



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 30 September 2011

14964/11

**Interinstitutional File:
2007/0267 (CNS)**

LIMITE

FISC 122

NOTE

from: Presidency
to: Working Party on Tax Questions – Indirect taxation (VAT)
Subject: Proposal for a Council Directive amending Directive 2006/112/EC on the common system of value added tax, as regards the treatment of insurance and financial services

Delegations will find attached a new compromise text for the Council Directive on the VAT treatment of insurance and financial services, which has been drawn up on the basis of the earlier compromise (doc. 12290/11 FISC 98).

Proposal for a
COUNCIL DIRECTIVE
amending Directive 2006/112/EC
on the common system of value added tax
as regards the treatment of insurance and financial services

Article 1

Directive 2006/112/EC is hereby amended as follows:

1) Article 135 is amended as follows:

(a) In paragraph 1, points (a) to (g) shall be replaced by the following:

(a) insurance and reinsurance [and transfer of insurance and reinsurance contracts];

"Insurance and reinsurance" means the acceptance of a commitment by a person to provide another person, in return for payment of a premium, in the event of materialisation of a risk covered, with an indemnity or a benefit as determined by the contract.

(b) granting of credit and management of credit by the ~~person granting it~~ **creditor**;

"Granting of credit" means the lending of money or the promise to lend money, as well as the granting of a deferment of payment of a debt [**, provided that the consideration for granting the credit and the grounds for determination the consideration are separately identified**].

(c) guaranteeing of debt and provision of any other ~~securities for debt~~ **surety bonds**;

"Guaranteeing of debt and provision of any other ~~securities for debt~~ surety bonds" means the acceptance of a monetary obligation to pay a debt or any other financial commitment on behalf of the debtor in response to his default or to pay on behalf of a ~~contractor~~ **contracting party** in cases where he does not fulfil his contractual obligations.

(d) transfer of a credit position and assumption of a debt position **and excluding debt collection**;

"Transfer of a credit position" means the **definitive** cession of the right of receiving money excluding one constituting a supply of securities~~[and excluding debt collection]~~.

"Assumption of a debt position" means the **definitive** assumption of an obligation to pay money, excluding one constituting a supply of securities.

(e) financial transfer;

"Financial transfer" means the execution following an order for transmission of funds.

(f) financial deposit taking and account operation;

"Financial deposit" means funds held for ~~the depositor~~ **a deposit holder** which must be repaid, transferred or which generate a return under the legal and contractual conditions applicable.

"Account operation" means the administration of monetary accounts for their holders.

(g) currency exchange and provision of cash;

"Currency exchange" means exchanges between currencies based on exchange rates between different currencies.

"Provision of cash" means the provision of bank notes and coins used as legal tender, with the exception of collectors' items, or the provision of negotiable or transferable means of payment.

(ga) transactions in securities, excluding their safekeeping and management;

"Securities" means transferable instruments other than those establishing title to goods or the rights referred to in Article 15 (2), representing a financial value or the right to acquire a financial value and reflecting one or more of the following:

- (a) an equity ownership position in a company, association or other undertaking;
- (b) a creditor's position for debts;
- (c) unit ownership in undertakings for collective investment.

(gaa) transactions in interests in companies and associations other than securities, excluding their safekeeping and management;

"Interests in companies and associations" means negotiable equity ownership positions in a company or association.

(gb) transactions in financial derivatives, excluding their safekeeping and management;

"Financial derivatives" means instruments in the form of contracts relating to the value of securities, currencies, interest rates or yields, financial indices or measures, commodities, transfers of credit risk, climatic variables, freight or inflation rates, emission allowances or other official economic statistics in which at least one of the parties is committed, on a firm or optional basis, to such value provided that profits and losses are derived without any possibility of delivery or fulfilment of any underlying goods or services, other than exempt insurance or financial services.

(gc) management of investment funds and pension funds established within the territory of the Community;

"Management of investment funds and pension funds" means services of collective portfolio management necessary for achieving the investment objectives of the investment fund and pension fund concerned.

