

Launched in 1960, the European Banking Federation is the voice of the European banking sector from the European Union and European Free Trade Association countries. The EBF represents the interests of almost 5000 banks, large and small, wholesale and retail, local and cross-border financial institutions. Together, these banks account for over 80% of the total assets and deposits and some 80% of all bank loans in the EU only.

EBF COMMENTS ON THE EUROPEAN COMMISSION'S GREEN PAPER ON THE FUTURE OF VAT: TOWARDS A SIMPLER, MORE ROBUST AND EFFICIENT VAT SYSTEM

[EBF's ETI n°: 4722660838-23]

KEY POINTS

The European Banking Federation (EBF) welcomes the opportunity to comment on the European Commission's Green Paper on the future of VAT.

The EBF believes that there is a general need to modernize and simplify the current VAT system. Existing derogations, different VAT rates and options for Member States are working against the goal of having the VAT legislation applied in a uniform manner across the EU. We also believe that making stakeholders a part of the formal legislative procedure is an important tool in the quest to establish a VAT system which is fully functioning, administratively manageable and in line with how business is conducted.

The continuation of the financial services VAT exemptions is rooted in political and socio-economic considerations, but also around technical and practical issues for the industry. In considering the future of any or all of the VAT exemptions, a clearer explanation from the European Commission and Member States regarding the objective of VAT in relation to financial services is required and a clearer understanding of the practical and technical impediments should be obtained from a detailed study. This would provide a rational and objective basis on which to decide which exemptions should continue.

It must be stressed that the possibility for European banks to compete on a level playing field with non-EU banks or other players in the financial sector who are not exempt is even more important today in a globalized world with high-tech IT solutions. We therefore strongly believe that - given that the general exemption for financial services were to be kept - there is

a need for changes in the current legal framework in order for banks and others to be able to decrease the costs they have for irrecoverable VAT today.

We believe the current situation could be improved if there was a general possibility to opt for taxation or that financial services were zero-rated.

An option to tax would unblock VAT expenses currently blocked within the transaction trail.

Zero-rating the supply of financial services to other taxable persons would in the same way solve the problem of non-deductible VAT for the economic sector concerned. It would also give the financial sector the possibility to make full use of the possibilities of increasing their competitiveness thru, for example, outsourcing and pooling.

Finally, the EBF considers that making cross-border VAT grouping mandatory as well as clarifying and elaborating the current rules for cost-sharing arrangements are two other options which would make the situation for the financial sector more similar to that of non-exempt businesses.

APPENDIX 1: ANSWERS TO THE QUESTIONNAIRE

4. VAT treatment of cross-border transactions in the single market

4.3 Other variants

Q1. Do you think that the current VAT arrangements for intra-EU trade are suitable enough for the single market or are they an obstacle to maximising its benefits?

Q2. If the latter, what would you consider the most suitable VAT arrangements for intra-EU supplies? In particular, do you think that taxation in the Member State of origin is still a relevant and achievable objective?

The EBF considers appropriate to maintain the current VAT regime for intra-EU supplies. Nevertheless, the EBF agrees with the Green Paper that maintaining this current regime would indeed require improving the VAT application in terms of legal certainty and administrative burdens on intra-EU transactions.

Although the EBF acknowledges the concerns that current VAT arrangements implies significant compliance costs in operating the current destination system and that having an origin system would result in lower compliance costs for traders, the EBF points out that the wide diversity of rates across Member States would not make feasible to introduce the origin system given the 'VAT rate' shopping that would inevitably arise. Furthermore, such a system would still require traders to apply the destination rules to the purchase of services from sources outside the EU besides the fact that for many tax authorities and VAT registered businesses to have to revert to an origin system would bring additional costs and burden on top of uncertainty of new legislation and transitioned implementation. We consider the only option to ponder about taxation at origin would be if a consensus view is ultimately reached that the current destination based model is unworkable.

At this moment, the EBF therefore refrain from envisaging taxation at origin and remains certain of the option to maintain current VAT arrangements.

About the ways to improve the current taxation regime, the EBF considers the following as possible improvements to reach significant benefits:

- Better definitions and explanation of the scope of VAT and the exemptions from VAT.
- Smoother exchange of tax information between Member States.
- Implementing reasonable thresholds before certain requirements must be fulfilled e.g. VAT registration thresholds and higher thresholds for filing EC Sales Listings for services.
- Greater harmonization of the tax base.

5. How to ensure the neutrality of the VAT system

5.1.1. The scope of VAT

Q3. Do you think that the current VAT rules for public authorities and holding companies are acceptable, particularly in terms of tax neutrality, and if not, why not?

