


## Value Added Tax on Financial Services in the EU: The Complete Story

Lyubomir Antonov

Doctor of Law, Chief Assistant Professor of Financial law, Tax law and Procedures and Head of the Public Law Department in the Faculty of Law at Varna Free University “Chernorizets Hrabar”; correspondence address: 84 Yanko Slavchev St, Chayka Resort, 9007 Varna, Bulgaria; e-mail: lyubomir.antonov@vfu.bg

 <https://orcid.org/0009-0006-6238-9017>

### Keywords:

VAT,  
value added tax,  
financial services,  
exempt supplies,  
overview

**Abstract:** The paper provides an extensive overview of the VAT exemption of financial services in the EU. The topic is surrounded by conceptual and practical challenges. The main issues are presented in a retrospective plan. They have been clearly defined and discussed since the very inception of the EU VAT system. The difficulties this tax regime is faced with today reveal the logical sequence that can be traced as far back as the 1970s. In its first part, the paper looks at the topic from a historical perspective, exploring the inclusion of financial services within the scope of the first VAT rules. Further insight is subsequently provided on the application of the VAT exemption over the past decades until the present-day rules. At its core, the text relies mostly upon the CJEU case law. Capital issues for VAT fiscal neutrality are also given careful consideration. This is the major concern inspiring the Commission’s attempts and proposals for VAT reforms. After a concise examination of the efforts to revise the legislation, the paper focuses on the most recent developments in the financial industry, which is a major stakeholder concerned by the recent aspirations of Brussels.

### 1. Introduction

The article addresses the topic of the recurring ambitions that from time to time inspire the European Commission (EC) to propose a VAT reform in

the area of financial services.<sup>1</sup> The revision is envisaged to reshape the European VAT system by bringing the supplies of financial services under its rulings for taxable transactions. The principal difficulty for the taxation of these supplies lies in the identification of the taxable amount.<sup>2</sup> The paper provides evidence that initiatives seeking to treat supplies of financial services as VAT-taxable transactions are not modern inventions. Such aspirations are rather a natural inclination inherent to the VAT system since its very first conception. As a second step, the article reviews recent proposals that the EC has been launching since the mid-1990s. In this context, attention will be paid to the latest ideas expressed among financial service providers in their capacity as stakeholders. These reform efforts have their origin in the First and the Second Directives of 11 April 1967 on the harmonisation of legislation of member states (MS) concerning turnover taxes.<sup>3</sup>

## 2. Early VAT on Financial Services and Its Evolution to Date

Pursuant to Article 19 of the Second Directive, the Council had to adopt appropriate actions to progressively restrict or abolish measures adopted by MS in derogation from the common VAT system. Such measures also included the way MS treated financial services for VAT purposes. A step forward in this regard was made on 9 December 1969 when the Council adopted a resolution that insisted all retail sales be covered under the VAT scope of application as soon as it had been introduced at the national level. On 21 April 1970, the Council decided to replace the MS contributions to the Communities' budget with the Communities' own resources.<sup>4</sup> The latter also include incomes accruing from VAT. In line with that, the EU rules

---

<sup>1</sup> The generic term "financial services" covers a wide range of financial supplies. Cf. Harry Grubert and Richard Krever, "VAT and Financial Services: Competing Perspectives on What Should Be Taxed," *Tax Law Review* 65, no. 2 (2012): 203.

<sup>2</sup> Rita de la Feria, "The EU VAT Treatment of Insurance and Financial Services (again) under Review," *EC TAX Review* 16, no. 2 (2007): 74.

<sup>3</sup> Cf. First Directive 67/227/EEC of 11 April 1967 on the harmonisation of legislation of MS concerning turnover taxes (O.J.E.C. 1301/67, 14 April 1967, p. 14–15); and Second Directive 67/228/EEC of 11 April 1967 on the harmonisation of legislation of MS concerning turnover taxes – Structure and procedures for application of the common system of VAT (O.J.E.C. 1303/67, 14 April 1967, p. 16–23).

<sup>4</sup> Decision of 21 April 1970 on the replacement of financial contributions from MS by the Communities' own resources (O.J.E.C. L094, 28 April 1970, p. 0019–0022).

were supposed to determine an identical scope of application for VAT under national legislation. Charging VAT on financial services should be examined as part of that principal conception, which relies upon the interdependence of economic activities within a single European market. This implied, above all, that the said services would be delineated and defined in the same manner within the common market. Only this could ensure their identical tax treatment.<sup>5</sup> The EU market transformed into “an area without internal frontiers” with the adoption of the Single European Act.<sup>6</sup> It led to the establishment of a temporary VAT regime for intra-community transactions, which was to be replaced by a definitive system by 31 December 1996.<sup>7</sup> Yet, this transitory regime still applies today.

VAT chargeability on financial services has been part of the EU’s agenda for a long time. A discussion on the issue can be traced back as far as before the very inception of the VAT system set up under the First and the Second Directives. The First Directive set out a replacement of the MS’ turnover taxes with a VAT system allowing deduction of input VAT. The Second Directive set forth the structure of the tax and the way it should have been charged. As to the VAT exemptions and rates, under those acts the MS applied a wide variety of solutions at domestic level. Until the entry into force of said directives across the six EEC MS, excluding France, financial services were subject to cumulative multistage taxes of various kinds.<sup>8</sup> Throughout the multiple discussions at the EU level addressing various drafts of the Second Directive financial services faced uncertain fates for a long time. Meanwhile, it was decided within a fairly short space of time that a special tax on insurance contracts should be maintained. In the end, financial services were not included in the supplies of services list annexed to the Second Directive.

---

<sup>5</sup> Gérard Hutchings, *Étude. Les opérations financières et bancaires et la taxe sur la valeur ajoutée*, Série Concurrence – Rapprochement des législations, no. 22 (Bruxelles: Office des publications officielles des CE, 1973), 3.

