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# Value added tax: Administrative cooperation and combating fraud

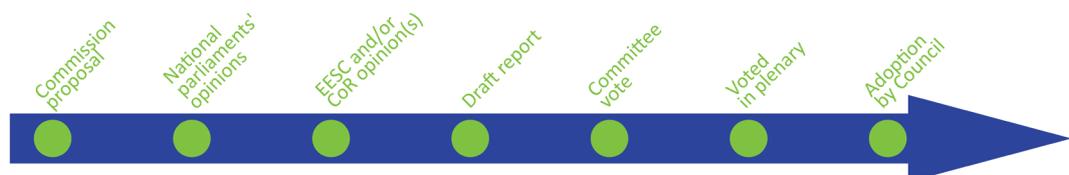
This proposal was part of a package of proposed EU legislation that aims to modernise the VAT regime for cross-border B2C e-commerce. It provides the basis for the underlying IT infrastructure and the necessary cooperation by Member States to ensure the success of the extension of the mini-one-stop-shop (MOSS). It contains provisions relating to – among other things – the exchange of information between competent authorities of Member States, and the control of transactions and taxable persons, as well as Member States granting to the Commission access to statistical information contained in their electronic systems. The regulation, significantly amended, was adopted by the Council – after consulting the European Parliament – on 5 December 2017. It is accompanied by Council Directive 2017/2455, which amends 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; see our [separate briefing](#) on this dossier – 2016/0370(CNS).

#### Proposal for a Council regulation amending Regulation (EU) No 904/2010 on administrative cooperation and combating fraud in the field of value added tax

COM(2016) 755, 01.12.2016, 2016/0371(CNS), Consultation procedure (CNS) – Parliament adopts only a non-binding opinion

Committee responsible:	Economic and Monetary Affairs (ECON)
Rapporteur:	Luděk Niedermayer (EPP, Czech Republic)
Shadow rapporteurs:	Doru-Claudian Frunzuliță (S&D, Romania) Bernd Lucke (ECR, Germany) Cora Van Nieuwenhuizen (ALDE, the Netherlands) Miguel Viegas (GUE/NGL, Portugal) Molly Scott Cato (Greens/EFA, United Kingdom) Barbara Kappel (ENF, Austria)
Procedure completed.	Regulation (EU) 2017/2454 <a href="#">OJ L 348, 29.12.2017, pp. 1-6</a>

15 February 2018  
Second edition  
The 'EU Legislation in Progress' briefings are updated at key stages throughout the legislative procedure. Please note this document has been designed for on-line viewing.



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## Introduction

Taxation policies have increasingly to address challenges resulting from technological developments, some of which do not fit into pre-existing patterns and rules. This is the case for digital goods and services which can be provided from any location, blurring the concept of the place of supply used to date in the EU value added tax (VAT) framework. Digitalisation has therefore recently spurred a move to the application of the concept of place of consumption for VAT (the [destination-based principle](#)). This is covered by the proposal to amend the current EU VAT Directive as regards certain value added tax obligations concerning the supply of services and distance sales of goods.

## Context

Value added tax is charged on the supply of goods and services to a taxable person, unless specifically exempted. It is charged on the additional value of each transaction and is collected at each stage of production and distribution.

### VAT framework

The EU Treaties specifically address the need for harmonisation of domestic provisions on indirect taxation (covering turnover tax and VAT, as well as excise duties and other indirect taxes). Harmonisation of all major VAT elements in the EU dates back to 1967.<sup>1</sup>

EU VAT legislation is based mainly on directives. At the core of the [current EU VAT framework](#) is the VAT Directive ([2006/112/EC](#)) of 28 November 2006, on the common system of VAT, which gathers all the amendments to the original sixth VAT Directive in [a single](#) piece of legislation.

## Existing situation

The destination principle is applicable for VAT since 1 January 2015, for a certain number of mobile transactions linked to telecommunications, broadcasting and electronically supplied services to non-taxable persons (business-to-consumer (B2C)). This means that VAT should be paid to the Member State in which the consumer is located. This is referred to as the mini one-stop shop ([MOSS](#)), an electronic system that allows companies to register and account for VAT that should be paid to other Member States, via a simplified online quarterly VAT return on a web portal hosted by the tax authorities in the Member

<sup>1</sup> Turnover taxes were covered by EC provisions as early as 1967 (multi-stage but non-cumulative turnover tax, Council Directive 67/557/EC), and a common system of value added taxes was set up with the sixth directive (Council Directive 77/388/EEC), recast in 2006 (Directive 2006/112/EC).



