

SUNDAY, 15 MAY 201

**DRAFT**  
**CFE response to the VAT green paper**  
**consultation**

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## A. Introduction

- 1 The European Commission launched a questionnaire dealing with the future of the VAT. In the subtitle the authors addressed unmistakably the goal of this undertaking, the VAT –system should be simpler, more robust and efficient. Simultaneously the Commission released a comprehensive working paper which deserves to be regarded as a well reasoned and excellent compilation of all the problems which currently affects business operators carrying out transactions within the scope of the VAT rules.
- 2 CFE will take part and will prepare the most appropriate answers for the benefit of its members. However, since the business environment has changed significantly, we now undertake a different concept: while in the past more or less isolated opinions furnished in technically excellent documents were sufficient and welcomed by the Commission, this time CFE would do better to find strategies to reconcile its valuable views with the most of the other representatives of stakeholders in Brussels. This does not necessarily mean to dilute most of the answers, but there should be taken the opportunity to share views and produce also a working paper in which the vast majority of the answers are carefully reasoned from a technical, economic and to a minor extent political perspective. Additionally, the paper shall be used for internal purposes as well in order to satisfy needs of the experts who, although highly technically skilled and really dedicated to European issues, would welcome guidance on how to make the most of the inputs. This joint approach will be more helpful than the traditional approach of submitting separate opinion statements. Many of the delegates represent in first place their own member organisation and of course experiences which have been obtained out of their jurisdictions. This is essential on the one hand for the reflection of all of the problems, on the other hand it means the scope of arguments requires a broader basis taking into consideration deviations caused by languages as well as administrative historical approaches of the tax administrations of the Member States.
- 3 Although they are full members of the Confederation Fiscale Européenne, the Swiss delegates will submit a separate report address the various questions specifically from a Swiss perspective.
- 4 In the explanations we shall also take care of the needs of the different kinds of industries. While the position for the simplification for Pan European groups can easily be championed as an excellent idea, smaller businesses which do not (yet) operate pan-European must also benefit

from a reform of the VAT system.. But one fact which will always be of a mere European nature is the circumstance that a single market should be established by Members using actually 23 and in a not so distant future, possibly more languages. That means 22 (23) or more statutes have to be translated into the different languages always being a source of misunderstanding and an obstacle for a smooth promotion of the single market. No other single market compares to Europe to this extent especially vis a vis to the tax administrations executing European guided law. For our daily work this means our efforts should not too much focus on the solution of complicated technical issues. This means we shall undertake to foster the reduction of compliance exposures and additionally to borrow more efficiently the improving process of the customs law concerning unified single returns as well as the implementation of what is called a “single window concept” by using all of the electronic means to obtain both a smart compliance and access for the control needs of the tax administration.

- 5 Our outlines follow the concept of the questionnaire and the working paper, dividing the list of questions into 16 different chapters. We also elaborate our reasoning’s in a corresponding format and will address the arguments which were laid down in the documents of the Commission. VAT treatment of cross-border transactions within the single market.

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### **Justification of the current system**

- 7 Complaints about the complexity of cross border transactions are heralded through all of the groups of operators as well as experts round Europe. However, criticism addresses always the same issues. But until now, nobody appreciates what could be achieved in Europe. The major obstacles are that 27 different administrations using 22 different languages are responsible for administering VAT. Having this in mind, and looking back 19 years, the status of the current system is the best we could accomplish, well guided by the Commission. But there is a need to improve the system permanently. The easiest undertaking would be to introduce the triple “Os”, One language, One legislator and One European administration. Of course, such approach is unrealistic.. Compared to the fruitless initiatives in other common markets, like the US, Europe has not done so as badly ([www.streamlinedsalestax.org](http://www.streamlinedsalestax.org)).
- 8 The current system puts most of the obligations and exposures onto the back of the business operators. But it is a logic consequence of their actions. They are acting international, while the

administrations are locked in their domestic frames and only few people have international experiences attending the Fiscalis network or are part of an international department. Thus apart from any technical improvements, an enhancement of cooperation of the administrations is a must. A second point is that we have to find a way to overcome the language differences not only as the translations of statutes are concerned. Any document as invoices or VAT returns written in a foreign language becomes a “*non valeur*” for controlling purposes especially for the tax administrations. So we have to think about a technique to harmonize both the format of the returns and maybe to encode subjects of transactions, supplies of goods and services, as well as procedural aspects, as the customs world did. We have to learn to think about how we can make underlying documents more understandable for all of the involved people, irrespective from where they are hailing.

- 9 The volume of the entire intra EU-27 external trade is roughly € 2.5 trillion (figures represent 2007, source: Europe in Figures 2009, table 10.11) and the extra external trade counts for € 1.2 trillion (source: table 10.10). The entire volume of the intra EU – 27 trade in services amounts to EUR 600 bill.(figures represents 2006; source: 10.4 table), while the extra EU – 27 trade in services contributes with EUR 441 bill. to the GDP

## 1.1 Concepts of systems

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According to article 113 TFEU (ex -Art. 99 of the EEC Treaty and Art. 93 of the EC Treaty) the Council shall adopt, [...]provisions for the harmonization of legislation concerning turnover taxes, [...] to the extent that such harmonization is necessary to ensure the establishment and the functioning of the internal market and to avoid distortion of competition.

- 11 The originality of the European VAT is its objective to supplement the abolition of customs duties on trade between European countries and the prohibition of the State aids, and by this way to eliminate artificial distortions of price that prevented an optimal allocation of production factors in a single market <sup>1</sup>. The primary objective is the internal market and the elimination of

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<sup>1</sup> Art. 113 TFEU (ex Art. 99 of the EEC Treaty and Art. 93 of the EC Treaty) provides that the Council shall adopt, [...]provisions for the harmonization of legislation concerning turnover taxes, [...] to the extent that such harmonization is necessary to ensure the establishment and the functioning of the internal market and to avoid distortion of competition.

obstacle of whatever nature on the trade between the businesses established in various EU Member States and consequently allow an optimal allocation of resources. The collection of taxes is a secondary objective. Although the European VAT is a consumption tax, it's essential characteristic the "non- taxation of the production of goods and services" .

- 12 The efficiency of the European VAT as tool in order to collect taxes is based on the combination of various factors: first, the use of the invoice as the base for reporting obligations that are more frequent and detailed than most of other taxes. Second the financial liability /incentives on producers and third, the fractionated payment. However, the fractionated payment mechanism has made the system sensitive to aggressive types of frauds, ao the missing trader fraud.
- 13 Before the inception of the internal market some of the MS fostered the implementation of the origin system that is to be found in the First VAT Directive of 1967, but whose economical and political reasons seems to be much older and cannot be anymore understood from in the current context. Any attempt to implement this system was rebuffed by the majority of the MS for seriously motivated technical reasons<sup>2</sup>. Already the introduction of an intra-community revenue split system which would have been inevitable to balance the mismatch between net-exporters and net-importers proved an insurmountable obstacle, not to mention the issues of control-sharing among MS and the consequences for the individual budgets of the MS. We believe that such a system has lost supporters and should not be discussed further.
- 14 From a practical perspective, the question whether the VAT is paid by the taxable person to the tax authorities in the country of origin or in the country of destination is less important than the legal certainty, the reduction of administrative compliance charges and the protection of the bona fine trader against missing trader fraud. The system of the VAT in the country of origin is probably the consequence of legal controversies anterior to the introduction of the VAT, and probably even the creation of the Common Market, and it is not an economic objective as such. We believe that such a system of VAT in the Country of Origin has lost supporters and should not be discussed further.
- 15 (The taxation of intra – Community supplies in the country of destination is already in place by the either the accounting of the acquisition VAT or the reverse charge in cases of the supply of

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<sup>2</sup> Conseil, Bruxelles 5 février 1988, 4393/88, Fisc 11, Résultat des travaux du Groupe des Questions financières en date des 21 et 22 janvier 1988, mécanisme de compensation de la TVA

services. Both concepts are cashless transactions and part of the reporting compliance. This system is favouring missing trader fraud and has forced the Member States to adopt individual measures that increase the compliance costs and the legal uncertainty.

