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MEMO

The Federation of Enterprises welcomes the initiative of the European Commission to organize a broad consultation on the future of VAT.

In the past months we have worked hard to draft the reaction of Belgian business. Attached you will find the fruit of our labour.

The FEB and its members are at the disposal of the European Commission and the Member States to further discuss this topic in the coming months and years and to engage in a constructive dialogue to determine the “action plan” in order to give the EU-economy the VAT system it needs.

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The Federation of Enterprises in Belgium (FEB-VBO) is the only multi-sector employers' organisation representing companies in all three regions of Belgium. Its members, Belgium's leading **sectoral federations**, represent companies in key industrial and service sectors.

FEB has 33 full members, all of which are professional sectoral federations, as well as a number of applicant and corresponding members. All in all, it represents more than **33,000 businesses**, of which **26,000 are small or medium-sized enterprises**.

FEB represents approximately **1.5 million workers** in the private sector (i.e. 75% of private sector employment in Belgium).

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> Continuation 1 of memo of 31 May 2011

Can the (40 year old) ugly duckling (finally) become a swan?

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1 Executive summary

With the introduction of the Value Added Tax system in 1970, the European Community revolutionized consumption taxes and was considered as a forerunner and as THE example to follow. In 2011 we can only come to the conclusion that the current EU VAT system has lost its position of VAT pioneer and has become the “ugly duckling” of consumption taxes. With its ageing population, high labour costs and limited natural resources the EU can simply not afford to maintain a complex and fragmented VAT system if it still wants to play a significant role in the world economy in 2020 and afterwards. A real internal market might turn out to be the unique selling proposition of the EU...

The **long term objective** should be the creation of **VAT Union** in which the entire EU would be considered as one single VAT territory without internal borders: the VAT treatment of supplies from Brussels to Lisbon would be identical to that of supplies from Brussels to Antwerp. The rules would be completely harmonized, companies would benefit from a full one-stop-shop and the 27 VAT authorities would operate as if they were one VAT administration to ensure a uniform application of the VAT rules. Distribution of VAT revenue between Member States would be done on the basis of macroeconomic data.

In the **short term** the **priorities** should be:

1. Improving the VAT rules on intra-EU trade

B2B supplies of goods and services should in principle be taxed in the Member State where the customer is established. To avoid VAT registrations and reporting obligations in multiple Member States this should be accompanied by a one-stop-shop mechanism.

The existing rules for B2C supplies could be maintained but with simplifications (e.g. distance selling regime).

2. Ensuring the consistency between VAT and other VAT/GST systems for international (non-EU) services

Since the 70's a lot has changed: we live in a truly globalized world and numerous other countries have introduced VAT/GST regimes. Possible obstacles to international trade and double taxation should be avoided by ensuring a consistent approach in all the countries/regions applying VAT/GST systems. We support the work done on this topic by the OECD.

3. Improving the EU VAT system as a whole

Even for companies with only domestic operations in one Member State or in several Member State the current VAT rules are sometimes unmanageable.



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VAT is a tax on final consumption and not a tax on businesses. The **neutrality** of the VAT-system for businesses is achieved by allowing the businesses to deduct the VAT charged to them (input VAT) from the VAT charged by them (output VAT). The neutrality principle also entails that the decision where to supply goods or services or where and from whom to buy goods or services cannot be biased by tax motives. This requires a level playing field between public and private sector, ensuring full VAT deduction and replacing remaining VAT exemptions by zero rates.

The lack of EU approach by the Member States have resulted in a fragmented and complex VAT system that is difficult to administer both for VAT authorities and companies. The only ones benefiting from this fragmentation and complexity are the fraudsters. Priority number one for the Commission and the Member States should therefore be the clarification and harmonization of the VAT rules. More important than the legal instrument itself (a regulation or a directive) is the willingness of the Member States to adopt an **EU approach** and to adopt clear rules. This directive or regulation should be accompanied by binding implementation decisions to offer additional guarantees of a consistent and harmonized implementation and interpretation in all Member States.

Considering the important role the businesses play in the functioning of the VAT system (as tax collectors and also as taxpayers) the FEB is of the opinion that they should receive a more important **consultative role** in the various stages of the legislative process (drafting of proposals, discussing proposals, interpretation and implementation in the Member States). Another important requirement is the **timely implementation of VAT-rules** by the Member States. Companies need sufficient time to analyze the impact of legislative changes on their supply chains and IT-systems, train their people and effectively prepare and implement the changes. Therefore the FEB proposes a two staged approach: Member States should be obliged to implement and publish the new VAT rules at least 6 months (for small changes) or 12 months (for big changes) before their actual entry into force.

Harmonization and simplification will also drastically reduce complexity for SME's, therefore making the internal market more accessible to them. For MNE's, intra-group transactions should be drastically simplified by the creation of EU VAT grouping scheme.

4. Administrative simplification

Besides the actual VAT rules, the entire administrative aspect is also an important source of administrative burdens, e.g.:

- VAT registration in different Member States;
- 27 different VAT returns;
- 27 different recapitulative statements;
- different deadlines to file VAT returns and recapitulative statement;
- different IT platforms to lodge VAT return and other reporting obligations;



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The only way forward is a harmonization and simplification of the reporting and other administrative obligations.

The FEB is in favour of:

- a single EU VAT registration and a single EU VAT number;
- a single EU VAT return in which companies can declare all their transactions in all the different Member States;
- a single point of contact (one-stop-shop) in the Member State of establishment to file the EU VAT return and comply with all other administrative obligations;

5. VAT administration and fight against VAT fraud

The role of business as “benevolent” tax collectors is often taken for granted by tax authorities. Not only when discussing changes to the VAT system, but also when applying the existing VAT rules. Member States need the business to effectively collect the VAT revenues. But businesses also need the Member States to help them (= businesses) to help them (= Member States). The FEB therefore fully supports the proposals made by the Commission to improve the relationship between traders and tax authorities.

A simple and harmonized VAT system will make VAT administration more simple both for VAT authorities and companies. It will also make the VAT system less fraud prone.



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2 General introduction

Already in the 50's, the European Coal and Steel Community understood the possible negative impact of the application of different turnover taxes on the establishment of a common market for coal and steel.

With the introduction of the Value Added Tax system in 1970, the European Community revolutionized consumption taxes and was considered as a forerunner and as THE example to follow. The EC VAT system was a major source of inspiration for the first wave of countries wanting to improve their consumption taxes.

In 2011 we can only come to the conclusion that the current EU VAT system has lost its position of VAT pioneer and has become the "ugly duckling" of consumption taxes. The second wave of countries looking to introduce a VAT system now look at countries like New Zealand, Australia or Singapore. The EU VAT system is only cited as worst practice.

In the 70's and 80's, the EU and the USA were still the centre of the economic world. Since then, this centre has drastically shifted eastwards. With its ageing population, high labour costs and limited natural resources the EU can simply not afford to maintain a complex and fragmented VAT system if it still wants to play a significant role in the world economy in 2020 and afterwards. A real internal market might turn out to be the unique selling proposition of the EU...

We recognize that is more difficult to organize a VAT system in a federal system. However, in a real federal system these problems can be overcome. The problem of the EU is that it is still (and become even more) an intergovernmental system. Looking at recent changes to the VAT system we can only come to the conclusion that Member States do not have a Community team spirit when it comes to establishing a VAT system that is really compatible with the internal market. Member States are only interested in keeping (and maximizing) their VAT revenues and do not trust each other. While we understand that VAT is in first place an important revenue raiser, this should not have a negative impact on economic activity in the internal market.

For the FEB it is clear that the current VAT system is not in line with the Treaty and is a threat to our future economic prosperity and social welfare. If the (40 year old) ugly duckling finally wants to become a swan, major changes have to be made. Therefore the FEB fully supports the European Commission in its initiatives to improve the VAT system in the EU and will participate actively in the future work in this area.



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3 VAT and cross-border transactions in the internal market

Question 1. Do you think that the current VAT arrangements for intra-EU trade are suitable enough for the single market or are they an obstacle to maximising its benefits?

