

# POSITION PAPER

## Removing VAT-related distortions between transport modes: Exempt all cross-border passenger transport from VAT

18 June 2015

COMMUNITY OF EUROPEAN RAILWAY AND INFRASTRUCTURE COMPANIES - COMMUNAUTÉ EUROPÉENNE DU RAIL ET DES COMPAGNIES D'INFRASTRUCTURE - GEMEINSCHAFT DER EUROPÄISCHEN BAHNEN UND INFRASTRUKTURGESELLSCHAFTEN



CER aisbl Avenue des Arts, 53 B-1000 Bruxelles Tel: +32 2 213 08 70 Fax: +32 2 512 52 31 contact@cer.be www.cer.be

# Contents

<b>EXECUTIVE SUMMARY</b>	<b>3</b>
<b>1. BACKGROUND AND PROPOSAL</b>	<b>4</b>
<b>2. ARGUMENTS FOR AN EXEMPTION</b>	<b>4</b>
An economic argument: create a level playing field for undistorted competition	4
An admin cost argument	5
A subsidiarity argument	6
A facts-related argument: ensure coherence with today's market realities	6
<b>3. HOW TO IMPLEMENT THE EXEMPTION IN THE VAT DIRECTIVE?</b>	<b>6</b>
<b>4. CONCLUSION</b>	<b>7</b>

## EXECUTIVE SUMMARY

Based on an analysis of competitive distortions and on discussions with representatives of the European Commission, Member States and other transport market stakeholders, CER proposes to change the VAT Directive so as to allow Member States to remove existing distortions between transport modes, notably between aviation and rail, by **exempting all cross-border passenger transport from VAT**, i.e. to apply zero output VAT together with the right to deduct input VAT, regardless of transport mode.

## 1. BACKGROUND AND PROPOSAL

CER welcomes the European Commission's initiative to take a fresh look at value-added tax (VAT) in passenger transport in Europe and to examine competitive distortions and ways to remove them. The study it commissioned, "Study on the economic effects of the current VAT rules for passenger transport", published in early 2015, provides a useful overview and a great amount of detail on relevant VAT rules in the European Union and in its Member States.<sup>1</sup> The stated objective of the study is to "assist the Commission in making policy choices". A stakeholder workshop organised by the Commission in April 2015, as a follow-up to the study, was about identifying the main distortions of competition and the actions that would be expected from the Commission, where "the feedback received from the participants of the workshop should pave the way for the preparation of the next steps".

This paper provides feedback from CER members: workshop participants and non-participants. CER believes that this initiative of the Commission can help passenger transport in Europe to get closer to a level playing field between modes.

The main issue from the rail perspective is *cross-border* passenger transport: While it is exempted from VAT in all EU countries in the case of aviation and maritime shipping, no such exemption is applied to railways (and coaches) in eight EU countries: Austria, Belgium, Croatia, Germany, Greece, Netherlands, Spain and, on some routes, France. All other EU countries exempt all cross-border passenger transport.

CER proposes to change the VAT Directive in a way so as to allow all Member States to remove competitive distortions by **exempting all cross-border passenger transport from VAT**, i.e. to apply zero output VAT together with the right to deduct input VAT, regardless of transport mode. For the sake of consistency, on-board consumption in cross-border passenger transport should be VAT-exempted correspondingly.

## 2. ARGUMENTS FOR AN EXEMPTION

Several arguments can be made for exempting all cross-border passenger transport from VAT:

**An economic argument: create a level playing field for undistorted competition**

In the cross-border passenger transport market, only aviation and maritime shipping are currently exempted from VAT, while railways and coaches are currently not generally exempted.

Also exempting railways and coaches from VAT would implement a principle put forward by the Commission, as a guiding principle for a review of current VAT rates, in the 2011 Communication on the future of VAT: "Similar goods and services should be subject to the same VAT rate" (VAT neutrality).<sup>2</sup>

---

<sup>1</sup> The study can be downloaded from [http://ec.europa.eu/taxation\\_customs/common/publications/studies/index\\_en.htm](http://ec.europa.eu/taxation_customs/common/publications/studies/index_en.htm).

