

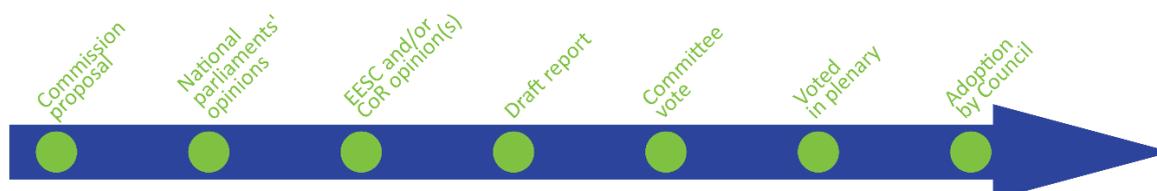
# Stronger administrative cooperation in the VAT field

## OVERVIEW

Value added tax (VAT) is a very efficient consumption tax and an important source of revenue for both national and European budgets. However, the rules governing common EU VAT system are 25 years old. A substantial review was initiated from 2016 onwards in order to update it and make it less vulnerable to fraud.

The reform of the VAT framework towards a definitive VAT system for intra-Community business-to-business (B2B) transactions was planned in several consecutive steps. The Commission proposal to amend Regulation 904/2010 (Regulation on VAT administrative cooperation) was initially put forward on October 2017, as part of the 'definitive VAT system package' and was itself amended on 30 November 2017. The resulting Regulation 2018/1541 was adopted on 2 October 2018, and applies in full as of 1 January 2020. It introduces the concept of the 'certified taxable person' and measures aimed at enhancing cooperation between Member States, improving cooperation between tax authorities and law enforcement bodies and addressing cross-border refund issues.

<b>Proposal for a Council regulation amending Regulation (EU) No 904/2010 as regards measures to strengthen administrative cooperation in the field of value added tax</b>		
<i>Committee responsible:</i>	Economic and Monetary Affairs (ECON)	<a href="#">COM(2017) 567</a> 4.10.2017
<i>Rapporteur:</i>	Roberts Zile (ECR, Latvia)	<a href="#">COM(2017) 706</a>
<i>Shadow rapporteurs:</i>	Gabriel Mato (EPP, Spain) Olle Ludvigsson (S&D, Sweden) Thierry Cornillet (ALDE, France) Barbara Kappel (ENF, Austria) Miguel Urbán Crespo (GUE/NGL, Spain) Molly Scott Cato (Greens/EFA, United Kingdom)	30.11.2017 (amended proposal) <a href="#">2017/0248(CNS)</a>  Consultation procedure (CNS) – Parliament adopts a non-binding opinion only
<i>Procedure completed:</i>	Regulation 2018/1541 <a href="#">OJ L 259 16.10.2018, pp. 1-11</a>	



## Introduction

Value added tax (VAT) was implemented for the first time in the 1950s in France. In 1967, the members of the then European Economic Community [agreed](#) to replace all turnover taxes with VAT and to have a common value added tax system. It has since become an important source of revenue, both for national administrations and as an own resource of the EU budget. VAT represents 7.1 % of EU GDP ([Eurostat](#), 2017).

The European common VAT system was agreed prior to the 1992 completion of the internal market as a compromise that permitted the abolition of internal frontiers. The VAT framework that is currently under review has become known as 'the transitional VAT system'. It was set up until a definitive destination-based system could be established. It departed from the fundamental principle in international taxation that indirect taxes on consumption are charged in the country in which the goods and services are consumed. The transitional VAT system is generally considered to be complex and to have significant compliance costs, as well as generating room for fraud.

## Context

### VAT framework

VAT is a [consumption tax](#) borne by the final consumer. At the core of the current [EU VAT framework](#) is Council [Directive 2006/112/EC](#) of 28 November 2006 on the common system of value added tax (the VAT Directive), which gathers into one piece of legislation all the amendments to the original (1977) Sixth VAT Directive.

VAT is charged on the supply of goods and services by a taxable person, unless specifically exempted. The business supplying goods or services (as a VAT taxable person) collects the VAT paid by the consumer, while being able to deduct from the VAT they have collected the amount of tax they have paid to other taxable persons on purchases for their business activities. The additional value of each transaction is collected at each stage of production and distribution (difference between the output VAT and input VAT) and this generates the VAT that is due to the tax authorities.

