

Common system of value added tax (VAT)

2004/0079(CNS) - 22/10/2012 - Follow-up document

In accordance with the requirements of Council Directive 2006/112/EC on the common system of value added tax ('the VAT Directive'), the Commission presents a report on the place of taxation of the supply of goods and the supply of services, including restaurant services, for passengers on board ships, aircraft, trains or buses.

The report focuses on the place of taxation of goods for consumption and of services, including restaurant services, supplied to passengers on board ships, aircraft or trains. However, in order to complete the picture of that segment of the market, it also addresses other issues such as the treatment of take-away goods supplied on board, supplies on board buses, as well as exemptions currently applied in this sector.

Main problems identified: the report is concerned about divergence of application between Member States. It is apparent that **exemptions are applied differently by Member States** and that some rules are not entirely respected or are understood differently. The difference in application is the main cause of complexity, and results in an increase in administrative burdens for business and can also create distortions of competition. Problems have been identified with certain concepts to be found in Articles 37 and 57 of the VAT Directive with Member States are applying these concepts in different ways.

In particular, it appears that there are situations where the national provisions implementing Articles 37 and 57 do not cover all three means of transport (ships, aircraft and trains). The report describes the problems in detail and also describes the situation on the cruise industry, where those consulted consider that the rules are particularly complicated and suggested that all on-board supplies of goods and services should be exempted.

The Commission draws attention to:

- **the patchwork of exemptions:** one group of Member States exempts goods for consumption on board ships, aircraft or trains as provided for in Article 37(3) of the VAT Directive. However, at least two Member States also allow exemption of on-board supplies of goods made whilst within the territory of the Community, but outside the Community section, which is not authorised by Article 37(3) of the VAT Directive. Furthermore, it appears that eight Member States also exempt services supplied to passengers on board ships, aircraft or trains, in particular restaurant and catering services. The Commission considers that Article 37 only allows an exemption of the supply of goods for consumption on board ships, aircraft or trains carried out during the Community section;
- **the definition of 'the Community section':** in at least three Member States, the definition of the Community section is not entirely clear. Typically, certain elements of the definition are missing, e. g. there is no definition of the point of departure and/or the point of arrival, or the definition used is only a partial one. In one Member State, there is no definition of the Community section at all. In five Member States, the onboard supply of goods and services is taxable to a different extent outside their territory, regardless of where – inside or outside the Community section – they should have been taxed in accordance with the rules. Council Implementing Regulation (EU) No282/2011 has provided some clarification, but this differentiation remains complicated and leaves the door open to misinterpretation and inconsistency;

- **the definition of restaurant and catering services:** whilst a clear definition has been available since 1 July 2011, the Commission cannot rule out the possibility that further clarification will be needed, particularly in order to align the VAT Implementing Regulation with the recent case law;
- **the understanding of notions of 'stopover' and 'non-scheduled stops':** divergences are observed between Member States in relation to the treatment of stopovers in comparison to the first point of embarkation or the last point of disembarkation of passengers within the EU. In at least ten Member States, the dividing line seems not to be correct.

The way ahead: the Commission states that the goods and services it covers are typical consumer products on which VAT is normally charged when they are supplied within the territory of the EU. As a matter of principle, the fact that the same goods and services are supplied on board certain means of transport **cannot be a sufficient justification for exempting those supplies within the EU from VAT.**

The future treatment of the transactions involved should be consistent with the guiding principles of VAT strategy set out in the [Commission's Communication on the future of VAT](#) particularly the need to increase the efficiency of the tax by broadening the tax base, but also the need for simple rules.

Given that the main purpose of VAT is to raise revenues and to tax consumption, the Commission is of the opinion that **the actual taxation of supplies of goods and services taking place on board transportation should be an objective to be pursued in the future.** Removing the exemption would also be in line with the need to make the tax systems more efficient. The Commission is aware that stakeholders (in particular, representatives of the cruise industry) indicate that it is desirable for them to keep the optional VAT exemption, as they fear a negative economic, social and environmental impact.

The Commission will verify which kind of clarifications could be agreed with Member States in order to address the current uncertainties. It will also assess whether **infringement procedures** should be undertaken for some Member States.

Even if the complexities can be solved, it is questionable whether the current rules laid down in the VAT Directive are satisfactory for ensuring the taxation of the transactions at stake in a simple, efficient and robust way. The Commission considers the application of these rules would still be complex for businesses and, in many cases, difficult or even impossible to control for tax authorities.

In the Commission's view, a change in the taxation of supplies on board means of transport giving rise to consumption in the EU cannot be achieved for the supplies on board alone, without putting these questions in the broader perspective of the design of a simpler and more neutral VAT framework for passenger transport activities in general.

In order to ensure such consistency, a legislative proposal in this field should be adopted, together with the proposals that will be made for passenger transport activities, following a comprehensive impact assessment. These proposals should ensure that the actual taxation of the supplies on board means of transport is simple and neutral.

Moreover, there is an acute need to make the rules less complex than is currently the case, and the obligations to be fulfilled by the operators should also be as light as possible. However, everything depends on the choice that will be made on the taxation system as such.

If the rules adopted mean that operators are liable to pay tax in Member States where they are not established, the case for a form of **one stop shop (OSS)** to simplify compliance would clearly have to be examined. As the Communication on the future of VAT pointed out, such a measure could only be considered after 2015, based on the experience from the mini one stop shop that will be implemented for

telecommunications, radio and television broadcasting and electronic services supplied by non-established suppliers to non-taxable persons (final consumers).

The Commission feels that **the issues linked with supplies on board means of transport should be addressed in conjunction with passenger transport activities** where a more neutral and simpler VAT framework for passenger transport activities will be proposed. These issues are closely related and the types of challenges and difficulties being faced are similar.

The Commission therefore considers that it is not opportune to accompany the present report with specific legislative proposals. It invites the institutions to express their views.