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PARLIAMENT, THE COUNCIL AND THE EUROPEAN ECONOMIC AND SOCIAL
COMMITTEE**

**On the follow-up to the Action Plan on VAT
Towards a single EU VAT area - Time to act**

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1. INTRODUCTION – THE WAY TOWARDS A SINGLE EUROPEAN VAT AREA

The EU VAT system is an asset of the Single Market; by removing obstacles that distorted competition and prevented the free movement of goods it has greatly facilitated trade in the EU. As a broad-based consumption tax, the Value Added Tax (VAT) is considered to be one of the most growth-friendly forms of taxation. VAT is also a major and growing source of tax revenue in the European Union¹. However, in recent years, the VAT system has been unable to keep pace with the globalisation and digitalisation of the economy. In particular, the current system for the taxation of trade between Member States is still based on 25 year old "transitional arrangements"². Under these arrangements, domestic transactions and cross-border transactions are subject to two completely different VAT regimes. As a result businesses trading cross-border bear an extra compliance cost of 11% in comparison to businesses trading only domestically. In addition, by allowing goods to be purchased cross-border free of VAT, these arrangements are particularly prone to fraud. In 2015, EUR 151 billion, representing 12.8% of the VAT liability were lost due to fraud and other shortcomings³. In this regard, it has been estimated that EUR 50 billion is due to cross-border VAT fraud, a fraud committed in large part by criminal organisations and which, according to recent press reports, has also been used to finance terrorism.

Today, the EU VAT system is too fragmented and too prone to fraud. As part of its agenda for a fair and efficient tax system in the EU, the Commission aims at rebooting the VAT system to ensure it remains an asset for the future. It has been estimated that putting in place a unified VAT regime in the single market would reduce cross-border VAT fraud by EUR 41 billion⁴ and compliance costs for businesses by EUR 1 billion⁵.

In its Action Plan on VAT (the 'VAT Action Plan') of 7 April 2016⁶, the Commission outlined the need to put in place a single European VAT area that could cater for the challenges of the 21st century. A set of key measures to be adopted in the short and medium term were announced in order to modernise the EU VAT system and make it simpler, more fraud-proof and business-friendly. These measures respond to several objectives: adapting the VAT system to the global, digital and mobile economy, supporting the needs of SMEs, providing

¹ VAT raised slightly more than EUR 1 trillion in 2015, which corresponds to 7% of EU GDP or 17.6% of total national tax revenues (source: Eurostat, Tax revenue statistics).

² Article 402 of 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) and COM(2016) 148 final, 7.04.2016.

³ Study and Reports on the VAT Gap in the EU-28 Member States, CASE 2017;

See: https://ec.europa.eu/taxation_customs/sites/taxation/files/study_and_reports_on_the_vat_gap_2017.pdf

⁴ As regards other modalities of VAT fraud, and in particular domestic VAT fraud, the Commission is engaged in a number of actions it intends to pursue together with the Member States and other interested parties. See, in this respect, point 3.1.3 of this Communication. See also the "20 measures to tackle the VAT gap" at the following link:

https://ec.europa.eu/taxation_customs/sites/taxation/files/docs/body/2016-03_20_measures_en.pdf

⁵ See Executive summary of the impact assessment accompanying the document Proposal for a 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 (SWD(2017) 326)

⁶ 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).

See: https://ec.europa.eu/taxation_customs/sites/taxation/files/com_2016_148_en.pdf

for an adequate rates policy, putting an end to cross-border fraud and helping Member States closing the VAT gap.

The modernisation of the existing VAT system will be achieved through a series of gradual steps. This Communication reports on the actions that have already been taken (Section 2) and provides further details on the steps forward (Section 3), including the initiatives that will be adopted this year:

- A legislative package on the definitive VAT system for intra-Union business-to-business (B2B) trade (hereafter the 'definitive VAT system');
- A proposal on the reform of the VAT rates;
- A proposal to reinforce the existing instruments for VAT Administrative Cooperation; and
- A proposal to simplify the VAT rules for SMEs.

