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Position paper

Exclusion of VAT from the 1% Cost Cap for PEPP (Investment Firm Providers)

Introduction

This memorandum is submitted to the European Insurance and Occupational Pensions Authority (EIOPA) to object to the inclusion of Value Added Tax (VAT) within the 1% cost cap applied to the Basic Pan-European Personal Pension Product (PEPP) under Regulation (EU) 2019/1238. The concern is focused on PEPPs offered by investment firms (as opposed to insurance-based PEPPs), where VAT on management fees can consume a substantial portion of the allowed 1% fee. We argue that VAT is a consumption tax external to a provider's discretionary cost structure and should be excluded from the regulatory cost cap. Including VAT in the cap **distorts competition** between providers and creates **regulatory inconsistencies** across Member States. This briefing outlines the legal background on VAT treatment of financial and pension services, compares how similar services are taxed or exempted in select EU jurisdictions, and presents a principled case for excluding VAT from the PEPP cost cap. Key supporting precedents from EU law and Court of Justice of the EU (CJEU) case law are cited throughout.

Legal Analysis: VAT on Financial Services and Pensions

VAT as an External Tax: VAT is structured as a **consumption tax borne by the final consumer, not by businesses**. Providers act as tax collectors for the State; the VAT they charge on fees is remitted to the government, not retained as part of their earnings. In the context of PEPP, an investment firm provider charging a management fee must add VAT (where applicable) on top of that fee. This VAT is **outside the provider's control** – the rate is set by law and varies by country (ranging from 17% in Luxembourg to 27% in Hungary). Treating such a tax as part of the "costs and fees" subject to the 1% cap effectively means the provider's net revenue could be only ~0.79–0.85% of assets, depending on the VAT rate, with the remainder being tax. By contrast, a provider whose fees are exempt from VAT can utilize the full 1% for operational costs and margins. The inclusion of VAT in the cap therefore penalizes providers solely based on tax regime, rather than efficiency or value. It is our position that **VAT should be considered external to the cost cap**, similar to how sales taxes are not counted as part of a merchant's price cap in other contexts.

Relevant EU VAT Law: Under the EU VAT Directive (2006/112/EC), most financial and insurance services are exempt from VAT (Article 135(1)(a) exempts *insurance and reinsurance transactions*, and Article 135(1)(g) exempts the *management of special investment funds*, as defined by Member States). In practice, **life insurance premiums and insurance-based pension products are exempt from VAT** by virtue of the insurance exemption. The CJEU has confirmed, however, that pure investment management services for pensions without insurance risk coverage *cannot* be classified as "insurance" for VAT purposes. Investment firms offering personal pensions thus fall outside the insurance exemption. They can only avoid VAT on their fees if those services qualify as *management of special investment funds* under Article 135(1)(g).

"Special Investment Fund" Exemption for Pensions: Whether a pension product's management fees are exempt under the "special investment fund" (SIF) category has been the subject of extensive litigation and divergent national treatments. The CJEU in *ATP PensionService* (2014) established that **defined-contribution pension schemes can qualify as special investment funds** if, *inter alia*, the beneficiaries bear the investment risk and the fund operates akin to a collective investment undertaking. More recently, in September 2024, the CJEU (joined cases *X* and others) clarified that **pension funds must be comparable to UCITS or other nationally recognized funds to benefit from the VAT exemption**. In essence, if a personal or occupational pension fund pools investments and the member's benefits depend on investment performance, it *may* be treated like a collective investment fund, making its **management services VAT-exempt under Article 135(1)(g)**. However, this test is technical and applied case-by-case; not all pension arrangements meet the criteria. Crucially, a personal pension provided via **individual portfolio management** (typical for an investment firm's PEPP) is not a pooled fund and thus generally does not qualify for the exemption – meaning these providers *must* charge VAT on fees.

