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NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee
No. prev. doc.:	9680/24
Subject:	VAT in the Digital Age package: a) Draft Council Directive amending Directive 2006/112/EC as regards VAT rules for the digital age = *General approach* b) Draft Council Regulation amending Regulation (EU) No 904/2010 as regards the VAT administrative cooperation arrangements needed for the digital age = *Political agreement* c) Draft Council Implementing Regulation amending Implementing Regulation (EU) No 282/2011 as regards information requirements for certain VAT schemes = *Political agreement*

I. INTRODUCTION

1. On 8 December 2022, the Commission submitted a package entitled 'VAT in the Digital Age', containing three proposals:

   - a proposal for a Council Directive amending Directive 2006/112/EC as regards VAT rules for the digital age (the amending Directive)[1];
   - a proposal for a Council Regulation amending Regulation (EU) No 904/2010 as regards the VAT administrative cooperation arrangements needed for the digital age (the amending Regulation)[2]; and
   - a proposal for a Council Implementing Regulation amending Implementing Regulation (EU) No 282/2011 as regards information requirements for certain VAT schemes (the amending Implementing Regulation)[3].

2. The three proposals have the following objectives:

   (a) they set out to modernise the process of invoicing by moving to generalised e-invoicing, and updating the reporting obligations for VAT purposes by standardising the information that needs to be submitted by taxable persons on each transaction, which would contribute to the fight against tax fraud (the 'digital reporting requirements' or 'DRR' part);

   (b) they seek to address the challenges that the platform economy poses to traditional sectors in terms of level playing field by enhancing the role of platforms in the collection of VAT, when they facilitate the supply of short-term accommodation rental or passenger transport services (the 'platform economy' part); and

   (c) they support the aim of reducing the need to register for VAT purposes in multiple EU Member States, by improving the functioning of and expanding the existing one-stop shop systems and reverse charge mechanisms (the 'single VAT registration' or 'SVR' part).

[1] Doc. 15841/22.
[2] Doc. 15842/22.
[3] Doc. 15843/22.

3. The European Data Protection Supervisor has issued its opinion on the package on 3 March 2023[4]. The European Economic and Social Committee has issued its opinion on the package on 27 April 2023[5]. The European Parliament adopted its opinion at its plenary session on 22 November 2023[6].

II. KEY ISSUE

4. Thanks to the work under the previous Presidencies, the technical work on the texts has been finalized, and the texts are now broadly acceptable for all delegations, except for one key issue, namely the deemed supplier regime for short-term accommodation rental services and passenger transport services by road.

5. At the policy debate in the meeting of the Council (Ecofin) in June 2023, there was general consensus on the need for a larger role for platforms in the collection of VAT on short-term accommodation rental and passenger transport services. However, a number of Member States expressed concerns on the deemed supplier model and some ministers called for some leeway on the taxation regime of short-term accommodation rental.

6. In its compromise texts, the Spanish Presidency adjusted the definition of short-term accommodation rental to allow Member States sufficient flexibility to accommodate national specificities in the taxation of the accommodation sector through national law. A group of Member States was however still not in a position to support this solution and asked for more flexibility and for taking into account the concern of one delegation regarding VAT neutrality.

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[4] Doc. 7071/23.
[5] Opinion of the European Economic and Social Committee, "VAT in the Digital Age", doc. ECO/606, https://webapi2016.eesc.europa.eu/v1/documents/EESC-2022-06315-00-00-AC-TRA-EN.docx/content
[6] European Parliament legislative resolution of 22 November 2023 on the proposal for a Council Directive amending Directive 2006/112/EC as regards VAT rules for the digital age, https://www.europarl.europa.eu/doceo/document/TA-9-2023-0421_EN.pdf; European Parliament legislative resolution of 22 November 2023 on the proposal for a Council regulation amending Regulation (EU) No 904/2010 as regards the VAT administrative cooperation arrangements needed for the digital age, https://www.europarl.europa.eu/doceo/document/TA-9-2023-0422_EN.pdf.

7. The Belgian Presidency accommodated these concerns by giving Member States the possibility to prevent the deemed supplier regime from applying to small and medium-sized enterprises (SMEs). At the meeting of the Council (Ecofin) on 14 May 2024, this solution gathered the support of all but one Member State.