The EBF answers this question in regard to taxation of holding companies only.

The EBF considers that the current treatment of holding companies is not acceptable. We understand the current treatment originates from the *Polysar Investments Netherlands (C-60/90)* judgment where the European Court of Justice (ECJ) dictated that a holding company with the sole purpose of holding shares in other undertakings, without involving itself directly or indirectly in the management of those undertakings, without prejudice to its rights as shareholder, does not have the status of a taxable person for the purposes of VAT and therefore has no right to deduct tax. However, we draw the attention to the fact that not all holding companies act in this manner, and, as such, some holding companies are taxable persons; i.e. they have some economic activity which is by virtue of their holdings in undertakings which they actively manage and control. This is a complex area as the activity of a holding company (a company that holds investments in other undertakings) can be sporadic and the level of involvement can vary over time.

As the EBF acknowledges the complexity of this area and the fact that current legislation is outdated in respect of the definition of 'holding companies', as national and international developments suggest there are many forms of companies than can be called a 'holding company' with a number of different economic purposes, we consider a definition or clarification around this subject would provide legal certainty and ensure that any formation considered a 'taxable persons acting as such' would come within the scope of VAT. In addition, the notion of 'taxable person acting as such' within Article 2 (1) (a) of the Directive should be clarified to ensure that the activities of holding companies can be considered to fall within the scope of VAT.

If holding companies were treated in such a manner, the neutrality of the tax would be maintained, as it would put a holding company on the same footing as other companies that hold assets in other undertakings. This has been made more important given the judgement in

AB SKF C-29/08, in which the ECJ ruled that a taxable person may deduct VAT incurred in sale of shares if it results in the disposal of the assets of the undertaking.

Finally, in practice, many holding companies do engage in other forms of taxable activities, such as providing management services to the undertakings they hold. This should be clearly distinguished from holding companies which have a more passive involvement with the undertakings they hold and this could be defined within a new version of Article 2 (1) (a) of a new Directive or Regulation.

Q4. What other problems have you encountered in relation to the scope of VAT?

Q5. What should be done to overcome these problems?

The main problem the banking industry encounters in relation to the scope of VAT is in regard to the significant lack of harmonization between Member States. As expressed by the EBF in previous letters to the European Commission and the different Presidencies, this lack of harmonization leads to lack of transparency and an inconsistent VAT system in the different Member States.

We consider the following as some of the reasons generating this lack of harmonization:

- Different interpretation of the VAT legislation as to what falls inside and outside the scope of VAT.
- Difference understanding and interpretation of terms such as 'taxable person', 'business purpose' and 'economic activity' which can lead to double or zero taxation and also impact on the effectiveness of European Sales Listing.
- The large amount of individual derogations and VAT articles Member States may individually implement.
- Inconsistent application by Member States of the ECJ cases.

In order to correct the lack of harmonization, the EBF recommends:

- To continue the work on the financial and insurance services proposals towards reaching a final agreement in order to create more certainty around the scope of VAT and exemptions.
- The VAT directive should only contain provisions that have to be implemented by Member States into national law rather than giving the option to Member States to implement or not some provisions.
- Harmonize definitions and provide further clarification of unclear terms and definition such as of holding companies, 'taxable person acting as such', 'active' and 'passive' holding companies in conjunction with their frequency of their taxable activities.
- New procedures for obtaining derogations. If a request is approved, the derogation should be applied in all Member States.

5.1.2. Exemptions from VAT

Q6. Which of the current VAT exemptions should no longer be kept? Please explain why you consider them problematic. Are there any exemptions which should be kept and, if so, why?

As the Commission will understand, the VAT exemptions mean that tax is not charged to the purchaser but tax paid on related inputs is not recovered. As a result, exemption results in the over-taxation of suppliers of exempt financial services which are unable to recover significant portions of their input VAT and the under-taxation of final consumers, since price will reflect the unrecovered VAT on inputs. So businesses incur a price element which they cannot wash through their VAT calculation, while final consumers do not pay tax on the full value added by financial service providers.

The continuation of the financial services VAT exemptions is rooted in political and socio-economic considerations, but also around technical and practical issues for the industry¹. In considering the future of any or all of the VAT exemptions, a clearer explanation from the Commission and Member States regarding the objective of Value Added Tax in relation to financial services is required and a clearer understanding of the practical and technical impediments should be obtained from a detailed study. This would provide a rational and objective basis on which to decide which exemptions should continue.