PEPP Cost Cap Framework: The PEPP Regulation mandates that the **Basic PEPP (the default investment option)** be "simple and affordable," with a cost cap of 1% of accumulated capital per annum. Regulatory technical standards have adopted an **"all-inclusive" approach to this cap, stating that in principle *all costs and fees* charged to the saver are included in the 1% limit**. Notably, EIOPA has recognized at least one exception: to *"ensure a level playing field amongst providers"*, the **cost of the capital guarantee** (when a PEPP offers a guaranteed return) is excluded from the cap. The guarantee cost was carved out because not all providers offer guarantees – a provider offering a guarantee would otherwise be disadvantaged relative to one offering a pure investment option. This explicit adjustment in the regulatory approach underscores that the **cost cap should fairly compare providers' own costs, not penalize providers for structural differences beyond their control**.

Applying the same logic, VAT on fees is a structural difference extrinsic to the provider's own efficiencies: some providers (insurance-based) incur no VAT on fees, while others (investment firms) must apply VAT purely due to legal form. We submit that continuing to count VAT toward the 1% cap contradicts the level-playing-field principle that EIOPA has embraced. Indeed, in the **only PEPP currently on the EU market (offered by Finax, an investment firm)**, the annual fee is advertised as *0.72% (0.6% management fee + 0.12% VAT)*, explicitly keeping the total under the 1% cap. This illustrates the real impact: the provider's actual fee is 0.6%, but the addition of 20% VAT brings the charge to 0.72%. Were VAT excluded from the cap, that provider could charge the same 0.6% net and not be concerned about the tax pushing the total over the limit – or alternatively could charge a full 1% fee and have the customer pay 1.2%

with VAT, if the cap were clearly defined as 1% **net of taxes**. Under current rules, an insurance-based PEPP could charge the full 1.0% to itself, whereas an investment firm PEPP in a 20% VAT country must limit itself to ~0.83% + VAT ≈ 1.0%. This disparity raises fairness issues under EU law and principles of equal treatment of market participants.

Legal Characterization of VAT: It is important to stress that VAT is **not a discretionary "cost" from the provider's perspective**. VAT is mandated by law and intended to tax the consumer's expenditure. The provider cannot reduce or avoid VAT through efficiency gains or better management – it is an obligation imposed on certain services. The **economic burden of VAT ultimately falls on the consumer** (the saver), as noted by the European Commission: VAT is "*charged as a percentage of the sales price*" and is **"borne by the final consumer, not by businesses"**. Therefore, including VAT in a cap that is meant to measure the provider's charges and efficiency conflates two different elements: (1) the provider's own charges for managing the pension, and (2) a government-imposed levy on consumption. Our position is that only the former properly falls within the regulatory intent of a "cost cap" on the PEPP provider. The latter should be treated akin to a tax *outside* the cost base (just as, for example, a cap on telecom prices might exclude VAT). This interpretation would align with the purpose of the cap – to keep providers' fees low – without inadvertently turning a tax policy divergence into a competitive handicap.

VAT Treatment of Pension Products in Selected Member States

VAT treatment of personal pension products (and analogous financial services) varies significantly across the EU, often depending on the legal form of the product (insurance contract, investment fund, or bespoke scheme). These differences illustrate why including VAT in the PEPP cost cap leads to uneven outcomes:

- **Insurance-Based Pensions – VAT Exempt across the EU:** Life insurance contracts (including many retirement annuities or unit-linked pension policies) are exempt from VAT under EU law. In **France**, for example, the dominant personal retirement savings vehicles are life insurance policies ("assurance-vie"); all charges on these policies are outside the scope of VAT (insurance is exempt), though France applies other taxes (e.g. insurance premium tax) which are not within the cap. In **Germany**, *Riesterrente* or *Rüruprente* individual pensions provided by insurers similarly charge fees with no VAT. Thus, an insurance company offering a Basic PEPP would not deduct any VAT from its 1% fee – the full amount counts as its revenue to cover costs and profit.
- **Investment Fund-Based Pensions – Often VAT Exempt (when qualifying as funds):** Several Member States have classified pension funds or certain personal pension vehicles as **special investment funds (SIFs) for VAT purposes**, thereby exempting their management fees. For instance, in **Denmark**, the *ATP PensionService* ruling led to defined-contribution occupational pension schemes being treated like mutual funds, with **management services exempt from VAT**. In **Ireland**, following EU case law, revenue authorities extended the VAT exemption to management of qualifying pension schemes (primarily DC schemes). A **position paper by PensionsEurope and AEIP** noted that *"in most Member States, pension funds are qualified as special investment funds. Consequently, these pension funds receive management services exempt of VAT."* This indicates that many countries (especially those with large funded pension pillars like the Netherlands, Denmark, Ireland, Luxembourg, etc.) have found ways to relieve pension vehicles from VAT, aligning with the social objective of retirement savings. However, the **criteria and consistency differ** – what qualifies as a "fund" in one jurisdiction may not in another, and personal pension accounts (as opposed to collective funds) are not always covered.