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State where they are located.<sup>2</sup> At present, for the online sales of goods and services other than e-services, companies with sales to customers in other Member States are obliged to register for VAT in all those EU countries.

In its [impact assessment](#) of the proposal, the European Commission highlights some positive results of the MOSS, for example, that Member States are collecting tax on behalf of each other for the first time, and that 12 000 businesses used the MOSS system in 2015. The Commission underlines that electronic services covered by the MOSS represent 70 % of EU turnover in electronic services. According to the Commission, the MOSS has allowed businesses to save €500 million, compared to what the cost would have been if the alternative of direct registration and payment had been used. This saving represents €41 000 per company on average and a 95 % reduction in costs. The Commission notes that both businesses and Member States were pleased with the introduction and implementation of the MOSS, and that the EU is considered the global leader for its MOSS system, with other jurisdictions following its example. The Commission also mentions some areas for improvement. Micro businesses have experienced problems due to the lack of a threshold and difficulties in identifying customers. Member States and the Commission need to communicate more with micro-businesses. Businesses are worried by the potential risk of multiple audits from Member States into which they make supplies. Other areas to be considered are how to correct past VAT MOSS returns, and the 10 year record-keeping, different invoicing rules, and burdensome correction methods.

## Parliament's starting position

In its [resolution](#) of 24 November 2016, towards a definitive VAT system and fighting VAT fraud, the European Parliament noted that different VAT regimes across the European Union may be seen as a non-tariff barrier in the single market. The EP considered that, the MOSS is a useful tool for removing this barrier, which can also support SMEs in cross-border activities. The EP called on the Commission to make it easier for companies to fulfil their VAT obligations across the EU.

## Council starting position

On 25 May 2016, the Council adopted a set of [conclusions](#) which addressed specific VAT elements, in particular the short and medium-term actions in the VAT area and SMEs. The Council also adopted [conclusions](#) on 'Improvements to the current EU VAT rules for cross-border transactions' on 8 November 2016.

The [VAT digital single market](#) and its proposals were presented at the ECOFIN Council on 6 December 2016.

<sup>2</sup> Presentations of the provisions are available in the [explanatory notes](#) (3 April 2014) and on the Commission webpage on [telecommunications, broadcasting & electronic services](#).



## Proposal

### Preparation of the proposal

In the 2011 Commission [communication](#) on the future of VAT, the need for an OSS was considered a crucial instrument for facilitating access to the single market in a VAT system based on taxation at destination. The approach was to first 'ensure the smooth introduction and functioning of the MOSS and then to consider broadening it over time'.

The European Commission held a public consultation in 2015, in the context of the digital single market strategy, with a view to presenting proposals on modernising VAT for cross-border e-commerce. The consultation concerned the 2015 changes to the place of supply rules for B2C supplies of telecommunications, broadcasting and electronic services, and the MOSS. [Annex 2](#) of the impact assessment (IA) on the proposal to amend the VAT Directive as regards supplies of services and distance sales of goods provides a summary of the results of the consultation. The IA presents a summary of the results, which are presented in an in-depth [study](#) on the assessment of the implementation of the 2015 place of supply rules and the MOSS. The assessment is presented by stakeholder categories: business (broadly supportive of the initiative); tax practitioners (generally satisfied); micro-businesses and SMEs (advocating the introduction of a threshold and other simplification measures); postal operators/couriers (broadly in favour); Member States (supportive); and the EP.

The [action plan](#), adopted by the European Commission on 7 April 2016, sets out the steps toward a single EU VAT area. The [VAT digital single market package](#), adopted on 1 December 2016, aims at improving the VAT environment for e-commerce in the EU and allowing business (including SMEs) and consumers to buy and sell goods and services more easily online. The package includes a proposal to set up a digital online portal, 'One Stop Shop', which requires a parallel update of provisions so as to provide the basis for the underlying IT infrastructure and the necessary Member States' cooperation to ensure the success of the extension of the 'One Stop Shop'.

