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2016/0374 (CNS)

Proposal for a

COUNCIL DIRECTIVE

**amending Directive 2006/112/EC, as regards rates of value added tax applied to books,
newspapers and periodicals**

{SWD(2016) 392 final}

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EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

- **Reasons for and objectives of the proposal**

According to Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (hereinafter 'the VAT Directive') electronically supplied services including electronically supplied publications (hereinafter 'e-publications') have to be taxed at the standard VAT rate (minimum 15%). On the other hand, Member States have the option to tax publications on any means of physical support at a reduced VAT rate (minimum 5%) and some Member States were granted the possibility to continue to apply VAT rates lower than the current minimum of 5% (super-reduced rates) including exemptions with the deductibility of the VAT paid at the preceding stage (so called zero rates) to certain printed publications.

The VAT Directive prevents Member States from applying the same VAT rates to e-publications as they currently apply to physical publications and the result is a markedly less favourable VAT treatment of e-publications in most Member States. While acknowledging the differences between printed publications and e-publications with regard to the format, they offer the same reading content for consumers.

Since 1 January 2015, with the entry into force of new "place of supply" rules, a harmonisation of VAT rates for electronically supplied services and in particular electronically supplied publications is no longer a requirement. VAT is since then levied, where the customer is based and suppliers can no longer benefit from being located in Member States with the lowest VAT rates.

As stated in the Commission's Action Plan on VAT¹ the current rules on VAT rates do not fully take into account technological and economic developments with regard to e-books and electronic newspapers. Modernising VAT for the digital economy is also a key objective of the Digital Single Market Strategy².

In its conclusions of 25 May 2016 on the Action Plan on VAT the Council invited the Commission to present a legislative proposal which integrates provisions concerning VAT rates for e-publications in the context of Digital Single Market initiatives by the end of 2016 and include an impact assessment.

In line with the Council conclusions and the commitment in its 2016 Action Plan on VAT, the Commission proposes to grant all Member States, the possibility to apply the same VAT rates to electronically supplied publications as Member States currently apply to printed publications, which include reduced, super-reduced and zero rates.

- **Consistency with existing policy provisions in the policy area**

The proposal is consistent with the announcement in the VAT Action Plan to grant Member States more freedom in setting VAT rates in a destination-based definitive VAT regime by a legislative proposal in 2017.

¹ Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee on an action plan on VAT - Towards a single EU VAT area - Time to decide, COM(2016) 148 final, 7 April 2016.

² Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee and the Committee of the Regions, A Digital Single Market Strategy for Europe, COM(2015) 192 final, 6 May 2015.

- **Consistency with other Union policies**

The proposal is consistent with the Commission's Digital Single Market Strategy.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

The proposal is based on Article 113 of the Treaty on the Functioning of the EU (TFEU). This article provides for the Council, acting unanimously in accordance with a special legislative procedure and after consulting the European Parliament and the Economic and Social Committee, to adopt provisions for the harmonisation of Member States' rules in the area of indirect taxation.

- **Subsidiarity (for non-exclusive competence)**

Member States are obliged to comply with the VAT Directive, which prevents them from granting e-publications the same VAT rates that they currently apply to printed publications. An EU-level legislative initiative to amend the Directive is indispensable in order to tackle the problem. This was confirmed by the Court of Justice of the European Union (CJEU) in its C-479/13 and C-502/13 judgments of 5 March 2015, in which the CJEU clearly stated that Member States cannot apply a reduced VAT rate to e-books under the current VAT Directive.

- **Proportionality**

The proposal is considered to be consistent with the principle of proportionality i.e. it does not go beyond what is necessary to meet the objectives of the Treaties in particular the smooth functioning of the Single Market. Setting and restricting VAT rates for e-publications falls under the responsibility of Member States. The initiative does not oblige Member States to change any VAT rates currently in force; it only relieves Member States from any restrictions in setting VAT rates for publications.

- **Choice of the instrument**

A Directive is needed to amend the current Directive.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Stakeholder consultations**

An open public consultation was held for 8 weeks between 25 July and 19 September 2016. The consultation had two main purposes. The first was to get the views of a wide range of stakeholders on the Commission's commitment to enable Member States to apply reduced VAT rates for e-publications, and the second was to provide them with an opportunity to present their views on the most appropriate definition(s) for e-publications that could benefit from a reduced VAT rate.

