ACCOUNTANCY EUROPE.

MODERNISING VAT

EU Policy Developments

FACTS.

TAX

MAY 2020

HIGHLIGHTS

This fact sheet provides an overview of current EU initiatives in respect of VAT, for persons with a working knowledge of the European VAT system.

These proposals have different objectives. Some aim to improve the competitiveness of the Digital Single Market and others to increase the cross-border trading activity of smaller businesses. Some provisions address weaknesses or inequalities in the current VAT system. Finally, Definitive Regime proposals have been introduced after over a quarter of a century of discussions and negotiations to modernise the European VAT system and make it more effective in the fight against fraud.

The fact sheet sets out the proposals according to themes and provides a summary of the current situation, the changes agreed or proposed, and an indication of the potential impact of these changes on businesses affected.

It will be clearly marked whether the proposals have been agreed or are still under negotiation. It is intended to update this document as and when new proposals are made, or existing proposals are agreed.

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INTRODUCTION

The last few years have seen an unusually large number of EU VAT legislative proposals. Some are proposed solutions to urgent issues; some are designed to improve the competitiveness of the Single Market and others are the culmination of many years' work leading towards fundamental reforms.

Taken together, they could represent a fundamental change to the European VAT system that will affect all EU businesses that trade cross-borders.

These proposals require unanimity from the Member States to become law - this process is often problematic as Member States have their own priorities and concerns. Some changes have already been approved but it is possible that some will never be approved.

PURPOSE AND AUDIENCE

This fact sheet is intended to be a high-level summary of the legislative proposals and will be updated as the files progress through negotiation. Once the legislation has been agreed, most references to the original proposals and changes made during negotiation will be removed, unless there are significant changes.

The topics covered are often quite complex, and this publication is targeted at people who have a working knowledge of the European VAT system. Links to the draft and final legislation will be provided. Where the file is still undergoing negotiations, the implementation dates shown will be target dates, but the actual effective date of implementation may be considerably later, depending on the complexity of the issues.

LEGISLATION SUMMARY

The main legislative proposals recently have been:

Confirmed	In negotiation
December 2016 – Modernising Cross-Border E-Commerce **December 2016 – A Generalised Reverse Charge Mechanism** **October 2017 – Quick Fixes** **December 2019 - Detailed Technical measures for supplies facilitated through electronic interfaces** **February 2020 - Special Schemes for SMEs** **February 2020 - Detailed Technical measures for the transfer of payment data**	**October 2017 – Proposals for the Definitive Regime** **January 2018 – Liberalising VAT rates** **May 2018 – Detailed Technical Measures for the Definitive VAT System**

One aspect of many of these measures is to extend the scope of the Mini-One Stop Shop (MOSS) to cover goods and services other than electronic services. Should these proposals be adopted in their entirety, the options available to businesses for reporting and paying VAT on supplies to other Member States will be greatly increased. We have prepared a graphic to summarise these options, which is available **here**.

Broadly, the proposals cover the following themes:

- simplification measures
- anti-fraud measures

- fundamental changes to the European VAT system
- VAT rates measures

The document will further divide these themes between legislation that has been agreed and that still undergoing negotiation.

The document will outline the current position, describe the main proposed changes and indicate the degree of progress that has been made for each.

This paper is based on proposed amendments to Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax[1] ('the VAT Directive') and supporting regulations. All reference to legislation refers to the VAT Directive, unless otherwise stated. Changes to the VAT Directive must be transposed into national legislation and their impact will differ between Member States due to existing national VAT legislation.

A version of Council Directive 2006/112/EC that includes the amendments should the proposed changes be enacted is also available.[2]

[1] Consolidated version is available from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:02006L0112-20160601
[2] https://ec.europa.eu/taxation_customs/sites/taxation/files/vat_directive_with_details_for_the_definitive_system_en.pdf

SIMPLIFICATION MEASURES

E-COMMERCE

These simplification measures aim to reduce barriers to cross-border e-commerce, as part of the Digital Single Market Strategy for Europe. An EU threshold to allow certain suppliers to use home country rules will be introduced with effect from 1 January 2019 to assist micro-businesses with issues arising from the introduction of the Mini-One Stop Shop (MOSS) for cross-border supplies of electronic services. It is hoped that cross-border distance sales of goods to consumers will be encouraged by extending the MOSS to cover such supplies from 2021.

Measures outlined in this section	Implementation date
€10 000 threshold for cross-border supplies of electronic services to all EU States[3]	1 January 2019
€10 000 threshold for cross-border supplies of goods and services[3] Existing distance selling rules withdrawn	1 January 2021
Simplified evidence requirements for cross-border electronic services[4]	1 January 2019
Home country invoicing rules for cross-border electronic services[3]	1 January 2019
No invoices required for distance sale of goods[3]	1 January 2021
Extension of (M)OSS to cover cross-border supplies of goods[3]	1 January 2021
Extension of (M)OSS to imports with a value of less than €150 at point of sale by sellers or market places[3]	1 January 2021
Errors can be corrected on subsequent OSS returns[3]	1 January 2021
Simplified arrangements for declaration and payment of import VAT where OSS not used[3]	1 January 2021
Co-operation between Member States on VAT audits[5]	1 January 2021

[3] Council Directive (EU) 2017/2455 5 December 2017
[4] Council Implementing Regulation 2016/0372 (NLE) amending Implementing Regulation (EU) No 282/2011 28 November 2017
[5] Council Regulation 2016/0371 (CNS) amending Regulation (EU) No 904/2010 28 November 2017

€10 000 THRESHOLD FOR CROSS-BORDER SUPPLIES OF GOODS AND SERVICES – SIGNIFICANT SIMPLIFICATION FOR MICRO-BUSINESSES AND START-UPS

Current situation

Cross-border electronic services to non-taxable persons – suppliers must either register for VAT in each Member State in which they make sales or make use of the simplified reporting procedure provided by the Mini-One Stop Shop (MOSS).

Cross-border supplies of goods to non-taxable persons – suppliers must register in each country where they make supplies and charge VAT at the rate applicable in that country unless the total value of such supplies falls below the distance selling thresholds set by that country.

The changes will come in two stages.

Stage one - changes from 1 January 2019. Cross-border electronic services will be treated as domestic sales. This means that the supplier applies its home country's VAT rules and pays any VAT due to its national tax authority. Member States must give the supplier the option to apply the normal place of supply rules.

Conditions

- **location:** The supplier must be established or resident in only one Member State and the consumer must be a non-taxable person located in another Member State
- **sales threshold:** VAT exclusive annual sales from electronic services into all Member States must not exceed €10 000 in both the current year and the preceding year. If the threshold is breached during a calendar year, normal place of supply rules apply (i.e. taxation in the Member State of consumption)

Stage two - changes from 1 January 2021. This scheme is extended to all supplies of **services to non-taxable persons** and **goods** despatched or transported to another Member State. Again, the supplier can opt for the normal place of supply rules to apply.

The **conditions** for acceptance are the same as for the changes affecting the supply of electronic services.

