



## CONSULTATION

### GREEN PAPER ON THE FUTURE OF VAT

#### **"Towards a simpler, more robust and efficient VAT system" (COM (2010)695 final)**

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#### **1. Introduction**

The European Commission has launched this consultation to review the current VAT system in the EU after 40 years of existence. A major issue concerns the further consolidation of the single market, where VAT is an important factor in cross-border transactions. The European Commission also wants to investigate options to cut red tape and reduce the administrative burdens for companies.

Pearle\*, which is the European trade federation representing the interests of more than 4,500 performing arts organizations across Europe, welcomes the fact that the European Commission has launched this debate.

Over the past decade the European Commission made different proposals seeking ways to improve the current VAT system and to respond to specific issues, such as those for labour-intense sectors or with regard to VAT and the place of supply of services. In addition, the Commission seeks to improve the system in order to better tackle fraud in relation to VAT.

The paper raises questions of importance to the live performance sector that Pearle\* represents, in particular with regard to cultural services exempt from VAT. Pearle\* has always taken interest in initiatives taken by the EU which may affect the operations and business. In fact it was VAT that lay at the origin some 20 years ago for a number of trade federations from the performing arts in Europe to create a European association to represent the interests of the live performance sector in Europe. The common concern at that time was based on the observation that VAT could be an element hindering cultural cooperation and cross-border offer of culture services.

Besides responses to a number of selected questions of a general nature, this contribution of Pearle\* to the Green Paper intends to pay specific attention to the issues at stake in relation to culture services, more precisely the performing arts. We urge the Commission to take note of the fact that Pearle\* represents both private and public bodies in the performing arts sector and that this paper is the result of the common viewpoint of all its members.

In this Green paper the discussion on the future of VAT is concentrated around two main areas: one concerns the principles on which the taxation of intra-EU transactions should be based if Europe wants an EU VAT system. In the other set of questions attention is given to issues which may need to be further dealt with, even if the current principles on VAT in the EU remain unchanged.

## **2. General comments**

Enterprises in the live performance sector are mainly SMEs with different legal statutes, many of which have a minimum of administrative human resources available. The reduction of administrative burdens in areas related to employment such as social security, visas and work permits, taxation (double taxation of withholding tax), intellectual property, and obviously also in the field of VAT is reported to be an important factor in easing the way in which business can be conducted.

In monitoring the annual reporting of the European Commission the past years on initiatives to reduce administrative burdens, the impact on the live performance sector is quasi non-existent. On a rather ad hoc basis across Europe, it is observed that some Member States undertake efforts to improve administrative processes for businesses through one-stop-shop and e-government.

Pearle\* published a study in 2007, for which research was undertaken in 2006 in the framework of the European Year on mobility of workers, called *'impediments to mobility in the EU live performance sector and on possible solutions'*. In this study, enterprises reported in relation to impediments to cross-border transactions different administrative burdens and complexities related to VAT which relate to applicable VAT rules, the VAT status of cultural services and the specific nature of the activities of the sector.

## **3. VAT treatment of cross-border transactions in the single market**

The consultation paper touches in the first part on questions concerning the principles of the system of VAT treatment based on taxation at origin, which was the original intention in order to achieve a single market in the EU, or a VAT system considering taxation in the country of destination. The Commission staff working document (SEC (2010) 1455 final) accompanying the Green paper and the Study published on 12 April 2011 on the website of DG Taxud on "VAT in the public sector and exemptions in the public interest" by Copenhagen Economics, provide for comprehensive analysis of the current situation and of possible models.

The response of Pearle\* to the questions addressed in the Green Paper are meant to add views from the sector to the theoretical studies, in such way that it reflects the daily realities and experiences for enterprises, public bodies and organisations operating in the live performance sector.

Q1: 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 maximizing its benefits?

Q2: 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?

In Pearle\*'s view there has to be an important distinction made when discussing VAT arrangements for intra-EU trade : the first concerns the legal framework of the single market, the second concerns the administrative context in which businesses have to operate.

