



EUROPEAN COMMISSION
DIRECTORATE-GENERAL
TAXATION AND CUSTOMS UNION
Indirect Taxation and Tax Administration
Value Added Tax

**VAT Expert Group
18th meeting – 5 February 2018**

taxud.c.1(2018)589413 – EN

Brussels, 29 January 2018

VAT EXPERT GROUP

VEG N° 068

Council Directive EU 2017/2455 of 5 December 2017 amending Directive 2006/112/EC and Directive 2009/132/EC as regards certain value added tax obligations for supplies of services and distance sales of goods

Article 2, points (14) to (20) – Provisions with effect from 1 January 2021

Special scheme for services supplied by taxable persons not established within the Community (non-Union scheme)

Need for implementing provisions and IT impact

1 PURPOSE OF THE DOCUMENT

On 5 December 2017, the Council adopted Council Directive EU 2017/2455 amending Directive 2006/112/EC and Directive 2009/132/EC as regards certain value added tax obligations for supplies of services and distance sales of goods.

Points (14) to (20) of Article 2 of this Directive amend or complete Section 2 of Chapter 6 of Title XII of the VAT Directive following the extension of the scope of the special scheme for telecommunications, broadcasting or electronic services ('TBE services') supplied by taxable person not established within the Community (non-Union scheme), to other services as from 1 January 2021.

The purpose of this working document is to determine whether or not these provisions:

- require detailed measures to be laid down in implementing legislation; and
- have an IT impact.

For the purpose of this work, the following implementing rules were considered:

- Council Implementing Regulation (EU) No 282/2011 laying down implementing measures for Directive 2006/112/EC on the common system of VAT (hereafter 'VAT IR');
- Commission Implementing Regulation (EU) No 815/2012 laying down detailed rules for the application of Council Regulation (EU) No 904/2010, as regards special schemes for non-established taxable persons supplying telecommunications, broadcasting or electronic services to non-taxable persons (hereafter 'COM IR').

The table in Annex 1 sets out the Commission's view, for discussion at the VEG meeting of 5 February 2018.

	VAT Directive	Impact on VAT IR?	Impact on COM IR?	IT impact?
1	<p><i>Article 358a(3): a definition of Member State of consumption is added to this Article:</i></p> <p>'Member State of consumption' means the Member State in which the supply of services is deemed to take place according to Chapter 3 of Title V.</p>	No	No	No
2	<p><i>Article 359: amended following the extension to other services</i></p> <p>Member States shall permit any taxable person not established within the Community supplying services to a non-taxable person who is established in a Member State or has his permanent address or usually resides in a Member State, to use this special scheme. This scheme applies to all those services supplied within the Community.</p>	<p>Yes</p> <p>The definition of the 'non-Union scheme' in Article 57a, point (1) must be amended following the extension of its scope to services other than TBE services.</p>	<p>Yes</p> <p>The definition of the 'non-Union scheme' in Article 1, point (1) must be amended following the extension of the scope of the non-Union scheme.</p>	No
3	<p><i>Article 360 – VAT identification number (unchanged)</i></p> <p>The taxable person not established within the Community shall state to the Member State of identification when he commences or ceases his activity as a taxable person, or changes that activity in such a way that he no longer meets the conditions necessary for use of this special scheme. He shall communicate that</p>	<p>No</p> <p>The extension of the scope does not require any changes to Article 57d specifying the date as of which a special scheme applies.</p>	No	<p>No direct impact. However, the number of registrations and VAT returns to be treated will increase following the extension of the scope of the non-Union scheme. MSs should verify to what extent their current system can support an increase in the number of traders and the related increase in the exchanges of messages between MSs</p>

	information electronically.			In general, due to the high number of traders, automatization will be needed in MS (if not yet done).
4	<p><i>Article 361 -- registration information (as amended with 2019 changes)</i></p> <p>1. The information which the taxable person not established within the Community must provide to the Member State of identification when he commences a taxable activity shall contain the following details:</p> <p>(a) name;</p> <p>(b) postal address;</p> <p>(c) electronic addresses, including websites;</p> <p>(d) national tax number, if any;</p> <p>(e) a statement that the person has not established his business in the territory of the Community and has no fixed establishment there.</p> <p>2. The taxable person not established within in the Community shall notify the Member State of identification of any changes in the information provided.</p>	No	No	No
5	<p><i>Article 362 – VAT identification:</i></p> <p>The Member State of identification shall allocate to the taxable person not established within the Community an individual VAT identification number for the application of this special scheme and shall notify him of that number by electronic means. On the basis</p>	No	No	No