The Commission received 858 submissions from readers (50%), businesses (16%), organisations (14%), authors (12%) and public authorities, researchers and libraries (8%) via the EU Survey tool, and four other contributions by email. The thrust of responses did not differ meaningfully between these groups of respondents, nor according to the Member States where the participants are located. An overwhelming majority of 94% of respondents agreed that Member States should be allowed to apply a reduced VAT rate to e-books, while 88% of them agreed that Member States should be allowed to apply a reduced VAT rate to e-

newspapers and e-periodicals as well. A plurality of respondents (45%) found that existing super-reduced (lower than 5%) and zero rates for printed publications should not be abolished, and 90% of these respondents agreed on allowing all Member States to apply such super-reduced or zero VAT rates to printed publications and as well e-publications. Respondents were roughly evenly split in assessing the effect of reducing VAT rates on e-publications, with some expecting a full pass-on of any VAT cut to consumers and others expecting a partial pass-on. In the latter case, profit margins for publishers would increase, and the majority of stakeholders assumed that in such a case the publishing industry would with regard to books invest in new content and that with regard to newspapers and periodicals the publishing industry would as well invest in new content, but also be less dependent from advertising revenue.

The consultation also confirmed that a definition of publications in Union law had to be broad and robust enough to cater for future technological developments. A share of 59% of respondents did not see the need to define the terms book, newspaper or periodical in a uniform way at EU level.

- **Impact assessment**

The impact assessment accompanying this proposal was considered by the Regulatory Scrutiny Board. Following a negative opinion and after revising the initial impact assessment, on 11 November 2016 the Board finally gave a positive opinion with reservations.³ The final impact assessment takes into account all recommendations by the Board and a detailed overview on how the recommendations have been taken into account is included in Annex 1 to the Staff Working Document for the impact assessment.

The impact assessment examines the baseline scenario, two policy options and their impacts. Option 1 would enable Member States to apply a reduced VAT rate to the supply of publications, both on any means of physical support or electronically supplied. In addition to option 1, option 2 would also enable Member States to apply reduced VAT rates lower than the current minimum of 5% or to grant exemptions with deductibility of the VAT paid at the preceding stage to the supply of publications, both on any means of physical support or electronically supplied.

Both options are preferred over the baseline scenario (no changes to the current rules), because they fulfil the objective of this targeted initiative. Option 1 would allow 19 Member States to align the VAT rates for e-publications with the current VAT rates for printed publications and option 2 would allow all 28 Member States to align VAT rates for e-publications with the current VAT rates for printed publications.

Option 2 has the further advantage that it is fully in line with the Action Plan on VAT, namely that derogations (super-reduced and zero rates) only available to a few Member States should be granted to all Member States in a definitive VAT regime. Therefore, options 2 has been selected for this proposal. It is estimated that this option could lead to a maximum decrease of VAT revenues for Member States by 2021 by EUR 4.7 billion annually, if all Member States decided to apply the current VAT rates for printed publications as well to e-publications.

The proposal will not reduce administrative burden for business and collection costs for Member States. Increased administrative costs could be incurred in the transition from the simpler standard rate framework for e-publications to a system with a greater variety of rates.

³ SEC(2016) 493

On the other hand, the taxation of transactions consisting of a bundle supply of a printed publication together with an e-publication could be facilitated.

4. BUDGETARY IMPLICATIONS

The proposal has no negative impact on the Union budget; because VAT rates applied in the Member States have no impact on the VAT own resources calculations.

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

Monitoring is required with regard to the correct applications of the VAT Directive. Beyond that, the monitoring at EU level takes place in a continuous review of the scope of the reduced rate in line with Article 100 of the VAT Directive and a collection of information about the VAT rates applied in each Member State, currently published by the Commission in the document "VAT rates applied in the Member States of the European Union"⁴.

- **Explanatory documents (for directives)**

The proposal does not require Explanatory Documents on the transposition.

- **Detailed explanation of the specific provisions of the proposal**

In order to enable Member States to harmonise the VAT rate treatment of e-publications with the treatment of printed publications and publications on all physical means of support, three amendments of the VAT Directive are required:

1. Amending Annex III

Under point 6 of Annex III references to "all physical means of support" and to specific formats for printed publications "(brochures, leaflets and similar printed matter, children's picture, drawing or colouring books, music printed or in manuscript form, maps and hydrographic or similar charts)" will be deleted and the condition "other than publications wholly or predominantly consisting of music or video content" will be introduced.

2. Amending Article 98

Under the current Directive all electronically supplied services have to be taxed under the standard VAT rate to which an exception for electronically supplied publications is introduced.