It must be stressed that the possibility for European banks to compete on a level playing field with non-EU banks or other players in the financial sector who are not exempt is even more important today in a globalized world with high-tech IT solutions. We therefore strongly believe that - given that the general exemption for financial services were to be kept - there is a need for changes in the current legal framework in order for banks and others to be able to decrease the costs they have for irrecoverable VAT today.

We believe the situation could be improved if there was a general possibility to opt for taxation or that financial services were zero-rated.

An option to tax provides the supplier with an opportunity to, by exercising the option, to allow for full VAT expense recovery. It would unblock VAT expenses currently blocked within the transaction trail. The tax payer should be given the opportunity to opt on a transaction by transaction basis or for any predefined group or category of transactions.

Zero-rating the supply of financial services to other taxable persons would in the same way solve the problem of non-deductible VAT for the economic sector concerned. It would also give the financial sector the possibility to make full use of the possibilities of increasing their competitiveness thru, for example outsourcing and pooling.

Finally, making cross-border VAT grouping mandatory as well as clarifying and elaborating the current rules for cost-sharing arrangements are two other options which would make the situation for the financial sector more similar to that of non-exempt businesses (see also Q28).

¹ https://editorialexpress.com/cgi-bin/conference/download.cgi?db_name=IIPF63&paper_id=212

Q7. Do you think that the current system of taxation of passenger transport creates problems either in terms of tax neutrality or for other reasons? Should VAT be applied to passenger transport irrespective of the means of transport used?

The EBF will not reply to this question.

Q8. What should be done to overcome these problems?

See answer to Q6.

5.1.3. Deductions

Q9. What do you consider to be the main problems with the right of deduction?

Q10. What changes would you like to see to improve the neutrality and fairness of the rules on deduction of input VAT?

The following are some of the main problems EBF members have to face when dealing with the right of deduction:

- Different methods within Member States to determine the amount of deductible input VAT where both taxable and exempt transactions are rendered. The methods are complicated and it often remains unclear what is deductible. These inconsistencies within the EU as to what is deductible cause distortion of competition between business operators in different Member States reinforcing the negative effect from the lack of neutrality.
- Refunds can take a considerable amount of time.
- Timing differences occur between the right to deduct and when the payment is made. Consequently late-payers receive a cash advantage as the right to deduct arises when the correct invoice is received. The principle of neutrality is broken as the supplier is required to pay the VAT based on the issue of the invoice regardless of whether they have received payment from the customer.
- The current system of partial exemption as it applies to financial services gives rise to a system of deduction that is complex for taxpayers and revenue authorities alike and is applied in an inconsistent manner across Member States. It is accepted that until the technical difficulties with exemption have been overcome, this is unlikely to change.
- Inconsistencies in the calculation of the pro-rata percentage.
- Differences in recognition of volume of exempt services for the purposes of calculating the correct volume of deductible VAT i.e. in the case of sale of securities some Member States take into account the margin earned, while others take into account the total volume of purchase price of the security.

The EBF considers that a proper harmonization in the field of deductions and an indispensable level playing field can only be achieved with the use of one single set of

guidelines to all Member States. Furthermore, it is important that the same VAT treatment applies regardless of who is providing the service, for example outsourcing of services, and that the extent to which financial services companies can recover input VAT should be the same in every Member State.

Additionally, we would like to refer to the possibility mentioned in the Green Paper of a 'cash basis' for both payment of tax by suppliers and the recovery of tax by their customers. Although the EBF acknowledges the merits of the proposal to the extent that a cash basis would (i) improve the cash flow of suppliers who are at a disadvantage where their customers delay payment and (ii) result in the lower loss of VAT to revenue authorities through defaulting traders, the EBF notes its implementation would however not be without cost to the business community who would have to change their IT systems.

5.1.4. International services

Q11. What are the main problems with the current VAT rules for international services, in terms of competition and tax neutrality or other factors?

Q12. What should be done to overcome these problems? Do you think that more coordination is needed at international level?

Due to recent developments, especially to the arrival of online electronic commerce, the need for a coordinated EU position in negotiations with the OECD is evident. As noted in the Green Paper, the Commission intends to deal with this via the VAT Committee. To this effect, we strongly recommend to include businesses as representatives in the VAT Committee to benefit from the knowledge and experience of both Member States and businesses in order to achieve the best possible results.

Additionally, the following are some of the main problems found concerning current VAT rules for international services; each problem is followed by the proposed solutions to overcome these problems:

- Lack of a level playing field among Member State as effect from the difference qualifications of services and the different scope of the financial VAT exemption in each Member State.

Proposed solution:

It is suggested to have more VAT Regulations explaining the VAT provisions of the Directive and a more formal, active and binding role of the VAT Committee in order to create a more broadly accepted and workable set of VAT rules.