- 16 ( The idea to scrap differences between domestic and intra – Community supplies could be accomplished with a cashless VAT for domestic transactions by introducing a total reverse charge. This concept was thoroughly examined by Germany and Austria five years ago and it is still supported by some members of the Fiscal Committee of the CFE. But such a system will only work well if the retail sector is organised mostly by supermarket chains. The latter cannot be considered to be leaking the system because of organisational reasons. In economies with less small retailers the risk on the market side is a little one. On the supply side risks remain to exist. Such market conditions would open an opportunity for total reverse charge, but there is only one country (Austria) which is not exposed by a sales tax effect due to its outstanding dominance of big chains in the retail industry (Recommendations of the Council, OJ L 195, August 23<sup>rd</sup> 2003, 43).
- 17 Another concept that has lead to lively discussions within the Fiscal Committee of the CFE, is to make no difference between domestic and intra-Community transactions by charging VAT in any case at the rate and under the rules of the Member State of destination. This would indeed restore the principle of fractionated payment for cross-border transactions and deal with the current system’s endemic vulnerability to fraud on goods (with the exception of “tradable services”). The option to follow the movement of the goods leads to major complexities and difficulties in registration in Member States where a business has no presence at all in such Member States and therefore it is disconnected from the accounting procedures. On the contrary, taxation of intra-community supplies of goods and services following the invoices, ie at the customer’s place of fixed establishment would deserve special attention. Such a system would build on existing concepts of establishment and identification and could be introduced without major structural changes. Although this should be clearly investigated, it is not certain that such a system would require major changes from both the tax authorities and the business. Of course, this would require an certain improvement of the administrative cooperation procedures (how to catch a fraudster established in another Member State when this fraudster has not paid the VAT ? Procedure allowing business to obtain the recovery of VAT in case of absence of payment of invoices by customers, etc) and an improvement of the current IT systems regarding verification of the VAT ID number of foreign taxable persons (by

permanently updating such a database, by adding some information such as the address and the bank account, etc) and the practical functioning to such a database. In addition, like it is the case today, non EU acquirers/ suppliers should register in a EU Member State. The situation may be more complex for services rendered to non - business, but the One Stop Shop provisions applicable as from 2015 would probably solve most of the problems. This system could be easily monitored by the existing recapitulative statement and would not require additional VAT identification procedures. It would seriously simplify the compliance procedures for business active in global markets requiring global sourcing and a global supply chain. This system would not require any approximation of tax rates. In addition, the taxation of intra-community supplies would reduce the risks of the bona fide trader of being involved in missing trader frauds (even if taxation of intra-community supplies is not an appropriate tool in order to limit fraud in some particular sectors such as tradable services, precious metal, etc where it should be envisaged to create new legal concepts).

- 18 Other members of the Fiscal Committee consider that such a concept could fit, possibly after advanced techniques are in place and a one stop shop, or like customs a single window feature is established.
- 19 Some members of the Fiscal Committee fear that taxation of intra-community operations at the rules and the rates of the country of destination are likely to impose extra burdens on business, especially if substantive VAT law is not completely harmonised, since procedures are going to be needed to cater for the different ways that different states tax supplies. These extra burdens may in turn discourage intra-community trade. They also argue that it is questionable how far such a change will reduce fraud, since it will always be possible to commit an MTIC type of fraud by acquiring the goods or services from a third country (even the supporters of the taxation of all intra-community operations admit this). The Green Paper is based on the assumption that MTIC type fraud is generally caused by customers' immediate suppliers. In the UK, in virtually all the cases the fraudster is commonly many transactions away. Indeed he is often many chains of transactions away. It is argued that unless procedures can be put in place that ensure that VAT is accounted for when goods or services enter the EU, any such changes are unlikely to have the effect of removing concerns about fraud in the system.

## 1.2 Technical mismatches which currently are at stake

- 21 Many technical obstacles are hampering smart operations in the single market. The reasons for that are simply different perceptions created by language, administrative, historical traditions, environments of resilience strings, the absence of adaptation of some procedures to the internal market (such as, for example, follow the movement of the goods while actually the monitoring is a of pure documentary nature) . The following list is not complete but highlights the needs for improvement.
- 22 Determination of the person liable of the payment of the tax (see for example, Opinion Statement of the CFE on persons liable for payment of VAT to the tax authorities regarding operations taking place in one Member State Submitted to the European Institutions in February 2011).
- 23 VAT registration formalities in another Member State.
- 24 Prefinancing costs when buying local advice in another MS are so significant that it constitutes a trade barrier.
- 25 Danger of missing trader fraud and the exposure for honest market participants (see for example, . See Opinion Statement of the CFE on the consequences of involvement in missing trader fraud Submitted to the European Institutions in February 2011)
- 26 Uncertainty to be eligible for VAT exemptions. Administrative costs in order to prove zero rating for intra – community supplies and exports. Different treatments of the requirements for the deduction of input VAT.

## 1.3 Question 1

- 27 The arrangement needs permanent improvements, but to make the system safer and more reliable, it can be not only accomplished by revamping the system partially, achievements have to be sought as well by introducing standardized returns and to a certain extent to encode transactions and procedures to mitigate language constraints.

## 1.4 Question 2

- 28 Taxation in the MS of destination can be a solution. At first glance, it should be implemented hand in hand with a European system of a VAT portal, as it will in place in not so distant future for customs purposes. The question is why cannot VAT be the part of the single window concept? But the question should be raised whether such taxation in the Member State of destination would could not be implemented with minimal compliance changes.
- 29 Some members of the Fiscal Committee have concerns that the suggested harmonisation of customs and VAT procedures will impose extra burdens on businesses, in particular small business that would be required to make investments in technology. They fear that imposing such burdens will discourage rather than encourage intra-community trade. Inter-state trade within the Community is twice the level of trade with third countries. Procedures that may be appropriate in one context may not be appropriate in the different context. While they see no problem in saying that there may be opportunities to adopt or adapt customs procedures, this needs to be done on a basis that does not impose significant extra burdens on small businesses.
- 30 It has also been observed that small business would probably like a system where all cross-border B to B supplies are zero-rated and all B to C supplies are taxed in the county of establishment. As a simplification measure, thresholds might be imposed so that there is only a need to register in a different state if supplies in that state exceed a threshold and below those thresholds tax should be payable in the country of establishment (if the company exceeds the registration threshold of that state). In its survey of members the CIOT (UK Chartered Institute of Taxation) has found that small businesses like the idea of only having to deal with their own tax authority if this possible.

## 2 Neutrality, public entities, holding companies and charities

### 2.1 General reasoning

- 31 Neutrality on the process of production of goods and services is a characteristic of the VAT system, but this has nothing to do with the entities listed above. The vast majority of these organisations act always on the edge between being engaged in business activities and “non-business activities”. The current system reflects the consequences of the scope of their

activities. Holdings are a slightly different issue since the court decisions does not give a total clear guideline (Polysar C-60/90, ECR (1991) I-2187; Sofitam C – 333/91; ECR (1993) I-3513; BLP C-4/94 ECR (1995) I-0983; Welcome Trust C- 155/94 (1996) ECR I-3013; Floridienne Berginvest C – 142/99, ECR (2000) I-9567; Cibo Participations C-16/00, ECR (2001) I-6663; KapHag C-422/01, ECR (2003) I-6851; Kretztechnik C-465/03, ECR (2005) I-4357; Securenta C-437/06, ECR (2008) I-1597).

- 32 There should be no objection to holding companies being members of an article 11 grouping. If the holding company is not carrying on any economic activity the amount of input tax that it is incurring should be small. There would also be no objections to the input tax being recoverable in so far as the grouping is making taxable supplies if the company was carrying on economic activity. Given those considerations it should be open to the grouping to allocate activities between different members in the grouping in the manner that it considers most desirable. The grouping as a whole (including the passive holding company) is then being placed in the same position as if it were one taxable person, which is the objective of the grouping.
- 33 As far as public entities are concerned the MS do not pursue uniform concepts. As such, the concept of “public entity” vary, according to objective circumstances, political priorities or national constitutional requirements. “Public entities” yalso produce goods and services that cannot be produced in an efficient way in a market context (ie. the “public goods”) because they are not fitted to be supplied individually against a payment (such as a lighthouse), because of the danger of monopolies or the inability of market mechanisms to produce goods and services at a price suitable in the light of long term social and economical objectives and therefore should be subject to an appropriate VAT treatment. In the essence the system has to make sure that activities which compares substantially to ordinary business operators shall be taxed for distortion reasons. However, to draw the borderline, this issue cannot be a subject lifted to the European level for reasons which is more a domestic issue rather than a European one. Communities have the statutory obligation to provide certain public services which are chargeable. If they do it in their own capacity they are not obliged to contract them out our make them to a subject of a competitive tendering. Differences exist and could be taken as given. The list of annex I embrace all of the activities which are mandatorily taxable. But there are some activities missing like the disposal of sewage and waste disposal. Consequently, these services are in some MS outside of the scope of VAT in some MS they are taxable.