- **Standalone Investment Services for Pensions – VAT Taxable:** In cases where a pension product is essentially an individual investment service (such as a brokerage or asset manager running a discretionary portfolio for the client's retirement), VAT usually applies at the standard rate. For example, in **Poland** and **Slovakia**, if an investment firm offers a personal pension plan that is not structured as an investment fund, the **management fee is subject to VAT (23% in PL, 20% in SK)**. In **Italy**, open pension funds (*fondi pensione aperti*) managed by investment firms can fall under the SIF exemption if properly structured, but if an investment manager simply manages a portfolio on behalf of a pension saver outside of a fund structure, VAT at 22% would apply to fees. Similarly, **Germany** historically charged 19% VAT on individualized portfolio management services (including those for high-net-worth retirement portfolios), although recent reforms in Germany have broadened VAT exemptions to *all* alternative investment funds – a potential model to include personal pension pools.
- **Netherlands – A Case Study in Divergence:** The Netherlands long treated pension fund management as **taxable**, distinguishing pension schemes from exempt investment funds. This led to Dutch pension funds paying 21% VAT on asset management services, increasing costs for savers. Industry bodies litigated this issue, resulting in the CJEU's *X (C-639/22) and others* judgment in 2024. The Court held that certain collective pension schemes *must* be seen as special investment funds if participants bear the investment risk, thus qualifying for VAT exemption. This was a significant development, but it applies to collective funds (e.g. industry-wide pension funds) and does *not* automatically cover every personal pension product. The Dutch example highlights that some Member States did *not* exempt pension management until compelled by case law – and even now, a personal PEPP offered by an investment firm in the Netherlands would likely still attract VAT unless structured as a fund. This kind of disparity – where a PEPP provider in one country faces a VAT burden that a provider in another country might avoid –

is precisely the scenario the PEPP framework should seek to neutralize, not exacerbate.

In summary, **providers of functionally similar pension products face different VAT obligations across the EU**. Many insurance-based or fund-based pensions enjoy VAT exemption on fees, whereas investment-firm PEPP providers often do not. The PEPP Regulation was supposed to create a *level playing field* for a new pan-European pension market, allowing various providers (banks, asset managers, insurers, IORPs) to compete on equal footing. However, by capping "all costs" at 1% **without excluding VAT**, the playing field is tilted:

- An insurer or fund manager operating a VAT-exempt structure can devote the entire 1% to service provision and margin.
- An investment firm managing individual accounts must either absorb part of the VAT cost (reducing their net fee to well below 1%) or charge the customer VAT that eats into the cap, limiting the funds available for management.
- Variations in VAT rates by country further mean a saver in one Member State might effectively get less management service for the same 1% gross fee than a saver elsewhere. For instance, a PEPP saver in Hungary (27% VAT) might only receive ~0.79% worth of actual service fee, whereas a saver in Germany (19% VAT) gets ~0.84% service and one in Luxembourg (17% VAT) ~0.85%.

These differences are **not due to provider efficiency or product design – they are solely the artifact of tax law variation and regulatory design**. By counting VAT in the cap, the EU framework is currently *amplifying* those distortions rather than mitigating them.

Basic PEPP vs. Alternative Investment Options

The PEPP Regulation distinguishes between the **Basic PEPP (the default, capped-cost option with prescribed risk-mitigation or guarantee)** and potential **alternative investment options** that a provider may offer (up to five, with varying risk/return profiles). The Basic PEPP is subject to the strict 1% cost cap; alternative options are not subject to the cap, but they must only be offered *in addition* to the Basic option and with full transparency. In theory, a provider could charge higher fees for an alternative PEPP option (where VAT would be a smaller percentage of a higher fee). However, **from a practical and consumer-protection standpoint, the Basic PEPP is the critical option**: it is intended to be the simple, low-cost default that most savers will choose, especially *"risk-averse"* or first-time retirement savers. Behavioral economics suggests a large majority of savers will stick with the default option rather than opt into higher-cost alternatives. Consequently, if the Basic PEPP is not economically viable for certain providers due to the cap structure, those providers cannot realistically make up for it by steering customers to uncapped alternatives – doing so would undermine the consumer protection intent and is limited by the requirement to always offer the Basic.