- For traders engaged in financial services and who may be established in more than one Member State, a significant problem is the VAT treatment of intra-company and intra-group services.

Proposed solution:

Taxation at the point of consumption should be considered in order to avoid the competitive disadvantage to providers established in non-EU locations and to ensure tax neutrality and fairness of VAT or similar taxes.

To achieve a level playing field there is a need for bi-lateral agreements between the EU and Third-countries, as well as guiding principles from the OECD in the area of VAT on intangible services and an examination of whether VAT can be collected from private persons when consuming intangible services provided by non-EU traders.

Furthermore, to ensure that pan global corporate groups are not in disadvantage, consideration is needed in regards to outsourcing and in-sourcing within corporate groups. Also, it is strongly envisaged the introduction of VAT grouping or cost-sharing arrangements to facilitate the growth of cross border business models.

- Finally, the EBF would like to refer to the issues raised in the Green Paper (section 5.1.4) about checking that VAT is correctly applied and for which VAT collection is particularly reliant on voluntarily compliance by non-EU supplier. In the consultation paper an alternative to encouraging tax authorities to cooperate on VAT at international levels was noted as to seek ways of collecting VAT from private consumers, for example by checking online payments. Although the Green Paper notes this method is under consideration in non-EU jurisdictions such as Canada and being aware that in Switzerland private individuals as recipient become liable to pay tax in some circumstances, we draw the attention to the fact that there is not enough information and a full understanding of the method. Therefore, with the information we have and as we consider this alternative method of collecting VAT from private consumers would imply expensive data processing developments for banks, the EBF would not support at this moment any further consideration to this method.

5.2. What degree of harmonisation does the single market require?

5.2.1. The legal process

Q13. Which, if any, provisions of EU VAT law should be laid down in a Council regulation instead of a directive?

The EBF would like to stress the need for more regulations as we understand that Council regulations are binding in their entirety and directly applicable in the legal systems of all EU countries which differs from current directives which are binding only as to their result in the EU countries named in the directive and the manner in which the directive is given effect in Member States is left to the Member State.

Q14. Do you consider that implementing rules should be laid down in a Commission decision?

The Green Paper suggests that the EU may press for the ability to issue decisions on the basis of majority voting. The EBF is uncertain whether majority voting would appropriately reflect the subject matter expertise or specific industry concerns for particular Member States.

Q15. If this is not achievable, might guidance on new EU VAT legislation be useful even if it is not legally binding on the Member States? Do you see any disadvantages to issuing such guidance?

Guidelines are always helpful. Even if not binding, guidelines will always assist in ensuring legal certainty and even in some Member States such a document would be accepted as legal guidance. However, as there is no further information in the Green Paper about who will issue these guidelines, we consider important to know with certainty who will be the body in charge with this responsibility.

It also needs to be addressed how non-binding EU guidance is to be accommodated in Member States where (binding) case law already exists which conflicts with that guidance. Although, this may be more of a concern in Member States where there is a more rigid system of binding precedent than in civil law jurisdictions, this issue needs to be addressed as it may otherwise work against the desired harmonization of the VAT rules among Member States.

Q16. More broadly, what should be done to improve the legislative process, its transparency and the role of stakeholders in the process, from the initial phase (drafting the proposal) to the final phase (national implementation)?

The following actions would facilitate a broader understanding and acceptance of any proposed legislation, as well as to provide more transparency to the process:

- To establish from the initial phase a more formalized role for the industry by making regular communication with stakeholders mandatory in the legislation process. A formalised procedure could be of profit to both sides; stakeholders would be reassured that their input reaches the official bodies involved but could also help make the European Commission and the Member States aware of the business concerns and thereby aid them in the strive to ensure that all legislation is as practicable and proportionate as possible. One solution would be to form a business consultation group rather like BIAC is to the OECD, where the business experts can help with the understanding of what impact any legislation changes will have to specific transactions.
- To make public the parliamentary proceedings regarding any proposed legislation as well as the debates and decisions taken by the VAT Committee.
- To make the role of the VAT Committee more active and increase its technical level. This enhancement could be achieved by for example changing its actual composition by including members of professional bodies rather than having only VAT technicians representing Member States.
- To make changes that would minimise the need for the courts to make references to the ECJ for determinations on points of EU law and/or speed up the ECJ process.

- To increase the use of Advocate-General's opinions and more detailed reasoning in ECJ judgments to avoid uncertainty as to the potential ramifications of the decision beyond the facts of the individual case.

5.2.2. Derogations and the ability of the EU to react quickly

Q17. Have you encountered difficulties as a result of derogations granted to Member States? Please describe these difficulties.

