



## **PUBLIC CONSULTATION ON THE ADAPTATION OF THE VAT SYSTEM**

### **COMMENTS OF PEARLE\*- Live Performance Europe TO THE REFORM OF VAT RATES AND REMARKS ON THE SPECIAL SCHEME FOR SMEs**

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#### Introduction

The Commission launched a public consultation on the adaptation of the VAT system, including a consultation on the reform of VAT Rates and on the special scheme for small and medium sized enterprises.

Pearle\*-Live Performance Europe welcomes the opportunity to take part in the public consultation which is of great importance to the music and performing arts sector. Pearle\* represents through its members associations more than 10,000 enterprises across Europe, which are primarily SMEs as well as micro-enterprises.

The rules regarding VAT are laid down in the Council Directive 2006/112/EC on the Common system of Value Added Tax. The Directive includes general rules regarding the VAT rates applicable in the different Member States. The standard rate is 15% and two reduced rates are allowed at minimum 5% for goods and services listed in the Annex III of the Directive.

As regards the cultural sector it includes the following two types of services:

- admission to shows, theatres, circuses, fairs, amusement parks, concerts, museums, zoos, cinemas, exhibitions and similar cultural events and facilities;
- supply of services by writers, composers and performing artists, or of the royalties due to them;

In different Member States culture benefits from super-reduced rates, zero rates or exemption.

The Council Directive 2008/8/EC determines the VAT taxation on those services as regards the place of supply of services.

The consultation on the reform of VAT rates seeks to gather views from stakeholders on:

- The need for EU action and in particular the need for greater freedom for Member States to fix VAT rates
- The proper balance between harmonisation and Member States autonomy in setting VAT rates
- The problems and risks linked to differentiation of VAT rates within the Single Market
- The desirable direction for reform as well as stakeholders' views on the proposed policy options and their impacts

At the same time the public consultation on the special scheme for small enterprises under the VAT directive seeks to gather views on:

- the current VAT provisions for SMEs and their application; and
- possible changes as regards the VAT provisions for SMEs.

## 2. Additional remarks to the online survey

In addition to its answers given in the online survey Pearle\* would like to raise some specific issues which are of relevance in the context of the consultation on a reform of VAT rates.

### 2.1. Facts about the live performance sector

In the context of defining VAT regimes it is essential to bear in mind that the sector is highly labour-intensive and that the services provided have a local nature.

- The sector includes a great mix of public bodies, non-profit organisations, private companies that are either VAT-exempt companies or VAT-registered
- The sector is composed of several thousand SMEs and micro-companies
- The sector is highly labour-intensive, creating jobs for about 1,2 million people (the highest among the cultural industries). Every performance or show relies on the physical involvement of human action.
- The sector has a primarily local focus as a performance is always taking place in a specific location on a specific moment in time for a limited number of persons. Even in the case of web streaming of performances the group reached via digital means is limited to a interested and targeted audience at that specific time.
- The sector has in different Member States reduced VAT rates, super-reduced rates, exemption, for either admission for shows or services from artists, etcetera or both.
- 20 Member States apply the low rate and/or exemption to the admission to shows (with only Spain applying normal rate of all countries in the Euro Zone)
- 24 Member States apply the low rate and/or exemption for the services of artists, writers, composers and performing artists
- The sector is highly mobile, with shows touring around and artists performing in other countries than the country of origin

### 2.2. Importance of an EU-wide approach to reduced rates for the sector

1. Pearle\* strongly calls upon the EU to maintain the option of VAT reduced rates and exemption for the sector as part of the VAT directive. An EU wide approach which binds Member States to apply reduced, super-reduced rates or exemption would hugely foster the live performance sector.

This would still allow Member States to decide on the level of the reduced rate, whereas it should also be possible to derogate from the reduced rate and apply super-reduced rates or zero rates. Furthermore exemption on public cultural services should remain an option, as certain types of public bodies or qualified organisations or artists may not have an interest to be subject to VAT.

