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'I/A' ITEM NOTE

From:	Presidency
To:	Permanent Representatives Committee/Council
No. Cion doc.:	14820/16 FISC 207 ECOFIN 1111 IA 126 14821/16 FISC 208 ECOFIN 1112 IA 127 14822/16 FISC 209 ECOFIN 1113 IA 128
Subject:	– 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 – 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 – Proposal for a Council Regulation amending Regulation (EU) No 904/2010 on administrative cooperation and combating fraud in the field of value added tax = Progress report

I. BACKGROUND

1. On 1 December 2016, the Commission adopted a "VAT e-commerce package" composed of amendments to Council Directives 2006/112/EC ("VAT Directive") and 2009/132/EC as regards certain VAT obligations for supplies of services and distance sales of goods (doc. 14820/16), Council Implementing Regulation (EU) No 282/2011 laying down implementing measures for Directive 2006/112/EC on the common system of VAT (doc. 14821/16), and Council Regulation (EU) No 904/2010 on administrative cooperation and combating fraud in the field of VAT (doc. 14822/16).

2. The general objectives of the package are the smooth functioning of the internal market, the competitiveness of EU businesses and the need to ensure effective taxation of the digital economy. It is consistent with the future application of the destination principle for VAT as set out in the recent VAT Action plan supported by Council[1]. Furthermore, it is a key initiative of the Digital Single Market Strategy[2] ('DSM Strategy') as well as of the Single Market strategy[3] and e-Government Action Plan[4].

3. The main provisions of the proposal are:

a) the introduction of common Community-wide simplification measures including a VAT threshold (€ 10,000) for intra-Community distance sales of goods and electronic services to help small start-up e-commerce businesses, as well as simplified rules for the identification of customers;

b) the extension of the existing Mini-One-Stop-Shop (MOSS) to intra-Community distance sales of tangible goods and services other than electronic services as well as to distance sales of goods of an intrinsic value not exceeding EUR 150 from third countries;

c) the removal of the existing intra-Community distance sales thresholds which are a cause of distortions in the single market;

d) allowing for EU sellers to apply home country rules in areas such as invoicing and record keeping;

e) the removal of the existing VAT exemption for the importation of small consignments from suppliers in third countries which disadvantages EU sellers;

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1 http://www.consilium.europa.eu/en/press/press-releases/2016/05/25-conclusions-vat-action-plan/
2 Doc. 8672/15.
3 Doc. 13370/15.
4 Doc. 8097/16.

f) the introduction of simplified arrangements for global declaration and payment of import VAT for importers of goods destined for final consumer where VAT has not been paid through the MOSS; and

g) greater coordination between Member States when auditing cross-border businesses subject to VAT to ensure high compliance rates.

II. <u>STATE OF PLAY</u>

4. The changes to the VAT Directive and Council Implementing Regulation were discussed at technical level under the Maltese Presidency at the meetings of the Working Party on Tax Questions (WPTQ) of 11 January, 8 February, 22 February, 8 March, 24 March, 4 April, 4 May and 19 May, as well as by the High Level Working Party on tax issues (HLWP) on 6 June 2017.

5. In two of the abovementioned WPTQ meetings, experts from the Working Party on the Customs Union were invited to participate in the discussion regarding the Imports Scheme and to submit questions to the Commission. Further co-ordination with Customs experts will be required in order to solve any remaining operational issues.

6. Based on the comments made by delegations, the Presidency has issued various iterations of a possible compromise text on these two proposals. The sixth Presidency compromise text (doc. 10043/17 FISC 130 ECOFIN 504 UD 145) reflects the current state of play.

7. Most delegations expressed support, in principle, for the Commission proposal and the Presidency compromise text has therefore not altered its general philosophy. However, one delegation still has a political reservation on the extension of the MOSS, the application of the Home Country Rules and the introduction of the Scheme for importation of an intrinsic value not exceeding €150.

