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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.

Reduced VAT rate for e-publications

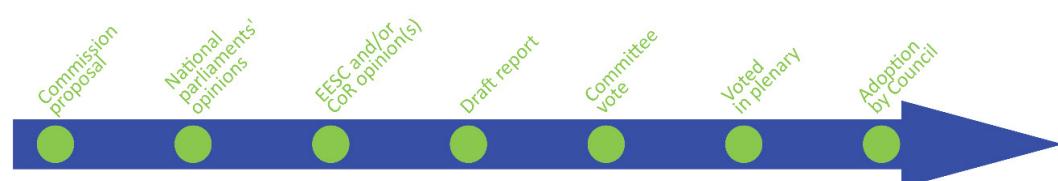
The fact that print and digital publications have been subject to separate value added tax (VAT) rates essentially means that products that are considered to be comparable and substitutable have been treated differently to one another. This situation resulted from rules which, on the one hand, allowed Member States to apply reduced rates to printed publications, but on the other excluded this possibility for digital publications. In addition, the evolution in the VAT framework means that VAT on digital services should be levied in the Member State where the consumer is based (thus protecting the single market from application of different rates within a Member State because of the different location of providers).

The question of broadening the possibility to apply reduced rates to all publications, be they print or digital, was addressed as part of the VAT digital single market package. The amendment to the VAT directive was adopted by the Council on 6 November 2018, after the European Parliament had delivered its opinion on 1 June 2017. The new rules allow Member States to apply the reduced rate to e-publications, as from 4 December 2018.

Proposal for a Council directive amending Directive 2006/112/EC, as regards rates of value added tax applied to books, newspapers and periodicals

COM(2016) 758, 1.12.2016, 2016/0374(CNS), Consultation procedure – Parliament adopts a non-binding opinion

Committee responsible:	Economic and Monetary Affairs (ECON)
Rapporteur:	Tom Vandenkendelaere (EPP, Belgium)
Shadow rapporteurs:	Mady Delvaux (S&D, Luxembourg) Bernd Lucke (ECR, Germany) Cora Van Nieuwenhuizen (ALDE, the Netherlands) Paloma López Bermejo (GUE/NGL, Spain) Molly Scott Cato (Greens/EFA, UK) Barbara Kappel (ENF, Austria)
Procedure completed.	Council Directive (EU) 2018/1713 OJ L286, 14.11.2018 pp 20-21



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Introduction

Taxation has to address the 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 in the EU VAT framework. Digitalisation has recently spurred the move to the application of the place of consumption for VAT (the [destination-based principle](#)). It has also raised the question of distinct treatment with regard to the VAT rate for printed and digital publications.

Context

VAT is charged on the supply of goods and services by 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 have specifically addressed the need for harmonisation of domestic provisions on indirect taxation (covering turnover tax and value added tax as well as excise duties and other indirect taxes). Harmonisation of all major elements of value added taxation dates back to 1967.¹

EU VAT legislation is based mainly on directives. The [sixth VAT directive](#) (77/388/EEC), adopted on 17 May 1977, in particular, provides common criteria for the VAT base in all Member States. Directive 92/77/EEC of 19 October 1992 (amending Directive 77/388/EEC) provides for the approximation of VAT rates.²

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 value added tax which gathers into [one](#) piece of legislation all the amendments to the original sixth VAT directive.

The VAT rates

In brief, the VAT rate structure established since 1992 is the following:

- > a standard VAT rate of 15% or more which applies to all goods and service (articles 96 and 97 of the 2006 VAT Directive), and

1 Turnover taxes were covered by EC provisions as early as 1967 (multi-stage but non-cumulative turnover tax, Council Directive 67/557/EEC), and a common system of value added taxes was set up with the 6th directive (Council Directive 77/388/EEC), recast in 2006 (Directive 2006/112/EC).

2 The 1992 directive's provisions were incorporated in Article 12(3a) & Article 28(2) of the sixth directive.



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- > the possibility for Member States to apply one or two reduced rates (Articles 98 -100 of 2006 VAT Directive), not lower than 5 %, to certain specified goods and services detailed in a list provided in an annex to the directive,³ currently Annex III.⁴

The application of reduced rates is expressly limited to supplies of goods or services in the categories included in Annex III to the directive (positive list mechanism). Application of the standard rate is the default rule.

Application of a reduced rate to electronically supplied services is explicitly excluded by the 2006 VAT Directive.⁵

VAT neutrality

The principle of fiscal neutrality is in essence the specific term implementing, in the VAT field, the principle of equal treatment as set out in Article 20 of the Charter of Fundamental Rights of the European Union.⁶ It implies that comparable situations should not be treated differently.⁷

As regards the assessment of a situation potentially breaching the equal treatment principle, this is based on a three-step process that consists of determining whether the situations at stake are comparable, establishing whether there is a justification for the difference of treatment of comparable situations, and defining the proportionality (choice of the least restrictive among the appropriate measures).