<sup>2</sup> See p. 11 of "Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee on the future of VAT: Towards a simpler, more robust and efficient VAT system tailored to the single market", COM(2011) 851 final.

A VAT rule change that amounts to applying this equal-treatment principle to digital media has been announced in early May 2015 by Jean-Claude Juncker, President of the European Commission: Member States should be allowed to harmonise VAT rates for digital media downwards to those applied to print media. Unlike in 1991 when the current European VAT Directive was adopted, today digital media compete directly with printed media. Referring to this change in the market, Mr Juncker pointed out that "This new reality has to be reflected by a forward-looking VAT regime in Europe".<sup>3</sup> It shows that the Commission is ready to revise the VAT Directive in order to adapt it to changed market realities and to help create a level playing field for competing goods or services.

A similar approach is required for a similar situation, namely the cross-border passenger transport market. Back in 1991, before the arrival of cross-border high-speed railway, railways served a specific sub-market of cross-border travel (cost-conscious leisure travellers) but did not compete significantly with aviation. Today, the situation has completely changed. There is now a significant and increasing number of cross-border high-speed rail connections (e.g. Paris-Brussels-Cologne or Paris-Strasbourg-Stuttgart-Munich), which directly compete with aviation, both for leisure and business customers. In this situation, VAT is distorting the choice of customers<sup>4</sup> to the detriment of railways - just as VAT is distorting customer choice between print and digital media. The current framework does not provide fair competitive conditions. CER therefore calls upon the Commission to follow a market-based approach similar to the one applied to media when revising the VAT regime of the transport sector.

### An admin cost argument

From the micro-perspective of railway and coach businesses, but also of tax authorities, the administrative costs related to VAT for cross-border transport are huge, and disproportionate relative to tax revenues. Heavy back-office processes in railway companies are currently required for cross-border rail transport to calculate and pay VAT in all relevant countries, incl. transit countries, and to deal with the different tax authorities.<sup>5</sup> Complying with rules on cross-border VAT absorbs considerable resources in tax and accounting teams. It may also require VAT representatives in the different Member States and consultants to adapt IT systems.

At the same time, from the macro-perspective of Member States, the impact of the exemption on VAT revenues would be "minimal", according to the 2014/15 study for the Commission (part 1, p. 26). There would be no impact in the vast majority of Member States that exempt *all* cross-border passenger transport from VAT already today.

---

<sup>3</sup> See [www.magazinmedia.eu/eu-president-juncker-european-commission-will-suggest-in-2016-reduced-vat-for-digital-press-to-eu-member-states](http://www.magazinmedia.eu/eu-president-juncker-european-commission-will-suggest-in-2016-reduced-vat-for-digital-press-to-eu-member-states) .

<sup>4</sup> VAT influences the modal choice of leisure customers everywhere and that of business customers in Member States that do not allow VAT deduction (France, Greece, Italy and Portugal).

<sup>5</sup> Accordingly, for coach businesses, especially SMEs, the minutes of the Ankara workshop (Group 2, Monday 27 April 2015) note: "the calculation of kms for each MS is complicated".

The huge administrative burden both for transport operators and tax authorities, with minimal impacts on VAT revenue, suggests that removing VAT for all cross-border passenger transport might be socially desirable even if market distortions did not matter.

### A subsidiarity argument

A political argument for the exemption has been put forward in the above-mentioned study (part 1, p. 183): Exempting all modes from VAT on cross-border passenger transport "fits best with the subsidiarity principle: it would leave the domestic market to national governments while regulating trade between Member States".

### A facts-related argument: ensure coherence with today's market realities

Article 393 of the VAT Directive calls for reviewing the VAT situation to facilitate the transition to a definitive VAT-regime. Taking a formalistic legal reading of the old VAT Directive as starting point, one might argue that in such a regime the existing exemptions for the airline and shipping sector should be abolished. In reality, however, it would appear more coherent to extend the existing exemptions to all transport modes: Adapt the VAT-regime to business realities, instead of adapting business realities to a final VAT-regime out of formal reasons.