	of the information used for that identification, Member States of consumption may have recourse to their own identification systems.			
6	<p><i>Article 363 – deletion from the register (extension to other services)</i></p> <p>The Member State of identification shall delete the taxable person not established within the Community from the identification register in the following cases:</p> <p>(a) if he notifies that Member State that he no longer supplies services covered by this special scheme;</p> <p>(b) if it may otherwise be assumed that his taxable activities have ceased;</p> <p>(c) if he no longer meets the conditions necessary for use of this special scheme;</p> <p>(d) if he persistently fails to comply with the rules relating to this special scheme.</p>	<p>No</p> <p>The extension of the scope does not require any fundamental changes to Articles 57g and 57h detailing the obligations of the taxable person in case of cessation or change of activities and Articles 58 to 58c regarding exclusion from a special scheme.</p> <p>However, the reference to TBE services in Article 57g, 2nd subparagraph, and Article 58c should be replaced by 'services'.</p>	<p>Yes</p> <p>Annex II (1) needs to be adapted following the extension of the scope to services other than TBE services.</p>	<p>No</p>
7	<p><i>Article 364 – VAT return. The main change concerns the extension of the period for submitting the VAT return.</i></p> <p>The taxable person not established within the Community making use of this special scheme shall submit by electronic means to the Member State of identification a VAT return for each calendar quarter, whether or not services covered by this special scheme have been supplied. The VAT return shall be</p>	<p>Possibly</p> <p>The extension of the scope does not require any changes to the detailed provisions regarding VAT returns (Articles 59 to 60a).</p> <p>However, detailed provisions could be laid down stipulating by when the VAT return should</p>	<p>No</p>	<p>Yes</p> <p>National applications and trans-European systems to be adapted following the extension of the deadline to submit VAT returns. This also affects deadlines for sending VAT return reminders.</p>

	submitted by the end of the month following the end of the tax period covered by the return.	be submitted and payments should be made in case the last day of the month is Saturday or Sunday or a public holiday (question raised by Sweden during Council discussions).		
8	<p><i>Article 365 – content of VAT return. The main change concerns corrections which can be made in a subsequent return</i></p> <p>The VAT return shall show the individual VAT identification number for the application of this special scheme and, for each Member State of consumption in which VAT is due, the total value, exclusive of VAT, of supplies of services covered by this special scheme carried out during the tax period and total amount per rate of the corresponding VAT. The applicable rates of VAT and the total VAT due must also be indicated on the return.</p> <p>Where any amendments to the VAT return are required after its submission, such amendments shall be included in a subsequent return within three years of the date on which the initial return was required to be submitted pursuant to Article 364. That subsequent VAT return shall identify the relevant Member State of consumption, the tax period and the amount of VAT for which any amendments are</p>	<p>Yes</p> <p>- Article 61(1) stipulating that changes to a VAT return cannot be made by adjustments to a subsequent return should be deleted or reformulated, depending on MSs' decision to have one single system for corrections as of 2021 or to keep two systems until 2023.</p> <p>- In Article 61a, the words '<i>any corrections to or</i>' should be deleted.</p> <p>- Corrections to pre-2021 return made as from Q1 2021 could be handled in two ways:</p> <p>1) by correcting the initial returns;</p> <p>2) or allowing taxable persons to make corrections in a subsequent return as from the first return to be submitted in</p>	<p>Yes</p> <p>Article 7 concerning corrections to VAT returns should be deleted or reformulated, depending on MSs' decision to have one single system for corrections as of 2021 or to keep two systems until 2023.</p> <p>The extension to other services does not affect the content of the VAT return.</p> <p>However, to allow for corrections of previous VAT returns, the following changes to the VAT return would be required (column B of Annex III):</p> <p>- Introduce a new Part 3 in the VAT return which allows entering corrections for the 12 preceding quarters, per MSC concerned. The current boxes 4.1 (MSC), 8.1 (VAT amount at standard rate), 10.1 (VAT amount at reduced rate)</p>	<p>Yes</p> <p>IT systems will have to be adapted to allow for corrections to previous returns, as explained in the column showing the impact on the COM IR.</p> <p>It should be analysed with MSs if, from an IT perspective, they would prefer to keep the previous correction mechanism for the 3 years previous to 01/01/2021 or to allow corrections to previous returns to be made in a subsequent return already from the first return to be submitted in 2021 (i.e. the return related to Q42020).</p> <p>The VAT rates module of the Tax Information Communication database (TIC) will have to be completed with VAT rates applicable to services other than TBE services.</p>