The impact:

Affected businesses will not be required either to register for VAT in other countries or to use the MOSS\OSS

Other benefits will be country specific:

- businesses located in Member States that have VAT registration thresholds in excess of €10 000 may not have to register or pay VAT
- in other Member States, affected businesses may have simplified registration, reporting and payment procedures

SIMPLIFIED EVIDENCE REQUIREMENTS FOR CROSS-BORDER ELECTRONIC SERVICES

Current situation

Two non-contradictory items of evidence – such as the billing address of the payment card used by the customer, the country code of a mobile phone SIM card etc. - are required to determine the location of the customer (and thereby the place of supply) for certain electronic services.

From 1 January 2019: A single item of evidence is required to establish the customer's permanent address or residence.

Conditions

This applies where the total value of electronic services made by a business does not exceed €100 000 in both the current and preceding calendar year. It applies to all electronic services except those supplied through:

- fixed land lines
- mobile networks
- a decoder or similar device

The impact:

Being able to use a single item of evidence to establish the location of the customer should be a significant reduction in administrative burden for businesses.

Requiring two non-contradictory items of evidence is considered very burdensome, particularly for smaller businesses that may not have the resources for sophisticated software solutions.

HOME COUNTRY INVOICING RULES FOR CROSS-BORDER ELECTRONIC SERVICES

Current situation

The invoicing rules that are applied to the supply of goods or services are typically those of the place where they are delivered (with limited exceptions). For cross-border transactions, this would typically be the country in which the consumer is located.

From 1 January 2019: the rules applying to invoicing of certain electronic services shall be those of the country where the supplier is registered to use the MOSS.

As mentioned above, additionally for **goods** supplied under the OSS (Section 3 - Chapter 6, Title XII), an invoice will not be required from 1 January 2021.

The impact:

Businesses will no longer need to know and comply with the invoicing requirements of every Member State into which they make supplies. This will help streamline the invoicing procedure for many companies, especially SMEs.

It should be noted that these changes apply to businesses making use of any of the *special schemes* referred to in Chapter 6 of Title XII of the VAT Directive – not just to electronic services. Consequently, when the MOSS is extended from 1 January 2021 the home country rules for invoicing will also apply to distance sales of goods and other services.

EXTENSION OF (MINI) ONE STOP SHOP TO COVER CROSS-BORDER SUPPLIES OF GOODS - SIMPLIFIES DISTANCE SALES RULES FOR EU AND 3RD COUNTRY SUPPLIERS

Current situation

Cross-border supplies of goods to non-taxable persons – suppliers must register in each country where they make supplies and charge VAT at the rate applicable in that country unless the total value of such supplies falls below the distance selling thresholds set by that country.

Goods imported from third countries – VAT is charged in the Member State where the goods enter the EU.

Cross border supplies of other services to non-taxable persons – generally, suppliers must account for VAT in the country in which the service has been supplied. This would normally be the Member State where the supplier is established but if the services are supplied in a different Member State (i.e. services are supplied where performed) then the supplier must register for VAT in that Member State.

Cross-border supplies of goods to taxable persons with a valid VAT number – the supplier does not charge VAT.

Changes from 1 January 2021. Current distance selling rules (Art 34) will be withdrawn. The MOSS becomes the One Stop Shop as the *special schemes* under Sections 2 and 3 of Chapter 6 of Title XII will be extended to cover:

distance sales of goods and services from suppliers in one Member State to another Member State (Section 3 - Chapter 6, Title XII)

services supplied by taxable persons not established in the EU (Section 2 - Chapter 6, Title XII)

distance sales of goods imported from 3rd countries in consignments with an intrinsic value of up to €150 (Section 4 - Chapter 6, Title XII)

Consequently, where the criteria are met, suppliers will have the option to use a single electronic portal to register and to declare and pay the VAT due in all Member States within which they make supplies. They will still have the option to register for VAT in every country in which they operate.

For each of these *special schemes* based around the OSS, the deadline for the submission of the VAT return has been extended from 20 days to 1 month following the end of the tax period covered by the return.

Additionally, for each of the *special schemes*, it will be possible to correct errors on subsequent returns - the current rules require that the original return is corrected. The correction must be made within 3 years of the date on which the initial return was due and specify the relevant Member State of consumption, the tax period and the amount of VAT of the correction.

No invoice will be required for the **distance sales of goods** using the *special scheme* set out in Section 3 Title XII, Chapter 6.

At this stage, it still will not be possible for the supplier to deduct input VAT incurred in the Member State of consumption from output VAT declared through the OSS (albeit the input VAT can be recovered in accordance with Council Directive 2008/9/EC). Provisions discussed in the Definitive Regime section may lead to recovery of input vat through the OSS in the future.

In some circumstance, a taxpayer must be registered in a Member State for activities not covered by the OSS whilst also making supplies covered by the OSS in that same Member State. If this this is the case, the taxpayer must offset the VAT arising from these OSS activities from VAT due on the non-OSS activities.

Additional more detailed rules covering reporting requirements, identification, exclusion, VAT returns and payments have been proposed in respect of the *special schemes* (new and amended Articles 57a to 63c Council

Implementing Regulation No 282/2011 Council Directive 2019/1995 and Council Implementing Regulation 2019/2026 -see below).

Conditions for distance sales of goods and services from suppliers in one Member State to another Member State (Section 3):

- the rules of this scheme are based on existing Articles 369a to 369k. Existing references to ‘telecommunications, broadcasting or electronic services’ have been replaced with ‘intra-Community distance sales of goods and any taxable person not established in the Member State of consumption supplying services’
- the scheme applies to all distance sales of goods and services to **non-taxable** persons
- a single quarterly VAT return is used to record distance sales of both goods and services. The return will detail the total value of supplies made and the VAT due in respect of every Member State of consumption
  - from 1 July 2022, businesses with an annual EU turnover exceeding €2 500 000 may have to submit monthly returns, by the end of the month following the relevant tax period (this provision is not yet agreed[6])

Conditions for services supplied by taxable persons not established in the EU (Section 2):

- the rules of this scheme are based on existing Articles 368 to 369. Existing references to ‘telecommunications, broadcasting or electronic services’ have been replaced with ‘services’
- this scheme is available to any supplier not established in the EU who supplies services to a non-taxable person in the EU
- a quarterly VAT return is required, whether or not any relevant services have been provided in the period

Conditions for Distance sales of goods imported from 3rd countries in consignments with an intrinsic value of up to €150 (Section 4):

- this is a completely new scheme, described in Articles 369l to 369w
- it covers the distance sale of all goods imported from third countries in consignments whose intrinsic value does not exceed €150. It cannot include goods subject to excise duties (e.g. tobacco, alcohol etc.)
- the scheme can be utilised by taxable persons:
  - established in the EU
  - not established in the EU but who are represented by an intermediary established in the EU
  - established in a third country with which the EU has negotiated an agreement on mutual assistance

A list of applicable third countries is to be provided at a later date by the European Commission

- for supplies under this scheme, VAT becomes chargeable when the payment has been received
- registration and deregistration requirements for the taxable person or intermediary are similar to the two special schemes in Sections 2 and 3
- monthly VAT returns are required, whether or not any relevant supplies have been provided in the period
- the supplier or intermediary must retain transactional records for 10 years from the end of the year during which the transaction occurred. These records must be made available electronically on request to both the Member State of identification and of consumption

[6] Proposed revised Art. 369f(2) Com(2018) 329 Final

The impact:

Affected businesses will not be required to register for VAT in all the Member States of consumption for such supplies and will be able to deal with all their VAT reporting and payment obligations through a single electronic portal, presumably easing language issues.

