

# AMICE Response to the Commission consultation on the review of VAT rules for financial and insurance services

## Your experience with the current rules

**Question 20. The exemption of financial and insurance services from VAT was introduced in 1977 as an exception to the general rule that VAT is to be levied on all services supplied for consideration by a taxable person. To what extent do you agree that the exemption is still needed?**

- Strongly agree
- Agree
- Neutral
- Disagree
- Strongly disagree
- Not sure

**Question 21. In general, how would you assess the functioning of the exemption of financial and insurance services?**

### **The exemption...**

- ... works very well
- ... works well, but could be improved
- ... works poorly and should be improved
- ... should be removed No opinion

**Question 22. Please indicate the reason(s) why.**

### **The exemption...**

- ... is too costly to apply
- ... is too complex in terms of notions (structural provisions and the definition of exempted services)
- ... is not clear in terms of notions (structural provisions and the definition of exempted services)
- ... may have a distortive effect on competition with businesses in other Member States
- Other
- No opinion

**Question 23. Please indicate which other reason(s).**

The provision of insurance services/products is VAT exempt but subject to insurance taxes applied on a state basis. If the current VAT exemption is removed, the insurance tax should be abolished in order to avoid double taxation.

The interpretation provided by the Court of Justice of the EU in its recent case law modifies the understanding of the VAT rules and thus, the established situations. This results in further legal uncertainty and divergent interpretation by Member States resulting in distortion in tax competition within the EU.

One example among others is the concept of exempt activities carried out by insurance intermediaries which may in be in contradiction with the rules on insurance distribution.

**Question 24. How do you estimate the impact of the lack of input tax deduction and hidden VAT?**

- They create a price barrier to outsourcing
- They undermine the level playing field between providers of outsourced services and in-house providers
- They affect the business structures of those operating in the financial and insurance sector
- They increase the costs for business customers
- They increase compliance costs
- They undermine the competitiveness of the sector
- Other
- Do not know

**Question 25. Please indicate which other reason(s).**

N/A

**Question 26. The compliance with VAT rules can be more difficult when supplying financial and/or insurance services cross-border. How do the factors listed below contribute to that effect?**

	Not at all	Somewhat	To a large extent	No opinion
Difficulty of finding information on VAT obligations in other Member States		<b>X</b>		
Different interpretations on definitions of exempted services		<b>X</b>		

Different rules for opting to tax			<b>X</b>	
Availability of VAT grouping		<b>X</b>		
Availability of cost-sharing arrangements			<b>X</b>	
Different deduction methods		<b>X</b>		
Different VAT obligations in other Member States			<b>X</b>	
Other		<b>X</b>		

**Question 27. Please indicate which other factor(s).**

IPT has an impact on cross-border provision.

Regarding VAT grouping, currently, the complexity arises from the different interpretation throughout the EU. In some Member States, the conditions are interpreted in a flexible way, while in others there is a strict application. Thus, we believe it is important to extend the availability of VAT grouping in all Member States in order to avoid any competitive distortion.

**Question 28. Do you think that the current rules hinder the development of cross-border supplies of financial and insurance services?**

- Yes  
 No  
 Do not know

**Question 29. Please indicate the reason(s) why.**

- Regulatory ecosystem too complex  
 VAT rules for financial and insurance services too complex  
 Discrepancies across VAT treatment by Member States  
 Other

**Question 30. Please indicate which other reason(s).**

The cross-border supplies are rather prevented from the different regimes of insurance tax. While some Member States have a tax rate of 0%, others have higher tax rates.

**Question 31. To what extent are the foreign VAT rules for financial and insurance services important when deciding whether to establish your business in a specific Member State?**

N/A

**Question 32. Which of the structural provisions listed below do you apply?**

N/A

**Question 33. Please indicate which other provision(s).**

N/A

**Question 34. The exemption was put in place i.a. due to the technical difficulty to calculate the taxable amount. To what extent do you agree that progress in technology, enhanced transparency rules and experiences gained from other countries and from other indirect taxes could help overcome this issue?**

- Strongly agree
- Agree
- Neutral
- Disagree
- Strongly disagree
- Do not know

**Question 35. Do the current VAT rules for financial and insurance services result in prices lower than those that would apply if these services were taxed?**

- Yes, but just for final non-taxable customers
- Yes, for all customers
- In part, due to other similar taxes
- No
- Do not know

**Question 36. To what extent are the current structural provisions effective in increasing the deduction of input tax and reducing the impact of hidden VAT?**