The EBF will not reply to this question.

Q18. Do you think that the current procedure for granting individual derogations is satisfactory and, if not, how could it be improved?

A genuine level playing field can only exist either without any derogations or when an individual derogation is, after consultation and adoption, made mandatory in all Member States.

5.2.3. VAT rates

Q19. Do you think that the current rates structure creates major obstacles for the smooth functioning of the single market (distortion of competition), unequal treatment of comparable products, notably online services by comparison with products or services providing similar content or leads to major compliance costs for businesses? If yes, in what situations?

Q20. Would you prefer to have no reduced rates (or a very short list), which might enable Member States to apply a lower standard VAT rate? Or would you support a compulsory and uniformly applied reduced VAT rates list in the EU notably in order to address specific policy objectives as laid out in particular in 'Europe 2020'?

The preference leans towards a simplified and uniformed reduced VAT rate format. As said in response to Q1, a major impediment to the implementation of the origin system is the diversity of VAT rates within Member States. The VAT rate structure must be considered when deciding how the EU VAT model needs to develop. If at the end, the EU is to move to this system then this can only realistically be achieved if there is uniformity/harmonisation of VAT rates between Member States. Even in a broader-based taxation model it is likely that there will be areas of political and socio-economic concern where a structure of lower rates may be considered desirable.

5.3. Reducing 'red tape'

5.3.1. The Commission Action Programme for Reducing Administrative Burdens and streamlining VAT obligations

Q21. What are the main problems you have experienced with the current rules on VAT obligations?

The main problems occur due to the high cost of administration and VAT compliance, and the lack of harmonization. More specifically,

- Cost of administration of VAT when operating in multiple jurisdictions and completion of the statement of annual trading details, VAT Information Exchange System (VIES), Intrastat and EU sales lists, European Declaration of Services (EDS).
- Issues around legal certainty due to the large number of derogations.
- Cost of hiring European VAT specialist to meet complex reporting requirements.

Q22. What should be done at EU level to overcome these problems?

The Commission should be looking at simplification measures that remove the scope for fraud rather than increasing reporting requirements. Current measures designed to identify or prevent fraud do not always catch the taxpayers that the measures are designed to target.

From a business perspective, the following are considered crucial steps to reduce the administrative burden on businesses operating in the EU:

- Greater harmonization of the VAT regimes across all Member States will significantly reduce administrative costs for businesses operating in multiple jurisdictions.
- Article 273 allows each Member State to create its own legal framework on VAT accounting requirements. Again, a maximum legal framework could be created in the form of a regulation, therefore giving legal certainty to businesses as to how to comply with VAT accounting in multiple jurisdictions.
- Continue with the Commission's action programme on reducing administrative burdens on businesses, especially the recommendations 6 – 15 (except 11) in the Annex to Communication COM (2009) 544 final. Please also see Q23 on this.
- Harmonize VAT return content across all Member States.
- Consider introduction of single European VAT return.
- Simplifying proofs required for exemption of certain transactions.
- Harmonize IT system's and technology used by VAT authorities to ensure that VAT return processes can be centralized within businesses, e.g. in shared service centres, to avail themselves of economies of scale for businesses operating in multiple jurisdictions.

Q23. What are your views particularly on the feasibility and relevance of the suggested measures including those set out in the reduction plan for VAT (N° 6 to 15) and in the opinion of the High Level Group?

We would support the measures, as well as the additional views, by the High Level Group of independent stakeholders regarding the amount of additional costs on the administration of VAT as a consequence of the VAT package with the only exception of Recommendation 11

as we do not support the introduction of a real-time VAT collection system for the same reasons mentioned in our answer to Q31. In respect of Recommendation 15, we fully agree that the anti-fraud obligations currently at the discretion of Member States should be harmonized and in line with best practice across all Member States.

We would also agree with a maximum list of standardised obligations in Art. 273 if the individual recommendations cannot be implemented. This would achieve a degree of legal certainty and a limit to the administrative obligations national authorities can impose on businesses.

5.3.2. Small businesses

Q24. Should the current exemption scheme for small businesses be reviewed and what should be the main elements of that reassessment?

Q25. Should additional simplifications be considered and what should be their main elements?

Q26. Do you think that small business schemes sufficiently cover the needs of small farmers?

The EBF will not reply to these questions.

5.3.3. Other potential simplification initiatives

5.3.3.1. A one-stop-shop mechanism

Q27. Do you see the one stop shop concept as a relevant simplification measure? If so, what features should it have?