By **including VAT in the Basic PEPP's 1% cap**, the current framework effectively forces investment-firm providers to operate the default product at a significantly lower net fee than 1%, as described above. Meanwhile, an insurance or fund provider can operate at the full 1%. Although the regulation permits alternatives with higher fees, that is cold comfort if the **default product itself is uncompetitive or loss-making for certain providers**. Indeed, stakeholders have warned that an overly restrictive cap for the Basic PEPP will deter providers and stifle the PEPP market: PensionsEurope observed that capping costs only for PEPP (but not for similar national products) risks limiting PEPP uptake, as national personal pension products could offer better value or returns without such a cap. In other words, if only the Basic PEPP is kept artificially cheap (inclusive of tax), providers might simply choose to continue offering national products where they can charge a sustainable fee – defeating the PEPP's goal of fostering a broad EU market.

It is instructive that **EIOPA itself, in its 2024 review, acknowledged the need to re-examine the strict cost cap**. EIOPA noted that while 1% is not "too low per se," the need for scale is making it challenging, especially for smaller providers. Among proposed fixes, EIOPA suggested to *"focus on value-for-money considerations in PEPP instead of a hard ceiling on costs."* This signals that regulators recognize inflexible cost ceilings may be counterproductive. Likewise, EIOPA highlighted that a *"lack of a uniform tax treatment at the national level"* has limited PEPP's adoption and recommended that Member States *"grant PEPP the same favorable tax treatment that national personal pension products enjoy,"* moving toward EU-wide tax harmonization for PEPP. These points strongly support our argument: the PEPP's success should not hinge on tax quirks. Until full tax harmonization is achieved, regulatory measures (like interpreting the cost cap as net of VAT) can help neutralize tax differences.

In summary, maintaining the inclusion of VAT in the Basic PEPP's cost cap places investment-firm providers at a structural disadvantage for offering the default option. It also undermines the consistency of the Basic PEPP across Member States. The alternative options do not ameliorate this concern, because the Basic PEPP remains the cornerstone offering by design. A fair, principles-based regulation would treat **unavoidable taxes and public levies as outside the scope of the provider's cost control**, just as it treats the guarantee cost (a feature serving consumer protection) separately. This ensures that the comparison among providers for the Basic PEPP is truly on the merits of efficiency, investment management, and service – not on who benefits from a tax exemption.

Distortion of Competition and Regulatory Inconsistency

Including VAT in the 1% cap distorts competition in several ways:

- Between Different Types of Providers: Investment firms vs. insurance companies are treated unequally. An insurer's PEPP operations benefit from an inherent VAT exemption on fees (no 20% tax haircut on their revenue), whereas an investment firm's identical service is effectively punished under the cap. This runs counter to the PEPP Regulation's intent to allow a "broad range of financial providers" – insurers, asset managers, banks, investment firms, etc. – to offer PEPPs on a level field. If one class of provider must operate with significantly less fee income for the same service due to tax, competition is skewed. Over time, this could drive certain providers (particularly innovative fintechs or asset managers) out of the PEPP market, leaving only those for whom the cap is less binding (likely large insurers). Such an outcome would reduce competition and consumer choice – exactly the opposite of PEPP's goals.
- Among Member States / Tax Jurisdictions: As noted, VAT rates differ across the EU. Presently, a PEPP provider based in a high-VAT country (or serving customers there) has a smaller net margin from the capped fee than a provider in a low-VAT country. This creates an uneven playing field based on geography. It also introduces a perplexing inconsistency: the "1% fee cap" is not truly 1% in economic effect – it varies. A saver in one country might effectively pay, say, 0.8% net fee + 0.2% VAT, while another pays 1% fee + 0% VAT, yet both appear to be at the "1% cap." The cap's value proposition to consumers is thus not uniform EU-wide when taxes are included. From a single-market regulatory perspective, this inconsistency is undesirable. The PEPP is meant to be a pan-European product with standardized features; letting VAT differences erode that standardization undermines the concept.

