

Open public consultation on the reform of VAT rates (proposal for a Council Directive amending Directive 2006/112/EC on the Common system of value added tax as regards the rules governing the application of VAT rates)

Fields marked with * are mandatory.

Please note: In order to ensure a fair and transparent consultation process only responses received through our online questionnaire will be taken into account and included in the report summarizing the responses. Should you have a problem completing this questionnaire or if you require particular assistance, please contact taxudC1@ec.europa.eu

The general rules on personal data protection on the EUROPA website are accessible [here](#).

Introduction and purpose of the consultation

In 2017, the Commission will, following its VAT Action Plan and the 2017 Commission Work Programme adopt four proposals related to VAT. Alongside the proposal to reform VAT rates, the Commission will present proposals on the definitive VAT regime, an SME package and improved administrative cooperation. The rates initiative is particularly linked with the one on the definitive VAT regime, because the existing extensive system of derogations to the VAT rates is largely set to expire when the definitive regime is adopted. Thus, this proposal will also have to determine the regime that will apply following the expiration of the derogations to the VAT rates.

The Value Added Tax (VAT) is one of the most important taxes in terms of revenue. It takes the form of a general consumption tax with one or more rates which depend on the good or service being taxed. The EU legal framework concerning VAT is laid down in Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (the 'VAT Directive').

The VAT Directive sets out general rules which set certain limits to Member States' freedom to fix VAT rates. These rules were intended to guarantee the neutrality, simplicity and workability of the VAT system. The default rule applies a standard VAT rate of minimum 15% to all taxable supplies of goods and services within the European Union. However, most Member States apply several different rates. In the EU VAT system, this is done by applying lower ('reduced') rates to certain goods and services. The directive allows up to two reduced rates, set at minimum 5%; these can be applied only to specific goods and services (such as foodstuffs, pharmaceuticals, books and so on), listed in Annex III of the VAT Directive. However, the list does not fully take into account technological and economic developments. In addition, a large number of derogations (exceptions) have been granted allowing certain Member States to apply to specified goods or services 'super-reduced rates' (e.g; rates lower than 5%) and in some cases, even granting to specified goods or services an exemption with a right to VAT deduction (so-called "zero rates").

These rules were established over two decades ago with the aim of arriving at a definitive VAT system based on the origin principle, i.e. a system in which the location of the seller determines the rate. To avoid unfair competition, the origin system requires Member States to tax the same goods at rates that are very similar[1]; for this reason, the VAT directive set minimum taxation levels, in the hope that over time VAT rates would converge. Nevertheless, given that over many years there was no appreciable progress on rate convergence, the Commission, with the agreement of the [Council](#) and the [European Parliament](#), decided in 2011 to abandon the objective of introducing the origin-based VAT system in favour of one based on the destination system, according to which the VAT applicable is the one where the buyer is located (so that the same tax rate is paid by all sellers)[2]. Differences in VAT rates may still affect the functioning of the single market in a system where consumers cross the border to buy goods and services. But apart from these cases, in a destination based system, suppliers derive no significant benefit from being established in a lower-rate Member State, so VAT rate differences have less potential to disrupt the functioning of the single market, provided that similar goods or services within a Member States are taxed at the same rate..This has opened up the possibility to reform rules on rates and provide more discretion to Member States.

As a consequence of these developments, the Commission adopted an Action Plan on VAT[3] in which it presented its plan to update rules on VAT rates to give more discretion to Member States in setting their VAT rates. Following the abandonment of the origin system, this reform would take the subsidiarity principle laid down in article 113 TFEU into account, which provides that the EU can act only if and in so far as certain objectives cannot be sufficiently achieved by the Member States and can be better achieved at Union level.

To give an example of the way in which current rules limit Member States' room for manoeuvre, one could cite the case of electronic publications, for which a [reform proposal](#) has recently been put forward by the Commission. Electronic publications are not included in the list of goods and services for which reduced rates are allowed, largely because the market for such publications was not very developed at the time the rules were written. The consequence of this is that, until the VAT directive is amended, Member States are not legally allowed to grant e-publications the favourable VAT treatment reserved for printed publications, even if the content is the same, and must tax e-publications at the higher standard rate. While the VAT directive can be amended to allow this, and indeed the Commission has proposed to do so, the procedure is long, raising the question of whether rules could be made less rigid, making it unnecessary in the future to present targeted reform proposals such as the one on electronic publications.

[1] Otherwise, sellers located in Member States with a higher VAT rate would be put at an unfair disadvantage compared with sellers located in low VAT countries.

[2] See <http://eur-lex.europa.eu/procedure/EN/199945#415549>.

[3] "[Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee on an action plan on VAT: Towards a single EU VAT area - Time to decide](http://ec.europa.eu/taxation_customs/sites/taxation/files/com_2016_148_en.pdf)", available at http://ec.europa.eu/taxation_customs/sites/taxation/files/com_2016_148_en.pdf

Scope of the consultation

This Open Public consultation aims at obtaining stakeholders views' on the following aspects:

- The need for EU action and in particular, the need for greater freedom for Member States to fix VAT rates;
- The proper balance between harmonisation and Member States autonomy in setting VAT rates
- The problems and risks linked to differentiation of VAT rates within the Single Market;
- The desirable direction for reform as well as stakeholders' views on the proposed policy options and their impacts.

