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'I/A' ITEM NOTE

From: General Secretariat of the Council
To: Permanent Representatives Committee/Council
Subject: VAT in the Digital Age package
- Progress report

The progress report in the Annex to this note presents the Presidency's view of the state of play and progress achieved in the examination of the abovementioned proposal in the second half of 2023.

It is suggested that the Permanent Representatives Committee invite the Council to take note of the Presidency progress report set out in the Annex to this note as an 'A' item at a forthcoming meeting.

‘VAT in the digital age’ package

Presidency progress report

I. INTRODUCTION

1. In its 2020 Action Plan for Fair and Simple Taxation supporting the Recovery Strategy, the Commission announced a VAT initiative to support the Commission’s aims to lead the transition into a greener and more digital world that is compatible with the principles of our social economy. Its principal objectives are a modernisation of the reporting obligations for VAT transactions, an extension of the scope of the EU VAT one-stop-shop schemes and an adaptation of the VAT framework to the platform economy¹.
2. In its Conclusions of November 2020 on fair and effective taxation in times of recovery, on tax challenges linked to digitalisation and on tax good governance in the EU and beyond, the Council welcomed the Commission’s suggestion to clarify, simplify and modernise the EU VAT rules, in particular supporting actions leading to further simplification of the EU cross-border trade, reduction of administrative burdens for businesses as well as tax authorities and a more efficient fight against VAT fraud².
3. In this context, 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)³;
 - 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)⁴; 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)⁵.

¹ Doc. 9844/20 + ADD 1.

² Doc. 13350/20.

³ Doc. 15841/22.

⁴ Doc. 15842/22.

⁵ Doc. 15843/22.

4. 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).
3. The European Data Protection Supervisor has issued its opinion on the package on 3 March 2023⁶. The European Economic and Social Committee has issued its opinion on the package on 27 April 2023⁷. The European Parliament has been consulted; its opinion was adopted at the plenary session on 22 November 2023⁸.

⁶ Doc. 7071/23.

⁷ Opinion of the European Economic and Social Committee, “VAT in the Digital Age”, doc. ECO/606, <https://webapi2016.eesc.europa.eu/v1/documents/P6FJPSUHKDC2-1879354131-3598/download>

⁸ 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.

II. WORK IN THE COUNCIL PREPARATORY BODIES

4. The Commission presented its proposals on 12 December 2022 to the Working Party on Tax Questions (WPTQ) under the Czech Presidency, where they were broadly welcomed by delegations. The WPTQ then proceeded to discuss each of the parts separately along the following lines:

a) Digital reporting requirements

5. The Commission is proposing to move to a fully digitalised mandatory transaction-by-transaction reporting system for intra-EU transactions in 2028 supported by e-invoicing, which would become the default system for issuing invoices and which would be based on a European standard. Data on intra-EU transactions extracted from the e-invoices would be transmitted to an EU database to allow for reporting and controls. Member States would also have the option to move towards a digital reporting system for domestic transactions.
6. The WPTQ analysed the legal text of the amending Directive and the amending Regulation. Based on the discussions in the WPTQ, the Swedish Presidency presented a compromise text on the most important aspects of the new system, i.e. electronic invoices and digital reporting requirements.
7. At the meeting of the Council (Ecofin) in June 2023, the Finance ministers generally welcomed the broad lines of the Commission proposals and expressed their support both to the progress made and to the work ahead. On the DRR part of the proposal, the ministers emphasized the importance of a single, e-invoicing-based reporting framework for the intra-community transactions. There were however different views from Member States on the level of harmonization to be achieved.
8. The Spanish Presidency pursued the work on this part of the proposals by presenting a compromise text on e-invoicing and digital reporting to the WPTQ and started the examination of the articles on the central VIES. While this part of the proposal will require further work to reconcile the positions of the delegations, the draft compromise text discussed during the Spanish Presidency could be a starting point for further work in the Council.