Question 2. If the latter, what would you consider the most suitable VAT arrangements for intra-EU supplies? In particular, do you think that taxation in the Member State of origin is still a relevant and achievable objective?

3.1 There is no internal market

Before 1993 the VAT system for EU-trade was based on physical controls at customs borders between Member States and VAT border tax adjustments (i.e. zero-rating in the country of origin and import VAT taxation at local rate in the country of destination).

Since 1993 the VAT system for intra-EU trade is still based on VAT border tax adjustment. The only difference is the abolishment of the customs borders and the physical controls. They have been replaced by shifting the control, financial risks and administrative obligations to the economic operators. One can question if it was the right policy choice to try to stimulate cross border trade of goods by increasing the risks and administrative burdens of the companies doing the cross border trade...

Very little, not to say nothing, has changed since!

Even in straight-forward A to B transactions the VAT issues and risks are important. It is often very difficult for a company to determine the VAT rules applicable in another Member State, thus requiring consulting a local external tax advisor. Complying with all the different administrative obligations in the different Member States is very complicated, very time consuming and very costly. Being 100% compliant is simply impossible. The VAT issues and risks rise exponentially in complex cross border transactions and business models (consignment stock, call of stock, toll manufacturing,...).

The supplier will also bear the full VAT risk if the customer fails to comply with his VAT obligations. Rules like "knew or should have known" lead to legal uncertainty, have made intra-EU trade a risky business and has not hindered the fraudster from frauding.



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Confronted with all these issues a lot of companies have effectively refrained from doing certain transactions in other Member States (or have even refrained from engaging in intra-EU trade at all). It is often easier to export and import than to do trade within the EU. Things have even worsened since the abolition of the internal customs borders. This is the paradox of the EU internal market.

For cross border supplies of services there have been significant improvements by the VAT Package. However the EU is still far away from establishing an internal market for services. Firstly because the VAT package it not resolve all the issues with cross border services. (EXAMPLES). Secondly due to the implementation and interpretation differences of the VAT package in the Member States. Thirdly because additional reporting requirements for services in the recapitulative statements have been imposed. Such additional burdens do not exist regarding domestic services or services to or from outside the EU.

3.2 Solutions

3.2.1 Ideal solution: a VAT Union

The only way to create a real internal market that works like a domestic market is to create a VAT Union.

In a VAT Union, the entire EU would be considered as one single VAT territory without internal borders. The rules would be completely harmonized and the VAT treatment of supplies from Brussels to Lisbon would be identical to that of supplies from Brussels to Antwerp.

A VAT-union would also drastically reduce complexity because:

- the VAT rules would be fully harmonized;
- businesses would only need one single EU VAT number to operate in the entire EU;
- businesses will only have to file one single EU VAT return;

A VAT Union would also imply that the 27 VAT administrations operate as if they were one VAT administration, with the European Commission acting as central body. This will guarantee a uniform application and interpretation of the VAT legislation and an equal treatment of companies and taxpayers in all the Member States.

It would also be beneficial for the Member States themselves. Reduced complexity will make the VAT system less fraud prone and will make controls easier. MTIC fraud will become impossible. A *quasi* EU VAT administration will also improve the fight against VAT fraud.



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VAT revenue distribution between Member States could for example be done on the basis of macroeconomic data.

We recognize that this an ambitious proposal that will not be realized in the short term, but we are convinced that this is the only way to achieve a real internal market and to reposition the EU VAT system as a (or even the) best practice in the world.

Necessary first steps towards the VAT Union are:

- further harmonization of the VAT rules;
- harmonization and simplification of administrative obligations (one single EU VAT registration, VAT number and VAT return);
- closer cooperation and trust between VAT authorities.

3.2.2 B2B short term alternative: destination principle based on the place of establishment of the customer

Option 1: destination is where the customer is established

The place of establishment of the customer serves as a proxy for the place of actual consumption.

Since the difference between supplying goods and services is fading in modern business models, there is an urgent need for establishing a single set of place of taxation rules for cross border transactions that apply both to supplies of goods and services.

The new general place of supply rule for services that was introduced by the VAT package should be extended to supplies of goods in B2B context. For immovable property, the place of taxation should remain the place where the immovable property is located.

The place of establishment of the B2B customer (for both goods and services) is the preferred solution for the following reasons:

- It is easier to determine the place of establishment of the customer than to determine the destination of the dispatch of goods, in particularly for pick-up deliveries (e.g. “EXW”);
- The complex issues regarding chain transactions will be resolved. The existing rules will become obsolete;
- No qualification issues anymore (e.g. is it a good or a service?).



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To avoid this system triggering multiple VAT registrations, increasing compliance costs and having important cash flow consequences, accompanying measures should be taken.

These problems could be avoided by implementing a well functioning one-stop-shop scheme (one EU VAT registration, one EU VAT return, a single point of contact for all administrative obligations and the possibility to deduct foreign VAT should be part of the one-stop-shop).

Alternatively, a reverse charge mechanism would also limit the requirement of foreign reporting obligations and neutralize negative cash flow impact for businesses

For intra-group transactions, all these issues should be avoided by introducing a EU VAT grouping system.

If the above mentioned conditions are met, the destination principle based on the place of establishment of the customer could be a valid and workable VAT regime for cross border supplies of goods and services.

Option 2: destination is where the goods arrive

Although this criterion probably reflects the most the place of actual consumption, it is in reality the most complex to apply in practice.

The supplier will exactly need to know to which Member States the goods are transported and if they effectively arrive in that Member State. This rule will be impossible to apply if the customer picks up the goods or in complex chain transactions. Without a one-stop-shop this would also lead to multiple VAT registrations (and the supplier will often not know in which Member State he has to register).

Also this rule does not end the different VAT treatment of supplies of goods and supplies of services.

Therefore the FEB is not in favor of the destination principle based on the place of arrival of the goods.

3.2.3 B2C supplies

For B2C supplies of goods and services, the existing general principles should be maintained, but with a full harmonization (e.g. distance selling regime) and the introduction of a one-stop-shop.

3.2.4 RIP origin principle?

Recent changes have moved the VAT system away from the origin principle. Political support in the Member States for the origin principle seems to be very low.



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The origin system would be a simple system for the supplier and would result in much lower compliance costs for companies, especially for B2C supplies of goods. However it would also require a full harmonization of VAT rates across the EU to avoid “VAT rate shopping”. This is seams very unrealistic in the short (or even the medium long) term.

Also for B2B supplies of goods it will only simplify the straightforward supply chains. More complex supply chains (e.g. with more than 2 parties) will still trigger foreign registrations and the application of different rules for the parties involved in the chain transaction. These issues could be overcome by a well functioning complete one-stop-shop mechanism, developing clear rules on what constitutes the cross-border supply in supply chains with multiple parties and harmonization of rules in general. It will also have a huge cash flow impact for businesses operating cross-border within the EU. This cash flow impact could be mitigated by a EU VAT grouping system.

For trade outside the EU, the destination principle will in any case still apply.

The switchover from the current destination principle to the origin principle will also necessitate huge investments (e.g. IT, training, redesigning business models...) and lead to all the legal uncertainty that usually comes with the implementation of new legislation.

4 Neutrality of the VAT system

4.1 Principle of neutrality

VAT is a tax on final consumption that is collected in a staged process by businesses. Since it is not a tax on businesses, they should not bear the burden of the VAT itself. Although VAT is charged in every stage of supply chain, it shouldn't be a cost factor until it reaches the stage of final consumption. In other words: VAT should be neutral for businesses.

This neutrality of the VAT-system for businesses is achieved by allowing the businesses to deduct the VAT charged to them (input VAT) from the VAT charged by them (output VAT).