2. ACHIEVEMENTS SINCE THE ADOPTION OF THE VAT ACTION PLAN

2.1 Adapting the VAT system to the digital economy and preparing for a modernised rates policy

On 1 December 2016, the Commission adopted several proposals⁷ to modernise VAT for cross-border e-commerce and a proposal on the VAT rate for e-publications. These proposals, which are an important part of the Digital Single Market strategy⁸, aim at adapting the VAT system to the digital economy.

2.1.1. VAT e-commerce proposals

The digitalisation of the economy has created increasingly pressing challenges for taxation policy. Some innovative and forward-looking solutions are necessary to keep track with these new business trends. Tax rules need to evolve to adapt to the fast-paced change in business models and consumer patterns. In parallel, taxation should be fair and effective for emerging businesses and should contribute positively to the development of the digital single market.

As a consumption tax, VAT has an important role in the strategy to meet these goals. The proposals on e-commerce are intended to benefit businesses, citizens and Member States and have allowed the EU to be seen as a leader globally.

⁷ Proposal for a Council Directive amending Directive 2006/112/EC and Directive 2009/132/EC as regards certain value added tax obligations for supplies of services and distance sales of goods (COM(2016) 757 final);

See: https://ec.europa.eu/taxation_customs/sites/taxation/files/com_2016_757_en.pdf

Proposal for a Council Implementing Regulation amending Implementing Regulation (EU) No 282/2011 laying down implementing measures for Directive 2006/112/EC on the common system of value added tax (COM(2016)756);

See https://ec.europa.eu/taxation_customs/sites/taxation/files/com_2016_756_en.pdf

Proposal for a Council Regulation amending Regulation (EU) No 904/2010 on administrative cooperation and combating fraud in the field of value added tax (COM(2016)755);

See: https://ec.europa.eu/taxation_customs/sites/taxation/files/com_2016_755_en.pdf

Proposal for a Council Directive amending Directive 2006/112/EC, as regards rates of value added tax applied to books, newspapers and periodicals (COM(2016)758);

See: https://ec.europa.eu/taxation_customs/sites/taxation/files/com_2016_758_en.pdf

⁸ See: <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1447773803386&uri=CELEX:52015DC0192>

The new rules would allow companies that sell goods online to deal easily with all their EU VAT obligations in one place and would simplify the treatment of VAT for start-ups and micro-businesses selling online cross-border sales under EUR 10 000. SMEs would also benefit from simpler procedures for cross-border sales of up to EUR 100 000. The new rules would also remove the current VAT exemption for small consignments imported into the EU that are worth less than EUR 22 and ensure that EU business can benefit from a level-playing field.

These proposals are currently being discussed in Council.

Furthermore, in the framework of the EU VAT Forum⁹, the Commission is exploring how to establish structured public-private cooperation with tax administrations, logistics companies, internet platforms, payment service providers and business associations with a view to improving VAT collection, reducing fraud in the field of e-commerce and delivering a level playing field for compliant business. The result of this consultation will provide evidence for a Commission initiative in 2018.

2.1.2. VAT e-publications proposal

The Commission has also delivered on its pledge to enable Member States to apply the same VAT rate to e-publications such as e-books and online newspapers, as for their printed equivalents, removing provisions that excluded e-publications from the favourable tax treatment allowed for traditional printed publications. This proposal is a step forward in ensuring technological neutrality and removing tax obstacles to the development of the e-publications market. This proposal is currently under discussion in Council.

2.2 Targeted measures to address fraud

2.2.1 Improving tax collection and administrative cooperation

The Commission has launched the development of the Transaction Network Analysis for the exchange and joint processing of targeted VAT data by risk analysis officials of the Eurofisc network¹⁰. This new instrument will allow tax administrations to stop fraudulent networks in a simpler, quicker and more secured way.

Furthermore, in the area of criminal law, the Directive against fraud to the EU financial interests by means of criminal law¹¹ was adopted last July and provides for minimum rules on the definition of criminal offences against the Union's financial interests, sanctions and limitation periods. The Directive defines the material competence of the future European Public Prosecutor's Office (EPPO)¹². The EPPO will, in particular, be competent for the

⁹ Commission Decision 2012/C 198/05 of 3 July 2012 setting up the EU VAT Forum, OJ C198 of 6 July 2012; See: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32012D0706%2802%29>

¹⁰ Eurofisc is a network for the swift exchange of targeted information between Member States. See information under following link [EUROFISC](#).