b) Platform economy

9. The ‘VAT in the Digital Age’ proposals seek to ensure a common and simplified approach to the taxation of the platform economy and to create a level playing field for VAT purposes between traditional suppliers of short-term accommodation rental and passenger transport services and those operating through platforms. To achieve this, the Commission proposes to move to a ‘deemed supplier’ model for the latter services. Put simply, where a supplier operating through a platform does not charge VAT on the supply the platform would have to charge it.
10. The Swedish Presidency presented a compromise text on the articles related to the platform economy in the amending Directive and the amending Implementing Regulation, simplifying and limiting the scope of the deemed supplier provision and modifying the definition of short-term accommodation rental.
11. 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.
12. The Spanish Presidency built on this guidance from the Ministers to adjust the ‘deemed supplier’ model, in order to make it acceptable for all delegations, exploring various options to introduce a certain degree of flexibility for those delegations who expressed concerns on the impact of the new proposal on their economies. In particular, some Member States expressed concerns on the effects of generalised taxation of the short-term accommodation rentals in their territory and for every type of accommodation, if a harmonized definition of short-term accommodation rental was applied.
13. In view of these concerns, the Spanish Presidency worked towards a balanced compromise combining a harmonized mandatory ‘deemed supplier’ model with a definition of short-term accommodation rental, which allows Member States sufficient flexibility to accommodate national specificities in the taxation of the accommodation sector through national law. A broad majority of Member States supported this proposal at technical level, whereas a group of Member States requested or would prefer further flexibilities.

c) Single VAT registration

14. As regards the third objective, the Commission package contains a range of improvements to the system put in place under the VAT e-commerce package in recent years on the one hand, and a series of new features that would reduce the operations for which VAT registrations in multiple Member States are necessary.
15. Based on the thorough examination of the articles in the various proposals related to the above topics, the Swedish Presidency presented a compromise text with regard to these articles to accommodate the concerns and suggestions of the delegations, especially on the improvements of the one-stop-shop schemes. The delegations assessed the text as a step in the right direction.
16. In June 2023, the Council (Ecofin) expressed support for the enhancement of the one-stop-shops and the reverse charge mechanism. However, some ministers asked for extra analysis on some of the proposed new features, like the extension of the ‘deemed supplier’ model or the mandatory import one-stop-shop.
17. The Spanish Presidency pursued the work on the new features in the OSS schemes, namely:
 - extension of the EU VAT one-stop shop to domestic business-to-consumer supplies;
 - addition of a special scheme to address transfers of own goods;
 - obligatory reverse charge mechanism for business-to-business supplies in situations where a supplier is not established for VAT purposes in the Member State where the VAT is due;
 - mandatory import one-stop shop for electronic interfaces;
 - extension of the deemed supplier provision in certain situations; and
 - new rules concerning second hand goods and works of art.
18. The Spanish Presidency presented compromise texts to take into account the positions of delegations on these new features. In particular, (i) the extension of the deemed supplier provision was not maintained, (ii) the elements in the Commission proposal related to works of art and second goods were removed, and (iii), the provisions on a mandatory IOSS were put on hold for them to be discussed in conjunction with the VAT elements in the reform of the Union Customs Code (UCC)⁹.

⁹ Doc. 9622/23.

19. At the WPTQ meetings on 7 and 14 November, the latest compromise text of the Spanish Presidency on the single VAT registration was acceptable to all delegations without prejudice to a few last technical adjustments, e.g. concerning the compatibility of national platform reporting regimes.

III. OUTSTANDING ISSUES

20. As detailed above, agreeing on the part of the package related to electronic invoicing and digital reporting requirements as well as the entry into application of the various parts of the package will require further discussions at technical level before an agreement on the whole package will be feasible.
21. On the SVR part, the Presidency believes that the discussions at a technical level have come to completion, aside from a few technical adjustments.
22. The provisions on the IOSS will have to be discussed in the light of the progress made with the UCC reform.
23. On platforms, while a majority of Member States support the latest Presidency compromise text, some delegations could not support it and some suggested an optional application of the deemed supplier rule, with a few of them suggesting the substitution of the deemed supplier rule by reporting obligations.
24. At the meeting of the Working Party on Tax Questions (High Level), these positions were confirmed. Further work will be necessary to reconcile the positions of the delegations on this element.

IV. CONCLUSION

25. In this context, the Spanish Presidency invites the Council to take note of this report, with a view to making further progress on this file and building on the progress made so far.