8. After the Council meeting, the Belgian Presidency conducted bilateral meetings to find a solution that would gather the support of all delegations. As a result of these meetings, the Presidency is of the view that the only avenue to change the text without endangering the fragile compromise that had the support of 26 Member States, would be to alleviate the administrative burden for platforms and underlying suppliers in those Member States that use the possibility to exempt SMEs from the deemed supplier regime. It therefore amended the compromise text accordingly.

9. At the level of the Working Party on Tax Questions (High Level), this text was supported by all delegations except for one. Many delegations expressed their wish for a swift agreement on the file. A group of delegations also stated that any further changes in the text increasing the flexibility in the deemed supplier model beyond the text currently on the table, or a split of the proposal, would be unacceptable to them.

III. NEXT STEPS

10. The Belgian Presidency is therefore convinced that the texts in doc. 11012/24 (amending Directive), doc. 9683/24 (amending Regulation) and doc. 9684/24 (amending Implementing Regulation), in a spirit of compromise and in particular given the importance of this package, which aims to modernize the VAT legislation in the light of the opportunities in terms of digitalization for business processes and for administrations, as well as in response to the challenges raised by the digital economy, should be acceptable to all delegations.

11. If the Council reaches a general approach on the draft amending Directive on this basis, in view of the substantial differences between the Commission proposal and the latest Presidency compromise text submitted for a general approach, a decision to reconsult the European Parliament on the text would have to be taken. Given the expiry at the end of 2024 of special measures under Article 395 of Directive 2006/112/EC, which would create a legal void and which is to be addressed in the Directive concerned, the European Parliament could be invited to issue its opinion on the Council text as soon as possible and in any event not later than 10 December 2024.

12. In this context, the Council is invited to:

    a) solve the remaining issue as outlined in section II of this note;

    b) reach a general approach on the draft Council Directive amending Directive 2006/112/EC as regards VAT rules for the digital age on the basis of the text in doc. 11012/24;

    c) reach a political agreement on

        - the draft Council Regulation amending Regulation (EU) No 904/2010 as regards the VAT administrative cooperation arrangements needed for the digital age on the basis of the text in doc. 9683/24; and

        - the Council Implementing Regulation amending Implementing Regulation (EU) No 282/2011 as regards information requirements for certain VAT schemes on the basis of the text in doc. 9684/24;

    d) agree on the Council and Commission statements and the Council statements in the Annex to this note and to include these in the Council minutes.

ANNEX

Statements to the Council minutes

Council and Commission statement

Re Article 14(4) of Directive 2006/112/EC: The Council and the Commission agree to assess the need to extend the definition of 'distance sales of goods imported from third territories or third countries' to supplies of goods from customs warehouses in the EU in the context of the forthcoming negotiations on the proposal on the scope of IOSS (150 euro threshold), taking into account the possible effects of this extension in terms of evasion and fraud.

Re Article 262 of doc. 11012/24: The Council and the Commission agree to assess the need to strengthen the VAT administrative cooperation framework to ensure that Member States that use the option provided for under Article 262, paragraph 1, subparagraph 2, allowing to exclude acquirers of goods and recipients of services from the obligation to report the data on those cross-border transactions, provide timely information to the Member State of the supplier whenever required. Based on that assessment, the Commission shall, where appropriate, submit a legislative proposal.

Council statement

Re Article 59c of doc. 11012/24: The Council invites the Commission within 5 years of the entry into force of this Directive to review the amount and scope of the threshold laid down in Article 59c of Directive 2006/112/EC.

Re Mandatory import one-stop-shop: The Council will continue to work on other elements of the proposal as regards the incentives to use the import-one-stop-shop in the framework of the negotiations on the Proposal for a Council Directive amending Directive 2006/11/EC as regards VAT rules relating to taxable persons who facilitate distance sales of imported goods and the application of the special scheme for distance sales of goods imported from third territories or third countries and special arrangements for declaration and payment of import VAT (interinstitutional file number 2023/0158 (CNS)) with a view to reaching an agreement as soon as possible.

Re Entry into application: The Council acknowledges the challenges that the implementation of the new reporting system brings from an IT perspective to tax administrations and taxable persons, in particular SMEs. For that reason, a staged approach to the implementation of electronic invoicing is recommended in particular for Member States introducing digital reporting requirements for self-supplies and supplies of goods and services made between taxable persons within their territory. Member States could provide for consecutive stages in the implementation of the obligation to issue electronic invoices for domestic transactions, other than those covered by the cross-border digital reporting requirements, based on the size of the taxable persons concerned, leading up to the EU-wide entry into force of the reform with respect to e-invoicing and e-reporting as of 1 July 2030.