



LEASEUROPE

THE DIRECTOR GENERAL

Mr Jorgen Holmquist
Director General
DG Market and Internal Services

By email

Brussels, 5th of September, 2007

Dear Mr Holmquist,

I am writing to you as Director General of Leaseurope regarding DG Tax UD's proposal for a Directive and a Regulation on VAT for financial and insurance services that is currently in the inter services consultation process.

Our members are concerned that the draft regulation on Financial and Insurance Services (Ref: Taxud/2146/07), dated 13th of July 2007, would exclude hire purchase, conditional sale, instalment credits and credit at the point of sale type products from the definition of granting of credit.

Such treatment would lead to these products becoming more expensive when made to non-taxable persons with consequences in terms of restricted access to finance for more disadvantaged consumers, a possible reduction in the choice of credit products for consumers and a distortion in competition in relation to other financing products such as personal loans.

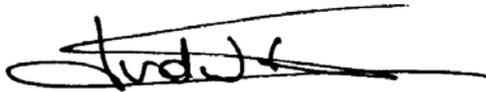
However, we now understand from DG Tax UD during the stakeholder meeting organised on the 31st of July, that the intention is only to exclude those agreements

where an interest element cannot be separated from the capital reimbursement within the repayment.

We welcome this reaction and would like to provide you with suggested alternative wordings for the relevant sections of the draft regulation (attached) which we feel better reflect the desired objective of the proposal in this context. These wordings also provide *further* justification as to why we believe that the above mentioned products should be exempt from VAT as the granting of credit.

We remain at your disposal for any further information. Please do not hesitate to contact me or Jacqueline Mills, Leaseurope Advisor, on +32 2 778 05 66 or at j.mills@leaseurope.org if you require any further information.

Yours sincerely,



Tanguy van de Werve
Director General
Leaseurope

Copy to:

- Mr Alexander Wiedow, Director, DG Taxud/D
- Mr Rolf Diemer, Head of Unit, Unit VAT and Other Turnover Taxes, DG Taxud/D
- Mr Burkhard Hein, Policy Officer VAT Legislation, Unit VAT and Other Turnover Taxes, DG Taxud/D
- Ms Jana Cappello, Policy Coordinator, Unit Policy Development and Coordination of the Internal Market, DG Markt/B

About Leaseurope

Leaseurope, the European Federation of Leasing Company Associations, is composed of 48 Member Associations in 34 countries. It represents as an umbrella body the European leasing and automotive rental industries. In 2006, its leasing members accounted for 93% of the European leasing market. In April 2006, the Federation integrated short and long term car and truck renters into its membership base. It now represents around 8 500 companies across Europe employing over 200 000 people. During the course of 2006, the companies represented via Leaseurope financed in excess of 287 billion euros of new investments in vehicles, equipment and real estate.

LEASEUROPE
SUGGESTED DRAFTING CHANGES TO
THE DRAFT REGULATION ON FINANCIAL AND INSURANCE SERVICES
TAXUD/2146/07
DOCUMENT DATED 13/07/07

(Proposal for a COUNCIL REGULATION laying down implementing measures for
Directive 2006/112/EC on the common system of value added tax)

Recital 32

Although involving a finance element, the granting of payment by instalments or of an allowed period for payment for the supply of services and goods should be excluded from the definition of "granting of credits" where the financing element is a part of the remuneration for the services or goods. In such cases the described specific ways of payment are not available separately. The same applies to so-called hire-purchase scenarios. In cases where a buyer cannot afford to pay the asked price for an item of property as a lump sum but can afford to pay a percentage as a deposit, a hire-purchase contract allows the buyer to hire the goods for a monthly rent. When a sum equal to the original full price plus interest has been paid in equal instalments, the buyer may then exercise an option to buy the goods at a predetermined price (usually a nominal sum) or return the goods to the owner. Such scenarios cannot be considered lending of money. The same reasoning applies to conditional sales; such sales are comparable to hire purchase except the credit is generally provided by the shop. It is an agreement where the price is payable by instalments and title to the goods remain with the seller until the full price is paid. Additional charges for the financing elements do not come under the definition "granting of credit".

~~Although involving a finance element,~~ **the making available of goods, on hire or by other means whereby possession to goods is transferred in return for payment, which may be by instalments over an allowed period for payment should be excluded from the definition of "granting of credits" where transfer to the hirer of title to the goods is not contemplated by the parties or, if title may pass, where no separate charge for any credit is specified. By contrast, where a separate charge for the credit is identified to the customer and title to the goods is expected to pass to the customer either automatically or subject to fulfilment of conditions or the exercise of an option to purchase, such as in certain types of hire purchase or conditional sale agreements, the supply should be treated as a taxable supply of goods and a separate exempt supply of credit. This exclusion covers rentals with an option to purchase where there is no separate charge for interest as these are leasing contracts covered by Recital 33.** ~~In such cases the described specific ways of payment are not available separately. The same applies to so-called hire-purchase scenarios. In cases where a buyer cannot afford to pay the asked price for an item of property as a lump sum but can afford to pay a percentage as a deposit, a hire-purchase contract allows the buyer to hire the goods for a monthly rent. When a sum equal to the original full price plus interest~~

~~has been paid in equal instalments, the buyer may then exercise an option to buy the goods at a predetermined price (usually a nominal sum) or return the goods to the owner. Such scenarios cannot be considered lending of money. The same reasoning applies to conditional sales; such sales are comparable to hire purchase except the credit is generally provided by the shop. It is an agreement where the price is payable by instalments and title to the goods remain with the seller until the full price is paid. Additional charges for the financing elements do not come under the definition "granting of credit"~~

Justification

It should be clarified in the recital that the intention here is to exclude from the definition of granting of credit only those payment facilities where it is not possible to separate an interest charge from the overall repayment.