## **2.2 MS have different systems in place how public entities have to be compensated for VAT suffered.**

- 34 While in UK, Scandinavian countries, The Netherlands, France, public entities are directly reimbursed (e.g. s 33 of the VATA in the UK), some MS, Federal States like Austria and Germany, in which Länder and communities get their share from the VAT proceeds, no further compensation is in place. Other systems like Australia compensate public entities in general or parts of them like schools and other institutions providing education by a system of zero rating (registration under the goods and service tax act 1999, Chap. 4 Div. 149).
- 35 The observations and the suggestions of Copenhagen Economic in the study “VAT in the public sector and exemptions in the public interest” deserve a particular attention. It would be worth to examine if such observations could possibly be extended to other sectors such as the as immovable property, public transport an banking and insurance services in the light of the neutrality of the VAT on outsourcing, neutrality of the VAT on organisation and the legal certainty, as well the possibility to make budget (because this is difficult on the base of the current procedures of deduction of input VAT when a business is performing activities that are taxable and VAT exempt – see infra).

## **2.3 Question 3**

- 36 The principle of neutrality is violated to a minor extent, since those entities do normally not perform business activities. Many of the MS pursue different concepts which in the essence do not substantially create distortions of competition. Any alternative concept will interfere into MS existing systems of revenue sharing which is supposed to be an exclusive responsibility of the latter.
- 37 Many bodies governed by private law are performing activities that are not of a commercial nature and beneficial for the whole collectivity and therefore should be encouraged (such as assistance to Small Business or workers, disabled persons) and for this reason are receiving financial support from the public authorities and other organisations. This lead to the complex issue of “subsidies” destined to finance the investments or to benefit directly the final consumers.

## 2.4 Question 4

38 Services constituent to the performance of exempt or organisations outside of the scope of VAT are not clearly benefiting from the application of Art 132 f RVD. The problem is that many of the public entities are outsourcing services which they are statutorily obliged to provide, for reasons outside of the scope of tax law, mainly to escape from the rigid regulations related to public service labour law. The requirement to form a group of persons limits opportunities to form outsourcing vehicles, despite the fact that this mechanism is extremely important in many sectors such as the health sector, social security, education, insurance and trade unions. In addition, it creates substantial compliance costs, limits the adoption of new methods of organisation or technologies and it is difficult to implement on cross-border operations.

## 2.5 Question 5

39 The scope of Art 132f should be extended, by continuing the other restrictive prerogatives as the compensations on cost basis and the necessity to conduct services directly produced for the activities of the principal entity.

# 3 Exemptions

## 3.1 General Reasoning

40 Neutrality is deemed to be a main conceptual principle of the VAT system, and therefore too often used as an argument which shall serve to press ahead with demands to change the rules. In an ideal single market exemptions should not be applied. But no market can produce a perfect world simply by lacking perfect market participants either on the demand side or the supply side. Even jurisdictions which were not bound by national concepts of bargains from negotiations ever to conclude Directives or accession treaties, follow the same concept by granting exemptions or reduced rates. The only difference is that exclusions to deduct input VAT and reduced rates, if in place, are fully harmonized (See, China, tax rate for small businesses of 3% instead of 17% (after the tax reform act 2008), and a long list of exemptions; Australia Goods and Service Tax Act 1999, Chap. 3). The reason for that is that VAT impacts consumers regressively resulting into a disproportional contribution to the revenue of the people with low income.

41 Additionally, the vast majority of European states impose enormous charges on wages and salaries compared to other single markets, which have to be calculated into the market prices and lead to accumulated tax load especially in a society which believed that vanishing working places in the manufacturing industry can be substituted by such in the service industry. Especially in the health care industry as well in the industry providing treatment for the elderly and personal services including the tourism, costs are driven by taxes. Only Denmark does not levy any charges furnished as payroll taxes. This fact is a good reason why consumers can afford to carry an overall general VAT rate of 25%, since accumulation of sub forms of indirect taxation like payroll taxes were scrapped by the government. Health care and pensions are sourced by a high VAT and high direct taxes.

42 In order to demonstrate the composition of taxes rates as well as revenues in specific countries of Europe compared to Australia and China the following table gives an overview (Source: Eurostat, Taxation Trends 2010, ESA Codes, D211 VAT, D29C Payroll taxes, D6111 Employers Social security charges, Statistics refer to 2008; in Billion, currencies not converted).

<b>MS</b>	<b>Soc. Sec.%</b>	<b>Payrolltax %</b>	<b>Soc. Leys</b>	<b>Payroll tax</b>	<b>VAT</b>	<b>Total Rev.</b>
Austria	21.83 %	9.43%	19.020	7.127	21.957	120.923
Belgium	33.97 %	minor	28.970	0.007	24.126	138.682
Czech Rep.	34.00 %	0	380.108	0	260.366	1.334.170
Denmark	0	local	0.771	8.874	175.472	837.653
France	up to 42 %	local	214.001	24.448	136.838	834.349
Germany	19.325%	0	162.350	0	175.870	968.320
Italy	up to 45 %		143.695	0	92.811	672.408
Poland	17.59 %	0	60.497		102.214	437.150
Spain	29.9 %	0	96.370	0	57.298	380.316
Sweden	31.42 %	0	262.365	139.651	297.512	1.486.617
UK	12.8 %	0	64.825	0	91.954	555.784
Australia	0 up to 6.85 %					
China	22%	up to 12 %				

43 Note: the UK Social Security figure of 12.8% just reflects employer contributions. There are also employee contributions that are deducted from employees pay. The employee's contribution was 11% last year for employees earning up to £ 817 per week with the excess being subjected to a 1% contribution. All these rates have been each increased by 1% from 5 April 2011.

- 44 The table indicates a valuable load on additional taxes levied on wages and salaries in Europe which have to be borne by customers and consumers notably included in the prices of the service industry. This means there is not so much flexibility to scrap either exemptions or reduced rates without any counter measures to compensate those who cannot afford increases in prices for essential goods or services.
- 45 Another issue is that MS which became members at the right time got the best options as far as reduced rates are concerned as well as exemptions. The question then is, does article 4 TEU require an equal treatment of all MS in the same way? Does the Treaty require a concept like the most favourite nation clause? Consequently, the impact would be that every deviation from the standard as well as any zero rating and reduced rate valid in one MS should be eligible for any comparable transaction in another MS. But, art 4 (2) TEU does not contain a provision granting equal treatment as far as secondary law and of course accession treaties as part of the primary law are concerned. The wording "The Union shall respect the equality of MS before the Treaty" means only that all of the MS shall be granted participation in the institutions. Differences as laid down in the VAT-Directive and in the accession treaties were all subjects of conclusions of all MS established on the fundament of unanimity. As it is valid in any associated concept, if once voted for and no superior norm exists which tells members another principle, e.g. of equal treatment in all instances, deviations are legally correct, irrespective whether from an isolated point of view they create distortions of competition as well as discriminatory circumstances.
- 46 Deviations create a different treatment as far as the second pillar of the funding of the Union is concerned. Art 322 (2) TEU set out the rules which have to be applied for the calculation of the funds entrusted to the institutions. Even though Reg.(EEC) 1553/89 determines how to calculate the basis for the contribution carefully, any reduced rate as well as partially exemptions have an impact on the volume of the payments. Thus, payments of the MS pursuant to the rules for the second pillar are not of the same volume which could be if the entire VAT – rules would be harmonized totally.

### **3.2 Exemptions for certain activities in the public interest**

- 47 The list contains more or less those services which historically were provided by the public sector. Postal services today are outsourced in companies and no longer public operators.

Additionally, strong private competitors are in the market. Therefore it cannot longer be continued with these kinds of exemptions (TNT Post C-357/07, ECR (2009) I-3025).

