

VAT rules for financial and insurance services today and tomorrow

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Your experience with the current rules

* Questions 1 to 19 relate to Insurance Europe as an organisation.

Q20: The exemption of financial and insurance services from VAT was introduced in 1977 as an exception to the general rule that VAT is to be levied on all services supplied for consideration by a taxable person. To what extent do you agree that the exemption is still needed?

<input type="checkbox"/>	Strongly agree
<input checked="" type="checkbox"/>	Agree
<input type="checkbox"/>	Neutral
<input type="checkbox"/>	Disagree
<input type="checkbox"/>	Strongly disagree
<input type="checkbox"/>	Not sure

Q21: In general, how would you assess the functioning of the exemption of financial and insurance services? The exemption...

<input type="checkbox"/>	... works very well
<input checked="" type="checkbox"/>	... works well, but could be improved
<input type="checkbox"/>	... works poorly and should be improved
<input type="checkbox"/>	... should be removed
<input type="checkbox"/>	No opinion

Q22: Please indicate the reason(s) why. (Multiple answers possible) The exemption...

<input type="checkbox"/>	... is too costly to apply
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	... is too complex in terms of notions (structural provisions and the definition of exempted services)
X	... is not clear in terms of notions (structural provisions and the definition of exempted services)
X	... may have a distortive effect on competition with businesses in other Member States
	Other
	No opinion

Q23: Please indicate which other reason(s):

The industry believes that exemption provisions should be updated and redefined to take account of recent developments in the financial services space: eg new technologies and the uptake of fintech. The current wording of the VAT Directive leads to a restrictive interpretation of the scope of the VAT exemption on insurance and related services by the ECJ. In practice, outsourcing any function specific and essential to insurance operations will lead to irrecoverable VAT, unless there are specific arrangements.

Complexity and lack of clarity on how to interpret the exemption, such as the different definitions of insurance related services among member states, lead to higher costs in terms of VAT administration, and — in specific instances — can create distortions of competition between member states.

Insurance companies are consumers and providers of financial services, either to group affiliates or third parties, and as a result face the same difficulties as other financial institutions. The narrow scope of the VAT exemption hampers the mutualization and delegation of important functions and hence a more efficient functioning of the insurance market.

As it currently stands, insurance and reinsurance benefit from a VAT exemption provided for by point (a) of Article 135 (1) of Council Directive 2006/112/EC and the overall competitiveness of the insurance sector would of course benefit from ways allow for more VAT reclaim. The legal framework for Solvency II foresees the possibility to outsource certain functions. It should be noted that claims management, asset management and other administrative functions are difficult or costly to outsource, in particular as a result of uncertainty arising out of application of the VAT regime.

Another difficulty relates to an unlevel playing field, for example, the administration of the portfolio of a life insurance product when it is subscribed as an investment and saving product. This insurance product will in certain cases fall in direct competition with special investments funds, but will not enjoy the same VAT benefit. Where the administration and portfolio management of an investment fund is VAT exempt, which is not the case for most life insurance schemes, the cost structure of the life insurer will be impacted and some costs will be passed on to the investor.

Q24: How do you estimate the impact of the lack of input tax deduction and hidden VAT? (Multiple answers possible)

X	They create a price barrier to outsourcing
X	They undermine the level playing field between providers of outsourced services and in-house providers
X	They affect the business structures of those operating in the financial and insurance sector
X	They increase the costs for business customers
	They increase compliance costs
	They undermine the competitiveness of the sector
X	Other
	Do not know

Q25: Please indicate which other reason(s):

As insurance is a VAT-exempt business, insurers find themselves in the position of the final customer when operating, therefore bearing all irrecoverable VAT incurred from buying the goods and services needed. Outsourcing functions essential to insurance activities become increasingly expensive. So, even if they are not hindered, their cost affects that of insurance services purchased by both private and business customers. As regards general insurance, the final cost becomes even higher when considering all irrecoverable input costs, such as hidden VAT, Insurance Premium Tax and other parafiscal levies that may be applicable to the insurance premium.

For instance, in France, VAT-exempt businesses are liable to a payroll tax. The expected implementation of VAT groupings in France as of 2023 may also have an impact on the cost of resorting to a third-party service provider. In Denmark, payroll duty is equally applicable at a rate of 15.3% of the total salaries relating to VAT exempt financial services.