Distance sellers of goods imported from third countries in consignments not exceeding €150 despatched directly from a third country will benefit from a simplification of import procedures. The VAT becomes due when the payment is accepted rather than at the time of import, which has potential cash flow advantages for importers.

SIMPLIFIED ARRANGEMENTS FOR DECLARATION AND PAYMENT OF IMPORT VAT WHERE OSS NOT USED

Current situation

Except where covered by the existing low value consignment relief, VAT is usually charged in the country of entry into the EU when custom clearance procedures are completed.

Changes from 1 January 2021. Special arrangements to simplify the declaration and payment of import VAT where an importer chooses not to use the OSS for the import of goods in small consignments. These mirror many of the simplifications available under the Section 4 *special scheme*.

Under this scheme VAT would not be charged when the goods are presented to customs but rather is paid by the final consumer on receipt of the goods.

Member States have the **option** to permit that the standard rate of VAT of the Member State of importation is that charged to the final consumer in the Member State of consumption.

The customer has the **option** to choose the standard import procedure where the Member State of importation does not allow the application of reduced rates under this scheme.

Conditions

- the intrinsic value of the consignment in question must not exceed €150 and the goods must not be subject to import or excise duties
- the person importing the goods must take steps to ensure that the VAT is paid by the consumer
- the VAT collected under this scheme is reported through a monthly electronic declaration and is due for payment by the end of the month following the importation. Adequate records must be kept, based on the requirements of the Member State of importation

The impact:

This scheme should speed up the importation and delivery of goods to the final consumer.

It is also likely to result in increased reporting obligations for couriers, national post services and customs agents who will have to have systems in place to record and report the VAT arising when the customer pays for the imported item.

CO-OPERATION BETWEEN MEMBER STATES ON VAT AUDITS

Current situation

Where suppliers have registered for VAT in Member States other than their Member State of identification, they are potentially subject to audit on the same supplies by both the Member State of identification and the Member State of consumption.

Changes from 1 January 2021. Rules have been introduced covering access to taxpayer information and the opening of an administrative enquiry. These rules require Member States to communicate to each other before contacting the taxpayer. The contact with the taxpayer will primarily be in contact with the Member State of identification. The Member State of consumption will not deal directly with the taxpayer.

Access to the records held by a taxable person or intermediary – the request is first made by the Member State of consumption to the relevant body in the Member State of identification.

On receipt, the Member State of identification must transmit the request electronically and without delay. The taxable person or intermediary must submit the requested records electronically via a standard form. These must then be immediately passed on to the Member State of consumption.

If no response has been received within 30 days of the request, the Member State of consumption can take any action in accordance with its national legislation to obtain the information.

Administrative enquiries - where the Member State of identification opens an enquiry into a taxpayer or intermediary, it is obliged to inform all other Member States. Where a Member State of consumption wants to open an enquiry, it must first contact the Member State of identification and if the need for an enquiry is agreed, the Member State of identification must inform all other Member States. These requirements do not prevent Member States taking any action that is in accordance with their own legislation.

Conditions

These rules only apply to taxpayers or intermediaries using the special schemes for distance sales – i.e. the OSS. These provisions are part of an extension to existing administrative co-operation rules required by the increased requirements for information transferred between Member States arising from the increased scope of the OSS over the MOSS.

The impact:

This will reduce the likelihood of simultaneous requests for information or enquiries from the tax authorities of multiple Member States.

QUICK FIXES

These are short-term proposals to alleviate certain practical difficulties encountered by businesses in cross-border transactions until the Definitive Regime provides the long-term solution.

Measures outlined in this section	Status	Implementation date
Simplified treatment for call-off stock[7]	Agreed	1 January 2020
VAT exemption for certain intra-EU transactions[7]	Agreed	1 January 2020
Standard criteria for chain transactions[7]	Agreed	1 January 2020
More clarity for the documentary evidence required for the VAT exemption for intra-EU supply of goods[7]	Agreed	1 January 2020
VAT exemption for groups of independent persons that pool services and share costs[7]	Council negotiation	1 January 2020*

* Application date from the draft proposals

There is disagreement on the proposal for pooled services, which was introduced during Council negotiations. This is discussed in further detail in the section covering simplification measures that have not been approved.

[7] Council Directive 2017/0251(CNS) amending Directive 2006/112/EC, Council Implementing Regulations 2017/0249(NLE) and 2017/0248 (CNS) https://www.consilium.europa.eu/media/36518/st12564-en18.pdf

SIMPLIFIED TREATMENT FOR CALL-OFF STOCK

Current situation

'Call-off stock' describes the arrangement where suppliers deliver inventory to a customer's premises, or to a location close to the customer's premises, but keeps legal title of the goods until the customer calls-off the stock for use or sells it. It is common in many retail and manufacturing businesses. It doesn't just apply to larger businesses – smaller suppliers may provide call-off stock to large retailers or wholesalers to promote new products or enter into new markets.

Call-off stock is differentiated from 'consignment stock' because in call-off stock transactions the supplier knows the identity of the customer at the time when the goods are despatched.

Where call-off stock transactions involve a transfer of goods to another Member State, the supplier is deemed to have made a VAT exempt supply of goods in the Member State of departure. The arrival of the goods gives rise to an intra-Community acquisition made by the business that transferred the goods which is – in general - subject to acquisition VAT in that other Member State.

The business that has transferred the goods is obliged, as a rule, to be identified for VAT purposes in the Member State of arrival to be able to declare the intra-Community acquisition in its VAT return. When the goods are taken out of the stock and delivered to the acquirer a second supply occurs, the place of supply of which is the Member State in which the stock is situated.

Simplification measures regarding these transactions have been introduced by some Member States but they are not consistent across the EU.

Changes from 1 January 2020. The call-off stock arrangements are treated as a single exempt supply in the Member State of dispatch and a single intra-EU acquisition in the Member State where the stock is subsequently situated. The provisions are contained in new Article 17a, a new Para 3 of Article 243 and a replacement to Article 262.

Example:

Car Manufacturer M in Member State M uses electrical components produced by supplier S in Member State S. The manufacturing occurs "just in time", i.e. the components must be at hand when needed. M wants to remain flexible with respect to the production and does not want to acquire large amounts of components which may become obsolete if production changes. Therefore, M arranges with S that the latter keeps – at M's expense – a stock of various components on M's premises, to which M has access.

Under the old rules, S would have recorded an exempt Intra-Community despatch in Member State S and an Intra-Community acquisition of goods in Member State M. When M calls-off stock, S would account for a domestic supply in Member State M and M would account for a domestic acquisition. S would have to register for VAT in Member State M in order to comply with its reporting and payment obligations.

Under the new rules, the no supply takes place on the initial despatch of goods from Member State S to Member State M. At the point M calls-off stock, S records an exempt despatch and M an Intra-Community acquisition for the goods called-off.

