



European Commission Consultation Paper

Review of existing legislation on VAT reduced rates

ECCVAT response January 2013

Introduction

1. The European Charities' Committee on Value-Added Tax (ECCVAT) is a group of charities and foundations that has come together to research the impact of VAT and other taxes on the work of NGOs and to make representations to the EU institutions and governments on behalf of the sector. ECCVAT has been working to improve the VAT system for charities since 1992.
2. Reference is made throughout this submission to “charities”. This term is taken to include public benefit foundations as well as charitable organisations providing services either outside the scope of VAT or that are exempt.

Overview

3. ECCVAT welcomes the opportunity to comment on this review of VAT reduced rates and the ongoing dialogue with the Commission on the *Future of VAT* reforms.
4. The European VAT system has long caused problems for charities because many of the services that they provide are either exempt under EU law or are outside of the scope of VAT because they are provided free of charge. In both cases this means that the charity cannot charge VAT and so cannot recover the VAT on its expenditure. This inability to recover the VAT that is spent on essential expenditure has grown significantly over the years as VAT standard rates have risen and the effect is to seriously reduce the resources that charities have available to spend on their charitable purposes. Evidence compiled by ECCVAT on ten Member States suggests that the total irrecoverable VAT lost to charities across all 27 Member States will run into billions of euros. This problem is becoming ever more acute at a time of general recession, when foundations and charities are under pressure from governments to increase the level of front-line services that they can offer and support. It is therefore imperative that this issue be addressed during the consultation process if civil society is to thrive.
5. ECCVAT welcomed the Commission's recognition, in its Communication on the *Future of VAT*, of the VAT burden facing charities. ECCVAT also welcomed the confirmation that there are no obstacles in EU law to grant-based refund schemes outside the VAT system of the kind enjoyed by public bodies, being extended to charities, and that the Commission is positively encouraging this. However, this will only be possible if there is more uniform application of such schemes by the 27 Member States, as the introduction of such rebate schemes is at their individual discretion, and the adoption of such schemes is hard to achieve at a time of financial austerity in many countries. Until such changes have been introduced, there should be no question of restricting any of the existing reduced rates that, like the corresponding VAT social exemptions, are particularly valuable to charities and combine to at least mitigate their irrecoverable VAT burden.

6. In relation to the VAT reduced rates on utilities (including water, energy and waste) and housing, ECCVAT stresses that any increase in VAT costs will only impact those unable to recover VAT on their purchases, ie charities and the final consumer. This risks penalising the most vulnerable elements of society and excluding access to basic needs such as water energy and shelter. ECCVAT is concerned about the likely impact of any changes to the VAT system both on the ability of charities to operate and also on the beneficiaries of services provided by charities and public bodies. We urge the Commission to give serious consideration to the unique position of charities as the consultation process progresses and not to forget the potential impact on the charity sector of any recommendations that are made on the future of reduced rates. We also urge the Commission to take into account the deprived, disadvantaged and diverse communities that the sector serves.
7. In relation to e-books, ECCVAT thinks that a discretionary reduced rate should be introduced with Member States given the choice as to whether to apply it. There is an assumption in the consultation questions that a set definition of e-books is required in VAT terms. We challenge this interpretation, suggesting that the popular understanding of books is changing over time in the minds of consumers and that the law should be allowed to reflect these changes and to allow future changes as the result of further technological advances.

Response to consultation questions

Q1. Are there any concrete situations that you are aware of whereby the application of a reduced rate on certain goods and services by one or more Member States is effectively resulting in material distortion of competition within the Single Market? Please explain and, if possible, give an indication of the economic impact of the distortive effects.

8. No comment

Q2. Which arguments (social, economic, legal, etc) do you wish to put forward in the context of the assessment of the reduced VAT rate for water?

Q3. Which arguments (social, economic, legal, etc) do you wish to put forward in the context of the assessment of the reduced VAT rate for certain energy products?

