



## ***Part III: Conclusions and Recommendations***



## 1. The working and the deficiencies of the current VAT system

- 1034 Within the EU and within the individual EU Member States, the VAT rules currently applicable to the supply of goods and the supply of services on board means of transport (hereinafter “buy-on-board” transactions) are very complex and differ significantly in terms of identification of the place of taxation, levels of taxation and compliance requirements.
- 1035 Ignoring the optional VAT exemption provided in Article 37(3) of the VAT Directive, the (practical) implementation of the current place-of-supply rules is not uniform in the 27 EU Member States.
- 1036 In this respect, the VAT data analysis shows that only 15 out of 27 EU Member States are correctly applying the place-of-supply provisions.
- 1037 As a result, it is very difficult for suppliers to correctly identify the place of taxation for their buy-on-board transactions.
- 1038 On top of this, 14 out of 27 EU Member States apply an exemption with a right to deduct VAT for restaurant and catering services and for the supply of goods, but not in a harmonised way. This is due to the optional nature of the exemption and the lack of clear definitions of the terms used to describe the buy-on-board transactions.
- 1039 If no exemption applies, there is a large discrepancy between standard and reduced VAT rates within the 27 EU Member States.
- 1040 Because of the divergent VAT obligations in the 27 EU Member States, it is also very complex and costly for international passenger transport operators to implement all these requirements correctly in their operational and billing systems.
- 1041 To summarise, **the working and the deficiencies of the current VAT system result in VAT-induced distortions of competition** for buy-on-board transactions on board different transport modes and between the EU Member States.
- 1042 **We therefore conclude that the current place-of-supply rules are not robust enough and that alternative options should be considered to allow for the effective taxation of buy-on-board transactions.**



## 2. Recommended alternative taxation options

- 1043 Based on our review of the 4 alternative options for the taxation of buy-on-board transactions, **the following 2 alternatives could be considered:**
- taxation at the place of establishment of the supplier of the buy-on-board transactions (policy option 2);
  - taxation at the point of departure for all transport sections (policy option 4).
- 1044 Both of them require additional measures to avoid distortion of competition and possible double or non-taxation.
- 1045 From a VAT technical perspective, taxation at the place of establishment of the supplier of the buy-on-board transactions (policy option 2) gives the most robust results to allow for taxation of buy-on-board transactions.
- 1046 However, this policy option requires stringent measures to avoid the risk of relocation.
- 1047 Such measures could consist in the implementation of a use and enjoyment provision for non-EU established operators, using the point of departure of the transport operation in the EU as a criterion and combined with the implementation of a mini one-stop-shop scheme to simplify compliance.
- 1048 Policy option 2 is also not supported by any of the consulted stakeholders as they fear market distortions between EU and non-EU based operators and possible double or non-taxation.
- 1049 For the above reasons, we believe that taxation at the point of departure for all transport sections (policy option 4) would be preferable as this policy option is closest to the current place-of-supply rules. For this reason, policy option 4 is also supported by some of the consulted stakeholders.
- 1050 It should be noted that the generalisation of the departure principle will also require the implementation of a use and enjoyment provision to avoid taxation of consumption outside the EU.
- 1051 For any option for change withheld, existing definitions will need to be amended or improved to create certainty and consistent implementation in the 27 EU Member States.



### 3. Need of VAT exemption

- 1052 The VAT data analysis and the outcome of the stakeholder consultation confirm that the exemption with a right to deduct for some buy-on-board transactions in certain EU Member States creates distortions of competition within the single market.
- 1053 Where the exemption does not apply, the complexity of the current place-of-supply rules increases the compliance costs of businesses operating in several EU Member States and could result in mistakes and even evasion.
- 1054 Abolishing the optional VAT exemption without changing the current place-of-supply rules will most likely only increase the current shortcomings.
- 1055 From a mere VAT technical perspective, our review of the alternative taxation options shows that the application of a VAT exemption, optional or obligatory, general or sectoral, does not contribute to a more efficient and effective taxation regime.
- 1056 However, we note that there is much resistance against the abolition of the current optional VAT exemption from an industry perspective, resistance that is often motivated for reasons outside VAT (e.g. application of other indirect taxes in the tourism industry).