¹¹ Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law (OJ L 198, 28.7.2017, p. 29-41).

¹² Twenty Member States reached political agreement on 8 June 2017. The European Parliament will now have to give its consent before the Regulation can be adopted.
See: <http://www.consilium.europa.eu/en/press/press-releases/2017/06/08-eppo/>

criminal investigation and prosecution of VAT fraud connected with the territory of two or more Member States that involves a total damage of at least EUR 10 000 000.

As regards international relations, the Commission has been negotiating an EU-Norway Agreement for administrative cooperation, combating fraud and recovery of claims in the field of VAT. The Agreement will enter into force after the adoption by the Council of the Decisions for its signature and conclusion. Furthermore an administrative arrangement for cooperation was signed between the Commission services and the Intra-European Organisation of Tax Administrations (IOTA) in order to exchange best practices between the Member States and the IOTA members.

Finally, various Member States have requested support to enhance tax administration capacity. Support actions under the Structural Reform Support Programme are closely coordinated under the FISCALIS programme¹³.

2.2.2 Temporary derogation

On 21 December 2016, the Commission fulfilled its commitment to present a proposal for a Council Directive¹⁴ as regards the temporary application of a generalised reverse charge mechanism in relation to supplies of goods and services above a threshold of EUR 10 000 per invoice. Under such a system, VAT is ‘suspended’ along the whole economic chain (between businesses) and is charged only to final consumers. This measure is intended to help Member States particularly affected by fraud to fight against carousel fraud¹⁵ while a comprehensive and EU-wide solution is put in place. Negotiations are ongoing in Council.

3. IMPLEMENTATION OF UPCOMING PROPOSALS

3.1 Towards a robust single European VAT area

3.1.1 Implementing the first step of the definitive VAT system

As announced in its VAT Action Plan, the Commission proposes to replace the current transitional arrangements for the taxation of trade between Member States by definitive arrangements. In line with requests of the European Parliament¹⁶ and the Council¹⁷, this

¹³ Member States can request the Commission for technical assistance in tax policy and tax administration matters. These requests are coordinated, analysed and monitored by the Structural Reform Support Service (SRSS). Such assistance can be financed under the Fiscalis Programme.

¹⁴ Proposal for a Council Directive amending Directive 2006/112/EC on the common system of value added tax as regards the temporary application of a generalised reverse charge mechanism in relation to supplies of goods and services above a certain threshold (COM(2016)811 of 21.12.2016)

See: https://ec.europa.eu/taxation_customs/sites/taxation/files/com_2016_811_en.pdf

¹⁵ Carousel fraud is a particular type of VAT fraud committed by organised crime gangs which exploit the fact that, under the transitional arrangements, trading between EU jurisdictions is VAT-free.

¹⁶ European Parliament Resolution of 13 October 2011 on the future of VAT (P7_TA(2011)0436): <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P7-TA-2011-0436>

¹⁷ Council conclusions on the future of VAT - 3167th Economic and Financial affairs Council meeting, Brussels, 15 May 2012 (see in particular point B 4): http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ecofin/130257.pdf

definitive VAT system will be based on the principle of taxation in the Member State of destination¹⁸.

In order to allow a soft transition for tax administrations and businesses, this change will be made through a gradual two-step approach¹⁹.

As a first legislative step, the VAT treatment of intra-Union B2B supplies of goods would be settled. The implementation of this first legislative step would be further divided into two sub-steps (see Sections 3.1.1.1 and 3.1.1.2 below), comprising a set of proposals to be adopted by the Commission this year (sub-step 1) and another one to be adopted next year (sub-step 2).

As a second legislative step, the new VAT treatment would be extended to all cross-border supplies, therefore also covering supplies of services. The implementation of this second legislative step would be proposed by the Commission after due monitoring of the implementation of the first step, the functioning of which would be evaluated by the Commission five years after its entry into force. The definitive system would then be fully implemented.