	required.';	<p>2021 (i.e. the return related to Q42020). For this option, a provision in the VAT IR might be needed.</p> <p>This will have to be decided by Member States taking into account the IT impact of both options (see comment in the column 'IT impact').</p>	<p>and 11.1 (total VAT amount payable/refundable) will have to be repeated in this part 3 and it will have to be possible to enter negative amounts in boxes 8.1, 10.1 and 11.1. Box 11.1 of this part 3 will display the total VAT amount per MSC resulting from the corrections.</p> <p>- Introduce a new Part 4 in the VAT return showing the balance between Part 2 (supplies related to the period concerned) and Part 3 (corrections related to previous tax periods) for each MSC. A negative balance for a MSC cannot be compensated with a positive balance in other MSCs and will result in a refund by the MSC concerned.</p> <p>- Introduce a new part 5 in the VAT return showing the net amount payable (total of VAT to be paid for supplies in all MSCs). Negative balances in MSCs cannot be taken into account in the calculation of this amount.</p>	
9	<i>Article 366 – currency of VAT return (unchanged):</i>	<p>No</p> <p>No impact on Article 61b.</p>	No	No

	<p>1. The VAT return shall be made out in euro. Member States which have not adopted the euro may require the VAT return to be made out in their national currency. If the supplies have been made in other currencies, the taxable person not established within the Community shall, for the purposes of completing the VAT return, use the exchange rate applying on the last day of the tax period.</p> <p>2. The conversion shall be made by applying the exchange rates published by the European Central Bank for that day, or, if there is no publication on that day, on the next day of publication.</p>			
10	<p><i>Article 367 – VAT payment (unchanged):</i></p> <p>The taxable person not established within the Community shall pay the VAT, making reference to the relevant VAT return, when submitting the VAT return, at the latest, however, at the expiry of the deadline by which the return must be submitted.</p> <p>Payment shall be made to a bank account denominated in euro, designated by the Member State of identification. Member States which have not adopted the euro may require the payment to be made to a bank account denominated in their own currency.</p>	No	No	<p>Yes</p> <p>National applications and trans-European systems to be adapted following the extension of the deadline to submit VAT returns and, hence, to pay the corresponding VAT amount. This affects also deadlines for sending payment reminders.</p>
11	<p><i>Article 368 – right of deduction:</i></p> <p>The taxable person not established within the</p>	No	No	No

	<p>Community making use of this special scheme may not deduct VAT pursuant to Article 168 of this Directive. Notwithstanding point (1) of Article 1 of Directive 86/560/EEC, the taxable person in question shall be refunded in accordance with that Directive. Article 2(2) and (3) and Article 4(2) of Directive 86/560/EEC shall not apply to refunds relating to services covered by this special scheme.</p> <p>If the taxable person making use of this special scheme is required to be registered in a Member State for activities not covered by this special scheme, he shall deduct VAT incurred in that Member State in respect of his taxable activities which are covered by this special scheme in the VAT return to be submitted pursuant to Article 250 of this Directive.</p>			
12	<p><i>Article 369 – records (unchanged):</i></p> <p>1. The taxable person not established within the Community shall keep records of the transactions covered by this special scheme. Those records must be sufficiently detailed to enable the tax authorities of the Member State of consumption to verify that the VAT return is correct.</p> <p>2. The records referred to in paragraph 1 must be made available electronically on request to the Member State of identification and to the Member State of consumption.</p>	<p>No</p> <p>The extension of the scope does not require any changes to the detailed provisions regarding records (Article 63c).</p>	<p>No</p>	<p>No</p>

	Those records must be kept for a period of ten years from the end of the year during which the transaction was carried out.			
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