Pearle\* is of the opinion that in particular for public services, such as cultural services, Member States should be able to master their own tax regimes and to be able to decide which services need to be tax exempt or subject to low VAT rates. The subsidiarity principle with regard to indirect taxation must be respected as it offers Member States flexibility to contribute to the objectives of the single market. Moreover as regards culture services, according to the Treaty, the competences on culture belong to the Member States, which assumes that this would also be reflected in the area of VAT on cultural services.

Notwithstanding this, Pearle\* members observe administrative burdens in relation to VAT and for which the EU may take important initiatives to facilitate cross-border trade for services in the EU. Live performance organisations complain about overly-complex rules, unclarity with regard to the applicable legislation for the type of cross-border transactions in the sector, problems with the right to claim refund, etcetera.

An example of the problems currently faced by live performance organisations concerns the recent changes following from the Council Directive 2008/8/EC on the place of supply of services. According to this Council Directive, the general rule implies that the business-to-business supplies of services will be taxed where the customer is situated, and for business-to-consumer supplies of services, the place of taxation will continue to be where the supplier is established.

BUT, in certain cases there is an exception foreseen for cultural, sporting, scientific, education and entertainment services where the general rules for services to businesses and to consumers are not applicable. According to Article 53 the place of services and ancillary services relating to cultural, artistic...and entertainment, shall be the place where those activities are *physically carried out*. In one case that may be the country of origin for a performing arts organization and in another case the country of destination.

While this appears at first to be a clear and straightforward rule, questions arise on what it means for the activity to be physically carried out. Take for example a music ensemble that has rehearsals in one country and then goes on tour in Europe. Part of its activities are physically carried out in one particular country, in this case the rehearsals. In reality the activity is sold as a package, including the calculation of the time for the rehearsing in the home country. Performing arts organizations wonder whether the new regulation has an impact on the calculation of the VAT. Many of them are now also confronted for the first time with the obligations related to listing for intracommunity supplies of services and the new rules in relation to the VAT refund claims. This results in a significant increase of the workload and the internal costs for most organizations, but in particular for those that are VAT exempt as they cannot - due to their status - deduct the VAT for the expenses made.

Whether the country of origin or the country of destination be the best option for cross-border transactions, as concerns live performance organizations, in both cases the conditions for operating a VAT mechanism should be subject to the following priorities:

- Subsidiarity principle for Member States to be respected
- Administration as simple as possible
- Clear rules which is particularly important for complicated forms of services (such as co-productions)

- Those eligible to fall under the exemptions to have the possibility to choose whether or not to make use of that right
- EU VAT number for those providing cross-border transactions (avoiding unnecessary, costly, time-consuming VAT registration)

#### 4. **Neutrality of the VAT system**

##### **SCOPE OF VAT**

Q3: 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?

Q4: what other problems have you encountered in relation to the scope of VAT?

Q5: what should be done to overcome these problems?

When discussing questions in the live performance sector on tax neutrality there are different issues to be taken into account. Whereas from a theoretical viewpoint the possible distortion of competition between private and VAT exempt may be defined as being important, it is not experienced as such in the sector itself. The reason being is that the artistic decisions are usually prevailing above the economic decisions of the organisation. The purely economic decision choosing one above the other as it is the case in many other sectors of economy will rarely dominate. The name of the artist, the group, the success of a production, will be the factors for an organiser to programme a specific event. Whether or not it concerns a service that is VAT subject or exempt, will be a secondary issue.

Secondly, the live performance sector is a highly labour-intensive sector<sup>1</sup>, which means that even for the most commercial live productions in Europe or in the world it takes several months before the productions costs are covered. The economic principle that more production results in lower costs per item does not work for this sector as labour costs do not decrease in a similar way as in the case for the production of goods. This is important to take into account when discussing economic activities of a sector as the live performance. This has been addressed in more detail by Pearle\* in its response to the European Commission on the consultation in 2008 on the Review of legislation on VAT reduced rates.

Thirdly, many will underline that the private sector can only be as vibrant as it is thanks to a healthy public sector of the arts. The best artists are often trained in public theaters before they move to commercial productions in theatre, broadcast or cinema. Both public and private sectors strengthen each other.

Although it might be expected from a theoretical point of view that a change in the VAT rules creates a more neutral situation, it is not expected by the sector that this would lead to a great effect in lifting possible distortions in the market.