8. Some delegations have suggested a split of the package in order to fast track the adoption of some of its measures, but most delegations opposed this idea and insisted on progressing on the package as a whole.

9. Although there are still a number of reservations on the substance of the proposals, discussions have overall allowed to stabilise a large part of the proposals, but the Presidency considers that five issues will require further discussions at technical level, namely:

(a) <u>Introduction of a threshold of €10,000 for TBE services</u>

The Commission's proposal provides for the introduction from 2018 of an annual threshold of €10,000 for supplies of telecommunications, broadcasting and electronic (TBE) services, below which the place of supply would remain in the Member State of the supplier. This would be aligned to the place of supply rules for Distance Sales of goods below the established threshold. As from 2021, the Distance Sales threshold would also be aligned to the threshold for TBE services and would be reduced to €10,000.

This measure would simplify the obligations of SMEs because they could apply the rules of the Member State of establishment if their annual turnover is below the established threshold. It would therefore eliminate a burden for such small operators who today have to register for MOSS from the first supply.

There are still two delegations that do not agree, in principle, to the introduction of a new threshold for TBE services, as they consider that thresholds are not the most suitable tool for achieving simplification. Another delegation has a political reservation on the reduction of the Distance Sales threshold to a lower amount of €10,000.

The Presidency considers that agreeing on this threshold is fundamental to reaching the goal of the proposal as it is an essential element of simplification for businesses and would incentivise them to trade online.

(b) Home Country Rules for Invoicing and Record Keeping

The Commission's proposal provides that EU sellers could apply their home country rules in areas such as invoicing and record keeping. This simplification would eliminate the burden for operators to use the rules of potentially 28 Member States of consumption.

There was no agreement regarding the proposal on record keeping and the Presidency therefore proposed to retain the present harmonised period of ten years. Some delegations, however, expressed dissatisfaction since it takes away an element of simplification for businesses.

With regard to the application of the Home Country rules to invoicing, one delegation maintained a political reservation, whilst another suggested instead to consider minimum harmonisation rules.

(c) Extension of the MOSS

The Commission's proposal provides that, as from 2021, the MOSS will be extended to distance sales of tangible goods and services to non-taxable persons and distance sales of goods of an intrinsic value not exceeding EUR 150 imported from third countries to non-taxable persons.

One delegation still has a political reservation on the extension of the MOSS.

(d) The Small Imports Scheme

The Commission's proposal provides for the elimination of the exemption from VAT of small importations that do not exceed €22. In addition, in order to cope with the payment of VAT on an increased number of small consignments, the proposal also provides for a special scheme for distance sales of goods imported from third countries or third territories that do not exceed €150. This would be based on the same principles as the other MOSS schemes.

One delegation has a political reservation on the elimination of the import exemption, whilst three delegations expressed political/scrutiny reservations on the application of a special MOSS scheme to imported goods that would not exceed €150.

As mentioned above, this part of the proposal will require further technical examination in coordination with customs experts considering the number of pending questions from delegations.

(e) Extension of the scope to online platforms and fulfilment houses

Whilst this possible extension was not proposed by the Commission, there is broad agreement on the need to tackle the issue and on the principle of making electronic interfaces (such as market places, platforms, portals and similar means) and fulfilment houses (which provide storage and delivery of distance sales, especially to third country operators) liable for collecting VAT. This would make it easier to collect VAT because the number of platforms and fulfilment houses is much smaller and easily manageable than the number of third party operators. Furthermore, it will make the enforcement of VAT collection easier. However, further discussions are required at the technical level to agree on how this could be implemented and to what extent.

With regard to operators who are established outside the EU, including those using fulfilment houses in particular, the Presidency notes and regrets that enforcement in this area is deficient, also because of the difficulties to enforce registration for VAT in the EU. However, this situation would be remedied by the measures described above.

III. WAY FORWARD

10. Against this background, the Committee of Permanent Representatives is invited to suggest that the Council (ECOFIN), on the basis of this progress report, note the above state of play at its forthcoming meeting on 16 June 2017.