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REPORT

From: General Secretariat of the Council
To: Council

No. prev. doc.: 13375/17 FISC 230 ECOFIN 847 UD 231

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

= General approach

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 seeks to be consistent with the future application of the destination principle for VAT as set out in the recent VAT Action plan supported by Council¹. Furthermore, it is a key initiative of the Digital Single Market Strategy² ('DSM Strategy') as well as of the Single Market strategy³ and e-Government Action Plan⁴.
 3. The European Council indicated in its conclusions of 19 October 2017 (EUCO 14/17) that work on the Digital Single Market should be speeded up and prioritised. It has also underlined the necessity of increased transparency in platforms' practices and uses, and called for "*an effective and fair taxation system fit for the digital era*".
 4. The main provisions of the three proposals are:
 - a) the introduction by 2019 of common EU-wide simplification measures for intra-EU distance sales of electronic services, such as a threshold (€10,000) to exempt small start-up e-commerce businesses from applying rules of the Member State other than where they are established, or the possibility for EU sellers to apply home country rules in areas such as invoicing;
 - b) the extension by 2021 of the Mini-One-Stop-Shop (MOSS) to intra-EU distance sales of tangible goods and services other than electronic services;

¹ Doc. 9494/16.

² Doc. 8672/15.

³ Doc. 13370/15.

⁴ Doc. 8097/16.

- c) the introduction by 2021 of a new One-Stop-Shop ("import OSS") for distance sales of goods imported from third countries of an intrinsic value not exceeding EUR 150, as well as the elimination of the VAT exemption for small importations that do not exceed €22, which currently disadvantages EU sellers;
 - d) the introduction of simplified arrangements for the global declaration and payment of import VAT on goods destined to final consumers in some specific cases; and
 - e) increased administrative cooperation between Member States when auditing cross-border businesses subject to VAT to ensure high compliance rates.
5. These proposals are expected to significantly improve VAT collection on online distance sales from third countries, where VAT fraud is estimated by the Commission at about EUR 5 billion per year.
6. A total of 17 Working Party on Tax Questions (WPTQ) meetings have been held to examine the three proposals at technical level during the Slovak, Maltese and Estonian Presidencies, followed by 3 meetings of Fiscal Attachés (18, 23 and 24 October 2017). The VAT e-commerce package was also discussed at the High Level Working Party on tax issues (HLWP) meetings of 6 June and 27 October 2017. These meetings have examined a total of 12 iterations of a possible compromise text.
7. In three of the abovementioned WPTQ meetings, experts from the Working Party on the Customs Union were invited to participate in the discussion regarding the Import OSS and to submit questions to the Commission. Tax experts were furthermore invited to co-ordinate with their Customs counterparts in preparation for WPTQ meetings.
8. The Maltese Presidency focused work at technical level on changes to the VAT Directive and Council Implementing Regulation and presented a progress report on the negotiations on these two proposals at the 16 June 2017 ECOFIN Council meeting (doc. 10044/17 FISC 131 ECOFIN 505), together with a Presidency compromise reflecting the state of play (doc. 10043/17 FISC 130 ECOFIN 504).

9. Against this background, the Estonian Presidency started the technical work on the changes to Council Regulation 904/2010 at the WPTQ meeting of 6 July 2017 and, on this basis, subsequently presented a first Presidency compromise on the entire VAT e-commerce package at the WPTQ meeting of 6 September 2017.
10. Since the start of the examination of the package, most delegations expressed support, in principle, for the Commission proposals. The Presidency compromise texts have therefore not altered its general philosophy. Nevertheless, the technical examination revealed several technical difficulties to be overcome, hence the number of expert meetings that were held.
11. In particular, delegations insisted on extending the scope of the Commission's proposals by making electronic interfaces (such as platforms, marketplaces and portals) liable for collecting VAT in order to ensure effective and efficient collection of VAT in this field. This work was initiated during the Maltese Presidency and continued during the Estonian Presidency, leading notably to the insertion of new Articles 14a (general principle), 66a (chargeable event) and 242a (record-keeping). These Articles have been subject to considerable work at technical level and the Presidency considers that its compromise text (doc. 13841/17) achieves in this regard a fair balance.
12. The detailed implementation issues for the provisions of the VAT directive that will apply as from 2021, including the above-mentioned Articles 14a, 66a and 242a, will be addressed in a forthcoming proposal by the Commission to revise the Council Implementing Regulation. In this respect, Fiscal Attachés have prepared a draft statement to be included in the Council minutes (annexed to doc. 13841/17) that highlights questions that will have to be considered in that phase and that has become an essential part of the overall political compromise.

13. In Coreper on 27 October 2017, delegations broadly welcomed the proposed Presidency compromise. Two delegations requested further work at technical level. Following discussions on the outstanding issue of administrative cooperation between Member States, the Presidency proposed the deletion of both a provision in Article 47j (possibilities for three Member States to ask for an administrative enquiry by another Member State) and the previous Article 47k (fees for the collection and control of taxes collected under the special schemes). Several delegations maintained political reservations (see part II of the present report), whilst the UK delegation entered a parliamentary scrutiny reservation.

II. REMAINING POLITICAL RESERVATIONS

14. The remaining key open issues have been resolved by Fiscal Attachés and Coreper, but several delegations have maintained political reservations on various parts of the text:
- a) *on the implementation date for the first set of simplification rules (three delegations):* since these simplifications are to the benefits of taxpayers, in particular small and medium businesses, the Presidency insists on keeping the date proposed in its compromise (1 January 2019) in order to reap the benefits as soon as possible;
 - b) *on Articles 14a (one delegation) and 242a (one other delegation):* as mentioned above, these Articles have been subject to considerable work at technical level and the Presidency considers that its compromise text, as well as the draft statement to be included in the Council minutes, achieve in this regard a fair balance;
 - c) *on the import OSS and the elimination of the VAT exemption for small importations that do not exceed € 22 (one delegation):* the delegation concerned tabled a proposal for an "alternative" import scheme, but pursuing this route would render it impossible to achieve the 2021 implementation date target;

- d) *on Article 369s (three delegations)*: the monthly period for VAT returns in the import OSS is an important concession made to customs authorities that the Presidency considers as necessary for an overall political compromise;
- e) *on the draft Regulation on administrative cooperation (several delegations)*: agreement on the above-mentioned compromise proposed by the Presidency at the Coreper meeting of 27 October will have to be confirmed by the ECOFIN Council.
15. The delegations concerned are encouraged to lift their remaining political reservations in the spirit of compromise.
16. The Presidency is convinced that discussions at technical and Coreper level have allowed to stabilise the overall package in a fair and balanced way, and considers that the only margin for further political compromise is in the draft statement to be included in the Council minutes.

III. NEXT STEPS

17. The Council is therefore invited:
- to resolve the remaining political reservations mentioned in part II of the present report;
 - to reach a general approach on the Directive, on the basis of a compromise text set out in doc. 13841/17 FISC 245 ECOFIN 899 UD 250, with a view to adopting the Directive, subject to receiving the opinion of the European Parliament and legal-linguistic finalisation, as an "A" item on the agenda of a forthcoming Council.