Further remarks to the public consultation on reduced VAT rates for electronically supplied publications

We’d like to recall here a number of arguments that support our proposition (we presented some of these arguments in our submission to the consultation on the Review of existing legislation on reduced VAT rates in 2012):

- **Reduced rates of VAT are a good policy instrument.** As the FEP amply illustrated in our reply to the Green Paper on the future of VAT, reduced rates on books have actually proven very effective in promoting readership and maintaining a healthy retail supply value chain. VAT is a neutral, stable and non-invasive tool – as opposed to other fiscal tools such as direct subsidies – for promoting the consumption of books and journals, which generate positive externalities.

- **Increased levels of readership will benefit individuals and society.** The social, economic and cultural dimensions of reading are closely connected. The influence is first on students’ education careers: the PISA surveys show that the number of books present in the household of the pupils and students is one of the most relevant variables that determine the scores in PISA tests. Even more directly, Brunello, Weber and Weiss (2012, reference below) demonstrated that the same variable has an influence on the long term income of individuals. The positive relations between reading and the grow rate of productivity is the main result of the study done by Gaffeo and Scorcu in 2006.

- **Reduced rates of VAT will most likely result in lower prices for consumers.** From what we can discern from experience in EU member states which have seen a reduction in VAT on books, in France (where e-books have been allowed a reduced VAT as of 2012), Italy (reduced VAT applied to e-books since 2015) and Sweden (where VAT on print books was reduced from 25% to 6% in 2001), a reduction in VAT did result in a lower price to the consumer. This even happened in countries like Italy, where the lowering of VAT was offset by the switch to the destination principle. When VAT on e-books was reduced in Italy to 4% from 22%, the concurrent switch to the destination principle actually led to a very small reduction in VAT, since most e-books were being bought from Luxembourg with its 3% rate and the average VAT rate (taking the 22% rate and the 3% rate) being paid on Italian e-books was between 6-7%. Overall prices still decreased quite significantly.

- **Reduced rates of VAT on e-books will not distort the internal market by making firms move to where the rates are lowest.** The switch to an imposition system for VAT based on the place of destination (where the consumer is located) in 2015 eliminated the risk completely. Such risk would have been quite low for publishers anyway, since publishing is an activity that is mainly rooted on a lingual-geographical basis. Indeed, this is one of the reasons why different rates of VAT on printed books across Member States have not created any internal market distortions in the past.

- **Producing e-books is not significantly cheaper than producing p-books, therefore removing the different VAT treatment will not have a distortive effect on supply of either.** Producing e-books is not substantially cheaper than producing printed books. Electronic publishing in fact generates many of the same costs which are associated with print publishing, as well as a
host of additional costs not present in the print world. The payment of royalties to authors, the editorial work required to make a quality publication, marketing costs for the work, distribution costs, and (electronic) storage and archiving costs, all remain part of a publisher’s calculation in the digital world. The main investment in a book is made before publication, and it is a risky one; publication can then come in different formats, and all formats should have the same VAT (reduced, super-reduced or zero). In addition, the costs of tackling online copyright infringement, investing in digitisation systems, staff and technology, maintenance of digital infrastructure and secure distribution systems as well as the costs of file conversions into the relevant formats, updating of formats, file preservation and the application of DRM – not to mention the commissions to large distribution platforms – are all new costs that are specific to electronic publishing. Indeed, because the costs of production are broadly the same, it is all the more incongruous that the print and digital outputs should be subject to such widely divergent tax treatment. All the more since many of the new costs are fixed costs that need to be recovered via the sale of large numbers of units. Given that publishers are already largely operating in the print-plus-digital paradigm, the related concern that changing VAT rates for digital will alter the patterns of production and supply is equally misplaced. What VAT differentials may do, however, is disadvantage consumers – i.e. hit the demand side - by depriving readers of e-books of the tax benefits enjoyed by readers of print books. Reduced VAT will help boost the e-book market to the benefit of users and the whole value chain.

An increase in e-book sales will represent an opportunity for publishers and booksellers. The growth of the e-book market is not being seen as a threat by publishers, who are embracing the digital transition and investing heavily in innovation to be successful in this market. While there is a degree of substitution between digital and print, publishers are equipped to compete in both markets, as their core competence is the production of quality content, regardless of its format. Booksellers, in turn, also see the opportunity in participating in the digital book market, and increasingly focus on this potential rather than on possible risks; the real threat on the e-book market being unfair competition and the lack of a level playing field with regard to certain market players. Reduced VAT rates on e-books will therefore enhance the opportunities for publishers and booksellers alike to successfully compete on this market.

We’d also like to expand on the definition issue.

There is consensus among FEP members that trying to provide an exact definition of an e-book for fiscal purposes would not be of much use, as technology keeps evolving and we don’t know what a book might look like in the future, while still being a book. There are also objective difficulties in providing a way to “measure” what a book is, while at the same time there haven’t been issues with recognising books, so that the actual need for a precise definition is not obvious.