### Changes the proposal would bring

The [proposal](#) for a regulation amending Regulation (EU) No. 904/2010 on administrative cooperation and combating fraud in the field of value added tax includes two articles. Article 2 relates to the entry into force of the regulation, while Article 1 amends Regulation (EU) No. 904/2010 in the following way:

- > points 1 to 4 propose to amend respectively Articles 1(4), 2(2), 17(1)(d) and 31 of the Regulation, so as to reflect the extension of the scope of the MOSS to services other than 'telecommunications, broadcasting and electronically supplied services' and to distance sales of goods (Article 1, points 1 to 4 of the proposal);
- > point 5 limits the application of Chapter XI (provisions concerning the special schemes in Chapter 6 of Title XII of Directive 2006/112/EC). Section 2 (provisions applicable from 1 January 2015) to 31 December 2020 and adds a new Section (3). This new section contains the following six subsections, which constitute the core of the Commission proposal:



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- > sub-section 1 specifies that the provisions of section 3 are applicable from 1 January 2021;
- > sub-section 2 contains provisions relating to the exchange of information between competent authorities of Member States concerning the identification of taxable persons making use of the MOSS (47b-c), VAT returns (47d) and VAT payments (47e-g). According to the Commission, those provisions 'mirror the existing provisions of Section 2 of Chapter XI and extend them to services other than electronic services and to distance sales of goods';
- > sub-section 3 contains provisions relating to control of transactions and taxable persons. It sets the obligation for Member States – upon import of goods on which VAT is declared under the special scheme<sup>3</sup> – to verify the validity of the VAT identification number to be provided to the customs authorities (Article 47h);
- > Furthermore, it clarifies that requests for records from taxable persons (Article 47i) by Member States, and administrative inquiries (Article 47j) are to be coordinated by the Member State of identification. With regards to the latter, it provides that the Member State of identification must notify the taxable person or intermediary any new tax assessment and collect the amount due;
- > Article 47l (sub-section 4) provides that the Member State of consumption will pay annually, to the Member State of identification, a 5% fee<sup>4</sup> for the collection and control of taxes collected under the special schemes of Directive 2006/112/EC, Title XII, Chapter 6, to compensate the Member State for the costs linked to the collection and control of the VAT collected;
- > Article 47m (sub-section 5) provides that Member States will grant the Commission access to statistical information contained in their electronic system – with the exception of any personal data;
- > Article 47n (sub-section 6) confers implementing powers to the Commission with regards to information exchange.

Lastly, point 6 amends Annex I of the regulation, deleting the reference to Article 34 of Directive 2006/112/EC from distance selling, and adding an exemption to point 3, i.e. 'where the taxable person makes use of the special schemes in Chapter 6 of Title XII of Directive 2006/112/EC'.

<sup>3</sup> Directive 2006/112/EC, Title XII, Chapter 6, Section 4.

<sup>4</sup> 5 % of the total amount collected by the Member State of identification on behalf of the Member State of consumption. It is proposed to calculate this fee on an annual basis, and on the net amounts involved.

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## Views

### Advisory committees

In its plenary session of 5 July 2017, the European Economic and Social Committee (EESC) adopted its [opinion](#) on the package (rapporteur: Amarjite Singh (Workers – Group II, United Kingdom)). The EESC welcomed that the proposed amendments to the MOSS addressed the concerns of SMEs. It also welcomed the proposed extension of the MOSS to goods, as it creates conditions for the possible removal of the Low Value Consignment Relief scheme. It noted, however, that, while the amendments to the VAT rates applicable to e-publications rules would eliminate the distinction between physical and non-physical publications, and ensure neutrality in this market, they may carry a risk for the VAT base.

### National parliaments

The [subsidiarity deadline](#) for national parliaments to submit comments on the proposals was 6 February 2017, prior to which they were scrutinised by the parliaments of 16 countries. No reasoned opinions were issued.

### Stakeholders' views<sup>5</sup>

In a [position paper](#) of 28 March 2017, BusinessEurope welcomes the proposal and specifically the extension of the MOSS to all distance sales of goods and services from businesses to customers (B2C). It also endorses other elements of the proposal, for example the auditing, invoicing and record keeping rules, and the removal of the VAT exemption for the import of small consignments. BusinessEurope calls for transparent definitions of goods and services, to give businesses access to clear information on the location for taxation. It welcomes the threshold for micro-businesses, but considers that €10 000 is a minimum, and that the threshold limit could be set higher.

<sup>5</sup> This section aims to provide a flavour of the debate and is not intended to be an exhaustive account of all different views on the proposal. Additional information can be found in related publications listed under 'EP supporting analysis'.



