CEEP RESPONSE

Registered stakeholder ID Nr 59513031434-92

Brussels, 24 April 2014

CEEP Answer to the EC Consultation on the review of existing VAT legislation on public bodies and tax exemptions in the public interest

Consultation documents:
http://ec.europa.eu/taxation_customs/common/consultations/tax/2013_vat_public_bodies_en.htm
Deadline: 25 April 2014

General Introduction:
In addition to answering to the specific questions of the consultation on the review of the VAT regime, CEEP hereby presents its general opinion on the issue, reiterating some key messages that our members already expressed exchanges with the relevant Commission services.
The current system ensures that public services are often excluded when VAT is imposed, under the assumption that they satisfy certain conditions. Hence, the current Directive is of fundamental importance for CEEP, because it recognises the unique character of public services requires specific maintenance. This is in line with Article 14 TFEU and Protocol 26 TFEU. Therefore, CEEP is convinced that the current exemptions for public bodies (Article 13 of the current Directive) and activities in public interest (Article 132-134 of the current Directive) suit the specific needs and conditions of provision of public services in Member States, and that there is no need to revise it. Indeed, the VAT regime has managed to contribute till now to maintain a high level of quality and effectiveness of public services for EU citizens and businesses.

In particular, it is underlined that the public and private spheres have differing approaches, and cannot be subject to the same VAT rules. That is why we want to reiterate the unique nature of public services and its impact on European Union citizens, which is something that the Commission and the report seem to have disregarded. From this perspective, public services providers and private market actors cannot be subject to similar VAT or exemptions there from, because only one of them is active by choice while the other has a duty to provide accessible, affordable and sustainable services. When fulfilling mandatory responsibilities, public entities do not act under the same legal framework as private entities, and this explain why they benefit from a specific treatment regarding VAT rules. CEEP deems that this distinction is reasonable, and does not create any disproportionate positive discrimination for one or the other provider.

We also would like to emphasise that the diversity of the tax regimes reflects the diversity of the EU Member States, which springs from important historic, political and economic specificities of the countries. Those specificities and their reasons of existence should not be

European Centre of Employers and Enterprises providing Public services
Rue des Deux Eglises, 26 ◄ BE 1000 Brussels ◄ Tel + 32 (0) 2 219 27 98 ◄ Fax + 32 (0) 2 218 12 13 ◄ www.ceep.eu ◄ ceep@ceep.eu

ignored, nor should the Commission try to propose a harmonised model.

Finally, CEEP strongly disapproves the idea that seems to be hinted in the Copenhagen Economy Report, being that full taxation of public services would be the better way to do this, partly because private actors would increase the efficiency within public services. It is essential to remind that the ownership of the provider of public service is in no way determining the quality and efficiency of the service, as per Article 345 TFEU stating that the Treaties shall in no way prejudice the rules in Member States governing the system of property ownership. Good and bad cases exist, that advocate for a freedom of choice regarding the way of providing public services, and it would be absolutely unacceptable to promote one or the other through the EU VAT policy.

For all those reasons, CEEP firmly believes that an update of the VAT exemptions to public services is not required and the current differential treatment between public services providers and private actors should be preserved, as they are not part of the same market. It is our opinion that the current VAT regime does not distort competition. CEEP is strongly against any amendment introducing full taxation of public services, as this will be damaging not only public services providers but also and foremost EU citizens daily benefiting from those services. The other revision possibilities also contain certain problematic aspects. For instance it is unsure whether a refund system could be precise enough in its implementation to ensure a levelled playfield between public services and private counterparts, and the other alternative could possibly endanger the important flexibility required when providing services of a public nature.

Answers to the questions:

<u>Question 1 – General evaluation of the current rules</u>

As explained in the general introduction, there is no need to reform the current tax rules for public bodies and public enterprises. This applies in particular for the tax neutrality.