In addition to that, the lack of legal certainty also creates a lack of commercial certainty. Clarifying its requirements may improve its effectiveness.

Q26: The compliance with VAT rules can be more difficult when supplying financial and/or insurance services cross-border. How do the factors listed below contribute to that effect?

	Not at all	Somewhat	To a large extent	No opinion
Difficulty of finding information on VAT obligations in other Member States		X		
Different interpretations on definitions of exempted services			X	
Different rules for opting to tax		X		
Availability of VAT grouping			X	
Availability of cost-sharing arrangements			X	
Different deduction methods			X	
Different VAT obligations in other Member States		X		
Other		X		

Q27: Please indicate which other factor(s):

Many insurers, like other financial institutions, and multi-nationals in general, operate cross-border. They can serve clients in other member states through the free provision of services or via local establishments, and they can have affiliates in other countries with whom they share resources, exchange services, etc. These various types of transactions, including a multitude of payment flows, must all be analyzed from a VAT perspective. Because of the complexity of the VAT rules due to territoriality and the absence of detailed guidance, the VAT treatment of the same service will sometimes be different in the two countries involved. Beyond possible double taxation, this leaves insurers exposed to fines and penalties when they choose to apply one country's position.

VAT groups are another example: in the CJEU Skandia jurisprudence, for instance, the case initially addressed a situation where VAT was eliminated and potentially closed the door for aggressive optimizations. However, by doing so, it also largely impacted the operational costs of head-office branches structures which were genuinely operating within the EU. Previously, any services shared between head offices and branches were disregarded for VAT purposes as rendered within the same legal entity. At present, as soon as the receiving establishment is a member of a local VAT group, it suffers an irrecoverable VAT cost on internal cost allocations. The same

happens in various member states in what are called "reverse-Skandia situations": ie when the supplying establishment is VAT-grouped locally. We note that the reverse Skandia is currently subject to a preliminary ruling by the CJEU in the Danske Bank case. Insurance groups operating with branches in the EU are numerous, and this trend is increasing for various reasons. Several important functions are mutualized between the head office and the branches, as in the single market financial institutions are allowed to utilize single passports and at the same time are forced, due to regulatory reasons, to have separate entities licensed for various businesses (eg life and non-life insurance). They also face a major VAT burden where services are provided both cross border and in one member state. Therefore, this jurisprudence has had a very detrimental effect in the whole sector.

The legislation should therefore take the current situation into account.

Q28: *Do you think that the current rules hinder the development of cross-border supplies of financial and insurance services?*

<input checked="" type="checkbox"/>	Yes
<input type="checkbox"/>	No
<input type="checkbox"/>	Do not know

Q29: *Please indicate the reason(s) why.*

<input type="checkbox"/>	Regulatory ecosystem too complex
<input type="checkbox"/>	VAT rules for financial and insurance services too complex
<input checked="" type="checkbox"/>	Discrepancies across VAT treatment by member states
<input checked="" type="checkbox"/>	Other

Q30: *Please indicate which other reason(s):*

With respect to the impact on financial services in general, there are clear benefits in harmonising the treatment of VAT. For example, with regard to insurance services, administration fees of certain unit-linked products are not exempt but similar/ competing services for UCITS are exempt. There are also different regulations in several member states on IPTs, which also may create competitiveness issues.

The different interpretations of the EU Directive, CJEU decisions and different national rules on VAT grouping create an uneven level playing field for the industry, which creates competitiveness issues because, to provide insurance services, insurers are large consumers of financial services, some of which are liable to VAT. In such cases, VAT reverse charge rules apply and may cause major hardships in the course of cross-border operations.

Q31: *To what extent are the foreign VAT rules for financial and insurance services important when deciding whether to establish your business in a specific Member State?*

<input type="checkbox"/>	Very important
<input checked="" type="checkbox"/>	Important
<input type="checkbox"/>	Not very important
<input type="checkbox"/>	Not important at all
<input type="checkbox"/>	No opinion

Q32: Which of the structural provisions listed below do you apply? (Multiple answers possible)

	Option to tax
X	VAT grouping
X	Cost-sharing arrangements
X	Proportional deduction
X	Other
	None

Q33: Please indicate which other provision(s):

An example of other provisions can be provided by the situation in Luxembourg, where cost sharing services are no longer available. Upon their removal, there were significant additional costs for groups who had to tax again the mutualized service.