According to the transitional system, a cross-border transaction of goods between taxable persons consists of two parts: a supply of goods in the Member State of departure that is exempt from VAT and an acquisition of goods liable to VAT in the Member State of destination. The VAT exempt supply breaks the chain of fractioned payments. Both the supplier and the acquirer of the goods should inform the tax authorities of their respective Member State about the transaction, but this does not occur in all cases. The current system is thus vulnerable to fraud as, for instance, the acquirer can subsequently sell the VAT-free goods, charge the VAT to their customer and disappear without paying the VAT to the tax authorities. This is an example of [missing trader intra-Community](#) (MTIC) fraud or '[carousel](#) fraud'.

It is only relatively recently, drawing on the experience of the electronic services regime, the 'mini-one-stop-shop' ([MOSS](#)) as from 2015, that the change to a definitive VAT system operating within the European Union in the same way as it would in a single country was deemed possible.

### Reboot of the VAT framework

In April 2016, the Commission adopted an [action plan on VAT](#) that sets out the modifications to be adopted to review and update the VAT framework. The 'rebooting' of the VAT system involves: setting up the definitive VAT regime for cross-border trade; tackling VAT fraud; updating the framework for VAT rates; simplifying and modernising VAT rules for e-commerce; and updating the VAT rules specific for SMEs. A number of legislative proposals amending the VAT legal framework have been put forward since then, in several instalments, to implement the VAT action plan. A number of these were adopted in 2017 and 2018.

One important component of the plan is the reform leading towards a definitive VAT system for intra-Community business-to-business (B2B) transactions, i.e. transactions where all the parties involved are taxable persons.

The definitive VAT system for B2B transactions is organised in two legislative steps: the first step addresses the VAT treatment of intra-EU B2B supplies of goods, and the second step supplies of services. The first legislative step was, in turn, split in two sub-steps. The [single VAT area](#) package of 4 October 2017 was the first of these sub-steps. The second sub-step introduced the detailed technical provisions for the actual implementation of the definitive VAT system with a [proposal](#) adopted on 25 May 2018. The Commission indicated in its [communication](#) of the same day that the extension of the definitive VAT system to the supply of services was scheduled to take place after the first evaluation of the implementation of the new VAT system for the supply of goods.<sup>1</sup>

## Existing situation

The current common VAT system is made up of VAT provisions and administrative cooperation provisions in the field of VAT (extending to the fight against fraud). The [VAT legal framework](#) consists of the [VAT Directive](#) (2006/112/EC), the [implementing Regulation](#) (Regulation (EU) No 282/2011 as amended since its adoption; it ensures uniform application of the VAT Directive), and the [VAT administrative cooperation Regulation](#) (Regulation (EU) No 904/2010 as amended since its adoption). The ongoing review of the VAT framework mainly implies the amendment of those instruments.

Under the framework applicable before the definitive system enters into force,<sup>2</sup> the current VAT system is quite vulnerable to fraud, in particular, in the three following circumstances.

1. The acquirer can subsequently sell the VAT-free goods before paying the VAT to the tax authorities, charge the VAT to its customer and disappear (MTIC fraud).
2. There is a dual system for the cross-border trade of [cars](#): if the car is new, the VAT is calculated on the total price of the new car. If the car is used, the VAT base is the profit margin.
3. Customs procedures 42 and 63<sup>3</sup> allow the import of goods free of VAT to a Member State if the goods have another Member State as the immediate destination. VAT is paid in the final destination country.

Moreover, [Article 9 of the VAT Directive](#) defines the concept of a taxable person as a person who engages independently in economic activity, without distinguishing whether the person is a reliable taxpayer or not. Taxable persons are identified with a VAT identification number, which is granted by national tax authorities and stored in national databases. The validity of any VAT number can be checked via the [VAT Information Exchange System \(VIES\)](#).

Under the VAT Directive rules for cross-border trade, the acquirer is obliged to be registered for VAT purposes, to inform the supplier of their VAT identification number and to declare the acquisition of the goods to the tax authorities of their country. The supplier, in turn, must submit a recapitulative statement of the transaction, including the VAT number of the acquirer, which is sent to and included in the VIES. The tax authorities of the Member State of destination can thus cross-check the information provided by the two parties.

## Parliament's starting position

The Parliament [resolution of 13 October 2011 on the future of VAT](#) and resolution of 24 November 2016, [Towards a definitive VAT system and fighting VAT fraud](#), called for the modernisation of the VAT system, strengthened cooperation in the fight against VAT fraud and reducing the VAT gap.

In 2016, Parliament welcomed the Commission's announcement to propose a definitive VAT system by 2017 and supported the objective of making it simple, fair, robust, efficient and less susceptible

to fraud, emphasising that a simple VAT system with few exemptions would ease the proper functioning of the digital single market. Moreover, it noted that the certified taxable person concept was an essential component of this model.