Q4. Which arguments (social, economic, legal, etc) do you wish to put forward in the context of the assessment of the reduced VAT rate for street cleaning, refuse collection and waste treatment? In your view, how can the hierarchy set out by the Waste Framework Directive be reflected in the VAT rates structure?

9. ECCVAT does not believe that the VAT system is the correct way to regulate the usage of water energy products and waste treatments. It is unlikely that the proprietors of utilities companies will bear this cost and they will instead pass it on to the consumer. The biggest consumers of these utilities will not be unduly impacted; this will only have implications for those unable to recover the VAT on their purchases: charities and final consumers. Increased costs will mean that charities are forced to redirect expenditure away from charitable activities and may have social implications for the poorest in society. The provision of water and energy are a basic need and it is important that the VAT system does not result in citizens living in fuel poverty or similar.

Q5. In your view, how can the reduced VAT rate for housing be best applied in order to take the resource efficiency element into account, and how should/can this be achieved with a minimum of increase in the administrative burden for businesses, in particular SMEs, providing supplies of goods and services in the housing sector?

10. ECCVAT is concerned that any change to the application of the reduced VAT rate for housing to take into account resource efficiency does not run counter to efforts by charities that are seeking to promote a green agenda and to engage in environmentally-friendly policies. Environmental taxes (such as Feed-in Tariffs and Generation tariffs relating to renewable energy) which incentivise the use of green energy should not be undermined by contrary taxation in the VAT system. This is particularly relevant to social housing projects which are generally built to higher energy efficiency standards than commercial properties (with the aim of reducing the costs for tenants)
11. Again we stress that any changes to the existing reduced rate will only have implications for those unable to recover the VAT on their purchases – ie charities and the final consumer. This is particularly important in the context of social housing schemes. Resource efficiency should not come at the cost of increasing poverty or marginalising the most vulnerable people in society. Removing or altering the reduced rate could therefore have significant social and economic repercussions for the poorest in society.

Q6. Do you agree that those electronic services that would qualify for the reduced rate will have to be precisely defined in a uniform way at an EU level or do you consider that a broad definition in the VAT Directive would be sufficient?

Q7. Considering the need for a uniform and future proofed approach at EU level, what should be the definition of an e-book in EU-law?

Q8. Considering the need for a uniform and future proofed approach at EU level, what should be the definition of on-line newspapers and on-line periodicals in EU-law?








Q9. Are the definitions laid down in the Audiovisual Media Services Directive sufficiently clear were a reduced VAT rate allowed for on-line radio and television broadcasting?

12. ECCVAT welcomes the recognition in the consultation that similar goods and services should be subject to the same VAT rates. This is increasingly important when comparable product is available online as a result of technological developments.
13. ECCVAT supports arguments that the existing reduced rate for books should be extended to accommodate e-books on the basis of equivalence and fiscal neutrality. A VAT reduced rate on e-books would be very beneficial for charities. ECCVAT is aware that universities are increasingly moving to the use of e-books and e-periodicals, incurring VAT at the standard rate, resulting in considerable additional costs. At a time when Member States are being encouraged to promote inclusive and open education this is perverse and demonstrates the inflexibility of the current system.
14. There is an assumption in the consultation questions that a set definition of e-books and other electronic services is required in VAT terms. We challenge this interpretation and do not see the need for a specific statutory definition. Instead we think a broad framework identifying key characteristics would be appropriate.
15. We are supportive of the proposition that the definition of a book has always included e-books; it is just that they were not envisaged when the legislation was drafted. It is clear from discussions with charities and universities that the popular understanding of books is changing over time in the minds of consumers. We believe that this interpretive argument

has not yet been properly considered and, based on the principle that the law is 'always speaking', should reflect these changes.

