

EPIF response to European Commission public consultation on review of VAT rules for financial and insurance services

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ABOUT EPIF (EUROPEAN PAYMENT INSTITUTIONS FEDERATION)

EPIF, founded in 2011, represents the interests of the non-bank payment sector at the European level. We currently have over 190 authorised payment institutions and other non-bank payment providers as our members offering services in every part of Europe. **EPIF** thus represents roughly one third of all authorized Payment Institutions (“PI”) in Europe. All of our members operate online. Our diverse membership includes a broad range of business models, including:

- Three-party Card Network Schemes
- E-Money Providers
- E-Payment Service Providers and Gateways
- Money Transfer Operators
- Acquirers
- Digital Wallets
- FX Payment Providers and Operators
- Payment Processing Services
- Card Issuers
- Independent Card Processors
- Third Party Providers
- Payment Collectors

EPIF seeks to represent the voice of the PI industry and the non-bank payment sector with EU institutions, policy-makers and stakeholders. We aim to play a constructive role in shaping and developing market conditions for payments in a modern and constantly evolving environment. It is our desire to promote a single EU payments market via the removal of excessive regulatory obstacles.

We wish to be seen as a provider for efficient payments in that single market and it is our aim to increase payment product diversification and innovation tailored to the needs of payment users (e.g. via mobile and internet).

Introduction

EPIF welcomes the possibility to provide feedback to the European Commission public consultation pertaining to the review of VAT rules for financial and insurance services. Our members fully support the objectives this initiative aims to tackle, as set out in the Inception Impact Assessment.

As the European Commission consultation pertains to the review of VAT rules for financial and insurance services at the same time, it is hard for our members to respond to some of the questions in the consultation. **EPIF members can only answer some of the consultation questions from the perspective of the payments sector but not for the entire financial and insurance sectors.**

Overview of key issues due to the exemption and lack of VAT deduction

EPIF members would like to highlight the following issues stemming from the exemption and lack of VAT deduction:

- Irrecoverable VAT is a cost burden, which creates additional costs and adds complexity.
- Business structures can be influenced by the VAT treatment applicable on the various scope of financial services with the potential for different entities being set up to contract for different supplies.
- Outsourcing/secondments become more expensive, on the basis that VAT charged / VAT self-assessed is non-recoverable in full or in part. As a result of this, hiring of permanent / contract staff can be more cost effective.
- The outcome of a cost benefit analysis as it pertains to outsourced vs in-house services can therefore drive the preferred business model / structure with respect to the performance of specific activities.
- Irrecoverable VAT in FS has significant cost implications and creates pressure to find lower cost solutions which impacts location decisions. Irrecoverable VAT in FS also impacts on corporate structuring decisions (being local versus cross-border) and creates complexity with regard the maintenance of partial exemption positions.
- Could result in businesses coalescing in locations where the option to tax or taxability is available on financial services. Particularly applicable to B2B services where the application of VAT would not impact the customer. B2C providers have a greater incentive to continue to apply the VAT exemption.
- The complexity and fragmentation of EU VAT rules, and in particular VAT deduction rules, can influence the decision to outsource certain function and the location of such outsourcing.

Key considerations and recommendations

Overarching design principles for a future modernised VAT framework

- EPIF would highlight that the valuation and determination of the taxable amount is a key area that needs to be taken into account when considering different policy options.
- Overarching design principles for a future modernised VAT framework for financial and insurance services:
 - Provide legal certainty to taxpayers engaged in the provision of financial services;
 - Ensure consistency and channel neutrality in the VAT treatment of financial services across the EU [for suppliers and merchants];
 - Ensure level playing field across all providers of financial services in the EU, irrespective of their business model or location;
 - Enable business structuring decisions to be made, without regard to VAT costs;
 - Remove any existing distortion of competition;
 - Have minimal impact on exchequer receipts.

Legal certainty: EU and national legislation has not been drafted to include provisions with respect to the appropriate taxability of financial services. As such, there is a requirement to rely on Tax Authority guidance (where available), which is non-binding on the Tax Authority, or alternatively apply to the Tax Authority for a ruling. Unless a Tax Authority ruling has been requested, the position adopted by the taxpayer is open to challenge in the event of audit. This can lead to an unlevel playing field amongst providers where the rules have been interpreted and applied differently. EPIF therefore believes that the reform should lead to rationalized, updated and pan-European harmonized definitions used for financial services exemptions. This should increase legal certainty for taxpayers.

