



Position Paper

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On the common system of value added tax as regards the special scheme for small enterprises

We welcome the proposals of the European Commission to simplify VAT system for small enterprises with the aim of enhancing their cross-border activities, however, special provisions should be harmonized in order to actually reduce the bureaucratic burden and not to contribute to further fragmentation due to various options given to Member States. As for companies trading cross border that do not take advantage of tax exemptions or cannot use them due to low national turnover thresholds, some facilitating regulations should be adopted.

Background

The proposal foresees the following amendments:

- a Union annual turnover threshold of 2 Mio. € up to which simplification measures can be applied by all – exempt or non-exempt – SMEs.
- the option of Member States to exempt all SMEs from VAT registration, invoicing, accounting and reporting obligations.
- a Union annual turnover threshold of 100.000 €, which enables businesses operating in more than one Member State to avail itself of the exemption in a Member State where it is not established.

The European Commission goal was to address several issues with its reform of the VAT system: the new system should be easy, just, robust, efficient and less prone to fraud. It is, however, questionable, if the proposed Directive will be fit enough to achieve these goals. In general it should be noted that the proposed Directive does not contribute to a harmonization of the VAT system; on the contrary – due to numerous options for the Member States, the proposal will lead to further fragmentation.

In the recitals of the proposed Directive, the European Commission indicates that distortions of competition, as a result of the shift towards destination-based taxation, should be addressed and avoided. However, those provisions shall only apply from 1 July 2022. This date was chosen without specifying whether the shift towards destination-based taxation will already be implemented by then. Therefore, it is unclear, whether the Commission has proposed an independent directive or whether its implementation is dependent on the implementation of a destination-based taxation.

Our detailed comments on selected articles

ad Art 280a

We welcome the establishment of a new threshold in the “small enterprise” definition as well as the level of the annual turnover below which simplifications and facilitations may be granted. We advocate for keeping Article 280 a (1) as stated in the Commission proposal.

The proposed Directive contains simplification measures for enterprises whose Union annual turnover is no higher than EUR 2 000 000. According to the Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises, the category of micro, small and medium-sized enterprises (SMEs) is made up of enterprises which employ fewer than 250 persons and which have an annual turnover not exceeding EUR 50 million, and/or an annual balance sheet total not exceeding EUR 43 million. A microenterprise is defined as an enterprise which employs fewer than 10 persons and whose annual turnover and/or annual balance sheet total does not exceed EUR 2 million. Therefore, first thing to keep in mind is that not all SMEs as such fall under the scope of the proposed Directive. What is an improvement, though, is that small companies can grow without losing all facilitations the first time they exceed a threshold value. Additionally, the proposal may help small companies that operate in conditions uncommon to their size, for example high turnover rates due to high material employment.

ad Art 284

According to Art 284 (1) of the proposal, Member States may exempt the supply of goods and services made within their territory by small enterprises established in that territory whose Member State annual turnover, attributable to such supplies, does not exceed a threshold fixed by those Member States for the application of this exemption. Member States may also fix varying thresholds for different business sectors based on objective criteria. However, those thresholds shall be no higher than EUR 85 000 or the equivalent in national currency.

Instead of harmonizing the existing rules, the proposal only foresees a maximum limit for the threshold. Currently, no Member State has introduced such a high threshold. This option would entail that within the small enterprises scheme, more than 27 different thresholds would exist.

Since many different interests have to be taken into account, setting such a threshold is a delicate matter. A high threshold puts taxable businesses at a competitive disadvantage – especially in case of delivery to the end user. Sectors with low input materials or low material usage also face a competitive disadvantage because the missing right to deduct tax will not be significant.

Member States may exempt the supply of goods and services made within their territory by small enterprises established in that territory whose Member State annual turnover, attributable to such supplies, does not exceed a threshold which shall be no higher than EUR 85 000.

According to Art 284 (2) of the proposal, Member States that have put in place the exemption for small enterprises shall also exempt the supplies of goods and services in their own territory made by enterprises established in another Member State, provided that the following conditions are fulfilled: a) the Union annual turnover of that small enterprise does not exceed EUR 100 000; b) the value of the supplies in the Member State where the enterprise is not established does not exceed the threshold applicable in that Member State for the granting of the exemption to enterprises established in that Member State.

In general, it should be noted that such a measure would lead to a change in the competitive situation between businesses. Such a measure entails that if an SME plans to avail itself of the exemption in other Member States, it has to know beforehand, whether a Member States foresees such an exemption for businesses established in this Member State. In addition, the SME needs to also find out whether different thresholds for different business sectors exist (questions of delimitation cannot be excluded) and - in a second step – it has to inform itself about the existing threshold. Since a harmonization of the thresholds is not foreseen, SMEs have to do their research for every single Member State, which leads to additional administrative burden.

Furthermore, Member States have to gather and regularly update all the relevant data about the turnover of those SMEs in order to examine if the thresholds and exemptions apply. Therefore, businesses have to face additional significant reporting obligations that will lead to additional burden and costs.

ad Art 288a

It is positive to note that small enterprises can continue to benefit from the VAT exemption, even if their annual turnover exceeded the exemption threshold during a calendar year. Yet, the provision is very vague because it does not explicitly state, whether this tolerance rule can only be applied for one year or for each year and if the enterprise can again apply the SME exemption for the following year. We encourage decision makers to keep the actual percentage for exceeding the threshold value at 50% to avoid constant changes in the VAT tax situation due to volatile turnovers.

ad Art 294c and 294f

Art 294 c and f are formulated in an unclear way. With regards to VAT measures, every receiving business should have the civil right to obtain an invoice. We therefore do not favor an exemption from issuing an invoice (Art 294 c). Additionally, we regret that the provisions of Art 294 f only foresee an option for Member States. Those simplifications should be made mandatory across all Member States to release SMEs from high administrative obligations.

ad Art 294e

The present article of the draft directive introduces an option for Member States. However, from the way in which the provision is formulated the conditions for an SME to be exempted from the obligation to submit a VAT return remain unclear.

ad Art 294g

We welcome the foreseen simplified procedure which allows small enterprises not benefiting from the SME exemption provided for in Article 284 to obtain an individual identification number. It should, however, be noted that the simplified procedure would not be applied to SMEs because by definition a small enterprise is defined as an enterprise whose annual turnover and/or annual balance sheet total does not exceed EUR 10 million.

ad Art 294h

We welcome the simplified obligations relating to the storage of invoices by small enterprises.

ad Art 294i

Currently, it is up to the Member States to decide how often a VAT return has to be submitted. We therefore welcome the harmonization (no option for the Member States) which will lead to less administrative burden for businesses. However, businesses should have the right to hand in the VAT return more regularly to receive a faster refund of VAT credits. Prolonged submission deadlines can be a good thing for small companies. Under certain circumstances, though, they can be tedious, especially if they would like to claim reimbursements for high input tax amounts paid (i. e. due to high material usage). Therefore, small companies should have the option to claim input tax amounts in a timely manner to shore up their liquidity.

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