## Council starting position

In its [conclusions](#) of 15 May 2012 on the future of VAT, the Council supported the European Commission's objective of a '[simpler, more efficient and neutral, robust and fraud-proof](#)' EU VAT system and acknowledged the need to simplify the current system in order to reduce compliance costs and administrative burdens both for businesses and for national tax administrations.

In its [conclusions](#) of 25 May 2016, it agreed on the need to improve administrative cooperation between national tax administrations, including by reinforcing the automatic exchange of information. Also, it underlined that it was 'possible and necessary' to improve the current system in the short term.

Finally, and considering that the reforms needed to achieve a definitive VAT system would take some time, in [the conclusions of 8 November 2016](#), it asked the Commission to present proposals to amend the current VAT system with regard to the updating of the following four aspects (a valid VAT identification number in order to be granted a VAT exemption; the VAT treatment of chain transactions; simplification of the rules regarding call-off stock arrangements at national level to be applied in a more uniform manner in the EU, and unifying the criteria for the documentation needed to claim an exemption in an intra-Community supply operation).<sup>4</sup>

## Preparation of the proposal

The proposal is part of a [package](#) of three proposals within 'the October 2017 definitive VAT system package'. The package is the first step on the way to the definitive VAT system for B2B transactions, the objectives of which are to:

- tax the sales of goods and services between EU countries in the same way as domestic sales;
- reduce the VAT gap due to fraud by €40 billion. The total VAT gap is estimated to be €147.1 billion,<sup>5</sup> which includes VAT fraud;
- make the system more robust and simple; and
- reduce business compliance costs, which are now 11 % higher for cross-border transactions than for domestic commerce, by €1 billion.
- tax the sales of goods and services between EU countries in the same way as domestic sales;

The two other proposals included in the October 2017 package are:

1. A [proposal for a Council directive amending Directive 2006/112/EC as regards harmonising and simplifying certain rules in the value added tax system and introducing the definitive system for the taxation of trade between the Member States](#);<sup>6</sup>
2. A [proposal amending Implementing Regulation \(EU\) No 282/2011 as regards certain exemptions for intra-Community transactions](#), requiring a proof of intra-Community transport in order to grant an exemption (this proposal is the response to the fourth change to the current system required by the Council).

The initial proposal was amended on 30 November 2017 (the [amended proposal](#)).<sup>7</sup>

## The changes the proposal would bring

The amended [proposal](#) to amend the Regulation on VAT administrative cooperation aims at bolstering cooperation between Member States, enhancing cooperation between tax authorities and law enforcement bodies and cross-border refunds as well as adding measures specifically

tackling the main types of cross-border fraud schemes (MTIC fraud, used car fraud, and VAT-free import fraud related to customs procedures 42 and 63).

The main changes to the regulation are the following:

The amended proposal would introduce **joint audits** as a new cooperation instrument. Amendments to Article 7 in Chapter II (Exchange of information on request) and Article 13 in Chapter III (Exchange of information without prior request) establish the procedure for administrative enquiries and joint audits and the means by which information would be exchanged (by standard forms and other means). Amendments to Article 28 set up the rules regarding the presence of officials of different Member States in administrative enquiries and joint audits.

The amended proposal would introduce the concept of **certified taxable person** (amendments to Articles 17 and 31 of the VAT Administrative Cooperation Regulation). The certified taxable person would have access to a number of simplification rules regarding those transactions more vulnerable to fraud, such as call-off stock arrangements and chain transactions.<sup>8</sup> Moreover, when the acquirer is a certified taxable person (CTP), it would be possible during the period of transition to the definitive system to use the reverse charge mechanism, i.e. the acquirer is responsible for paying the VAT to the tax authorities of the destination country. It foresees that information about the CTP status of taxable persons would be saved in the national databases and retrieved via the VIES system.

Several amendments to Article 21 in Chapter V (Storage and exchange of specific information) provide for a quicker exchange of information between customs authorities and national authorities regarding fraud around the import of goods and customs-procedures 42 and 63. In addition, a new article 21a states that Member States must grant other Member States automated access to information about vehicle registration.

Changes to Articles 33 to 37 in Chapter X reinforce the role of [Eurofisc](#).<sup>9</sup> The provisions clarify the joint processing and analysis of data within Eurofisc; Eurofisc agents would have broader and simpler access to the VIES data. New technologies, such as transaction network analysis (TNA) software developed by the European Commission, would be able to detect suspicious operations at an early stage. Moreover, Eurofisc would be able to coordinate joint administrative enquiries, forward information about VAT fraud to Europol and the European Anti-Fraud Office (OLAF) and disclose fraud cases to the European Public Prosecutor's Office (EPPO).