2. The effects of a mere increase of the VAT rate for tickets on the sector such as happened in the Netherlands in 2011 and in Spain<sup>1</sup> in 2012, demonstrate clearly that higher rates have a substantial negative impact on number of tickets sold, productions and performances sold. This has an immediate effect on employment and production. As a result the aim of public authorities to generate income from higher VAT (taxing at normal rate) was completely mitigated, and in addition also resulted in less income from social contributions on employment and income from corporate taxes.

In the Netherlands the VAT rate on tickets for live performance was decided to be raised from 6% to 19% in 2011. Due to the negative impact on the sale of tickets it was decided to lower again the VAT rate to 6% in July 2012. In Spain the reduced VAT for the provision of cultural services was abolished in September 2012 to the standard rate of 21%. This led to an immediate decrease of income for live performance organisations of nearly 34% in September 2012 compared to the year before and over a period of a year to a decrease of 26% compared to the year before. In that period there 29.01% less spectators attended a live performance. The sector is until present still operating under the standard VAT rate and awaits a decision from the government to lower it.

These two cases demonstrate that there is clearly a need for a general EU wide scheme for reduced VAT rates for culture.

### 2.3. The need for a practical system for organisations operating under a VAT exempt system

A main criterion for the EU when legislating is the question of cutting red tape through better regulation. In this regard an option to tax may lead to important additional administrative burdens and costs for organisations that now operate under a tax exempt system.

1. For that reason, in certain EU Member States (such as in Belgium or France) public authorities have used article 13 (1) to exempt organisations when undertaking VAT liable activities under a certain threshold.

The EU can provide further clarity to guide Member States in the interpretation of Article 13 allowing for qualifying organisations to have the option to choose between different systems: tax exemption, low VAT rate (or if applicable : super-reduced/zero rate).

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<sup>1</sup> In Spain the impact of a raise of the VAT rate in 2012 on admission to shows and on services of artists (live performance, cinema) resulted in the year after in a loss of more 43 million spectators, a loss of more than 5000 direct jobs, closure of 20% of the companies as they no longer could pay their bills or keep people in employment. Finally it resulted in 500 million euros less on the public tax collection.

This would allow for organisations with a very little amount of cross-border activities, taxable activities or outsourced services to continue working under the status of tax exemption (for example when under a certain threshold of taxable activities). At the same time, organisations with a more substantial amount of taxable or cross-border activities could then choose to continue working under a tax exempt status or operate under a low VAT rate.

Referring to the [public consultation](#) of the Commission on the special scheme for small enterprises under the VAT Directive, Pearle calls upon the Commission to maintain a special scheme for SMEs, taking into consideration the specific context of cultural organisations.

2. In the case of cross-border transactions, tax exempt or non-tax exempt organisations should be able to obtain an EU VAT number, in order to facilitate cooperation and to sell services abroad. Especially for tax exempt organisations this would substantially reduce administrative problems which occur on a daily basis.
3. A best practice for a reform to the VAT directive would be to include a clause for the automatic recognition of exemptions for artistic companies allowing those cultural public bodies (or other VAT exempt organisations) that are exempt under art. 132 n) of the VAT directive to be automatically exempt in the case of cross-border transaction (supply of services in other EU MS). This would create greater legal certainty for such cultural organizations with regard to the criteria to be fulfilled in order to be exempt from VAT.

#### 2.4. The goals of the EU in respect to culture

1. Culture cannot be assessed as other services or goods in the market. This is clearly endorsed in the European competition law of the General Block Exemption Regulation (recital 6, GBER II). Referring to article 107 (1) of the Treaty also states those do not typically give rise to any significant distortion or competition.
2. Furthermore a special regime on VAT for culture is in line with art 3 TEU and art 167 TFEU, whereby it is defined as a goal that the EU should foster the flowering of the cultures in its Member States.
3. In the context of developments in the digital environment, Pearle\* is of the opinion that public bodies and others which equally provide online services should therefore be treated in the same way as admission to shows or services supplied by artists and composers.
4. For that purpose, Pearle calls upon the EU to endorse its commitment to safeguard a special regime for VAT reduced for culture.