- 48 Many members of the Fiscal Committee see force in the argument that the judgment in the TNT case has achieved a proper balance. Organisations like Royal Mail have obligations to provide a universal service and they can see some force in arguments that the exemption can be justified as a quid pro quo for those obligations that other private competitors do not assume.
- 49 The entire healthcare services are mostly provided by the public sector (eg. NHS in UK). Even though in Europe private providers win more and more ground, especially in Germany in which private operators of hospitals hold a market share of roughly 25%, the public sector is dominating the market. But nevertheless privates are also obliged to take care for publicly funded healthcare treatment to a significant extent in order to be eligible for the tax exemption (Para 4 (1)(14) of the German Vat code). However, independents in Germany have not to comply with the strict rules for charitable institutions and can pursue profitable activities. Other MS require even private operators to comply with rules for charitable entities in order to be eligible for the exemptions (e.g. Austria). The compensation for the suffered VAT is mostly organised as a refund for the market participants (Art. 33 VATA). Germany does not grant extra compensation payments for input VAT. Costs deriving from procurement are basis of the general tariff system.
- 50 The provisions regulating exemptions have to be interpreted strictly (Pflagedienst Kügler, C-141/00, ECR (2002), I 6833), ancillary services which are not medical care are vat-able (Diagnostiko & Therapeftiko Kentro Athinon-Ygeia, C-394/04, C-395/05, ECR (2005) I- 10373): such a distinction can hardly be implemented in practice and is not compatible with sound business management. It is observed that Member States allow business not to implement such interpretations of the ECJ
- 51 Definitions which person or entity is eligible for a exemption pursuant Art 132 RVD are rather vague, especially the term “social wellbeing”, and entrusted to be determined by the national courts in the light of the MS` s law (Kingscrest C-498/03, ECR (2005) I-4427). Real distortions of competitions became visible in the area of services linked to sport or physical education by non – profit making organisations. Gyms reorganise themselves into non-profit organisations after

the holding period of normally five years for the acquisition of the equipment elapses, in order to obtain recovery of the input VAT and then to benefit from the exemption.

- 52 Services listed in Art 132 RVD, except postal services, are not easily to be converted in taxable ones. Maybe some of them, like medical care, education welfare and social security work, as well as museums should be eligible for zero rating, since in the most of the MS concepts of reimbursement of suffered VAT exist and it does not matter for the treasury departments whether compensation has to be paid out of funds collected previously or to reimburse inputs directly. Since both systems create roughly the same timing of cash flows a change of the concept will create no budgetary gap during the time of transition.

### 3.3 Exemption for other activities

- 53 The list contains mostly financial services, immovable property and gambling. The absence of access to the historical background of such exemptions is a source of damageable confusion (see Opinion Statement of the CFE on the case C-455/05, Velvet & Steel regarding the definition of financial services submitted to the European Institutions in November 2009).
- 54 As a rule, Exemptions should be limited and clearly defined. When distortions of competition still exist, there should be a formal procedure to resolve these issues, regardless or wheter these issues relate to distortions between in-house v. outsourcing or on the final service delivered (in competition with taxable in-house providers).
- 55 Financial services which could easily be turned into taxable ones with a low rate on interest which shall compensate for the input taxation, like the farmers scheme. However, private consumers then have to pay (see Opinion Statement Proposals VAT Directive and Regulations regarding Financial services – 2008)  
However, charging VAT on financial services means disclose the margin (because VAT is a proportion of the margin or remuneration of the service) and it reduces the negotiation position of the supplier of such services: therefore, in B2C relations, it should be examined whether such services could be taxable on their margin, but without disclosing it. In B2B relations, such services could be zero rated with a full right of deduction of input VAT without impact of the level of the tax at the final consumption level. One clear concern that should be highlighted is that any changes should be structured in a manner that does not impact on the competitiveness of the EU financial services sector.

- 56 As far as the general insurance industry is concerned, a premium tax is in place in the most of the MS. A new VAT concept shall be directly linked with the imposition of ever a FAT or a FTT. If the decision makers take a fancy to the latter the current system is a better option, since banks will remain input tax payers for the reason FTT does by far not cover the wide range of financial business activities, while an implementation FAT will require a reconciliation with the VAT rules.
- 57 The rule for outsourced constituent activities (Art 132 f) shall be reconsidered in case of continuing with a substantial number of exempt transactions.
- 58 Leasing and letting of immovable property embraces the exemption for renting out premises either to private or business tenants. The concept of “relative passive involvement” in order to define the concept of leasing of immovable property has neither a rational, a scientific nor historical base and it is as such a source of permanent legal uncertainty and disputes (see Opinion Statement of the CFE on the distinction between taxable and VAT exempt letting of immovable property submitted to the European Institutions in November 2009 ). Social dwelling continues to be an issue. Instead of an exemption a low rate concept would be an alternative, however, abusive behaviour like rent with an option to purchase is inherent in such circumstances.

### 3.4 Questions 6

- 59 The VAT exemptions are derived from the activities that were not within the VAT scope under the Second VAT Directive<sup>3</sup> i.e. activities that had at that time little or no impact on the intra-community trade, mainly at retail level and some operations for which the free circulation was at that limited by regulatory or physical constraints (banking and insurance services, as well immovable property services were initially excluded from the list of the VAT exempt/outside of the scope activities).

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<sup>3</sup> The preparatory documents of the Sixth VAT Directive just mention the list of the exemptions that were most commonly existing in the Member States under the Second VAT Directive. There is no historical evidence that the Council adopted some exemptions according to their intrinsic nature: this approach seems to have been adopted much later by the Court of Justice on the base of suggestions of the Commission.

- 60 As a rule, VAT exemptions without right of deduction of input VAT should be restricted to small business activities (with a high threshold) and be optional. Activities that should be encouraged from a social or political perspective should be entitled to a reduced VAT rate.
- 61 The macroeconomic consequences of immovable property exemptions should be carefully examined. In particular, the immediate taxation of the long term private use of buildings forces households, public authorities and other organisation taxed on their costs (mainly in social sensitive areas such as education, health, culture, etc) that have to fund important investments by means of credit. This has as consequence that future income or public support will be used in order to refund credits obtained from banks and destined to pay taxes that have sometimes been paid twenty years earlier. In practice, since such institutions are frequently funded by subsidies paid public authorities and thus by taxes, the current situations leads to the funding of past taxes by futures taxes and credit. This situation has important macroeconomic consequences, in particular on the impact of a reduction of the credit rate in order to support the economic activity and this should be clarified.
- 62 As observed by Maurice Lauré, VAT is not fitted to tax long term consumption and VAT on the private use of buildings should be replaced by a yearly tax on consumption. This is in line with the views of members of the Fiscal Committee that are not in favour of significantly altering the exemptions for land transactions. These exemptions are unlikely to give rise to cross-border issues. Land transactions are also often already subject to transaction taxes. With older buildings, there will be no corresponding significant rights of input tax recovery because the major works have already occurred. It will represent an additional cost for not only the residential sector but also any exempt businesses (this may be less significant if most exemptions are removed) and the charitable sector. If a low rate is to be introduced it should be for residential sales generally. This would presumably avoid the suggested undesired effect. Imposing a very high tax on all residential sales will discourage people from moving homes, which will increase inflexibility in the labour market. Similar problems may arise for the exempt and charitable sectors. It also seems very harsh that people who have made investments in properties expecting the investments to be free from VAT should find those investments subject to VAT. Especially if a reduced rate is not applied, the impact on the value of investments could be significant.

- 63 VAT exemption with right of deduction on purely national transactions (national reverse charge) should be maintained or extended as long it is strictly necessary in order to fight against fraud or to deal with specific types of business (such as for example, financial services).
- 64 The exemption for postal services is at stake to be deleted. Any further exemption might be scrapped under the condition that they do not create higher costs for private consumers. Since in most MS compensation schemes for publicly provided services exist for the inputs, it does not matter whether a zero rating or an exemption applies. Taxation of financial services should be revamped in the light of possible other concepts for the taxation of financial services. But if this new initiatives will be kept on the back burner input taxation is an alternative.
- 65 As general remark, VAT charged on in the course of tax audits are not recharged to the acquirer of goods and services. This has also an impact on the neutrality of the system.

### 3.5 Question 7

- 66 Passenger transport is an inconsistent area and produces unfair competition from a VAT perspective. While any ground transport, especially domestic transport is generally levied with a number of charges, excise taxes, insurance premium taxes, registration taxes and VAT, air transport is left off with levy constraints. Additionally, many countries provide exemptions for international passenger transport (e.g. Accession Treaty OJ 236, 23<sup>rd</sup> September 2003, list pursuant to Art 24, annex V – XIV). Since taxation of international passenger transport cannot be solved by the MS themselves, it is a European issue which offer the opportunity to impose a European tax, which can be divided by the MS and the institutions. A formula is the most appropriate technique to calculate proportionately the justifiable share of each MS, which can be GDP and/or the number of people.
- 67 However, some members of the Fiscal Committee see merit in zero-rating transport. It avoids the complications of apportionment that otherwise arise. Public transport/transport of goods should also be encouraged for ecological reasons and also because it assists the objectives of creating a single market.

