PensionsEurope feedback to the European Commission on its roadmap on the review of VAT rules for financial and insurance services

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1. PensionsEurope feedback to the European Commission on its roadmap on the review of VAT rules for financial and insurance services

PensionsEurope supports the European Commission's objective to simplify the life of taxpayers operating in the Single Market and we welcome the review of the VAT rules. In our joint position paper (November 2018) together with AEIP on the necessary steps to relieve pension fund participants from unnecessary VAT burden, we called for an amendment to the VAT Directive that provides more clarity with respect to the legal basis of the VAT exemption for pension funds and occupational pensions, is non-discriminative with regard to pension schemes, and is up-to-date.

In general, we believe all pension fund participants should be protected from unnecessary VAT burdens, regardless the character of the schemes (DB / DC / hybrid) as well as the Member State in which the services are being received. This exemption is especially relevant since pension plans (i) are in essence cost-sharing arrangements of beneficiaries with a clear public interest of preventing poverty among the elderly, as well as providing for survivor pensions, and (ii) they deliver services themselves that are being exempt meaning their VAT on purchases of services or goods cannot be recovered. Thus we **speak out for the retention of relevant VAT exemptions and are clearly against a general abolition of the system of VAT exemptions or relevant VAT exemptions** as we do not see the stated advantages in the Commission's Roadmap ("*The removal of the exemption would not only free the suppliers of financial and insurance services from irrecoverable input VAT, but it would greatly simplify the VAT rules for the sector*"). If VAT exemptions for financial and insurance services would be abolished in a broad manner to create "VAT neutrality" this would at the end lead to an increase in cost and a reduction in benefits for beneficiaries because the cost decrease under way for purchased preliminary products and services will not outweigh the likely increase due to the abolition of VAT exemptions.

The current exemption, in the light of the case law, seems to work for pension funds in most countries. Nevertheless, there is some ambiguity as to the application of the VAT Directive to pension schemes. In the landmark Wheels and ATP cases, the ECJ has set out the conditions for the application of the exemption for special investment funds to pension schemes. The most crucial test is to assess whether the pension fund participants bear the investment risk. Whereas this differentiation is useful when distinguishing between 'pure' DC and DB schemes, there also exist many types of 'hybrid' schemes that combine elements of both systems. It is unclear how the case law relates to these hybrid schemes. The legal uncertainty and the mass of relevant case law thus arises most from the fact that pension schemes have to qualify under Art. 135 (1) g VAT Directive that emphasises certain characteristics from investment funds. To reduce this kind of legal uncertainty and resulting complexity in arrangements a **clear and undisputable legal exemption from VAT for pension schemes** is needed and would be much more effective than disrupting the system of relevant VAT exemptions in total. Furthermore, regarding the Article 135 of the Council Directive 2006/112/EC of 28 November 2006 on the common system of VAT, we would like to suggest adding on the Paragraph 1 (letter f) the management and the safekeeping in shares, interests in companies or associations, debentures and other securities, so as also the services provided by the custodian banks would be exempted from VAT.

We recommend providing certainty irrespective the Member States in which the management services are rendered. Even though Member States have organised their pension system differently, economically these pension systems are comparable in essence. Regardless of the type of commitment, all pension plans should be treated the same for VAT purposes. Therefore, we believe **the current exemption for special investment funds should be extended to all pension schemes.**

The EC's combined evaluation roadmap/inception impact assessment states that *"Existing distortions linked to the exemption and its diversified application across the Member States should be reduced."* Even though the VAT exemption is in place, in some countries there is a stamp duty (for instance 4%) that is not subject or exempt from VAT and there is no possibility of any deduction. We urge the EC to recommend Member States to exempt (at least) pension schemes from this duty (or decrease their duty to no more than 1%).

Finally, PensionsEurope believes that establishing a cross-border investment-friendly tax environment in the EU not only requires removing unfair tax treatment but also introducing tax incentives. The EC's statement that "[…] Tax and other financial incentives, as well as collective bargaining play an important role […]" in "improving the cost-effectiveness, safety and equitable access to supplementary pension schemes" is still valid and should be taken into account as well.[1] Regarding financial incentives, for instance OECD report on "Financial incentives for funded private pension plans in OECD countries" (November 2019) is very helpful. Recently also the High-level group of experts on pensions recommended in its final report (of December 2019) that "*Member States should reserve tax and/or financial incentives in both the saving and the pay-out phase for supplementary pensions meeting minimum quality requirements. These incentives should reflect the diversity in characteristics of types of pensions and the related social policy of a Member State*".

[1] EU White Paper 'An Agenda for Adequate, Safe and Sustainable Pensions' (COM(2012) 55 final).

About PensionsEurope

PensionsEurope represents national associations of pension funds and similar institutions for workplace and other funded pensions. Some members operate purely individual pension schemes. PensionsEurope has **24 member associations** in 17 EU Member States and 4 other European countries[2].

PensionsEurope member organisations cover different types of workplace pensions for over **110 million people.** Through its Member Associations PensionsEurope represents more than **€ 4 trillion of assets** managed for future pension payments. In addition, many members of PensionsEurope also cover personal pensions, which are connected with an employment relation.

PensionsEurope also has **26 Corporate and Supporter Members** which are various service providers and stakeholders that work with IORPs.

PensionsEurope has established a **Central & Eastern European Countries Forum (CEEC Forum)** to discuss issues common to pension systems in that region.

PensionsEurope has established a **Multinational Advisory Group (MAG)** which delivers advice on pension issues to PensionsEurope. It provides a collective voice and information sharing for the expertise and opinions of multinationals.

What PensionsEurope stands for

- A regulatory environment encouraging workplace pension membership;
- Ensure that more and more Europeans can benefit from an adequate income in retirement;
- Policies which will enable sufficient contributions and good returns.

Our members offer

- Economies of scale in governance, administration and asset management;
- Risk pooling and often intergenerational risk-sharing;
- Often "not-for-profit" and some/all of the costs are borne by the employer;
- Members of workplace pension schemes often benefit from a contribution paid by the employer;
- Wide-scale coverage due to mandatory participation, sector-wide participation based on collective agreements and soft-compulsion elements such as auto-enrolment;
- Good governance and alignment of interest due to participation of the main stakeholders.

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[2] EU Member States: Austria, Belgium, Bulgaria, Croatia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Luxembourg, Netherlands, Portugal, Romania, Spain, Sweden. Non-EU Member States: Iceland, Norway, Switzerland, UK.