ACCOUNTANCY EUROPE.

MODERNISING VAT

Simplification measures in negotiation

FACTS.

TAX

FEBRUARY 2019

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 simplification measures that are in negotiation 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.

TABLE OF CONTENTS

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, simplification measures that are in negotiation at EU level 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

This document outlines the simplification measures that are in negotiation. 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

SIMPLIFICATION MEASURES (IN NEGOTIATION)

SPECIAL SCHEMES FOR SMES

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

Measures outlined	Status	Implementation date
New VAT exemption thresholds available to all EU businesses [5]	Preliminary stage	1 July 2022*
New simplification measures for exempt businesses [8]	Preliminary stage	1 July 2022*
New harmonised definition of 'small enterprise' with new simplification measures [8]	Preliminary stage	1 July 2022*

* Application date from the draft proposals.

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 2022. If agreed, Member States can choose to implement a national VAT exemption threshold up to a harmonised maximum of €85 000. Any threshold implemented by a Member State will apply to any business established within the EU if the relevant criteria are met. Member States will be permitted to set different thresholds for different business sectors, provided that they do not exceed the EU limit of €85 000.

Exceptionally, if the turnover of a small enterprise exceeds the threshold of another Member State by 50% or less in a particular calendar year, it may continue to use the exemption in that Member State for a subsequent calendar year. This does not apply if the EU turnover threshold is exceeded.

[5] COM(2018) 21 final -Proposal for a Council Directive amending Directive 2006/112/EC on the common system of value added tax as regards the special scheme for small enterprises

Example:

Company A, resident in EU Member State A, has annual turnover in 2023 of €125 000, of which €30 000 is outside the EU. Of the €95 000 turnover within the EU, €45 000 is sold in Member State B, which has implemented a national VAT exemption threshold of €55 000. In 2023, Company A would be able to utilise Member State B's national VAT exemption because its total turnover is less than the EU threshold of €100 000 and its turnover is less than the Member State's threshold.

If in 2024 Company A's total and EU turnover remained the same but its turnover to customers in Member State B increased to €60 000, it would still be able to claim the exemption in Member State B because this is less than 150% of Member State B's national threshold. If this continued in 2025, Company A would not be able to utilise Member State B's national VAT exemption threshold as Member State B's threshold has been breached for more than 1 year.

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

Conditions

- the exemption applies only to small enterprises established within the EU
- it would only be available to small enterprises whose
  - total turnover within the EU does not exceed €100 000 (net of VAT) per annum, and
  - supplies do not exceed the exemption threshold in the other Member State
- the small enterprise must notify the tax authority in the Member State of establishment in advance of its intention to use the exemption in other Member States
- the Member State of establishment is obliged to take all necessary measures to ensure that relevant small businesses accurately report both their EU-wide turnover and the turnover in other Member States and to inform the tax authorities of other Member States in which they carry out a supply.

The impact:

This would be a potentially valuable change for very small businesses supplying goods and services into 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
- other simplification measures for exempt supplies in the Member State of supply – a range of simplification measures for small exempt businesses have been proposed, many of which are optional for Member States

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 July 2022. If agreed, the following optional and mandatory simplification measures will be available to all exempt small businesses established within the EU:

- a Member State **option** to remove the obligation for qualifying businesses to notify the tax authority where they are established 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
- **note** – this relief only applies to qualifying businesses established in the Member State in question and not to other EU established businesses making supplies into the Member State
- member States **must** release qualifying businesses from the requirement to issue an invoice
- a Member State **option** to release qualifying businesses from all or some of the VAT accounting obligations
- a Member State **option** to release qualifying businesses from the obligation to submit VAT returns. Where the option is not adopted, Member States **must** grant qualifying businesses the option to submit a simplified annual VAT return
- a Member State **option** 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 in the Member State in question
- 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.

NEW HARMONISED DEFINITION OF 'SMALL ENTERPRISE' WITH NEW SIMPLIFICATION MEASURES FOR NON-EXEMPT BUSINESSES

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 VAT Committee.

Changes from 1 July 2022. If agreed, there will be a harmonised definition of 'small enterprise'. Where Member States have opted to introduce cash accounting for VAT, all businesses that fulfil this definition can use cash accounting, Additionally, they will benefit from the following simplifications measures that are mandatory for Member States:

- simplified VAT registration process
- simplified rules on storage of invoices
- provision that qualifying businesses can opt for an annual VAT return
- no interim payments of VAT

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, having a mandatory cash accounting turnover threshold of €2 million could be very useful. In respect of the other simplifications, it depends on whether Member States chose to implement them considering the higher threshold. In Member States choose to implement the other simplifications, they should provide some reduction in administrative burdens and cash flow.

QUICK FIXES

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[6].

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

THE DEFINITIVE REGIME

Measures outlined	Status	Implementation date
Recovery of input VAT through the (M)OSS[3]	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[7].

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

[7] 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

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.

Avenue d'Auderghem 22-28, 1040 Brussels

+32(0)2 893 33 60

www.accountancyeurope.eu

@AccountancyEU

Accountancy Europe

ABOUT ACCOUNTANCY EUROPE

Accountancy Europe unites 51 professional organisations from 37 countries that represent **1 million** professional accountants, auditors, and advisors. They make numbers work for people. Accountancy Europe translates their daily experience to inform the public policy debate in Europe and beyond.

Accountancy Europe is in the EU Transparency Register (No 4713568401-18).