<sup>6</sup> Single European Act (O.J.E.C. L169, 29 June 1987).

<sup>7</sup> See: Article 281 of Directive 91/680/EEC of 16 December 1991 supplementing the common system of VAT (O.J.E.C. L376, 31 December 1991, p. 0001–0019).

<sup>8</sup> Hutchings, *Les opérations financières*, 11–4. See also: Frédéric Tristram, “Un impôt au service de l’économie. La création de la taxe sur la valeur ajoutée, 1952–1955,” in *L’impôt en France aux XIXe et XXe siècles*, eds. Maurice Lévy-Leboyer, Michel Lescure, and Alain Plessis (Vincennes: IGPDE, 2006), 195–231.

Since the adoption of the First and the Second Directives, all EEC MS, except for Belgium to some extent, retained in their national VAT systems the same concepts that were underlying their previous tax regimes. It appeared that, in those states, the conditions that predominated under former taxation rules were simply reproduced or replicated. In fact, the financial activities were not brought under the new common taxation rules. A major drawback was that the reproduction of the old rules, notably wide exemptions, did not have the same impact under a regime of a single tax, such as the VAT, as within a system of cascading taxes. Tax exemptions protected suppliers of financial services from obligations and technical complications. At the same time, exemptions stripped those suppliers of the right to deduct input VAT that had been incurred at earlier stages of the production and distribution chains. Above all, the tax exonerations that were maintained did not allow exempted suppliers to forward any right of deduction to their clients. If the latter were VAT-taxable persons, additional taxation occurred at the final stage of the transactions sequence every time there was a “break” within the VAT credit chain.<sup>9</sup> Thus, cascading taxation was restored to a certain degree. However, the principal goals behind the common system were as follows: (1) to set up a neutral taxation system at the single-state level; and (2) to abolish the pre-existing forms of cascading taxes.<sup>10</sup> The implementation of the two directives led to the general finding that they did not contribute to the spontaneous rapprochement of the MS’ taxation methods on financial services. In fact, these directives were silent in this respect. That finding found expression in two final observations. Firstly, the overwhelming majority of financial services were not affected by VAT any more than they had been by former taxes. Secondly, the delimitation of taxable operations, the tax base assessment methods, as well as the options for deduction often gave an impression of high complexity. This

---

<sup>9</sup> On some negative effects when the VAT chain is broken and a comparison in this regard with turnover taxes or single-stage sales taxes, see: Michael Keen and Ben Lockwood, “The Value-Added Tax: Its Causes and Consequences,” *IMF Working Papers*, no. 183 (1 July 2007): 6, <https://doi.org/10.1016/j.jdeveco.2009.01.012>.

<sup>10</sup> Fabrizio Borselli, “A Sensible Reform of the EU VAT Regime for Financial Services,” *International VAT Monitor – IBFD*, no. 5 (Sept./Oct. 2009): 378–9. See also: Alan Schenk and Howell H. Zee, “Treating Financial Services under a Value Added Tax: Policy Issues and Country Practices,” *Tax Notes International* 22 (June 2022): 3310–1.

clearly explains the initial reluctance on the part of the financial industry to adopt VAT.<sup>11</sup>

In the aftermath of the First and the Second Directives, the EEC states appeared to be facing the following two options: (1) to have a special tax imposed on them in place of VAT; or (2) to integrate all financial activities within the VAT system. The second option gave rise to two further alternatives: whether (1) to include, in principle and formally, the financial services under the VAT application; or (2) to lay down what would in fact be exemptions on the financial services and possibly special rules on them. At the time, the Council decided not to list these services in Annex B to the Second Directive simply on account of the understanding that this would spare obligations to the MS and leave them gradually adapting to the new taxation rules. Thus, the exemption approach was given preference over all other options.<sup>12</sup>

Financial services were first included under the VAT rules with the adoption of the Sixth Directive.<sup>13</sup> However, the document did not define or clarify the exempt services. This legal flaw subsisted since 1977 and has been reproduced over decades. Eventually, the EC indicated it as a ground for its proposal to update the VAT rules for financial and insurance services made in 2007.<sup>14</sup> The EC also pointed out that their inconsistent

<sup>11</sup> Hutchings, *Les opérations financières*, 14–5; Björn Matthiasson, “The Value-Added Tax,” *Finance & Development* 7, no. 001 (1970), accessed January 22, 2024, <https://www.elibrary.imf.org/view/journals/022/0007/001/article-A007-en.xml>. Burnod aptly notes that an exempt BtoC supply is more favorable than an exempt BtoB supply due to the loss of deduction rights in the latter case. See: François-René Burnod, *Le cadre juridique de la taxe sur la valeur ajoutée*, Conseil des Prélèvements Obligatoires, November 2022, accessed January 22, 2024, [https://www.ccomptes.fr/system/files/2023-02/20230209-TVA-rapport-particulier-1\\_0.pdf](https://www.ccomptes.fr/system/files/2023-02/20230209-TVA-rapport-particulier-1_0.pdf). In 2010 the EC launched the idea of a European tax on financial activities chargeable on the profits and remunerations paid by financial entities, but the initiative was abandoned. See: Laurent Quignon, “Spécificités et évolution récente de la fiscalité bancaire,” *Revue d'économie financière* 131, no. 3 (2018): 89–106.

<sup>12</sup> Hutchings, *Les opérations financières*, 33–4.

<sup>13</sup> Sixth Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the MS relating to turnover taxes – Common system of VAT: uniform basis of assessment (O.J.E.C. L145, 13 June 1977, p. 1–40).

<sup>14</sup> Cf. “Exemptions without the right to deduct,” Directorate-General for Taxation and Customs Union, accessed January 22, 2024, [https://taxation-customs.ec.europa.eu/exemptions-without-right-deduct\\_en](https://taxation-customs.ec.europa.eu/exemptions-without-right-deduct_en).

application and overreliance on the case law to fill the legislative gap and provide clarifications was a “current problem with the rules”. The Sixth Directive was repealed by the present-day VAT Directive (the VAT Directive).<sup>15</sup> The enumeration in the latter replicates word for word the texts in the Sixth Directive, with the sole exception of factoring. Factoring is one of the forms that debt collection could take and should be treated as a VAT-taxable transaction.

