



EUROPEAN COMMISSION
Regulatory Scrutiny Board

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Opinion

Title

DG TAXUD – Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax with regard to VAT rates for electronically supplied books, newspapers and periodicals

(resubmitted version of 27 October 2016)

(A) Context

A single 'standard' value added tax (VAT) rate applies to most goods and services. However, Member States have the possibility to set reduced VAT rates on selected goods, including to promote social objectives. Legacy exceptions for individual Member States to the standard and reduced rates have resulted in different VAT rates across the single market.

The Court of Justice of the European Union (CJEU) recently ruled that electronic publications may not benefit from lower rates, as this contradicts the VAT Directive. Printed publications may, however, and several Member States have legacy derogations from the reduced rate. Some have objected to this disparate treatment.

The initiative on VAT rates for e-publications intends to address the unequal treatment between printed and electronic publications across Member States.

This and a parallel initiative on modernising and simplifying the VAT for cross-border e-commerce are elements of the Commission's Digital Single Market (DSM) strategy and 2016 Action Plan on VAT. The Action Plan, in particular, prepares the way for a definitive VAT regime that is based on the principle of taxation in the country of destination for both goods and services. In so doing, it proposes granting Member States more leeway to set VAT rates.

(B) Overall opinion: POSITIVE WITH RESERVATIONS

The Board appreciates improvements to the resubmitted report. Sections describing the policy context, the problem definition and the policy objectives are much stronger. Due to modifications to the problem definition and structuring of options, some of the Board's earlier comments no longer apply.

The revised report still fails to satisfactorily address three issues, however:

- **The report prejudices the definitive VAT regime for publications in some parts of the analysis. There are two scenarios for the definitive VAT regime: extension and review of the list of products that may have reduced VAT rates vs. abolition of the list. Option 1 (possibility for reduced rates for all publications) is clearly a temporary solution consistent with either of the scenarios. The preferred option 2**

(possibility for super-reduced and zero-rates for all publications) is only consistent with the eventual abolition of the list. The positive rating on Option 2 therefore prejudices the definitive regime and option 2 can hardly be considered temporary.

- Similarly the initiative's general objective. "to prepare the ground for the definitive regime", is not reflecting an overarching pre-announced objective in the policy framework for the initiative, such as the Digital Single Market or the VAT Action Plan. As a matter of fact, the rationale for the options assessed refers to the much more targeted objective of aligning taxation of paper and electronic publications.
- The justification for the preferred option does not appear to weigh benefits against costs. Although, from the qualitative rating, option 2 appears more effective than option 1, the analysis indicates that it would also be more expensive and distortive of the current VAT system.

Accordingly, the Board gives a positive opinion, on the understanding that the report shall be further adjusted in order to integrate the Board's recommendations with respect to the following aspects:

1. The report should clarify how the present initiative is articulated with the Commission's approach to the definitive VAT regime.
2. The report should further elaborate the baseline scenario to include those elements of the definitive VAT regime that have already been agreed and those that remain uncertain at this stage. It should revise the general objective of the initiative.
3. The report should clarify the scope of the options and assumptions behind the impact analysis and compare the options in a more transparent and balanced way.

(C) Further recommendations for improvements

The planned VAT reform is not fully reflected in the revised report, arguably because doing so would pre-empt the outcome of negotiations in the Council on the future shape of the VAT regime in the EU. Yet, the baseline scenario assumes that in the revised regime, Member States will be free to apply reduced, super-reduced and zero VAT rates to electronically supplied publications. Anticipating one of the possible outcomes without further clarifications as to the considered choices calls for a more elaborate justification in the description of the baseline scenario.

Naming of options should be consistent across sections 5 and 6. Different names make it harder to keep track of the alternative solutions. In particular, the name of option 1 should correspond to its substance.

It should also be clear from the outset (i.e. in the description of the options) that option 1 foresees aligning VAT rates at a reduced rate for all publications, both printed and electronic, while retaining the existing leeway for super-reduced or zero-rates for some printed publications in some Member States.

The impact analysis section should clearly state the assumption that all Member States will exercise to the maximum extent all leeway that the options provide, i.e. they will lower VAT rates to the fullest possible extent.

There appears to be little evidence to corroborate that a reduced VAT on e-publications

will lead to lower prices for consumers. The report shows contradictory outcomes between the Commission's study and practice and past experience. The report should therefore explain why it bases the impact assessment, and in particular the options, on this assumption.

Since the stakeholder consultation has resulted in a sample that is not representative, the report should not aggregate across all respondents (e.g. pages 23, 33 and 45). Documented differences across groups of stakeholders contradict the blanket statements on pages 45 and 46 that responses do not differ significantly across groups of respondents.

(D) Procedure and presentation

The lead DG shall ensure that the report is adjusted accordingly prior to launching the interservice consultation.

(E) RSB scrutiny process

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| Reference number | 2016/TAXUD/022 |
| External expertise used | No |
| Date of RSB decision | 11 November 2016 |