Glossary

Supply of good: the transfer of the right to dispose of tangible property as owner.

Supply of services: any transaction which does not constitute a supply of goods.

Standard rate: A unique standard VAT rate of minimum 15% must be applied to all supply of goods and services subject to VAT, unless they are exempted or subject to a reduced or other rate.

Reduced rate: Member States have the right to apply up to two reduced rates of minimum 5% to specific goods and services listed in Annex III of the VAT directive.

Super-reduced rate: Super-reduced rates are specific derogations to the VAT system which allow Member States to use rates below the minimum of 5% for certain goods or services.

Zero rate: Zero rate is a form of super-reduced rate which allows Member States to exempt a transaction from VAT while still allowing the deduction of input VAT (making the transaction taxed at an effective rate of 0%)

Parking rate: Parking rates are reduced rates that apply to goods and services not included in Annex III but subject to a reduced rate in certain Member States on 1 January 1991 (Art. 113 of the VAT Directive).

Publication of responses

Contributions received are intended for publication "as submitted". Below, you have the possibility to indicate whether you agree to the publication of your individual responses under your name or anonymously. Furthermore, the European Commission will prepare a synopsis report summarizing all responses received (including responses anonymized upon request).

- * 1 Do you agree to your contribution being published ?
 - Yes, I consent to all of my answers being published under my name/the name of my organisation.
 - Yes, I consent to all of my answers/personal data being published anonymously.

- * 2 Do you confirm that the information you provide in your response to this consultation is not subject to copyright restrictions?
 - The information provided is not subject to copyright restrictions.
 - The information provided is subject to copyright restrictions.

Identification of the stakeholder

- * 3 Are you replying as a, or on behalf of:
 - Business
 - Tax expert, tax advisor or tax practitioner
 - Trade/Business/Professional association
 - Academic institution, think-tank
 - Non-governmental organisation, consumer association
 - National tax administration
 - Other public authority, public institution, including national or regional parliaments
 - Private citizen
 - Other

- * 5 Please indicate your name, or the name of your company, organisation, or institution for which you respond to this consultation.

Comité Professionnel des Galeries d'Art

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If you agree to be contacted by us in case of questions or doubts over your replies to this questionnaire, please indicate your email-address:

lhenry@comitedesgalleriesdart.com

* 7

What is your country of residence (seat for businesses) ?

- Austria
- Belgium
- Bulgaria
- Croatia
- Cyprus
- Czech Republic
- Denmark
- Estonia
- Finland
- France
- Germany
- Greece
- Hungary
- Ireland
- Italy
- Latvia
- Lithuania
- Luxembourg
- Malta
- Netherlands
- Poland
- Portugal
- Romania
- Slovak Republic
- Slovenia
- Spain
- Sweden
- United Kingdom
- Non-EU country

8 If your organisation or entity is listed in the EU Transparency Register, please indicate its Register ID number here:

Part I. Experience with the current rate regime

* 22 Currently, the list of goods and services eligible for reduced VAT rates is contained in Annex III of the VAT Directive. This list is not regularly updated. Is the range of goods and services eligible for reduced rate treatment adequate ?

- Yes, the coverage of the list is adequate
- No, the list leaves out some goods or services which should be included
- Not sure/No opinion

23 Please indicate for which specific goods/services in respect of which there is a need for updating the list and why ?

the list of artworks benefitting from reduced VAT rates cannot evolve and include contemporary art practices (such as video art and installation).

* 24

In most cases, current rules limit the possible difference in VAT rates within one Member State or between Member States. Sometimes, however, the differences can be relatively large, for example when a Member State has received a specific derogation allowing it to apply super-reduced rates of less than 5% or a zero rate, whereas other Member States apply a standard rate.

Are you aware of any distortion of competition resulting from the application of a reduced, super-reduced or zero rate? One example of distortion would be a case where a business obtained a significant advantage over a competitor mainly because it benefited from a lower rate on sales in the same market.

Note: Please limit your answer only to cases where the distortion stems from VAT; differences in other taxes, fees or social contributions are not relevant here.

- Yes, I know of such cases of distortion within the same Member State
- Yes, I know of such cases between two Member States
- Yes, I know of cases both within the same and between different Member States
- No, I am not aware of any such case

- * 26 On the basis of your experience, do you think granting additional flexibility to Member States would create new distortions of competition ?
- Yes, this is very likely
 - Yes, this is somewhat likely
 - No, this is unlikely
 - No, this can be excluded
 - Not sure/No opinion

Part II. Views on the reform

- * 28
- As already mentioned, the VAT directive establishes a minimum standard VAT rate of 15% and a list of goods and services which can be subject to a reduced rate of no less than 5%. This system offers harmonisation at EU level but in some cases may limit Member States choices in various ways, for example by ruling out a reduced VAT rate on certain goods or services or by setting a minimum level to the VAT rate.