Conditions

- the goods are despatched by a taxable person to another Member State and another taxable person is entitled to take ownership of the goods in accordance with an existing agreement
- the taxable person despatching the goods is not established in the Member State to which the goods are transported
- the taxable person despatching the goods knows the identity and VAT identification number of the customer and records this information, together with details of the transaction, in a relevant register
- if the transported goods have not been supplied to the taxable person due to receive the goods within 12 months of despatch, these arrangements will cease to apply. In such circumstances, a supply of goods for consideration is deemed to take place on the day following the expiry of the 12-month period
- if the goods are supplied to a different person other than that originally intended, these arrangements will cease to apply, unless:
  - the conditions specified above (i.e. those in para 2 Article 17a) are met and
  - the substitution is recorded by the supplier in the register
- both taxable persons keep a register of all goods supplied under these arrangements
- the taxable person despatching the goods shall submit a recapitulative statement providing the VAT identification number of the taxable person to which it supplies goods under the call-off stock arrangements

The impact:

These arrangements will provide a reduction in administrative burdens for the supplier as the supplier will not have to be identified in every Member State where goods have been shipped as part of the call-off arrangement – subject to the time limits above.

VAT EXEMPTION FOR CERTAIN INTRA-EU TRANSACTIONS

Current situation

An interpretation by the European Court of Justice states that the VAT identification number is a *formal condition* for the supplier to exempt an intra-EU supply. Failure by the supplier to check for a valid VAT identification number of the customer and failing to record it on the VAT Information Exchange System (VIES), can both result in administrative penalties but not the refusal of the exemption (under article 138 of the Directive) itself.

Changes from 1 January 2020. It will be a *substantive condition* (i.e. a requirement) for the application of the exemption that the acquirer must be registered for VAT in different Member State from that where the dispatch of the goods begins.

Furthermore, the correct filing of the VIES listing will be a *substantive condition* for the exemption.

The provisions are contained in a revised Para 1 and a new Para 1a of Article 138.

Conditions

The supply of goods despatched to destinations from one Member State to another are automatically exempt where all of the following apply:

- the goods are supplied to another taxable, or a non-taxable legal person acting as such, in another Member State from which the dispatch begins the recipient of the goods has been identified for VAT in another Member State from that where the goods are dispatched and has provided the supplier with their VAT identification number

reference is made to the person acquiring the goods in the recapitulative statement

The impact:

This is not a simplification measure but rather an anti-fraud measure. There is no practical difference in what suppliers must do - the supplier will still have to verify the status of their customer through the VIES before applying the exemption. However. failure to correctly follow the procedures could lead to the effective taxation of the exempt supply in the country of departure rather than just the imposition of administrative penalties.

STANDARD CRITERIA FOR CHAIN TRANSACTIONS

Current situation

'Chain transactions' describe the situation where business A contracts with business B to supply goods, but business B has contracted to supply the same goods to business C. The goods are then transported directly from business A to business C, with any one of the three parties to the arrangements organising the transport. In such circumstances, A may or may not be aware that C is the final consumer of the goods.

The arrangements can be considerably more complex than that described above, with additional businesses being in the chain and circumstances where the goods end up in a different Member State to any of the parties involved in the transactions.

In the context of this simplification, there must be a cross-border supply of goods. Currently, where there are successive supplies of goods subject to a single intra-EU transport, only one supply should benefit from the VAT exemption on intra-EU supplies. The other supplies should be taxed. There are currently different approaches to chain transactions within the EU which may lead to double or non-taxation.

Changes from 1 January 2020. Providing that certain conditions are met, it is proposed that the exempt intra-EU transport will be that made by the provider of the goods to the intermediary operator. If the conditions are not met, then the exempt intra-EU transport will be ascribed to be that between the intermediary operator and the customer.

The provisions are contained in a new Article 36a.

Conditions

the intermediary operator communicates the name of the Member State of arrival of goods to the provider of the goods

the intermediary operator must communicate to the supplier the VAT identification number that has been granted to the intermediary operator by the Member State from which the goods are to be despatched

The impact:

This measure will provide greater legal certainty for those suppliers engaged in intra-EU chain transactions. However, intermediary operators which are not registered for VAT in the EU cannot benefit from these measures.

MORE CLARITY FOR THE DOCUMENTARY EVIDENCE REQUIRED FOR THE VAT EXEMPTION FOR INTRA-EU SUPPLY OF GOODS

Current situation

There are no specific requirements in the VAT Directive for the records required to prove that goods have been dispatched from one Member State to another, and thereby qualify for the VAT exemption for intra-EU supplies of goods. Consequently, Member States have introduced their own divergent requirements.

Changes from 1 January 2020. From that date, it is proposed that there will be two rebuttable presumptions that goods have been transported outside of one Member State to another Member State.

Conditions

The two rebuttable presumptions are:

- where the supplier arranges transport, the supplier indicates that the goods have been dispatched from their Member State and has either
    - two items of non-contradictory evidence specified in para 3(a) of Article 45a of Council Implementing Regulation (EU) No 282/2011, such as bills of lading, an invoice from the goods carrier and other documents relating to the transport or
    - a single item of non-contradictory evidence specified in para 3(a) plus another piece of non-contradictory evidence specified in para 3(b). The pieces of evidence in all cases must be from parties independent of the customer and supplier and from the organisations that provide the other piece of evidence. Evidence under para 3(b) includes relevant insurance documents, official documents issued by a public body confirming arrival of the goods, or a receipt from the warehouse of destination confirming arrival
- where the customer arranges transport, the vendor has both
    - a written statement from the acquirer stating that the goods in question have been transported by or on behalf of them, which states the Member State to which the goods are destined and other information about the transport, and
        - two items of non-contradictory evidence specified in para 3(a)
        - a single item of non-contradictory evidence specified in para 3(a) plus another piece of non-contradictory evidence specified in para 3(b)

A tax authority may rebut a presumption in either circumstance.

The impact:

This measure will reduce the administrative burden and provide greater legal certainty for those suppliers engaged in intra-EU supplies of goods.

VAT EXEMPTION FOR GROUPS OF INDEPENDENT PERSONS THAT POOL SERVICES AND SHARE COSTS

This was not agreed at the Economic and Financial Affairs Council meeting of 2nd October 2018 and the Commission will submit a revised proposal in the future.

Current situation

Where groups of non-taxable persons or persons making exempt supplies pool resources to provide a common service (e.g. development of an IT system), the common service could result in a taxable supply and thereby result in irrecoverable input VAT for all the members that pool the resources.

Changes from 1 January 2020. If agreed, independent groups of persons acting together will be able to share costs on projects without VAT being charged on the members.

Conditions

- the individual persons or organisations must either be non-taxable persons or carry on activities that are exempt from VAT
- the joint project obtains the exact reimbursement of each member's share of the costs incurred – i.e. the joint project does not intend to generate its own profit
- both the independent group of persons rendering the services and the members must be established in the same Member State
- the exemption should not result in a distortion of competition

The impact:

This would be a considerable cost-saving measure for banking and financial services companies in particular, who have been lobbying heavily for such a change[8].

[8] Due to the decisions of ECCJ in cases DNB Banka (C32615), Aviva (C-605/15) and Commission against Germany (C-616/15)

SPECIAL SCHEMES FOR SMES[9]

These are amendments to and expansions on existing schemes to alleviate the administrative burden on smaller entities that arise from cross-border VAT issues. The most significant measure is the proposal that national exemptions and reliefs should also be available to businesses registered in other Member States. The final Council Directive was issued on 18 February 2020, with the simplification measures substantially watered down.

