

Value added tax VAT: common system, treatment of insurance and financial services

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The Council took note of a **progress report** from the presidency regarding work on proposals on the value-added tax (VAT) treatment of insurance services and other financial services.

The proposals for a directive and a regulation are intended to clarify the provisions of directive 2006/112/EC as regards financial services, which are exempt from VAT. They are aimed at increasing legal certainty for economic operators and national tax administrations, reducing administrative burdens and lessening the impact of hidden VAT on the costs of service providers.

The existing provisions were established in the 1970s and have led to uneven interpretation by the member states, causing distortions of competition.

The VAT exemption for financial services causes high compliance costs, and inconsistencies in its implementation have resulted in an increasing number of court cases, especially as concerns new types of services.

The proposals date from 2007. In November 2010, the Council endorsed guidelines for work on the dossier. Under Polish presidency (July to December 2011), the working group has focused on definitions of exempt financial services.

The report provides an overview of progress achieved during that time and assesses the prospects for reaching an overall compromise on the dossier. The main conclusions may be summarised as follows:

1. to continue the work on the basis of the package of guidelines that would form a future compromise; or
2. to postpone further work on the dossier until examination of the VAT strategy and proposals on the financial sector taxation, which may lead to a new impulse in this file.

During the discussion in the high level working group, the vast majority of delegations supported continuation of the work and have shown openness towards the efforts to achieve a compromise as soon as possible.

The Presidency took note of the constructive approach by the majority of delegations towards a guideline concerning a transfer of insurance and reinsurance contract portfolios, assuming that transfer of insurance and reinsurance contract portfolios and transfer of credit contract portfolios should be treated equally for VAT purposes, which would mean that **both cases should be exempt from VAT**. In the Presidency's view visible progress has been achieved in the work on outsourcing, where the majority of delegations supported narrow scope of definition, accepting that exemption within outsourcing should be granted only for services of financial or insurance nature. However, a few delegations supported broader application of exemption for outsourced financial and insurance services to avoid distortions of competition of the sector.

Progress has also been made as regards the **work on definition of management of investment and pension funds** – the majority of Member States supported equal treatment of investment and pension funds, by application of exemption to management of funds, irrespective of their legal form and business

structure, in order to avoid possible distortions of competition and not to create artificial burdens in the area of the management of those funds. However, a few Member States argued that certain types of pension funds were by their nature different from investment funds and, in their view, should not be exempt.

Further discussions are needed in this respect and the Commission's services are currently preparing a room document on all of these issues which will be available in 2012. Some Member States again are of the opinion that the exemption should be limited to investment funds collecting savings of small investors.

During the Polish Presidency work has been carried out in relation to **transactions in financial derivatives**. In the opinion of the majority of Member States exemption should apply to those of a financial nature, while transactions in commodities should be recognized as taxable. Nevertheless, further work should be undertaken to investigate the tax treatment of derivatives and, in this context, the merits of the **simplification for exchange traded commodities**.

The relationship with the VAT strategy and proposals on the financial sector taxation was discussed. Given that the proposal on FTT was of a different nature and that the new VAT Strategy was still under preparation in the Commission, the Presidency – bearing in mind the opinion of the Commission – noted, without prejudice to the future discussions, that at this stage it was difficult to assess what impetus from these two files could be expected for further work on VAT treatment of insurance and financial services. This approach also received support during discussion at the HLWP, where **the vast majority of Member States was in favour of continuation of the work on financial and insurance services without waiting for the results of the work on FTT and VAT strategy**.

In the light of the constructive discussion, the Presidency remains convinced that the work aiming at reaching a compromise in this dossier should be continued.