3. Amending Article 99

A paragraph 3 is added to Article 99 to allow Member States to apply reduced rates lower than the minimum laid down in this Article or to grant exemptions with deductibility of the VAT paid at the preceding stage to the supply of the goods and services mentioned under the amended point 6 of Annex III.

Striking out the references to format and referring in general to books, newspapers and periodicals is a requirement to cover as well e-publications and Member States would be able

⁴ https://ec.europa.eu/taxation_customs/sites/taxation/files/docs/body/vat_rates_en.pdf

to continue to restrict the application of reduced rates to certain books, newspapers and periodicals, e.g. by excluding specific formats or content.

The supply of pure music and video content would continue to be taxed at the standard VAT rate, as would publications that predominantly consist of music and video content. Member States would have the discretion to specify the term "predominantly" in their national VAT law. This solution would also allow Member States to continue to apply a reduced rate for audio books, audio newspapers and periodicals for people with sight loss.

This proposal does not put forward any EU level definition of the terms book, newspaper and periodical at EU level. E-publications are evolving and any specific definition of what is a book, newspaper or periodical risks being outdated within a short time. Given the unanimity requirement for EU legislation in tax matters, Member States are generally able to adapt the rules to future needs in a more timely fashion than the EU could.

The third amendment of the VAT Directive acknowledges the fact that several Member States were granted derogations and apply rates lower than reduced rates (including zero rates) to certain printed publications. The possibility to apply an additional reduced rates lower than the current minimum of 5% or granting exemptions with deductibility of the VAT paid at the preceding stage to the supply of books, newspaper and periodicals will be granted to all Member States, so as to enable them to align VAT rates for e-publications with the VAT currently in force for printed publications.

Proposal for a

COUNCIL DIRECTIVE

amending Directive 2006/112/EC, as regards rates of value added tax applied to books, newspapers and periodicals

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 113 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Parliament⁵,

Having regard to the opinion of the European Economic and Social Committee⁶,

Acting in accordance with a special legislative procedure,

Whereas:

- (1) Council Directive 2006/112/EC⁷ provides that Member States may apply reduced rates of value added tax (VAT) to publications on any means of physical support. However, a reduced VAT rate cannot be applied to electronically supplied publications, which have to be taxed at the standard VAT rate.
- (2) In line with the Commission's Digital Single Market Strategy⁸ and in order to keep abreast of technological progress in a digital economy, Member States should be enabled to align the VAT rates for electronically supplied publications with lower VAT rates for publications on any means of physical support.
- (3) In the Action Plan on VAT⁹, the Commission outlined that electronically supplied publications should be able to benefit from the same preferential VAT rate treatment as publications on any means of physical support. To achieve this aim, this needs to include the possibility for all Member States to apply to the supply of books, newspapers and periodicals either a reduced VAT rate or lower reduced VAT rates including the possibility of granting exemptions with deductibility of the VAT paid at the preceding stage.
- (4) Since 1 January 2015, VAT on all electronically supplied services has been levied in the Member State where the customer is based. Given the implementation of the destination-based principle, it is no longer necessary to apply the standard rate to electronically supplied publications in order to ensure the establishment and the functioning of the internal market and to avoid distortion of competition.

⁵ OJ C , , p. .

⁶ OJ C , , p. .

⁷ Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ L 347, 11.12.2006, p. 1).

⁸ COM(2015) 0192 final

⁹ COM(2016) 148 final

- (5) In order to prevent an extensive use of reduced VAT rates to audio-visual content, Member States should be enabled to apply a reduced rate to books, newspapers and periodicals, only if these publications, both on any means of physical support or electronically supplied, do not wholly or predominantly consist of music or video content.
- (6) Member States should maintain discretion to set VAT rates for publications and restrict the scope of reduced VAT rates.
- (7) Directive 2006/112/EC should therefore be amended accordingly,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Directive 2006/112/EC is amended as follows:

- (1) in Article 98(2), the second subparagraph is replaced by the following:

The reduced rates shall not apply to electronically supplied services with the exception of those falling under point (6) of Annex III.'

- (2) In Article 99, the following paragraph 3 is added:

'3. By way of derogation from paragraph 1, Member States may apply reduced rates lower than the minimum laid down in this Article or may grant exemptions with deductibility of the VAT paid at the preceding stage to goods and services referred to in point (6) of Annex III.'

- (3) in Annex III, point (6) is replaced by the following:

'(6) the supply, including on loan by libraries, of books, newspapers and periodicals, other than publications wholly or predominantly devoted to advertising and other than publications wholly or predominantly consisting of music or video content;'

Article 2

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 3

This Directive is addressed to the Member States.

Done at Brussels,

For the Council
The President