There are also other aspects to the neutrality principle of VAT:

- Neutrality of the design of the VAT system: VAT is a general tax on consumption (as opposed to taxes on specific goods like excise duties). This means that all “commercial transactions” should in principle be taxed and that similar goods and services should be subject to the same VAT treatment;
- Economic neutrality of the VAT system: the decision of where to produce goods or supply services and where to buy goods or services should only



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be based on economic imperatives and should not be biased by tax motives. This is particularly relevant for cross-border transactions (both intra-EU and with third countries);

- Neutrality of VAT administration: since businesses are (until now) unpaid tax collectors, the administrative burdens and costs of compliance should be reduced as much as possible;

However, in reality VAT is often not neutral for businesses. Therefore the FEB requests the Commission and the Member States to pay particular attention in future work and legislative proposals to the issue of VAT neutrality for businesses.

4.2 Scope

Question 3. Do you think that the current VAT rules for public authorities and holding companies are acceptable, particularly in terms of tax neutrality, and if not, why not?

Question 4. What other problems have you encountered in relation to the scope of VAT?

Question 5. What should be done to overcome these problems?

4.2.1 Public authorities

Public authorities are becoming more and more often active as regular economic operators, for example regarding construction work, financial and insurance services, different forms of consultancy, services of recruitment and selection, outplacement and career guidance, insourcing of pure economic activities etc. Private businesses on the other hand are becoming more active in sectors that used to be the privileged domain of public authorities for example regarding energy, public transport, waste management, healthcare, education etc. Furthermore, public bodies are involved in complex arrangements with private companies (e.g. public-private partnerships). The difference in VAT treatment between public and private bodies therefore inevitably leads to distortions of competition. And this problem is increasing.

The VAT treatment of public authorities also offers an incentive not to outsource to private sector companies the supply of goods or services that are merely ancillary to the public activities, although the same goods or services could be supplied more efficiently and at a lower cost (excluded VAT) by a private sector company. This results in a non-efficient allocation of public resources. In some member states, VAT compensation funds are destined to mitigate this negative incentive.

The terms used in article 13 of the VAT directive (2006/112/EC) are unclear, leaves much leeway to the Member States and leads to complicated issues. Examples:

- how to decide whether public bodies are “governed by public law”.



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- how to determine when public bodies are engaged in activities or transactions “as public authorities”. This is directly linked to the fundamental and highly sensitive philosophical, ideological and political question of the role of public authorities in today’s society, more precisely: where does such a role stop?
- what is a “significant” distortion of competition?

If a private sector company is experiencing unfair competition by a public sector body, it has no real legal instrument to formally raise this issue with the tax authorities. It can only make an informal complaint but tax authorities are not obliged to analyze the complaint, nor to give any feedback. Member States’ VAT administrations often don’t have a real incentive or are not willing to challenge the non taxable status of public bodies of their own member state. The FEB is of the opinion that all Member States should introduce a formal procedure to enable private sector businesses to take up these issues with the tax authorities.

A often heard argument from Member States is that extending the scope of VAT to the public sector would be too complex and that it would lead to administrative burdens for public bodies. As a consequence they would be able to spend less time on their core-business. This is a valid argument, but unfortunately it is rarely accepted or even taken into consideration by Member States when it comes to imposing new obligations on the private sector. Private businesses also spend a huge amount of time, money and human resources on VAT compliance instead of using them to supply goods and services. If VAT is too complex for the public sector, it is also too complex for the private sector.

The FEB is of the opinion that the current VAT rules for public bodies are not neutral and therefore need to be thoroughly reviewed in order to create a level playing field between private and public bodies. Public bodies should only be considered as a non-taxable person when they act as real public authorities on the basis of their “regalian prerogatives” for which they cannot be in competition with private sector bodies. Supplies of goods or services which could be performed both by private and public bodies need to be treated in the same way, irrespective of the legal nature of the person making these supplies. In case distortion of competition still subsists, a formal procedure should be available for private sector bodies to take up these problems with the Vat authorities.

Possible negative consequences for the final consumer of extending the scope of VAT to more public authorities might be mitigated by clearly defined zero rates, that would be open to all taxable persons, both public and private.

4.2.2 Holding companies

Even though a large number of EJC-decisions are dealing with holding companies there is still uncertainty. A lot of questions are still not answered and therefore lead to discussions between business and tax authorities.



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The fundamental and primary role of a holding company is to hold shareholdings in affiliated companies. This activity is generally not considered as an economic activity and remains out of scope of VAT.

In order to avoid negative VAT consequences, companies are sometimes forced to charge the holding company with additional activities. This does not always lead to an optimal or efficient division of tasks in a group of companies.

The VAT treatment of holding companies is especially important in case of VAT grouping, since is the view of the Commission and some Member States that non-taxable holdings cannot be members of a VAT grouping. However it could also be argued that non-taxable persons can join a VAT grouping and that the VAT regime of the VAT grouping would in this case be the same as that of an ordinary taxable person carrying out both taxable activities and out-of-scope activities.

Most holding companies do not only hold shares and collect dividends. They are an important factor in the management and strategy of groups.

The holding of shareholdings that give the holding company the possibility to influence the management decisions and the strategy of the subsidiaries and/or the group as a whole (e.g. 10% like in the parent subsidiary directive) could be considered as an economic activity. In this way only real passive portfolio holding companies would be considered as non-taxable persons.

For example in Switzerland the acquisition, holding and the disposal of participations is considered a business activity which allows the holding company to deduct input VAT. Are considered as participations the shareholdings which are held as a fixed asset and give the holding company a decisive influence in the subsidiary. Shareholdings of at least 10% of capital are always considered as participations. The business activity of the subsidiaries may be taken into account to determine the right to input VAT deduction for the holding company.

4.2.3 Subsidies, compensation for damages, warranties,...

Today we have a variety of subsidies that business can receive in several different forms and situations. Subsidies can come from the EU, member states, regional or local authorities, semipublic bodies, charities, etc. Subsidies can be (very) general or (very) specific, direct or indirect, in cash or in kind,... Although the economic effect of all subsidies is in principle the same, the VAT treatment of subsidies differs and is not always clear.

In practice is often very difficult to determine if a given subsidy is directly linked to the price of a taxable supply and whether it should be regarded as a consideration for a supply or not. This lead to a lot of uncertainty and problems for business.

The same applies for compensation for damages, warranty obligations, certain contractual compensations etc.



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Member states have different approaches to this issue. Businesses have difficulties to oversee the economic and VAT effects when receiving subsidies, which is not satisfying. The VAT rules must give a clear answer to these questions.

Further, if such a subsidy affects the right to deduct input VAT it is an even larger problem, (The rise of the standard VAT rate in some member states also means that the cumulative amount of non deductible VAT also increases)

4.2.4 Transfer of going concern

The out-of-scope character of a transfer of going concern (or parts of a concern) is currently optional for the Member States. The FEB fully supports the economical rationale behind the out of scope character of TOGC and therefore it should be applied in a uniform way in all Member States.

The optional character leads to a lot of problems if the transferred concern is located in multiple Member States, especially if some of them do not consider the TOGC as out of scope of VAT.

4.2.5 Fictitious supplies and acquisition of goods

Under article 17 and 21 of the VAT Directive certain intra-EU transfers of goods by a company are treated as supply of goods in the Member State of dispatch and as an acquisition in the Member State of arrival. In practice, this means that a taxable person can in principle not move his own goods to another Member State without being VAT registered in both Member States. He must register and draft a “transfer document” for VAT purposes only. The fact that the taxable person might not be established in the EU or that the transaction is only a one-off does normally not matter.

As from the beginning, Member States have tried to mitigate the VAT registration burden with exceptions in the provision itself (cf art 17.2) and introducing other derogations (e.g. consignment stocks simplifications, extended simplified tolling schemes etc). Although, some of the simplification measures are very business friendly, harmonization on EU level was not the primary concern when implementing national simplification rules.

Despite all these efforts, these fictitious supplies provisions remain very difficult to apply and are in our opinion one of the principal reasons why doing intra-EU business with Community goods is much less attractive than doing the same with non-Community goods. Non-community goods can benefit of pragmatic customs procedures like “equivalence” which is vital to keep up with demands of international trade. Tolling schemes involving goods with Community status, multiple Member States and ending with an export outside the EU are troublesome.