Clarity must be provided in article 13 of the Common VAT System Directive (CVSD) allowing for qualifying organisations to have the option to choose between tax exemption or zero or low VAT rate. This would allow for organisations with very little cross-border activities and outsourced services to

<sup>1</sup> According to Eurostat pocketbook 2011 on culture the core sector alone of the performing arts already represents about 1 million workers

continue working under the status of tax exemption, whereas those organisations which have an important amount of cross-border activities should have the chance to be subject to a low VAT rate. A low VAT rate would also create a better level playing field for both profit and non-profit organisations and would support employment and working conditions in the sector. Finally it would be in accordance to Article 167 of the Treaty on culture.

#### **EXEMPTIONS FROM VAT**

Q6 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?

Q7 Do you think that the current system of taxation of passenger transport creates problems either in terms of tax neutrality or for other reasons? Should VAT be applied to passenger transport irrespective of the means of transport used?

Q8 what should be done to overcome these problems?

The exemptions applicable for performing arts organisations are described in the CVSD as follows:

##### *Article 13*

1. States, regional and local government authorities and other bodies governed by public law shall not be regarded as taxable persons in respect of the activities or transactions in which they engage as public authorities, even where they collect dues, fees, contributions or payments in connection with those activities or transactions.

However, when they engage in such activities or transactions, they shall be regarded as taxable persons in respect of those activities or transactions where their treatment as non-taxable persons would lead to significant distortions of competition.

In any event, bodies governed by public law shall be regarded as taxable persons in respect of the activities listed in Annex I, provided that those activities are not carried out on such a small scale as to be negligible.

2. Member States may regard activities, exempt under Articles 132, 135, 136, 371, 374 to 377, and Article 378(2), Article 379(2), or Articles 380 to 390, engaged in by bodies governed by public law as activities in which those bodies engage as public authorities.

##### ***Exemptions for certain activities in the public interest***

###### *Article 132*

1. Member States shall exempt the following transactions:

(n) the supply of certain cultural services, and the supply of goods closely linked thereto, by bodies governed by public law or by other cultural bodies recognised by the Member State concerned;

The reduced rates applicable for the live performance sector are described in the CVSD as follows:

##### Article 98

1. Member States may apply either one or two reduced rates.

2. The reduced rates shall apply only to supplies of goods or services in the categories set out in Annex III.

**Annex III** list of supplies of goods and services to which the reduced rates referred to in article 98 may be applied

(7) admission to shows, theatres, circuses, fairs, amusement parks, concerts, museums, zoos, cinemas, exhibitions and similar cultural events and facilities;

As regards the exemption of public bodies in the performing arts sector, the main difficulties arise for cross-border activities on the applicable rules in relation to services rendered by tax exempt organisations. Legal uncertainty is often reported, including contradictory information depending on

the tax office in the countries concerned. In general performing arts organisations would favour a possibility to choose between tax exempt or low VAT rate as this model responds best to the nature of cultural services. Distortion or competition are not so much the criteria as whether the VAT would generate more production, employment, increase scale and have a positive effect on ancillary services and on related cultural industries (such as phonogram industry, creative content suppliers) or other sectors (such as hotels and restaurants, tourism). In the case of reduced rates the integration of "supply of services by organizers and promoters" in annex III as it is was suggested by the Commission in its consultation paper on the Review of existing legislation on VAT reduced rates, would be welcomed.

Pearle\* is of the opinion that the effects expected from outsourcing when removing tax exemption may be overestimated. Outsourcing is closely related to employment and many of the public bodies operate on the basis of open end employment contracts. The effects would thus be minor as they would only be seen after a substantial number of years as employed staff retires or when people decide to leave the organisation.

A problem that still occurs concerns the supply of services by individual artists that are working as self-employed. The ruling in the Matthias Hoffman case C-144/00 ECJ of 3 April 2003 underlined that individual performers should equally be subject to Article 13 of the CVSD as bodies governed by public law or by other cultural bodies. This ruling is often unknown or ignored, resulting in delays of dealing with the tax exemption.

Pearle\* believes that in the end the decision should be in favour of the citizens so that the general objectives are respected while guaranteeing that culture remains accessible to all levels in society.

## **DEDUCTIONS**

Q9 What do you consider to be the main problems with the right of deduction?