### 3. Current State of Play and Issues

Financial services give rise to VAT complications since they consist of providing intermediation, which is often rendered for implicit fees. This makes identifying the taxable value added a tight exercise.<sup>16</sup>

#### 3.1. Insurance and Reinsurance Transactions

The first place in the list of exempt financial services in the VAT Directive is assigned to the insurance and reinsurance industries. Their function is to reduce, through risk pooling, the financial impact of a risk for individuals and businesses. Reinsurance protects insurers against very large claims and helps them obtain an international spread of risk. This type of service has its specific peculiarities, which justify its being set apart from the other financial services in the VAT Directive.<sup>17</sup> However, determining the price of premiums for VAT purposes is not an easy task.<sup>18</sup> Thus, Article 135(1)(a) of the VAT Directive exempts insurance and reinsurance transactions, including related services, from VAT. This means that no VAT is chargeable on insurance and reinsurance premiums. As far as the payment of damages is concerned, it is in principle outside the scope of VAT as not being by nature a consideration for a supply. What is more of an issue, is that the VAT

---

<sup>15</sup> Directive 2006/112/EC of 28 November 2006 on the common system of VAT (O.J.E.C. L347/1, 11 December 2006).

<sup>16</sup> Schenk and Zee, “Treating Financial Services,” 3309; Otto Altenburger, “Applying VAT to Financial Services: Is the New “mobile-ratio model” Adequate for Insurance?,” *Zeitschrift für die gesamte Versicherungswissenschaft* 111 (2022): 354, <https://doi.org/10.1007/s12297-022-00532-5>.

<sup>17</sup> Joel Swinkels, “EU VAT Exemption for Insurance Transactions,” *International VAT Monitor – IBFD* (July/August 2007): 262 et seq.

<sup>18</sup> Cf. de la Feria, “The EU VAT Treatment,” 74. See also: Schenk and Zee, “Treating Financial Services,” 3309, 3315.

Directive does not provide clear guidance on this exemption. The group of exempted suppliers is not exhaustively delineated, as only the nature of the services provided is of relevance. The transactions carried out by insurers, including with reinsurers, multi-level intermediaries, and sub-intermediaries, that are not VAT-exempt remain a grey area. These issues are already addressed in the CJEU case law, which, since the mid-1990s, has been consistently asked to rule on the scope of exemptions.<sup>19</sup> But even in cases where rulings have been delivered, there are still situations where MS diverge in their application. One such example is the case of *Arthus Andersen*. It is flagged in the literature that, unlike continental EU MS, Ireland and the UK, departing from a literal interpretation, had ignored the outcome of the said case.<sup>20</sup>

### 3.2. Granting and Negotiation of Credits

This exemption is settled in Article 135(1)(b) of the VAT Directive. Its scope is clarified in the case law.<sup>21</sup> It applies to credits granted by banks, financial institutions, and possibly by other taxable persons. Granting a deferral of payment for a supply of goods and services in return for payment of interest may be equated to granting of credit and therefore deemed exempt. However, this would not be the case, if the payment of interest was restricted to the day of delivery. Also, a third party, which manages the granting of credits but is different from the person granting them, does not perform exempt supplies. VAT experts remarked that this is an unjustified limitation that affects credit institutions resorting to securitization.<sup>22</sup> Moreover, it should be noted that charging VAT on credit interests would lead to double taxation.

<sup>19</sup> de la Feria, “The EU VAT Treatment,” 81.

<sup>20</sup> Ad van Doesum, Herman van Kesteren, and Gert-Jan van Norden, *Fundamentals of EU VAT Law* (the Netherlands: Wolters Kluwer, 2016), 286–8. Cf. CJEU Judgment of 3 March 2005, *Staatssecretaris van Financiën v. Arthur Andersen & Co. Accountants c.s.*, Case C- 472/03, ECLI:EU:C:2005:135.

<sup>21</sup> Key CJEU cases are: C-281/91 (Muys’ en De Winter’s Bouw- en Aannemingsbedrijf BV); C-453/05 (Ludwig); C-276/09 (Everything Everywhere); C-381/09 (Gennaro Curia); C-93/10 (GFKL Financial Services); C-130/15 (NEC / Bookit C-607/14, NEC C-130/15, Cardpoint C-42/18); C-208/15 (Stock ’94); C-692/17 (Paulo Nascimento Consultin); C-235/18 (Vega International); C-695/19 (Rádio Popular); C-801/19 (FRANCK); C-250/21 (O. Fundusz Inwestycyjny zamknięty reprezentowany przez O).

<sup>22</sup> van Doesum, van Kesteren, and van Norden, *Fundamentals of EU VAT Law*, 288–9.

This should be an outcome contrary to the very purpose of VAT. The granting of credits is aimed at ensuring the availability of funds for the purchase of goods and services the prices of which include VAT charged. The amount of this VAT is therefore taken into account in the calculation of the credit interests. The latter can thus be considered VAT charged for the first time. A double taxation would occur if another VAT were to be charged on the payment of the credit interests.<sup>23</sup>

### 3.3. Credit Guarantees

The next financial service under exemption is provided for in Article 135(1)(c) of the VAT Directive. Bank guarantees definitely fall under this provision, although the term “guarantee” is not defined by the VAT Directive, or by the CJEU. Non-pecuniary obligations are excluded from this exemption as it should be enabled only in cases of related financial transactions.<sup>24</sup>

### 3.4. Current Accounts, Payments, and Transfers

This exemption is laid down in Article 135(1)(d) of the VAT Directive. As for all exemptions, the criteria for applying this one are defined by the CJEU. The leading case clarifying the situation is *SDC*.<sup>25</sup> The services under this exemption should form a distinct whole and fulfil the essential functions specific to an exempt service. Transactions involving transfers should have the effect of transferring funds and entail changes in the legal and financial situation. Nonetheless, it is reported in the literature that the criteria set out in *SDC* give rise to disagreements between taxpayers and tax authorities.<sup>26</sup> Moreover, the interpretation of the case across the MS tends to differ.<sup>27</sup> The lack of a uniform interpretation is also due to the different language versions. As to the debt collection, which is excluded from the exemption, it should be noted that the term has no legal definition. At the same time, technology led to new service provisions related to payment-handling, which are subject

---

<sup>23</sup> Hutchings, *Les opérations financières*, 38–9.