Channel neutrality: EPIF considers that VAT rules should be determined by what type of service/product is provided and not the channel through which it is provided - the level of human intervention versus digitalisation does not change the nature of the supply. As an example we would refer to software systems automating equity trading, or applications allowing to provide insurance or credit transactions with limited or without human intervention.

Level playing field:

- EPIF believes that the rules should ensure level playing field across all providers of financial services in the EU, irrespective of their business model or location.
- There is **no consistency in the VAT treatment applied from Member State to Member State as it pertains to financial services**, which creates an un-level playing field due to the potential for different VAT rates to be applied on essentially similar underlying transactions. Fintech services may be viewed as either a financial or technology related service or a mix of both depending on the interpretation applied. The differing taxable vs exempt treatment of such services between Member States impacts the industry in a number of ways:

- a) Suppliers - in terms of pricing decisions and the impact that the VAT treatment would also have on their right to obtain VAT credit;
 - b) Customers - clarity on whether the procured services are subject to VAT and for cross border procurement whether they are required to undertake a self-assessment.
 - c) It influences decision making with respect to business structuring i.e. in what jurisdiction should the merchant contracting entity be set up;
 - d) Significant costs are required to be incurred when considering entity expansion into new Member States i.e. to determine the taxability of the product offering in country;
 - e) Taxpayers in jurisdictions that treat such services as VAT exempt incur significant VAT costs (on third party and intercompany purchases) - resulting in a distortion of competition for players in the market operating from different EU Member States;
 - f) VAT self-assessment obligations are unclear for merchants receiving such services from abroad;
 - g) Additional complexity needed to manage the compliance and reporting obligations depending on applicability of the VAT exemption.
- This can lead to businesses and customers making structuring decisions based on the different treatment in the Member States and lead to distortion within the industry.
 - There is also **no level playing field when it comes to Fintech services and similar services provided in a more traditional manner**. There are certain Member States that will treat for example traditional merchant acquiring services as being exempt from VAT; however, when such services are provided with a technology layer on top (i.e. an API integration which removes the requirement to integrate with a gateway, merchant acquirer, processor etc.), the technology element is often viewed by Member States as being the 'principal element' and thus the entire service is viewed as being VATable in nature. Again, this leads to distortions of competition between taxpayers offering a comparable service and the resulting impact from a customer perspective etc.]
 - EPIF also considers that where traditional finance remains exempt, if Fintech providers are introduced into the supply chain, frequently they may charge VAT. Disparity between some of these outsourced functions can introduce sticking VAT into the system for the traditional finance player. Furthermore, there exist boundary issues between financial services and non-financial services and impact on VAT treatments. Please also refer above to the channel neutrality point.
 - EPIF would also point out that **emerging offerings (e.g. DeFi) are still not well understood and unclear in regulatory terms let alone VAT**. EPIF believes that the [OECD report on taxing virtual currencies \(2020\)](#) should be considered in the context of this initiative to review VAT rules for financial services.

Price transparency for tax base determination

- EPIF would like to note that in the payments sector, it is not uncommon for parties in the value chain, notably the international card schemes, to use blended pricing models. Therefore, price transparency and price disclosure does not in itself provide a useful basis for determination of the tax base.

Domestic and cross-border activities

- EPIF considers that traditional retail financial services tend to have a domestic focus (B2B less so but still the trend is strong to domestic providers by SMEs) whereas emerging service offerings can be anywhere (see below under question 7). Multinationals are more involved in cross-border activity; however, this activity is often limited for regulatory reasons. We would refer here to EU passporting rules enabling businesses established in one EU country to provide their services across the EU.
- In more detail, a number of financial services can be provided remotely to recipients/customers located globally. Depending on the focus of the business, choosing a location could be impacted by the VAT implications and potential irrecoverable VAT costs. Within the EU VAT legislation, the distinction of where the recipient is located (EU or non-EU) impacts the ability of the EU seller to recover domestically incurred VAT. This can create distortions. Also, a non-EU provider may be at an advantage to provide its services from a location outside of the EU as they may not face VAT recovery restrictions in their domestic country. A system that seeks to eliminate any un-level playing field should be considered.
- As previously mentioned, the complexity and fragmentation of EU VAT rules, and in particular VAT deduction rules, can influence the decision to outsource certain function and the location of such outsourcing.