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Mr Jean-Marc Delporte
Chairman
National Accounts Institute
City Atrium C
Rue du Progrès 50
B-1210 Brussels

Subject: LAK Invest: Real estate transaction in the Flemish Region

References: your letter: T/ICN/2012/010184 of 22 November 2012
our letter: ESTAT D/FL/LFO/JD/lj D(2012) 1773328 of 30 January 2013
your letter: ICN/2013/002481 of 6 March 2013

Dear Mr Delporte,

Thank you for your letter dated 6 March 2013 and for the additional information provided on this transaction.

The issue to be considered is the treatment in national accounts of a real estate transaction performed by PMV, an entity of the Flemish Government.

Herewith, I would like to inform you about Eurostat's view on this case. This view confirms the Eurostat opinion, as communicated to the Belgian statistical authorities on 30 January 2013.

Accounting issue

In 2010, PMV (via its subsidiary PMV re Vinci, classified in S1312) together with Grondbank the Loop has established LAK Invest. PMV re Vinci has 49% of the shares while Grondbank the Loop has 51%. Grondbank the Loop itself is indirectly controlled by the City of Gent.

LAK Invest has constructed an office building in Gent and will remain its legal owner. Upon completion of the building in April 2012, PMV re Vinci has become a 100% owner of LAK Invest. LAK invest will rent out the office building to the Flemish Environmental Agency (VMM) for 27 years with a possible extension of the rental contract for 18 more years.

Via a private placement scheme of 'real estate certificates', the economic ownership and the effective control over the building would be transferred to the certificate holders. The private placement was concluded on 15 December 2012 and was fully subscribed.

Methodological analysis

Firstly, it is Eurostat's view that the long term rental contract between LAK Invest and VMM should be recorded as a financial lease. Although the contract has some characteristics of an

operational lease (no purchase option, maintenance mainly performed by LAK Invest), Eurostat is of the opinion that because of the very long duration of the lease contract (up to 45 years, in the form of 27 years renewable for another 18 years, at the demand of the lessee) it should be recorded as a financial lease.

Secondly, LAK Invest is, in this context, to be considered as an ancillary unit to PMV re Vinci which is classified in the Flemish Government (S1312). The fact that LAK invest won a competitive bid to construct the building does not change this conclusion. ESA95 does not exclude ancillary units from participating in competitive bids.

This entails that gross fixed capital formation needs to be recorded in the books of the Flemish Government for the value of the building corresponding to its phases of construction from 2011 onwards. In the Belgian April 2013 EDP notification this recording has already been implemented.

Thirdly, in the documents provided by the NAI and PMV, it is argued that the economic ownership of the building would be transferred to the purchasers of the real estate certificates. The purchasers can, in various majorities depending on the type of decision, decide on issues relating to economic ownership (sale of the building, expansion, refurbishments etc.). It was also demonstrated that the entities which have purchased the real estate certificates at the end of 2012, belong in a majority of the private sector.

There is no explicit maturity for the real estate certificates. PMV explains in the emission prospectus that the legal owner LAK Invest NV (PMV) will take the initiative for a potential sale between years 20 and 30 of the contract depending on market conditions (at page34 it is mentioned that the sale is in fact foreseen after 27 years, which correspond to the length of the lease). During this period, the sale is at the initiative of LAK invest.

Moreover, the fiscal treatment at national level of the real estate certificates as indicated by PMV is comparable to the treatment of debt instruments rather than to ownership (equity).

Furthermore, as the lease contract has a duration of more than 9 years (27 years, renewable up to 45 years), Eurostat understands that the lessee (VMM) can protect itself against eviction by a potential new owner of the building, via a simple registration of the contract at a mortgage office (hypotheekkantoor). This means that it is highly unlikely that the real estate certificate holders, even if the appropriate high majority could be found, would be able to actually force the sale of the building. Any possible purchaser of the building would not be able to modify the lease for a very long period (potentially up to the year 2057).

Even if VMM would waive its right for the renewal after 27 years, this duration in se roughly corresponds to the economic life span of the building which is sufficient to qualify it as a financial lease (ESA95 annex II.4).

From the documentation provided, it is evident that the building is a purpose-built complex of office space and laboratories which was specifically designed for use by VMM.

Finally, given all the above, any risk that the holders of the certificate will not perceive an income resulting from the lease of the building, seems to be practically nil, given also that the lessee is a government agency leasing the building from a government unit.

The elements outlined above lead Eurostat to maintain its preliminary view that the real estate certificates should be considered as debt instruments (F3) and hence do not transfer in reality the economic ownership of the building to their holders. The building should therefore remain in the books of the legal owner which is the Flemish government via PMV and LAK Invest.

Conclusions

1. The long term rental contract between LAK Invest and VMM is to be recorded as a financial lease.
2. Gross fixed capital formation (P51) needs to be recorded in the books of the Flemish Government for the value of the building corresponding to its phases of construction from 2011 onwards.
3. The sale of the real estate certificates, even though they were purchased by entities of the private sector, do not in reality transfer the economic ownership of the building out of the books of the Flemish Government.

Procedure

This view of Eurostat is based on the information provided by the country authorities. If this information turns out to be incomplete, or the implementation of the operation differs in some way from the information presented, Eurostat reserves the right to reconsider its view.

In this context, we would like to remind you that Eurostat is committed to adopt a fully transparent framework for its decisions on debt and deficit matters in line with Council Regulation 479/2009, as amended, and the note on ex-ante advice, which has been presented to the CMFB and cleared by the Commission and the EFC. Eurostat therefore publishes all official methodological advice (ex-ante and ex-post) given to Member States on the Eurostat website. In case you have objections concerning the publication of this specific case, we would appreciate if you would let us know before 13 May 2013.

Yours sincerely,



François Lequiller
Director