



EUROPEAN FEDERATION  
OF INTELLIGENT ENERGY EFFICIENCY SERVICES

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## EFIEES contribution to the public consultation "Review of existing VAT legislation on public bodies and tax exemptions in the public interest"

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EFIEES

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**EFIEES** represents private companies ensuring an overall management of energy demand to end-user (**Energy Efficiency Service Companies, EESCs**). These companies provide operational services, running, maintenance and managing equipment on end users' site: industrial, service, residential premises (collective or personal), public premises (sports as well as healthcare facilities, hospitals, etc.). They commit, by long-term contract, to a set of technical, economic and environmental performance standards. Their remuneration is based on an agreed performance commitment, defined as compliance with operating quality standards and/or delivery of improvements in energy efficiency. In many Member States, companies represented by EFIEES also operate **district heating networks**.

**Q1: General evaluation of the current rules (see point 3):**

- What is your evaluation of the current VAT regime as regards the public sector (including special rules for public bodies, Article 13, and tax exemptions in the public interest, Article 132-134 of the VAT Directive)?

- What are in your opinion the main problems of the current rules?

- Are there any distortions of competition (output and input side)? If so, how and in which sector do they occur?

The current rules on VAT as regards the public sector lead to two major problems: distortions of competition between public and private operators and lack of incentives to outsource by bodies governed by public law.

#### **a) Distortions of competition between public and private operators of energy efficiency services**

As a result of the current rules on VAT, public entities and other exempted bodies (schools, universities, hospitals etc.) purchasing products and services from entities which are subject to VAT, are in no position to deduct VAT which has to be charged on the prices of these products and services. This leads to **distortions of competition** as private companies such as **energy efficiency services companies are discriminated against public suppliers** as bodies governed by public law (so-called "public Energy Efficiency Services Companies") happen to be energy efficiency services suppliers in some MS. Such situation exist in particular in Belgium and in Italy.

#### **b) Lack of incentives to invest or outsource**

The current rules on VAT in the context of exempted bodies lead to situations when **professional energy efficiency services** are more expensive for exempted bodies as the latter cannot recover the VAT they have to pay. Such rules are not in line with the EU energy and climate goals: improving energy efficiency, decreasing GHG emissions and increasing share of renewables in energy-mix.

Therefore, distortions of competition detrimental to energy efficiency services companies happen **on both input and output sides**. On the output side, energy efficiency services may be taxed if carried out by private companies, but not taxed if carried out by a body governed by public law. On the input side, public bodies which cannot deduct the VAT that they have to pay when purchasing from entities which are subject to VAT, may have to have enough incentives to invest or to outsource even if services could be provided more efficiently by specialised energy efficiency services companies. This is particularly striking in exempted sectors in the public interest such as hospitals, especially in private health care as the latter is not supported by the public system from VAT declarations sources.

Q2: Distortion of competition clause:

- Do you think the distortion of competition clause pursuant to the second subparagraph of Article 13 (1) of the VAT Directive and the existing case law from the Court of Justice of the European Union in this respect have been efficient enough in preventing distortions of competition between public and private providers on the output side?
- Does the national legislation of your country provide for a legal mechanism according to which a private entrepreneur who is experiencing unfair competition from a public sector body could formally raise this issue with the tax authorities or the courts?

- While there are distortions in the sector of Energy Efficiency Services, our members, in the various MS, see no distortion between public operators/private operators of District Heating networks. In both situations VAT is charged to the consumers.
- In case of distortions (energy efficiency services), there is no particular national mechanism to raise the issue with the tax authority or the courts.

Q3: Reform measures (see point 5):

- What are your views on the different reform options or reform measures mentioned in this document (including a possible sectorial reform); do you have a preference for any particular option and any particular variant mentioned in relation to the different options and why?
- Is there any option which should be excluded and why?
- Do you have any additional ideas or proposals?

EFIEES' views on the reform options mentioned by European Commission:

### Option 1

#### **Full taxation of public bodies and activities in the public interest**

Generally speaking, the VAT rate should be applicable on the basis of the nature of the activity, not on the basis of the characteristics of the operator being public or private.

The full taxation system would offer the equal treatment of public and private operators and a remedy against existing distortions of competition. In addition, according to the study presented by European Commission in its consultation document, this would be the preferable option from the economic point of view.

Under such a system public bodies would be able to deduct VAT paid for products and services. Consequently, the offer by all operators being public or private would be assessed on the basis of their professionalism, which leads to more efficient allocation of public money.