As it is extremely difficult to try to comply with all local administrative rules across the different Member States and in order to considerably decrease the compliance and administrative costs of businesses, we encourage the European Commission to reconsider the option to introduce the one-stop-shop mechanism on a mandatory basis rather than optional as it is now.

This mechanism is a relevant simplification measure, which is currently used on a voluntary basis by non-EU providers of electronic services. In view of the extension of the “one-stop-shop” registration mechanism to EU suppliers of electronic services from 2015, it would seem feasible to envisage a “Single European VAT Return” for *any* business engaged in the supply of goods and/or services in a jurisdiction other than their own country of establishment.

The Single European VAT Return would require a number of generic VAT principles to be aligned across all Member States, first and foremost the format and content of the national VAT return information, as well as a large degree of harmonisation of the administrative obligations in general. In conjunction with the work currently being undertaken within the Commission's programme on reducing administrative burden (Q22 / Q23), this could be an achievable objective within the wider scope of achieving a true Single European Market. Ideally, the Single European VAT Return would also be able to include refund applications

of VAT incurred on travel expenses under both the EU Refund Directive, as well as the EU Thirteenth Directive.

The current Procedure for Refund Directive claims, through the national electronic portals, is partially operational; however the existing electronic format creates additional problems. In line with existing and published proposals, improvements to the current system could include the following:

- Enabling businesses to upload the data in excel format or ability to copy supplier information: currently businesses are required to manually enter the information for every single invoice
- Option to save data: loss of data occurs when the site either crashes or times out
- Increase the capacity of data to be upload: several claims have to be submitted due to the size of the scanned invoices or for the tax authorities to audit the claims
- Online data source for each Member State confirming what can be recovered
- Ability to submit a single claim for all Member States

In summary, the following features should be available:

- Universal VAT return form, one for each Member State
- Harmonized administrative obligations, such as filing frequency, etc
- Uniform technology requirements
- Inclusion of reclaim information of VAT incurred in a Member State where no taxable activities took place in the relevant period

5.3.3.2. Adapting the VAT system to large and pan-European businesses

Q28. Do you think that the current VAT rules create difficulties for intra-company or intra-group cross-border transactions? How can these difficulties be solved?

The application of current VAT rules causes additional VAT costs with respect to intercompany cross-border services within companies with VAT exempt activities such as the financial industry. To meet the objectives of the Commission in reducing costs and to ensure that financial services providers established outside the EU are not put in a position of advantage, the supply of intra-company and intra-group services needs to be facilitated in a VAT neutral way. This could be achieved through the use of VAT grouping and the VAT exemption to cost-sharing arrangements which are the mechanisms available to address tax neutrality. However, the current arrangements around both VAT grouping and cost-sharing are not applied evenly and do not, therefore, work efficiently.

For this reason, it is strongly suggested by the banking industry that mandatory cross-border VAT grouping is introduced within the EU and that the exemption for cost-sharing entities in fact is applied across the EU and that in a uniform way.

A mandatory, correct and uniform application of cost-sharing and VAT grouping across all Member States would effectively address the current cascade cost of VAT on intra-group and intra-company transactions. Especially as the current cost-sharing rules are not precise or detailed enough further elaboration and improvement are strongly required in order to promote a correct and uniform application across the EU. Such an outcome would not be inconsistent with the OECD models for transfer pricing which drive the taxation of corporate

groups and lead to the need for a “charge” to be raised between entities/branches of the group mainly in the international arena but more recently in domestic situations.

In addition to the cost implications of intra-company and intra-group transactions across borders, there are also administrative burdens on companies involved in cross border trade due to the implementation of the VAT Package. For example, statistical reporting and invoicing requirements necessitate more than a basic knowledge of the VAT systems of 27 different Member States. Also, Member States should have confidence in the general reverse charge provisions which were operative for many services for many years prior to the VAT Package changes.

5.3.3.3. Synergies with other legislations

Q29. In which areas of VAT legislation do synergies with other tax or customs legislation need to be promoted?

Whilst it is generally accepted that VAT Directives are stand alone and should be treated as independent of other tax legislation, one of the areas of uncertainty for VAT is the cross-over of product terminology. In this respect, we consider there could be a requirement for defined terms in the VAT legislation that can be read across from other tax legislations, such as the Insurance Premium Taxes. Also, the transfer pricing area can be used, for example, when determining whether a fixed establishment is involved in a transaction.

5.4. A more robust VAT system

5.4.1. Reviewing the way VAT is collected

Q30. Which of these models looks most promising in your view and why, or would you suggest other alternatives?