After due consultation of all stakeholders and detailed analysis of the different options to implement the destination principle, the Commission opted for taxation rules according to which, for intra-Union cross-border supplies of goods, the supplier would charge the VAT to his customer at the rate of the Member State of arrival of the goods. The VAT would be declared and paid in the Member State where the supplier is established via a one-stop-shop mechanism. However, during the first step of the definitive VAT system and as an exception to this general principle²⁰, if the customer is certified as a compliant business by its tax administration (a possibility also opened to SMEs), this customer would continue to be liable for the VAT on goods purchased from other Member States as is currently the case²¹.

Additionally, Council conclusions²² and discussions with the Member States and other stakeholders on the VAT Action Plan showed a need to introduce certain short-term improvements to the current VAT system ("quick fixes"). Those four quick fixes are proposed this year together with the legal cornerstones of the definitive VAT system (sub-step 1 below). A proposal in 2018 (sub-step 2 below) will further provide detailed technical provisions for the actual implementation of the first step of the definitive VAT system.

¹⁸ A "destination-based" VAT system means that goods traded across borders are taxed in the country where they are consumed (the destination country) and at the destination country's tax rate, rather than where they are produced (the origin country).

¹⁹ See Section 4 of the VAT Action Plan.

²⁰ See footnote 27.

²¹ In the second legislative step of the definitive VAT system, taxation would cover all cross-border supplies of goods and services (and therefore the supplier, and not the customer, would be liable for the VAT on all goods and services purchased from other Member States) so that all supplies of goods and services within the single market, either domestic or cross-border, will be treated the same way.

²² Council conclusions of 8 November 2016 on Improvements to the current EU VAT rules for cross-border transactions (Doc. 14257/16 FISC 190 ECOFIN 1023);
See: <http://data.consilium.europa.eu/doc/document/ST-14257-2016-INIT/en/pdf>

3.1.1.1. *First sub-step: the October 2017 definitive VAT system package*

The October 2017 definitive VAT system package consists of the following three pieces of legislation:

A] A proposal for a Directive amending the VAT Directive

The proposal introduces the following:

- a) The notion of certified taxable person, modelled on the existing concept of authorised economic operator in the field of customs. The concept of certified taxable person allows for an attestation that a particular business can globally be considered to be a reliable taxpayer. Certified taxable persons would benefit from certain simplifications²³. The proposal lays down the criteria to be fulfilled in order to be granted the certified taxable person status, the cases of exclusion, the Member State competent to grant and withdraw the certified taxable person status, the right of taxable persons to appeal against administrative decisions on this matter and the obligation of mutual recognition by Member States.

- b) Three "quick fixes" requested by the Council, namely:
 - simplification and harmonisation of rules regarding call-off stock arrangements²⁴;
 - recognition of the VAT identification number of the customer as a substantive condition in order to exempt from VAT an intra-Community supply of goods²⁵;
 - simplification of rules in order to ensure legal certainty regarding chain transactions²⁶.

²³ Simplifications provided for by certain "quick fixes" - see point A], b) and point B], and the simplification regarding the liability rule for certified taxable person-customers under the new taxation system – see point A], c).

²⁴ Call-off stock refers to the situation where a supplier moves stock to a Member State where he is not established, in order to sell it at a later stage to an already known buyer. Currently this gives rise to the following complex treatment: (i) a deemed intra-Community supply made by the transferor, (ii) a deemed intra-Community acquisition in the Member State of arrival of the goods made by the transferor who has to register there and (iii) a domestic supply.

²⁵ Providing a valid VAT identification number of the purchaser would become a substantive condition for the supplier to apply the VAT exemption in case of intra-Community supplies of goods. This modification would allow for better monitoring of the flow of goods through improved quality of exchanged recapitulative statements (recapitulative statements to be submitted by the supplier and exchanged between Member States via the VIES system include the VAT identification number of the acquirer).

