

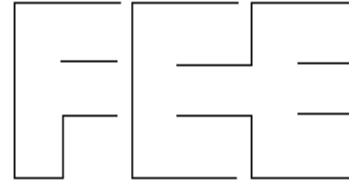
Date
16 February 2007

Le Président

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Mr. László Kovács
Commissioner
European Commission
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cc Robert Verrue, Director General
Alexander Wiedow, Director, Indirect Taxation and Tax Administration

Dear Commissioner,

Re: FEE Comments on the 'Study to Increase the Understanding of the Economic Effects of the VAT Exemption for Financial and Insurance Services'- Final Report to the EC of 2 November 2006 issued by PwC

FEE welcomes the publication of the PwC 'Study to Increase the Understanding of the Economic Effects of the VAT Exemption for Financial and Insurance Services' ("the Study") as it considerably furthers the understanding of the economic effects of the VAT exemption for financial and insurance services and more in particular the distortions caused by it.

FEE is pleased to provide some general comments on the study followed by a number of observations on some specific paragraphs.

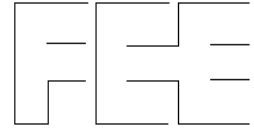
General observations

FEE observes that according to the results of the Study there do not seem to be any significant issues related to the current system of exemptions for financial and insurance services. This appears to contradict the outcome of the conference 'Modernising the VAT rules for financial services and insurance' organised jointly by the European Commission and the European Banking Federation on 11 May 2006. At this conference concerns were expressed as to the obstacles created by the current VAT regime and the urgent need to modernise and simplify the VAT system.

Such contradiction might possibly be explained by the fact that the statistical sample used in the study is relatively small and may not fully represent the whole of the Banking and Insurance sector in the EU. FEE therefore recommends considering the possibility to launch a public consultation, before any draft legislative provisions are tabled, on the VAT exemption for financial and insurance services, possibly using the PwC study as a basis.

Paragraph 72: Extension of the Scope of Exemption for B2B Supplies

According to the general principles underpinning the current VAT system, exemptions should not be created on the basis of the recipient but rather on the nature of the transactions carried out. FEE therefore observes that extending exemptions to currently taxable supplies would be against the basic concepts of VAT. Financial and insurance institutions cannot, in our view, be considered on the same basis as public interest entities.



FEE supports the fact that the scope of the existing and any future exemptions must be clarified to ensure that they are applied consistently across all 27 Member States.

Paragraphs 74 to 80: Reduction of the Scope of Exemption for B2B Supplies; Option to Tax for B2B Supplies; Zero Rating of Specific Financial Transactions

FEE analysed the three proposed solutions based on fundamental VAT principles suggested in the report.

FEE does not support the solution to extend the scope of exemption for B2B supplies, as it would be against the original principle (for the justification of the existence of the exemptions) of reducing the tax burden on the final consumer for social reasons.

FEE would rather favour the solution to have available in all Member States an option to tax B2B services. This should be mandatory for Member States, because it safeguards the principle of neutrality, embedded VAT costs are thereby eliminated (apart from those permitted under article 176 of Directive 2006/112/EC) and the application of exemptions is brought back to its original aim of reducing the tax burden on the final consumer.

FEE agrees that the solution to reduce the scope of exemption of B2B supplies might reduce VAT revenues for Member States but is not technically feasible because of the particular issue related to the valuation of a number of financial services.

The solution of zero rating, is not, in the view of FEE, acceptable as it violates the principle of neutrality.

Paragraphs 81 to 84: Mandatory Domestic VAT Grouping; Cross-Border VAT Grouping

The experience of Member States allowing domestic VAT groupings does not indicate any disadvantages such as loss of revenue or lack of feasibility. FEE notes that the 86% of surveyed businesses are reluctant to outsource operations because of the potential VAT costs. FEE therefore suggests as a solution to make it mandatory for Member States to introduce the option of domestic VAT grouping, applying in full article 11 of Directive 2006/112/EC.

Concerning cross border VAT grouping, FEE observes that in a situation with no cross border VAT grouping, when you compare two businesses operating in various Member States, the one operating as a holding with subsidiaries would be at a disadvantage compared to the one operating as an SE because the holding has to tax intra-group transactions, whereas a Single company, on the application of the ECJ decision in FCE Bank does not have to account for transactions between different parts of the same legal entity.

Paragraphs 85-86: Cost Sharing

It is questionable whether cost sharing is a supply of services or not (see ECJ decision in the EDM case).

If article 132.f of Directive 2006/112/EC (ex 13.A.1.f) is applied to outsourced services, there is, in our view, a significant risk of a distortion of competition. (see Taksatorringen case C-8/01). It is therefore difficult to see how this article could help the financial services.

Paragraphs 87-88: More Refined Input VAT Recovery Calculations

Input VAT recovery calculations should become more flexible by making Article 173.2 c (Directive 2006/112/EC) mandatory for Member States, i.e. Member States should be obliged to authorize or require the taxable person to make the deduction on the basis of the use made of all or part of the goods and services supplied to the business.

Paragraph 89: Uniform Limited Input Tax Credit (ULITC)

FEE does not support the idea of the Uniform Limited Input Tax Credit (ULITC) because this would be a further exception to the general system and would not bring the advantages that could be achieved through the other solutions.

Paragraphs 91-96: Insurance – Article 13(B)(a) ; Banks – Article 13(B)(d)(1) to (5); Funds – Article 13(B)(d)(6)

Industry specific issues should be discussed in more detail. However, FEE agrees that a more modern EU definition of exemption for the three sectors of insurance, banks and funds is needed. Such definition should take into account the recent developments in these sectors.

Paragraphs 97-98: Funds – Article 13(B)(d)(6)

FEE suggests it could be valuable for businesses to have a clearer definition on the borderline of VAT exempt financial services. Art 135 of Directive 2006/112/EC provides a list of exempt financial services but we know from practice that the interpretation of what is taxable or not taxable differs significantly between Member States. This frequently creates distortions for banks and insurance businesses operating cross border (for example, in some countries, like Sweden, underwriting fees charged by banks for guaranteeing IPOs is taxable, but this is not the case in other countries, like Germany, where they are exempt).

FEE recommends the VAT Committee provide such a definition. For this purpose members of industry business and VAT experts should, in our view, be consulted.


Chapter 7: Priority Solutions

In FEE's view the most efficient solutions, in order of priority, would be the following:

1. Pan European Guidance;
2. Mandatory to have an option to tax B to B services applied on common bases in all Member States;
3. More refined input VAT recovery calculations.

We trust that our comments will help progress the debate and discussions on this difficult area and we are of course at your disposal to meet with you to discuss any of the points in this letter.

Yours sincerely,



Jacques Potdevin
FEE President