An amendment to Article 48 in Chapter XII would simplify the procedure for VAT **refund** to taxable persons not established in the Member State of refund.

Article 49 in Chapter XIII would be amended to require Member States participating in EPPO and OLAF<sup>10</sup> to inform it about VAT fraud cases involving activity in two or more Member States for a total damage of at least €10 million.

Finally, an amendment to Article 55 would adapt the regulation to the **new personal data protection** rules established by Regulation (EU) No 2016/79 and an amendment to Article 58 would adapt it to Regulation (EU) No 182/2011 (on the control by Member States of the Commission's exercise of implementing powers).

## Advisory committees

On 23 May 2018, the European Economic and Social Committee (EESC) adopted its [opinion on the VAT reform package \(II\)](#), which includes the proposal. It welcomes the Commission proposal and the proposed changes, and supports the OLAF and the EPPO involvement in investigating cross-border VAT fraud together with Eurofisc. In addition, it recommends that Member States strengthen their administrative capacity and make better use of digital technologies in order to fight VAT fraud while improving voluntary compliance.

## National parliaments

The [subsidiarity deadline](#) for national parliaments to submit comments on the proposals was 30 January 2018. No reasoned opinions were sent. The [Czech Senate](#),<sup>11</sup> the [German Bundesrat](#)<sup>12</sup> and the [Romanian Senate](#)<sup>13</sup> made contributions.

## Stakeholder views<sup>14</sup>

The reboot of the VAT framework is based on the reflection and the [consultations](#) dating back to the Commission's 2010 [green paper](#) 'On the future of VAT – Towards a simpler, more robust and efficient VAT system', and its 2011 [communication](#) 'On the future of VAT – Towards a simpler, more robust and efficient VAT system tailored to the single market'. Large consultations have accompanied the preparation of the reform since April 2016, in particular [a second public consultation](#) in 2017 which included an evaluation of the current framework and a specific questionnaire for tax administrations. The dialogue with Member States and stakeholders continued in the Group on the Future of VAT (GFV) and the VAT Expert Group (VEG).

## Legislative process

In the European Parliament, the proposal was subject to the consultation procedure and was assigned to the Economic and Monetary Affairs Committee (ECON) (Rapporteur: Roberts Zile, ECR, Latvia). The [resolution](#) adopted in plenary on 3 July 2018 approved a number of proposed amendments. The proposed amendments aimed at improving the balance between the need for a better flow of information between EU and national authorities so as to fight VAT fraud and the protection of personal data and privacy; several amendments were introduced seeking clearer definition of the operating boundaries of Eurofisc as well as the processing and use of information by the authorities. On the other hand, the amendments attempted to reconcile the interests of the requested and the requesting authorities in establishing more effective inspection mechanisms. Finally, they provided for a two-way communication mechanism between Eurofisc and Europol. Amendments also aimed at providing a simplified mechanism on how the Member States deal with outstanding VAT liabilities. The resolution took into account the fact that the issue of the certified taxable person was agreed to be assessed with the 25 May 2018 proposal;<sup>15</sup> the amendments prepared on this elements were accordingly [deleted](#) by the rapporteur beforehand.

The European Data Protection Supervisor made [formal comments](#) on the proposal on 6 March 2018 and suggested several changes to improve data protection.

On 12 September 2018 the Commission produced a [follow up to the European Parliament's legislative resolution](#) of 3 July 2018, providing the Commission position on the amendments proposed, as well as on the data protection issues raised therein.

In the Council, the proposal was discussed in the 'Working Party on Tax Questions (Indirect Taxation)'. The 2018 presidencies prepared for a general approach. The [assessment of the amended proposal](#) is [linked](#) to the other proposals made in October 2017 as well the 25 May 2018 proposal.

The Council adopted [Regulation EU No 2018/1541](#) on 2 October 2018. It provides for the measures to be applicable as from 1 January 2019 on the joint audits as a new cooperation instrument, storage and exchange of specific information, on the strengthening of Eurofisc and the enhanced cooperation with other law enforcement bodies.

As regards the joint administrative enquiries, the requested authority is to undertake those joint enquiries 'where necessary'; it can also refuse joint enquiry under certain conditions even when at least two other Member States would have considered it required. The text also specifies that if joint administrative enquiries take place, they do so under the direction and according to the legislation of the requested Member State.

