



## INDIRECT TAXATION

Indirect taxes include value added tax (VAT) and excise duties on alcohol, tobacco and energy. The common VAT system is generally applicable to goods and services that are bought and sold for use or consumption in the EU. Excise duties are levied on the sale or use of specific products. EU legislative activities are aimed at coordinating and harmonising VAT law and harmonising duties on alcohol, tobacco and energy with the aim of ensuring the proper functioning of the internal market.

### 1. VALUE ADDED TAX (VAT)

#### A. Legal basis

Article 113 of the Treaty on the Functioning of the European Union (TFEU).

#### B. Development

VAT harmonisation has proceeded in various stages with a view to achieving transparency in intra-Union trade. In 1970, the decision was taken to finance the European Economic Community budget from the Communities' own resources. These were to include payments based on a proportion of VAT and obtained by applying a common rate of tax on a uniform basis of assessment. The VAT Directive (2006/112/EC), adopted in 2007, codifies these amendments in a single piece of legislation.

In 1985, the Commission published the 'Single Market White Paper' (COM(1985)0310), Part III of which concerned the removal of fiscal barriers. The need for action in the field of VAT arose from the 'destination principle'.

#### C. Achievements

##### 1. The VAT system

###### a. The transitional system

In 1987, the Commission proposed changing to the 'origin principle', under which transactions between Member States would bear the tax already charged in the country of origin, which traders could then deduct as input tax. In addition, the Commission proposed the establishment of a clearing system to reallocate the VAT collected in the countries of origin to the countries of consumption. However, these proposals were unacceptable to the Member States. They outlined, as an alternative, the destination principle for transactions involving VAT-registered traders, thereby establishing the basis of the transitional system, which became operational in 1993 (Directives 91/680/EEC and 92/111/EEC).



## b. Viable strategy to improve the existing system

Starting in 2000, the Commission pursued measures to improve the transitional rules then in force. The core EU legislative text on VAT is now the VAT Directive (2006/112/EC). This was followed in 2008 by Directives 2008/8/EC and 2008/9/EC. VAT on services between traders was now to be levied in the country where the services were provided.

In 2005, the foundation was laid for a more uniform application of EU rules (Implementing Regulation (EU) No 282/2011). All Member States now had the option of applying special rules to simplify the application of VAT. The system was improved by the adoption of Regulation (EC) No 37/2009 on administrative cooperation in the field of value added tax in order to combat tax evasion connected with intra-Community transactions.

### 2. VAT rates

Directive 92/77/EEC provided for a minimum standard rate of 15%, to be reviewed every two years. The Council subsequently extended the period of validity of the minimum rate until the end of 2017. In addition, Member States could apply one or two reduced rates of a minimum of 5% to certain goods and services. Member States were also able to continue applying rates below the minimum (including zero) on goods and services if such rates were already in place before 1 January 1991. In 2009, Directive 2009/47/EC concerning reduced rates of value added tax for certain labour-intensive local services was adopted. In 2016, the Commission adopted a proposal for a Council directive to apply the same VAT rates to electronically supplied publications as Member States currently apply to printed publications. Parliament approved the Commission's proposal in June 2017. In January 2018, the Commission adopted a proposal on the reform of VAT rates ([COM\(2018\)0020](#)). The proposal aims to increase flexibility by allowing Member States to benefit from reduced and zero rates that exist in other Member States.

### 3. Recent developments

In 2010, the Commission published a Green Paper on the future of VAT ([COM\(2010\)0695](#)). The aim was to initiate a discussion of the VAT system. In 2012, the Commission set up a group of experts on VAT ('VAT Committee'), which publishes regular guidelines.

On 7 April 2016, the Commission put forward an [Action Plan on the Modernisation of the EU VAT System](#). It outlines the principles which would govern a future single European VAT system, short-term measures to combat VAT fraud, plans for an overhaul of the reduced-rate arrangements and proposals to simplify the VAT rules, and announces a VAT package incorporating measures designed to make life easier for SMEs. The centrepiece of the plan is the proposed shift to the country-of-destination principle for cross-border shipments of goods. On that basis, VAT would be paid by the exporter in the Member State in which the goods are delivered. As a first step, the principle will apply only to B2B shipments. The action plan also sets out two possible ways of granting the Member States more leeway to introduce reduced rates.



Starting in 2017, the Commission presented a number of legislative proposals stemming from the Action Plan. In June 2018, the Council adopted a directive setting a permanent minimum standard VAT rate of 15%. In December 2018, the Council adopted legislative acts on: (i) 'quick fixes' to improve the functioning of the current VAT system pending the entry into force of the new system; (ii) VAT on e-publications; and (iii) cross-border administrative cooperation in the field of VAT. Several other Commission proposals are being discussed in the Council.

#### **D. Role of the European Parliament**

In accordance with EU legislation in the field of VAT, Parliament's role is limited to the consultation procedure. In 2014, Parliament adopted a [resolution](#) on the Commission's proposal for a Council directive amending Directive 2006/112/EC on the common system of VAT as regards a standard VAT return (later withdrawn). On 24 November 2016, Parliament adopted a [resolution](#) on the Commission's Action Plan, welcoming the intention to propose a definitive VAT system and additional measures to tackle fraud. In March 2019, Parliament adopted a report stemming from the work of the Special Committee on financial crimes, tax evasion and tax avoidance (TAX3), which reflects on a number of issues related to VAT.

