



EUROPEAN COMMISSION  
Regulatory Scrutiny Board

Brussels,  
Ares(2016)

## Opinion

### Title

**DG TAXUD – Generalised reverse charge mechanism**  
(version of 29 September 2016)\*

#### **(A) Context**

VAT Directive 2006/112/EC governs value-added tax (VAT) in the EU. It ensures that the principles underlying the functioning of this tax apply consistently in all Member States. In its 2016 Action Plan on VAT, the Commission announced a legislative proposal for a definitive VAT system. This system would operate the same way in the EU as in any individual country. The Commission intends to base this system on the destination principle, meaning that tax rates are determined by where products are consumed.

This broader reform will take time to complete. In the meantime, several Member States are concerned about high levels of VAT fraud. This initiative aims to provide a short-term and temporary tool to tackle VAT fraud.

Member States are currently able to apply a reverse charge mechanism to specific sectors. This initiative would amend the VAT Directive to permit a generalised reverse charge mechanism. This means that authorities could decide to collect all VAT due on all transactions above a certain threshold at the final stage of the supply chain rates.

#### **(B) Overall opinion: NEGATIVE**

**The Board gives a negative opinion because the report contains shortcomings that need to be addressed, particularly with respect to the following issues:**

**(1) The report should explain how this initiative is compatible with the views that the Commission expressed on the generalised reverse charge system in the 2016 VAT Action Plan and the future definitive EU VAT system.**

**(2) The problem section should present what is known about the evolution of cross-border VAT fraud in the EU. It should describe where reverse charges have been applied in individual sectors, and describe positive and negative experiences to date.**

**(3) The report should present evidence why the envisaged threshold for the generalised reverse charge system is appropriate to exempt small and medium-sized enterprises (SMEs) or micro-enterprises.**

**(4) The impact analysis should demonstrate that the initiative is proportionate with the problem that it is intended to solve. In particular, the report should present what is known about the likely increase in costs and reporting requirements for businesses,**

\* Note that this opinion concerns a draft impact assessment report which may differ from the one adopted.

**including SMEs. The analysis should not only cover the best possible outcome of the introduction of a generalised reverse charge system, but should also transparently present what would happen if likely risks materialise. The choice of the preferred option should fully take into account these risks.**

**(5) Since there was no public consultation, the report should transparently report on stakeholder views collected through other means, including through the REFIT platform. The available opinions of business and Member States should feature prominently throughout the report.**

**The lead DG shall ensure that the report is revised accordingly and resubmitted to the Board for its final opinion.**

### **(C) Further recommendations for improvements**

**(1) Clarify the policy context.** The report should clarify apparent inconsistencies with other related EU initiatives, in particular with the VAT Action Plan and the future definitive EU VAT system. The political context of the initiative should be fully transparent, including any relevant commitments that the Commission has already taken. The report should also reflect stakeholder concerns about the generalised reverse charge proposal. The report should emphasise that this measure is intended to be temporary and limited.

**(2) Strengthen the problem analysis.** The report should explain the evolution of the problem since the introduction of the EU VAT system in 2006. This analysis should cover the size of the VAT gap, at both aggregated and disaggregated levels, and the size of the carousel fraud phenomenon compared to other types of fraud. The baseline should explain how successful the existing sectorial reverse charge arrangements have been in fighting fraud. The report should explain why sectorial reverse charges and other more conventional measures will not sufficiently address the problem.

**(3) Improve the analysis of impacts and related risks.** The impact analysis should present more clearly how the different options would achieve the objectives and address the problems identified. The report should pay due attention to minimising administrative burdens and avoiding fraud simply migrating elsewhere (to other countries and retail fraud). This requires assessing the increased administrative burden and compliance cost on businesses, especially SMEs. The effectiveness of a possible exemption of SMEs or micro-enterprises should be better analysed. In this context, the choice of a particular threshold as compared to higher and lower alternatives should be better justified.

The generalised reverse charge mechanism is arguably a blunt tool. The report should justify the proportionality of the options to the problems they would address, and consider secondary consequences that the options might generate. The report should include best-case and worst-case scenario analyses, in particular regarding the preferred option. The report should acknowledge and respond to business claims that a generalised reverse charge would be ineffective in solving fraud problems and would constitute a significant administrative burden. The risks related to the temporary implementation of the reverse charge should be better presented. What are the short-term and long-term risks? Is there a risk that Member states add additional elements that increase administrative burden or have negative cross-border effects?

**(4) Better present and analyse stakeholder views.** The report should present stakeholders' views in a transparent and objective way, including business and Member States' opinions. In the absence of a public consultation, the report should draw on earlier feedback on the generalised reverse charge, notably the REFIT Platform opinion and relevant points made in the consultation for a Green Paper on the possible introduction of

an optional reverse charge mechanism.

*Some more technical comments have been transmitted directly to the author DG and are expected to be incorporated into the final version of the impact assessment report.*

**(D) Procedure and presentation**

The executive summary should take into account the revisions to the report.

**(E) RSB scrutiny process**

Reference number	2016/TAXUD/027
External expertise used	No
Date of RSB meeting	26 October 2016