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4.3 Exemptions

Question 6. Which of the current VAT exemptions should no longer be kept? Please explain why you consider them problematic. Are there any exemptions which should be kept and, if so, why?

4.3.1 General remarks

The current rules on exemptions make the VAT system very complex and distort neutrality.

The main issue with the exemptions is the fact they are not applied in a consistent and harmonized way across the EU. It is often not easy to determine if a given transaction is covered by an exemption in a particular Member State. For companies operating cross border this leads to additional complexity, obligation to hire external consultants to minimize compliance risks and lengthy discussions with national tax authorities.

Exemptions also create distortions in the efficient distribution of tasks. Exempt companies have an incentive to insource economic activities to avoid VAT due to the fact they do not receive an input VAT-deduction.

A large part of the exemptions is generally justified by social reasons: subjecting to VAT these goods or services would make them more expensive. While the FEB understands the social reasoning behind these exemptions, it does not understand why they are accompanied by the loss of the right to input VAT deduction for the supplier. The non deductibility of input VAT creates hidden a hidden VAT cost that is incorporated in the price and is passed on to the next stage in the supply chain and ultimately to the final consumer. Exemptions without credit can be considered as “social window-dressing” by Member States because it implicitly shifts and important part of the financial burden of social VAT policy from the Member States to the economic operators covered by the exemptions and finally back to the final consumers. The Member States give with one hand and take back with the other.

Therefore the FEB is of the opinion that the current system of exemptions should be reconsidered by:

- Analyzing the economic advantages and disadvantages of each exemption;
- Limiting the exemption to a minimum;
- Determining a common set of exemptions that are clearly defined;
- Replacing all exemptions by zero-rates or exemptions with credit;

This would make compliance easier and reduce distortion of restore the neutrality.

4.3.2 Financial services

The VAT rules on financial services have not changed since the introduction of the VAT system in the EU in the 70's. Much has changed since then: new financial



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products, new business models, new players in the financial sector. Moreover many banks, insurance companies and other financial institutions are operating cross border in the EU and the bigger ones are even operating globally. The current rules are out of date and need to be drastically updated urgently.

The VAT exemption leads to uncertainty and major distortions since not all Member States apply the same definitions for financial services. The line between an exempt financial service and non exempt (financial) service is sometimes very thin which makes it difficult to determine the correct VAT regime. This leads to time-consuming study work, high costs for external consultants, discussions with tax authorities (in different Member States) and ultimately litigation procedures.

This is problematic not only for the financial institutions themselves, but also for their (corporate) clients that are receiving financial services in different Member States. Many non financial groups also supply financial and insurance services to group members. Additionally, the current VAT treatment of financial and insurance services also has another important impact on companies outside the financial and the insurance sector *sensu strictu* because it creates an incentive for insourcing due to irrecoverable VAT. This leads to an inefficient distribution of tasks.

The non deductibility of input VAT for financial institutions creates a “hidden VAT” that is passed on to the customers. The VAT exemption is therefore in reality only partial.

Solutions to overcome the problem of hidden VAT and insourcing could be the possibility to opt for taxation, zero-rating financial services and cross border VAT grouping (or at least an efficient cross-border cost sharing arrangement). The option to tax would allow the financial institution to apply VAT on services for which the “difficult to tax argument” does not apply or can be overcome and to recover the input VAT. The option could for example be exercised on a transaction by transaction basis, for certain predetermined categories of transactions or in a B2B context.

Zero-rating would allow the financial sector to improve their organizational structure and efficiency by facilitating the outsourcing and/ or pooling of tasks. It would also solve the problem of hidden VAT and this without introducing a real VAT. This will allow the European financial sector to compete on a level playing field with the non-EU financial sector.

Another way to mitigate the current VAT rules would be to allow cross-border VAT-grouping and cross border cost-sharing arrangements.

The FEB asks the European Commission and the Member States to continue and intensify their discussions on all three parts of the proposed revision of the VAT treatment of the financial services (i.e. definitions, option to tax and cost sharing) and to come to concrete results as soon as possible. Besides the difficulty to determine the taxable base, there is no reason to treat financial services differently than any other service.



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Finally the FEB also points out that most Member States have introduced other taxes or levies compensating for the VAT exemption (tax on insurance premiums, stock exchange taxes,...). These taxes should be taken into consideration when redesigning the VAT rules on financial and insurance services, in order to avoid any double use or double taxation.

4.3.3 Standstill-clause

Also the exemptions under the standstill-clause of article 176 should be reviewed and abolished or phased out where possible and harmonized where not possible.

4.3.4 Immovable property

Immovable property should be subject to VAT in a B2B context. For social reasons it could be zero rated in a B2C context.

4.3.5 Goods covered by VAT warehouse arrangement

The VAT warehouse regime only covers the goods mentioned in Annex V of the VAT directive. This limitation to certain goods does not exist for non-community goods sent to a VAT warehouse. This limits the attractiveness of the EU as market for community goods who are not included in the list. For example many strategic metals for the green economy are not yet allowed in the VAT warehouse (e.g. Gallium, Lithium, rare earths, etc). This could hinder the EU in playing a leading role in the global green economy.

4.4 Passenger transport

4.4.1 EU passenger transport

Taxation of passenger transport pursuant to where the transport effectively takes place, proportionate to the distances covered is a very complex system to operate for transport companies.

A one-stop-shop mechanism like the one that will be introduced for the e-commerce sector in 2015 would be a serious improvement.

Having said this, the FEB favours a general one-stop-shop for all companies.

4.4.2 International sea and air transport

The output and input exemptions for international sea and air transport are justified because:

- international sea and air transport is to a very large extent conducted outside any tax jurisdiction, i.e. on or over the high seas;



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- it plays a crucial role in the development of free trade and the mobility of persons.

To ensure neutrality, these rules should be extended to international rail and road transport.

4.5 VAT Deduction

Question 9. What do you consider to be the main problems with the right of deduction?

Question 10. What changes would you like to see to improve the neutrality and fairness of the rules on deduction of input VAT?

4.5.1 General remarks

As mentioned earlier the neutrality of the VAT-system for businesses is achieved by allowing the businesses to deduct the VAT charged to them (input VAT) from the VAT charged by them (output VAT). Limitations in the right to deduct input VAT and delays in the effective repayment undermine the neutrality principle. The FEB is of the opinion that VAT should be fully deductible (for all taxable persons). Limitations of the right to deduct are only acceptable if there are sound reasons to do so and cannot be used as a simple revenue raiser for the Member States.

4.5.2 Determining the amount of deductible VAT

It takes huge efforts for businesses to identify the “right” amount of deductible VAT. Allocation of input VAT to taxed activities and non business or exempted activities is not free of interpretation and lead to lengthy discussions with VAT authorities. This is especially an issue for **overhead costs**.

Adjustments of VAT deduction during the economic lifetime of goods and the deemed supplies of services for private use are a relatively heavy burden for companies, but allow to take into account the actual business use.

The new deduction rules for investment goods that entered into force 1 January 2011 however have made the rules even more complicated, especially for movable goods. For movable goods it is often very difficult and sometimes even impossible to know from the outset the percentage of business use. On top of that the business use of certain movable goods can be very variable over time. We do not understand why the scope of this proposal (that originally only covered immovable goods) was extended to movable, moreover since only very few Member States seem to have made use this option (unfortunately Belgium is one of them).

As already mentioned, the VAT exemptions should be reviewed and the remaining exemptions should be replaced by zero rates, thus allowing input VAT deduction. This would first of all restore VAT neutrality and secondly simplify determining the



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right amount of deductible VAT. Only the VAT linked to non business use would remain non deductible or be subject to the system of deemed supplies.

4.5.3 VAT refunds

As important as the actual deduction rules are the rules governing VAT refunds, within the country of establishment but even more in other Member States. The recent problems with the (not) functioning of the refund portals is unacceptable.

While some Member States manage to give refunds within one or two weeks, in some Member States it takes months or even years to obtain a refund. Some Member States only refund after requiring additional information/documents or even after a complete audit. On top of that some Member States use every possible excuse or little mistake to refuse the refund.