²⁶ Chain transactions are successive supplies of the same goods where the goods supplied are subject to a single intra-Community transport between two Member States. In this situation, the transport is to be attributed to only one supply within the chain so as to determine to which of the transactions the exemption for intra-Community supplies should be applied in accordance with Article 138 of the VAT Directive. Member States have asked for legislative improvements in order to increase legal certainty for operators in determining the supply within the chain of transactions to which the intra-Community transport must be ascribed.

Those "quick fixes" would only be available to certified taxable persons (except the "VAT number quick fix" which, by its own nature, cannot be so restricted).

- c) The legal cornerstones of the definitive VAT system. They include, in particular, the introduction of the principle of taxation in the Member State of destination and of the liability of the supplier as a rule (except where the customer is a certified taxable person)²⁷. They also introduce a One Stop Shop (OSS) that would allow suppliers to account for the VAT due on their supplies of goods to other Member States in their Member State of establishment. This OSS would allow offsetting output VAT due on supplies made against input VAT incurred on purchases made within the EU.

B] A proposal amending Implementing Regulation (EU) No 282/2011 to introduce the fourth "quick fix"

This proposal introduces the fourth "quick fix" required by the Council, namely, the harmonisation and simplification of rules on the proof of the intra-Community transport of the goods in order to exempt from VAT an intra-Community supply of goods. This simplification would only be available where a certified taxable person is involved.

C] A proposal amending the VAT Regulation on Administrative Cooperation

This proposal is needed to ensure the inclusion of the certified taxable person status in the VIES system²⁸. It will provide the legal basis for an efficient technical IT tool allowing Member States and operators to immediately check electronically whether an operator has been granted that status.

3.1.1.2. Second sub-step: the 2018 detailed technical provisions for the definitive VAT system

The above mentioned legal cornerstones of the definitive VAT system would constitute the agreement of principle of the Member States to move from the current VAT transitional arrangements to a definitive VAT system based on the principle of taxation at destination. The Commission will adopt in 2018 a proposal for a Directive, accompanied by the relevant implementing measures, laying down the detailed technical provisions needed for the operation of the definitive VAT system.

The 2018 proposal will introduce the specific provisions for the implementation of the legal cornerstones. Implementing measures will also be proposed to form the basis of the IT developments necessary for the functioning of the new system by 2022.

²⁷ Similar to domestic transactions, in intra-Union transactions in goods, the supplier would charge the VAT due (the one of the Member State of destination of the goods) to his customer. However, if his customer is a certified taxable person, he will not charge the VAT due to him. The customer will, as is currently the case, self-assess the VAT due in his domestic VAT return. For the purpose of these changes, the concept of "intra-Union supply of goods" will be introduced and the notion of "intra-Community acquisition of goods" will be abolished.

²⁸ The VAT Information Exchange system (VIES) is an electronic means of validating VAT identification numbers of economic operators registered in the European Union for cross-border supplies of goods or of services.

See more info on: http://ec.europa.eu/taxation_customs/vies/

3.1.2. *Fighting VAT fraud today: better administrative cooperation for faster results*

Several recent press reports across Europe as well as investigations by national authorities have highlighted the decisive link between large-scale VAT fraud cases and organised crime. These have shown that the proceeds from the fraud are feeding money laundering schemes before being invested in other criminal activities, and possibly terrorism financing.²⁹ In this context, and as recognised by the European Parliament²⁹, the Member States³⁰ and the European Court of Auditors³¹, the instruments for administrative cooperation in the field of VAT must be reinforced.

By November 2017 the Commission will table a legislative proposal to reinforce the existing instruments for administrative cooperation. One of the objectives will be to strengthen the Member States' capacity to conduct faster joint risk analysis of available information within Eurofisc, launch follow-up actions and share VAT intelligence with law enforcement bodies at EU level, such as Europol OLAF and the EPPO. The proposal should also contain measures to tackle the loopholes in the importation system under the so-called procedure 42³², by facilitating the systematic access to the relevant information by tax and customs authorities.

All these measures would help to build a greater mutual trust between tax administrations which will be needed to fully implement the definitive VAT system.

