STANDARD VAT RETURN FOR BUSINESSES

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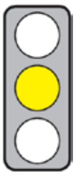
Centrum für Europäische Politik

KEY ISSUES

Objective of the Directive: The Commission wants to introduce an EU-wide standard VAT return.

Affected parties: All businesses and tax offices.



Pro: (1) An EU-wide standard form and the harmonisation of tax periods and submission deadlines strengthen the single market and result in savings in the cost of bureaucracy for businesses.

(2) A standard form and the harmonisation of tax periods and submission deadlines facilitate the exchange of information between the Member States to reduce tax fraud.

Contra: (1) The standard form may mean that individual Member States no longer receive all the information considered necessary for uncovering tax fraud.

(2) Stipulating a tax period for smaller businesses of at least three months and a submission deadline for the standard return of at least one month is disproportionate.

CONTENT

Title

Proposal COM(2013) 721 of 23 October 2013 for a Council **Directive** amending Directive 2006/112/EC on the common system of value added tax as regards a **standard VAT return**

Brief Summary

Note: Article numbers refer to Directive 2006/112/EC as amended by the proposal.

► **Context and objectives**

– The Directive on the common system of value added tax (2006/112/EC) obliges a tax-liable business to submit VAT returns (Art. 250 (1)).
– A business is obliged to submit VAT returns in several Member States, in particular, where
  - it has branches in several Member States, or
  - it sends goods to consumers in another Member State, where the annual turnover exceeds a certain threshold.
– The following transactions are generally subject to VAT (Art. 2 (1)):
  - supply of goods within a Member State,
  - supply of services within a Member State by a domestic or foreign business,
  - intra-Community acquisition of goods; this exists where a business acquires goods from a business in another Member State (Art. 20); and
  - importation of goods from non-EU countries.

  In the case of intra-Community acquisition and importation, the business that acquires or imports the goods must pay the VAT and not the business that supplies (intra-Community supply) or exports the goods. The VAT paid is reimbursed by way of input tax whereby intra-Community acquisition and importation are VAT neutral for the business.
– The applicable VAT Directive (2006/112/EC) allows the Member State scope for discretion when it comes to the form of the VAT returns, so these differ from state to state.
– The Commission wants to introduce an EU-wide mandatory standard VAT return (hereinafter: "standard return"). The standard return consists of:
  - a standard form,
  - harmonised tax periods and deadlines for submission of the VAT return and
  - harmonised rules on correcting the VAT return.
– The standard return should
  - reduce barriers to trade,
  - facilitate the on-time submission of error-free VAT returns,
  - reduce the costs for all businesses by up to € 15 billion annually [page 37, SWD(2013) 427], and
  - facilitate the fight against fraud by enabling prompt exchange of information between Member States.

► **Layout of the standard form**

– The standard form covers
  - information which must be contained on every standard form (hereinafter: mandatory information) (Art. 250 (1)) and
  - information which is only contained on the standard form if the Member State requires it (hereinafter: additional national information) (Art. 251 (1) to (3)).

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– The Member State is not permitted to stipulate any additional information (Art. 273 (2)).
– The Commission adopts implementing acts for (Art. 255a (a) and (b) and Art. 255b).
  - a common set of "definitions" for the information and
  - the "technical details" for transmission, e.g. a common numbering system for the information on the standard form.

- **The standard form: Mandatory information**
  – For the purposes of assessing tax, every standard return must indicate (Art. 250 (1)):
    - VAT identification number or tax reference number of the business,
    - the period for which the tax is being declared (tax period),
    - the tax which the business has to pay based on its transactions (chargeable tax),
    - the net amount of the transactions on which the business has to pay tax including the amount of exempt transactions,
    - the input tax refunded to the business by the tax office on acquisitions of goods,
    - the net amount of acquisitions for which input tax is deducted, and
    - the amount to be paid by, or refunded to, the business (net amount of VAT).
  – For tax periods up to 31 December 2019, the following information must also be provided (Art. 250 (1) (f) and (g)):
    - the amount of exempt intra-Community supplies and
    - the net amount of intra-Community acquisitions and or transactions treated as such; the latter exist, in particular, where, within the same business, an item is sent from another EU country to the home EU country and used there on a permanent basis (Art. 21).

    From 2020, the Member State may require this to be provided as additional information (Art. 251 (1) (b) and (2) (b).

- **The standard form: National additional information**
  – A Member State may only require information for the purposes of fighting tax fraud which is contained in an exhaustive list (Art. 251 (1) and (2); see cep**Overview**).
  – In addition, in the case of transactions to which special VAT regulations apply, a Member State may require information necessary to calculate the tax (Art. 251 (3)). This is limited to special regulations which
    - are contained in the VAT Directive (2006/112/EC), e.g. for travel agents (Art. 306 et seq.), or
    - have been issued by the Member State for a specific region or territory, e.g. Monaco.