There are literally hundreds of millions of euro's of refundable VAT being blocked by the Member States. The negative cash flow impact for companies is huge. The VAT refund practices in some Member States is totally unacceptable and need to be reformed on the basis of best practices applicable in other Member States.

4.5.4 Flat-rate deductions

Flat-rate deductions are presented as a simplification measure for cases where it is difficult to determine the percentage of business use. Our experience shows that in practice the effect is completely different. There are hardly two Member States which apply the same rules. Therefore business again faces a problem with different rules which usually pushes costs for applying the rules.

In the staff working document the Commission states that in such a system there will always be winners and losers. In fact there are only losers. In Belgium for example VAT on cars is only maximum 50% deductible. This means that if business use is 100%, you will only be able to deduct 50% VAT. If business use is only 30%, you will only be able to deduct 30% VAT. This is clearly a budgetary measure and not a simplification measure. Also, when re-invoicing these car costs, the 50% VAT deduction limitation remains valid in the hands of the supplier and can apply a second time in the hands of the client.

4.5.5 Deduction limitations under the standstill-clause

Under Art. 176 sub-paragraph 2 of Directive 2006/112/EC, Member States can maintain their national exclusions from input VAT deduction. Thus, businesses engaged in cross-border transactions usually face a completely different situation in other Member States regarding the exclusion of input VAT deduction than in their home Member State. Since it is difficult to gain an overview of the numerous exclusions, businesses engaged in cross-border transactions in the EU have to engage VAT advisers, thus increasing the VAT advisory and compliance cost for cross-border transactions in the EU.



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The economic rationale behind most of these deduction limitations is very questionable or even inexistent. They should all be abolished / phased out. Pending their phasing out, a public database should be set up by the Commission containing all these derogations.

4.5.6 Cash accounting

An optional cash accounting may have advantages for both business (especially SME's) and Member States. Disadvantages are e.g.:

- the standard approach in accounting is accrual based;
- cash accounting will create additional layers of complexity (cf. reconciliation, payment in month X and invoice month X+1 or vice versa, etc).

In any case the FEB is the opinion that it should not have an impact on the moment of VAT deduction of the customer. Otherwise the customer will avoid trading with a company operation under a cash accounting scheme to avoid cash flow problems. This is even more important since the customer will in most cases not even be aware that his supplier operates under a cash accounting scheme. He will only know it after having received the invoice with the mention "cash accounting".

4.5.7 Other issues

Without being exhaustive, here is a list of other issues regarding VAT deduction, e.g.

- Deduction of VAT incurred before the formal VAT registration or during the preparatory phase before the first outgoing supply of goods or services is done;
- Deductibility of input VAT on costs related to representative/sales offices in other EU countries with no output VAT;
- Deduction of VAT (input) and cross charging (output) in the case of shared service centers which are not VAT registered in the different EU countries;
- In some member states there are large problems with the possibility to recover VAT for a fully taxable company that receives subsidies;
- Deduction of VAT and the different treatment by the EU countries of the (financial/payment) discounts;
- Different deadlines for claiming input VAT and / or correcting invoices;
- The rule governing the exercise of the right of deduction usually require the claimant inter alia to hold an invoice made out to him. (in some Member States this excludes invoices for employees' business expenses);
- Knowledge test discussions: the "knew or should have known" rule is often invoked by VAT authorities to deny VAT deduction, even if companies have no real instruments to know or be able to know;
- VAT treatment related to congresses (some countries follow e.g. the margin scheme, some do not).



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4.6 International services

Question 11. What are the main problems with the current VAT rules for international services, in terms of competition and tax neutrality or other factors?

Question 12. What should be done to overcome these problems? Do you think that more coordination is needed at international level?

The decision of where to produce goods or supply services and where to buy goods or services should only be based on economic imperatives and should not be biased by tax motives.

For goods, the exemption of exports and the taxation of imports manages to solve the most important issues.

This is not the case for international services (and intangibles). The complexity and the lack of harmonization of the VAT system still constitute obstacles to the international trade in services and intangibles.

Not all countries (even within the EU) have the same approach regarding the difference between a supply of goods and a supply of services, complex services, composite services, supply and installation contracts, the use of use and enjoyment rules,...

Clear rules that are consistently applied by all member states and third countries are of paramount importance. For example to determine:

- whether a supply is to be qualified as a good or a service;
- if a transaction is to be regarded as a single or a composite supply;
- the place of the supply (especially if multiple establishments are involved);
- the applicable VAT rate;
- the taxable amount;
- the application of possible exemptions;
- the invoice requirements;
- ...

Now countries have their own national rules (or no rules at all) to resolve these issues, resulting in legal uncertainty and double taxation.

The exponential growth in international services has made these problems even more acute.

The best way to overcome these issues is by a systematic and consistent use of the destination principle. The VAT should be declared and paid by the customer (in



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case of B2B). Excessive administrative burdens should be avoided because this would mean replacing one obstacle by another obstacle. In this way, it makes no difference whether services or intangibles are obtained domestically or abroad because the domestic VAT rate will always apply.

The EU should enter into agreements with other countries/regions in the world to ensure a common approach to international services and to facilitate administrative cooperation with countries outside the EU.

There is an urgent need for clear and simple rules to resolve the issues relating to the qualification of a transaction for VAT purposes (good, service, single supply, composite supply,...) and this both within the EU and with third countries.

The FEB supports the work done on this topic in the OECD Working party n° 9 on Consumption taxes.

Another issue European companies have to face is that it is very often impossible to receive a compliant invoice from a non EU supplier. It is very difficult to explain to non EU suppliers the European invoicing rules (e.g. content or e-invoicing). This should however not lead to any sanctions.

5 Harmonization and legal process

5.1 The legal process

Question 13. Which, if any, provisions of EU VAT law should be laid down in a Council regulation instead of a directive?

Question 14. Do you consider that implementing rules should be laid down in a Commission decision?

Question 15. If this is not achievable, might guidance on new EU VAT legislation be useful even if it is not legally binding on the Member States? Do you see any disadvantages to issuing such guidance?

Question 16. More broadly, what should be done to improve the legislative process, its transparency and the role of stakeholders in the process, from the initial phase (drafting the proposal) to the final phase (national implementation)?

Besides the specific issues regarding cross border trade, another major problem with the current VAT system is the difficult legal process.

Recent experiences have shown that the only way to reach an agreement on VAT matters is (1) to adopt a clear text but to grant options or derogations to the



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Member States, or (2) to adopt a text without options or derogations but which is so unclear that it can be interpreted and applied by the Member States in 27 different ways (= *de facto* options). The result is the same in both cases: a complex and fragmented VAT system. In fact one can even hardly speak of a VAT system. In fact there are 27 national VAT systems that share some common characteristics.

Even for a company doing only domestic transactions in different Member States the current VAT system is therefore unmanageable!

Clarifying and harmonizing the VAT rules should therefore be priority number one for the Commission and the Member States.

More important than the legal instrument itself (a regulation or a directive) is the willingness of the Member States to adopt an **EU approach** and to adopt clear rules that can only be implemented and interpreted in a harmonized way. If Member States adopt a real EU approach, even the unanimity rule will not be an obstacle to improving the VAT system. The failure to adopt this EU approach combined with the subsidiarity principle and unanimity rule have made a mess of the current EU VAT system.

Without this EU approach even a VAT regulation will not resolve anything, even if it leads to immediate harmonization. An unclear or bad regulation will even be worse than an unclear or bad directive because Member States wanting to adopt a pragmatic approach will be unable to do so.

Because of the direct effect, a **clear regulation** will always be preferred over a directive. If not all the VAT rules can be laid down in a regulation, at least the following rules should:

- important definitions;
- definition of fixed establishment when services and goods are received and used and/or supplied;
- place of supply rules;
- functioning of the one-stop-shop;
- exemptions (i.e. zero rates)

The system of **implementing regulations** clarifying new VAT directives has proven not to be efficient, because they were never adopted timely and did not clarify as much as they were supposed to.