## Legislative process

In the European Parliament, the proposal was assigned to the Economic and Monetary Affairs Committee (ECON). A [draft report](#) on the proposal (Rapporteur: Luděk Niedermayer, EPP, Czech Republic) was published on 31 May 2017. It was adopted in [Committee](#) on 16 October 2017 and the resultant resolution adopted in [plenary](#) on 30 November 2017.

The Parliament voted for a number of amendments to the Commission proposal: that (i) Member States shall exchange all information referred to in Subsection 2 (articles 47b-47g) without delay, unless expressly stated otherwise; (ii) the details of the competent person responsible for coordination of administrative enquiries within the Member State will be published on the website of the Commission; (iii) within two years from the date of application of the regulation, the Commission would conduct a review to ensure the viability and cost effectiveness of the aforementioned 5 % fee and, if necessary, take steps for correction; (iv) that the information to which the Commission will have access will not contain personal data and, in addition, be limited to information necessary for relevant statistical purposes; and (v) that the Commission will ensure that the process of data extraction does not impose an unnecessary administrative burden on Member States.

In the Council, the changes to the VAT Directive were examined prior to the amendments to Council Regulation 904/2010. The Council's draft amended act was in fact [published](#) on 28 November 2017. The Council adopted the act on 5 December 2017 and the final act was published in the [Official Journal](#) on 29 December 2017. It entered into force on 18 January 2018, and applies as of 1 January 2021.

Among the changes made by the Council, in Article 17 of Regulation (EU) No. 904/2010 (relative to the storage and exchange of specific information), a new point (e) is added under paragraph 1, adding to the list of information each Member State must store in an electronic system, data on the VAT identification numbers it has issued, with reference to Article 369q of Directive 2006/112/EC, as well as the total value of the imports of goods exempted under Article 143(1), (point ca).

In Article 47b (identification of taxable persons making use of MOSS), the Council adds that 'any changes in the information provided pursuant to Articles 361(2) and 369c of Directive 2006/112/EC will also be submitted by electronic means'.

Article 47c (identification of taxable persons making use of MOSS) adds the obligation for the Member State of identification to inform the competent authorities of the other Member States, of the individual VAT identification number allocated for the application of the special scheme.

Article 47d (VAT returns) distinguishes between the information provided in paragraphs 2 and 3 of Article 369g of Directive 2006/112/EC: the information provided in paragraph 2 must be transmitted from the Member State of identification to the competent authority of each other Member State from which goods are dispatched or transported, whereas the information provided in paragraph 3 must be transmitted to the competent authority of each Member State of establishment concerned.

Article 47f (VAT payments) increases to twenty days (instead of ten, as per the Commission proposal) the deadline available to the Member State of identification, to ensure that the amount taxable persons,



making use of one of the special schemes, have paid is transferred to the bank account designated by the Member State of consumption.

Article 47h (obligation for Member States to verify the validity of the VAT identification number to be provided to the customs authorities) is modified, so that the verification is communicated, at the latest, upon lodging the import declaration.

Article 47j is amended in two parts: a subparagraph is added to paragraph 1, specifying that paragraph 1 applies only in respect of administrative enquiries concerning the special schemes; and paragraph 3, which provides that any Member State of consumption concerned may participate in an administrative enquiry carried out by the Member State of identification, is deleted.

The Commission proposed articles 47k (the new tax assessment issued by a Member State after completing an administrative enquiry, as well as the notification obligations) and 47l (the 5 % fee for the collection and control of taxes collected under the special schemes) were deleted.

Lastly, the Commission proposal to replace point 3 of Annex I (the list of supplies of goods and services to which the request for information and administrative enquiries applies), was also deleted.



## References

### EP supporting analysis

Hadzhieva, E., [Tax challenges in the digital economy](#), European Parliament, Policy Department A, June 2016.

Sigurd Næss-Schmidt, H., Mekonnen Ali, D., Nieto Aria, M., [Simplifying and Modernising VAT in the Digital Single Market for e-Commerce](#), European Parliament, Policy Department A, 2012.

### Other sources

[Value added tax \(VAT\): administrative cooperation and combating fraud](#), European Parliament, Legislative Observatory (OEIL).

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The author acknowledges the contribution of Gustaf Gimdal in drafting this briefing.

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