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NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee/Council
No. Cion doc.:	14823/16 FISC 210 ECOFIN 1114 IA 129
Subject:	Proposal for a Council Directive amending Directive 2006/112/EC, as regards rates of value added tax applied to books, newspapers and periodicals – Political agreement

I. INTRODUCTION

1. On 1 December 2016, the Commission submitted a proposal for a Council Directive amending Directive 2006/112/EC, as regards rates of value added tax applied to books, newspapers and periodicals¹.
2. Directive 2006/112/EC on the Common System of value added tax currently provides that electronically supplied services, including electronically supplied publications, are taxed at the standard rate. On the other hand, books on all means of physical support, as well as newspapers and periodicals, may be taxed at a reduced VAT rate, and some Member States were also granted the possibility to continue to apply super-reduced rates, including exemptions with the deductibility of the VAT paid at the preceding stage (zero rate).

¹ Doc. 14823/16.

3. The European Parliament issued its opinion on 1 June 2017². The opinion of the European Economic and Social Committee was issued on 5 July 2017³.
4. Following the preparatory technical work, the ECOFIN Council, on 16 June 2017, has examined the compromise text set out in doc. 8076/17⁴. However, the required unanimous support to the compromise text could not be obtained.
5. To be noted, this legislative dossier covers a very specific sector of economy, which is important in the context of the Digital Single Market policy, which, in turn, is an ambitious project as such. Nevertheless, although the rules to be introduced by this amending Directive would not be mandatory to all MS, they would ensure further legal certainty in the EU, as to how rates on e-publications are regulated.
6. These rules would be applied temporarily, until the Council of the EU delivers on its political commitment to legislate on the definitive VAT system including the rules on setting of VAT rates⁵.

II. STATE OF PLAY

7. This legislative dossier is on the table of the Council and its preparatory bodies since December 2016.
8. At the request of some delegations and on the basis of bilateral contacts, the Presidency deemed opportune to insert, as possible item, this legislative dossier into the agenda of the forthcoming ECOFIN Council meeting of 25 May 2018.
9. At the meeting of the High Level Working Party on Tax Questions on 16 May 2018, most of the delegations indicated that they are ready to accept the same compromise text that was tabled for June 2017 ECOFIN (as set out in the Annex to this note). However, some delegations still maintained their reserves, while no delegation has raised any technical remarks on the compromise text.

² TA/2017/233/P8.

³ OJ C 2017/345/79.

⁴ Also see doc. 10040/17 + COR 1.

⁵ On 18 January 2018, the Commission issued a proposal for a Directive amending Directive 2006/112/EC as regards rates of value added tax. The objective of that legislative proposal is to introduce the rules on setting of VAT rates across the EU, with effect from the entry into force of definitive arrangements for the taxation of trade between Member States.

III. WAY FORWARD

10. Against this background, the Presidency hopes that, at the level of the Committee of the Permanent Representatives and, subsequently, following the exchange of views at the level of the Council, all delegations, in the spirit of the compromise, would be willing to lift their remaining reserves on this dossier.
 11. The Committee of Permanent Representatives is therefore invited to recommend that the Council, at its forthcoming meeting:
 - reach a political agreement on the draft Directive, on the basis of the compromise text set out in Annex to this note, with a view to adopting the Directive, subject to legal-linguistic revision.
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Proposal for a

COUNCIL DIRECTIVE

**amending Directive 2006/112/EC, as regards rates of value added tax applied to books,
newspapers and periodicals**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 113 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Parliament⁷,

Having regard to the opinion of the European Economic and Social Committee⁸,

Acting in accordance with a special legislative procedure,

⁶ The compromise text is reproduced from doc. 8076/17 +COR1.

⁷ OJ C , , p. .

⁸ OJ C , , p. .

Whereas:

- (1) Council Directive 2006/112/EC⁹ provides that Member States may apply reduced rates of value added tax (VAT) to publications on any means of physical support. However, a reduced VAT rate cannot be applied to electronically supplied publications, which have to be taxed at the standard VAT rate.
- (2) In line with the Commission's Digital Single Market Strategy¹⁰ and in order to keep abreast of technological progress in a digital economy, Member States should be enabled to align the VAT rates for electronically supplied publications with lower VAT rates for publications on any means of physical support.
- (3) In the Action Plan on VAT¹¹, the Commission outlined that electronically supplied publications should be able to benefit from the same preferential VAT rate treatment as publications on any means of physical support. In its recent judgment in C-390/15, the Court of Justice of the European Union has considered that the supply of digital publications, on the one hand, on all physical means of support and, on the other hand, electronically, amount to comparable situations. Therefore, it is appropriate to introduce the possibility for all Member States to apply a reduced VAT rate to the supply of books, newspapers and periodicals irrespective of whether they are supplied on physical means of support or electronically. For the same reasons, it is appropriate to allow those Member States that currently apply, in accordance with Union law, VAT rates lower than the minimum laid down in Article 99 or grant exemptions with deductibility of the VAT paid at the preceding stage, to certain books, newspapers or periodicals supplied on physical means of support, to apply the same VAT treatment to such books, newspapers or periodicals when supplied electronically.

⁹ 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).

¹⁰ COM(2015) 192 final.

¹¹ COM(2016) 148 final.

- (4) Since 1 January 2015, VAT on all electronically supplied services has been levied in the Member State where the customer is based. Given the implementation of the destination-based principle, it is no longer necessary to apply the standard rate to electronically supplied publications in order to ensure the establishment and the functioning of the internal market and to avoid distortion of competition.
- (5) In order to prevent an extensive use of reduced VAT rates to audio-visual content, Member States should be enabled to apply a reduced rate to books, newspapers and periodicals, only if these publications, both on any means of physical support or electronically supplied, do not wholly or predominantly consist of music or video content.
- (6) Member States should maintain discretion to set VAT rates for publications and restrict the scope of reduced VAT rates, including, subject to objective justification, where digital publications offer the same reading content.
- (7) Directive 2006/112/EC should therefore be amended accordingly.

HAS ADOPTED THIS DIRECTIVE:

Article 1

Directive 2006/112/EC is amended as follows:

- (1) In Article 98(2), the second subparagraph is replaced by the following:

'The reduced rates shall not apply to electronically supplied services with the exception of those falling under point (6) of Annex III.'

(2) In Article 99, the following paragraph 3 is added:

'3. By way of derogation from paragraphs 1 and 2 of this article, and in addition to the rates referred to in paragraph 1 of article 98, Member States which, at 1 January 2017, applied, in accordance with Union law, reduced rates lower than the minimum laid down in this Article or granted exemptions with deductibility of the VAT paid at the preceding stage to the supply of certain goods referred to in point (6) of Annex III, may also apply the same VAT treatment where that supply is supplied electronically, as referred to in point (6) of Annex III.'

(3) In Annex III, point (6) is replaced by the following:

'(6) supply, including on loan by libraries, of books, newspapers and periodicals either on physical means of support or supplied electronically or both (including brochures, leaflets and similar printed matter, children's picture, drawing or colouring books, music printed or in manuscript form, maps and hydrographic or similar charts), other than publications wholly or predominantly devoted to advertising and other than publications wholly or predominantly consisting of audible music or video content;'

Article 2

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 3

This Directive is addressed to the Member States.

Done at Brussels,

For the Council

The President