ROADMAP

Title of the initiative: **Proposal for a Council Directive amending Directive 2006/112/EC on the common system of VAT, with regard to the treatment of vouchers and related instruments**.
Lead DG: TAXUD/D.1
Expected date of adoption of the initiative (month/year): Final quarter 2010

Initial IA screening & planning of further work

A. Context and problem definition

What is the political context of the initiative? How does this initiative relate to past and possible future initiatives, and to other EU policies?

This initiative is a further element of initiatives that had been announced in the VAT strategy adopted by the Commission in June 2000 setting out the Commission's strategic programme for improving the operation of the VAT system within the context of the internal market[1]. The strategy, which was subsequently updated, was for a pragmatic programme of action geared to four main objectives: the simplification and modernisation of existing rules, more uniform application of current rules and a new system of administrative cooperation.

What are the main problems identified?

The existing rules in the VAT Directive do not provide for clear rules as to the VAT treatment of commercial transactions involving vouchers. As a result, national tax administrations have adopted ad-hoc pragmatic approaches which are divergent and essentially uncoordinated. These often take the form of national measures aimed at securing the tax on local voucher-based transactions but do not take account of the need for business to offer cross-border services to consumers and can lead to double taxation of such services. Businesses therefore face uncertainty in intra-EU business strategies dependent at least partially on vouchers (such as mobile business to consumers (B2C) operations concerning telecommunications, tourism and certain retail models) and struggle to achieve a consistent treatment for goods or services marketed on the basis of vouchers across several Member States. VAT problems also occur when vouchers cover both B2B and B2C operations (*e.g.*, certain staff incentive schemes). There is evidence that to avoid the risk of double taxation, they may decline otherwise profitable business opportunities. Users of pre-paid services may face double taxation or, conversely, operators may exploit mismatches to avoid any taxation.

Recent changes in the place of supply rules for services, including those for telecoms, broadcasting and electronic services which come into effect on 1 January 2015 are intended to shift the place of taxation from where the supplier is located to the location of the customer and risk exacerbating the uncertainty. Vouchers are essentially anonymous payment instruments with possible cross-border functionality and, in the absence of clear and consistent EU-wide rules for their tax treatment, there is a risk that the objective of these changes (VAT on services to accrues to the country of consumption) will not be achieved. Without modernising the legislation, there is a risk that vouchers could be used to frustrate these recent legislative changes.

There is also a need to address the consequences of a number of ECJ judgements relating to vouchers. For the most part, the Court has helpfully filled in some of the gaps in VAT legislation, but in other limited circumstances, the outcome has not been as limpid as might be hoped and legislative clarification should be considered.

Who is affected?

[1] COM(2000) 348.

In addition to tax administrations and revenue authorities, businesses and consumers using vouchers can expect benefits through the removal of uncertainty.

The ongoing lack of clarity and unpredictability create costs for businesses and restrict opportunities for consumers. Consultations with businesses, who strongly advocate the need for action at EU level, give strong indications that cost saving expected from the resolution of existing problems will far outweigh the costs associated with change.

Is EU action justified on grounds of subsidiarity? Why can the objectives of the proposed action not be achieved sufficiently by Member States (necessity test)? As a result of this, can objectives be better achieved by the Community (test of EU value added)?

The proposal is aimed at ensuring the proper and uniform application of the provisions of the VAT Directive where the necessary action falls under the exclusive competence of the Community.
The objectives of the proposal cannot be sufficiently achieved by the Member States for the following reasons:

The existing diversity of interpretations between Member States is due to the absence of clear provisions in the VAT Directive and entails risks of double or non-taxation. New provisions may only be introduced or existing provisions clarified by a Community act. The Commission alone has right to initiate the necessary measures.

Therefore, only Community action can achieve the objectives of the intended proposal and ensure equal treatment of Member States and notably of the taxpayers in the European Union. The intended proposal therefore complies with the subsidiarity principle.

B. Objectives of EU initiative

What are the main policy objectives?

The purpose of this proposal is to enable the Council to adopt common rules on the treatment of vouchers for VAT purposes and to create certainty and avoid double or non taxation. It will also ensure the smooth functioning of the internal market by avoiding distortions created by shortcomings in the existing EU legislation and the different tax treatments adopted by Member States.

Policy deliverables are as follows:

- Clarification of the timing of taxation for goods or services purchased with the use of vouchers, thus removing the main source of mismatches in taxation which can lead to double or non-taxation.
- Resolution of the lack of coordination between Member States in the VAT treatment of vouchers by establishing common rules for different kinds of vouchers and, in so doing, removing barriers to cross-border business development.
- Removal of uncertainty faced by businesses which see use or a need for vouchers, particularly in intra-EU based business models where inconsistencies in the tax treatment hampers efforts to exploit Single Market opportunities.
- Facilitate the use of certain services for consumers who wish to avail of voucher-based (*i.e.* prepaid) purchase of goods or services, particularly in cross-border or out-of-state transactions.
- Address problems which arise, because of lack of clarity in legislation, in equality of tax treatment between established consumer payment systems (such as credit and debit cards) and innovative payment systems (often linked to mobile telecommunications services) and

where a level playing field is not assured by current rules.

