



Association Européenne des Institutions Paritaires
European Association of Paritarian Institutions

Association Internationale de droit belge - aisbl - 1921



Position Paper on the necessary steps to relieve pension fund participants from unnecessary VAT burden

www.pensionsEurope.eu

www.aeip.net

1. Introduction

The Directive of the European Council of 28 November 2006 (2006/112/EC) on the common system of value added tax (VAT) provides for an exemption of management services rendered to special investment funds. In most Member States, pension funds are qualified as special investment funds. Consequently, these pension funds receive management services exempt of VAT.

The relevant article (135 (1) (g)) of the Directive of 17 May 1977 (77/388/EEC) is still in place and the 2006 Commission proposal remains - however abandoned - highly relevant. In earlier negotiations in the process of the 2006 review of the VAT Directive, various EU Member States requested for an overall exemption of services rendered to pension funds regardless the character of the scheme.

Therefore, PensionsEurope and AEIP urge the European Commission to take the necessary steps to relieve all pension fund participants from unnecessary VAT burdens, regardless the character of the schemes as well as the Member State in which the services are being received. This exemption is especially relevant since pension plans:

- Are in essence cost-sharing arrangements of beneficiaries with a clear public interest of preventing poverty among the elderly, as well as providing for survivor pensions; and
- Deliver services themselves that are being exempt meaning their VAT on purchases of services or goods cannot be recovered.

This paper calls for an amendment to the VAT-Directive that provides **clarity**, is **non-discriminative** with regard to pension schemes, and is **up-to-date**. **Political willingness** is necessary to address inconsistencies in the case law. These developments are presented as background information.

2. VAT-Directive needs to provide clarity

PensionsEurope and AEIP underline the importance of clarity with regard to the VAT Directive. Since its inception article 135 (1) (g) of the VAT Directive with regard to exemptions of VAT on management services has not changed.

However, landmark decisions of the European Court of Justice did of course provide essential case law. At present the VAT Directive:

- treats pension plans based on its form and the place of residence differently for VAT purposes; and
- provides no guidelines or at least insufficient guidance for hybrid pension plans.

Present case law does not fully take into account the role of hybrid plans and variations in vehicles throughout the European Union. The inability to provide for trustworthy regulations throughout the European Union hamper maintaining a level playing field.

PensionsEurope and AEIP stress the importance of clarity with regard to management services rendered to pension plans as being exempt, regardless its character or the (judicial) form of the provider.

3. VAT-Directive needs to be non-discriminative

PensionsEurope and AEIP strongly recommend a level playing field across the European Union, meaning that all pension plans are treated equally for VAT purposes, irrespective the Member States in which the management services are rendered.

Although historically Member States approached their pension system differently, economically these pension systems are comparable in essence. Regardless the legal form, pension plans should be treated the same for VAT purposes. Especially since cross-border activity and the cross-border transfer of pension schemes are of importance and removing unnecessary obstacles are important in maintaining a level playing field. Non-discriminative policies are of *major importance for the adequate functioning* of the European Union's internal market.

PensionsEurope and AEIP stress the importance of clarity with regard to management services rendered to pension plans as being exempt, regardless the Member State the services are being received.

4. VAT Directive needs to keep up with market practice

PensionsEurope and AEIP notice that since 1977 the internal market and pension plans were subject to serious changes. The VAT Directive does not reflect various market developments which leads to:

- Incompleteness;
- Insufficient guidance and unclarities;
- Unequal treatment.

PensionsEurope and AEIP stress the importance of up-to-date regulations to maintain and further develop the European Union internal market.

5. Political willingness is essential

The CJEU case law ultimately results in distinctions between pensions plans and its providers which are explainable from the lack of political decision making and judgment on a case by case basis but are by no means derived from proper and thoughtful decision making.

At present, pension providers and paritarian institutions face the risk of defining pension schemes along CJEU case law in order to prevent VAT burdens whereas other considerations should be prevailing. The VAT Directive should therefore be reviewed in order to provide for an exemption for all pension schemes, taking into account their cost sharing character.

The EC's statement that "[...] Tax and other financial incentives, as well as collective bargaining play an important role [...]" in "improving the cost-effectiveness, safety and equitable access to supplementary pension schemes" should be taken into account¹.

¹ EU White Paper 'An Agenda for Adequate, Safe and Sustainable Pensions' ([COM\(2012\) 55 final](#))

PensionsEurope and AEIP call for political decision making since maintaining of the current status quo does not contribute to a level playing field within the EU and undermines the freedom of contract of pension providers and paritarian institutions.

6. Background with regard to landmark decisions

The interpretation of the EU VAT Directive is largely the exploration field of courts across the EU and referring questions of those courts to the Court of Justice of the EU (JP Morgan Claverhouse Investment Trust, Wheels, ATP Pension Services). Based on these rulings, **non-UCITS (i.e. pension funds) must either 'be identical' or 'display sufficient comparable features' to be 'in competition with UCITS' to be VAT exempt (i.e. clause 135 of the VAT Directive)**. In JP Morgan Fleming Claverhouse Investment Trust, the CJEU relied on the principle of fiscal neutrality when it held that not only UCITS but also closed-ended funds should fall within the scope of the exemption.