- **Vis-à-vis National Products (Regulatory Arbitrage):** If PEPP fees are constrained (including VAT) to an extent that providers cannot cover distribution and advice costs, providers may favor offering national personal pension products outside the PEPP framework which are not subject to such caps. PensionsEurope has warned that since in "several member states PEPPs will not be the only personal pension products (and where they are, non-PEPP personal pension products may emerge), capping only PEPPs, but not national pension products, will limit PEPP market uptake". This is a form of regulatory inconsistency: the EU introduces a stricter rule for the PEPP, but a similar product under national rules might have higher permissible fees (or effectively exclude VAT since insurance-based). The result is that PEPP – intended to be a competitive new offering – could be handicapped by its own regulations in competing against local pension products. Such distortion does not benefit consumers in the long run; it simply means PEPP fails to thrive, and savers stick with (or providers stick to) potentially higher-cost or less portable national solutions.
- **Level Playing Field Principle:** At a higher level, EU financial regulation strives for neutrality and fairness so that product providers compete on cost-efficiency and quality, not on regulatory arbitrage. By analogy, consider how MiFID II and PRIIPs regulations aim to standardize cost disclosures so that one product is not hiding costs that another must show. Here, the PEPP cost cap seeks to instill cost discipline, but if it inadvertently favors one business model over another, it violates the level playing field principle. The **VAT differential is a classic externality** – unrelated to the pension service itself – and thus should be taken out of the competitive equation. Even the VAT Directive's history shows an awareness of neutrality: Article 135(1)(g) exists to avoid penalizing collective investment vehicles with irrecoverable VAT, thereby promoting neutrality between direct investments and fund investments. Similarly, extending that logic to pensions means removing VAT where it causes imbalance. PensionsEurope and the Association of Paritarian Institutions have

explicitly called for *"non-discriminative policies"* in VAT to ensure comparable pension plans are treated the same for VAT across legal forms. They note that current law *"treats pension plans based on form and the place of residence differently… hampering a level playing field"*. The inclusion of VAT in the PEPP fee cap effectively codifies such differential treatment into the PEPP rules, which is at odds with the spirit of neutrality.

In light of these points, it becomes evident that including VAT in the cost cap is **not just a technical detail, but a policy choice with significant market implications**. It tilts the competitive landscape, potentially depriving consumers of some of the most cost-efficient providers (who might decide against entering the PEPP market). It also conflicts with broader EU objectives of consistency and fairness in the internal market.

It is worth noting that **removing VAT from the cap does not mean consumers pay more without visibility**. Providers would still disclose all fees and taxes to consumers transparently (the PEPP Key Information Document and Benefit Statement will itemize costs). The question here is purely about the **regulatory ceiling**: what counts toward the 1% limit. We argue that VAT can be excluded from that calculation *while still being fully disclosed*, so consumers know what they pay in tax. This approach would align with the treatment of other necessary costs that were excluded (like guarantees), and it would support a healthier competitive market. The cap would then truly reflect the **provider's charges** for managing the PEPP, which is what the regulation originally sought to restrain.

Conclusion and Recommendations

Conclusion: The inclusion of VAT in the 1% cost cap for the Basic PEPP, particularly as it affects investment-firm providers, is an unwarranted extension of the cap that goes beyond the provider's own costs and enters the realm of tax policy. It creates an uneven competitive environment, where providers subject to VAT (and operating in higher-VAT jurisdictions) are materially disadvantaged compared to those who can avoid VAT on their fees (insurance-based providers or those in more favorable jurisdictions). This runs contrary to the objectives of the PEPP framework to encourage diverse providers and foster competition and innovation in personal pensions. It also injects regulatory inconsistency: PEPP savers across the EU do not get the same value from the capped fee due to differing tax components, and PEPP products face harsher constraints than comparable national products, which could undermine PEPP's attractiveness.