Other types of credit agreements, such as those products known as hire purchase, conditional sales, instalment credits or credit at the point of sale do involve the "lending of money" and contain an interest element that can be separated from the capital reimbursement.

Recital 33

The supply of financing elements in combination with a leasing of goods or services should be excluded from the definition of “granting of credits”; such financing elements exist in a variety of scenarios. In leasing scenarios, such as operating lease, finance lease or contract hires the financing elements are built into remuneration, which the lessee has to pay for the use of goods or services; they are thus not lending of money.

Subject to Recital 32, ~~The supply of financing elements in combination with a leasing of goods or services should be excluded from the definition of “granting of credits”; such financing elements exist in a variety of scenarios.~~ **even if one of the cost components (not separately identified) built into the lease rental is a cost of financing.** In such leasing scenarios, ~~such as~~ for instance operating leases, finance leases or contract hires, the financing elements are built into remuneration, which the lessee has to pay for the use of goods or services; they are thus not lending of money.

Justification

The proposed wording here further clarifies that the leasing of goods or services where one of the cost components, which is not separately identified, built into the lease may be a financing element, does not constitute a granting of credit.

Article 3, paragraph 1 - (1)(a)

1. The following services are excluded from the definition of "granting of credit" and "financial safeguarding of credits" in Article 135a 1. (2)

(1) Granting of credit

(a) the granting of payment by instalments, of an allowed period for payment for the supply of services and goods, as well as hire-purchase or scenarios where the financing element is a part of the remuneration for the services or goods;

1. The following services are excluded from the definition of "granting of credit" and "financial safeguarding of credits" in Article 135a 1. (2)

(1) Granting of credit

(a) the granting of payment by instalments, ~~or~~ of an allowed period for payment for the supply of services and/or goods, ~~as well as hire-purchase or scenarios~~ where the financing element is ~~a part of the remuneration for the services or goods~~ **is not separately identified from the payment for the goods or services.**

Justification

See justification to recital 32 above.

*Hire purchase, conditional sales, instalment credit and credit at the point of sale type products are indeed credits, containing an interest charge **separate** from the capital reimbursement.*

If these products are excluded from the exemption for granting of credits, they will become more expensive for non-taxable person, including consumers, who will not be able to deduct the VAT charge on the interest element.

This may result in certain borrowers, for example those on low incomes for whom credit is already difficult to obtain, finding their access to finance further restricted.

Furthermore, the market for these products will be distorted in relation to other products, such as personal loans. These loans, often available to borrowers with a good credit history, would not suffer an additional VAT charge and would therefore be less expensive. VAT treatment should not lead to a discrimination between various types of financing products.

Additionally, these products are likely to become less attractive to credit providers who may withdraw from such markets entirely, thus diminishing the offer of finance for consumers. Importantly, this would be contrary to the Commission's stated objective of wanting to encourage a "wider choice of products (for consumers) which corresponds to their needs..." (Green Paper on Retail Financial Services). As mentioned above, due to the security of the financed asset, these types of products are often available for consumers who find it more difficult to obtain other forms of credit, thereby covering the specific needs of this category of potential borrowers.

Another consequence of the reduction in the availability of these forms of credit would be a significant drop in sales of related assets. For example, it would have a serious adverse effect on car manufacturers and dealers.

Lastly, consumers would also find it more difficult to replace ageing assets. In the passenger car sector for instance, this would inevitably result in consumers continuing to use older, less environmentally-friendly vehicles, leading to increased environmental pollution.

Article 3, paragraph 2 – (1)(aa) new

2. Unless excluded by paragraph 1, the following services are included in the definition of "granting of credit" and "financial safeguarding of credits" in Article 135a 1. (2):

(1) Granting of credit

- (a) Loans and syndicated loans;
- (b) Mortgage loans;
- (c) Overdraft facilities;
- (d) Overrunning facilities;
- (e) Global credits;
- (f) Overdraft loans;
- (g) Credit card services;
- (h) Pawn broking;
- (i) Debt securities such as bonds, bills, certificates of deposit and commercial papers;

2. Unless excluded by paragraph 1, the following services are included in the definition of "granting of credit" and "financial safeguarding of credits" in Article 135a 1. (2):

(1) Granting of credit

(aa) Hire purchase, conditional sale, instalment credit or credit at the point of sale type products where the financing element is separately identified from the capital repayment

- (a) Loans and syndicated loans;
- (b) Mortgage loans;
- (c) Overdraft facilities;
- (d) Overrunning facilities;
- (e) Global credits;
- (f) Overdraft loans;
- (g) Credit card services;
- (h) Pawn broking;
- (i) Debt securities such as bonds, bills, certificates of deposit and commercial papers;

Justification

See justification to Article 3, paragraph 1 - (1)(a)

For additional clarity and legal certainty, we feel it is useful to explicitly include these products in the list of services included in the definition of granting of credits.