### 3.6 Question 8

- 68 The observations and the suggestions of Copenhagen Economics made in the study "VAT in the public Sector and exemptions in the public interest" deserve major attention. But attention

should also be paid on the fact that some VAT exempt activities are not profit oriented, that they funded partly or totally by taxes and therefore, this could substantially influence the importance of a possible change.

- 69 Since changes of the concept of exemptions will interfere significantly with national formats of VAT and input tax compensation it is the most subtle subject to undertake because any level of political organisations are affected. Therefore if really Art 132 is at stake to be reshuffled completely, promoters have to take in consideration that this might be the first opportunity to launch an intervention by the national parliaments in their capacity to watch violation of the principle of subsidiarity and proportionality (Protocol 2 TFEU).

## 4 Deductions

### 4.1 General remarks

- 70 Generally speaking the most obvious deficiency of the VAT system is that deduction shall be granted to the purchaser in any case<sup>4</sup>, irrespective of whether the supplier has paid VAT due or not. Art. 167 RVD provides that the deduction is timely and a right thing to do at the time when the deductible tax becomes chargeable. Chargeability refers to a neutral coherent event for the purpose of the right of deduction and does not require any payment by the purchaser. From a lawful perspective the concept is correct, since the principle of neutrality relies on the honest behaviour of all participants and should not be lost over risks of the misbehaviour of the recipient of the supply. Loose of right to deduct input VAT or delays in repayments can lead to substantial distortions of competition.
- 71 This mechanism is used by purchasers who deduct immediately VAT while they systematically pay the invoices much later. In this case the supplier has paid the VAT to the authorities and has not been refunded by the purchaser: the later payer obtains a free credit from his suppliers. It has been observed that such a mechanism of “free credit” has been systematically used by large purchasers who have a strong market position and face smaller suppliers. Currently there is no solution in the pipeline. A similar problem occurs when the purchaser

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<sup>4</sup> Some members of the Fiscal Committee are not happy with the suggestion that it is a deficiency of the VAT system that the right of deduction can arise irrespective of whether the supplier has paid the VAT. If the customer has paid the VAT it can hardly be right that he should be subject to double jeopardy.

does not pay and the supplier has to perform complex formalities in order to recover VAT on unpaid receivables. This is another example where the current VAT system supports dishonest traders against bona fide traders.

- 72 Another issue is the mixed use of items for private and business purposes. As far as the deduction of construction costs of buildings are concerned negative effects of the ECJ Judgements (Lennartz C-97/90, ECR (1991) I-3795; Armbrrecht C-291/92 ECR (1995) ECR I-2775; Bakcsi C-415/98, ECR (2001) I-1831; Seeling C-269/00 ECR (2003) I-4101; Wolny C-72/05 ECR (2006) I-8297) has been solved by implementing Directive 2009/162 (OJ (2010) L 10) commencing with the beginning of 2011. The determination of the private use of business investments such as computers, telephones or cars, as it is authorized by the Directive and implemented at least by one Member States, is bureaucratic and inquisitorial.
- 73 Further uncertainties derive from the different exclusions to deduct input VAT. Mainly input VAT for cost of cars, entertainment cost, accommodation and restaurant services are differently treated. These disharmonised areas in the VAT field creates not only difficulties for residents business operators, but more important for non-residents when they apply for recovery in other MS. The VAT-package was more a boost than a bust to mitigate compliance costs. However, mostly the requests for information which are released by the country liable for a repayment is done in the language of the country in which the tax authority is established.
- 74 It may also be worth noting that problems may be caused by the decision in Case C-97/09 Schmelz v Finanzamt Waldviertel. This is because a business may have to account for VAT on supplies in other Member States even though it is not registered in the country where it is established because it is a small enterprise. The fact that it is not registered in the country where it is established may impact on its ability to recover input tax in the country where it is established that relate to the supplies that are taxed in the other member state. To avoid this problem, there may be merit in having an EU wide exemption for small enterprises. Since 2010, the method of refund of foreign VAT is now decentralised (while it was possible to centralise before the VAT package) and suffers major technical deficiencies (in particular regarding the communication of (in practice all) the invoices on electronic way).
- 75 The limitation of deduction of input VAT on cars combined with a taxation of supplies of second hand cars by business leads to an accumulation of non deductible VAT.

- 76 The most harmful consequence may perhaps be found in the insurance sector regarding indemnification of victims of car accidents where one may observe a combination of high insurance premium taxes, non deductible VAT on cars and non deductible VAT on health services. Detailed studies could possibly demonstrate that victims of a car accident suffer as much taxes as smokers of cigarettes and that this situation seriously damages the situation of victims of accidents.
- 77 The treatment of subsidies as relates to the calculation of the pro rata has to be clarified pursuant to the Court decisions (Commission v. Spain C-204/03 ECR (2005) I-8389), Commission v. France C-243/03, ECR (2005 I-8411).

#### 4.2 Question 9

- 78 The main problems with the right of deduction are:
- 79 Absence of harmonisation of VAT exemptions combined with total freedom of different rules of determination of the deductible VAT left to the appreciation of Member States and , to a certain extent, individual businesses is a clear violation of the principle of neutrality of the VAT on the production of goods and services; Some members of the Fiscal Committee consider that the freedom of deducting input VAT should be qualified as a State Aid
- 80 Limitations of right of deduction should be strictly limited to private consumption;
- 81 The VAT becomes partly a tax on production and brings in danger the qualification of VAT as consumption tax that is levied in the country of consumption;
- 82 There are two methods of limitation of the right of deduction, i.e. the self-supply at the time of acquisition of goods and services and the limitation of deduction. These two methods are overlapping or combined.
- 83 Deduction of the VAT in another EU member State is still a problem
- 84 In case of partial deduction of input VAT, it is extremely difficult to take into account the actual right of deduction in another Member State or in a third Country;

- 85 It has been observed that the current electronic refund procedure does not function properly and that the tax authorities require systematically a copy of the invoices;
- 86 The business that does not dispose of the Fixed Establishment in a Member State having adopted a national reverse charge procedure is facing the substantial amount of VAT to be deductible though the 8th Directive procedure.
- 87 The strangest concept in VAT is the formalism of the invoice as the document which needs to be produced totally correct with an endless list of items to put on for the purpose to have the right to deduct VAT. No other evidences are accepted and requirements have been tightened. In other parts of the Community law, e.g. customs or export refund, the Court was more open to accept substituting documents for the benefit of business operators (Huygen, C-12/92, ECR (1993) I-6381). This strict requirement does more harm than good especially for small businesses.

#### 4.3 Question 10

- 88 Neutrality is not the main issue, since it has to be accepted that particular costs will always be questioned to be correctly expensed for business reasons, like entertainment costs. A second issue is the fact that the vast majority of MS keep a short rein to the extent of the deduction for costs of cars. This is understood as a simplification measure for the administration. However, such exclusions are affecting the principle of neutrality to a wider extent.
- 89 We would you like to see the neutrality and fairness of the rules on deduction of input VAT improve as follows:
- 90 Strict limitation of the VAT exemptions without impact on the productive investment or, much better, their replacement by a super reduced rate of 2/4 %;
- 91 Would the exemptions be absolutely necessary, the refund scheme of the VAT on investments should be compulsory;
- 92 An one-stop-shop mechanism whereby business could offset the input VAT incurred in a Member State against the VAT due in another Member State should be combined with an advanced harmonisation of the procedures regarding VAT returns.

## 5 International Services

### 5.1 General remarks

93 The OECD opened a consultation about international services. To some extent payments for royalties may result into double taxation in cases in which they are taxed by the country where the licensee is located and the royalties are additionally subject to importation VAT due to the rules of customs valuation. In cases in which the recipient cannot recover VAT or importation VAT it has a dramatic negative effect. The medical industry is partially hit by such a phenomenon.

94 The issue of tradable services (CO<sup>2</sup> certificates, vouchers, positions on precious metal, etc ) in relation with third countries should deserve a particular attention of the danger of fraud in this sector.