    The Commission adopts implementing acts for the standardisation of the information (Art. 255a (a)).

- **Submission of the standard return: Tax period and payment of tax**
  – In principle, every business must submit a standard return (Art. 250 (1)). Exemptions apply, in particular, to exempt small enterprises (Art. 282 et seq. in conjunction with Art. 272 (1) (d)).
  – The tax period is generally one calendar month. For a business with an annual turnover of not more than two million euros, it is at least three months, except where a tax period of one month is necessary in order to prevent tax evasion or fraud (Art. 252 (2).
  – The Member State may extend the tax period to a maximum of one year (Art. 252 (2)).
  – The Member State must establish a deadline for submission of the standard return. The deadline must be between one and two months from expiry of the tax period (Art. 252 (1)).
  – The business is entitled or – if the Member State so requires – obliged to submit the standard return electronically. In the case of electronic submission, the authenticity and integrity of the standard return must be guaranteed by (Art. 252a)
    - an "advanced electronic signature" (see cep**PolicyBrief**; Art. 2 No. 2 Directive 1999/93/EC) or
    - a similarly secure method.
  – The Commission adopts implementing acts for (Art. 255a (b) and (d) and Art. 255b)
    - common secure methods for transmitting the standard return, and
    - common "procedures" such as electronic methods for submitting the standard return.
  – The business must pay the net amount of VAT by no later than the expiry of the submission deadline (Art. 206).

- **Corrections**
  – The business may make corrections to the information on the standard return. The Member State determines the period within which corrections are permitted. (Art. 250 (2))
  – The Commission adopts implementing acts for the common procedures by which corrections can be made (Art. 255a (c)).
  – The Member State may no longer require a business to submit an annual VAT return containing all transactions for the past year and amendments (Art. 261 (old version), page 8).

Main Changes to the Status Quo

- New is that the Member State can only require the information provided for in the Directive.
- New is that the standard return must be submitted one month after expiry of the tax period at the earliest.
- New is that the tax period, for a business whose annual turnover is not more than two million euros, is generally at least three months.
- Annual VAT returns are abolished.

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Statement on Subsidiarity by the Commission

An EU-wide standard return may reduce obstacles to trade in the single market. It can only be brought in by the EU by way of a change to the VAT Directive (2006/112/EC).

Policy Context

In 2011 the Commission announced in the Communication on the future of VAT [COM(2011) 851] that it would propose a standard return. In the case of this proposal for a Directive, the European Parliament (EP) only has a right to be consulted. In its report on 30 January 2014, the EP Committee for Economic and Monetary Affairs welcomed this proposal and did not propose essential amendments.

Legislative Procedure

23 October 2013	Adoption by the Commission
Open	Adoption by the Council, publication in the Official Journal of the European Union, entry into force

Options for Influencing the Political Process

Directorates General:	DG Taxation and Customs Union
Committees of the European Parliament:	Economic and Monetary Affairs (leading), Rapporteur Ivo Strejček (EKR Group, CZ)
Federal Ministries:	Finance (leading)
Decision mode in the Council:	Unanimity: The Federal Government has a right of veto

Formalities

Legislative competence:	Art. 113 TFEU (Tax harmonisation)
Form of legislative competence:	Shared competence (Art. 4 (2) TFEU)
Legislative Procedure:	Art. 289 (2) TFEU (special legislative procedure)

ASSESSMENT

Economic Impact Assessment

Ordoliberal Assessment

Small and medium-sized businesses, in particular, are reluctant to sell goods to consumers in other Member States because – over certain thresholds – they have to submit a foreign VAT return. For the same reason, businesses are reluctant to set up branches in other Member States. **An EU-wide standard form and the harmonisation of the tax periods**, deadlines for submission of VAT returns **and deadlines** for payment of tax, make it easier for businesses to submit foreign VAT returns and thus **strengthen the single market**.

This positive effect would be reinforced if the technical implementation of the Directive were to enable submission of the standard return in the language of the business or in English, rather than in the language of the respective country. However, despite the introduction of the standard return, significant hurdles need to be overcome with regard to the submission of foreign VAT returns. Firstly, the proposal does not result in full harmonisation of VAT returns because, in addition to the mandatory information, each Member State can require additional information. Secondly, there is still a need to submit the VAT return to the foreign tax office. Thirdly, rates of tax still differ.

As the tax morality and the form of tax laws varies from country to country, the Member States require varying types and amounts of information in order to uncover tax fraud. **The EU-wide standard form** which restricts the amount and content of information, thus limits the Member States. It **can** therefore **result in individual Member States no longer receiving information which they consider necessary for uncovering tax fraud** [also in Bundesrat Drucksache 735/13 (Resolution)].

