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REPORT

From: General Secretariat of the Council
To: Permanent Representatives Committee

No. prev. doc.: 9671/1/15 FISC 65 ECOFIN 453
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Subject: Proposal for a Council Directive amending Directive 2006/112/EC on the common system of value added tax, as regards the treatment of vouchers
– Political agreement

I. INTRODUCTION

1. On 10 May 2012, the Commission presented a proposal for a Council Directive amending Directive 2006/112/EC on the common system of value added tax (the VAT Directive), as regards the treatment of vouchers¹. The main objective of the proposal is to harmonise national VAT rules on vouchers, which would increase legal certainty for businesses, particularly those wishing to exploit single market opportunities. Moreover, where a voucher is issued in one Member State and used in another, the risks of mismatches in national regulation, which sometimes include double or non-taxation, would be reduced.

¹ doc. 9926/12 FISC 67.

2. The European Economic and Social Committee and the European Parliament delivered their opinions respectively on 14 November 2012² and 17 April 2013³.
3. The proposal of the Commission and various Presidency compromise proposals have been discussed extensively from all angles at technical level for nearly four years at the Council preparatory bodies (e. g., the Working Party on Tax Questions (WPTQ) has met for about 25 times on this dossier, and a comparable number of compromise texts have been tabled for examination).

II. STATE OF PLAY

4. In June 2015, under Latvian Presidency, following an exchange of views at the Committee of Permanent Representatives⁴, the decision was taken to postpone submission of this dossier to the Council due to continuing divergences in positions of Member States.
5. Under Luxembourg Presidency, the WPTQ has discussed this file on 18 September 2015, where the views of the delegations on some of the technical aspects of the file have been clarified further (see point 10 of this note).
6. Following the preparatory work done during previous Presidency terms, and on the basis of a number of discussions held on bilateral or multilateral basis, the Netherlands Presidency has tabled a new compromise text for examination at the WPTQ meeting of 11 April 2016⁵. As a result of continuing this work among experts, the Presidency now takes the view that only a limited number of further adjustments to the compromise text would be needed, in order to achieve the required unanimous support of all delegations.
7. On this basis, the Netherlands Presidency suggests to conclude the work on this dossier, and tables for the Committee of Permanent Representatives the compromise text set out in doc. 8333/16 FISC 59 ECOFIN 326 LIMITE. The main aspects of this compromise text are explained in Part III of this note.

² OJ C 11, 15.1.2013, p. 27.

³ OJ C 242E, 23.8.2013, p. 144.; doc. P7_TA(2013)0175.

⁴ See doc. 9670/1/15 FISC 64 ECOFIN 452 REV 1 LIMITE and doc. 9671/1/15 FISC 65 ECOFIN 453 REV 1 LIMITE.

⁵ doc. 7463/16 FISC 42 ECOFIN 257 LIMITE.

III. KEY CHARACTERISTICS OF THE PRESIDENCY COMPROMISE

8. The text of Article 30b(2), discussed at the WPTQ meeting of 11 April 2016, was acceptable to all delegations, and now constitutes an integral part of the Presidency compromise set out in doc. 8333/16 FISC 59 ECOFIN 326 LIMITE:
- i) the first subparagraph of Article 30b(2) intends to express that with regard to an MPV in a distribution chain only the underlying supply of the goods or services to which the MPV gives entitlement is subject to VAT. Depending on its nature this supply can be either taxed or exempted. Furthermore, this first subparagraph clarifies that each preceding transfer of the multi-purpose voucher in the chain is not subject to VAT;
 - ii) the second subparagraph deals with distribution services and other services such as promotion services that can be identified in the distribution chain. This paragraph merely clarifies that the general VAT rules apply to the supply of such services, including as regards the rules for deduction of input VAT.
9. Following the WPTQ of 11 April 2016, the Presidency has also made the following adjustments:
- i) Recital 2 of the Presidency compromise text has been supplemented with the wording taken from Article 1 of the VAT Directive, so that the recital now specifies that one of the objectives of the amending directive is also "to be consistent with the principles of a *general tax on consumption exactly* proportional to the price of goods and services".
 - ii) Recital 5 has been modified to better reflect the positions of Member States regarding the scope of the amending directive and the definition of vouchers (which is set out in Article 30a).
 - iii) Recital 11a was inserted, to specify that the amending directive does not aim to further regulate how, pursuant to the VAT Directive, Member States should handle situations where a multi-purpose voucher is not redeemed by the final consumer during its validity period, and the consideration received for such voucher is kept by the seller.

- iv) The Presidency has added a new Article 410b (a review clause), under which, within 3 years after practical application of the new VAT rules on vouchers in the EU, the Commission will have to present a report on practical application of VAT rules on vouchers, with particular regard to the definition of vouchers, VAT rules relating to taxation of vouchers in the distribution chain and non-redeemed vouchers. The report would be accompanied, where necessary, by an appropriate proposal to amend the relevant rules. In view of the Presidency, such a review clause will permit to have a higher degree of follow-up, as some Member States have expressed caution whether the draft amending directive is sufficiently ambitious and whether it will not cause any new problematic practical issues related to VAT treatment of vouchers.
 - v) Following the request of one delegation, the Presidency has moved the starting date of application of the new VAT rules on vouchers to 1 January 2019 (the new Article 410a of the VAT Directive, and Article 2 of the amending directive).
10. The Presidency stresses that, following the analysis of various scenarios, as ascertained and agreed by all delegations at the WPTQ meeting of 18 September 2015, the rules on vouchers that would be inserted into the VAT Directive do not alter the application of the special scheme for travel agents foreseen in Articles 306 to 310 of the VAT Directive. In other words, the special scheme for travel agents would supersede the specific arrangements designed for vouchers.

IV. WAY FORWARD

11. Against this background, the Presidency is of the view that the compromise text, set out in doc. 8333/16 FISC 59 ECOFIN 326 LIMITE, should address the issues raised and strike the right balance between the concerns of all delegations, with a view to reaching an agreement on this dossier.

12. The Permanent Representatives Committee is therefore invited to:

- confirm, at its level, the agreement on the compromise text set out in doc. 8333/16 FISC 59 ECOFIN 326 LIMITE;
- recommend that the Council reaches a political agreement, as an "A" item, on the draft Directive, as set out in doc. 8333/16 FISC 59 ECOFIN 326 LIMITE, with a view to adopting the Directive, subject to legal-linguistic revision, as an "A" item on the agenda of a forthcoming Council.