Since probably not all rules can be laid down in a regulation or a directive we welcome the proposal of the Commission of **binding implementation decisions**, these implementation decisions would offer additional guarantees of a consistent and harmonized implementation and interpretation of the VAT rules. They could also determine administrative practices and technical specifications for IT systems.

A first step, that can be realized in the very short term, the Commission could publish **non binding guidelines** that would give a first comment on how changes to the VAT rules are to be understood. If these guidelines would be published



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together with the legal changes to the VAT directive or shortly afterwards, this would help both the Member States in their implementation process and the companies to understand and adequately prepare the changes of the VAT rules.

Considering the important role the businesses play in the functioning of the VAT system (as tax collectors and also as taxpayers) the FEB is of the opinion that they should receive a more important **consultative role** in the various stages of the legislative process (drafting of proposals, discussing proposals, interpretation and implementation in the Member States). This can only be beneficial for the transparency and the quality of VAT legislation. Since businesses are directly and immediately impacted by any change to the VAT rules, they can give valuable input to the Commission and the Member States.

Another important measure to improve legal certainty and guarantee a consistent and harmonized approach of the VAT rules would be the introduction of an **EU advance ruling** mechanism. This is especially important for cross border transactions.

A last major issue is the **last-minute implementation of VAT-directives** by the Member States. Companies need sufficient time to analyze the impact of legislative changes on their supply chains and IT-systems, train their people and effectively prepare and implement the changes. Therefore the FEB is a favor of a two staged approach: Member States should be obliged to implement and publish the new VAT rules at least 6 months (for small changes) or 12 months (for big changes) before their actual entry into force.

5.2 Derogations

Question 17. Have you encountered difficulties as a result of derogations granted to Member States? Please describe these difficulties.

Question 18. Do you think that the current procedure for granting individual derogations is satisfactory and, if not, how could it be improved?

It is clear that an important part of the complexity of the VAT-system is caused by the existence of individual derogations and grandfathering rules. These derogations lead to disharmonization and make operating in the internal market even more difficult. Derogations also tend to treat the symptoms, without curing the “disease” itself.

Examples of problems:

- reverse charge
- exemptions
- rates
- ...

The FEB is of the opinion that derogations should only be granted if:



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- they are justified by objective and sound reasons of general interest (it cannot be used as “the easy solution”);
- there are no other ways (inside or outside the VAT) to overcome the problem, for example regulatory of other legal measures;
- a change of the general VAT system is not possible or not justified
- they are proportional;
- the negative impact on businesses is limited (re administrative burdens);
- they are temporary (with clear rules on the way it will undone);
- they are clearly defined;
- they can all be consulted in a EU database (with a clear description and the deadline).

The FEB therefore asks the Commission to re-evaluate all the existing derogations on the basis of objective criteria, including their impact on intracommunity trade and the administrative burdens on businesses.

5.3 VAT rates

Question 19: Do you think that the current rates structure creates major obstacles for the smooth functioning of the single market (distortion of competition), unequal treatment of comparable products, notably online services by comparison with products or services providing similar content or leads to major compliance costs for businesses? If yes, in what situations?

Question 20: Would you prefer to have no reduced rates (or a very short list), which might enable Member States to apply a lower standard VAT rate? Or would you support a compulsory and uniformly applied reduced VAT rates list in the EU notably in order to address specific policy objectives as laid out in particular in ‘Europe 2020’?

The FEB considers the VAT rates as an important policy instrument. Member States should therefore remain free to decide whether or not they will apply reduced rates.

We recognize that the current rules of the VAT directive can create complexity in a cross-border context. While it is relatively easy to know whether a Member State applies a reduced rate for certain (categories of) goods or services, it is not always easy to determine the exact scope of this reduced rate because the annex III of the VAT directive leaves of lot of leeway for interpretation by the Member States. The VAT directive (annexe III) should therefore define more in detail for which goods (e.g. CN-codes) and services and under which conditions a reduced can be applied. This would ensure a more harmonized and consistent application of reduced rates in the member states that choose to introduce them.



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A much bigger issue are the reduced rates that are applied on the basis of individual derogations, the grandfather-clause and the temporary provisions. It is very often difficult to know which goods and services are covered by these reduced rates. These reduced rates should be, or incorporated in the list of annex III, or abolished.

In order to improve transparency and facilitate the work of businesses, this should be complemented by a binding and public database with a detailed list and a clear description of the reduced rates applied by each Member State.

Finally, we agree with the European Commission that inconsistencies between comparable goods and (electronically supplied) services should be removed.

6 Cutting red tape

6.1 Administrative burdens

Question 21. What are the main problems you have experienced with the current rules on VAT obligations?

Question 22. What should be done at EU level to overcome these problems?

Question 23. What are your views particularly on the feasibility and relevance of the suggested measures including those set out in the reduction plan for VAT (N° 6 to 15) and in the opinion of the High Level Group?

The FEB fully supports the efforts of the Commission to reduce the administrative burdens by 25%. However, we regret that these objectives are often easily forgotten or simply put aside by the Member States on the basis of the general catch-all justification of “the fight against VAT fraud”. Recent antifraud measures have seriously raised the costs, the risks and the administrative burdens for legitimate companies, without effectively stopping fraudsters. The administrative burden reduction objectives should be taken more seriously by the Member States and should have a more binding character.

A first important cause of administrative burdens is the fragmented character of the VAT system. It takes a lot of time, effort and money to find out how the VAT rules have been implemented, are interpreted and actually applied in practice in the different Member States.

Just some examples to illustrate the problems:

- Complex supply chains
 - triangular A-B-C cases (precise rules differ in the Member States);
 - cases with more than three parties
 - call of stock
 - consignment stock



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○ ...

- Determining if a transactions is to be qualified as a good or a service (e.g. repair services);
- Proof of zero rated intra-EU supply;
- Options and derogations;
- Invoicing and archiving requirements;
- Different thresholds;
- Not all information is available to determine the correct treatment at time of invoicing (e.g. client does not want to pay VAT because he will ship the goods outside the country. The client does not want to tell destination of the goods to the supplier for commercial reasons. Destination of the goods could be in or outside EU)

All these issues should be resolved as quickly as possible. For some of them, the rules applied in some Member States could serve as best practices for the entire EU.

Besides the actual VAT rules, the entire administrative aspect is also an important source of administrative burdens, e.g.:

- VAT registration in different Member States
- 27 different VAT returns
- 27 different recapitulative statements
- different deadlines to file VAT returns and recapitulative statement
- different IT platforms to lodge VAT return and other reporting obligations
- simplified regime is non applicable to non bilateral toll manufacturing when A is a supplier of goods in MS 1, B is a toll manufacturer in MS 2 and C is a non EU trader (even if A received the proof that the final product has been exported from MS 2)

The only way forward is a full (or at least a far stretching) harmonization of the VAT rules and the reporting and other administrative obligations.

The FEB is in favour of:

- a single EU VAT registration and a single EU VAT number (comparable to the EORI number in the customs field);
- a single EU VAT return in which companies can declare all their transactions in all the different Member States. This will of course only be a real simplification if it based on a best practice example. It would also still require harmonization of the VAT rules. What's the point of having a single VAT return if you don't know to know how to fill it in...?
- a single point of contact (one-stop-shop) in the Member State of establishment to file the EU VAT return and comply with all other administrative obligations (e.g. VAT deduction in all Member States)



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Pending this harmonization process, a public and up to data database hosted by the Commission with all the relevant information per Member State would be very helpful.

Another major issue is the very formalistic character of the VAT rules, where even small involuntary mistakes can be severely sanctioned (penalties and loss of VAT deduction). Mistakes and involuntary non compliance should not be sanctioned if there is no loss of VAT revenue. If there is a VAT loss, then penalties should only be based on the net VAT loss. Cases of real fraud on the other hand should be sanctioned more severely.

