

Opinion of the European Committee of the Regions — Fair taxation package

(2018/C 461/07)

Rapporteur:	Paul LINDQUIST (SE/EPP), Commissioner of Stockholm County Council
Reference documents:	Proposal for a Council Directive amending Directive 2006/112/EC as regards rates of value added tax
	COM(2018) 20 final
	Annex to the Proposal for a Council Directive amending Directive 2006/112/EC as regards rates of value added tax
	COM(2018) 20 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
	COM(2018) 21 final

I. RECOMMENDATIONS FOR AMENDMENTS

Proposal for a Council Directive amending Directive 2006/112/EC as regards rates of value added tax
(COM(2018) 20 final)

Amendment 1

Recital (4)

Text proposed by the Commission	CoR amendment
In a definitive VAT system all Member States should be treated equally and should therefore have the same restrictions in applying reduced VAT rates, which should remain an exception to the standard rate. Such equal treatment without restricting Member States' current flexibility in setting VAT can be achieved by enabling all of them to apply a reduced rate for which the minimum requirement does not apply, as well as an exemption with the right to deduct input VAT, in addition to a maximum of two reduced rates of a minimum of 5 %.	In a definitive VAT system all Member States should be treated equally and should therefore have the same restrictions in applying reduced VAT rates, which should remain an exception to the standard rate. Such equal treatment without restricting Member States' current flexibility in setting VAT can be achieved by enabling all of them to apply a reduced rate for which the minimum requirement does not apply, in order to take into account the beneficial social or environmental effects of various goods and services , as well as an exemption with the right to deduct input VAT, in addition to a maximum of two reduced rates of a minimum of 5 %. Within the limits set by this directive, it is possible for Member States to maintain existing reduced VAT rates or to introduce new rates that benefit the final consumer and are in the general interest, for example for labour-intensive services or to factor in social and/or environmental considerations.

Reason

If the rules are too specific, there is a considerable risk that they may stand in the way of the flexibility sought.

Amendment 2

Recital (8)

Text proposed by the Commission	CoR amendment
While the application of different rates in certain remote areas continue to be possible, it is necessary to ensure that the standard rate respects the minimum of 15 %.	While the application of different rates in certain remote areas continue to be possible, it is necessary to ensure that the standard rate respects the minimum of 15 % and the maximum of 25 %.

Amendment 3

Add a new () after Article 1(1)

Text proposed by the Commission	CoR amendment
	Article 97 is replaced by the following: 'The standard rate may not be less than 15 % or greater than 25 %.'

Amendment 4

Article 1(2)

Text proposed by the Commission	CoR amendment
<p>Article 98 is replaced by the following:</p> <p style="text-align: center;"><i>'Article 98</i></p> <p>1. Member States may apply a maximum of two reduced rates.</p> <p>The reduced rates shall be fixed as a percentage of the taxable amount, which shall not be less than 5 %.</p> <p>2. By way of derogation from paragraph 1, Member States may in addition to the two reduced rates apply a reduced rate lower than the minimum of 5 % and an exemption with deductibility of the VAT paid at the preceding stage.</p> <p>3. Reduced rates and exemptions applied pursuant to paragraphs 1 and 2 shall only benefit the final consumer and shall be applied to pursue, in a consistent manner, an objective of general interest.</p> <p>The reduced rates and exemptions referred to in paragraphs 1 and 2 shall not be applied to goods or services in the categories set out in Annex IIIa.;</p>	<p>Article 98 is replaced by the following:</p> <p style="text-align: center;"><i>'Article 98</i></p> <p>1. Member States may apply a maximum of two reduced rates.</p> <p>The reduced rates shall be fixed as a percentage of the taxable amount, which shall not be less than 5 %.</p> <p>2. By way of derogation from paragraph 1, Member States may in addition to the two reduced rates apply a reduced rate lower than the minimum of 5 % and an exemption with deductibility of the VAT paid at the preceding stage.</p> <p>3. Reduced rates and exemptions applied pursuant to paragraphs 1 and 2 shall benefit the final consumer and shall be applied to pursue, in a consistent manner, an objective of general interest that takes into account the beneficial social or environmental effects of various goods and services.</p> <p>The reduced rates and exemptions referred to in paragraphs 1 and 2 shall not be applied to goods or services in the categories set out in Annex IIIa.;</p>

