

# CCBE statement on VAT rates applicable to legal services in reaction to the Draft Council Directive dated 7 December 2021<sup>1</sup>

1/04/2022

## Executive summary

The CCBE welcomes the inclusion of some categories of legal services among those which, as from 2025, could benefit from lower rates of VAT. On the other hand, it considers that this improvement is insufficient. The CCBE can hardly support differentiation or discrimination between legal services and consequently invites the Council to extend lower rates of VAT to other categories of legal services, especially those provided to private individuals such as legal advice, support in legal proceedings as well as alternative dispute resolution, the objective being to respect the principles of “equality of arms” and “fair trial” while promoting core values of the European Union as well as the Rule of Law.

## 1. Introduction

The Council of Bars and Law Societies of Europe (CCBE) represents the bars and law societies of 45 countries, and through them more than 1 million European lawyers.

The CCBE and its member bars and law societies have been considering the issue of VAT rates applicable to legal services for many years, advocating for the application of a 0%<sup>2</sup> rate or at least lower rates<sup>3</sup>.

On 7 December 2021, the Economic and Financial Affairs Council (ECOFIN) reached an agreement on a list of updated services for which Member States would be able to apply lower rates of VAT as from 1 January 2025. The new rules are aimed at considering the updated needs of Member States as well as the updated political goals of the EU.

This new list includes *inter alia* the following three types of legal services i.e. services supplied:

- (i) to “people under a work contract”,
- (ii) to “unemployed people in labour court proceedings”, and
- (iii) “under the legal aid scheme as defined by Member States”<sup>4</sup>.

<sup>1</sup> Amending Directive 2006/112/EC dated 28 November 2006

<sup>2</sup> Exemption with deductibility of the VAT paid at the preceding stage

<sup>3</sup> Cf. Resolution of the CCBE on Access to Justice and VAT, 2003, available [here](#)

<sup>4</sup> Cf. point 27 of amended Annex III of the Directive, available [here](#)

The CCBE welcomes that Member States would be offered broader possibilities when determining VAT rates applicable to legal services which are a key component of the Rule of Law<sup>5</sup>.

However, the CCBE finds this improvement insufficient and wishes to call upon the Council to take into account the following important considerations.

## 2. General impact of VAT applied to legal services

VAT charged on legal services rendered to private individuals who do not carry out an economic activity is a factor of inequality compared to the same legal services rendered to economic operators who in most instances can recover such input VAT<sup>6</sup>.

Member States, as guarantors of the Rule of Law, should therefore be able to correct this inequality of treatment which is currently imposed among subjects of law.

The cost of non-recoverable VAT borne by private individuals makes it more difficult for them to seek enforcement of their rights, thus creating an obstacle to “access to justice”. It is to be noted that such a discrimination is relevant whether the private individual is a plaintiff or a defendant.

Given the fact that the Council refers to “public interest” to support its initiative to propose reduced VAT rates<sup>7</sup> for certain legal services, it must be noted that when a private individual has no other option than taking professional advice or initiating legal proceedings against a public authority or a corporate player, the private individual will in almost all cases be disadvantaged regardless of whether or not the dispute concerns the specific legal areas mentioned in the updated list of legal services.

The principle of equality of arms is the necessary corollary of the principle of effective judicial protection guaranteed by Article 47 Charter of Fundamental Rights of the EU (CFREU).<sup>8</sup> The Court of Justice of the EU (CJEU) recognises that this principle “*implies that each party must be afforded a reasonable opportunity to present his case, including his evidence, under conditions that do not place him at a substantial disadvantage vis-à-vis his opponent.*”<sup>9</sup>

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<sup>5</sup> “Member States may apply a maximum of 2 reduced rates. The reduced rates will be fixed as a percentage of the taxable amount, which shall not be less than 5% and apply only to the supplies of goods and services listed in Annex III. Member States may apply the reduced rates to a maximum of 24 points of supplies of goods and services listed in Annex III” (Art 98-1. of the Draft Directive);

“Member States may in addition to the 2 reduced rates, apply a reduced rate lower than the minimum of 5% and an exemption with deductibility of the VAT paid at the preceding stage to a maximum of 7 points of supplies of goods and services listed in Annex III” (Art 98-2. of the Draft Directive).

<sup>6</sup> Inequality must also be outlined for income tax purposes. Whereas economical operators can deduct legal fees of any kind from their taxable base, individuals who do not carry out an economic activity cannot deduct such fees from their taxable income;

<sup>7</sup> Recital 4b of the draft Directive, available [here](#).