Q10 What changes would you like to see to improve the neutrality and fairness of the rules on deduction of input VAT?

Organisations that are VAT exempt cannot deduct VAT for services and products that they have bought. At the same time, following the Directive on the Place of Supply of Services, VAT-exempt organisations in the case of intra-community supply of services (a foreign producing company) are now obliged to have a VAT-number in order to be able to declare the VAT for foreign productions which are not VAT-exempt. That means that the VAT results in a higher cost for the organisation. On the other hand the organisation has less administrative burdens as it does not have to comply with the administrative tasks that need to be undertaken in the context of deduction of VAT.

But in the case of right of deduction, the simple fact of not having to cover the compliance costs in relation to deduction of VAT is an important argument for the thousands of small enterprises in the sector to maintain the status of tax exemption.

The motivation when it has the choice between tax exempt status or a non-exempt status will also depend of the possibility to be eligible to a low VAT output rate. The live performance sector is one of the culture industries, as it is acknowledged by sectors which suffer of economic pressure due to new digital business models (such as the recording industry), that is looked at for offering new

business opportunities. Given the high labour-intensity of the sector, a low VAT rate is an important tool to stimulate local economy and consumption.

Questions often arise in relation to the contractual arrangements in the sector between the organiser and the producing company, with sometimes additional complications of intermediaries (agents/management bureaus). The problems arise when the contract provides for an all-in invoice including costs of hotel, travel, ...and the level of VAT that is to be deducted. For both supplier and customer, there seems to be a lack of clarity in relation to the applicable VAT rates, the place where VAT has to be paid or the part of the production eligible for VAT deduction.

A common system of invoicing, including compulsory information in relation to the VAT would help to reduce the administrative burdens of the business customer. In addition clear guidance is desirable when it concerns "all-in" invoices, including VAT subject services, which are the same across Europe. Finally easy accessible one-stop-shop offices in each country should increase efficiency and reduce delays with regard to the right of deduction.

#### **INTERNATIONAL SERVICES**

Q11 What are the main problems with the current VAT rules for international services, in terms of competition and tax neutrality or other factors?

Q12 What should be done to overcome these problems? Do you think that more coordination is needed at international level?

The live performance sector is a highly mobile sector, with both incoming and outgoing services to different parts of the world.

As Pearle\* has reported to the European Commission (consultation 2010) and to the OECD (consultation of 2010 on article 17 model tax convention), the sector suffers from great difficulties in relation to double taxation, in particular direct taxation. As regards indirect taxation, again questions often relate to the place of supply of services, especially in situation which have mixed packages of services. Another problem in the globalised world concerns the offer of creative content online from live performance organisations.

An international agreement on VAT and the place of supply of services, such as for cultural services would help to create a level playing field for the sector at international level.

#### **5. Degree of harmonisation in the single market**

#### **LEGAL PROCESS**

Q13 Which, if any, provisions of EU VAT law should be laid down in a Council regulation instead of a directive?

Q14 Do you consider that implementing rules should be laid down in a Commission decision?

Q15 If this is not achievable, might guidance on new EU VAT legislation be useful even it is not legally binding on the Member States? Do you see any advantages to issuing such guidance?

Q16 More broadly, what should be done to improve the legislative process, its transparency and the role of stakeholders in the process, from then initial phase (drafting the proposal) to the final phase (national implementation)

A Council regulation having direct impact on national legislation has the advantage of providing clarity for all those concerned and for streamlining formats for documents. A Council regulation, given the the subsidiarity of Member States in relation to taxation, would automatically be limited to topical questions which have a truly European dimension.

In the case of the live performance sector, there are a few areas in which the EU might consider an EU regulation. This could be the creation of an EU VAT number for organisations with a genuine intra-community dimension of the services supplied, such as in the case of live performance organisations. This would release organisations of the administrative burden to register in each Member State even when the organisation is VAT exempt in the country of residence.

A Council regulation would also be useful laying down the format for documents in relation to declaration/ deduction of VAT. An EU-wide document would reduce the compliance costs and administrative burdens for businesses. It would also reduce the difficulties in relation to translation of documents (similar systems have been created in the areas of social security, visas...and in the future on work and residence permits).