Reason

Limiting the exemptions so that 'only' the final consumer benefits could be difficult to implement in practice because many goods and services are sold to both individual consumers and companies. The recitals state that the basic thinking behind the proposal is among other things to preserve the functioning of the internal market, avoid unnecessary complexity and thus avoid a rise in business costs. The word 'only' should therefore be deleted from the text of the directive.

Annex to the Proposal for a Council Directive amending Directive 2006/112/EC as regards rates of value added tax (COM(2018) 20 final)

Amendment 5

Number 5

Text proposed by the Commission					CoR amendment				
(5)	Supply of alcoholic beverages	11.01 11.02 11.03 11.05 47.00.25	None	None	(5)	Supply of alcoholic beverages	11.01 11.02 11.03 11.04 11.05 47.00.25	None	None

Reason

There is no reason to allow alcohol made of other non-distilled fermented beverages, such as vermouth, to be taxed at a reduced rate.

Amendment 6

Number 7

Text proposed by the Commission					CoR amendment				
(7)	Supply, hire, maintenance and repair of means of transport	29 30 33.15 33.16 45 47.00.81 77.1 77.34 77.35 77.39.13	Supply, hire, maintenance and repair of bicycles, baby carriages and invalid carriages	30.92 33.17.19 47.00.45 47.00.75 77.21.10 77.29.19 95.29.12 29.10.24 45.11.245.-11.3	(7)	Supply, hire, maintenance and repair of means of transport	29 30 33.15 33.16 45 47.00.81 77.1 77.34 77.35 77.39.13	Supply, hire, maintenance and repair of bicycles (including e-bicycles), e-scooters, baby carriages and invalid carriages	30.92 33.17.19 47.00.45 47.00.75 77.21.10 77.29.19 95.29.12 29.10.24 45.11.245.-11.3

Reason

It should be spelled out that Member States may also apply a reduced tax rate to e-bikes and e-scooters. E-bikes and e-scooters play an important role in mobility.

Amendment 7

Number 10

Text proposed by the Commission					CoR amendment				
(10)	Supply of computer, electronic and optical products; supply of watches	26 47.00.3 47.00.82 47.00.83 47.00.88	<i>None</i>	<i>None</i>	(10)	Supply of computer, electronic and optical products; supply of watches	26 47.00.3 47.00.82 47.00.83 47.00.88	<i>Irradiation, electromedical and electrotherapeutic equipment; spectacles and contact lenses</i>	26.60 32.50.4

Reason

Member States should be able to apply reduced tax rates to spectacles and contact lenses, as well as pacemakers and hearing aids.

Amendment 8

Number 15

Text proposed by the Commission					CoR amendment				
(15)	Supply of financial and insurance services	64 65 66	None	None	(15)	Supply of financial services	64 66	None	None

Reason

Under Article 135(1)(a) of Directive 2006/112/EC the Member States are required to exempt insurance and reinsurance transactions, including related services performed by insurance brokers and insurance agents, from tax.

The Commission proposal thus contradicts the text of Directive 2006/112/EC.