Q34: The exemption was put in place i.a. due to the technical difficulty to calculate the taxable amount. To what extent do you agree that progress in technology, enhanced transparency rules and experiences gained from other countries and from other indirect taxes could help overcome this issue?

	Strongly agree
	Agree
	Neutral
X	Disagree
	Strongly disagree
	Do not know

Q35: Do the current VAT rules for financial and insurance services result in prices lower than those that would apply if these services were taxed?

	Yes, but just for final non-taxable customers
	Yes, for all customers
	In part, due to other similar taxes
X	No
	Do not know

Q36: To what extent are the current structural provisions effective in increasing the deduction of input tax and reducing the impact of hidden VAT?

	Not effective at all	Somewhat ineffective	Neither effective nor ineffective	Somewhat effective	Very effective	No opinion
Option to tax		X				
VAT grouping				X		
Cost-sharing arrangements				X		
Proportional deduction			X			

Q37: VAT provisions related to financial and insurance services can be perceived as complex. For which of the current structural provisions is that correct? (Multiple answers possible)

	Option to tax
X	VAT grouping
X	Cost-sharing arrangements
X	Proportional deduction
	None

Q38: To what extent do you agree or disagree with the following statement: The lack of input tax deduction is detrimental to the financial and insurance sector. It compels the sector to outsource services which are typically provided in-house, thus raising the costs.

Insurance Europe did not provide an answer to Q38. There is no direct link between the lack of input tax deduction and the outsourcing of input services and therefore it would not be possible to answer to the question as it is currently formulated.

Q39: Unless you make use of the option to tax, does your business incur any costs related to irrecoverable (hidden) VAT?

X	Yes
	No
	Do not know
	My business is applying the option to tax

Q40: To what extent do you agree that the current VAT rules are fit to cover emerging trends in the industry (such as digitalisation)?

	Strongly agree
	Agree
	Neutral
X	Disagree
	Strongly disagree
	Do not know

Q41: The VAT treatment of emerging trends under the current VAT rules for financial and insurance services can be problematic due to unclear definitions for VAT purposes. In connection with which of the emerging trends listed, do you consider this correct? (Multiple answers possible)

X	Services provided by means of fintech
	E-money
	Services linked to crypto-assets (such as mining)
X	Payment services
X	Other
	Do not consider it problematic
	Do not know

Q42: Please indicate which other trend(s):

The possible answers include a partial list of still developing services. Because these services are new, and their definitions have not yet formed, at this stage the assessment of their impact on the financial and insurance sector is not fully clear and therefore it's not possible to indicate a clear emerging trend whose treatment could be problematic.

Insurance Europe would like also to include in this list the provision of insurance intermediary services via digital processes, and mediation and distribution services, which should to be VAT exempt to the same extent as the underlying financial transaction, including any cross border component.

Q43: The regulatory framework in the financial and insurance sector (e.g. the Markets in Financial Instruments Directive (MIFID) and the Insurance Distribution Directive (IDD)) has strengthened the role of intermediaries. Do you consider the VAT exemption to be coherent with this development?

	Yes
X	No
	Do not know

Possible changes to the current rules

The Commission is intending to prepare a proposal that will seek to modernise the current VAT rules for financial and insurance services. Your answers will feed into the review of these rules.

Q44: In your view, which would be the best way to reform the rules on exemption? (Multiple answers possible)

X	Update definitions of exempt services drawing on the extensive CJEU case law in the field of VAT
X	As regards the definitions, refer to other EU regulations governing the financial and insurance sector
	Removing the exemption, so that definitions will be no longer needed
X	Other
	Do not know

Q45: Please indicate which other way(s):

A future well-functioning set of exemptions on financial services will require new legislation with a clear preamble, fully replacing the current rules.

We urge the Commission to redefine the exemption taking into consideration recent developments: ie outsourcing of certain functions is now largely possible and dealt with in the Solvency II legal framework. Many outsourced services may not benefit from a VAT exemption with a narrow interpretation of the directive.

The current case law could be considered when designing the exemptions, however should be disregarded for future interpretation, since the criteria laid down by the CJEU for a financial service to be exempt (ie being specific and essential to the provision of an exempt financial service) are not concrete enough to provide legal certainty for the parties involved to rely on. The explicit inclusion of the main outsourced functions like claims management, underwriting, asset management for insurance products should be clearly stated and not left to interpretation.