As for printed publications and e-publications, neutrality relates to the fact that not only are they comparable products but there is also the question of whether the existing framework, which results in the application of a reduced rate only to physical publications, can be justified and considered proportionate based on another principle, namely the objective of providing 'clear, simple and uniform rules' for electronically supplied services.

VAT on e-publications levied where the consumer is based

Since 1 January 2015, for a certain number of mobile transactions linked to telecommunications services (including e-publications) to non-taxable persons (Business to consumer, B2C), the destination principle is applicable for VAT. This means that VAT should be paid to the Member State where the consumer is located. This is referred to as the mini one-stop shop ([MOSS](#)).⁸ The destination principle implies that it is no

3 In the sixth directive this was listed in Annex H.

4 Lower or zero-rates existing at the time of the adoption of the directive are subject to 'standstill derogations' -Articles 109-130 of the VAT Directive).

5 See Article 98 which provides that 'The reduced rates shall not apply to the services referred to in point (k) of Article 56(1). Article 56(1) (k) refers to 'electronically supplied services, such as those referred to in Annex II'.

6 As the Court recalled it in its judgement delivered on 7 March 2017 in case [C-390/15](#) Rzecznik Praw Obywatelskich (RPO) e.a, point 38.

7 With the mirror situation that different situations are not treated similarly. However, this aspect is not at stake in the case of neutrality between paper publications and e-publications.

8 Presentations of the provisions are available in the [Explanatory Notes](#) (3.4.2014) and on the Commission webpage on [Telecommunications, broadcasting & electronic services](#).

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longer necessary to apply the standard rate to an electronically supplied publication in order to prevent distortions resulting from the location of the supplier in the single market.

Existing situation

The provisions at stake were last amended by [Directive 2009/47](#). They aimed at 'updating' the description of goods covered; in particular, the Commission [proposed](#) to cover 'printed matter' as well as audio books, CD, CD-ROMs or any similar physical support that predominantly reproduce the same information content as printed books'. However the text as adopted, after consultation of the EP, does provide in its point 6 that:

'Supply, including on loan by libraries, of books on all physical means of support (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), newspapers and periodicals, other than material wholly or predominantly devoted to advertising.'

(underlined is the modification brought by Directive 2009/47).

This means that currently, for 'physical' publications, Member States have the option of applying a reduced VAT rate. Some have been authorised to apply super-reduced rates (below 5%), which involve VAT deductibility.

Decisions of the Court of Justice

The existing framework was brought to the attention of the European Court of Justice in recent procedures. Two of them were actions for failure to act, on which the Court delivered [judgements](#) on 5 March 2015. It ruled that applying a reduced rate of VAT on the supply of digital books (or electronic books) constituted a failure to fulfil the obligations deriving from the VAT provisions.⁹

On 7 March 2017, the Court delivered a [judgement](#)¹⁰ on a request for a preliminary ruling on the validity of the VAT directive provisions that limit reduced rates to printed publications. The Court assessed the situation with regard to equal treatment principles and found that the existing VAT provisions do not raise validity questions.

Parliament's starting position

The European Parliament adopted a non-legislative [resolution](#) in November 2011 on the modernisation of VAT legislation in order to boost the digital single market, in which it underlined that the 'VAT rates applicable to books illustrate the shortcomings of current legislation'.

⁹ Court of Justice of the European Union, [Judgments in Cases C-479/13 and C-502/13 Commission v France and Commission v Luxembourg](#), 5 March 2015.

¹⁰ See abovementioned case C-390/15 - RPO.

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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.



Preparation of the proposal

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Proposal

Preparation of the proposal

The review of the VAT rates structure system was launched by the 2011 Commission [communication](#) on the future of VAT. One of the guiding principles was the need to respond to the challenge of convergence between the online and the physical environment, ensuring that similar goods and services are subject to the same VAT rate.

The [action plan](#) adopted by the European Commission on 7 April 2016 sets out the steps toward a single EU VAT area, and the [VAT digital single market package](#), adopted on 1 December 2016, of which the proposal in question is a part, aims at improving the VAT environment for e-commerce in the EU.