	Not effective at all	Somewhat ineffective	Neither effective nor ineffective	Somewhat effective	Very effective	No opinion
Option to tax				<b>X</b>		
VAT grouping				<b>X</b>		

Cost-sharing arrangements				<b>X</b>		
Proportional deduction				<b>X</b>		

**Question 37. VAT provisions related to financial and insurance services can be perceived as complex. For which of the current structural provisions is that correct?**

- Option to tax
- VAT grouping
- Cost-sharing arrangements
- Proportional deduction
- None

**Question 38. To what extent do you agree or disagree with the following statement: The lack of input tax deduction is detrimental to the financial and insurance sector. It compels the sector to outsource services which are typically provided in-house, thus raising the costs.**

- Strongly agree
- Agree
- Neutral
- Disagree
- Strongly disagree
- Do not know

**Question 39. Unless you make use of the option to tax, does your business incur any costs related to irrecoverable (hidden) VAT?**

N/A

**Question 40. To what extent do you agree that the current VAT rules are fit to cover emerging trends in the industry (such as digitalisation)?**

- Strongly agree
- Agree
- Neutral
- Disagree
- Strongly disagree
- Do not know

**Question 41. The VAT treatment of emerging trends under the current VAT rules for financial and insurance services can be problematic due to unclear definitions for VAT purposes. In connection with which of the emerging trends listed, do you consider this correct?**

- Services provided by means of fintech
- E-money
- Services linked to crypto-assets (such as mining)
- Payment services
- Other
- Do not consider it problematic
- Do not know

**Question 42. Please indicate which other trend(s).**

N/A

**Question 43. The regulatory framework in the financial and insurance sector (e.g. the Markets in Financial Instruments Directive (MIFID) and the Insurance Distribution Directive (IDD)) has strengthened the role of intermediaries. Do you consider the VAT exemption to be coherent with this development?**

- Yes
- No
- Do not know

### **Possible changes to the current rules**

*The Commission is intending to prepare a proposal that will seek to modernise the current VAT rules for financial and insurance services. Your answers will feed into the review of these rules.*

**Question 44. In your view, which would be the best way to reform the rules on exemption?**

- Update definitions of exempt services drawing on the extensive CJEU case law in the field of VAT
- As regards the definitions, refer to other EU regulations governing the financial and insurance sector
- Removing the exemption, so that definitions will be no longer needed
- Other
- Do not know

**Question 45. Please indicate which other way(s).**

If the VAT exemption is abolished, the insurance tax at state level should be removed as well. Otherwise, there will be a double taxation of the same services.

Broadening the definitions

Insurance companies – especially small and medium-sized ones - would use outsourcing to get part of services forming part of their activity from specialized providers leading to more efficiency and reduced costs.

Possible outsourced services that are to be considered specific and essential to carrying out insurance business should be: underwriting of risk, risk management, insurance company administration, policy administration, product development, marketing, and claims handling.

With the current definitions, such services are not exempt (CJEU C 40/15 Aspiro; C-8/01 Taksatorringen) with a significant difference with analogue situation in financial services due to the different wording in Article 135(1)(a) referring only to insurance transactions in respect to Article 135(1)(d) and (f) which refers to transactions “concerning” or “relating to” certain banking operations. Such difference is not justified.

A new and wider definition for exempt insurance operations would allow companies to be more efficient and avoid dispute with tax authorities.

In some Member States (e.g. Italy), the tax authorities have challenged the application of the exemption even to services rendered by coinsurers and reinsurers.

**Question 46. The removal of the exemption for financial and insurance services could benefit the neutrality of the VAT system. What could be other effects of such a removal?**

- Simplification in the application of the VAT rules for financial and insurance services
- Lower VAT compliance costs
- Less distortive effect of the exemption on competition linked to suppliers from non-EU countries operating in the EU
- Higher VAT compliance costs
- Higher complexity of VAT rules
- None
- Other

**Question 47. Please indicate which other effect(s).**

- The risk of double taxation with IPT and VAT to be avoided by abolishing IPT.

**Question 48. If only fee-based financial services were to be taxed, in relation to which of them would it be difficult to determine the taxable amount?**

In a way it would probably be easy to determine the VAT for insurance premiums relating to non-life insurance whereas pension and life insurance schemes with a significant savings component could likely be more difficult to determine.

However, it is important to remember that a premium of a risk insurance is not a fee. Premiums of a risk insurance contain two components:

- The first component is the portion of the premium which is transferred to a pooled fund and invested to cover the insured risks.
- The second component is the portion which reimburses the insurer for administering the pooled fund.

