ACCOUNTANCY EUROPE.

MODERNISING VAT

Fundamental changes to the European VAT system

FACTS.

TAX

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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 fundamental changes to the European VAT system.

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, fundamental changes to the European VAT system are outlined.

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, reference to the original proposals and changes made during negotiation will be removed.

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	October 2017 – Proposals for the Definitive Regime January 2018 – Special Schemes for SMEs 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)

[1] COM(2018) 812 final and COM(2018) 813 final
[2] COM(2018) 819 final and COM (2018) 821 final

- simplification measures (in negotiation)
- anti-fraud measures
- **fundamental changes to the European VAT system**
- VAT rates measures

The document outlines fundamental changes to the European VAT system. 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/EC[3] ('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

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	Status	Implementation date
Change in place of supply to the location of the final customer[5] [6]	Preliminary stage	1 July 2022*
Re-establish Intra-Community taxable supply [12] [13] [7]	Preliminary stage	1 July 2022*
Certified Taxable Person (CTP) [12] [13]	Preliminary stage	1 July 2022*

* Application date from the draft proposals.

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).

[5] 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

[6] 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

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

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[8]):
    - 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

[8] 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.

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.

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