Legal and Policy Justification: VAT is a tax ultimately borne by consumers and is outside the control of providers. Treating it as part of the "costs and fees" mischaracterizes its nature. Legal precedents (CJEU cases) have repeatedly drawn lines between what is a provider's service (which can be regulated or exempted) and what is an external element like taxes or guarantees. The PEPP Regulation already separates the cost of guarantees from the cap to ensure fairness. By the same token, VAT (a government-imposed charge) should be separated. Not doing so contradicts the principle of fiscal neutrality in VAT and the level-playing-field rationale that justified the guarantee exclusion. Moreover, excluding VAT from the cap would not violate the letter or spirit of the PEPP Regulation – the law caps "costs and fees" but does not explicitly define whether that includes taxes. EIOPA has the ability to clarify this in technical guidance or through Q&A, interpreting the cap as applying to the **net cost to the consumer that is within the provider's disposition** (i.e. before statutory taxes).

Recommendation: EIOPA should take immediate steps to **exclude VAT from the 1% cost cap calculation** for Basic PEPPs. This can be achieved by:

- **Issuing interpretative guidance or Q&A** stating that for the purposes of the cost cap, "costs and fees" mean charges retained by the provider or associated service providers, and **do not include any taxes levied on those charges** (such as VAT or potential financial transaction taxes). The guidance can analogize to the treatment of the guarantee cost (already excluded) and cite the need to maintain a level playing field. This clarification would empower investment firm providers to charge up to the full 1% in fees *exclusive* of VAT, putting them on equal footing with an insurance provider charging 1% with no VAT.
- **Engaging with the European Commission and co-legislators** to support a formal amendment or clarification in the upcoming PEPP Regulation review (scheduled by 2027). Given EIOPA's own proposal to move toward value-for-money instead of a hard cap, an interim solution is to fix the most distortionary aspect of the cap – its treatment of VAT. An amendment could explicitly state: "For the Basic PEPP cost cap, any value-added tax or analogous sales tax on fees shall not be counted toward the 1% limit." This would remove ambiguity and give confidence to providers in all Member States.
- **Monitoring and ensuring transparency:** If VAT is excluded from the cap, EIOPA can simultaneously ensure that PEPP disclosures clearly show the total cost to the consumer, including taxes. For example, the PEPP Key Information Document could present the 1% capped fee and then note "+ VAT (if applicable)". This way, there is no loss of transparency – consumers see that, say, a 0.95% fee plus 0.19% VAT equals 1.14% total cost in a given country. The emphasis, however, is that the regulatory cap would constrain the provider's fee (0.95% in this example) and not inadvertently force it to drop to say 0.80% to accommodate VAT. We believe consumers are best served by having a robust marketplace of PEPP providers competing to offer quality and efficient management at around 1% + tax, rather than a shrunken field of providers who can survive at ~0.8% net.

By adopting these recommendations, EIOPA would help eliminate a **deterrent to entry for prospective PEPP providers**. This change is especially important for fintechs, asset managers, and pension funds that are not insurance companies – exactly the kinds of new entrants the PEPP initiative hoped to attract to broaden pension coverage in the EU. It would also respond to stakeholder concerns that the all-inclusive cap is too restrictive and *“a barrier to development and market uptake of PEPP across the EU”*.

In conclusion, excluding VAT from the 1% cost cap is a reasonable, fair, and necessary adjustment. It aligns with both **legal precedent** (distinguishing taxes from service fees) and **sound regulatory policy** (ensuring like-for-like competition and consistency). It would remove an unintended bias in the PEPP framework and thereby support the creation of a truly level playing field for personal pensions. We urge EIOPA to implement this clarification promptly, to foster the growth of the PEPP market without further delay and to uphold the principle that savers’ outcomes – not tax technicalities – are at the heart of the PEPP’s cost-efficiency measures.

Sources:

- Regulation (EU) 2019/1238, *on a Pan-European Personal Pension Product (PEPP)* – Art. 45 (cost cap) and Recitals.
- EIOPA Regulatory Technical Standards on PEPP KID and cost cap (2020) – explanatory text on all-inclusive cost cap and guarantee cost exclusion.
- European Commission Q&A on PEPP (2022) – confirms Basic PEPP cost cap at 1% of assets.
- CJEU Case C-464/12 *ATP PensionService* (2014) – VAT exemption for DC pension fund management.
- CJEU Joined Cases C-639/22 etc. *X and others* (2024) – criteria for pension funds as special investment funds (VAT exemption).