The Green Paper suggests altering the system of collecting VAT and presents four different models for this. Any of these proposals cannot be considered in isolation due to the potential impact from both a regulatory and civil law perspective. It is recognised that the primary goal behind these models is to reduce the risk of MTIC fraud and the impact on Member States and legitimate taxpayers who are innocently caught in chain transactions. The main reason for the proposals to change the current VAT collecting system is a survey concluding that on average, the VAT gap amounts to 12 per cent of GDP each year. However, for a number of countries the VAT gap is as little as 2-3 per cent in contrast to other countries where it well exceeds 20 per cent.

We believe that the approach taken - to change the collecting system for all businesses across Europe - is not the correct way to proceed. Black market is not dealt with by complicating the rules for all but this problem should be dealt with in other ways. Instead we believe that first of all, a thorough analysis has to be done to look into which reason(s) is/are the predominant factor behind the VAT gap in each country. Then, we suggest that – given the fact that the VAT gap numbers in the Green Paper should serve as a base for the discussion – the starting point should be those countries where the collecting system apparently functions properly. What are the pros of these states’ systems and in which ways can it be copied by those countries where the collection obviously is not working? We believe that complicating the

rules for serious businesses in order to stop black markets is not an adequate method. People and businesses involved in such transactions are not likely to follow the rules but instead we risk having more parallel economies if the system is made even more complicated.

Regarding the four models presented in the Green Paper we would like to leave the following comments:

Optional Split payment Model

Please see the answer on Q31.

Central VAT Monitoring Database Model

According to the Green Paper the model means that all invoice information is sent in real time to a central database, which is runned and monitored by the tax authorities. The model presupposes the use of electronic invoicing by all businesses.

Based on our experience from the recent work with the Invoicing Directive we do not believe this model to be realistic, at least not for the moment. One precondition for increasing the use of electronic invoices is that there is a standardised model which is used thru out the EU. The Commission has given the European Organization on Standardisation ("CEN") the mission to look into these questions. CEN will report back to the Commission by the end of the year. Even if we had a EU-conform model this would not solve the problems with non-EU countries. Cross-border transactions with such countries would still have to rely on paper-based invoices. Also, the member states have very different opinions on the use of electronic invoices and introducing mandatory electronic invoicing is not possible, at least not at the moment. To conclude, a precondition for the Central VAT Monitoring Database model is that we have a standardised European electronic invoicing market. The model also means increased costs and administration for banks and other businesses when developing new systems and in handling both paper-based invoices and electronic invoices. Therefore the model does not decrease the administrative burden for companies but rather the other way around, which is in conflict with explicit national governments' and EU ambitions. We also have our doubts whether the Central VAT Monitoring Database model actually would solve the problems with black market and trade economies.

Data Warehouse Model

In this model, the taxable persons upload predefined transaction data structured in an agreed format into a secured VAT data warehouse maintained by the taxable person. The tax authority would be given direct access to the transaction data of a taxable person in this VAT data warehouse.

Like pointed out in the PWC study this model presupposes that all technical features and requirements of the VAT data warehouse are harmonised across the EU. Otherwise it is not realistic. Also, the model entails an increase in administrative burden and costs especially if the model is made mandatory, which seems like a necessity in order to get some effect.

The certified taxable person model

In this model, a taxable person's VAT compliance process and internal controls would be certified. In order to be certified, the taxable person should have what is called an "Internal Control Framework" that includes a "VAT Control Framework", covering people, processes and technology.

Many questions remains unsolved in regard to this proposal; who shall certify the taxable person and control that it is actually also conformed to. It is very likely that the model would mean extra administration for businesses and tax authorities. The model actually implies that the control of businesses is shifted from tax authorities to the businesses themselves, at the expense of the businesses.

5.4.2. Protecting bona fide traders against potential involvement in VAT fraud

Q31. What are your views on the feasibility and relevance of an optional split payment?

An optional split payment method means - as the EBF understands it - that the customer instructs his bank to pay for the service or goods in question. The bank then divides the payment into two parts; out of which one part is forwarded to the seller and the other part is transferred directly to the tax authorities. This means that the seller does not have the possibility to manage the VAT part as is the case today. We believe that this could in general damage businesses cash-flow by depriving them of the possibility they have today to use the VAT in their business facilitating cash-flow.

As the Commission itself has already recognised, this model would require substantial changes in the way all businesses and tax administrations handle VAT. Moreover, it would require banks in particular to change existing IT-based payment and transfer systems. Not only would the model of collecting taxes need to be amended but it would also be necessary to make substantial changes in national civil law regulations. Assuming a bank has to be authorized to pay to its customer only the net amount and to pay the VAT amount directly to the customer's revenue office. This can only be done by implementing new national civil law regulations. Furthermore, all forms used in the existing payment and transfer system have to be changed, requiring a complete change in the banks' current IT-systems. We anticipate that any such solution would give banks a right to compensation for costs occurred. Regarding cash payments, cheque and credit card transactions even further problems would have to be addressed.