## **2. EXCISE DUTIES ON ALCOHOL, TOBACCO PRODUCTS AND ENERGY**

### **A. Legal basis**

Article 113 TFEU and, in relation to energy taxation, Article 192 TFEU, in order to pursue the objectives of Article 191 TFEU.

### **B. Objectives**

The rates and structures of excise duties vary between Member States, affecting competition. Very wide disparities in the duties levied on a particular product can result in tax-induced movements of goods, loss of revenue and fraud. Attempts have been made since the early 1970s to harmonise both structures and rates, but progress has been insignificant.

### **C. Achievements**

#### **1. General rules**

Under Directive 2008/118/EC concerning the general arrangements for excise duty, general arrangements are established for products subject to excise duty, with a view to guaranteeing the free movement of goods and, hence, the proper functioning of the EU's internal market. In May 2018, the Commission proposed a recast of Directive 2008/118/EC.

#### **2. Alcohol**

A fundamental question in relation to alcohol taxation has been the extent to which different products are in competition. The Commission (COM(79)0261) and the Court of Justice of the European Union (Case 170/78, ECR 1985) have traditionally taken the view that all alcoholic drinks are more or less interchangeable and in competition. Directive 92/83/EEC, through which the products on which excise is to be levied and



the method of fixing the duty are defined, was only adopted in 1992. Another important directive, 92/84/EEC, followed. A proposal for a directive amending Directive 92/84/EEC (approximation of the rates of excise duty on alcohol and alcoholic beverages) was withdrawn in March 2015, after the Council failed to reach agreement on this subject.

In the framework of the Regulatory Fitness and Performance (REFIT) platform, the Commission undertook an evaluation of Directive 92/83/EEC and, in May 2018, made a proposal to amend the Directive.

### **3. Tobacco products**

The basic structure of tobacco excise rates has been brought together in a consolidated directive (2011/64/EU). In contrast to the original Commission proposals, only minimum rates have been set. Different categories exist for taxable tobacco products. Taxes on cigarettes must comprise a proportional (ad valorem) rate, combined with a specific excise duty. Other tobacco products are subject to an ad valorem, a specific or a so-called mixed excise duty.

Along similar lines to the excise duties on alcohol, the REFIT evaluation revealed opportunities for the revision of the relevant directive on tobacco products. The Council invited the Commission to carry out the preparatory work for a possible legislative proposal. In January 2018, after carrying out an assessment, the Commission decided not to propose a revision or amendment of Directive 2011/64/EU owing to a lack of data.

### **4. Energy products (mineral oils, gas, electricity, alternative energy, aviation fuel)**

The basic structure of mineral oil excise duties within the Community was established in 1992. Here too, as in the case of alcohol and tobacco, only minimum rates have been set, in contrast to the original plans (full harmonisation). An extensively altered version of the 1997 Commission proposals was adopted (Directive 2003/96/EC, derogations in Directives 2004/74/EC and 2004/75/EC).

The communication published by the Commission in 2000 on the taxation of aviation fuel (COM(2000)0110) simply meant that Directive 2003/96/EC now provides for a mandatory exemption from excise duty for energy products supplied for use as aviation fuel other than in private pleasure flying. It introduced for the first time provisions which allow Member States to tax aviation fuel for domestic flights and, by means of bilateral agreements, fuel used for intra-Community flights.

In 2001, measures to promote the use of biofuels were proposed, including the possibility of applying a reduced rate of excise duty, and they were adopted in 2003 as Directive 2003/30/EC.

### **5. VAT on other fuels**

A proposal was presented in 2002 for the levying of VAT on natural gas and electricity, with the domicile of the purchaser being taken as the place for taxation for companies. For final consumers, this would be the place of consumption. This proposal has since been adopted (Directive 2003/92/EC) too.

### **6. Recent initiatives**

The Commission's most recent initiative was the Energy Tax Directive proposal ([COM\(2011\)0169](#)), which sought to modernise the rules on the taxation of energy



products. It would have enabled the Member States to redesign their overall tax structures in a way that would have contributed to growth and employment by shifting taxation from labour to consumption. The proposal was withdrawn in March 2015.

#### **D. Role of the European Parliament**

##### **1. Alcohol and tobacco taxation**

In its resolution on EU taxation policy in 2002, Parliament condemned the Commission's policy with regard to duties on tobacco and alcohol products, and, in particular, rejected upward harmonisation. In 2009, although Parliament favoured the gradual increasing of taxes on cigarettes and other tobacco products, it did not accept the level of taxes proposed by the Commission.

##### **2. Taxation of mineral oil/energy**

In its 2002 resolution on tax policy, Parliament argued that 'the "polluter pays" principle needs to be applied more widely, particularly in the energy products sector'. Parliament issued a favourable opinion on the biofuel proposals in October 2002 and adopted amendments designed to strengthen them. In 2012, Parliament adopted a [resolution](#) on the Energy Tax Directive proposal, which was later withdrawn.

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