
Opinion Statement FC 4/2018 on a Proposal for a Council Directive amending Directive 2006/112/EC, as regards rates of Value Added Tax (COM(2016)758 final, of 1 December 2017 and COM/2018/20 of 28 January 2018)

**Prepared by the CFE Fiscal Committee
Submitted to the European Institutions in June 2018**

This Opinion Statement concerns the proposal to amend Article 99 of Directive 2006/112/EC (COM(2016)758 final of 1 December 2017) to allow Member States to apply reduced rates or to grant exemptions with the right to deduct input tax on the supply of books, newspapers and periodicals other than publications wholly or predominantly devoted to advertising and other than publications wholly or predominantly consisting of music or video content. The Opinion Statement also concerns the proposal (COM/2018/20 of 28 January 2018) to amend Articles 98 and 100 and to insert a new Article 99a into Directive 2006/112/CE. The CFE supports the idea of giving Member States greater freedom to be able to fix rates. However, it is concerned that this should be done in a manner that does not significantly increase the burdens on businesses making cross-border supplies.

CFE Tax Advisers Europe is a Brussels-based association representing European tax advisers. Founded in 1959, CFE brings together 30 national organisations from 24 European countries, representing more than 200,000 tax advisers. CFE is part of the European Union Transparency Register no. 3543183647-05. We would be pleased to answer any questions you may have concerning our Opinion Statement. For further information, please contact Ms. Stella Raventós, Chair of the CFE Fiscal Committee or Aleksandar Ivanovski, Tax Policy Manager, at info@taxadviserseurope.org. For further information regarding CFE Tax Advisers Europe please visit our web page <http://www.taxadviserseurope.org/>

I. Background and Issues

This Opinion Statement concerns the proposal to amend Article 99 of Directive 2006/112/EC (COM(2016)758 final of 1 December 2017) to allow Member States to apply reduced rates or to grant exemptions with the right to deduct input tax on the supply of books, newspapers and periodicals other than publications wholly or predominantly devoted to advertising and other than publications wholly or predominantly consisting of music or video content.

The Opinion Statement also concerns the proposal (COM/2018/20 of 28 January 2018) to amend Articles 98 and 100 and to insert a new Article 99a into Directive 2006/112/CE. These changes withdraw the current, complex list of goods and services to which reduced rates can be applied and replaces them with new lists of products (such as weapons, alcoholic beverages, gambling and tobacco) to which the standard rate of 15% or above would always have to be applied.

The CFE supports the idea of giving Member States greater freedom to be able to fix rates. However, it is concerned that this should be done in a manner that does not significantly increase the burdens on businesses making cross-border supplies.

II. The evolution of the EU VAT system since 1993

In accordance with the Principle of Subsidiarity (Article 4 and 5 of the Treaty on the Functioning of the European Union), reduced VAT rates should only be within the competence of the European Union when this is necessary to prevent abuse or to ensure that undue burdens and complexities are not imposed on those making cross-border supplies in the internal market. In this regard the CFE observes that:

- the Council's decision to apply the destination principle means that there is no longer the same need to restrict the use of reduced rates to protect the proper functioning of the internal market;
- the Council has also approved a proposal designed to avoid distortions of competition arising from distance sales and the provision of e-services to non-taxable persons.

III. For the consumer reduced VAT rates have the same impact as VAT exemptions, but the position is different for producers

The CFE observes that reduced rates and VAT exemptions have a similar economic impact on sale prices to the final consumer. However, they do not have the same impact on the organisation of the production chain:

- reduced rates allow a price reduction to the final consumer. However, they also allow a deduction of input VAT by the supplier and this renders outsourcing and intra-group transactions easier;

- VAT exemptions without the right of deduction of input VAT allow a reduction of the price charged to the final consumer. However, they also impact on the commercial attractions of outsourcing and intra-group transactions because they may increase the amount of input tax that the business cannot recover. A possible alternative consisting of granting every business performing VAT exempt operations an option to tax those operations at a reduced rate is unlikely to be generally acceptable. Such an alternative would cause distortions in intra-community and international trade: this is because the acquirer would be able to claim a VAT exemption to avoid having to account for VAT in the country where he acquires the service while the supplier in a different country would elect for taxation, so as to secure a right of deduction. Giving traders such options would therefore result in non-taxation or double taxation.