<sup>8</sup> See Case Otis C-199/11, point 48: “The principle of effective judicial protection laid down in Article 47 of the Charter comprises various elements; in particular, the rights of the defence, the principle of equality of arms, the right of access to a tribunal and the right to be advised, defended and represented.”

<sup>9</sup> See Case Otis C-199/11, point 71.

### 3. Positive assessment by the CCBE regarding the possibility to apply lower rates of VAT to certain legal services

The proposed inclusion in the amended Annex III (point 27) of the 2006/112/EC Directive of three categories of legal services eligible to lower rates of VAT is regarded by the CCBE as a positive development.

This positive assessment stems from various angles:

- a. A lower rate of VAT on legal services constitutes an improvement for access to justice, which is considered as a core public service together with access to the health system or access to education; this is in particular relevant but not limited to services rendered in the context of legal aid;
- b. Concerning employment-related legal proceedings, a reduced rate of VAT clearly support the rights enshrined in Art 6 of the European Convention on Human Rights (ECHR) and Art 47 of the CFREU.

### 4. Request for inclusion of additional legal services which would be eligible to lower rates of VAT

As mentioned in the draft Council Directive<sup>10</sup>, two parameters have in principle to be met in order for a given service to “merit” and “deserve” a lower rate of VAT:

- (i) the “benefit of the final consumer”, and
- (ii) the pursuance of “objectives of general interest”.

A solid justification of those two parameters is consequently of importance in the approach to be followed.

**4.1 Regarding the “benefit of the final consumer”:** it is understood that given the number of providers - mostly but not exclusively lawyers - the difference in the final price would go to the final consumer, especially for private individuals, and would not generate a direct benefit to service providers<sup>11</sup>.

The decrease in the price borne by private individual-clients would translate into a greater ability to explore their legal options and seek enforcement of their rights. Thus, lower rates of VAT would translate into (i) a greater spectrum of legal services supplied for the same final cost, or (ii) a lower price for the same given service.

In both cases, the benefit of the final consumer seems clearly established.

**4.2 Regarding the “objective of general interest”:** this criterion seems also met as a result of a facilitated access to Justice, including access to legal advice and to jurisdictions which are two pillars of the Rule of Law.

Lawyers are sometimes described by the European Court of Human Rights (ECtHR)<sup>12</sup> as “*officers of the law*” because they occupy “*a vital position in the administration of justice*” or as they are “*collaborating in the administration of justice*” as portrayed by the CJEU jurisprudence.<sup>13</sup>

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<sup>10</sup> Recital 2a of the draft Directive, available [here](#).

<sup>11</sup> Only an exemption with no right of deductibility of the VAT paid at the preceding stage would have an impact on the VAT status of the service providers

<sup>12</sup> See for example ECtHR, CASE OF ALTAY v. TURKEY (No. 2), (Application no. 11236/09), Judgment, 9 April 2019, par. 56.

<sup>13</sup> See for example CJEU, Prezes Urzędu Komunikacji Elektronicznej, Joined Cases C-422/11 P and C-423/11 P, Judgment, 6 September 2012, par. 23.

The CCBE considers that legal services should enjoy a treatment equivalent to the one reserved to education and health services, including for tax purposes.

On the other hand, the CCBE is worried that the application of lower rates of VAT to a very limited number of legal services could be seen as a prioritization within legal services justifying discrimination between them. The CCBE takes the opposite view that all legal services play an equally important role in facilitating access to Justice.

Furthermore, lawyers are not in favour of increasing administrative burden which would result from the application of several VAT rates.

Based on the above, the rationale underlying the possibility to apply lower rates of VAT only for very few legal services seems highly questionable.

## **5. Conclusion**

The assessment of the CCBE is that the inclusion of certain legal services in the scope of lower rates of VAT is quite a positive development.

The CCBE consequently welcomes the new point 27 of amended Annex III of 2006/112/EC Directive as proposed by the Council.

Nevertheless, those new provisions are insufficient to promote the EU fundamental values established in Article 2 Treaty on European Union (TEU), which includes “Freedom”, “Democracy”, “Equality”, the “Rule of Law”, “Justice” as well as “Human Rights” including those of individuals belonging to minorities.

Therefore, the CCBE invites the Council to extend lower rates of VAT to other categories of legal services, especially those provided to private individuals such as legal advice, support in legal proceedings as well as alternative dispute resolution, the objective being to respect the principles of “equality of arms” and “fair trial” while promoting core values of the European Union as well as the Rule of Law.

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