



Fédération Européenne des Activités de la Dépollution et de l'Environnement  
European Federation of Waste Management and Environmental Services  
Europäische Föderation der Entsorgungswirtschaft

31st May 2011

## FEAD

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## FEAD input to the EC Green Paper on the Future of VAT

### 5.1. How to ensure the neutrality of the VAT system

#### 5.1.1. The 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?

*Differential treatment with regards to the payment of VAT in the public and the private waste management sector is a problem in a number of Member States (e.g. Germany, UK, Greece, Belgium, Luxembourg etc.). It creates **distortions of competition between public and private bodies**, in particular, for the **collection of waste** which has the following consequences:*

*1. In cases where public and private service providers compete in the same market, distortion of competition occurs due to the public party not charging its customers with VAT.*

*The current legislation has attempted to resolve this issue in Article 13<sup>1</sup> of the VAT Directive by granting Member States the discretion to charge VAT to public authorities where this would lead to a “significant” distortion of competition. This however has led to legal uncertainty and a lack of clarity which prevents the consistent application at national level. Member States, for instance, have interpreted the provisions of Article 13 paragraphs 1 and 2 in different ways and have treated certain taxable services as non taxable, even in markets that are open to competition<sup>2</sup>.*

*FEAD members regret that **waste management is not included in the list of taxable activities** (Annex I of the Directive 2006/112/EC) which has been created explicitly with the goal to avoid distortions of competition between public and private bodies. This is all the more problematic given that waste management is an activity wherein the private sector is actively involved and which is labour-intensive, rendering our sector thus very sensitive to VAT.*

*2. A second issue is that a public body exempt from VAT is charged VAT by the private service provider when it outsources its services. This acts as a disincentive for public authorities to outsource services even under circumstances where this would improve efficiency as they cannot recover the*

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<sup>1</sup> Article 13 (1) paragraph 1 of the VAT Directive stipulates that “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.” Article 13(1) paragraph 2 provides that when public authorities “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”.

<sup>2</sup> Copenhagen Economics Study: “VAT in the Public Sector and Exemptions in the Public Interest”, 1<sup>st</sup> March 2011, page 108-109.

VAT. It also affects the promotion of public-private partnerships since these types of contracts become unfairly costly for public authorities due to the non-recoverable VAT.

One of the reasons for public bodies using in-house service providers is that private providers would have to charge VAT, which for the public entity is not recoverable. However, if the VAT could be recovered, the public body may be able to save costs by using a private provider. The 2011 Copenhagen Economics study on the VAT exemptions in the public sector contracted by the European Commission, for instance, clearly shows how public authorities can save costs by outsourcing if they could recover VAT. In this regard, the study provides the following example: a service which costs the public authority € 110 when provided via an in-house operator can be provided by the private operator for € 100 as a result of economies of scale. However, as the private provider is currently required to charge VAT of around 20%, the cost for the public authority becomes € 120 on account of the non-recoverable VAT. Clearly if the authority was able to recover the 20%, it could decide to outsource the service and save costs.<sup>3</sup>

The Copenhagen Economics study further explores the investment decisions of the public sector and shows that, for public authorities, the possibility of refunding VAT may lead to more investment decisions and outsourcing.<sup>4</sup>

Equal VAT treatment in the public and the private sectors could also provide more clarity on the burden of costs for public-private partnerships (PPPs) and consequently foster the creation of more PPPs in the EU. The Copenhagen Economics study shows that there are cases where the creation of PPPs has been difficult as a result of differential VAT treatment. In the case of Germany, for example, PPPs must pay VAT, which makes the participation of the public party more expensive because of the non-recoverable VAT. Accordingly, the share of investments in Germany through PPPs stands at only 4 % while in other European economies this share is around 15 %.<sup>5</sup>

Against this background, FEAD is of the opinion that equal VAT taxation of public and private waste management operators in the different EU Member States needs to be guaranteed.

- Q4. What other problems have you encountered in relation to the scope of VAT?

FEAD members have noted that, even in cases where the legislation appropriately addresses the issue of distortions of competition by applying VAT to public operators, the implementation of such legislation is sometimes problematic. Public bodies, which are exempt from VAT for most of their activities might lack the knowledge or even the tools to properly apply VAT in practise. Problems could, for instance, arise from the fact that their accounting systems sometimes do not include the VAT parameter.

- Q5. What should be done to overcome these problems?

All activities related to the waste management sector should be subject to VAT no matter what the legal status of the entity is that performs the service. In that respect, public bodies involved in waste management activities should be treated as taxable persons. VAT must be introduced to the public sector bodies which compete with the private service providers in order to prevent distortions of competition in the waste management sector.

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<sup>3</sup> The example with the analysis is provided on page 10 of the Copenhagen Economics Study. Figure 1.2 exemplifies the choice between outsourcing and self-supply.

<sup>4</sup> In part 1.2, the Copenhagen Economics Study explains how the differential treatment of the VAT between the public and private sectors impacts the investment decisions of public bodies, pages 13 -18 and 117-121.

<sup>5</sup> Box 3.6 of the Copenhagen Economics Study presents the case public-private partnerships in relation to VAT in Germany, page 122.

*The European Commission should clarify as a matter of urgency that under circumstances where public authorities provide a service in direct competition with private providers subject to VAT the principle of fair competition dictates that VAT should also be applied to the public provider of that service. It should also be considered that any distortion of competition is significant at the margin and therefore the phrase "significant" should be removed from Article 13.*

*It also seems to us that 'full taxation' is preferable to 'refund schemes' given that it avoids the drawbacks associated to cash-flow issues. Furthermore, while refund schemes only allow the recovery of the VAT paid on investments, full taxation would also resolve the distortion linked to VAT paid on labour.*

*In order to give full effect to the option of 'full taxation', attention must be paid to the definition of "public bodies". It should be made clear that "in-house" operators are included into its scope.*

### **5.2.3. VAT rates**

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

*In some EU Member States, reduced VAT rates are applied to waste collection and/or treatment activities for the purpose of fulfilling environmental objectives.*

*The option to apply reduced rates to waste management activities should be maintained as long as this does not lead to disruptions of the single market and to unequal treatment between public and private bodies. FEAD members consider that this is not the case for Member States where reduced VAT rates for waste management activities are applied given the limited impact of these reduced VAT rates on cross-border transactions.*

- 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'?

*FEAD believes that the possibility to apply reduced rates to waste collection and treatment activities should be safeguarded given that, where they are applied, reduced VAT rates have been widely recognized as an efficient policy instrument. They should be used to serve the Europe 2020 objectives, notably that of sustainable growth. Environmental services, such as waste management, are crucial to achieving these objectives, and should thus benefit from VAT support mechanisms.*

*FEAD is the European Federation representing the European waste management industry. FEAD's members are national waste management associations covering 20 Member States and Norway. They have an approximate 60% share in the household waste market and handle more than 75% of industrial and commercial waste in Europe. Their combined annual turnover is approximately € 75 billion.*

*FEAD represents about 3000 companies with activities in all forms of waste management. These companies employ over 320000 people who operate around 2400 recycling and sorting centres, 1100 composting sites, 260 waste-to-energy plants and 900 controlled landfills. They play an important role in the determination of the best environmental option for waste management problems.*