It was an appreciation of the points outlined above that resulted in the European Parliament in 1963 recommending that Member States should have the right to determine what supplies should be exempt or eligible for reduced rates or other specific taxes, provided this had no impact on the internal market¹. When assessing the position account needs to be taken of the technological changes that have occurred since the 1960s.

IV. Zero rating with a right to deduct input VAT

An alternative to VAT exemptions would be to allow taxation at a reduced rate or to zero-rate². Preparatory documents relating to the Sixth VAT Directive indicate that the Council objected to zero-rating on the basis that:

- it would violate Article 1(2) of the VAT Directive that intends to apply a tax on any consumption. Indeed, zero rating is relieving specific consumption from a tax;
- that the taxable persons performing VAT zero rate operations would only receive money from the tax authorities and it is not the role of the tax authorities to grant subsidies to some categories of business.

Despite these objections, the CFE can see no reason why supplies should not be zero-rated provided this does not cause undue distortions to the single market. In any event, these objections do not apply to super reduced rates because it is a tax and it complies with Article 113 of the Treaty on the Functioning of the European Union. In addition, some operations that are currently VAT exempt are subject to other indirect taxes that may sometimes be much higher than non-deductible VAT (for example in the insurance sector). It would probably be preferable if these national indirect taxes were progressively replaced by the common VAT system.

¹ Report of the Committee for the internal market on the Proposal of the Commission to the Council (Doc 121, 1962-1963) concerning a Directive on the harmonization of the legislations of the Member States on turnover taxes ("Deringer Report"), European Parliament, Documents of Session 1963-1964, 20 August 1963, Document 56, p. 45

² Exemptions with deductibility of the VAT paid at the preceding stage to the supply

V. Common structure and uniform definitions

Although the CFE is in favour of a revision of the lists of operations benefitting from reduced VAT rates or zero rating, it also has concerns about the implications of the proposals on particularly small businesses that are making supplies to customers in other Member States. Under the Commission's current proposals for the definitive system, such businesses may be required to account for VAT using the relevant rates applied in the country of their customer. Particularly with services that are performed as part of a package of supplies whose elements are taxed at different rates, considerable difficulties may then frequently arise in determining what rates to apply. In this regard, the CFE observes that if such an approach is to be adopted:

- at a minimum, it is of fundamental importance that accurate, and preferably binding, guidance is available to traders who are not established in that state. This should ideally be available in a number of languages, otherwise a business established in another state may find the information difficult to locate. Ideally it should be available from a single portal, so that traders throughout the EU know that there is one source to which they can turn for guidance. This could in part be done by reference to links to relevant guidance on national tax authority web sites, if this is available;
- consideration should be given to a binding ruling systems;
- while it may slightly limit the Member States' freedom, there could also be merit in having a classification at an EU level for supplies that might be made by non-established businesses. This might be done in regulations or explanatory notes. Although Member States would be given the freedom to determine what rate to apply to a category of supply, the categories would be defined at an EU level, so that harmonised definitions would apply. This would help avoid or reduce the problems that arise from the multiplicity of different definitions in different Member States. In order to avoid the need to classify supplies for which no Member State wants to apply a reduced rate, the system could possibly work on the basis that Member States that want to introduce a reduced rate should consult with the Commission who will then together seek to devise a relevant classification for the supplies to be taxed at a reduced rate. If another Member State wants to reduce the rate for similar supplies, consideration would then be given by that State and the Commission to whether the same classification should apply to all those supplies or whether additional classifications are required;
- the development of computerised systems that can determine the basis upon which supplies are made would be helpful. Provided that the business has acted reasonably in using the system the responses should be binding. Having a classification system may assist in developing such a computerised system;
- given the heavy burdens being imposed on them, it is important that businesses that have acted in good faith should not be penalised by the imposition of heavy penalties.

Except in cases where there are difficulties in calculating how much VAT should be charged on operations, when exemptions may still perform a useful role³, the CFE considers that it would be preferable for supplies to be taxed at reduced rates, rather than being exempt. In this way, the barriers to outsourcing caused by the current exemption are reduced.

³ Some members of the Fiscal Committee do not share this view and consider that there are no technical reasons that would make difficult or impossible to determine the VAT taxable base.