In the ATP case, the CJEU ruled that: “pension funds such as those at issue in the main proceedings **may fall within the scope of that provision** if they are **funded by the persons to whom the retirement benefit is to be paid**, if the **funds are invested using a risk-spreading principle**, and if the **pension customers bear the investment risk**. Accordingly, the management of such a fund is **exempt** from VAT.

In the Wheels case, the CJEU concluded that: where the members of a pension scheme **do not bear the risk** arising from the management of the fund and the employer’s contributions are a means by which it complies with its **legal** obligations to its employees, an investment fund pooling the assets of a pension scheme is **not** a “special investment fund” for these purposes. Accordingly, the management of such a fund is **not exempt** from VAT.

Conclusion

The risk of these developments with regard to VAT is that schemes as in de Wheels case are likely to be terminated and schemes as in the ATP case are being implemented to save VAT on services rendered and thus to make possible that the return on investment on behalf of pensioners increases. Not all Member States wish to apply the so called ‘comparability test’ as set out by the European Commission in Working Paper [no 936](#). Without clear guidance or article pension funds are treated unequally throughout the European Union and pension schemes are treated differently.

The risk of a lack of political decision making is that the VAT Directive doesn’t keep up with market practices and thus doesn’t meet the goal of providing clarity for the financial market and the risk of unwanted and undesirable unfair and unequal VAT treatment increases.

Solution

The ATP-case and the Wheels-case make clear that **amendment of clause 135 of the VAT Directive should be considered** – so that any services rendered to pension plans irrespective the variations in plans and funds or place of residence is exempt – to ensure that EU tax law does not interfere with the social economy and there is a true and fair level playing field for managing pension plans exists.

CHAPTER 3

Exemptions for other activities

Article 135

1. Member States shall exempt the following transactions:

[...] (g) **the management of pension funds and** the management of special investment funds as defined by Member States;

About PensionsEurope

PensionsEurope represents national associations of pension funds and similar institutions for workplace and other funded pensions. Some members operate purely individual pension schemes. PensionsEurope has **23 member associations** in 18 EU Member States and 3 other European countries².

PensionsEurope member organisations cover different types of workplace pensions for over **110 million people**. Through its Member Associations PensionsEurope represents more than **€ 4 trillion of assets** managed for future pension payments. In addition, many members of PensionsEurope also cover personal pensions, which are connected with an employment relation.

PensionsEurope also has **26 Corporate and Supporter Members** which are various service providers and stakeholders that work with IORPs.

PensionsEurope has established a **Central & Eastern European Countries Forum (CEEC Forum)** to discuss issues common to pension systems in that region.

PensionsEurope has established a **Multinational Advisory Group (MAG)** which delivers advice on pension issues to PensionsEurope. It provides a collective voice and information sharing for the expertise and opinions of multinationals.

What PensionsEurope stands for

- A regulatory environment encouraging workplace pension membership;
- Ensure that more and more Europeans can benefit from an adequate income in retirement;
- Policies which will enable sufficient contributions and good returns;

Our members offer

- Economies of scale in governance, administration and asset management;
- Risk pooling and often intergenerational risk-sharing;
- Often “not-for-profit” and some/all of the costs are borne by the employer;
- Members of workplace pension schemes often benefit from a contribution paid by the employer;
- Wide-scale coverage due to mandatory participation, sector-wide participation based on collective agreements and soft-compulsion elements such as auto-enrolment;
- Good governance and alignment of interest due to participation of the main stakeholders.

Contact:

PensionsEurope

Koningsstraat 97, rue Royale – 1000 Brussels Belgium

Tel: +32 (0)2 289 14 14 – Fax: +32 (0) 289 14 15

² EU Member States: Austria, Belgium, Bulgaria, Croatia, Estonia, Finland, France, Germany, Hungary, Ireland, Italy, Luxembourg, Netherlands, Portugal, Romania, Spain, Sweden, UK. Non-EU Member States: Iceland, Norway, Switzerland.

ABOUT AEIP

The European Association of Paritarian Institutions – AEIP, founded in 1996, is a Brussels-based advocacy organization, representing Social Protection Institutions established and managed by employers and trade unions on a joint basis within the framework of collective agreements.

In the context of social protection, paritarism is a type of self-organization of social relationships which on the basis of equal negotiations, brings about agreements which are equally binding on both employers and employees. This kind of self-organization goes from the paritarism of negotiation to the paritarism of management and results in various types of agreements, from adhesion to a particular form of cover to the creation of a paritarian institution.

The Association has 20 Associate and Affiliate members - all leading large and medium-sized Social Protection Institutions, from 12 European countries, as well as 13 Task Force Members from 3 European countries. All AEIP members are not-for-profit organizations.

In particular, AEIP deals – through dedicated working groups – with EU coordinated pension schemes, pension funds, healthcare, unemployment and provident schemes, paid holiday and health & safety at work schemes. Complementary to their role as non-for-profit social protection providers, AEIP members are also long-term institutional investors.

AEIP represents its members' values and interests at the level of both European and international institutions.

For more information: www.aeip.net