A reform could grant Member States greater room for manoeuvre in this regard. However, this might result in an increase in complexity, creating additional costs for businesses and generating legal uncertainty; this is because, in a destination based system, businesses in each Member State must generally apply the VAT rate applicable in the Member States where they are selling. What should the reform prioritise ?

- Priority should be given to more flexibility for Member States even if it implies a complication of the VAT system or greater differences between VAT rates
- Priority should be given to maintain the simplicity of the VAT system and limit rate differences, even if this limits the room for manoeuvre of Member States
- Not sure/No opinion

* 29

The reform should propose a solution for the future of super-reduced rates. Many of these derogations were only granted on a temporary basis and are set to expire when the definitive regime is adopted.

One option would be to extend the scope of super-reduced rates to all Member States. This would ensure equal treatment among them. However, this could add complication to the VAT system and introduce a risk of erosion of VAT revenues.

A second option would be to remove the super-reduced rates from the VAT system; this would simplify the VAT system. However, it would require Member States to abolish the super-reduced rates already granted to specific sectors and revert to the normal regime. What is your view ?

- Super-reduced rates should be integrated in the VAT system and granted to all Member States even if the VAT system ends up being more complicated
- Super-reduced rates were only temporary and as such should disappear from the VAT system in order to simplify it
- The status quo should be maintained; the current temporary derogations should be extended indefinitely, even if this results in different treatment between Member States
- Not sure/No opinion

* 30

In the current system, Member States are only allowed to apply one standard rate to all transactions and two reduced rates to some transactions (with the exception of super-reduced rates which are specific derogations). A reform could increase the number of rates available to Member States. This would allow Member States greater flexibility, at the cost of introducing greater complication. Do you think Member States should also receive more flexibility regarding the number of rates they can apply (while remaining limited by the list for the application of reduced rates) ?

- Priority should be given to more flexibility for Member States, so Member States should have no limits on the number of rates they can apply
- The current number of rates provides sufficient room for manoeuvre
- Not sure/No opinion

* 31 Should the 15% minimum for the standard rate be maintained ?

- Yes
- No
- Not sure/No opinion

* 32

Should the 5% minimum for reduced rate be maintained ?

- Yes, this limits risks of erosion of revenue and of unfair competition
- No, Member States should be free to set reduced rates at the level they like
- Not sure/No opinion

* 33

The Commission is now assessing two broad options for the reform of the VAT rate system. The first option aims to keep the standard VAT rate of 15% and update regularly the list of goods and services eligible for reduced rates, on the basis of Member States suggestions. The second option increases flexibility substantially by removing the minimum rate of 15% and abolishing the list, thus granting Member States large discretion to fix their VAT rate. Under both options all currently existing reduced rates, including derogations, legally applied in Member States would be maintained and made available to all Member States, ensuring equal treatment.

Which of these two solutions would you prefer?

- Regularly review the list of goods and services that can be taxed at a reduced rate. Allow Member States to submit their proposals for adjustment, and charge the European Commission with reporting whether such changes would pose any risk of distortion of competition. Keep the minimum standard VAT rate at 15%.
- Abolish the list and allow greater freedom on the number of reduced rates and their level. Develop and put in place safeguards to avoid unfair tax competition, guarantee legal certainty and reduce compliance costs.
- It is best to keep the current system
- Not sure/No opinion

* 36 Do you think the list of Annex III should be extended to allow the goods and services it contains to be taxed at a super-reduced rate ?

- Yes
- No
- Yes but only for some of these goods/services
- Not sure/No opinion

* 38 Do you think a specific list should be made for goods and services subject to super-reduced rates ?

- Yes
- No
- Not sure/No opinion

- * 39 Do you think granting Member State greater flexibility could risk creating, because of more intense tax competition between Member States, an erosion of VAT revenues and/or pressures to narrow the tax base for VAT ?
- Yes, this is very likely
 - Yes, this is somewhat likely
 - No, this is somewhat unlikely
 - No, this is very unlikely
 - Not sure/No opinion

Document upload and final comments

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Should you wish to provide additional information (e.g. a position paper, report) or raise specific points not covered by the questionnaire, you can upload your additional document(s) here.

Please note that the uploaded document will be published alongside your response to the questionnaire which is the essential input to this open public consultation. The document is an optional complement and serves as additional background reading to better understand your position.

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43 If you wish to add further information - within the scope of this questionnaire - please feel free to do so here.

1000 character(s) maximum

« Art market professionals and collectors regret that the list of artworks benefitting from reduced VAT does not include contemporary art practices (such as video art and installations which represent a significant volume of sales on the market). It is complicated to modify this list of works of art fixed by decree - article 98A annexe III of the French General Tax Code - without coming in conflict with the European legislation (Directive 2006/112 /CE, appendix IX). It is therefore essential to grant Member States more autonomy as regards the list of goods which can be subject to a reduced VAT rate. Art practices are in permanent evolution and it would be appropriate to allow each Member State to update the list according to the new forms of art. We strongly advise the introduction of a periodical consultation (every two years) of the professional organizations representative of relevant sectors in each Member State in order to collect their proposals and target further reforms. »

Contact

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