Results of Council of Economics and Finance Ministers, Brussels 12 February 2002 - taxation

DN: MEMO/02/22 Date: 13/02/2002

TXT: EN

PDF: EN

DOC: EN

MEMO/02/22

Brussels, 12th February 2002

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VAT on electronic commerce

The Council gave its political agreement, without discussion, to the Commission's June 2000 proposals for a Directive and a Regulation, as amended in discussions with Member States, on the application of VAT to

digital products (see IP/00/583 and MEMO/00/31). The rules will apply to products such as computer games and software, delivered on line as opposed to in a physical form, as well as to subscription-based and pay-per-view radio and television broadcasting. Member States are due to implement the new rules by 1 July 2003.

European Commissioner for taxation Frits Bolkestein commented "I am delighted that the Council has at last been able to agree the important Directive on applying VAT to digital products. This measure will remove the obligation for EU firms to apply VAT when exporting to world markets and thus remove a major competitive handicap."

The new rules will ensure that EU suppliers will no longer be obliged to levy VAT when selling these products on markets outside the EU. Current VAT rules, drawn up before e-commerce existed, subject electronically delivered services originating within the EU to VAT irrespective of the place of consumption, whilst those from outside the EU are not subject to VAT even when delivered to consumers within the EU. The new rules will also eliminate an existing competitive distortion by subjecting non-EU suppliers to the same VAT rules as EU suppliers when they are providing electronic services to EU customers, something which EU businesses have been actively seeking.

Under these new rules, no obligations will be imposed on non-EU suppliers selling to business customers in the Union (so-called B2B sales which constitute at least 90% of the market), since the VAT will be paid by the importing company under self-assessment arrangements.

However, the rules will require for the first time that suppliers of digital products from outside the EU will have to charge VAT on sales to private consumers (so-called B2C), just as EU suppliers have to do. Non-EU suppliers will be required to register using special simplified arrangements with a VAT authority in any one Member State of their choice, and to levy VAT at the rate applicable in the Member State where the customer is resident. The country of registration will re-allocate the VAT revenue to the country of the customer. This system concerning how the non-EU suppliers should fulfil their obligations and concerning revenue re-allocation will be applied for three years following implementation of the proposal and may then be extended or revised.

Non-EU suppliers' B2C sales into the EU will not be treated identically to EU suppliers for VAT purposes but the rules will be fair and will meet fully non-discrimination obligations under the World Trade Organisation (WTO). Non-EU suppliers will be subject to simpler and lighter administrative requirements than those applied to EU traders and other non-EU businesses carrying on activities in the EU.

OECD principles

The Council agreement means that the EU has become the first significant tax jurisdiction in the world to develop and implement a simplified framework for consumption taxes on e-commerce in accordance with the principles agreed within the framework of the Organisation for Economic Co-operation and Development (OECD). The agreement therefore complements the international

process at the OECD. The OECD principles on the taxation of e-commerce were agreed at a 1998 conference in Ottawa. These principles establish that the rules for consumption taxes (such as VAT) should result in taxation in the jurisdiction where consumption takes place. The OECD also agreed that a simplified online registration scheme, as now adopted by the Council, is the only viable option today for applying taxes to e-commerce sales by non-resident traders.

A moratorium on taxation of electronic commerce in the EU, as some critics have suggested, would be unworkable and would discriminate unjustifiably against traders selling tangible goods. Furthermore, EU suppliers are already required to levy VAT on the provision of digital products. The new rules extend equivalent taxation to non-EU providers of electronic services to EU customers.

Some critics have also suggested that it is unfair that Member States can apply reduced or zero rates of VAT to certain printed material such as books, newspapers and periodicals. However, digital information services (to which the standard rate of VAT will apply under the new rules) are fundamentally different products, so they should not necessarily be taxed identically.

The Council can formally adopt the Directive once the text agreed has been translated into all eleven of the EU's working languages and once the Parliament has given its opinion about the Regulation that establishes the procedures for co-operation between Member States' VAT authorities and for revenue-sharing. A Parliament opinion on the Regulation is necessary because the Council has changed its legal basis from Article 95 of the Treaty (co-decision by Council and Parliament) to Article 93, under which the Council decides on the proposal unanimously following an opinion from the Parliament. The Commission believes that Article 95 is the correct legal basis.

Tobacco taxation

The Council also adopted formally, without discussion, a Directive revising the rates and structure of excise duties on manufactured tobacco. The Directive, based on Commission proposals of 15 March 2001 (see IP/01/368 and MEMO/01/87), will introduce a minimum fixed amount of excise duty per 1000 cigarettes in the most popular price category to narrow differences between tax levels in different Member States. The changes will also ensure that the level of excise duty on tobacco products such as fine-cut tobacco are more closely aligned with the level of duty on cigarettes to reflect increasing health concerns. The Commission proposal also provides for increases in the minimum amounts of tax on cigars, cigarillos and smoking tobacco to adjust for inflation. The new Directive will enter into force from 1 July 2002.

Taxation Commissioner Frits Bolkestein commented: "I am very pleased that the Council has reached unanimous agreement on this important revision of EU rules on tobacco taxation less than a year after the Commission presented the proposal. The Directive will ensure a fair and reasonable level of taxation of all tobacco products sold in the EU. It will also help to tackle fraud and smuggling between Member States by narrowing differences between Member States' tobacco taxation levels."

For further details of the Directive, see IP/02/233.

Details of current rates of excise duty applied to tobacco products are available on the Europa Website:

http://www.europa.eu.int/comm/taxation_customs/publications/info_doc/taxation/c4_excise_tables.pdf (see pages 33-39).