General Manager
EACB



Henning Schoppmann
Secretary General
EAPB

Copy to: Mr Constantinos Nicolaidis, Director of Cyprus's Customs and Excise Department and VAT Commissioner



ANNEX

List of Outstanding Issues

The following is a list of outstanding issues we strongly consider to be of paramount significance and, thus, requiring further analysis and discussion. We have briefly presented the core problem surrounding each of the issues together with our suggestions.

Outsourcing

- The introduction of a new specific VAT outsourcing exemption is necessary in order to clarify conditions for an outsourced service to be exempt, given that the exemption is currently subject to a number of different interpretations among Member States.
- The scope of VAT outsourcing exemption should follow the nature of the service and not the status of the person carrying it out. In that regard, we believe that activities/functions which are inextricably linked to the nature of a financial or insurance contract such as contract/policy proposal, control & reconciliations of bank accounts, customer account set-up, receipt of claims, claims handling excluding fulfilment should be covered by the VAT outsourcing exemption.

Derivatives

- The current VAT treatment for derivatives differs between the various Member States. It is vital these differences are removed in order to provide consistency of treatment across Member States, promote operational efficiencies and ensure neutrality for businesses across the EU. A factor introducing particular complexity is that Member States have differing interpretations as to the comparability of the Directive and the implementing regulations.
- Clarification on the differing interpretations to the Directive and implementing regulations is key to ensuring consistency of treatment across Member States. It is furthermore noted that the proposed implementing regulations are only limited to options and do not deal with the wider scope of derivatives. In a particular context, we welcome the suggestion of a special scheme being introduced for exchange traded commodities. We however consider the suspension regime should be extended to (taxable) transactions between “non-member and member”. Furthermore, given that similar schemes already exist, notably in the UK, the introduction of an EU-wide scheme would ensure consistency of treatment across the EU.

Transfer of insurance and reinsurance contracts, credit contracts and contract portfolios

- There is a need for an exemption of these items in order to spread risk and guarantee the VAT neutrality principle when a business restructures.
- The transfer of these items should be explicitly exempted in the VAT Directive.

Management of investment funds and pension funds

- An appropriate exemption is required for the management of investment funds and pension funds to ensure that (smaller) investors investing their money directly or indirectly through such funds do not bear a greater tax burden than those (often larger) investors able to create a diversified portfolio through direct investments in securities, and also to ensure that EU funds are not less attractive than comparable non-EU funds.
- The definition of “*investment funds*” should include all undertakings for collective investment (e.g. regulated UCITS funds, certain alternative investment funds governed by the AIFMD and other kind of funds) raising capital from investors with the main object of investing in securities, cash, financial assets or real estate. Furthermore the definition of “*pension funds*” should make clear that it includes common asset pools established to facilitate the investment of funds. The VAT Directive should also provide explicit exemption for discretionary portfolio management services as well as for trade-specific “*investment advice*” services.

Specific exclusions from exemptions

- There is a need to clarify that the fact that the supply of certain services may be specifically excluded from exemption under a particular heading does not prevent the supply from being exempt from VAT under general VAT principles (for example, where it forms part of a composite supply of which the principal elements are exempt).
- The supply of core fund distribution services should qualify for exemption pursuant to the intermediation exemption where the distributor is actively signing clients up for a particular investment fund (as is generally accepted under current law). Furthermore, global custody services as an essential component of investment in global financial markets should be explicitly exempted in the VAT Directive.

Financial transfer and financial deposit taking & account operation

- The scope definition of “financial transfer” and “account operation” needs to be clarified.
- Regarding the definition of “financial transfer”, the preparatory work for financial transfers should be explicitly exempted in the Directive. Additionally, the term of “account operation” should clarify what account administration entails.