16. Not producing a specific definition of e-books in the VAT system presents a number of advantages. It would also allow future changes and greater flexibility, in the result of further technological advances, future proofing the current reduced rates system.
17. We believe that in addition to a framework of characteristics, one possible future-proof definition would be the ISBN. This is an international system which allocates a unique identifier to all books published including e-books. The administration of this system is handled differently in different countries. For example, in the UK, the system is administered by a private entity - The Nielsen UK ISBN Agency. There is a similar unique numbering system for magazines and periodicals.
18. In summary, ECCVAT recommends that a discretionary reduced rate be introduced with Member States given the choice as to whether to apply it. We feel that it is sufficient to simply add e-books to Annex III of the VAT Directive, without the need for further commentary. We would argue that the same applies to e-magazines, e-periodicals and e-newspapers. The provision in Article 98 (2) of the VAT Directive that "reduced rates shall not apply to the services referred to in point (k) of Article 56(1)" [which includes (k) electronically supplied services, such as those referred to in Annex II] should be withdrawn.

Annex I: The following organisations support this submission

	<p>Isobro – Danish Fundraising Council (Denmark)</p> <p>http://www.isobro.dk/</p>
	<p>European Foundation Centre (pan-European)</p> <p>http://www.efc.be/Pages/EfcWelcomePage.aspx</p>
	<p>Charity Tax Group (UK)</p> <p>http://www.ctrg.org.uk/home</p>
	<p>Irish Charity Tax Reform Group (Ireland)</p> <p>http://www.ictr.ie/</p>
	<p>DAFNE (pan-European) – Donors and Foundations Networks in Europe – has a collective membership of over 6,000 foundations</p> <p>http://www.dafne-online.eu/Pages/default.aspx</p>
	<p>Fundación ONCE (Spain) – provides training and employment programmes for people with disabilities</p> <p>http://www.fundaciononce.es/EN/Pages/Portada.aspx</p>
	<p>Swedish Red Cross (Sweden)</p> <p>http://www.redcross.se/</p>
	<p>EUFED – European Union Federation of Youth Hostels</p> <p>http://www.eufed.org/EN/home.html</p>

 <p>Asociación Española de Fundaciones</p>	<p>Spanish Association of Foundations (Spain)</p> <p>http://www.fundaciones.org/es/home</p>
 <p>European Fundraising Association</p>	<p>European Fundraising Association (pan-European)</p> <p>http://www.efa-net.eu/</p>
 <p>Gesellschaft für europäische Kommunikation e.V.</p>	<p>euroCom (Germany) – improves the organisational competence and effectiveness of NGOs</p> <p>http://www.eurocom.org/english-site/index_main.htm</p>
 <p>Taula d'entitats del Tercer Sector Social de Catalunya</p>	<p>Tercer Sector Social de Catalunya (Spain) – works to improve the rights, equality and quality of life of Catalan people</p> <p>http://www.tercersector.cat/</p>
 <p>FRIVILLIGORGANISATIONERNAS INSAMLINGSRÅD SWEDISH FUNDRAISING COUNCIL</p>	<p>Swedish Fundraising Council (Sweden)</p> <p>http://www.frii.se/index6.shtml</p>

Annex II – Identification of the Stakeholder

The Commission services would be interested in receiving contributions from all interested stakeholders on the issues described below. In order to analyse the responses, it will be useful to group the answers by type of respondent. For this reason, you are kindly requested to complete the following form.

You are included in one of the following groups:

- Multinational enterprise
- Large company
- Small and medium sized enterprise (SMEs)
- National Association

X European Association

- Non-Governmental organisation (NGO)
- Tax advisor or tax practitioner
- Citizen
- Academic
- Others

Name of your organisation/ entity/ company

European Charities' Committee on VAT (ECCVAT)

Country of domicile

The Secretariat is based in London, United Kingdom. Members come across the Member States.

Brief description of your activity or your sector

The European Charities' Committee on Value-Added Tax (ECCVAT) is a group of charities and foundations that has come together to research the impact of VAT and other taxes on the work of NGOs and to make representations to the EU institutions and governments on behalf of the sector. ECCVAT has been working to improve the VAT system for charities since 1992.

Do you agree to the publication of your personal data?

Yes

Do you agree to have your response to the consultation published along with other responses?

Yes

Identification number in the Transparency Register:

72562234730-60