3.1.3. *Towards more efficient tax administrations*

By the end of 2017, the Commission will submit a separate package of two reports to the European Parliament and Council:

- a report under Article 12 of Council Regulation 1553/89 on the procedures applied in the Member States for registering taxable persons and determining and collecting VAT, as well as on the modalities and results of their VAT control systems³³;
- a report under Article 27 of Directive 2010/24/EU on the use of mutual assistance between Member States for the recovery of taxes – in particular VAT – that are not paid voluntarily by the taxable persons³⁴.

²⁹ European Parliament resolution of 24 November 2016;
See: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P8-TA-2016-0453+0+DOC+XML+V0//EN>

³⁰ Council Conclusions of 25 May 2016;
See: http://www.consilium.europa.eu/press-releases-pdf/2016/5/47244641288_en.pdf

³¹ Special Report No 24, Tackling intra-Community VAT fraud: More action needed, 2015;
See: http://www.eca.europa.eu/Lists/ECADocuments/SR15_24/SR_VAT_FRAUD_EN.pdf

³² The procedure 42 is a customs procedure whereby goods are imported and put in free circulation in a Member State and it is clear at that time that the goods will leave the territory of that Member State to another Member State. As a result, the customs duties will be levied in the Member State of importation at the time of importation, but the VAT is exempted, since it will be paid later upon acquisition following the importation in the Member State of arrival of the goods. At the time of importation the person presenting the goods to customs will indicate a customs procedure code 4200 (for importation) or code 6300 (for re-importation) in the customs import declaration.

³³ Council Regulation (EEC, Euratom) 1553/89 of 29 May 1989 on the definitive uniform arrangements for the collection of own resources accruing from VAT, OJ L 155/13 of 7.6.1989.

³⁴ Council Directive 2010/24/EU of 16 March 2010 concerning mutual assistance for the recovery of claims relating to taxes, duties and other measures, OJ L 84/1 of 31.3.2010.

These reports will shed light on the challenges for tax administrations to collect tax, in a changing social, economic and financial environment. Digitalisation, globalisation, new business models, tax fraud and avoidance and resource constraints urge tax administrations to review their practices and find modern or alternative ways of collecting taxes in the single market. This further provides an opportunity for the Commission to open a high level strategic dialogue with the national authorities, in order to design solutions that are consistent across the EU and that are aligned with EU rules.

3.2 Towards a modernised rates policy

As announced in its VAT Action Plan, the Commission also plans to modernise the rules currently framing Member States' freedom to set VAT rates.

Further to the e-publications proposal, referred to in point 2.1.2 above, the Commission will by November 2017 propose a reform of VAT rates. This is consistent with the definitive arrangements based on the destination principle that will gradually replace the current transitional arrangements for the taxation of trade between Member States.

In fact, with goods and services being taxed in the Member State of destination, suppliers derive no significant benefit from being established in a lower-rate Member State. Diversity in VAT rates would therefore no longer disrupt the functioning of the single market, provided it is accompanied by safeguards to avoid potential risks like revenue erosion, distortion of competition, complexity and legal uncertainty.

3.3 Towards an SME VAT Package

SMEs bear proportionally higher VAT compliance costs than large businesses due to complexity and fragmentation of the EU VAT system. In an effort to alleviate those compliance costs, the Commission will by November 2017 prepare a comprehensive simplification package for SMEs to create an environment that is conducive to their growth and favourable to cross-border trade.

The existing special scheme for small enterprises aims at reducing compliance costs for SMEs but is not suited for a destination-based system. It should be adapted so as to ensure equal treatment of SMEs regardless of where they are established in the EU and to encourage them to engage in cross-border activities and fully seize the opportunities of the single market.

4. CONCLUSION

Modernising the VAT system and adapting it to the challenges posed by the fight against fraud is key for the future of our single market. The reform of the current VAT system should contribute to the development of the digital single market and complement the agenda set by the Commission for a fairer and more efficient corporate tax system in the EU.

In this context, it is both necessary and urgent to keep progressing on the path towards an EU-wide VAT system that can boost jobs, growth, investment and competitiveness and is fit for an increasingly digitalised economy. The Commission remains committed to deliver on these promises.