It cannot be the way forward to abolish exemptions just for formal legal reasons enshrined in the VAT-Directive 40 years ago, whilst neglecting that what was once conceived as an exception has now become the rule and the modus operandi of large parts of the industry. This reality check suggests extending the existing exemptions to all transport modes.

## 3. HOW TO IMPLEMENT THE EXEMPTION IN THE VAT DIRECTIVE?

Rules in the VAT Directive will be changed to adapt the Directive to changed market realities in the media market - in line with the Commission's guiding principle that "similar goods and services should be subject to the same VAT rate".

VAT rules for the cross-border passenger transport market should be adapted as well. Member States today could not apply zero VAT to cross-border passenger transport railways or coaches unless they did so on 1 January 1978 (Art. 371) or before their accession to the EU (Art. 375 to 390; "standstill clauses"). Therefore, without a change of the VAT Directive, the eight EU countries mentioned in section 1, which levy VAT on cross-border transport, could not decide to apply zero VAT going forward.

The appropriate VAT rule change for the transport market is to add the qualification "except for cross-border passenger transport" to the Article 99 clause "The reduced rates [...] may not be less than 5%". This change will allow Member States wishing to do so to exempt cross-border passenger transport from VAT by

applying a reduced rate of 0% - subject to Article 98 (1), which requires that "Member States may apply either one or two reduced rates".

In order to allow Member States already applying two positive reduced rates to effectively VAT-exempt cross-border passenger transport, Article 98 (1) should be modified slightly by adding the qualification "or three reduced rates if one of them applies to cross-border passenger transport".

#### **4. CONCLUSION**

All EU Member States should be allowed to exempt all cross-border passenger transport from VAT, whether exemptions have been in place historically or not. Several arguments support this:

- 1) An economic argument related to the current distortion of the cross-border transport market. This distortion should be removed by a VAT exemption for all modes, in line with the guiding principle of VAT 'neutrality' put forward by the European Commission in 2011: "Similar goods and services should be subject to the same VAT rate".
- 2) Administrative costs related to VAT in cross-border passenger transport are disproportionate relative to VAT revenues.
- 3) The subsidiarity principle suggests leaving to Member States rules on national taxation, not on the taxation of cross-border activities.
- 4) The reality in today's market is that cross-border passenger transport sector is used to zero VAT rates for decades, a reality to be respected. Therefore, VAT harmonisation, which the Commission rightly promotes, should be done at the zero VAT level.

It is therefore proposed to change Articles 98 and 99 of the VAT Directive so as to allow Member States to levy a reduced VAT of zero to cross-border passenger transport. For the sake of consistency, on-board consumption in cross-border passenger transport should be VAT-exempted correspondingly.

Removing the VAT handicap of railways is consistent with modal-shift goals of the Transport White Paper, such as that "By 2050 the majority of medium-distance passenger transport should go by rail." It would not imply a drastic change to existing practice as most Member States apply the exemption already today.

Even after amending the VAT Directive to allow zero VAT, VAT might still be levied on cross-border passenger rail transport in certain Member States. Measures should be taken to simplify VAT processes:

- a) Harmonise national requirements regarding the collection and archiving of records or alternatively provide for cross-country acceptance of the national requirements in the country of registration of the rail company
- b) Harmonise requirements regarding invoice documentation for input VAT deduction
- c) Simplify VAT registration in other Member States

## Disclaimer

### Community of European Railway and Infrastructure Companies (CER) AISBL

Avenue des Arts 53  
B-1000 Brussels  
Belgium

Tel +32 2 213 08 70  
Fax +32 2 512 52 31  
[contact@cer.be](mailto:contact@cer.be)

**This CER document is for public information.**

Although every effort is made to ensure the accuracy of the information in this document, CER cannot be held responsible for any information from external sources, technical inaccuracies, typographical errors or other errors herein. Information and links may have changed without notice.