<sup>24</sup> van Doesum, van Kesteren, and van Norden, *Fundamentals of EU VAT Law*, 289.

<sup>25</sup> CJEU Judgment of 5 June 1997, *Sparekassernes Datacenter (SDC) v. Skatteministeriet*, Case C-2/95, ECLI:EU:C:1997:278.

<sup>26</sup> van Doesum, van Kesteren, and van Norden, *Fundamentals of EU VAT Law*, 290.

<sup>27</sup> Cf. e.g., Aldo Bisioli and Marco Zanetti, “VAT Exemption for Financial Services in the Banking Sector – The Italian Approach,” *International VAT Monitor – IBFD* (May/June 2021).



to unclear VAT treatment. In a nutshell, though, it is known from settled case law that factoring qualifies as a service that is subject to VAT.<sup>28</sup> The exemption at issue does not apply to the following: transfers for consideration of a portfolio of life reinsurance contracts;<sup>29</sup> collection and processing of payments on behalf of clients;<sup>30</sup> additional fees charged when using certain methods of payment for mobile telephony services;<sup>31</sup> electronic messaging services for financial institutions (SWIFT);<sup>32</sup> sales of discount cards;<sup>33</sup> processing of debit and credit card payments in cases where service providers sell for and on behalf of another entity;<sup>34</sup> technical and administrative services supplied to bank operating cashpoints;<sup>35</sup> payments and transfers by direct debit in execution of subscribed dental payment plans.<sup>36</sup> Some of these services are also treated in the case law in light of other financial exemptions. The purpose of their listing here is to show how increasingly casuistic the matter on the achievement of fiscal neutrality over the VAT-exempt financial services is. To the enumeration above may be added cases resolved to the opposite effect.<sup>37</sup> However, often the case law itself is subject to diverging interpretations and does not always diminish legal uncertainty.

---

<sup>28</sup> CJEU Judgment of 26 June 2003, *Finanzamt Groß-Gerau v. MKG-Kraftfahrzeuge-Factoring GmbH*, Case C-305/01, ECLI:EU:C:2003:377.

<sup>29</sup> CJEU Judgment of 22 October 2009, *Swiss Re Germany Holding GmbH v. Finanzamt München*, Case C-242/08, ECLI:EU:C:2009:647.

<sup>30</sup> CJEU Judgment of 28 October 2010, *Commissioners for HMRC v. AXA UK plc*, Case C-175/09, ECLI:EU:C:2010:646.

<sup>31</sup> CJEU Judgment of 2 December 2010, *Everything Everywhere Ltd v. Commissioners for HMRC*, Case C-276/09, ECLI:EU:C:2010:730.

<sup>32</sup> CJEU Judgment of 28 July 2011, *Nordea Pankki Suomi Oyj*, Case C-350/10, ECLI:EU:C:2011:532.

<sup>33</sup> CJEU Judgment of 12 June 2014, *Granton Advertising BV v. Inspecteur van de Belastingdienst Haaglanden/kantoor Den Haag*, Case C-461/12, ECLI:EU:C:2014:1745.

<sup>34</sup> CJEU Judgment of 26 May 2016, *Bookit, Ltd v. Commissioners for HMRC*, Case C-607/14, ECLI:EU:C:2016:355; and CJEU Judgment of 26 May 2016, *Commissioners for HMRC v. National Exhibition Centre Limited*, Case C-130/15, ECLI:EU:C:2016:357.

<sup>35</sup> CJEU Judgment of 3 October 2019, *Finanzamt Trier v. Cardpoint GmbH*, legal successor to *Moneybox Deutschland GmbH*, Case C-42/18, ECLI:EU:C:2019:822.

<sup>36</sup> CJEU Judgment of 25 July 2018, *Commissioners for HMRC v. DPAS Limited*, Case C-5/17, ECLI:EU:C:2018:592.

<sup>37</sup> For ex., cases C464/12 (*ATP PensionService*), C-264/14 (*David Hedqvist*), Case C-801/19 (*FRANCK*).

Sometimes even judicial rulings raise more questions than they provide answers, creating uncertainty where it did not exist before.<sup>38</sup>

### 3.5. Currency, Bank Notes and Coins

This exemption is set forth in Article 135(1)(e) of the VAT Directive. It does not apply to platinum nobles.<sup>39</sup> The logic behind it is that it would be unreasonable to tax the means of exchange necessary for private expenditures. The latter represent the consumption for which VAT is designed.<sup>40</sup> Exchange transactions between fiat currencies and units of bitcoin are exempt on this ground too.

### 3.6. Shares and Other Securities

The exemption is set out in Article 135(1)(f) of the VAT Directive. According to settled case law, it is clear that the mere acquisition of ownership in and the holding of bonds is not an economic activity,<sup>41</sup> whereas the involvement of a holding company in the management of its subsidiaries constitutes an economic activity only if it is accompanied by transactions subject to VAT under Article 2 VAT Directive;<sup>42</sup> the supply of a mere physical, technical or administrative service related to transactions in securities is not exempt;<sup>43</sup> services provided by a credit institution in the form of an issuance guarantee are subject to VAT exemption;<sup>44</sup> transactions relating to portfolio management are not exempt;<sup>45</sup> transactions designed to transfer shares

<sup>38</sup> Cf. in this respect van Doesum, van Kesteren, and van Norden, *Fundamentals of EU VAT Law*, 291; See also: de la Feria, “The EU VAT Treatment,” 81.