### 5.2 Question 11

95 The issue comes up more in cases where one VAT/GST concept pursues a legal approach for branches while others follow the economic approach (Switzerland, Australia, New Zealand and South Africa). Normally this does not matter except in cases of bank services or services within other exempt industries, like gambling.

### 5.3 Question 12

96 The OECD initiative is valuable for a more coordinated system of indirect taxation.

97 The main problems with the current VAT rules for international services in terms of competition and tax neutrality are:

98 Double taxation issues and danger of absence of recovery in case of dispute, because of difference of national procedures regarding recovery period

98a Non taxation of branch – head office combined with “input taxation” (or VAT exemption) variable depending on the country and the way businesses are structuring their activity (see on this issue [CFE Opinion on the Consequences of the ECJ interpretation of the VAT treatment of transactions between head office and branches](#) - Case C-210/04, FCE Bank April 2008)

- 98b There would be merit in harmonising the place of supply and classification of supply rules, for example by removing or limiting the current derogations. This may have the benefit of reducing the dangers of double taxation and non-taxation: note for example Case C-277/09 HMRC v. RBS Deutschland. The CIOT (UK Chartered Institute of Taxation) disagrees with the comments that tax should be imposed on cross-border branch to branch supplies.

## 6 Degree of harmonisation

### 6.1 General remarks

- 99 It is right that a Directive does not provide a full coverage for harmonisation. The Treaty allows any other legal act to be used apart from a Directive. Art 113 TFEU does not limit legislators as it is laid down in Art. 115 TFEU. But regulations do not solve the problem which originates from translation constraints as well as interpretation based on previous knowledge acquired under the influence rather of domestic circumstances than within the European flavour. As we have learned from customs, MS tend to fix the most of the necessary explanations in the implementation code which contains now more than 1.000 articles. This is evidence that MS tend to exaggerate and are not behaving carefully with their capacity to have the power of a legislator. They produce too much then and not always comfortable for readers, including mistakes (eg. transport facilities). It is evident that current means of committeeology cannot be used due to lacking rules in a regulation. And there are doubts whether MS will champion such a step fearing an evasion of their last resort of sovereignty, taxes and budget.
- 100 Business operate in a single market and after a problem emerges, it is not possible to wait for tent to twenty years in order to get legal certainty. There a clear need for an European interpretation body where both business and Member States can get binding answers without having to go through the Court system where fundamental decisions for the European Economy can be influence by factual circumstances, short term political or budgetary constraints of some Member States or the Commission, or simply by the absence of understanding of the judges of the impact of their interpretation.
- 101 One solution could be to establish an administrative authority, but not a court, in which all MS are entitled to appoint minimum one expert. The decision of the authority must be binding for the parties and in cases of interpretation for all MS. Any decision should be accessible for the public. Business operators shall be entitled to bring questions to the authority to solve intra-community problems. Any MS shall have the right to bring questions up. Decisions made by the

authority should be challengeable at the ECJ after going through the instances responsible at the seat of the challenging party. However, the authority shall be qualified as tribunal in order to be able to forward questions to the ECJ in cases of unsolved inputs (Art 267 TFEU). The most important prerogative is that the authority has to react in an appropriate time frame (three months). The implementation can be done on a contractual basis pursuant to the international law and does not require any amendment of the Treaty. Such a concept helps to make MS more cooperative and can be used to learn from each other. Since the same need of a comparable administrative authority exists for the CCCTB it should be considered as an opportunity to improve cooperation as well as trust.

## **6.2 Question 13**

- 102 The entire VAT law can be eligible to be set out in a regulation. But this will not solve the problems as outlined above.
- 103 However, members of the Fiscal Committee consider that regulations may assist in a resolution. For that reason, they consider that there must be some benefits in measures being implanted by regulation even if this does not completely solve all the problems that arise. Due to high costs of the administrative changes and the necessity of uniform implementation and interpretation across the EU, the following provisions of EU VAT law should be laid down in a Council regulation instead of a directive, such as VAT registration, VAT returns, recapitulative statements, VAT liability.

## **6.3 Question 14**

- 104 Decisions in which the representatives of the MS are not involved will not have the effect the business community would expect.

## **6.4 Question 15**

- 105 Soft law concepts are very common in the Community law. The guidelines for the AEO are as well soft law as to a more important extent the most of the frames released by the DG Competition in the area of state aid law. It could be helpful.
- 106 Authorities derogating from the guidance would probably feel obliged to motivate their position. If such guidance strictly pursuing the objectives of simplicity, clarity and coherence in line of

the general principles of the European VAT and the Treaties, they could also offer to the CJ a reference in order to adopt some interpretations or probably, reduce the need of national Courts to require preliminary rulings from the CJ. Such a guidances would be very useful for new member States that had not yet the opportunity nor the means to develop their own guidances.

107 It would be extremely important to create a permanent forum where business can bring forward issues of European magnitude. Business can contribute with essential practical information on how things work in practice.

## **6.5 Question 16**

108 As long as an initiative is in hands of the Commission the process is transparent enough. If the proposal starts to be processed by the Council, then the business community loses track of progress and the final result contains provisions that are sometimes unexpected, obscure and therefore are not understood by business or sometimes, even by many Member States. The current legislative process at Council level does not allow to discuss major economic issues that can only be clarified in an open and face-to-face debate .

## **7 Derogations and the ability of the EU to react quickly**

### **7.1 General remarks**

109 Currently, the decision making process takes too long time. For this, MS can not to be blamed since learning processes and coordination with the national parliaments needs time which must be allowed to be spent. However, urgent measures cannot be performed in the same manner. Derogations are part of the concept as long as many of them originate from the historical legislators continuing with their zero rating, super reduced rates, and additional needs to combat tax fraud or to grant simplification measures.

### **7.2 Question 17**

110 Knowledge about derogations is no longer a problem, since the Commission provides good quality documentation about them.

111 However, derogations are a problem where they affect the accounting and IT procedures of business active in various Member States. Unless there is some compelling reason for not doing so, there should be consultation before agreeing on derogations. Derogations are undermining the VAT system and create disharmonization and complexities by allowing Member States to apply own national approaches.

### **7.3 Question 18**

112 It takes too long to have in place specific derogations in order to fight fraud. Necessary derogations to combat tax fraud shall be subject of a small Committee consisting of the experts of the Commission the applying MS and representatives of the current presidency, the previous and the next presidency. Since it has to be granted that the principle of unanimity will not be undermined the time of effectiveness has to be limited with one year.

## **8 Rates**

### **8.1 General remarks**

113 For reasons which have been elaborated above for exemptions, members of the Fiscal Committee of the CFE believe that reduced rates are a proper mean to limit the impact of the regressive effect of the VAT. Reduced rates have also a negative input in cases in which they are not applied at the same level for the same products. Differences for the supply of services (e.g. tourism) do not have the same effect as reduced rates for the supply of goods. The reason why this phenomenon exists is that any reduction of indirect taxes in the tourism industry shows not the same reflection in the calculation of business operators. The imposition of the reduced rate of 5.5% in France on restaurant services does not simultaneously led to a significant reduction of prices in the menus. Price elasticity means that operators try to optimize their calculation and react only after consumers react angry for being annoyed, irrespective how high tax rates are.

114 As supplies of goods are concerned, groups of consumers tend to look after the best price opportunities. Farmers eligible for the special schemes buy fertilizers at the place where a reduced rate makes a significant price difference obvious. They organize pick up concepts in countries where a reduced rate is applied like in Italy (4%) and exhaust the opportunity to be

treated as a private consumer as long as they will not exceed the threshold for the acquisition VAT.

- 115 Many members of the CFE Fiscal Committee consider that especially if exemptions are to be removed, reduced rates are to be welcomed for social reasons and because of the dangers that EU traders may be placed at a competitive disadvantage if for example financial services were taxed at the standard rate.

## **8.2 Question 19**

- 116 There are some areas in which distortive effects can be identified. As explained above, fertilizers and farmers are a couple as well as the problem of prints and audios.
- 117 It has been observed that differences in VAT rates combined with excises on goods have a substantial impact depending of the cost of individual transport up to a distance of about 50 km from the border or even more depending of the products.
- 118 Similar situations have been observed for e-services, but this will normally come to an end by 2015.

## **8.3 Question 20**

- 119 A pan European strategy would be more appropriate. But nevertheless it has also to be considered that local markets prevail and therefore uniformed reduced rates may be not a solution for all kinds of markets and consumers.