The proposal builds on the fact that the 'current rules on VAT rates do not fully take into account technological and economic developments with regard to e-books and electronic newspapers'.¹¹ Both the [Council](#) and the [European Parliament](#) have called upon the Commission to present a legislative proposal remedying the different rate treatment of print and digital publications. A public consultation was organised by the Commission between July and September 2016 on reduced VAT rates for electronically supplied publications. Building on the fact that the 'current rules on VAT rates do not fully take into account technological and economic developments with regard to e-books and electronic newspapers'¹² the [proposal](#) for a Council directive amending Directive 2006/112/EC, as regards rates of value added tax applied to books, newspapers and periodicals, was finally adopted by the Commission on 1 December 2016.

The changes the proposal would bring

The proposal amends the VAT provisions to allow the application of a reduced VAT rate also to e-publications within the VAT rate framework applicable prior to the modernisation of the VAT rates.¹³

The current proposal seeks to make the following amendments to the VAT Directive with regard to rates applicable to digital publications:

- > deleting the reference to 'all physical means of support' and specific formats for printed publications in Annex III of the directive, and adding the condition that the publication does not wholly or predominantly consist of music or video content;
- > introducing an exception, for digital publications, to the rule that electronically supplied service are to be taxed at standard rates, thus allowing application of a reduced rate;

11 Phrasing from the Commission's '[Action plan on VAT](#) - Towards a single EU VAT area - Time to decide'.

12 Phrasing from the Commission's '[Action plan on VAT](#) - Towards a single EU VAT area - Time to decide'.

13 The 18 January 2018 proposal for a directive amending Directive 2006/112/EC as regards rates of value added tax, ([2018/0005\(CNS\)](#)) switches from a positive list mechanism to a negative list one, reduced rates could be applied to all goods, except those for which they are excluded.



Preparation of the proposal

The changes the proposal would bring

- > introducing the possibility to apply a reduced rate below the minimum of 5 % (super-reduced rates) to digital publications, acknowledging the fact that several Member States were granted derogations for print publications and now apply rates lower than 5 % (including even zero rates) to such publications.

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Views

Advisory committees

The European Economic and Social Committee (EESC) adopted its [opinion](#) during its plenary session on 6 July 2017 (rapporteur: Amarjite Singh, Workers – Group II / United Kingdom). That opinion covers both the proposals on VAT on e-commerce and the proposal on a reduced VAT rate for e-publications. The Committee welcomed the latter as ensuring tax neutrality, while underlying the possible impact on the tax base.

National parliaments

The deadline for national parliaments to submit [comments](#) on the proposals was 31 January 2017, and the parliaments of six countries completed the scrutiny process within the deadline. Opinions were issued, in the context of political dialogue, by the Bundesrat in [Germany](#) (which welcomes the move to similar treatment for print and digital publication but expresses concerns regarding the proposed extension of reduced or zero VAT rates), and the Assembleia da República in [Portugal](#).

Stakeholders' views¹⁴

Answers from [stakeholders](#) participating in the Commission's public consultation on 'reduced VAT rates for electronically supplied publications' showed wide support for the alignment of the VAT rate for digital publications with that applied to print publications.

¹⁴ 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

The proposal requires unanimity for adoption by the Council, after consultation of the European Parliament (legal basis: Article 113 of the Treaty on the Functioning of the European Union (TFEU)).

In the European Parliament, a [report](#) was prepared by the Economic and Monetary Affairs Committee (ECON) (rapporteur: Tom Vandenkendelaere, EPP, Belgium). The Culture and Education Committee (CULT) adopted an opinion, whereas the Internal Market and Consumer Protection Committee (IMCO) and the Legal Affairs Committee (JURI) decided not to give opinions. The report is supportive of the Commission proposal in so far it corrects the unequal VAT treatment of printed and e-publications, while separating this correction from the discussion of forthcoming general proposals on VAT rates. The report was voted in plenary on 1 June 2017.

In the Council, discussions were intertwined with other VAT-related issues and proposals.

The Council's [position](#) was prepared by the working party on tax questions. Discussions in Council showed support for the proposal to apply the reduced rate to both print and digital publications. A general approach was agreed on [2 October 2018](#) leading to the adoption on 6 November 2018 of [Council Directive \(EU\) 2018/1713](#). The adopted directive maintains the possibility to apply existing super-reduced rates, and provides a non-exhaustive list of publications beyond books, newspapers and periodicals.¹⁵ The directive entered into force on 4 December, opening up the possibility for Member States to apply the reduced rates within the current VAT rates framework to e-publications.

¹⁵ Article 1(3) of the adopted directive – ‘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’ – matches the phrasing of the EP amendment.



References

Other sources

[Proposal for a Council directive amending Directive 2006/112/EC, as regards rates of value added tax applied to books, newspapers and periodicals](#), 2016/0374(CNS), European Parliament Legislative Observatory (OEIL).

European Commission, [VAT EU existing framework](#).

European Commission, [VAT rates](#).

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