Finally, an option to tax may be taken into consideration only for some classes of insurance. In that case, should an option to tax be mandatory in all member states, it would also have to be combined with provisions forbidding any cumulative application of VAT along with IPT or any other similar tax.

Q46: *The removal of the exemption for financial and insurance services could benefit the neutrality of the VAT system. What could be other effects of such a removal? (Multiple answers possible)*

<input checked="" type="checkbox"/>	Simplification in the application of the VAT rules for financial and insurance services
	Lower VAT compliance costs
	Less distortive effect of the exemption on competition linked to suppliers from non-EU countries operating in the EU
	Higher VAT compliance costs
	Higher complexity of VAT rules
	None
<input checked="" type="checkbox"/>	Other

Q47: *Please indicate which other effect(s):*

The interaction of VAT with the different national tax regimes for financial services must be carefully examined to ensure a level playing field in the interest of policyholders and avoid any increase in the costs of insurance contracts.

Depending on how such measure is implemented (eg definition of the tax base, scope and terms of VAT deduction rights, combination with other taxes applicable to insurance premiums, etc), removing the VAT exemption for insurance services may open a wide range of unsolved issues.

The price of insurance products may also increase: if IPT and payroll duty were not repealed, there would result in an increase in price for consumers as it would effectively lead to double taxation. As it currently stands, IPTs are levied in the vast majority of EU member states at a rather high range of rates and their repeal seems unlikely, given the generated revenue in some countries (eg ~€ 5 bn per year in Italy).

In most member states, life insurance, health insurance and pension contributions are exempt from IPT (or taxed at a reduced rate) in order to keep these insurance products as affordable as possible. If these tax exemptions are not integrated into the new system, price increases for customers of these products would be inevitable.

A VAT exemption should remain an available option, in order to avoid re-building an overly complex set of VAT rules.

Q48: *If only fee-based financial services were to be taxed, in relation to which of them would it be difficult to determine the taxable amount? Please explain.*

Insurance Europe would like to highlight that insurance is not a fee-based service. A premium is not a fee and it represents the price of the service provided by insurers, which is the risk coverage. Whereas insurers calculate premiums differently, based on their underwriting process and how they assess the risk, the added value of such service can be seen as the difference between the amount of premiums collected and the amount paid in compensation.

The main features of the industry are the insurance cycle, which is an inverted production cycle, and the pooling of risks. The effective amount of paid compensation is usually determined at the end of a cycle when the claims

related to a generation of contracts arise and such cycles may in some cases have a very long duration, thus making the calculation of the difference between these amounts very difficult, if not impossible.

Q49: *Financial service providers may currently opt for taxation and obtain the right of deduction, but it is up to each Member State to introduce such option. Should Member States keep that discretion?*

	Yes
X	No, it should be available in all Member States
	No opinion

Q50: *Not having a right of deduction when supplying exempt financial and insurance services impairs the neutrality of VAT. To what extent would you support or oppose the introduction of a fixed rate of input tax deduction to remedy that effect?*

	Strongly support
	Support
X	Oppose
	Strongly oppose
	No opinion

Q51: *If a fixed rate of input tax deduction was introduced, should such a rule remain optional for operators or, alternatively, should it be mandatory?*

X	It should be optional
	It should be mandatory
	No opinion

Q52: *Should cost-sharing agreements be made available to the financial and insurance services sector?*

X	Yes
	No
	No opinion

Q53: *In your view, should businesses established in other Member States be allowed to form part of the cost sharing arrangements?*

X	Yes
	No
	No opinion

Q54: *Please indicate the reason(s) why. (Multiple answers possible)*

X	To achieve a more level playing field for businesses
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	To boost competitiveness of financial and insurance service providers
X	To reduce the tax burden and the administrative costs of businesses operating at cross-border level
	Other

Q55: Please indicate which other reason(s):

To date, cross-border cost-sharing agreements can be organized, but the ECJ case law banned their use by financial services and insurance companies. If cost-sharing agreements were to be made available again to the industry, it would consolidate cross-border groupings, thus allowing the rationalization of their administrative costs.

Q56: If no, please indicate the reason(s) why. (Multiple answers possible)

N/A

Q57: If no, please indicate which other reason(s):

N/A

Q58: Which is the most beneficial aspect of establishing VAT groups for providers of financial and insurance services?