# **9 Reducing red tapes**

## **9.1 Preliminary remarks**

- 120 A general issue concerning the current VAT obligations is the lack of harmonisation that generates a significant cost for business operating in various member States. This is particularly important regarding the differences in forms used, on-line filing solutions, different IT and, in general the absence of a minimal standard requirements. More efforts should be put on the harmonisation of compliance , from a IT perspective.

- 121 Practically speaking, the outcomes of the High Level group are rather overdrawn than helpful. If once an electronic accounting system is in place, it does not matter to press the button one, two or three times. The issuing of the annual return is to certain extents very helpful, especially in parts of businesses which have complicated VAT driven record requirements in place, so in the construction industry or smaller tour operators. Having concepts in place in which accountants have to watch closely whether a contract creates more than 10 invoices on advanced payments and in the final invoice have to reflect all of them, mistakes are inherent, especially if the business is established in a jurisdiction in which it is required to take care of a reverse charge mechanism for the construction industry depending on whether the customer is a principal constructor or a final consumer (Art 199 (a) eg.: The Netherlands).
- 122 An annual report helps to reconcile the figures for VAT purposes again with the results of the financial statements. The listing is as well not an issue since it is an incomplete controlling instrument as long as no corresponding records are in place for the acquisition VAT purposes, as set out in the administrative regulations to the VAT in the Czech Republic. However, differences exist as far as the intrastate statement is concerned. Some of the transactions have to be recorded in the listing other than in the intrastate return and vice versa.
- 123 More important are the requirements to provide evidences for zero rated transactions, either intra community supplies or exports. In the case an ex-work clause (Incoterms 2010) is stipulated, the buyer has the obligation to arrange the transport as well as apply for the export customs clearance. However, many MS require traders to provide the original customs or transport documents which will never come into the hands of the seller and will be needed by the buyer for its own records (Twoh International BV. C-184/05 ECR (2007) I-7897). The same happens in the case the DAP clause (Delivered at place, replaces DDU, delivered duty unpaid) is stipulated. DAP clauses create cases in which, if more than two parties are involved, and the last two are established in the country of destination, that simultaneously importation VAT and the regular VAT will become due. Some countries do not allow to deduct the input VAT and the importation VAT for the same transaction even though the right to deduct rely on different concepts.
- 124 Smaller businesses have to pay disproportional more fees to comply with the rules since special international VAT networks are not affordable and mostly local accountants or tax advisors are seldom part of a transeuropean tax network with the appropriate access to the correct

solution. The mandatory application of standardized returns would help to have visible comparable in place and facilitate language and cultural weaknesses. However, it is observed that for many small businesses, there is no non-VAT reason to produce monthly or quarterly accounts.

## 9.2 Question 21

- 125 The annual return is more helpful than a mess since it is used as a controlling tool to reconcile VAT numbers with the numbers of the financial statements. More important is that the power of attorney once accepted in one MS will also be valid for any other interventions on behalf of the client. In cases of exports an automatic information of the responsible customs authority (customs office of export) shall be forwarded to the responsible tax office of the seller, if the latter can be identified by his VAT-ID, irrespective what kind of Incoterms are stipulated (Art 792 (1) customs implementation code).
- 126 One of the easiest amendments could be to standardize VAT returns, as it is utilized by customs. This would be helpful to overcome language differences, as well to improve controlling routines.
- 127 Any change in formalities implies huge costs in adaptation of computer programs. Difference in formalities are not compatible with the current way of doing business

## 9.3 Question 22

- 128 Cooperation between tax authorities, customs, Eurostat (intrastate) and business operators is the most appropriate initiative to do, because of obligations which have to be carried out twice or more times.
- 129 Major attention should be deserved on full harmonisation of formalities, or at least definition at EU level of a maximum set of standardised VAT obligations that may be imposed by the Member States in such a way that IT system could more easily handle a predefined range.

## 9.4 Question 23

- 130 The list of the high level group is too much driven by desk top publishers rather than experts having done the work in question. Since any monthly return normally is based on the monthly accounting work, which is required to be done by other legal constraints, like the obligation to

prepare proper accounting for the purpose of controlling. The same is the case with the annual return.

- 131 Recommendation 8 is correct in order to facilitate the different requirements to prove exports. Recommendation 9 is simply not useful, since the intra EU supplies listing deviate significantly in many cases, like triangular case, assembly and installation, cross border multi-processing. Recommendation 10 is not completely right, since the vast majority of MS do not require monthly returns when notifiable transactions do not occur. The Directive does not require such an obligation. The subject of all other recommendations are either applied (e-government), or in process.

## 10 Small businesses

### 10.1 General Remarks

- 132 In the single market small businesses are exposed significantly by either compliance exposures, as well as by weaker access to appropriate solutions due to cost constraints and professionals having lesser experiences how to deal with single market projects.
- 133 Microbusinesses with less than EURO 100.000 revenue should be eligible for an option for a total exemption, but be left input taxed. Businesses in the range between EURO 100.000 and 1.000.000 could be audited whether a flat rate scheme comparable to farmers may be suitable to solve compliance problems. There could be merit in having an EU wide threshold below which an individual does not need to register in any EU jurisdiction. Any steps that reduce the need for small business to have to register in a number of jurisdictions would be welcomed.
- 134 The flat rate shall be calculated that way that the average input VAT can be covered. However, such a scheme can be only put in place, if traders are involved more than 95 percent in B2B transactions.
- 135 In general the Commission, DG budget rather than DG Taxud, shall put in place controlling instances for the purpose to test and audit the impact of flat rate concepts in order to fine tune rates for preventing of gaining excessive benefits. Farmer schemes do not require a ceiling (Title XII, Chap. 2), however a comparable generosity cannot be applied for small businesses.

- 136 Small businesses operating in the single market need better access to correct and solid solutions. Especially for them an establishment of the administrative authority is the most helpful measure if simultaneously timing frameworks will be enacted.

## **10.2 Question 24**

- 137 A review of the exemption concept is essential when programming a more generous exemption concept, in analogy to UK (BP 73.000, 2011/2012). Simultaneously Commission shall elaborate whether a flat rate system may also be a substantial improvement to bring down compliance costs, but bearing in mind that such a simplification can only be established for those with a significant involvement in B2B transactions.

## **10.3 Question 25**

- 138 Additional simplifications could be set out by reducing the frequency of filing returns up to a ceiling of EUR 500.000 and to relax the steep list of items for small value invoices up to a ceiling of a gross sum of EUR 2.000.

## **10.4 Question 26**

- 139 Farmers are well positioned in the Directive. A flat rate concept without any ceiling has to be reconsidered, as well as the fact that sales to non-taxable persons can be left untaxed totally.

# **11 One stop shop**

## **11.1 General Remark**

- 140 E-government of customs is by far more advanced than in the field of VAT. A one stop shop can be part of the single window concept which is currently in place of some of the MS. This means such a portal can be used to follow electronically any intra community transaction. Any export and import is recorded and immediately controlled by the system from the perspective of a risk assessment procedure. It is ridiculous to talk about the necessity of a listing without putting in place a direct control mark in the country of destination. Once in place it does not matter how the VAT will be charged, ever in the country of destination with an automatic imposition of the right rate, or in the country of origin. If taking in consideration that instead of sending the money into a circle with spinning wheels a matching between input and output can be done

electronically without any cash transfers. Having such a system in place all goals can be accomplished easily.

- 141 It is affordable for small businesses as well, since it will be offered by the public and currently any small freight forwarder and customs agent has the same access.

### **11.2 Question 27**

- 142 The one stop shop is a solution which starts to work in the customs administration and will help to bestow more trust by the tax administration towards the better techniques.
- 143 Some members of the Fiscal Committee believe that the One Stop Shop should be optional, although it should be based on standardized EU IT platforms, using forms that are not uniformized but that could be completed with the use of a single IT procedures from a central point, even if refers to data relating to various countries.

## **12 Pan – European businesses**

### **12.1 General remarks**

- 144 Group advantages have to be supported in order to bring down efforts for senseless controlling routines. Any of the bigger groups have risk management tools in place embracing any kind of charges and applicable for the entire jurisdictions in which the group operates. Conceptual the AEO (authorized economic operator) would be an answer, but customs administrations have limited themselves to certify business operators country by country instead of group by group. Here again the limited will to cooperate waves opportunities and creates wasted times. A group concept, which is controlled by representatives of MS involved enhance automatically the learning of useful coordination.