CEEP also considers that tax harmonisation should not be considered as an end in itself. It should be left to the Member States to provide clear rules through national legislation for the taxation of activities that are already defined, organised and “regulated” at national level. Indeed, it is now clearly recognised and codified in the EU Treaties that public services, due to their special nature, are benefitting from a specific treatment regarding internal market and competition rules, and they are under the remit of national, regional and local authorities.

<u>Question 2 - Distortion of competition clause</u>

CEEP do not see any major distortion of competition, and deems that any potential distortion can be adequately addressed and prevented in the current system. The current Directives provides for a balanced and secure legal framework.

<u>Question 3 – Reform measures</u>

As already stated in the general introduction, CEEP does not see any added value to revise the current VAT regime for public bodies and activities in the general interest. Therefore, CEEP opposes all scenario presented. The current provisions are basically suitable for the scope of VAT of the public sector and basically suitable to guarantee the necessary tax neutrality. CEEP rejects all the options suggested, including the introduction of an undifferentiated full tax liability in sectors. Public Services are activities which are organised and controlled by public authorities. Private operators are only entrusted with the performance by the authorities. For this reason there is no competition between public and private companies.

CEEP Members would like to formulate some additional remarks:

- Regarding the scenario of a refund system, this would create problems in decentralised systems because of the financial distribution among different public levels; the national, regional and local level. Moreover, the Commission does not have a competence for measures of financial compensation, these measures should not be regulated by VAT or tax rules, they should remain up to domestic law of the Member States.
- Regarding option 3 suggesting the deletion of special rules relating to public bodies (Article 13 of the VAT Directive) while keeping all or most of the current exemptions in the public, the integration of Article 13 in Article 132 is not welcomed because Article 13 accounts for the wider text exemption of VAT rules for public bodies executing their competences.
- No major reform of the VAT Regime is needed as presented in the consultation document. Nevertheless, there is a major issue that should be tackled, arising from national interpretations of Article 13(2). In Member States, local authorities are more and more encouraged to cooperate together for the provision of public services, in order to achieve economy of scale and enhance quality and efficiency in a context of rising cost pressure. This public-public cooperation has been now fully recognised in secondary law, namely in the Public Procurement Package as published in the OJ L 94 on 28 March 2014. The Package provides for a clear definition of public-public cooperation and needs to be now fully transposed by Member States. This definition recognises that public-public cooperation is out of the scope of the market and therefore there is no issue regarding potential distortion of competition. Nevertheless, the efforts to further develop this tool are often countered by remaining legal uncertainties regarding the taxation/non-taxation of this cooperation. In some Member States, national authorities include public-public cooperation in the VAT scope, whereas this seems quite contradictory with the existing exemptions. This legal uncertainties and what seems to be an abusive taxation of public-public cooperation activities in some Member States may prevent authorities to use this tool to the detriment of the efficiency gains that could be realised. Based on the new provisions on public-public cooperation in the procurement package, and in a view to ensure coherence among EU legislations, CEEP strongly calls for a clear exemption of public-public cooperation from the VAT regime.

<u>Concluding remarks:</u>

As a conclusion, CEEP is strongly opposed to the options suggested in the Consultation paper. CEEP considers that the current regime providing for two distinct exemptions for public bodies (Article 13 of the VAT Directive) and for activities in the general interest (Article 132-134 of the VAT Directive), is adequate. The current VAT Directive does not give serious distortions of competition or positive discrimination for one or another type of provider of public services, but rather ensure an adequate level playing field that take into account the special nature and needs of public services. The current system enables Member States to better adapt to national regional or local environment and participate to ensure a sustainable financing of public services. It is therefore essential to preserve the diversity of regimes in Member States by fully implementing the subsidiarity principle, to avoid any breach in the freedom of authorities to define, organise and provide public services in their territories.

Rue des Deux Eglises, 26 ◄ BE 1000 Brussels ◄ Tel + 32 (0) 2 219 27 98 ◄ Fax + 32 (0) 2 218 12 13 ◄ www.ceep.eu ◄ ceep@ceep.eu