"Investment funds" means undertakings for collective investments the sole object of which is investment in securities, cash, other financial assets or in real estate of capital raised **directly or indirectly** from investors and which are subject to rules designed to protect investors and operate on the principle of risk spreading.

"Pension funds" means undertakings for collective investments operating similarly to investment funds and the ~~main~~-**basic** object of which is to provide retirement benefits in the context of an occupational activity.

(gd) intermediation in insurance and financial transactions as referred to in points (a) to (gb).

"Intermediation in insurance and financial transactions" means a distinct act of mediation rendered by a third party who [brings the parties together and] does what is necessary in order for the parties to enter into, **maintain**, renew or alter a contract in insurance or financial transactions as referred to in points (a) to (gb).

(b) The following paragraph 1a shall be inserted:

Article 135 (1a)

"1a. The exemption provided for in points (a) to (gc) of paragraph 1 shall apply to the supply of any constituent element of an exempt insurance or financial service, which itself constitutes a distinct whole and fulfils in effect the specific and essential [functions] of that exempt service."

2) Point (a) of Article 137(1) is amended as follows:

"(a) the financial transactions referred to in points (b) to (gd) of Article 135(1), excluding intermediation in insurance transactions;"

3) Point (c) of Article 169 is amended as follows:

"(c) transactions which are exempt pursuant to points (a) to (gb) and (gd) of Article 135(1), where the customer is established outside the Community or where those transactions relate directly to goods to be exported out of the Community."

4) Point (c) of Article 174 (2) shall be replaced by the following:

"(c) in so far as the transactions specified in points (b) to (gd) of Article 135(1), excluding intermediation in insurance transactions, are incidental, the amount of turnover attributable to these transactions."

5) Article 220(2) is amended as follows* :

"2. By way of derogation from paragraph 1, and without prejudice to Article 221 (2), the issue of an invoice shall not be required in respect of supplies of services exempted under points (a) to (gd) of Article 135(1)."

6) Article 221(2) is amended as follows* :

"2. Member States may impose on taxable persons who have established their business in their territory or who have a fixed establishment in their territory from which the supply is made, an obligation to issue an invoice in accordance with the details required in Article 226 or 226b in respect of supplies of services exempted under points (a) to (gd) of Article 135(1) which those taxable persons have made in their territory or outside the Community."

7) Article 288(4) is amended as follows:

"(4) the value of real estate transactions, insurance and financial transactions as referred to in points (a) to (gc) of Article 135(1), and intermediation in financial transactions as referred to in points (b) to (gb) of Article 135(1), unless those transactions are ancillary transactions."

* Changes to be made to the text as amended by Council Directive 2010/45/EU and applicable from 1 January 2013.

* Changes to be made to the text as amended by Council Directive 2010/45/EU and applicable from 1 January 2013.

8) New Chapter 5a is inserted:

"Chapter 5a

Special scheme for transactions on a regulated commodity market

Article 356a

Member States may, after consulting the VAT Committee, for purposes of simplification, authorise suspension of the tax to be collected on transactions between taxable persons who are members of a regulated commodities market, or between a taxable person who is a member of that market and the central counterparty of that market, **in respect of transactions on that market.**"

Member States making use of the possibility provided for in the first subparagraph shall submit annually – by 31 March - information for the preceding calendar year to the VAT Committee concerning the operation of suspension of the tax, including in particular the revealed methods of tax avoidance and the impact of suspension of the tax on competition.

Article 356b

1. Member States making use of the possibility provided in Article 356a may dispense with some ~~or all~~ recording requirements of value added tax.

2. Without prejudice to paragraph 1, Member States shall, as a minimum, ensure that members of a regulated commodities market keep account of transactions and keep the documentation to allow identification of the customer in such transactions.

Members of a regulated commodities market shall keep this information for a period of at least five years, starting from the end of the year when the transaction took place.

3. Member States may accept equivalent obligations under measures adopted pursuant to other Community legislation, such as Council Directive 91/308/EEC of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering, to meet the requirements of paragraph 2."

[4. Member States may lay down obligations which are more stringent, in particular as regards the keeping of special records or special accounting requirements.]