Position of the FEB regarding the proposed measures in the Commission administrative burden reduction action plan of 2009:

- Recommendation 6 - abolishing annual summary VAT returns: This would be a good idea. However, some Member States (e.g. Germany) allow taxable persons to correct or amend their periodic VAT returns in this annual summary return. This is easier than having to retroactively correct the different monthly or quarterly VAT returns. A solution could be to allow taxable persons to correct or amend a VAT return in the last periodic VAT return of the year or the first VAT return of the next year;
- Recommendation 7 – Reducing the frequency of the periodic VAT return: This would reduce administrative burdens to a certain extent but will make it more difficult for the VAT authorities to detect fraudsters in an early stage;
- Recommendation 8 – Proof of export exemption: an automatic exchange of information between customs and VAT authorities would be a good thing. However simplification of the proof of exemption of intra-EU supplies is more urgent;
- Recommendation 9 – abolishing intra-EU acquisitions listing: we agree that this is a redundant obligation;
- Recommendation 10 – Abolishing « nil » intra-EU sales listing : we agree that this is a redundant obligation;
- Recommendation 11 - Real-time VAT collection : the FEB heavily opposes this proposal because it is too complex. See our remarks on the split payment model;
- Recommendation 12 – Facilitating power of attorney: This would allow centralizing VAT compliance for the entire group in a EU centre of expertise or to outsource it to external consultants. ;



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- Recommendation 13 – E-government: Increasing the use of e-government is a good thing if it is done in a consistent and harmonized way. It would be equally burdensome if companies are confronted with different portals, IT-systems, requirements, forms and formats in the different Member States. These portals should also be accessible from other Member States to allow centralization of VAT compliance within groups;
- Recommendation 14 – Incorporated VAT and general business registration: This would be even better if there was only one VAT registration for the entire EU;
- Recommendation 15 – harmonizing antifraud measures: this is good thing if it is based on truly best practice, and not on what Member States consider as being a best practice;

6.2 SME's

Question 24. Should the current exemption scheme for small businesses be reviewed and what should be the main elements of that reassessment?

Question 25. Should additional simplifications be considered and what should be their main elements?

Question 26. Do you think that small business schemes sufficiently cover the needs of small farmers?

The FEB is of the opinion that the VAT rules should be clear and simple so that there is no need for special rules for SME's.

In the short run, however action should be taken in order to simplify the general VAT system for SME's (reduce complexity and compliance obligations, improve access to information on foreign VAT rules and practices). This would make the internal market more accessible for SME's.

For very small businesses a special scheme might be part of the solution. The FEB is in favour of an EU harmonized small business scheme. Major differences between the national small business schemes might lead to competitive distortions and also lead to new obstacles for SME's wishing to do cross-border trade.

A small business scheme might also lead to unwanted effects:

- If the small business scheme is limited to domestic operations, persons falling under this scheme have an incentive not to engage in cross-border trade if they cannot use their status in other Member States.
- Conversely, large businesses with only very limited operations in the member state of establishment might opt for the small business scheme.



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- Also small businesses that are close to the threshold might be tempted to not further develop their economic activity (or at least not officially) to stay outside the scope of VAT.
- The small business scheme is also sometimes abused by fraudsters operating in the black economy.

Possible solutions to overcome these issues might be:

- a harmonized and EU-wide small business scheme (common threshold based on EU annual turnover);
- limited to physical persons;
- for whom the economic activity is not their main profession (secondary professions);
- only during the start-up phase:
 - higher threshold during the first 3 or 5 years;
 - very low threshold after that.

Another simplification measure could be an optional cash accounting scheme for SME's. The scope of such a scheme could be wider than the small business scheme. In any case the effects of the cash accounting scheme should remain limited to the taxable person that has chosen for this regime and cannot affect the immediate VAT deduction by his customer! Otherwise taxable persons will avoid doing business with other taxable persons falling under the cash accounting scheme. The impact on cash flow (= timing difference in VAT revenues) should therefore be borne by the Member States. The risks of abuse or avoidance between persons with close ties, as mentioned in the Commission staff working document, should not be overstated and can easily be avoided by clearly defining the taxable persons able to opt for the cash accounting scheme.

The FEB has no experience with the regime for farmers. It should be examined whether this possibility is widely used in the Member States that have introduced such a scheme and if it still useful. In recent years the traditional farming activity has greatly evolved: e.g. increased automation (requiring major investments), introduction of strict regulatory frameworks,... Farmers, even the very small ones, are subject to other rules (environment, animal health, food protection,...) that are sometimes even more complex than VAT. Small farmers could possibly be covered by the general small business scheme.

6.3 One-stop-shop

Question 27. Do you see the one stop shop concept as a relevant simplification measure? If so, what features should it have?

A well functioning OSS is an essential element for a destination based VAT system (but also for a VAT Union). It would be a real simplification it would cover all the



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VAT obligations, thus acting as a real single point of contact in the Member State of establishment:

- VAT registration (EU VAT number);
- VAT reporting (EU VAT return);
- VAT payment;
- VAT deduction and refund;
- All transactions (both B2B and B2C)
- Portal for contacts with other Member States;
- Direct link to a improved VIES database;
- Direct link to a database with the details if the VAT rules in all the Member States.

A OSS will however not take away the need to a drastic simplification and harmonization of the VAT rules. What's the point of having a OSS platform if companies would still have to manage 27 different VAT systems.

The design and development of the OSS should be done on the EU level and not by each Member State individually. This is the only way to guarantee that it will be working smoothly in all the Member States and guarantee an equal treatment of taxable persons across Europe. A joint development project will probably be also cheaper than 27 national projects.

6.4 MNE's

Question 28. Do you think that the current VAT rules create difficulties for intra-company or intra-group cross-border transactions? How can these difficulties be solved?

A significant part of all cross border transactions relate to intra-group and intra-company activities. The decision to operate as one single legal entity with branches in the other Member States or with subsidiaries should only be based on an economic rationale and should be influenced by VAT motives. Applying VAT on intra-group transaction causes serious cash-flow issues inside the group and therefore creates an incentive to operate intra-company, even if this is not always the most efficient business models.

Since intra-group transactions take place in a closed circuit where economic operators know each other and where VAT is generally fully deductible, intra-group transactions could and should therefore be drastically simplified from a VAT perspective.

A major improvement would an EU VAT grouping scheme. External incoming and outgoing transactions would still be subject to the normal VAT rules so that Member States will not lose any VAT revenue.



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6.5 Synergies with other legislations

Question 29. In which areas of VAT legislation do synergies with other tax or customs legislation need to be promoted?

For the import and export of goods there is obviously a strong link with customs and excises. Synergies between these legislations should be focused on limiting delays in the flow of goods and reducing administrative obligations.

It is also crucial that companies are not required to give the same information more than once for different legislations, especially if it has to be given in different formats. Information that is available to one part of the public authorities (or Member State) should be shared with other parts of the public authorities (or Member States). This is notably the case for customs and excises but also for Intrastat statistical obligations.

One must also avoid that VAT simplifications are undermined by changes in other legislations (e.g. accounting). For example invoicing requirements (content, e-invoicing,...) and archiving requirements.

7 Robustness of VAT system and fight against fraud

7.1 VAT collection

Question 30. Which of these models looks most promising in your view and why, or would you suggest other alternatives?

As earlier mentioned businesses are important partners of the Member States in the collection of VAT. Until further notice business is still an unpaid tax collector.

The FEB is of the opinion that the current model for VAT collection is adequate, although administrative obligations and liability risks are difficult to manage. Changes to the method of VAT collection would only have a very limited impact on VAT revenue losses due to bankruptcies, fraud and the black economy. We are not convinced by the solidity of the estimates of reduction in the so-called VAT gap.

We think that changes to the VAT system itself (harmonization, simplification and improving the cooperation between Member States) would be much more effective to reduce the VAT gap. Changing the VAT collection mechanism without a prior reform of the VAT system itself would only treat the symptoms but not the causes of the VAT gap. Changes to the method of VAT collection can only be considered as a closing piece (the cherry on the cake) of a fundamental reform of the VAT system.

In any case, possible changes in the method of VAT collection should be extensively discussed with the business sector and should be examined on the basis of a cost/benefit analysis taking into account the impact on the entire chain of



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VAT collection, i.e. not only on the state budgets, but also the administrative and financial cost for the businesses.