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
(COM(2018) 21 final)

Amendment 9

Recital (13)

Text proposed by the Commission	CoR amendment
<p>Furthermore, in order to ensure compliance with conditions for exemption granted by a Member State to enterprises not established there, it is necessary to require prior notification of their intention to use the exemption. Such notification should be made by the small enterprise to the Member State where it is established. That Member State should thereafter, based on the information declared on the turnover of that enterprise, provide that information to the other Member States concerned.</p>	<p>Furthermore, in order to ensure compliance with conditions for exemption granted by a Member State to enterprises not established there, it is necessary to require prior notification of their intention to use the exemption. Such notification should be made through an online portal set up by the Commission. The Member State of establishment should thereafter, based on the information declared on the turnover of that enterprise, provide that information to the other Member States concerned.</p>

Reason

This amendment goes with the amendment to Article 1(12) — it reproduces the proposal set out in the draft report presented to the European Parliament by T. Vandenkendelaere (EPP/BE).

Amendment 10

Article 1(12)

Text proposed by the Commission	CoR amendment
<p>Article 284 is replaced by the following:</p> <p style="text-align: center;"><i>'Article 284</i></p> <p>1. Member States may exempt the supply of goods and services made within their territory by small enterprises established in that territory whose Member State annual turnover, attributable to such supplies, does not exceed a threshold fixed by those Member States for the application of this exemption.</p>	<p>Article 284 is replaced by the following:</p> <p style="text-align: center;"><i>'Article 284</i></p> <p>1. Member States may exempt the supply of goods and services made within their territory by small enterprises established in that territory whose Member State annual turnover, attributable to such supplies, does not exceed a threshold fixed by those Member States for the application of this exemption.</p>

Text proposed by the Commission	CoR amendment
<p>Member States may fix varying thresholds for different business sectors based on objective criteria. However, those thresholds shall be no higher than EUR 85 000 or the equivalent in national currency.</p> <p>2. Member States that have put in place the exemption for small enterprises shall also exempt the supplies of goods and services in their own territory made by enterprises established in another Member State, provided that the following conditions are fulfilled:</p> <p>a) the Union annual turnover of that small enterprise does not exceed EUR 100 000;</p> <p>b) the value of the supplies in the Member State where the enterprise is not established does not exceed the threshold applicable in that Member State for the granting of the exemption to enterprises established in that Member State.</p> <p>3. Member States shall take appropriate measures to ensure that small enterprises benefiting from the exemption satisfy the conditions referred to in paragraphs 1 and 2.</p> <p>4. Prior to availing itself of the exemption in other Member States, the small enterprise shall notify the Member State in which it is established.</p> <p>Where a small enterprise avails itself of the exemption in Member States other than that in which it is established, the Member State of establishment shall take all measures necessary to ensure the accurate declaration of the Union annual turnover and the Member State annual turnover by the small enterprise and shall inform the tax authorities of the other Member States concerned in which the small enterprise carries out a supply.;</p>	<p>Member States may fix varying thresholds based on objective criteria. However, those thresholds shall be no higher than EUR 100 000 or the equivalent in national currency.</p> <p>2. Member States that have put in place the exemption for small enterprises shall also exempt the supplies of goods and services in their own territory made by enterprises established in another Member State, provided that the following conditions are fulfilled:</p> <p>a) the Union annual turnover of that small enterprise does not exceed EUR 100 000;</p> <p>b) the value of the supplies in the Member State where the enterprise is not established does not exceed the threshold applicable in that Member State for the granting of the exemption to enterprises established in that Member State.</p> <p>3. Member States shall take appropriate measures to ensure that small enterprises benefiting from the exemption satisfy the conditions referred to in paragraphs 1 and 2.</p> <p>4. The Commission shall set up an online portal through which small enterprises wishing to avail themselves of the exemption in another Member State can register.</p> <p>Where a small enterprise avails itself of the exemption in Member States other than that in which it is established, the Member State of establishment shall take all measures necessary to ensure the accurate declaration of the Union annual turnover and the Member State annual turnover by the small enterprise and shall inform the tax authorities of the other Member States concerned in which the small enterprise carries out a supply.;</p>

Reason

The subsidiarity principle would require the national threshold to be a matter of national competence, which means that a threshold other than the proposed common EU threshold of EUR 100 000 should not be introduced. It is good to allow different national thresholds because this increases flexibility, but limiting the option to different business sectors could make it difficult to know where to draw the line.