### **12.2 Question 28**

- 145 Any of the transactions which has to be necessarily underpinned by returns which are not uniformed, by evidences which have to be provided differently, with requirements such book entries which do not make any sense, as well as different recording compliances are manageable, but costly. A system in which operators can streamline their controlling efforts will be better. However, smaller businesses which never can achieve a comparable standard

and remain in the territory of exposure should not be left aside. Therefore group simplifications shall be implemented hand in hand with a single window concept for VAT, which is affordable and can also be designed to mitigate compliance constraints.

- 146 The current VAT rules create difficulties for intra-company or intra-group cross-border transactions that are VAT exempt, mainly in the financial sector. These difficulties would disappear if financial services were taxable on a way appropriate to such operations.

## **13 Synergies with other legislations**

### **13.1 Question 29**

- 147 As mentioned above, a single window concept helps mostly, since one portal is enough for VAT, customs, import and export licences as well as export refunds and additionally for excise tax purposes.
- 148 Some members of the Fiscal Committee argue that the information already collected should be used and exchange by the different national tax authorities, possibly putting in place more efficient tool of access by more efficient IT systems put in place at European level

## **14 VAT collection**

### **14.1 Question 30**

- 149 At first glance, payments splits would possibly be the most effective concept in order to achieve a pull out of the cash produced by VAT due of the gross amount of an invoice. The split payment model is highly dependent on the rapidity of the exchange of information and this may be problematic in the EU context where each Member State has one or even more systems. Promoters may have underestimated the major practical difficulties in the EU context, their impact on group treasury centers and the fact that within a group of companies many operations do not lead to effective payments. The split payment model in the EU context still has many unanswered concerns and questions, such as: How to deal with the exchange risk? How will non-EU suppliers and purchasers be informed and convinced to step into this split payment system and new complexity? How to treat barter trade or more in general absence of monetary payment in a split payment model? What is the liability of the supplier if the client

doesn't pay in the blocked bank account (in time)? Can the authorities seize amounts on the blocked accounts? How does split payment work in practice with credit notes? How will split payment deal with in-house banking of multinationals where bulk payment (i.e. one payment for multiple invoice) and netting is daily practice? Who will pay the implementation cost? What will be the effect on our turnover? Are the credits on that blocked account interest bearing? Does split payment entail that everybody has to VAT report in a cash accounting philosophy? The scepticism about the merits of a split payment methodology is widely shared by the members of the CFE Fiscal Committee. Instructions will have to be given to the bank on a payment by payment basis, given exemptions, different rates and the fact that some payments do not relate to taxable supplies. If suppliers remain liable for VAT, they are also likely to require safeguards (for example notification to the tax authority that it has been paid) before they feel safe about the idea of making the supply. We are also sceptical about it having any impact on fraud for the reasons outlined at (i) above. We also have concerns about the cost implications especially for small businesses where it faces the problem that a lot of supplies may still be paid for with cash.

- 150 However, another method could be the direct accounting of inputs in the system of the tax administration which are collected to credits for the recipients of a supply of service or goods which have to be matched with the VAT due of the supplier. Cash transaction shall contain the net value of the invoice.
- 151 The central VAT monitoring database model and the data warehouse model offer an IT gate for the authorities in the accounting systems. The problem is that at the same time this gives access to highly sensitive information such as invoices that contain names of suppliers, prices, timing etc. The danger of the access through the databases of the tax authorities is that the hackers can less easily be unmasked by the nature of the information they are looking for than this would be the case for decentralized storage of data by individual business. The intrinsic danger of such system should be carefully taken into consideration.
- 152 The certified taxable person model is a model wherein a taxable person's VAT compliance process and internal controls are certified. However, it is questionable if this is useful in order to protect himself against fraudulent suppliers and fraudulent clients.

153 However such a system will not work in the area of small businesses, since cash transactions are rather frequent than seldom. However, if once such systems are working, suppliers will promote easier concepts for the benefit of the smaller operators.

## 15 Protecting bona fide traders

### 15.1 Question 31

154 An optional split system does exist in some MS. It would help to reduce dramatically any further risk caused by the court decisions making market participants obliged to be careful. So such a system might fit but again for smaller businesses it requires to take a strong stance against their suppliers from which they might depend on. However, it is a case which occurs very seldom and can be sorted out after a longer relationship will be build up.

155 Some members of the CFE Fiscal Committee believe that Authorities could improve the efficiency of the methods of fighting missing trader fraud by submitting, on a monthly basis and next to the European sales listing data, the following additional data per VAT number in their database to a European platform:

156 1) Did this taxpayer on the EC sales listing file all required VAT returns?

157 2) Did this taxpayer on the EC sales listing nil returns?

158 3) Has this taxpayer on the EC sales listing a significant payment backlog?

159 4) Total amount of intra-Community acquisitions as reported in the VAT return by this taxpayer compared to the inverted EC sales listing result for that taxpayer.

160 This information is very important in order to assess in advance the reliability of a supplier that is a potential Missing Trader.

161 This information could then be used by Eurofisc for basic data mining and support fast and objective decision making of the tax authorities. (115) It is also argued that major improvements could be reached by measures that could possibly see as questions of detail, but that may have major practical consequences:

- 162 Synchronization of VIES with national databases ;
- 163 Updating VIES database with more info such as name, address, period of validity;
- 164 Upgrading VIES database with the “technical invalid” feature in case the taxpayer meets certain criteria about “payment delay”, “late filing” and/or “consistent nil filing”. The Member States can choose within a certain range how tight they define the algorithm. This should help taxpayers to be aware of business partners that are getting off the right compliance track long before their VAT number is cancelled.
- 165 Online consultation of local VAT position (current account) in the national database like a bank account consultation. Outprints of extracts have authenticity status. Taxpayers don’t have to harass the tax collector for an certified extract anymore. Both parties save time.
- 166 Online availability of certificates of ‘tax status’ with authenticity status so that taxpayers do not have to wait until the tax control office is open to complete their refund file or VAT registration request. Again both parties save time.
- 167 Upgraded VIES with the possibility to check the links between bank accounts and VAT numbers. This should be a way to make VAT number hijacking more difficult. A supplier could demand to be paid from the bank account linked with the VAT number before granting a VAT exemption. The payment would be the ultimate proof that the one claiming to be the real owner of the VAT number he shows. In the reverse case, a client could insist to pay only to the bank account that is officially linked to the VAT number of the supplier. In both cases VAT number hijacking is prevented.
- 168 VAT number surveillance service organized by the Commission. The taxpayer flags the VAT numbers on which he wishes to be informed by email in case of changes; this request would bear a time stamp. This could be a “paying service” from the Commission to raise some own resources to (partially) finance the underlying IT maintenance cost of the upgraded VIES.
- 169 Significant mismatches between sales listings and purchase listings of suppliers and clients are communicated to both parties. According to our information (subject to further verification), such data can be exchanged via an external platform without enabling the host of the platform

to read the information exchanged, using encryption keys that only the sender and receiving party have.

- 170 Updated VIES database with information about whether a given taxpayer is “certified” and the date of certification data available on VIES.

## **16 An efficient and modern administrating of the VAT system**

### **16.1 Question 32**

- 171 Any effort to foster a climate of trust and cooperation will contribute to a better result. The problem which has to be addressed is that while international operators are acquainted to cope with problems linked to deal with global activities, tax administrations do not have the opportunity to obtain the same level of experience. This creates distrust a sentiment which has to be inherent in this professional environment. Therefore cooperation has to be designed in a way to help to sort out the honest from the fraudsters and to make understandable for both sides where the limits of the cooperation are in the light of the needs born by the duties and obligations of which each side have to comply with.

## **17 Other issues**

### **17.1 Question 33**

- 172 As addressed in the answers above, the strongest efforts have to be put into more cooperation between tax administrations, the Commission and business operators. The best to do is to establish an administrative body (authority) in which every MS will be represented and which is specializing in two areas, one is VAT and cross border transactions and the other is once enacted the interpretation of the CCCTB. Businesses need quicker access to solutions since compared to the other single markets Europe limits itself by keeping its backbones too long in uncertainty.
- 173 Even if a penalty system is left to each Member State, such a system much comply with the principle of proportionality and effectiveness. In certain Member States, VAT penalties are applied even in absence of any VAT fraud (and sometimes, in absence of any loss of VAT revenue.