Does the objective imply developing EU policy in new areas or of strategic importance?

No.

C. Options

What are the policy options? What legislative or 'soft law' instruments could be considered? Would any legislative initiatives go beyond routine up-date of existing legislation?

The policy options to be examined in the impact assessment could include:

Do nothing
The work undertaken to date indicates that difficulties in this area will continue to grow unless corrective action is taken. Doing nothing is not a realistic option. Neither would it be realistic to restrict the use of vouchers in circumstances where they might create uncertainty in the tax treatment of the underlying transaction.

"Soft law" type approaches
The other options for change involving a range of non-legislative "soft law" type approacheswould seek to resolve mismatches in taxation either through the VAT Committee or through litigation or by setting out, in the form of a Communication, the Commission's understanding of the correct VAT treatment of vouchers. A combination of each of these elements might realistically have to be considered.

Modernisation of the existing legislation
If however the difficulties identified are considered to be so serious as to demand changes in the VAT Directive, a proposal for a Council Directive would be the only possible way to achieve this result. The public consultation undertaken by DG Taxud as well as discussions with Member States all seem to point to this as the preferred and necessary choice.

In so far as a legislative approach is to be considered, the range of technical options for consideration would encompass the following:

- Determine the tax treatment of vouchers on the basis of the underlying goods or services being supplied.
- For tax purposes, treat the acquisition of a voucher as a payment on account for future goods or services.
- Treat vouchers used for payment facilitation as a form of financial service.
- Develop a *sui generis* model for VAT treatment of voucher related transactions.

Does the action proposed in the options cut across several policy areas or impact on action taken/planned by other Commission departments?

As far as each of these options are concerned, there is unlikely to be any palpable impact on other policy areas. Any action will merely clarify and bring certainty in transactions where the rules for taxing the underlying transactions, the supply of goods or services, are already established.

Do the options respect the proportionality principle?

Each of the options contemplated complies with the proportionality principle because the main result in each instance will be to ensure that the underlying supply of goods are services (which is always the objective of a voucher) is correctly taxed in accordance with the existing VAT rules.

Given its limited scope, the measures under consideration are proportionate to the aim pursued. No financial cost to the EU is envisaged and any cost to operators is expected to be more than offset by the security of identifying certainty as to the correct VAT treatment of their operations. The public consultation confirmed the priority business attaches to a clear and predictable tax outcome.

D. Initial assessment of impacts

What are the significant impacts likely to result from each policy option (cf. list of impacts in the impact assessment guidelines), even if these impacts would materialise only after subsequent Commission initiatives?

Doing nothing

As far refraining from any action is concerned, the outcome is likely to increase uncertainty, encourage litigation in order to resolve this and to dampen commercial innovation. Restrictions on the use of vouchers in taxable transactions would have broadly similar consequences. Recent changes in the place of supply rules for services, including those for telecoms, broadcasting and electronic services which come into effect on 1 January 2015 risk exacerbating the uncertainty.

"Soft law" type approaches

A non-legislative approach might obviate the difficulties which are always inherent in getting consensus in the Council between 27 Member States. It might also create a situation where it would be easier to handle problems arising in the future from unforeseen innovation.It would not however guarantee the paramount outcome which is a consistent and certain outcome across the EU.

Modernisation of the existing legislation

New rules in the VAT Directive will restore certainty through up-dated legislation.. The expected impacts are not likely to be substantial but will nevertheless be beneficial through eliminating the risks of double or non-taxation associated with mismatches. It will also remove barriers to commercial innovation and development caused by the uncertainty inherent in the current situation.

This outcome may however require some adjustment in practice from Member States who have put in place pragmatic or ad-hoc measures to deal with the on-going problems. Discussions with Member States and other stakeholders would tend to indicate that this is an acceptable cost for a robust long-term solution.

Could the options have impacts on the EU-Budget (above 5 Mio €) and/or should the IA also serve as the ex-ante evaluation, required by the Financial Regulation?

Not relevant.

Could the options have significant impacts on simplification/administrative burden or on relations with third countries?

The existing uncertainty creates burdens for taxpayer and national tax administrations. They have repeatedly asked the Commission, who are seen as holding the key to resolution, to address this. There is a realistic expectation of simplification and reduction in administrative burdens.

There has been no indication at all of any VAT issues in transactions involving vouchers and third countries. In any event, the underlying transaction (acquisition of goods or services) would either be free of tax or have predictable tax consequences.

E. Planning of further impact assessment work

What information and data is already available? What further information needs to be gathered? How will this be done (e.g. internally or by an external contractor) and by when? What type and level of analysis will be carried out (cf. principle of proportionate analysis)?

The Commission has engaged a firm of consultants (Deloitte) to undertake an **economic** study of the importance of vouchers in the EU. This work is currently in hand and the outcome is expected before the **end of April 2010**. It is expected that this will be used as input for the IA.

Which stakeholders & experts have been/will be consulted, how and at what stage?

A public consultation has already been undertaken and the results have been published on the TAXUD website at http://ec.europa.eu/taxation_customs/common/consultations/tax/article_2992_en.htm .