<sup>39</sup> Article 46 of Regulation (EU) No 282/2011 of 15 March 2011 laying down implementing measures for Directive 2006/112/EC on the common system of VAT (O.J.E.C. L77/1, 23 March 2011).

<sup>40</sup> Cf. van Doesum, van Kesteren, and van Norden, *Fundamentals of EU VAT Law*, 292.

<sup>41</sup> CJEU Judgment of 6 February 1997, Harnas & Helm CV v. Staatssecretaris van Financiën, Case C-80/95, ECLI:EU:C:1997:56.

<sup>42</sup> CJEU Judgment of 12 July 2001, Welthgrove BV v. Staatssecretaris van Financiën, Case C-102/00, ECLI:EU:C:2001:416.

<sup>43</sup> CJEU Judgment of 13 December 2001, Commissioners of Customs & Excise v. CSC Financial Services Ltd, Case C-235/00, ECLI:EU:C:2001:696.

<sup>44</sup> CJEU Judgment of 10 March 2011, Skandinaviska Enskilda Banken v. Skatteverket, Case C-540/09, ECLI:EU:C:2011:137.

<sup>45</sup> CJEU Judgment of 19 July 2012, Finanzamt Frankfurt v. Deutsche Bank AG, Case C44/11, ECLI:EU:C:2012:484.

between companies which concern immovable property and the transfer of that property are exempt (provided that the MS concerned has not availed itself of the option laid down in Article 15(2)(c) VAT Directive);<sup>46</sup> sales of discount cards are not transactions concerning “other securities” within the meaning of Article 135(1)(f) VAT Directive.

The *SKF* case provides clarifications on exempt transfers of shares by a parent company of all its shares in a wholly-owned subsidiary and of its shareholding in an associated company.<sup>47</sup> In the *Kerr* case, the CJEU sheds light on the term “negotiation” as referred to in Article 135(1)(f) VAT Directive. The case law is abundant and meticulously examined in the literature.<sup>48</sup> However, application-related issues remain. Thus, in a cross-border context, the scope of the exemption on transactions in shares differs between MS. The question regarding the treatment of the sale of minority shareholdings remains unanswered. Another unanswered question is whether services such as asset management and global custody should be regarded as “management” and “safekeeping” of shares in the sense of Article 135(1)(f) VAT Directive. It is clear in this regard that advisory services concerning investments in transferable securities, provided by a third party to an investment management company which is the manager of a special investment fund, fall within the scope of “management”.<sup>49</sup> The notion of “safekeeping” is more problematic, though. Its scope concerns the VAT treatment of global custody services. It is duly stressed in the literature that the said services were regarded as VAT-exempt in the UK, whereas in many other jurisdictions global custody services were fully taxed with VAT. A PwC study from 2006 reports that global custody

---

<sup>46</sup> CJEU Judgment of 5 July 2012, *DTZ Zadelhoff vof v. S. van Financiën*, Case C259/11, ECLI:EU:C:2012:423.

<sup>47</sup> CJEU Judgment of 29 October 2009, *Skatteverket v. AB SKE*, Case C-29/08, ECLI:EU:C:2009:665.

<sup>48</sup> Cf. van Doesum, van Kesteren, and van Norden, *Fundamentals of EU VAT Law*, 292–6. See also: Ben Terra, Julie Kajus, and Zsolt Szatmari, “Commentary on European VAT” (IBFD 2023), Global Topics IBFD, 2402–807.

<sup>49</sup> van Doesum, van Kesteren, and van Norden, *Fundamentals of EU VAT Law*, 294; CJEU Judgment of 7 March 2013, *GfBk Gesellschaft v. Finanzamt Bayreuth*, Case C275/11, ECLI:EU:C:2013:141.

services were exempt in 11 MS, taxed in five, and the subject of legal uncertainty in nine.<sup>50</sup>

### 3.7. Management of Special Investment Funds

The last type of exempt financial services is identified in Article 135(1)(g) of the VAT Directive. Given the fast development of asset management and the increasing share of retail investment, the correct application of this exemption raises critical questions. The CJEU delivered a key ruling on the issue in the *Abbey National* case.<sup>51</sup> It clarified that the concept of “management of investment funds” is an autonomous concept in the EU law, the content of which cannot be changed by MS. The administration and reporting services of such funds provided by a third-party manager are included in the said concept under certain conditions. Services corresponding to the duties of a depositary remain outside the exemption. The ruling on the *JP Morgan Fleming* case provided a framework for the freedom MS have in defining the term “mutual investment funds.”<sup>52</sup> The latter should respect the objective pursued by the exemption in question, which is to facilitate investing in securities through collective investment schemes, while at the same time respecting the VAT principle of fiscal neutrality. Other judgments provide further answers, including the following: that investment advisory services performed by a third party on behalf of a management company of a mutual fund are covered by the notion of “management of a mutual fund”;<sup>53</sup> that an investment fund in which the assets of a pension scheme are pooled does not come under the concept of a “mutual investment funds,” the management of which may be exempt;<sup>54</sup> that a taxable person who has set up a pen-

---

<sup>50</sup> van Doesum, van Kesteren, and van Norden, *Fundamentals of EU VAT Law*, 295. Cf. PwC, 2 November 2006, “Study to Increase the Understanding of the Economic Effects of the VAT Exemption for Financial and Insurance Services,” Final Report to the EC (taxud2005/AO-006), 79.

<sup>51</sup> CJEU Judgment of 4 May 2006, *Abbey National plc and Inscape Investment Fund v. Commissioners of Customs & Excise*, Case C-169/04, ECLI:EU:C:2006:289.