	Not beneficial at all	Somewhat detrimental	Neither beneficial nor detrimental	Somewhat beneficial	Very beneficial	No opinion
It is optional				X		
Intragroup supplies are out of scope and therefore not taxed					X	
VAT compliance costs are lower for the members of the group as they are pooling them					X	
It is easier to outsource the activity through a single taxable person				X		
VAT grouping increases the competitiveness of the sector by reducing hidden VAT					X	
Other				X		

Q59: Please indicate which other aspect(s):

Another aspect to consider is the high degree of freedom for the organisational structure. In general, VAT grouping allows the creation of a legal structure best fitting for the financial services companies' business model, as well as restructuring without limitations resulting from VAT. Additionally business segments that are relevant from a regulatory perspective must be separated (ie the separation of property & casualty insurance from life insurance). Individual analysis of the potential application of VAT exemptions on intragroup services (ie financial

services) is not required, which decreases administrative costs. Other examples of decreasing compliance costs are fewer regulations for inter-group invoicing, the need to prepare less tax returns, etc.

In any case, it should be noted that the individuation of a list of benefits of VAT groupings as stated in the wording of this question can be difficult, as VAT groupings are mainly intended at achieving VAT neutrality between exempt and liable to tax operators within the same group. Moreover, proportional deduction rules can be very complex in cases of the outsourcing of some functions.

Q60: Which is the most effective way to reform the rules for financial and insurance services in your country?

	Not effective at all	Somewhat ineffective	Neither effective nor ineffective	Somewhat effective	Very effective	No opinion
Remove the exemption and tax financial and insurance services at a standard rate	X					
Remove the exemption and tax financial and insurance services at a reduced rate				X		
Tax only fee-based services at a standard rate	X					
Tax only fee-based services at a reduced rate	X					
Grant businesses the option to apply VAT				X		
Grant businesses the right to constitute a VAT group in every Member State					X	
Make cost-sharing arrangements available to the sector in all Member States					X	
Other				X		

Q61: Please indicate which other reform(s):

See answer to Q62, on the amendment of the VAT Directive to include the cross-border effect for VAT groups

Further comments

Q62: If you wish to add further information within the scope of this questionnaire, please feel free to do so here. (2000 characters maximum)

Insurance Europe:

- Urges to explicitly allow cost sharing groups independent of the type of activities conducted by members of the group.
- Asks for more clarity and legal certainty for financial and insurance services operators about the scope of the VAT exemptions to provide a more refined criteria and extensive list of exempt services.
- Suggests that policymakers investigate how the impact of non-deductible VAT on the cost of doing business of insurers can be limited. Besides the non-deductible VAT, IPT is charged on several insurance services in member states and rates tended to increase over the past few years.

- Believes that the introduction of the option to tax should not be in addition to any IPTs to avoid double taxation and an increase of costs for insurance coverage for customers.
- Suggests reconsidering an option to tax property & casualty insurance and continuing the (partially) existing IPT exemption for life insurances, health insurance coverage and pension schemes.
- Supports the amendment of the VAT Directive to make the option for VAT group treatment mandatory in every member state to avoid any distortion between financial operators in different countries.
- Supports the amendment of the VAT Directive to include the cross-border effect for VAT groups to avoid any distortion between financial operators located in different member states and in line with the ECJ ruling in Case C-386/14. VAT grouping rules must be eased and uniformed, in order to simplify the creation of VAT groups, allow requirements for VAT groupings to be met by insurance companies and therefore establishing a level playing field across all member states.
- Requests the elimination of VAT obstacles to the arrangements needed for insurance business. These features should be determined by the nature of the service, rather than by the person providing it. To achieve a level playing field, outsourced services that are necessary to the insurance business must benefit from a VAT exemption.

Q63: *If you wish to upload a concise document, please do so below. The maximal file size is 1MB. (Only files of the type pdf,txt,doc,docx,odt,rtf are allowed) Please note that the uploaded document will be published alongside your response to the questionnaire, which is the essential input to this open consultation. The document is an optional complement and serves as additional background to better understand your position.*

Please see our accompanying document for more details.

Insurance Europe is the European insurance and reinsurance federation. Through its 37 member bodies — the national insurance associations — it represents all types and sizes of insurance and reinsurance undertakings. Insurance Europe, which is based in Brussels, represents undertakings that account for around 95% of total European premium income. Insurance makes a major contribution to Europe's economic growth and development. European insurers pay out almost €1 000bn annually — or €2.7bn a day — in claims, directly employ nearly 950 000 people and invest over €10.4trn in the economy.