- CJEU Case C-235/19 *United Biscuits (Pension Trustees)* (2020) – pension fund management not an "insurance" transaction for VAT if no risk coverage.
- European Commission, Taxation and Customs Union – "VAT is… borne by the final consumer, not by businesses".
- Global VAT rates overview – EU VAT rates range from 17% (LU) to 27% (HU).
- PensionsEurope & AEIP Position Paper (2019) – calls for VAT exemption for all pension funds; notes disparate VAT treatment hinders level playing field.
- PensionsEurope response to EIOPA (2019) – warns all-inclusive 1% cap will hinder PEPP uptake and that national products not capped could outperform.
- European Pensions (Nov 2024) – report on first PEPP (Finax) fee structure (0.6% + VAT = 0.72%), highlighting inclusion of VAT under current cap.
- EIOPA Staff Paper on PEPP Future (Sept 2024) – acknowledges need for scale under 1% cap, proposes focusing on value-for-money over hard cap; notes lack of uniform tax treatment limiting PEPP uptake and suggests equalizing tax treatment for PEPP.

Supplement: Classification of PEPP Services as Electronic Services

To ensure regulatory coherence and simplicity in VAT treatment once VAT is excluded from the PEPP cost cap, it is appropriate and legally defensible to classify digital PEPP services—particularly those provided by investment firms via web or mobile applications—as "electronic services" under the VAT Directive (2006/112/EC, Article 58 and Annex II, as defined in Implementing Regulation (EU) No 282/2011, Article 7).

Definition:
Under EU VAT law, "electronic services" include services delivered over the internet or an electronic network, the nature of which renders their supply essentially automated, involving minimal human intervention, and impossible to ensure in the absence of information technology.

Modern investment firm-based PEPPs—especially those offered by fintech platforms like LifeGoals—satisfy this definition:

- Account setup, contribution, and portfolio selection are done entirely online;
- Investment management is algorithmic or digitally managed, involving automated rebalancing, risk profiling, and reporting;
- Periodic statements, KIDs, and customer service are delivered via apps or digital dashboards.

Implications of Electronic Service Classification

- Harmonized Place of Supply Rules (Article 58): Classifying PEPP-related services as electronic ensures the place of supply for VAT purposes is the location of the consumer (i.e. the saver). This is crucial for cross-border consistency, particularly when a provider operates from one Member State but serves clients across the EU.

- VAT One-Stop Shop (OSS) Scheme Eligibility: Providers of electronic services to EU consumers can use the OSS scheme, simplifying compliance by allowing the provider to declare and remit VAT in one Member State, even when serving savers across borders. This would reduce administrative barriers for PEPP providers offering cross-border accounts, a core goal of the PEPP Regulation.
- Legal Precedents Supporting Automation = Electronic Service: The CJEU has held in *Geelen (C-568/17)* that where services are delivered via automated digital tools and have no meaningful human input, they should be treated as electronic services—even where the underlying content (e.g., video or financial data) might also have other characteristics. Similarly, *Kozuba Premium Selection (C-478/19)* confirms that the method of supply (digital vs manual) governs the VAT classification.
- Clarity and Fairness in VAT Application: By treating PEPP management as an electronic service:
    - VAT obligations can be clearly defined and automated;
    - A uniform standard rate of VAT is applied at the point of consumption;
    - Cross-border barriers are minimized;
    - Providers are not required to register in every country, supporting the PEPP's pan-European ambition.
- Consumer Transparency: Including VAT as an electronic service improves disclosure: it becomes a clearly itemized tax, distinct from management fees, visible in the PEPP Key Information Document (KID) and benefit statements.

Conclusion and Recommendation

In addition to excluding VAT from the PEPP 1% cost cap, EIOPA should formally recommend that digital PEPP services be treated as electronic services for VAT purposes. This promotes legal clarity, tax neutrality, and ease of compliance—strengthening the viability of PEPPs as a scalable, cross-border pension solution. It also aligns with the broader EU goal of supporting digital finance and reducing regulatory friction for innovative providers.