<sup>52</sup> CJEU Judgment of 28 June 2007, *JP Morgan Fleming Claverhouse v. The Commissioners of HM Revenue and Customs*, Case C-363/05, ECLI:EU:C:2007:391.

<sup>53</sup> CJEU Judgment of 7 March 2013, *GfBk Gesellschaft v. Finanzamt Bayreuth*, Case C275/11, ECLI:EU:C:2013:141.

<sup>54</sup> CJEU Judgment of 7 March 2013, *Wheels Common Investment Fund v. Commissioners for HMRC*, Case C424/11, ECLI:EU:C:2013:144.

sion fund in the form of a legally and fiscally separate entity may be entitled to deduct the VAT he or she has paid on services relating to the management and operation of that fund;<sup>55</sup> that pension funds can qualify as mutual funds for VAT purposes if they are financed by the pension recipients, the savings are invested according to the principle of risk diversification and the investment risk is borne by the members of the pension fund;<sup>56</sup> that the exemption may also apply to the investing of funds in real estate;<sup>57</sup> that a single supply of management services, provided by a software platform belonging to a third-party supplier for the benefit of a fund management company, which manages both special investment funds and other funds, does not fall within the exemption;<sup>58</sup> that tax work and the use of software provided to investment fund management companies are exempted.<sup>59</sup>

There are also many pending requests for preliminary rulings waiting for their answers to the general question of whether the exemption for the management of mutual funds applies to a pension fund.<sup>60</sup> Despite the efforts of the CJEU, the main trouble remains that MS treat investment funds, pension schemes, and third-party service providers differently.<sup>61</sup> The negative impact of such an uneven playing field on economic activities within the common market is a distortion of competition.

#### 4. VAT Reform on the Exemption of Financial Services

To sum up, the VAT issues at stake consist of obsolete and imprecise definitions of the term “financial services” in the VAT Directive, which gives rise to numerous disputes between businesses and tax authorities and to

<sup>55</sup> CJEU Judgment of 18 July 2013, *Fiscale eenheid PPG Holdings BV v. Inspecteur van de Belastingdienst/Noord/kantoor Groningen*, Case C26/12, ECLI:EU:C:2013:526.

<sup>56</sup> CJEU Judgment of 13 March 2014, *ATP PensionService A/S v. Skatteministeriet*, Case C464/12, ECLI:EU:C:2014:139.

<sup>57</sup> CJEU Judgment of 9 December 2015, *Staatssecretaris van Financiën v. Fiscale Eenheid X NV cs*, Case C-595/13, ECLI:EU:C:2015:801.

<sup>58</sup> CJEU Judgment of 2 July 2020, *Blackrock Investment Management v. Commissioners for HMRC*, Case C-231/19, ECLI:EU:C:2020:513.

<sup>59</sup> CJEU Judgment of 17 June 2021, *K and DBKAG v. Finanzamt Österreich*, Joined Cases C-58/20 and C-59/20, ECLI:EU:C:2021:491.

<sup>60</sup> Cf. VATupdate.com. See: CJEU cases C-639/22 (X); C-640/22 (*Fiscale Eenheid Achmea*); C-641/22 (Y); C-642/22 (*Pensioenfondsvoor Fysiotherapeuten*); C-643/22 (*BPL Pensioen*); C-644/22 (*BPFL*).

<sup>61</sup> van Doesum, van Kesteren, and van Norden, *Fundamentals of EU VAT Law*, 296–8.

discrepancies in the treatment of financial services for VAT purposes in different MS.<sup>62</sup> In the late 1980s, the concept of the cash flow method for taxation of financial services emerged at the international level. It treats the cash inflows from the said services as taxable supplies and the cash outflows as purchases of taxable inputs.<sup>63</sup> In the mid-1990s, alternative tax treatments of financial services were discussed within the OECD. In the same period, the EC also initiated a review of the EU VAT regime on these services, placing the cash flow mechanism under examination. This method was not welcomed by the legislator or businesses and was not forwarded for further deliberation.<sup>64</sup> Nevertheless, the EC continued to prioritize works on the VAT treatment of financial services and in 2004 convened the so-called *Fiscalis* seminar, aimed at investigating positions of tax authorities and businesses on the possibility of moving towards full taxation of financial services. This resulted in the mobilization of a massive resistance against the initiative. The resistance was so fierce that the possibility has since been abandoned and does not seem realistic any longer.<sup>65</sup>

Against this background of continuous uncertainty, following a public consultation launched in 2006, the EC proposed a Directive in 2007 to update the rules on the matter.<sup>66</sup> According to the Explanatory Memorandum, the proposal was aimed at creating an environment of legal certainty with fewer administrative charges for operators and administrations, as well as at reducing the impact of hidden VAT on the costs of insurance and financial services providers. The proposal points out that a public consultation of stakeholders carried out in 2006 and an independent study commissioned

---

<sup>62</sup> Borselli, “A Sensible Reform,” 375–6.

<sup>63</sup> Schenk and Zee, “Treating Financial Services,” 3314–5.

<sup>64</sup> Actually, the review reflects on the so-called “truncated cash flow method”. Cf. de la Feria, “The EU VAT Treatment,” 79–81. See also: OECD, “Indirect Tax Treatment of Financial Services and Instruments (1998); Commission of the EC, The TCA System – A Detailed Description” (2000).

<sup>65</sup> De la Feria, “The EU VAT Treatment,” 81, 87. *Fiscalis* is a training programme set forth by Decision 2235/2002/EC of the EP and of the Council of 3 December 2002.

