



**ACCOUNTANCY
EUROPE.**

MODERNISING VAT

Anti-fraud measures

FACTS.

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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 are aimed at improving 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.

Accountancy Europe has created five fact sheets that set out the proposals according to themes and provide a summary of the current situation, the changes agreed or proposed, and an indication of the potential impact of these changes on businesses affected. This publication focusses on anti-fraud measures that have been agreed upon at EU level.

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 two 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. Here, anti-fraud measures that have been agreed upon at EU level are outlined.

PURPOSE AND AUDIENCE

This fact sheet is intended to be a high-level summary of the legislative proposals.

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	October 2017 – Proposals for the Definitive Regime
December 2016 – A Generalised Reverse Charge Mechanism	January 2018 – Special Schemes for SMEs
October 2017 – Quick Fixes	January 2018 – Liberalising VAT rates
	May 2018 – Detailed Technical Measures for the Definitive VAT System
	December 2018 – Detailed Technical measures for the transfer of payment data ¹ and supplies facilitated through electronic interfaces ²

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 (agreed)
- simplification measures (in negotiation)
- **anti-fraud measures**

¹ COM(2018) 812 final and COM(2018) 813 final

² COM(2018) 819 final and COM (2018) 821 final

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

The document outlines the anti-fraud measures that have been agreed. To consult additional elements of the VAT proposals, please visit this page.

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/EC³ ('the VAT Directive') and supporting regulations. All reference to legislation refer 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.⁴

³ Consolidated version is available from <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:02006L0112-20160601>

⁴ https://ec.europa.eu/taxation_customs/sites/taxation/files/vat_directive_with_details_for_the_definitive_system_en.pdf

ANTI-FRAUD MEASURES (AGREED)

Measures outlined in this section	Implementation date
Temporary generalised reverse charge mechanism ⁵	16 January 2019
Removal of the small consignment exemption ⁶	1 January 2021
Joint and several liability for online marketplaces on distance sales ⁴	1 January 2021
Automated exchange of payment information ⁷ (not agreed)	1 January 2022*

* APPLICATION DATE FROM THE DRAFT PROPOSALS

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 – there is a further proposal⁸ in respect of the existing reverse charge mechanism (and associated the 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. This proposal was also approved on 2 October 2018.

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
 - 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

⁵ Proposed Council Directive COM(2016) 811

⁶ Council Directive (EU) 2017/2455 of 5 December 2017

⁷ Proposed Council Directives COM(2018) 812 and Proposed Council Regulation COM(2018) 813

⁸ Proposed Council Directive COM(2018) 298

- 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 aspects⁹:
 - 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

⁹ Proposed Council Directives COM(2018) 819 and Proposed Council Implementing Regulation COM(2018) 821

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 place¹⁰. 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 EU¹¹.

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
- 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

¹⁰ 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

¹¹ 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 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.



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