



CONFEDERATION  
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**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**

*This is an Opinion Statement prepared by the Fiscal Committee of the Confédération Fiscale Européenne (CFE), the European association of national tax advisory organisations with 32 members representing over 180,000 tax advisers.*

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In the Case C-455/05, Velvet & Steel the Court ruled that Article 135(1)(c) of the VAT directive must be interpreted as meaning that the concept of “assumption of obligations” excludes from the scope of that provision obligations which are non-pecuniary, such as the obligation to renovate a property.

## **Reasoning of the Court**

### *The context*

Concerning the context in which the expression “assumption of obligations” is used, it is clear that the exemption provided for in Article 13B(d)(2) of the Sixth Directive concerns, in addition to the assumption of obligations, the negotiation and assumption of credit guarantees or any other security for money and the management of credit guarantees. It is common ground that all those transactions are, by their nature, financial services.

In the Case Velvet & Steel, the Court considered the assumption of the obligation to renovate a building is not, by its nature, a “financial transaction” within the meaning of Article 13B(d) of the Sixth Directive and therefore it does not come within the scope of that provision.

### *The purpose*

In reaching that conclusion, the Court placed reliance on statements in the European Commission’s observations that purported to set out the reasons for exempting financial transactions. In its written observations, the Commission claimed that the purpose of the exemptions is to alleviate the difficulties that would otherwise arise in determining the tax base and the amount of VAT that can be deducted on such supplies and also to avoid an increase in the cost of consumer credit. Since subjecting the assumption of an obligation to renovate a property to VAT does not present such difficulties, the Court considered that such supplies cannot be exempted.

## Observations of the CFE

Although the CFE does not object to the conclusions reached in the Case Velvet & Steel, it is concerned about the reliance that the Court placed on the alleged purpose of the exemptions. In particular, the CFE is concerned that the Court should suggest that one of the reasons why the exemptions were introduced was to avoid the difficulties that would otherwise arise in determining the taxable base and the amount of VAT that can be deducted. For the reasons outlined below, the CFE does not understand that there is any evidence that clearly suggests that this was one of the purposes of the exempting provisions. The Court is therefore wrong to seek to place reliance on this alleged purpose when determining the scope of the provisions.

### *Regarding the context,*

In the Case Case C-13/06, Commission v. Greece, the Court ruled that the services provided for persons who get into difficulties while travelling, while away from home or while away from their permanent residence are exempt “insurance services”. This was despite the fact that these services are of a non pecuniary nature, like the services in Velvet & Steel.

### *Regarding the purpose,*

The CFE is not aware of any evidence that clearly suggests that the exemptions for financial services were introduced because of difficulties in determining the taxable base and the amount of VAT that can be deducted. Attached is a written question to the Commission made by Mr Langendries, member of the European Parliament, on 9 January 2008 and a reply dated 6 March 2008 by the Commission. The Commission’s reply indicates that no stated reasons were provided for the exemptions at the time that the Directive was published. The reply suggests that the difficulties in calculating the consideration for financial services was referred to as a possible reason for exempting such services in the earlier Hutchings Report. However, the CFE has considered this report, and there is nothing in that report that clearly suggests that difficulties in determining the taxable base and the amount of VAT that can be deducted was one of the reasons for the exemptions. The CFE accordingly considers that the Court was wrong to suggest that this is one of the purposes for the exemptions.

While the CFE accepts that there may be instances when there may be difficulties in determining the taxable base on financial services, it is also important to note that:

- even with the exemptions, business have to address this issue when determining the right to deduct VAT on services rendered to non EU customers (art. 169(c) of the Directive 2006/112/EC), or when determining what deductions can be claimed using the general prorata (article 174(1) of the Directive 2006/112/EC);
- the list of exemptions mentioned in article 135(1) include transactions where the only consideration will be commission which can be easily determined. Equally the exemptions do not clearly extend to other transactions, for example relating to derivatives, which are clearly financial services but whose VAT status is unclear;

- on 13 August 1993, the European Commission sent a reasoned opinion to Belgium based on an “almost unanimous” guideline of the European VAT Committee expressed during its 13<sup>th</sup> meeting of 15 and 16 December 1981 i.e. that gross interest should be included in the numerator of the general prorate of deduction;

The CFE therefore considers that the Commission and the Court of Justice are wrong in suggesting that one of the purposes of the exemptions was to alleviate the difficulties connected with determining the tax base and the amount of VAT that can be deducted. While there may be situations where this may be a consequence of the exemptions, there is no evidence that clearly suggests that this was one of the purposes of the exemptions. Supplies should therefore not be considered to be exempt just because of the absence of such difficulties.

### Parliamentary questions

9 January 2008

P-6605/07

#### WRITTEN QUESTION by Raymond Langendries (PPE-DE) to the Commission

► **Subject: Purpose of VAT exemptions for financial services**  Answer(s)

In paragraph 24 of its judgment of 19 April 2007, Case C-455/05: *Velvet & Steel Immobilien und Handels GmbH v Finanzamt Hamburg-Eimsbüttel*, the European Court of Justice mentions that the European Commission explains, in its written observations submitted to the Court, that the purpose of VAT exemptions for financial operations (Article 13(B)(d) of the Sixth VAT Directive) was to alleviate the difficulties surrounding the determination of the taxable base and the amount of VAT deductible and avoid a rise in the cost of consumer credit.

What is the exact reference of the documents produced by the Commission, Parliament, the Economic and Social Committee or the Council that set out out this explanation of the purpose of VAT exemptions for financial services when the Sixth VAT Directive was being negotiated and to which the Commission referred in its written observations?

### Parliamentary questions

6 March 2008

P-6605/2007

#### Answer given by Mr Kovács on behalf of the Commission

The origin of the point expressed by the Court in this judgment and to which the Honourable Member draws attention, is to be found in the Commission's consultation paper on modernising Valued Added Tax (VAT) obligations for financial services and insurance, a part of which is quoted in the written observations by the Commission submitted to the Court in the course of Case C-455/05. The source of the statement taken from the consultation paper can be found in two documents: the proposal for a Sixth Council Directive on the harmonisation of legislation of Member States concerning

turnover taxes of 1973<sup>(1)</sup> and its explanatory memorandum, as well as the so-called Hutchins Report of June 1971 'Les Operations Financières et Bancaire et la Taxe sur la Valeur Ajoutée'<sup>(2)</sup> (document XIV/241/71).

The Commission stated in the explanatory memorandum that certain exemptions were 'justified for reasons of general policy common to all Member States.' There is no further explanation of what these policies might be. However, on the basis of the information available in the archives of the Commission, these proposed measures in the 1973 proposal were arrived at subsequent to an examination of the analysis in the Hutchings Report.

This report concluded that whilst subjecting financial services generally to VAT was 'logical, desirable and possible' there were difficulties that needed to be overcome including the absence of a readily identifiable mechanism for taxation (in other words, difficulties with the taxable base and the computation of deductibility) and the resultant increase in the cost of consumer credit.

The Commission decision to propose a narrow exemption was a pragmatic one based on its perception of these difficulties. No further information is available in the Commission's records.