Whatever instrument chosen, as mentioned in the introduction of this paper, it should aim and focus on increasing clarity and efficiency, reducing administrative burdens, and easing the administrative handling of deduction of VAT with regard to cross-border supply of services.

#### **DEROGATIONS**

Q17 Have you encountered difficulties as a result of derogations granted to Member States? Please describe these difficulties.

Q18 Do you think that the current procedure for granting individual derogations is satisfactory and, if not, how could it be improved?

Pearle\* has no specific comment to questions 17 and 18.

#### **VAT RATES**

Q19 Do you think that 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 costs for businesses? If yes, in what situations?

Q20 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'?

Pearle\* is of the opinion that Member States should maintain the possibility to provide for public services a tax exempt status and for other culture services reduced VAT rates.

Pearle\* expressed in its response to the Commission consultation on the Review of existing legislation on VAT-reduced rates in May 2008<sup>2</sup> that the sector would like to see further study on supply of services of promoters or organisers in the list of services eligible for VAT reduced rate.

The Council had made clear when adopting the Directive 2009/47/EC to allow for only a limited number of labour-intense services the use of reduced VAT rates. In Pearle's opinion this decision has been taken without fully exploring all the elements addressed in the prior consultation. For example, a study on VAT exempt services, such as in relation to cultural services, was not undertaken until this year and the sector was not consulted in relation to this study. As a result, there were no objective elements available for the Council to base its decisions upon in relation to the effects of reduced VAT rates and the extension to services not listed in the annex III.

Over the past years in different countries, there is a trend observed that VAT rates are increased to the highest applicable rates, whether it concerns B2B or B2C. The discussion on the online offer of creative content should not be differentiated from the physical creative products or services. In this regard Pearle\* would be in favour for a general framework for cultural services and goods, which does not discriminate one sector from the other, which encourages Member States to either continue to apply tax exemption or to favour reduced VAT rates, in order to allow for the cultural sectors to develop new business models and invest in answers to the challenges arising from the digital environment.

Referring to our answer under the questions Q3-Q5 we wish to underline that clarity must be provided under article 13 of the CVSD allowing for qualifying culture organisations to have the option to choose between tax exemption or low VAT rate.

## **REDUCING RED TAPE**

Q21-Q29

In the responses to the above question Pearle\* has expressed its support for the set-up of systems which simplify administration and compliance costs.

In relation to Q29 "in which areas of VAT legislation do synergies with other tax or customs legislation need to be promoted?" Pearle\* would be in favour of one-stop-shop in relation to excise duties as well as on withholding taxes. A central system that allows an enterprise to declare the different taxes, via its registration number, and to have access to the necessary documents for deduction should help to reduce administrative burdens, lower the threshold for smaller SMEs to comply with tax rules and reduce delays from tax offices.

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<sup>2</sup> Response of Pearle to consultation of the European Commission on Review of existing legislation on VAT reduced rates <http://www.pearle.ws/en/positionpapers/detail/30>

## **A MORE ROBUST VAT SYSTEM**

Q30-Q31

Pearle\* has no particular view on the strategy to combat VAT fraud.

## **AN EFFICIENT AND MODERN ADMINISTRATING OF THE VAT SYSTEM**

Q32-Q33

If the EU aims at a better functioning of the single market, it should seek to establish measures which support that aim, by dialogue between tax administrations of Member States and stakeholders. The dialogue process should be open to stakeholders not just from the regular business communities, but open to representatives of all sectors interested.

In addition the EU could on a continuous basis, for example through the creation of a tax or VAT observatory, undertake studies on different aspects and topical questions related to VAT. Queries or suggestions from stakeholders should equally be possible in relation to particular problems identified in one or the other sector or in a particular field of the application of the law.

### **6. Conclusion**

Pearle\* is of the opinion that :

- the EU should provide a framework that allows businesses to operate within the single market with a minimum of administrative burdens. The EU can take in this respect several initiatives which ease cross-border transactions.
- the EU should respect the subsidiarity of Member States regarding the option on tax exemption of public cultural services and/or on low VAT rates for cultural services.
- Qualifying enterprises in the sector should be able to have the choice between tax exemption or low VAT rate for culture services.