



# EUROCITIES statement on VAT refund for public services



Response to the European Commission consultation on the review of existing VAT legislation on public bodies and tax exemptions in the public interest

The current VAT system for public bodies is complex, but is justified by the unique role of public bodies in delivering services in the public interest. The European Commission should ensure that any change to the VAT system does not impose a burden on public interest activities and does not increase costs for citizens.

The Commission's competences are to facilitate cross-border transactions in the internal market and to avoid distortion of competition between member states. However, distortion of competition within them remains a task of the member states themselves. The diversity of VAT systems in the EU has not caused any negative effects on cross-border transactions and on the internal market. EU legislation should fully respect the principle of local and regional self-government as recognised in the Lisbon Treaty (Art. 4 TEU) and protocol 26 on services of general interest.

## • KEY POINTS:

- The current VAT rules applying to the public sector are sufficient, including articles 13 and 132-134 of the VAT directive 2006/112 EC.
- The Commission should not propose one single model of VAT rules for public services. The diversity of fiscal regimes reflects the diversity of EU member states' historic, political, social and economic specificities. Those specificities should be recognised and respected.
- Local government activities are predominantly local and therefore do not distort intra-EU trade. The European Commission has previously expressed the view that locally supplied services are, by their very nature, largely provided directly to final consumers and are therefore unlikely to distort competition in the internal market.<sup>1</sup>
- National refund systems already in place in many member states have proven to be effective. These systems must remain at the discretion of each member state to be adapted to the national situation.
- Of the options proposed in the consultation document, we would prefer a sector based approach. A reform by sector would allow public authorities and stakeholders to come to a consensus, and allow reform measures to be fit for purpose. The consultation document provides a basis for discussion on this, and we would be willing to contribute to a full analysis of advantages and drawbacks.

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<sup>1</sup> 2008 consultation on the review of existing legislation on VAT reduced rates

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- Many different VAT models exist across EU member states. Any proposals to change the VAT systems should be discussed with city representatives, since they would be seriously affected by any modification.

## General evaluation of current rules (question 1)

The specific rules for public bodies in article 13 have been well designed in combination with articles 132-134 of the VAT directive.

- Retaining articles 132-134 of the VAT directive is of great importance to local government in order to keeping services such as social, health care, and education, and certain cultural services free from VAT rules. These are all considered as services in the public interest and it is vital not to increase their cost for citizens.
- VAT rules directly affect cooperation between public bodies that want to share services, whether through municipal companies or inter-municipal cooperation. This is the case in Austria, France and Germany for instance. There would be a difference of treatment if the common provision of services through inter-municipal cooperation became subject to VAT, when self-provision by a public body is exempted from VAT.

## Distortion of competition clause (question 2)

The distortion of competition clause of the VAT Directive has affected public as well as private actors. An annex on applicability would be useful and should explain in detail how to proceed when there is a suspicion of distortion of competition. For instance, in Sweden's current road-parking dispute, it was unclear for public and private actors which authority to consult when a distortion of competition took place. Article 13 should be maintained and any future reform must be in the general interest of public authorities. Any change should not be applied retrospectively, but only as of the entry into force of the new rules.

## Reform measures (question 3)

We strongly oppose the full taxation model as presented in option 1. Services of general public interest, such as social, health, education, and certain cultural services, must be kept free from VAT. A full taxation model would only increase costs for citizens and would not deal with the issue of neutrality in the choice of the provider. The sector approach (option 4) seems the most appropriate, and should include consultation of relevant public authorities and stakeholders in the preparation of the future rules.

- A Europe-wide refund scheme, as proposed in option 2, should be approached with caution as each member state has its own unique and complex taxation model. Some reforms at EU level could be introduced, but should be considered case by case, depending on the structure of the service provider and in line with

national tax legislation. Any harmonisation system would mean structural and legal changes that would incur additional costs.

- National VAT refund schemes have proven their efficiency. Countries such as Austria, Denmark, Finland, France, the Netherlands, Portugal, Sweden, and the United Kingdom, have all implemented successful national VAT refund schemes.
- The national refund schemes not only protect public authorities from paying unnecessary tax but also ensure public authority neutrality when deciding on the provider of goods and services. In any future reform, national refund schemes should remain a core principle in VAT legislation for public bodies.
- The suppression of article 13 and the modernisation of article 132, as proposed in option 3, are not needed, as both of these function well. For simplification, both articles could be integrated into one.
- Option 4, sector reform, provides a basis for discussion. EUROCITIES would be willing to contribute to an analysis of potential issues.
- Option to tax (question 5): This option could be feasible when considering public authorities acting in sectors that are not usually tax-exempted, and private bodies in sectors that are usually tax-exempted. City authorities should be involved in further analysis to evaluate if the option to tax is a suitable solution.

## Sector reform (question 4)

We believe that sector reform and sector specific legislation could lead to better regulation and reduce red tape, ensuring a reformed VAT system that is fit for purpose.

- In many cases, member states already enforce VAT neutrality through an option to tax within certain sectors, applying equal treatment to public and private actors. This eliminates any doubt regarding a possible distortion of competition.
- Nevertheless, an in-depth analysis and impact assessment of the sector reform should be carried out involving relevant public bodies and stakeholders, looking first at sectors with a substantial impact on the internal market.
- Concerning waste management and sewage, these services are mandatory tasks provided by local or regional authorities and exempted from VAT in some member states. As stated above, local and regional self-government and the discretion of the member states in how they organise their services of general interest must be respected (protocol 26 of the Lisbon Treaty). Modification of the VAT rules could not overrule these provisions of the Treaties.