Measures outlined	Status	Implementation date
New VAT exemption thresholds available to all EU businesses	Agreed	1 January 2025
New simplification measures for exempt businesses	Partially agreed – some measures dropped	1 January 2025
Raised cash accounting threshold	Agreed	1 January 2025

NEW VAT EXEMPTION THRESHOLDS AVAILABLE TO ALL EU BUSINESSES

Current situation

National VAT exemptions for smaller entities supplying goods and services are only available to taxable persons established in the Member State in question. Additionally, national exemptions vary considerably within the EU.

The VAT Directive currently permits Member States to implement *graduated tax relief*, but this has not been widely adopted.

Changes from 1 January 2025. Member States have the **option** to implement a national VAT exemption threshold, for both the supply of goods and services, up to a harmonised maximum of €85 000 (Article 284(1)). Any threshold implemented by a Member State will apply to any business established within the EU if the relevant criteria are met. When using the exemption, a taxable person is not required to register for VAT and submit a VAT return for the supplies covered by the exemption for any Member State in which they are not established. They are not required to file a VAT return for the supplies covered by the exemption in the Member State of establishment.

Member States will be permitted to set different thresholds for different business sectors, provided that sectoral thresholds do not exceed the EU limit of €85 000 and that businesses that fall under more than one sector can only use one threshold.

Taxable persons cannot use the exemption if their turnover in the previous calendar year exceeded the Member State threshold – Member States have the option to extend this period to two years.

Normally, if the turnover of a small enterprise exceeds the Member State annual turnover threshold by 10% (the 'ceiling') or less in a particular calendar year, it may continue to use the exemption in that calendar year (Article 288a). Member States have the option to:

[9] Council Directive 2020/285 - Council Directive amending Directive 2006/112/EC on the common system of value added tax as regards the special scheme for small enterprises https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32020L0285&from=en

Have no ceiling, which means that exemption would cease to apply immediately in the calendar year when the Member State annual threshold was exceeded, or

Increase this ‘ceiling’ of 10% to 25%, or

Allow the taxable person to continue to benefit from the exemption without ceiling during the calendar year when the threshold is exceeded.

This is a substantial reduction to the original proposals, where the ceiling was set at 50% of the Member State’s annual turnover threshold, with no Member State options.

In all cases, the exemption is withdrawn if during any calendar year the €100 000 Union turnover threshold is exceeded.

Graduated tax relief, which only a few EU countries implemented, is withdrawn.

The details of all Member State provisions will be published on the European Commission’s website.

Conditions

the exemption applies only to enterprises established within the EU.

it would only be available to enterprises whose

- total Union turnover does not exceed €100 000 (net of VAT) per annum, and
- the combined value of supplies made in the Member State where the exemption is granted does not exceed the Member State’s annual exemption threshold.

in calculating the turnover for the Member State thresholds, most sources of revenue are included, including supplies of goods and services to third countries. The EU threshold excludes sales to 3rd countries in most cases

the small enterprise must give notification to the tax authority in the Member State of establishment in advance of its intention to use the exemption in other Member States – the details to be provided are in Article 284a

An individual identity number, normally the taxpayer’s VAT number with an ‘EX’ suffix added, will be issued by the Member State of establishment to the taxable person. The exemption in the Member State in which the taxable person is not established would normally commence, at the latest, 35 days after receipt of the notification – a longer period can apply in order to prevent tax evasion or avoidance

The taxable person must report each quarter to their Member State of establishment the total value of supplies made in the Member State of establishment and in each other Member State in which supplies are made. This report must be filed within 30 days of the end of the calendar quarter

If the Union annual turnover threshold is exceeded, the taxable person must inform the Member State of establishment within 15 working days

Example:

Company A is established in Member State A, which has opted for the permitted maximum exemption threshold of €85 000. It also has substantial sales in Member State B, where the annual exemption is €35 000. Both Member States have not exercised the option to extend the 'lead in' period for assessing the availability of the exemption and have opted for the standard ceiling of 10%.

In the year ending 31 December 2026, Company A has total turnover in Member State A of €68 000 – of which €9 000 is to third countries. It has turnover of €36 000 in Member State B. In the calendar year 31 December 2027, Company A will benefit from the exemption in the country of establishment as its total EU turnover is less than €100 000 and its Member State A turnover is less than €85 000. However, it will not be able to take advantage of the exemption in Member State B as it exceeds the national exemption threshold by €1 000.

In the year to 31 December 2027, the EU sales in Member State B drop to €34 000 and the EU sales in Member State A increase by a corresponding €2 000. For the year to 31 December 2028, Company A is able to claim the exemption in both Members States A and B.

During 2028, turnover in Member State B increases to €36 000. This is below the 10% ceiling (€38 500) so Company A can continue to use the exemption in Member State B for the remainder of that calendar year and not revert back to Member State B's registration and reporting obligations. However, it will not be able to use the exemption in Member State B in the 2029 calendar year as it has breached the prior-year limit.

For the year to 31 December 2029, Company A's turnover in Member State B has again fallen to €34 000. However, its total turnover in Member State A has increased to €86 000, of which €9 000 still relates to sales to 3rd countries. Consequently, total EU turnover has now risen to €101 000, which exceeds the Union threshold. Consequently, Company A cannot use the exemption in Member State B for the 2030 calendar year but will still be able to take advantage of the exemption in Member State A because its total revenue reportable in the Member State of establishment is €76 000.

The impact:

This would be a potentially valuable change for very small businesses supplying goods and services into other Member States, allowing cross-border sales without automatically having to register and report VAT in other Member States.

The potential value would be dependent upon the threshold in the Member State of supply – a low threshold will limit its usefulness. The combination of the:

- one (or two year) 'lead in' period
- the reduced ceiling for exceeding the national threshold and
- the immediate withdrawal of the exemption if the Union threshold is breached

could make the scheme complicated and costly for smaller businesses to monitor and may inhibit its uptake.

NEW SIMPLIFICATION MEASURES FOR EXEMPT BUSINESSES

Current situation

There are no harmonised simplification measures for exempt businesses – Member States have the option to introduce their own measures (available only to domestic businesses) after consulting the EU VAT Committee.

Changes from 1 January 2025. The following optional and mandatory simplification measures will be available to all exempt small businesses established within the EU:

- a Member State **option** (Article 292b) to remove the obligation for qualifying businesses to notify the tax authority in their Member State of establishment at the start of their taxable activities and to obtain a VAT registration number
  - if Member States do not exercise this option, they **must** provide simplified registration procedures with the procedure taking no longer than 15 days, unless checks are required to prevent tax evasion or avoidance
- a Member State **option** (Article 292c) to release qualifying businesses from the obligation to submit VAT returns in the Member State of establishment.
  - where the option is not adopted, Member States **must** grant qualifying businesses the option to submit a simplified annual VAT return. Taxable persons have the option to use the Member State's normal VAT filing regime
- a Member State **option** (Article 292d) to release qualifying businesses from all or some of the obligations contained in Articles 217-271 of the VAT Directive (e.g. invoicing requirements, accounting requirements, storage of invoices, VAT returns, recapitulative statements)

Conditions

- the enterprise must be exempt from VAT (under Article 284) in the Member State in question
- the first two simplifications only apply in the Member State in which the taxable person is established
- the enterprise must be established within the EU

The impact:

These proposals could provide some relief from administrative burden. However, most of the proposals are Member State options so qualifying businesses still face uncertainty as to other Member States' requirements. The Member State option to not require exempt businesses to register for VAT is potentially the most useful of the simplification measures but is only available for exempt businesses established in the Member State.

