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From: Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director

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To: Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union

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Subject: COMMISSION STAFF WORKING DOCUMENT
EXECUTIVE SUMMARY OF THE EVALUATION
Special Scheme for travel agents of the Council Directive 2006/112/EC on the common system of value added tax

Delegations will find attached document SWD(2021) 33 final.

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COMMISSION STAFF WORKING DOCUMENT
EXECUTIVE SUMMARY OF THE EVALUATION

Special Scheme for travel agents

of the

Council Directive 2006/112/EC on the common system of value added tax

{SWD(2021) 32 final}

EXECUTIVE SUMMARY

The special VAT scheme for travel agents (the “special scheme”), set out in Articles 306 to 310 of the VAT Directive¹, is a simplification measure derogating from the normal VAT rules that is in place since the adoption of the common VAT system in 1977.

Under the special scheme, all transactions performed by a travel agent acting in his own name in respect of a journey are regarded as a single supply. The taxable amount is the profit margin realised by the travel agent on the supply of this single service and hence the travel agent is not entitled to deduct input VAT. The place of taxation for the travel agent's supply is where he has established his business.

This scheme has never been updated nor applied uniformly by Member States, leading to numerous cases brought to the Court of Justice of the European Union. Over the years, the travel industry has undergone profound changes that are not reflected in the current rules.

The performance of special scheme is assessed against the five evaluation criteria set out by the Better Regulation Guidelines². The key findings of the evaluation are summarised as it follows:

1. The special scheme has been widely effective in achieving its two main objectives of simplifying the application of VAT rules for travel agents and ensuring a fair allocation of VAT revenue.

The scheme permits travel agents to operate within the EU without having to register and apply VAT in each of the other Member States where travel services take place. The place-of-supply rule and the concept of single service are key elements that bring simplicity and make the scheme much more straightforward to apply than the normal VAT rules.

The fact that the special scheme prevents the travel agent from either deducting or obtaining refund of input VAT also ensures an equal distribution of revenues among Member States. The majority of VAT collected via the special scheme goes to the Member States of consumption of the travel services.

2. The special scheme presents a number of shortcomings.

Taxation of business to business supplies at the margin comes at a cost for businesses: non-deductibility of input VAT. However costs and benefits deriving from the application of the special rules differ according to the business model in use.

The blocked input VAT has also placed travel sectors mainly targeting businesses, namely Travel Management Companies and Meeting, Incentives, Conference and Events organisers, at a competitive disadvantage when compared to suppliers not subject to the special scheme (e.g. principal suppliers, suppliers of in-house services and intermediaries).

¹ Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ L 347, 11.12.2006, p. 1), <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=URISERV%3A131057>

² <https://ec.europa.eu/info/sites/info/files/better-regulation-guidelines.pdf>

However, the rule of taxation at origin leads to non-taxation of the margin made by third country operators on the sale of EU travel services. The inequality of treatment becomes more acute with the increased competition at the global level and the fact that no physical presence is required to sell travel services into the EU market.

The scheme lacks in clarity and harmonisation. Despite or even because of the extensive case-law, its rules remain unclear and not uniformly applied by Member States. This is not only a source of complexity in the application of the scheme but also leaves scope for distortions of competition detrimental to the proper functioning of the internal market.

The scheme is outdated. It was designed for "brick and mortar" travel agencies with a local office that hardly exist any longer. It does therefore not capture the new economic reality in which travel agents operate and certainly is not fit for the digital age.

3. The special scheme continues to be relevant for the travel operators.

The scheme has, in many respects, been successful and there is little desire within the industry to see the scheme as such brought to an end, as confirmed by the public consultation. The scheme in its present form is however inadequate to meet diverse and new needs of travel operators and to support them in the Covid-19 crisis.

4. The special scheme is only partially consistent with the developments in the VAT system and in sector-specific regulations.

The VAT system has gradually evolved towards taxation at destination to which the scheme has kept adequate consistency. Most of the services purchased by the travel agent are in fact taxed in accordance with the normal place-of-supply rules where the services take place.

For reason of consistency, the special rules and their interpretation however need to take better account of essential developments in the regulatory framework aimed at improving legal certainty and uniformity of treatment in particular with the regard to the functioning of the travel package market³ and platform-to-business relations⁴.

5. The EU added value of the special scheme for the functioning of the single market is hampered by divergent application of its rules.

As integral part of the common VAT system, the special scheme must be applied in a consistent manner. The evaluation found that on a number of aspects, the majority of Member States continues to apply or interpret in different ways the common rules. This hampers the correct functioning of the internal market by causing distortions of competition whether at national or Union level and leads to episodes of non-taxation or double taxation.

The public consultation shows a strong demand from stakeholders for clearer, simpler and more harmonised rules for travel agents. According to them the rules as they are applied today result in market distortions and do not ensure a level playing field for all travel agents operating in the EU market, including those not established within the EU.

³ Directive (EU) 2015/2302 of the European Parliament and of the Council of 25 November 2015 on package travel and linked travel arrangements (OJ L 326, 11.12.2015, p. 1).

⁴ Regulation (EU) 2019/1150 of the European Parliament and of the Council of 20 June 2019 on promoting fairness and transparency for business users of online intermediation services (OJ L 186, 11.7.2019, p. 57).