Amendment 11

Article 1(15)

Text proposed by the Commission	CoR amendment
<p>the following Article 288a is inserted:</p> <p style="text-align: center;"><i>'Article 288a</i></p> <p>Where during a subsequent calendar year the Member State annual turnover of a small enterprise exceeds the exemption threshold referred to in Article 284(1), the small enterprise shall be able to continue to benefit from the exemption for that year, provided that its Member State annual turnover during that year does not exceed the threshold set out in Article 284(1) by more than 50 %;</p>	<p>the following Article 288a is inserted:</p> <p style="text-align: center;"><i>'Article 288a</i></p> <p>Where during a subsequent calendar year the Member State annual turnover of a small enterprise exceeds the exemption threshold referred to in Article 284(1), the small enterprise shall be able to benefit from the exemption for that year, provided that its Member State annual turnover during that year does not exceed the threshold set out in Article 284(1) by more than 33 %;</p>

Reason

The provision reduces 'cliff-edge' effects, but it could distort competition for companies that are unable to benefit from the exemption. The amount by which the threshold may be exceeded should therefore be reduced from 50 % to 33 %.

II. POLICY RECOMMENDATIONS

THE EUROPEAN COMMITTEE OF THE REGIONS

1. welcomes the Commission's initiative to reform the EU's existing VAT system in order to better support a functioning internal market and ensure that VAT rules are adapted to changes in the global and digital economy;
2. notes, however, that it is important for the proposal to avoid distortions of competition and increased red tape and higher business costs for small and medium-sized businesses (SMEs), not to mention local and regional authorities;
3. believes that differences in VAT rules and rates have a particularly big impact on border regions and on the activities of SMEs in those regions, and that it is therefore necessary to assess the territorial impact of the proposals with a view to allowing greater flexibility in setting VAT rates as well as the thresholds proposed;

Common rules on VAT rates

4. endorses the Commission's proposal that goods and services should be taxed on the basis of the destination principle, since this involves less risk of distorting competition;
5. supports Article 98(1) and (2) of the proposal for a Directive whereby Member States may apply a maximum of two reduced tax rates of at least 5 % and one reduced tax rate for which no minimum of 5 % is required, as well as an exemption with the right to deduct input VAT;
6. welcomes the Commission's proposal for a list (Annex IIIa) of products on which the VAT rate may not be reduced, rather than, as hitherto, having a list (also including various temporary derogations) of products on which the VAT rate is allowed to be lower than the standard rate. The proposal provides greater flexibility for individual Member States and eliminates the lack of tax neutrality due to the fact that certain Member States cannot replicate the reduced VAT rates that other Member States apply to certain products. It is important to point out that the purpose of the list is to avoid distortions of competition and that it should not be used to achieve other political aims;

7. considers that the present rules not only result in a lack of fiscal neutrality between the Member States, but prevent opportunities for technological development from being exploited since the same goods/services are taxed at different rates depending on the form of distribution. A striking example of this is the prohibition of reduced VAT on digital publications such as newspapers, audio books and music streaming. This has notably hit the newspaper industry at a time when it is undergoing major structural changes, with the increasing digitisation of media consumption, and when the significance of newspapers for democracy cannot be underestimated;

8. assumes that Article 98(3) will apply for goods and services that are typically bought by individual consumers. When this has been established, it should be possible to sell goods and services with a reduced tax rate even if the transactions involve both businesses and private individuals;

9. notes that the expression 'final consumer' could lead to certain implementation problems. The final consumer in the context of VAT might be a private individual, a non-taxable legal person or a taxable person conducting an activity that is exempt without the right to deduct VAT. However, the explanatory memorandum indicates that the final consumer is the person who acquires goods and services for personal use. Given that legal persons can also be final consumers, the CoR believes that the requirement should also include such persons;