Although the Commission shows that countries which currently require a lot of information in the VAT return, actually have more problems with tax fraud than those requiring less information [SWD(2013) 427, page 14], this does not necessarily prove – contrary to the Commission's view – that increasing the amount of information will not reduce tax fraud. It is more likely that these countries currently require a lot of information because tax morality is low. We should not simply assume that they lack interest in reducing bureaucracy costs for businesses; lower bureaucracy costs, on the one hand, improve a country's attractiveness as a business location and, on the other, increase productivity of all businesses, which in turn pushes up tax revenues. The proposed exchange of information on proven practices to prevent tax fraud [SWD(2013) 427, page 21] does help to combat tax fraud but the decision on the optimum amount of information required, on the one hand, to uncover tax fraud, and on the other, to keep bureaucracy costs for businesses down, is best made by each Member State.

Impact on Efficiency and Individual Freedom of Choice

According to the Commission, **a standard form and the harmonisation of tax periods and deadlines** for the submission of the VAT return **result in** annual **savings in bureaucracy costs for all businesses** of 15 billion euros [SWD(2013) 427, page 37]. This boosts business productivity and increases incentives for independent activity which in turn promotes innovation. However, since all businesses will have to change to the standard return, changeover costs will also be incurred by businesses that only have to submit VAT returns in their home country – which is the case for 87% of all businesses. They will only gain if the standard form requires significantly less information than previously.

A standard form and the harmonisation of tax periods and deadlines for the submission of tax returns **facilitate the exchange of information between the Member States for the avoidance of tax fraud** arising as a result of cross-border activities. This is because the Member States can exchange information more quickly if all information on the VAT returns relates to a similar time period and if the Member States know what information is provided by businesses in other Member States.

Carousel fraud, in particular, may thus be reduced. This type of fraud involves at least three businesses: One business acquires goods from a foreign business within the EU which is thus VAT neutral. It then sells the goods in its own country and charges VAT. The business is dissolved before it can pay the VAT, which it has received, over to the tax office. A "carousel" arises where the same goods are sold several times back and forth between the businesses involved at home and abroad so that the business can avoid paying VAT several times prior to its dissolution.

The requirement that, for turnover of not more than 2 million euros, the tax period has to be at least three months, and the fact that the minimum deadline for the submission of the standard return is one month – both periods are currently less in some Member States – reduces the liquidity management of the Member States and thus impacts on the government budget. In addition, the ability to set tax periods of up to one year still results in a lack of uniformity. This possibility should be limited to very small businesses because in that case it is unreasonable to require quarterly submission.

Legal Assessment

Legislative Competency

Fiscal sovereignty lies, in principle, with the Member States. The EU can, however, harmonise "legislation" on VAT law where this is necessary for the establishment of the single market and to avoid distortion of competition (Art. 113 TFEU). The planned harmonisation relates mainly to procedural rules. The wording of the legal basis does not, at least, rule out the harmonisation of procedural rules since these also constitute legislation. In addition, the aim and purpose of harmonisation means that it must be possible to harmonise procedural rules where this is necessary to establish the single market. **The planned harmonisation of VAT returns has the overall result of strengthening the single market** (see above) **and is therefore covered by the legislative competence relating to tax harmonisation.**

Subsidiarity

Overall, the EU is better able to achieve the stated objectives. Although each Member State can best decide what information it needs to combat tax fraud, the EU is more able to combat cross-border tax fraud because information on this must be exchanged promptly between the Member States. In addition, it is better able to reduce obstacles to trade and facilitate the on-time submission of error-free VAT returns by businesses operating across borders.

Proportionality

The measures are suitable and necessary for establishing the single market. They also have to be reasonable, however. The aim of establishing the single market conflicts with the fiscal sovereignty of the Member States. **The requirement that the tax period, for a business with an annual turnover of not more than two million euros, has to be at least three months, and the fact that the deadline for submission of the standard return is at least one month, does strengthen the single market. However,** as a result, the taxed owed does not have to be paid until the said period or deadline has expired. The Member State can therefore no longer decide when the tax revenues will be available. Some Member States would therefore receive tax revenues at a later date than is currently the case. Firstly, this may result in a shortfall in the government budget. Secondly, there is, as a result of the extension of the period or deadline, the risk that more businesses than before will pay no tax as a result of insolvency. This applies, in particular to young businesses which become insolvent more frequently. Thus **the fiscal sovereignty of the Member State is unreasonably restricted. This planned harmonisation therefore breaches the principle of proportionality.**

Conclusion

An EU-wide standard form and the harmonisation of tax periods and submission deadlines strengthen the single market and result in savings in the cost of bureaucracy for businesses. The form may, however, mean that individual Member States no longer receive all the information considered necessary for uncovering tax fraud. On the other hand, a standard form and the harmonisation of tax periods and submission deadlines facilitate the exchange of information between the Member States for the avoidance of tax fraud. Stipulating a tax period for smaller businesses of at least three months and a submission deadline for the standard return of at least one month breaches the principle of proportionality.

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