Note: the following simplifications originally proposed were **not** adopted:

- Member States **must** release qualifying businesses from the requirement to issue an invoice
- Member States **must** introduce simplified obligations for the storage of invoices by small enterprises
- a Member State **option** to release qualifying businesses from all or some of the VAT accounting obligations
- Member States **must not** require interim payments from small enterprises

NEW HARMONISED MAXIMUM THRESHOLD FOR CASH ACCOUNTING

Current situation

Member States have the option to introduce a cash-accounting scheme for VAT. The annual turnover limit for the scheme is €500 000 per year, although Member States can opt for a higher limit of €2 000 000 per year after consulting the EU VAT Committee.

Changes from 1 January 2025. Where Member States use their **option** to introduce cash accounting for VAT, they can choose any threshold for turnover up to a maximum of €2 000 000 without having to consult the EU VAT Committee.

Conditions

- the enterprise must have an annual turnover no higher than €2 000 000 per year
- the enterprise must be established within the EU

The impact:

In Member States that have the €500 000 threshold, increasing the cash accounting turnover threshold to €2 million could be very useful, providing some reduction in administrative burdens and improve cash flow. However, it is up to the Member State to adopt the cash accounting scheme and to apply the maximum threshold.

THE DEFINITIVE REGIME

Measures outlined in this section	Status	Implementation date
Recovery of input VAT through the (M)OSS	Preliminary stage	1 July 2022*
Single rule for the chargeability of VAT on intra-Union supplies	Preliminary stage	1 July 2022*
Recapitulative statement only required for the supply of cross-border services	Preliminary stage	1 July 2022*

* Application date from the draft proposals[10].

[10] COM(2018) 329 final - Proposal for Council Directive amending Directive 2006/112/EC as regards the introduction of the detailed technical measures for the operation of the definitive VAT system for the taxation of trade between Member States

Current situation

Input VAT cannot be recovered through the MOSS, albeit suppliers can recover input VAT incurred on relevant supplies in other Member States via other means.

Member States can, in certain circumstances, impose different points at which intra-EU supplies of goods can become chargeable to VAT.

Intra-EU supplies of goods must be included on a recapitulative statement.

Changes from 1 July 2022. If agreed, a taxable person making use of the OSS (i.e. the *special schemes* under Chapter 6, Title XII) must pay the **net** amount of VAT due in each Member State. Where the deductions exceed the amount of VAT due, the excess is carried forward to the following period. An EU taxable person or their intermediary may request on the tax return a refund of excess VAT where they have been in a refund situation for successive tax periods.

A single EU-wide rule will apply to establish the tax point for intra-EU supplies of goods – VAT will become chargeable on the issue of an invoice or, if no invoice is issued, by the fifteenth day of the month following that in which the supply is made.

A recapitulative statement will only be required for relevant intra-EU supplies of services.

Conditions

Refunds cannot be made through the OSS where the taxable person has not made any taxable supplies in:

the current tax period and

- the three preceding tax periods where quarterly returns are submitted or
- the eleven preceding tax periods where monthly returns are submitted

The impact:

Being able to recover input VAT through the OSS is likely to be a major benefit for businesses using the OSS - the current alternative method of reclaiming input VAT incurred in other Member States is costly and time consuming. It would address one of the main criticisms of the current MOSS.

The other two simplifications provide a welcome reduction in administrative burdens and increase legal certainty for those businesses making intra-EU supplies of goods.

ANTI-FRAUD MEASURES (AGREED)

Measures outlined in this section	Implementation date
Temporary generalised reverse charge mechanism[11]	16 January 2019
Removal of the small consignment exemption[12]	1 January 2021
Joint and several liability for online marketplaces on distance sales[13]	1 January 2021
Automated exchange of payment information [14]	1 January 2024

TEMPORARY APPLICATION OF A GENERALISED REVERSE CHARGE MECHANISM (GRCM)

This has been specifically requested by certain Member States as a means for combatting carousel fraud. After considerable debate, it was approved on 2 October 2018.

Note – it was further agreed on 2 October 2018[15] that the existing reverse charge mechanism (and the associated Quick Reaction Mechanism) should be extended past its current expiry date of 31 December 2018 to expire with the introduction of the Definitive Regime i.e. on 30 June 2022.

Current situation

VAT is generally charged on the fractionated payment basis, with each supplier in the chain responsible for reporting and paying the VAT due only on the value that they have added to the chain. Articles 199 and 199a of the VAT Directive permit Member States to use a reverse charge mechanism (i.e. the recipient - not the supplier of goods or services - is designated as the person responsible for paying the VAT) but this is restricted to certain sectors – predominantly the construction \ property sector.

Changes from implementation date Member States will be able to apply a GRCM within their borders. If introduced, the measure will apply to the entire economy and is not to be limited to certain sectors. The taxable person receiving goods and services of an invoiced value of more than € 17 500 will be liable for payment of the VAT.

Conditions

Due to the potential spill-over effects of the measure, there are strict conditions that must be passed before Member States can introduce the GRCM:

the Member State must have

- a VAT gap in 2014 of at least 5% above the EC's median VAT gap, and
- carousel fraud accounting for more than 25% of its VAT gap, and

[11] Proposed Council Directive COM(2016) 811
[12] Council Directive (EU) 2017/2455 of 5 December 2017
[13] Council Directive 2019/1995 and Council Implementing Regulation 2019/2026 replacing COM(2018) 819 final and COM (2018) 821 final
[14] 2018/0412(CNS) and 2018/0413 (CNS) replacing COM(2018) 812 final and COM(2018) 813 final 3
[15] Interinstitutional File:2016/0406(CNS)

- established that other measures will not adequately combat carousel fraud within its territory, and
- established that the estimated gains in tax compliance and collection resulting from the introduction of the GRCM outweigh the expected additional burdens on businesses and tax authorities by at least 25%, and
- established that businesses and tax administrations will not incur higher costs through the implementation of the GRCM than if other control measures were applied

the Member State must establish appropriate and effective electronic reporting obligations on the taxable persons supplying or receiving goods or services

member States wishing to apply the GRCM must provide the Commission with certain information – the Commission then has a maximum of 3 months after the receipt of all necessary information to inform the Council that all necessary requirements have been met. The Council may then authorise the Member State to use of the GRCM

Member States implementing the GRCM must inform all Member States of the names of all persons subject to proceedings for VAT fraud and administrative breaches in the twelve months preceding the application

there are then interim reporting requirements on Member States that have adopted the GRCM assessing the impact of the measure

the Commission can propose the repeal of all implementing decisions in case of considerable negative impact (defined in the proposal) on the internal market

in any event, the measure has a sunset clause restricting the application of the GRCM until 30 June 2022. This date has been chosen to coincide with the proposed introduction of the Definitive Regime, as the Commission believes that the changes introduced by the Definitive Regime would effectively deal with most carousel fraud.

The impact:

Introducing a GRCM would require substantial retraining both within tax authorities and for taxable persons. It is likely to result in considerable additional administrative burdens for businesses and costs in changing existing systems.