Therefore, this is a preferred option by EFIEES.

### Option 3

#### **Deletion of special rules relating to public bodies (Article 13 of the VAT Directive), while keeping all or most of the current exemptions in the public interest**

This option has a potential to address the problem of distortions of competition resulting from different treatment of public bodies, however it will not solve the problem of the entities which cannot recover their VAT if they are exempted by Articles 132-134 (for example: hospitals). This means that they will not be incentivised to outsource. Any reform of Art. 13 should be made in combination with coherent reform of Art. 132-134.

The exemptions "in the public interest" should be understood as activities managed by a public or by a private operator.

### Option 2

#### **Full compensation of input VAT ("refund system") at the EU level**

This option has a potential to offer a solution for the "input" and "output" distortions of competition due to inequalities in treatment between public and private bodies within the VAT system, provided that it would be implemented according to the first variant proposed by European Commission. This means that all currently exempted or non-taxable services would qualify for a refund of their input VAT expenditure. Otherwise, in cases where only some of the sectors are considered to be eligible for such a refund system, distortions of competition would remain in the sectors which are currently not covered.

Generally speaking, we are quite reluctant to this solution, because we do not trust it would be able to be accepted by 28 MS, in all MS, all sectors.

#### **Q4: Sectorial reform (see point 5.4.):**

In case a sectorial reform would be the way forward, Copenhagen Economics has modelled the sectors postal services, broadcasting, waste management and sewage. Other sectors such as air traffic control, access to roads and parking areas could be potential candidates as well.

- Do you agree with this list?
- Which other sectors should in your view be selected for such a review? Why?

According to the European Commission's document this option would concern sectors where distortions of competition can clearly arise between public and private entities or/and those which usually are associated with high investment costs, which can be the case in our sector (Energy Performance Contracting, where long-term investments are paid for by guaranteed energy savings).

The reform of the VAT system should aim at solving the problem of distortions of competition between the public and private entities. This goal will not be reached, if distortions of competition persist in sectors which would have been excluded from this reform (those covered by Article 132 and the ones that are not there). Public sectors and all economic sectors should be treated on equal footing.

It should be pointed out that there are activities which are not recognised as economic sectors as such<sup>1</sup> (not covered by a specific NACE -code), but where distortions of competition exist, this is the case in energy efficiency services business. As a consequence, such activities would risk not being covered by the reform and distortions resulting from special treatment for public bodies (Article 13) would need to be addressed anyway.

Of course, in case the "sectorial reform" is followed by the EU, we ask for energy efficiency services to be added in the list. Such a reform would bring a solution to the distortion of competition between public and private operators, but would not provide for any solution to the lack of incentive to outsourcing in case the competent authority remains exempt from VAT.

### **Review of Articles 132-134**

This option affords a possibility that most distortions between public and private operators will be deleted, if exemptions are to be granted on the basis of the nature of the service, as opposed to the nature of the operator, in the context of Articles 132-134. Nevertheless, Article 13 within this option is supposed to stay in place, which would give possibilities for public bodies to perform activities as public authorities that would still qualify such activities to be exempted from the VAT.

Another weakness of this option is that it keeps tax exemptions in place. This means that exempted bodies will not be incentivised to outsource even if other operators offer more professional, therefore more efficient service.

Reforms of Articles 13 and 132-134 must be made in coherence.

Q5: Option to tax (see point 5.5.):

- Do you think that an option to tax as regards tax exempt activities either by taxable persons or Member States should be considered?

The option to tax does not seem to provide a general solution to discriminations in treatment between public and private sectors and would add even more complexity to the system. Its sub option to tax for Member States by allowing MS to tax possibly at reduced rates activities currently exempt would create new type of complications related to differences between standard and reduced rates which already is problematic in many MS as the last public consultation on VAT reduced rates organised by European Commission has shown.<sup>2</sup>

Any reform, probably based on a combination of the different measures, should aim at guaranteeing the neutrality of VAT towards the management system, being private or public.

<sup>1</sup> Eurostat publication "Business economy by sector - NACE Rev. 2"

<sup>2</sup> EFIEES has sent its contribution to this public consultation on 15 January 2013.

The current situation, with disincentives to partnerships between public bodies and professionals of energy efficiency, that can guarantee strong and long-lasting energy savings, has no justification in terms of economic optimisation, growth, competitiveness, innovation. On the contrary.