<sup>66</sup> Proposal for a Directive amending Directive 2006/112/EC on the common system of VAT, as regards the treatment of insurance and financial services (Brussels, 28 November 2007, COM(2007) 747 final). A draft regulation was also proposed. Cf. Proposal for a Regulation laying down implementing measures for Directive 2006/112/EC on the common system of VAT, as regards the treatment of insurance and financial services (Brussels, 28 November 2007, COM(2007) 746 final).

by the EC have confirmed the necessity of these objectives.<sup>67</sup> The proposal relied on the observation that intensifying competition was driving economic operators within the single market to resort to common techniques to improve their competitiveness. The financial industry applied measures such as the outsourcing of activities (which lowered administrative and labor costs), pooling of activities (with a cost-sharing intention), and sub-contracting (inserting a supplementary distribution level). These practices created hidden VAT in the cost structure of financial services as less value was created in-house but more was supplied as services by independent third parties to the suppliers of financial products.<sup>68</sup> Such third-party services might have no longer come under the exemption for financial services and were therefore invoiced with VAT. This VAT was often not deductible for the clients because they had no right to benefit from the deduction, as they supplied exempt financial services themselves. Such non-deductible VAT became part of the costs. Thus, the proposal was intended to provide solutions reducing the impact on the said costs.<sup>69</sup>

In 2020, the EC launched a new initiative with the view to creating a roadmap.<sup>70</sup> This was the first stage of a new public consultation conducted as an opinion poll among stakeholders from the financial industry. It took place between October 22, 2020 and November 19, 2020 and was replied to by 28 respondents. The roadmap phase revealed that the EC was envisioning two options for reform: (1) removing the existing VAT exemption; or (2) keeping the exemption but modifying its scope by taxing only some types of services.<sup>71</sup> The second consultation stage was held between February 8, 2021 and May 3, 2021. A total of 468 questionnaires from

---

<sup>67</sup> Cf. PwC, “Study to increase the Understanding of the Economic Effects of the VAT Exemption for Financial and Insurance Services,” Final Report to the EC, 2 November 2006 (Tender No taxud/2005/AO-006).

<sup>68</sup> Cf. de la Feria, “The EU VAT Treatment,” 78–79; Schenk and Zee, “Treating Financial Services,” 3310–1.

<sup>69</sup> Cf. the Explanatory Memorandum to the Proposal of Directive amending Directive 2006/112/EC (28 November 2007, COM(2007) 747 final), 3–4.

<sup>70</sup> EC, “Review of the VAT rules for financial and insurance services” (taxud – CI, Ref. Ares(2020)5770956 – 22 October 2020).

<sup>71</sup> Rafaela Pardete, Marcia Santos, and Francisco Leote, “Future VAT Regime for Financial Services from a Stakeholder Perspective: Analysis of the European Commission 2020 Public Consultation’s Position Papers,” *EC Tax Review* 33, no. 1 (2024): 35.

stakeholders were received during that period. At the time of writing, there have been no further developments on this topic. It is safe to presume that the EC decided to process the survey results without proceeding to adopt a proposal before the upcoming 2024 EP election. Nevertheless, the stakeholders' positions remain valid and of interest.

Publicly accessible as of December 16, 2021, they have been scientifically processed using innovative and reliable research methods such as pre-analysis data processing and AI-generated text mining. Consequently, the responses were divided into four thematic clusters – (1) Investment Funds; (2) General Financial Services (banking sector); (3) Insurance; and (4) Fee-based Services (mostly connected to consumers and credit).<sup>72</sup> This survey unravels the dominant attitudes that can be discerned within the financial industry with regard to the EC consultation. All stakeholders voiced concerns about how end consumers would react to a change in the VAT exemption regime. They all argued that the exemption should be maintained, as it ensures VAT neutrality. Investment companies reckon that the exemption encourages small investors to place their capital in investment funds. They also pointed out possible negative effects on governments' VAT receipts, as some investment fund service fees would still have to be zero-rated, whereas the managers of such funds would at the same time be able to deduct the VAT paid on their costs. As far as the general financial and insurance services are concerned, the respondents expressed the fear that abolition of the exemption would lead to higher prices and a heavier tax burden for final consumers who cannot recover input VAT. A competitive disadvantage would be created for EU companies compared with their counterparts in states that do not have a VAT system. At the same time, respondents within the second cluster suggested that a special right to recover input VAT at a fixed rate could be introduced, thus reducing the hidden VAT incurred by financial service providers.

It was also recognized that the exemption infringes upon fiscal neutrality principles, as many other businesses are entitled to recover input VAT. Moreover, it was proposed that an option to tax on a transaction-by-transaction basis, depending on the providers choice, could be adopted, along with cost-sharing groups. Both these options were already

---

<sup>72</sup> Pardete, Santos, and Leote, "Future VAT Regime for Financial Services," 37.



on the table at the time of discussing the draft directive from 2007. The lack of harmonization across the Union was also highlighted as a major cause for distortion of competition. As regards the insurance services, their taxation poses serious conceptual problems, as it is difficult to determine on which basis VAT shall be calculated, especially for contracts related to savings accrual.<sup>73</sup> The insurance sector contends that the exemption should be extended to the entire supply chain as a measure reducing hidden VAT. Participants representing this industry warned that introducing a VAT rate other than a zero rate for insurance services would make it imperative to consequently repeal all special taxes applicable to insurance premiums or any other forms of indirect taxation. Otherwise, a double taxation of insurance services could occur. As far as the fee-based services are concerned, respondents backed the view that the said services should only be taxed when companies can easily establish which transactions' fees are taxable. Thus, in their view, the VAT exemption should be maintained without being clarified or simplified.<sup>74</sup>

## 5. Conclusion

Defining and applying VAT exemptions for financial services is a slippery slope on which tax experts have been decades ago. Few of the proposals concerning the issue conceived over the years have not been discussed already in the 1970s. Any taxation placing a burden on transactions based on securities was considered inappropriate at the time, as it was viewed as detrimental to the general conception of promoting the development of capital markets and widened distribution of securities among the public. The full exemption was fostered as a model offsetting possible drawbacks caused by a system where taxable financial transactions (such as the VAT today) would still have been maintained.<sup>75</sup> In any case, discussions always revolved around two options; namely, the complete removal of exemptions or the introduction

---

<sup>73</sup> Otto Altenburger, Rudolf Diewald, and Max Götsche, "The Inclusion of Insurance Services in the European VAT System – A Problem that Cannot Be Solved?," *Zeitschrift für die gesamte Versicherungswissenschaft* 111 (Oct. 2022): 340, <https://doi.org/10.1007/s12297-022-00536-1>.