The burden of VAT payment would shift to the end of the supply chain - client end-consumer facing businesses, such as retailers, are likely to have a greater burden in respect of VAT reporting and payment.

E-COMMERCE

REMOVAL OF THE SMALL CONSIGNMENT EXEMPTION FOR DISTANCE SALES

Current situation

Goods of a total value not exceeding €10 are exempt from VAT on importation into the EU from third countries, including those delivered through distance selling. Member States have the option to increase the exemption to a maximum of €22. The exemption does not cover alcohol, perfume or tobacco products.

Changes from 1 January 2021. This exemption has been removed. This decision was taken to:

reduce the market distortions arising from genuine supplies of certain low value items effectively being VAT free when imported into the EU and

to reduce fraud arising from the import of items where the consignment value is undervalued and/or mis-described

The impact:

Importers of low value items from outside the EU will see an increase in cost and administrative requirements – albeit the administrative burden will be somewhat reduced due to simplifications arising from the extension of the OSS or simplified import requirements for consignments not exceeding €150.

MAKING ONLINE MARKETPLACES JOINTLY LIABLE FOR VAT DUE ON DISTANCE SELLING

Current situation

The sole responsibility for reporting and paying the VAT due on sales made by 3rd party suppliers using online marketplaces rests with the supplier and not with the marketplace.

Changes from 1 January 2021. Taxable persons that run electronic marketplaces, platforms and portals facilitating distance sales by non-EU suppliers will be deemed to have received and supplied the goods themselves.

This was not part of the European Commission's original proposals but was introduced as part of the negotiation process in Council.

Conditions

includes distance sale of goods imported into the EU from third countries in consignments with an intrinsic value not exceeding €150

includes the supply of goods within the EU by a taxable person not established in the EU to a non-taxable person

the platform etc. is required to keep adequate records of the relevant transactions for a period of 10 years from the end of the year during which the transaction took place

Further detailed technical amendments have been proposed to clarify certain aspects:

- Article 14a is amended to clarify when an electronic platform 'facilitates' the distance sale of goods and when a relevant transport of goods takes place.
- Amendments to Article 14s - also specify that the provisions do not apply to taxable persons that **only** provides payment processing or listing/advertising services or redirection of customers to other electronic interfaces
- A new Article 136a specifies that the deemed supply from the supplier using the marketplace and the marketplace shall be exempt
- The Section 3 Special Scheme is expanded to allow marketplaces to use the One Stop Shop to report relevant *domestic* transactions under Para 2 Article 14a – i.e. where the transport of goods supplied begins and ends in the same Member State. This would be the only non-cross border transaction capable of being reported on the OSS.
- A new Article 5c specifies that the liability of marketplaces shall be limited to the VAT declared and paid by the marketplace, providing that the marketplace can demonstrate that it was dependent on information provided by the supplier and where incorrect, the marketplace could not have reasonably known that the information was incorrect
- Article 5c also introduced a presumption (rebuttable by the taxable person that supplies the goods) that:
  - the person selling goods through an electronic interface is a taxable person and
  - the person buying the goods is a non-taxable person

- Para 2 of Article 369zb has been changed to require the payment of VAT to be at the same time as the import duty, and not at the end of the month following the importation as previously required

The impact:

This will have a significant impact on the providers of such electronic platforms who will need to increase their compliance procedures to ensure that the platform's users register for VAT within the EU and properly account for and pay the VAT due.

The European Commission will be working with the main platform providers in the intervening period to develop a system that is effective in reducing the likelihood of fraud and at the same time keeping the administrative burdens on the platforms to a minimum.

PAYMENT SERVICE PROVIDERS OBLIGED TO KEEP NEW RECORDS FOR CROSS-BORDER PAYMENTS FOR SUPPLIES OF GOODS AND SERVICES

Current situation

Payment service providers currently have no specific obligation to keep records of payments that they administer in respect of cross-border sales of goods and services. There is no specific mechanism for the tax authorities of Member States to automatically exchange such information between them. With the potential change in place of supply to the place of consumption, the tax authorities in the place of consumption would not know to which other Member State to send a request for administrative co-operation.

Changes from 1 January 2022. If agreed, payment service providers will be obliged to retain certain payment information for cross-border payments where the volume of payments indicates economic activity may be taking place[16]. It is proposed that a central electronic system for the storage and processing of such information for the benefit of anti-fraud officials in the EU[17].

Cross-border VAT fraud arising from e-commerce has been identified as an important and growing issue that must be dealt with at the EU level. It is that the payment records from large payment service providers will provide valuable intelligence on businesses that have failed in their obligations to register for VAT or understate their income. This is particularly the case for Member States of consumption, who otherwise may have no other practical means of identifying that a VAT liability exists in their jurisdiction – an issue that will become more critical if the change of place of supply under the Definitive Regime comes into effect.

Conditions

The payment service providers are those listed in points (a) to (f) of Para 1 of Article 1 of Directive 2015/2366

The records requirements (new Article 243a- d) will only apply where both:

- funds are transferred from the payer to a payee established in another Member State or in a third country
- the payment service provider executes more than 25 payments to the same payee in a calendar quarter

The records shall be kept by the payment service provider for 2 years

[16] Detailed in Com(2018) 812 final Proposal for a Council Directive amending Directive 2006/112/EC as regards introducing certain requirements for payment service providers

[17] Detailed in Com(2018) 813 final Proposal for a Council Regulation amending Regulation (EU) No 904/2010 as regards measures to strengthen administrative cooperation in order to combat VAT fraud

The location of the payee and payer shall be determined by the relevant IBAN and or BIC codes

There are detailed requirements for the information to be retained (Article 243d) – broadly the identifier code of the payment service provider, payee details (such as VAT number, name IBAN etc.) and details of the payment

The impact:

Although this will directly affect only the limited number of payment service providers, it is likely to have a significant impact on these providers who will need to modify their internal systems and may need to upgrade their compliance procedures to ensure that relevant information from the payee is collected at the time that the payment is executed.

FUNDAMENTAL CHANGES TO THE EUROPEAN VAT SYSTEM

THE DEFINITIVE REGIME

These proposals provide the framework for the most significant change in cross-border VAT since the current regime was introduced in 1993. The most notable measure is the proposal that the place of supply for most cross-border sales should no longer be the location of the supplier but rather the location of the customer.

As of November 2018, this file has made little progress in Council negotiations.

Measures outlined in this section	Status	Implementation date
Change in place of supply to the location of the final customer and re-establish Intra-Community taxable supply [18] [19]	Preliminary stage	1 July 2022*
Certified Taxable Person (CTP) [18] [19] [20]	Preliminary stage	1 July 2022*

* Application date from the draft proposals.

[18] Com(2017) 569 final - Proposal for a Council Directive amending Directive 2006/112/EC as regards harmonising and simplifying certain rules in the value added tax system and introducing the definitive system for the taxation of trade between Member States

[19] COM(2018)329 final Proposal for a Council Directive amending Directive 2006/112/EC as regards the introduction of the detailed technical measures for the operation of the definitive VAT system for the taxation of trade between Member States

[20] COM(2017) 567 final - Proposal for a Council Regulation amending Regulation (EU) No 904/2010 as regards the certified taxable person

CHANGE IN PLACE OF SUPPLY TO THE LOCATION OF THE CUSTOMER AND RE-ESTABLISHMENT OF INTRA-EU SUPPLIES

Current situation

The place of supply for a cross-border sale of goods from a taxable person in one Member State to another taxable person in another Member State is the place of establishment of the supplier (or where transport begins).