10. supports the proposal to allow the weighted average rate (WAR) to exceed 12 % in order to ensure that Member States' revenues are protected;

11. points out that greater flexibility in setting VAT rates could make things complicated, especially for SMEs, which do not have the resources and systems available to large companies to enable them to manage a number of different tax rates in their cross-border transactions;

12. urges the European Commission to set up an electronic portal, for example by further developing the existing TEDB web portal, to allow businesses to keep track of the different VAT systems in all the EU Member States and, in the framework of the conditions for exemption granted by a Member State to enterprises not established there, to provide notification of their intention to avail themselves of the exemption. This tool should be easy to access, reliable and available in all the official EU languages;

13. also calls on the Commission to extend the scope for using the Mini One Stop Shop (MOSS) scheme when this proposal is implemented. The MOSS scheme will be particularly important for the administrative processing of VAT in the country of destination;

14. believes that greater flexibility in setting VAT rates could make it more difficult to determine how a transaction involving several supplies should be taxed. This affects the applicable tax rate, the taxable amount, the type of invoice, and the country considered the country of taxation. It can lead to problems with invoicing and generate uncertainty, costs and disputes, as the issue may be dealt with in different ways in different Member States. The Commission should therefore provide clear guidelines on how transactions involving several supplies are to be managed;

Simplifying the rules for small enterprises

15. welcomes the European Commission's proposal to give Member States more scope to simplify VAT procedures for small companies. It is still important to improve tax efficiency and combat fraud so as to avoid distortions of competition and safeguard Member States' tax revenues;

16. endorses the proposed definition of a 'small enterprise' as a business with a Union annual turnover in the single market of less than EUR 2 million;

17. points out that the fragmentation and complexity of the VAT system result in major compliance costs for businesses involved in cross-border transactions. These costs are disproportionately high for SMEs, which form the backbone of the economy and the basis for employment at regional level, in particular for small businesses with a turnover of up to EUR 2 million. These companies make up about 98 % of all EU enterprises, and contribute approximately 15 % of total turnover and around 25 % of net VAT revenue;

18. points out that in relation to the supply of electronic services it can be difficult to establish in which Member State the customer is located. In some cases the red tape involved for small companies to determine this to the satisfaction of the tax authorities can be such as to deter them from doing business with customers in other Member States. To reduce the regulatory burden for small businesses with a turnover of less than EUR 2 million within the Union, these should be able as an alternative to charge the highest applicable VAT rate within the Union for a given service;
19. shares the Commission's view that the costs of complying with the VAT system should be as low as possible, and is pleased that the proposal is expected to reduce SMEs' VAT compliance costs by up to 18 % per year;
20. supports the proposal to make the exemption accessible to all small businesses that are established in another Member State, on condition that their annual turnover within the EU does not exceed EUR 100 000, but thinks it is necessary to assess the risk of growth-hampering effects. Exceeding the ceiling could represent a considerable business cost for a company that has been exempt from tax and has therefore had a considerably lower administrative burden;
21. welcomes the proposal to allow small businesses to issue simplified invoices, as well as the proposal not to require businesses that are exempt from VAT to issue invoices;
22. endorses the proposal to allow small businesses to submit VAT returns for a period of one calendar year;
23. wonders why VAT-exempt businesses are released from all accounting and storage obligations. There is a risk that such a concession could be abused because it will be difficult for Member States to check whether a company is exceeding the threshold;
24. notes that in several Member States measures are being taken to simplify the registration of new companies, with the aim of improving the business environment, although this could also increase the risk of so-called carousel fraud. During 2014 alone, the VAT leakage from carousel fraud was estimated at EUR 50 billion. It is important to improve tax efficiency and combat fraud so that leakage decreases.

Brussels, 10 October 2018.

*The President
of the European Committee of the Regions*

Karl-Heinz LAMBERTZ