From a VAT perspective, it is only the second component that should be included in the taxable amount. VAT should apply to the insurer's value added which is essentially the difference between the amount of premiums collected and the amount of paid compensation.<sup>1</sup>

**Question 49. Financial service providers may currently opt for taxation and obtain the right of deduction, but it is up to each Member State to introduce such option. Should Member States keep that discretion?**

- Yes
- No, it should be available in all Member States
- No opinion

**Question 50. Not having a right of deduction when supplying exempt financial and insurance services impairs the neutrality of VAT. To what extent would you support or oppose the introduction of a fixed rate of input tax deduction to remedy that effect?**

- Strongly support
- Support
- Oppose
- Strongly oppose
- No opinion

**Question 51. If a fixed rate of input tax deduction was introduced, should such a rule remain optional for operators or, alternatively, should it be mandatory?**

- It should be optional
- It should be mandatory
- No opinion

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<sup>1</sup> In Australia the Goods and Service Tax (GST) is collected on the value added of goods and services provided to consumers. The value added is the difference between the amount of premiums collected by an insurer (and any interest which is earned) and the amount of insurance payouts made by the same insurer  
<https://treasury.gov.au/sites/default/files/2019-03/4gst.pdf>

**Question 52. Should cost-sharing agreements be made available to the financial and insurance services sector?**

Yes

No

No opinion

**Question 53. In your view, should businesses established in other Member States be allowed to form part of the cost sharing arrangements?**

Yes

No

No opinion

**Question 54. Please indicate the reason(s) why.**

To achieve a more level playing field for businesses

To boost competitiveness of financial and insurance service providers

To reduce the tax burden and the administrative costs of businesses operating at cross-border level

Other

**Question 55. Please indicate which other reason(s).**

- Cost sharing arrangements should be possible to use when there is a mark-up because of Transfer Pricing or Income tax regulations (as those regulations in general do not allow pricing based on self-cost).
- To offer an effective alternative to the VAT group regime.

**Question 56. Please indicate the reason(s) why.**

To open up the cost sharing arrangements exemption cross border would negatively affect the revenues of Member States having introduced the exemption

Because cost sharing arrangements mostly operate in the national market of their own Member State

To open up the cost sharing arrangements exemption may encourage cross- border operations and establishments in Member States whose tax administration are more flexible and, consequently, increase the competition between Member States

To open up the cost sharing arrangements exemption would increase administrative costs for stakeholders and Member States' tax administration, derived from increased controls and audits

Other

**Question 57. Please indicate which other reason(s).**

N/A

**Question 58. Which is the most beneficial aspect of establishing VAT groups for providers of financial and insurance services?**

	Not beneficial at all	Somewhat detrimental	Neither beneficial nor detrimental	Somewhat beneficial	Very beneficial	No opinion
It is optional					<b>X</b>	
Intragroup supplies are out of scope and therefore not taxed					<b>X</b>	
VAT compliance costs are lower for the members of the group as they are pooling them					<b>X</b>	
It is easier to outsource the activity through a single taxable person			<b>X</b>			
VAT grouping increases the competitiveness of the sector by reducing hidden VAT					<b>X</b>	
Other						

**Question 59. Please indicate which other aspect(s).**

N/A

**Question 60. Which is the most effective way to reform the rules for financial and insurance services in your country?**

	Not effective at all	Somewhat ineffective	Neither effective nor ineffective	Somewhat effective	Very effective	No opinion
Remove the exemption and tax financial and insurance services at a standard rate	<b>X</b>					
Remove the exemption and tax financial and insurance services at a reduced rate	<b>X</b>					
Tax only fee-based services at a standard rate	<b>X</b>					
Tax only fee-based services at a reduced rate	<b>X</b>					
Grant businesses the option to apply VAT						<b>X</b>
Grant businesses the right to constitute a VAT group in every Member State					<b>X</b>	
Make cost-sharing arrangements available to the sector in all Member States					<b>X</b>	
Other				<b>X</b>		

**Question 61. Please indicate which other reform(s).**

- Abolition of IPT
- Where financial and insurance services are taxed, deduction of input VAT is possible.

## **Further comments**

***Question 62. If you wish to add further information within the scope of this questionnaire, please feel free to do so here.***

AMICE welcomes the Commission's initiative to update VAT rules for insurance services and to address the issues identified in its roadmap – the lack of tax neutrality, legal uncertainty, high administrative/regulatory costs.

We believe that the VAT exemption should be maintained. Any repeal of the VAT exemption should be accompanied by the removal of taxes on premiums at Member State level.