The regulation introduces exceptions to the use of standard forms for the transfer of information without prior request. It also requires that information stored in the electronic system according to Article 17, and its maintenance (Article 18-20) and access by any other Member State authority under article 21 and the new Article 21a (dealing with the information related to national vehicle registrations), will have to comply with Article 55 of the regulation (which ensures that information is covered by the obligation of official secrecy and receives the necessary protection).

Another change introduced by the Council stresses that Eurofisc will coordinate participating Member States' administrative enquiries of fraud identified by Eurofisc liaison officials, but without the power to require Member States to carry out administrative enquiries.

Specific provisions on improving access to vehicle registration data and customs data were to enter into force as from 1 January 2020 because they required new technologies to be developed.

As a follow-up, Council [Regulation EU No 2018/1909](#), adopted on 4 December 2018, sets out the provisions required in the VAT cooperation Regulation concerning the monitoring of the correct application of call-off stock arrangements introduced by Council Directive 2018/1910.

## EP SUPPORTING ANALYSIS

Remáč M., [Definitive VAT system and fighting VAT fraud](#), Implementation Appraisal, EPRS, European Parliament, October 2017.

## OTHER SOURCES

[Strengthening administrative cooperation in the field of value added tax](#), European Parliament, Legislative Observatory (OEIL).

## ENDNOTES

- <sup>1</sup> A state of play of the VAT reboot can be read in a 2019 article Merckx M and Gruson J. 'Definitive VAT regime: ready for the next step?', EC Tax Review, 2019/3.
- <sup>2</sup> See the explanatory memorandum in [COM\(2017\) 569](#).
- <sup>3</sup> For a short presentation see Court of Auditors [Special Report No 13/2011](#) 'Does the control of customs procedure 42 prevent and detect VAT evasion?', p.11 'This procedure is commonly known as customs procedure 42 because in such cases the importer of the goods must indicate in box 37 of the SAD a code starting with the digits 42. When goods are re-imported, code 63 should be indicated instead. For the purposes of this report, references to customs procedure 42 include customs procedure 63.'
- <sup>4</sup> The first three elements were addressed in the amendments to the VAT Directive proposed in the same package and adopted by [Directive \(EU\) 2018/1910](#) of 4 December 2018; the fourth was implemented in the [VAT Implementing Regulation](#) also adopted on [4 December 2018](#).
- <sup>5</sup> The latest [VAT gap estimate](#) dates from 2018 for the year 2016. The estimation of VAT fraud and compliance costs was made in ['Implementing the 'destination principle' to intra-EU B2B supplies of goods – Feasibility and economic evaluation study'](#), 2015.
- <sup>6</sup> [Directive \(EU\) 2018/1910](#) of 4 December 2018.
- <sup>7</sup> The initial proposal only included amendment to Article 17 and 31 of the Regulation. In the amended proposal the amendment to Article 17 is modified and only the amendment to Article 31 remains as in the initial proposal.
- <sup>8</sup> A 'call-off stock transaction' is a cross-border transaction where a supplier sends the goods to a stock of their own property located in the Member State of the acquirer, in order to make them available for the acquirer. The transfer of rights is at the moment the acquirer takes the goods out of the stock. A 'chain transaction' is defined as successive supplies of the same goods by means of a single intra-Community transport operation between two Member States.
- <sup>9</sup> A more updated presentation can be found via this [link](#).
- <sup>10</sup> Since not all Member States participate, OLAF will continue with its administrative investigations in relation to non-participating Member States as under the provisions applicable prior to the amendment.

- <sup>11</sup> They related to need for clarification about joint controls and administrative inquiries and the concern that 'national tax administrations should have an effective tool to reduce the risk of overuse of joint controls by the tax authorities of another Member State'.
- <sup>12</sup> It stressed that data exchange with the European Anti-Fraud Office (OLAF) in cases of VAT fraud is not possible owing to a lack of powers and criticises the inclusion of data exchange with Europol. Concern with regards to the risk of violation of the fundamental rights (notably Articles 55 (5) and 58 (2)) were also made.
- <sup>13</sup> They related to the decision on procedures relating to administrative inquiries that it believed must be left up to the requested Member State. It also stressed that tax authorities should have data not only on imports to the EU but also on exports from the EU to avoid carousel fraud. Moreover, it voiced concern that some provisions, such as those concerning repayments and joint audits, are difficult to put into practice.
- <sup>14</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'.
- <sup>15</sup> The [proposal on the technical details of the definitive system](#) that is still pending ([2018/0164\(CNS\)](#)).

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[epers@ep.europa.eu](mailto:epers@ep.europa.eu) (contact)

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