7.1.1 Split payment method

The FEB heavily opposes the split payment model.

A non exhaustive list of objections:

- It is a complicated system;
- It will require huge investments in IT systems (both by tax authorities and business);
- It has high start-up and operational costs;
- It has a huge cash flow impact;
- The blocked money cannot be invested (even when the company really needs the money);
- It does not cover cash payments, netting of payments, compensations, payments in kind, barter trade, credit card payments,...
- It will affect the rights of privileged and normal creditors in case of concurrence of creditors;
- It is not effective in fighting the black economy (it will even stimulate the black economy)

7.1.2 Central VAT monitoring database

The FEB does not consider the central VAT monitoring database as an acceptable solution.

First of all the Member States will not be able to process the huge amount of data they will receive. Member States don't even use the information that is in their possession now. This model could in any case only be contemplated if business are only expected to deliver "raw data" in bulk in the format of their own ERP or accounting system and if it would replace all other reporting obligations.

Secondly we have very serious questions whether Member States will be able to guarantee data protection and integrity, and this both against security breaches from persons inside the public authorities as from unauthorized third parties. This database will hold important strategic and commercial information that is very confidential on all European companies. It will certainly be a privileged target for hackers and foreign intelligence services (or even that of other Member States).

7.1.3 VAT data warehouse

If well designed a common standard VAT data warehouse could be beneficial both to businesses and tax authorities.

For the FEB the following conditions must be met:



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- It must only contain data that is effectively relevant for tax authorities and that can be processed by them;
- It should be easy to implement in existing ERP and accounting systems (also for SME's);
- It should be identical in all Member States;
- It should be a common data warehouse both for VAT and direct taxation;
- It should be accompanied with a drastic simplification of reporting obligations (e.g. simplification of VAT return and abolition of recapitulative statements);
- Two-yearly evaluation to check whether Member States actually and effectively use the information provided.

7.1.4 Certified taxable person

The concept of certified taxable person could be a solution to improve the relationship and the trust between business and VAT authorities and will allow the former to focus on doing business and the latter to concentrate on fighting fraud. It should be a EU certification, or at least certification in one Member State should be automatically recognized in all other Member States.

For the FEB it is essential that certification is not limited to big companies, but that is also open and effectively accessible to SME's.

Certification will always come with an important cost for a company (assistance of an external consultant, prior audit, investment in IT systems, improving risk management procedures, training of staff, maintaining the certification...) . Companies will only request certification if the benefits outweigh the costs. Therefore, future improvements to the VAT system and reductions of administrative burdens cannot be limited to certified companies. Furthermore, non certified companies cannot, for that reason only, be considered as suspicious or as fraudsters.

7.1.5 Positive incentives for VAT collection

An easy and effective way to improve VAT collection would be authorize businesses to keep a small part (e.g. 1%) of VAT that they collect to partially cover the costs of VAT collection. Partially, because the real cost of VAT collection however is much higher than 1% of VAT revenues. This would finally put an end to the status of unpaid tax collector. It could also be an argument to make the broadening of the tax base more acceptable to the 'new' taxable persons subject to VAT reporting obligations.

A similar system exists for the collection of customs duties where the Member States are authorized to retain 25% of customs duties to cover their collection costs.



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7.2 Protecting bona fide traders

Question 31. What are your views on the feasibility and relevance of an optional split payment?

For the abovementioned reasons, the FEB is also not in favour of an optional split payment method. This will create a lot of discussions and conflicts between business partners.

We believe more in early warning system whereby legitimate businesses and VAT authorities share information on possible fraudulent behaviour of economic operators in order to detect and stop fraud schemes in an early stage to avoid or limit VAT losses, and this without the necessity of a split payment.

A very important and urgent measure to protect bona fide traders is the improvement of the **VIES database**:

- Completing the available data set (name, legal form, address(es), start date, end date);
- Ensuring the real time accuracy of the information;
- Allowing bulk checks;
- Introduce the possibility to “flag” certain VAT numbers so that a company is automatically informed of all changes in the VIES system concerning these VAT numbers;
- Also mentioning local VAT numbers (but with a special mention);
- Examine whether a VAT compliance indicator can be introduced;
- Examine whether the VIES system could also make the link between a VAT number and the bank account numbers of the taxable person.

This would help legitimate businesses to avoid unknowingly getting implicated in a VAT fraud scheme or having their VAT number hijacked by fraudsters.

8 Efficient administrating of the VAT system

Question 32. Would you support these suggestions to improve the relationship between traders and tax authorities? Do you have other suggestions?

When designing the VAT system the Member States decided that they needed the help of the businesses to effectively collect their VAT revenues. Businesses, as unpaid tax collectors, play a crucial pivot role between tax authorities and taxpayers. To make sure that they fulfil their mission, Member States have imposed all sorts of reporting, payment, auditing and other administrative obligations on businesses.



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The role of business as “benevolent” tax collectors is often taken for granted by tax authorities. Not only when discussing changes to the VAT system, but also when applying the existing VAT rules. Member States need the business to effectively collect the VAT revenues. But businesses also need the Member States to help them (= businesses) to help them (= Member States). When considering or discussing changes to the VAT rules (e.g. in the fight against VAT fraud) Member States often only think of their own interests. Changes in the VAT rules should be based on a cost benefit analysis of the entire VAT collection chain, including the impact on their main partner, i.e. business. Even minor changes to the VAT rules can have a big impact on the administrative obligations of business and affect the cost of compliance.

The FEB therefore fully supports the proposals made by the Commission to improve the relationship between traders and tax authorities.

The creation of a permanent discussion forum between tax authorities and business (both on a EU level and on a Member State level) could be a first step towards a better mutual understanding of each other's views, priorities, constraints, necessities, challenges,... It could also serve as platform to discuss practical issues, share best practices and discuss and analyze legislative proposals. This forum can only work if it is taken seriously by all the Member States, even if it would not have any real regulatory powers. This permanent discussion forum could also play a key role to make the legislative process more transparent.

We are also convinced that promoting voluntary compliance true Partnerships will always be more beneficial than enforced compliance. This will improve mutual understanding and trust and should lead to less administrative burdens and less, but more focused, audits. Promoting voluntary compliance can only be a success if two conditions are met:

- the design of the VAT system should make voluntary compliance possible. Given the complexity of the current VAT system it is almost impossible to be 100% complaint;
- remaining issues or questions relating to involuntary non compliance can be taken up with the tax authorities without fear of being sanctioned.

Companies not entering into a partnership should not be excluded from future simplifications of the VAT system or reductions of the administrative burdens. Not entering into a partnership cannot be considered as “suspicious” or as a presumption of VAT fraud. Companies can have many valid reasons not to enter in an agreement (e.g. negative cost-benefit analysis). Finally the Partnership concept should not be limited to MNE's, but should also be open to SME's.

A more coordinated and integrated approach by the Member States towards the IT implementation of new VAT rules is absolutely necessary. The recent experience with the refund portals was an unacceptable illustration of this. If Member States fail to timely and correctly implement a relatively straightforward IT-tool for which they have had more than one year to prepare, how will they ever be able to introduce a



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one stop shop system... IT will only become even more important for VAT administration.

The IT systems of the tax authorities will not only have to communicate with each other, but will also have to process information provided by the IT-systems of the business. This requires informing and dialoging with business on all the relevant technical specifications in a very early stage.

Businesses also need time to be able to incorporate IT-changes in their budgets and planning, design and implement the changes and test the new systems before going live.

A common approach will also be beneficial for the member states themselves. Firstly because they can pool their know-how and experiences. Secondly because they will also benefit from benefits of scale, both for the design, the implementation and the maintenance of these IT-tools.

9 Other issues

Question 33. Which issues, other than those already mentioned, should be addressed in considering the future of the EU VAT system? What solution would you recommend?

The most important issues have been mentioned above. Of course, this does not mean that there are no other issues which could be raised during the future work of the European Commission.