## 4. Recommendations for future action

### 4.1. Policy objectives and general options for change

- 1057 The future reform initiatives by the Commission to adopt common rules on the treatment of transactions on board means of transport should create certainty and avoid double or non-taxation. They should also ensure the smooth functioning of the internal market by avoiding distortions of competition created by the current shortcomings.
- 1058 In general, the following options for change could be considered by the Commission: do nothing, “soft law” type approaches or modernisation of the existing VAT legislation.
- 1059 **Doing nothing** will cause the current shortcomings to persist and even increase.
- 1060 The options for change could involve a range of **non-legislative “soft law” instruments** to resolve mismatches in taxation either through VAT Committee Guidelines or litigation (infraction procedures). A combination of each of these elements might have to be considered.
- 1061 For a **legislative approach**, the range of options, from a VAT technical perspective only, could involve:
- introducing common definitions with respect to the existing provisions via a binding Council Implementing Regulation;
  - introducing a one-stop-shop scheme to reduce costs where multiple VAT registrations and divergent compliance obligations remain;
  - changing the place-of-supply rules for the taxation of buy-on-board transactions, for example, by introducing one of the 4 policy options suggested;
  - abolishing the existing VAT exemption;
  - assessment of the current VAT rates structure.
- 1062 Whatever option for change the Commission might consider, it is advisable to further involve the different stakeholders in order to assess the impact on their operations and to assess the administrative burden, as well as the EU Member States most concerned taking into account the VAT and economic data collected in this Report. In this respect, it is pointed out that, although no data were found specifically relating to buy-on-board transactions, the economic data collected in this Report together with the VAT data is still very relevant to assess the importance of this sector for the EU Member States concerned.
- 1063 As regards the design of a possible alternative taxation regime in the future, we propose the following layered approach.
- ### 4.2. Recommendations for action in the short term
- 1064 **In the short term**, we recommend keeping the existing VAT regime (combination of the place-of-supply rules with option to exempt the supply of goods for consumption on board ships, aircraft or trains) whilst adopting common rules for implementing those provisions.
- 1065 This is also the preferred option for the industry according to the stakeholder consultation.



- 1066 Both with respect to the identification of the place of taxation (first main issue) and the level of taxation (second main issue), there is a lack of clear definitions of terms used to describe a travel itinerary (“stopover”, “point of departure”, “point of arrival”, “scheduled”, “embarkation”, “disembarkation”) and the buy-on-board transactions (“supply of goods for consumption”, “supply of goods for take away”, “restaurant and catering services” and “other services”).
- 1067 We recommend introducing common definitions of these terms in the 27 EU Member States through a **Council Implementing Regulation** and, as deemed appropriate, litigation (infraction procedures).
- 1068 In addition, we recommend introducing a **one-stop-shop scheme** by analogy of the existing scheme in place for electronically supplied services by businesses established outside the EU and learning from the proposed system for B2C telecommunications, television and broadcasting and electronic services as of 1 January 2015.

#### 4.3. Recommendations for action in the medium term

- 1069 **In the medium term**, the VAT place-of-supply rules between the different transport modes and itineraries should be aligned. The possibility to keep the VAT exemption should be considered.
- 1070 In this respect, one of the 4 alternative taxation options analysed in Part II of the Study could be considered. As explained above, 2 policy options came out as preferable from our review.
- 1071 An **alignment of the VAT place-of-supply rules** will remove the current distortions of competition between ships, aircraft and trains compared to other means of transport used (e.g. long-distance buses & coaches).
- 1072 Taking into account the potential risk of relocation that is inherent to policy option 2 (place of establishment of the supplier of the buy-on-board transactions) and in view of controllability, we believe the **point of departure (policy option 4)** to be the most adequate reference point to define the place of taxation. Policy option 4 is also supported by some of the consulted stakeholders.
- 1073 From a pure VAT technical perspective, our review shows that the application of a VAT exemption, general or sectoral, does not contribute to a more effective taxation regime. However, we note that there is much resistance against the abolition of the current optional VAT exemption from an industry perspective, resistance that is often motivated for reasons outside VAT (e.g. application of other indirect taxes in the tourism industry).

#### 4.4. Recommendations for action in the longer term

- 1074 While the **VAT exemption** could be maintained in the medium term, it could be **abolished in the longer term**.
- 1075 When abolishing the current optional VAT exemption and in order to avoid multiple VAT registrations and divergent compliance requirements, we recommend continuing the application of a **one-stop-shop scheme** which should allow to further limit the cost of compliance and the cost of collection.



- 1076 Finally, as mentioned in the European Commission's Communication on the future of VAT<sup>1</sup>, we would also suggest reviewing the current VAT rates structure in view of reducing the dissimilarity of the VAT rates structure between EU Member States. Such harmonisation could not only tackle the legal uncertainty, distortion of competition but also help reducing the compliance costs pointed out by stakeholders.

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<sup>1</sup> Communication from Commission to the European Parliament, the Council and the European Economic and Social Committee on the future of VAT: Towards a simpler, more robust and efficient VAT system tailored to the single market, [http://ec.europa.eu/taxation\\_customs/taxation/vat/key\\_documents/communications/index\\_en.htm](http://ec.europa.eu/taxation_customs/taxation/vat/key_documents/communications/index_en.htm).