If VAT on insurance products is introduced, this would require a VAT tax rate matching the current insurance tax rate while abolishing the insurance tax simultaneously. The positive effect of being entitled to reclaim input VAT would otherwise not be outweighed by the negative effect of creating a risk of double taxation. This would lead to an increase of prices for insurance products and more costs applied to policyholders who would have to handle the economic burden in the end. Moreover, the insurance sector is already highly affected by the low interest rate environment, any increase of costs would tighten the current situation and would increase the pricing pressure on insurers.

VAT groups have been an efficient way to allow insurance services to operate in groups instead of individual companies. The current wording of the VAT Directive uses undefined legal terms for integration ("closely bound by financial, economic and organisational links"). This results in divergent application across Member States. Some flexibility when setting up a VAT group should be introduced at EU level. It is important that the three links are interpreted in a holistic way. Not all links (in particular the financial link) have to be fulfilled to the same extent and they don't need to have the same weight. Sometimes there won't be strong financial links but there will be strong organisational links. In some countries, for mutual insurance companies, it is not always possible to fulfill the financial link if it is defined as a percentage of participation in the capital or in voting rights.

***Question 63. If you wish to upload a concise document, please do so below.***

# Accompanying document | Review of VAT rules for financial and insurance services

AMICE welcomes the Commission's initiative to update VAT rules for financial and insurance services and to address the issues identified in its roadmap – the lack of VAT neutrality, legal uncertainty, high administrative and regulatory costs. It is essential to ensure a level playing field in the interest of European consumers and to contribute to the smooth functioning of the EU internal market.

We believe that the VAT exemption should be maintained. Any repeal of the VAT exemption should be accompanied by the removal of taxes on premiums at Member State level. Some countries have 0% tax rate, while others charge higher rates. This situation should be taken into consideration if changes are introduced to VAT liability or replacing insurance tax by VAT.

If VAT on insurance products is introduced, this would require a VAT tax rate matching the current insurance tax rate while abolishing the insurance tax simultaneously. The positive effect of being entitled to reclaim input VAT would otherwise not be outweighed by the negative effect of creating a risk of double taxation. This would lead to an increase of prices for insurance products and more costs applied to policyholders who would have to handle the economic burden in the end. Moreover, the insurance sector is already highly affected by the low interest rate environment, any increase of costs would tighten the current situation and would increase the pricing pressure on insurance undertakings.

In addition, it would be important to update definitions of exempt services taking into consideration other regulations applicable to the insurance sector. In some national tax regulation, the VAT-free insurance services are very tightly defined which causes that insurance related services both for insurance companies' own purposes as well as provided for customers include VAT.

Outsourced activities, such as underwriting of risk, risk management, IT, marketing, product development, claims management etc. which are essential to carrying our insurance business should also benefit from VAT exemption.

We would welcome the possibility of a fixed (flat) rate of input tax deduction to remedy the absence of input VAT reclaim.

## **VAT Groups**

VAT groups have been an efficient way to allow insurance services to operate in groups instead of individual companies.

The current wording of the VAT Directive uses undefined legal terms for integration (“closely bound by financial, economic and organisational links”). This results in divergent application across Member States. Some flexibility when setting up a VAT group should be introduced at EU level. It is important that the three links are interpreted in a holistic way, looking at the economic and organisational reality and taking into account the specific circumstances of the entities looking to be grouped. The linking factors can exist in different forms depending on the circumstances and reflecting the economic reality. Therefore, not all links (in particular the financial link) have to be fulfilled to the same extent and they don't need to have the same weight. The overall picture of the economic activity and the economic reality is decisive. Sometimes there won't be strong financial links but there will be strong organisational links. In some Member States, for mutual insurance companies, it is not always possible to fulfill the financial link if it is defined as a percentage of participation in the capital or in voting rights.

We have answered that VAT-grouping is “Somewhat effective” in question 36 and has marked that VAT grouping can be perceived as complex in question 37. The answers are based on the perspective of those countries in which the VAT grouping rules are not applicable for mutual insurance companies (e.g. Germany). However, we do want to highlight that VAT grouping is considered as very effective and are not perceived as complex in EU Member States where mutual insurance companies can apply VAT grouping (e.g. Sweden). This further illustrates the need of flexible VAT grouping rules throughout the EU and the necessity of a holistic interpretation of the financial, economic and organizational links in order not to discriminate certain company forms.

### **General input about Insurance**

The Commission’s stakeholder consultation note is written mostly with a financial prospect. The prospect of the value adding of a risk insurance is not enough considered. The premium of a risk insurance is not a fee according to our arguments above (see Q48).