We have concerns and would urge the Commission to undertake a more detailed evaluation before considering whether this is a viable proposition. There is in our view a considerable level of uncertainty on the legal and contractual implications this proposal will have including what additional risk financial institutions will be exposing themselves to in the event of non-compliant and errors. Moreover, the cost of IT changes has not been fully appraised and will need to be determined, including the question on who should bear this cost. We are concerned that if implemented, it would be the financial industry which has to bear the major part of the burden, a business sector which mainly renders largely VAT exempt financial services. Accordingly, we remain unconvinced on the merits of this proposal and consider this measure to be disproportionate to the objective to fight against VAT fraud. If cash payments would not be possible, the method would actually function in a very limited area. Instead we fear that new black markets would be created, increasing the payments in cash in order to avoid VAT. We therefore believe that the method in question is not realistic.

5.5. An efficient and modern administrating of the VAT system

Q32. Would you support these suggestions to improve the relationship between traders and tax authorities? Do you have other suggestions?

The EBF agrees with the importance given to improve the relationship between traders and tax authorities as they share the important objective of collecting the correct amount of tax. Given the importance of this issue and its consequences, we ask for further clarity and more detailed information about the measures the European Commission intends to envisage as we consider the information found on the Green Paper is not enough to provide a formal answer.

5.6. Other issues

Q33. Which issues, other than those already mentioned, should be addressed in considering the future of the EU VAT system? What solution would you recommend?

- Harmonized VAT rules across the EU.
- The consistent application of the cost-sharing arrangements set out in Article 132 (1)(f) needs to be addressed as part of a review of the EU VAT system. The cost sharing arrangements should be set out clearly in a new model with regulations explaining how they would work in practice and including an EU-wide application of the exemption for cost sharing entities.
- Consistent application of VAT grouping rules, including consideration of cross-border VAT grouping mechanisms.
- It is essential for all sectors, including the banking industry, involved in the use of exempt services that the issue of outsourcing is properly addressed and a full and clear solution is given as to what the extension of the exemption is to those outsourced services.
- The removal of the intervention regulation, which has created complexity and increased tax costs for companies that supply services cross border.
- The capital goods scheme as set out in Article 187 needs to be addressed to ensure uniform treatment across the EU Member States and simplified to ease the administrative burden. In the same way, the EBF considers important to have Article 187 available and implemented in the same way across the EU.
- The option to tax for financial services needs to be addressed to ensure uniform treatment as well as creating a workable model in all Member States to ensure both the neutrality of the tax across the EU but one which can be applied without a large amount of administrative effort and expensive computer system changes. Various models for the option to tax have been reviewed over the years and more recently the

EBF undertook a study² in conjunction with Ernst and Young and the final paper was presented to the Commission.

- The option to tax for immovable property needs to be addressed to ensure uniform treatment as well as creating a workable model in all Member States. This will obviously need to be carried out in conjunction with the capital.

² [http://www.ebf-fbe.eu/uploads/documents/publications/Reports/Others/D1925_EBF - EY Final Report.pdf](http://www.ebf-fbe.eu/uploads/documents/publications/Reports/Others/D1925_EBF_-_EY_Final_Report.pdf)

APPENDIX 2: IDENTIFICATION OF THE STAKEHOLDER

- **Name and address of the respondent, relevant contact details (including email address for contact)**

European Banking Federation (EBF) aisbl
Rue Montoyer 10
1000 Brussels – BELGIUM

Contact person: Francisco Saravia
Tel. +32 (0)2 508 37 28
E-mail: f.saravia@ebf-fbe.eu

- **If you are registered with the Commission as an "interest representative"³ your identification number**

4722660838-23

- **Are you a recognised European social partner organisation or a representative of a European (sectoral) social dialogue committee**

Yes

- **Field of activity of the respondent. Please specify your field of activity. Please indicate if you are directly affected by any of the measures and if so, which one and to what extent:**

Banking

- **If the respondent is an association of stakeholders, how many members do you represent and what is your membership structure?**

+/- 5.000 member banks; European Federation whose members are national associations

- **Do you object to publication of personal data on the grounds that such publication would harm your legitimate interests?**

No

- **Do you agree to having your response to the consultation published along with other responses?**

Yes

³ <https://webgate.ec.europa.eu/transparency/regrin/welcome.do?locale=en>