Cross-border supplies of goods between taxable persons are treated as an exempt supply from the perspective of the supplier **and** an intra-community acquisition by the customer. The customer accounts for the VAT using the reverse charge mechanism.

Changes from 1 July 2022. If agreed, cross-border supplies of goods will give rise to a single transaction for VAT purposes – an 'intra-Union supply of goods'. This is any supply of goods from a taxable person to both taxable and non-taxable persons whereby goods are transported from one Member State to another Member State.

The place of supply is normally deemed to be the location of the final customer that receives the goods. Consequently, the supplier would account for the VAT using the rates and rules of the Member State in which the customer is based. The supplier would normally be obliged to register and submit VAT returns in each Member State where they have customers but would normally be able to use the OSS to simplify reporting and registration.

If the final customer is a taxable person, the customer would account for the input VAT as it would if the goods have been acquired from a supplier in the same country – unless the final customer is a CTP (see section below).

VAT rate liberalisation proposals (see below) also interact with the change in the place of supply rules. Each Member State would have the option to have up to 5 different VAT rates and suppliers must potentially be aware of these rates for each Member State in which they wish to make supplies.

The impact:

This would be the final stage of the most dramatic change in EU VAT in 25 years. The potential impact would be reduced for businesses that are able to apply for CTP status but for other businesses that supply goods from one Member State to another the impact would be profound.

Dealing with the changes will be proportionately more difficult and costlier for smaller businesses, although the potential extension of the OSS, together with the other simplification measures mentioned above, would at least partially alleviate the impact.

CERTIFIED TAXABLE PERSON

Current situation

All taxable persons making cross-border supplies broadly have the same tax treatment and obligations unless they can take advantage of any one of *special schemes*.

Changes from 1 July 2022. If agreed, taxable persons that meet the criteria can apply for CTP status. Obtaining CTP status preserves the current rules – i.e. the supplier makes an exempt cross-border supply and the acquirer makes an intra-Community acquisition and accounts for the VAT via a reverse charge. This would apply where the acquirer is a CTP.

Conditions

Available to any taxable person:

- with a fixed establishment or a permanent address in the EU, and
- is either a supplier or customer of intra-Union supplies of goods, and
- meets the following criteria (which are automatically met for authorised economic operators[21]):
  - has no serious or repeated infringements of taxation and customs rules and no record of serious criminal offenses in the conduct of their business
  - can demonstrate a high level of control over the business and the flow of goods
  - can provide evidence of financial solvency – either by demonstrating that they are of good financial standing or by providing financial guarantees

Specifically, not available to the following activities carried on by taxable persons:

- those subject to the flat-rate scheme for farmers
- those activities covered by the small enterprises VAT exemption (see above)
- supplying goods and services for which VAT is not deductible
- carrying out occasional supplies of new means of transport or buildings

The impact:

Qualifying businesses that wish to continue with the current cross-border supply of goods rules would find this useful. However, the criteria for approval, especially in respect of being able to demonstrate the required level of control over the flow of goods and of financial solvency, are likely to mean that many smaller businesses would be unable to qualify for CTP status and would have to rely on using the OSS to mitigate administrative burdens.

VAT RATES MEASURES

Measures outlined in this section	**Implementation date**
Rates of VAT chargeable on books and newspapers[22]	4 December 2018
Liberalising VAT rates[23]	20 days after publication *

* Application date from the draft proposals.

[21] defined by the WCO SAFE Framework of Standards as a party involved in the international movement of goods, in whatever function, that has been approved by, or on behalf of, a national Customs administration as complying with WCO or equivalent supply chain security standards.
[22] COM(2016) 758 final Proposal for a COUNCIL DIRECTIVE amending Directive 2006/112/EC, as regards rates of value added tax applied to books, newspapers and periodicals
[23] COM(2018) 20 final Proposal for a COUNCIL DIRECTIVE amending Directive 2006/112/EC as regards rates of value added tax

E-COMMERCE

VAT RATES FOR E-BOOKS

Current situation

Electronic books and magazines are treated in line with other electronically supplied services for VAT purposes, rather than in line with their paper equivalents. Consequently, electronic books must be taxed at the standard rate (minimum 15%). Member States have the option to apply a reduced VAT rate (minimum 5%) on physical books and periodicals with some Member States being granted the possibility of even lower rates – including at zero percent with the right to recover input VAT.

Changes from the implementation date If Member States have reduced rates for the equivalent paper publications they can opt to extend the reduced rate of VAT to electronic books, newspapers and periodicals. Furthermore, they also have the option to apply rates below the reduced rate (minimum 5%) to these products, including exemption from VAT with the recovery of input VAT.

Conditions

- this does not apply to publications that consist wholly or predominantly of music or video content, or that are predominantly devoted to advertising

The impact:

This will be beneficial to publishers and authors who see an increasing proportion of their sales being in a digital format and who fear that the difference in VAT rates between the printed and electronic versions will have a negative impact on sales.

LIBERALISING VAT RATES

As of November 2018, this file has made little progress in Council negotiations.

Current situation

Member States must have a standard VAT rate not less than 15%. They are also able to opt for up to 2 reduced rates for certain goods and services that can be no lower than 5%. By derogation, Member States are permitted to continue to apply any lower rates if such rates were already in place on 1 January 1991.

Changes once agreed. If agreed, Member States must maintain a standard rate of VAT that is not lower than 15%. Additionally, however, they may opt to have all or some of the reduced rates:

- up to two reduced rates not less than 5%
- one exemption with deductibility of VAT paid at the previous stage
- one super-reduced rate of between 0% and 5%

The existing Member State derogations will be withdrawn.

Conditions

- there is a list of proscribed goods and services to which reduced rates of VAT cannot be applied. These are fully detailed in a revised Annex III of the VAT Directive[24], including goods and services supplied under margin schemes, alcohol and tobacco, supplies of electrical equipment etc
- the reduced rates must only benefit the final consumer and must be to pursue 'an objective of general interest' – not defined in the proposed Directive
- in setting their overall VAT rates, Member States must not fall below a weighted average rate of 12%. This weighted average is calculated only taking into account those transactions for which VAT cannot be deducted – fundamentally, supplies to final consumers and those made to non-business and VAT exempt sectors of the economy

The impact:

This could potentially reduce administrative burdens for businesses making intra-EU supplies, reducing the current number of potential VAT rates from over 250 to a maximum of 140.

However, as this measure is linked to changes in the place of supply under the Definitive Regime, the impact of having many different rates will be magnified for businesses, which will be required to know all the VAT rates that could affect them in each Member State in which they make supplies.

These impacts could be reduced by:

- having a standardised description of those goods and services subject to reduced rates, akin to the EU Customs Code
- having the rates in a centralised database with an obligation on Member States to keep their data accurate and up to date.

[24] COM(2018) 20 final – ANNEX to the Proposal for a Council Directive amending Directive 2006/112/EC as regards rates of value added tax https://ec.europa.eu/transparency/regdoc/rep/1/2018/EN/COM-2018-20-F1-EN-ANNEX-1-PART-1.PDF

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