<sup>74</sup> Pardete, Santos, and Leote, "Future VAT Regime for Financial Services," 38–40.

<sup>75</sup> Proportional deduction is subject to Article 173 et seq. VAT Directive. See: Borselli, "A Sensible Reform," 375.

of further clarifications. The former was not adopted five decades ago and there is no clear reason why such a measure would be anticipated these days. Consumers would certainly not welcome a VAT reform such as the one proposed by the EC, regardless of the price in hidden VAT passed on to them.<sup>76</sup> As to the suppliers representing the financial industry, their interest in the deduction of a tax credit should not be overestimated. After all, there is no place where an ideal VAT model has been adopted in practice so far.<sup>77</sup>

## References

- Altenburger, Otto. “Applying VAT to Financial Services: Is the New “mobile-ratio model” Adequate for Insurance?.” *Zeitschrift für die gesamte Versicherungswissenschaft* 111 (2022): 353–60. <https://doi.org/10.1007/s12297-022-00532-5>.
- Altenburger, Otto, Rudolf Diewald, and Max Götsche. “The Inclusion of Insurance Services in the European VAT System – A Problem that Cannot Be Solved?.” *Zeitschrift für die gesamte Versicherungswissenschaft* 111 (Oct. 2022): 339–52. <https://doi.org/10.1007/s12297-022-00536-1>.
- Bisioli, Aldo, and Marco Zanetti. “VAT Exemption for Financial Services in the Banking Sector – The Italian Approach.” *International VAT Monitor – IBFD* (May/June 2021): 148–56.
- Borselli, Fabrizio. “A Sensible Reform of the EU VAT Regime for Financial Services.” *International VAT Monitor – IBFD*, no. 5 (Sept./Oct. 2009): 375–83.
- Burnod, François-René. *Le cadre juridique de la taxe sur la valeur ajoutée*. Conseil des Prélèvements Obligatoires, November 2022. Accessed January 22, 2024. [https://www.comptes.fr/system/files/2023-02/20230209-TVA-rapport-particulier-1\\_0.pdf](https://www.comptes.fr/system/files/2023-02/20230209-TVA-rapport-particulier-1_0.pdf).
- Deloitte. “VAT treatment of financial services,” 2021. Accessed February 10, 2024. <https://www2.deloitte.com/content/dam/Deloitte/nl/Documents/tax/deloitte-nl-tax-VAT-treatment-financial-services-EU-commission.pdf>.
- van Doesum, Ad, Herman van Kesteren, and Gert-Jan van Norden. *Fundamentals of EU VAT Law*. The Netherlands: Wolters Kluwer, 2016.
- de la Feria, Rita. “The EU VAT Treatment of Insurance and Financial Services (again) under Review.” *EC TAX Review* 16, no. 2 (2007): 74–89.

<sup>76</sup> Cf. in this respect Deloitte, “VAT treatment of financial services,” 2021, 3, accessed February 10, 2024, <https://www2.deloitte.com/content/dam/Deloitte/nl/Documents/tax/deloitte-nl-tax-VAT-treatment-financial-services-EU-commission.pdf>.

<sup>77</sup> Kathryn James, *The Rise of the Value-Added Tax* (Cambridge: Cambridge Tax Law Series, April 2015), 9–10.

- Grubert, Harry, and Richard Krever. "VAT and Financial Services: Competing Perspectives on What Should Be Taxed." *Tax Law Review* 65, no. 2 (2012): 199–240.
- Hutchings, Gérard. *Étude. Les opérations financières et bancaires et la taxe sur la valeur ajoutée*. Série Concurrence – Rapprochement des législations, no. 22. Bruxelles: Office des publications officielles des CE, 1973.
- James, Kathryn. *The Rise of the Value-Added Tax*. Cambridge: Cambridge Tax Law Series, 2015.
- Keen, Michael, and Ben Lockwood. "The Value-Added Tax: Its Causes and Consequences." *IMF Working Papers*, no. 183 (1 July 2007): 138–51. <https://doi.org/10.1016/j.jdeveco.2009.01.012>.
- Matthiasson, Björn. "The Value-Added Tax." *Finance & Development* 7, no. 001 (1970): 40–6. Accessed January 22, 2024. <https://www.elibrary.imf.org/view/journals/022/0007/001/article-A007-en.xml>.
- Pardete, Rafaela, Marcia Santos, and Francisco Leote. "Future VAT Regime for Financial Services from a Stakeholder Perspective: Analysis of the European Commission 2020 Public Consultation's Position Papers." *EC Tax Review* 33, no. 1 (2024): 33–46.
- Quignon, Laurent. "Spécificités et évolution récente de la fiscalité bancaire." *Revue d'économie financière* 131, no. 3 (2018): 89–106.
- Schenk, Alan, and Howell H. Zee. "Treating Financial Services under a Value Added Tax: Conceptual Issues and Country Practices." *Tax Notes International* 22 (June 2022): 3309–16.
- Swinkels, Joel. "EU VAT Exemption for Insurance Transactions." *International VAT Monitor – IBFD* (July/August 2007): 262–9.
- Terra, Ben, Julie Kajus, and Zsolt Szatmari. "Commentary on European VAT" (IBFD 2023). Global Topics IBFD, 2402–807.
- Tristram, Frédéric. "Un impôt au service de l'économie. La création de la taxe sur la valeur ajoutée, 1952–1955." In *L'impôt en France aux XIXe et XXe siècles*, edited by Maurice Lévy-Leboyer, Michel Lescure, and Alain Plessis, 195–231. Vincennes: IGPDE, 2006.