After all, there are no such definitions of e-books (or books, for that matter) in national legislations, and this has not constituted a problem so far. Some examples:

- Swedish fiscal legislation suggests a rule of interpretation which implies that the content should be measured by its principal type of content.
- In Germany, the current fixed book price law applies to “books” and “[...] products which reproduce or substitute books, sheet music or cartographic products and, upon due consideration
of the overall circumstances, are to be deemed to be primarily of a typical publishing or bookselling nature”. These rules have so far consistently been interpreted as covering e-books. The explicit extension of the scope of the law to e-books added the following wording: “such as e.g. electronic books on offer for permanent access, and similar electronic products offered by publishers”. In the publishers’ experience this set of rules does work in practice.

- The Italian legislation, when it applied reduced VAT on e-books, did not introduce a definition of e-book. It changed the definition of “book” so as to include also electronic formats. The Italian definition of book, for fiscal purposes, is the following: “book is any publication identified by an ISBN code and distributed through any physical support or via digital communication means”. Probably because of this simplicity, it did not create problems up to now. The tax authority then issued some norms that make the provision more precise. Essentially, they said that the publication should be a book, plus should have an ISBN.

- For Spanish law, “a book is a scientific, artistic, literary or any other kind of work that constitutes a unitary publication in one or more volumes and that can be published in print or on any other support susceptible of being read. The definition of book is to include electronic books and books published or distributed through the internet or on other support that may appear in the future, complementary materials of print, visual, audiovisual or auditory nature that are edited together with the book and that participate in its unitary nature, as well as any other editorial manifestation.”

- The French law on reduced rates of VAT admits digital books including “elements [...] typical of digital publishing”, as long as these have an ancillary nature.

Basically, these cases boil down to the application of an “I know one when I see it” concept (made popular by the US Supreme Court), which relies on common sense and a practical spirit. In this perspective, the ideal would be to simply adapt the current Directive to apply to books on all kinds of supports, downloaded or provided through any other non-physical means of supply. Thus the current practice in the different EU Member States, which has not caused any problems, could be continued.

A guiding principle could be the ISBN, the standard identifier number for books (which is quoted in the Italian legislation, for example). All books in all formats typically have an ISBN assigned to them. The definition of monographic publication for ISBN is: “publication conceived as a whole in one part or within a finite number of parts by its publisher/author(s) and made available to the public in any product form”.

The ISBN also provides a number of examples of items to which an ISBN can be assigned:

a) printed books and pamphlets (and their various product forms);
b) Braille publications;
c) publications which are not intended by the publisher to be regularly updated or continued indefinitely;
d) educational/instructional films, videos and transparencies;
e) audio books on cassette or CD or DVD (talking books);
f) electronic publications either on physical carriers (such as machine-readable tapes, diskettes, CD-ROMs) or on the internet;
g) digitised copies of print monographic publications;
h) microform publications;
i) educational or instructional software;
j) mixed media publications where the principal constituent is text-based.

Once again, there isn’t a measurable objective criterion, and still the system has been working fine for many years now. The ISBN encompasses a range of educational materials, some of which may not come across strictly speaking as books, such as videos and films: these will not be considered as books; at the same time, it is important to ensure that the notion of digital publications includes digital learning materials produced by publishers that replicate and also enhance the function of textbooks. These could be defined as digital materials published to be adopted by schools or used by students in the framework of education, or materials intended for pupils, students and teachers directly involved in a teaching activity provided on behalf of an educational establishment. In any case, educational digital content contains text, film, pictures and audio and is probably going to get even more complex, with further embedded services, but it is imperative not to have a too narrow definition allowing scroll down pure text only.

Internationally, other attempts have been made at defining e-books, but again, not trying to get precise quantitative criteria. Some examples:

- From a WIPO SCCR negotiation document (they tried to find a term that covers books and e-books, but not audio-visual works, music or software): “work” means literary and artistic works within the meaning of Article 2.1 of the Berne Convention, in the form of text, notation and/or related illustrations, whether published or otherwise made publicly available in any media. At WIPO, the phrase “text-based work” has been used to define an e-book.
- There is no single definition of an e-book in the USA. However, the term is generally understood to mean a non-print book that is formatted in an electronic (or “digital”) format and then accessed by an electronic/technological device such as an E-reader, handheld device, personal computer, etc. Electronic formats vary as do the electronic features of the book.
- There is not a specific definition of e-book in the Brazilian legislation. In general terms, the Brazilian law considers as book the traditional material in the printed format. However, the very same legislation compares certain materials to books, which allows an interpretation that books in the digital format are regarded as books in the following terms: “texts derived from books or originals, produced by publishers, through a publishing contract with authors, by utilizing any reading support.”
- According to an OECD report on e-books, “E-book is a book composed in or converted to digital format for display on a computer screen or handheld device.”

Again, rather than providing a clear definition, these examples support the idea that such a quantitative criterion might not be so necessary.

Further reading:

https://www.actualitte.com/article/lecture-numerique/livre-numerique-hachette-bascule-la-tva-de-19-6-a-7/32066


References:
E. Gaffeo; A. E. Scorcu, 2006, “Il ritorno economico della lettura” in Investire per crescere. Materiali per una discussione, Milano: AIE