



## **Consultation paper**

# **Review of existing legislation on VAT reduced rates**

### **Note**

**This document is being circulated for consultation to all stakeholders concerned by the plan to review the current VAT rate structure set out in the Communication on the future of VAT adopted by the Commission in December 2011.**

**The sole purpose of this consultation is to collect relevant evidence and information from stakeholders to help the Commission develop its thinking in this area.**

**This document does not necessarily reflect the views of the European Commission, and should not be interpreted as a commitment by the Commission to any official initiative in this area.**

The stakeholders concerned are invited to submit their comments no later than 04/01/2013.

## 1. IDENTIFICATION OF THE STAKEHOLDER

The Commission services would be interested in receiving contributions from all interested stakeholders on the issues described below. In order to analyse the responses, it will be useful to group the answers by type of respondent. For this reason, you are kindly requested to complete the following form.

<ul style="list-style-type: none"><li>• <b>You are included in one of the following groups:</b><ul style="list-style-type: none"><li><input type="checkbox"/> Multinational enterprise</li><li><input type="checkbox"/> Large company</li><li><input type="checkbox"/> Small and medium sized enterprise (SMEs)<sup>1</sup></li><li><input type="checkbox"/> National Association</li><li><input type="checkbox"/> European Association</li><li><input type="checkbox"/> Non-Governmental organisation (NGO)</li><li><input type="checkbox"/> Tax advisor or tax practitioner</li><li><input type="checkbox"/> Citizen</li><li><input type="checkbox"/> Academic</li><li><input type="checkbox"/> Others. Please specify .....</li></ul></li><li>• <b>Name of your organisation/ entity/ company</b> .....</li><li>• <b>Country of domicile</b> .....</li><li>• <b>Brief description of your activity or your sector</b> ..... .....</li><li>• <b>Do you agree to the publication of your personal data?</b><ul style="list-style-type: none"><li><input type="checkbox"/> Yes</li><li><input type="checkbox"/> No</li></ul></li><li>• <b>Do you agree to have your response to the consultation published along with other responses?</b><ul style="list-style-type: none"><li><input type="checkbox"/> Yes</li><li><input type="checkbox"/> No</li></ul></li></ul>
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## 2. INTRODUCTION AND BACKGROUND

The Commission adopted in December 2011 a Communication on the future of VAT<sup>2</sup> that sets out the fundamental characteristics that must underlie the new VAT regime, and priority actions needed to create a simpler, more efficient and more robust VAT system in the EU.

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1 According to the Commission Recommendation (2003) 361 of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (its Annex, Title I, Article 2), SMEs are defined as enterprises which employ fewer than 250 persons and which have an annual turnover not exceeding EUR 50 million, and/or an annual balance sheet total not exceeding EUR 43 million. Within the SME category, a small enterprise is defined as an enterprise which employs fewer than 50 persons and whose annual turnover and/or annual balance sheet total does not exceed EUR 10 million, and a microenterprise is defined as an enterprise which employs fewer than 10 persons and whose annual turnover and/or annual balance sheet total does not exceed EUR 2 million.

2 COM(2011)851 final of 6.12.2011

One of the priority actions is a review of the current VAT rates structure, based on a thorough impact assessment covering all aspects and on the following guiding principles:

- Abolition of those reduced rates which constitute an obstacle to the proper functioning of the internal market. Reduced rates justified in the past can have distorting effects today because the economic, business and legal environments have changed in the meantime;
- Abolition of reduced rates on goods and services whose consumption is discouraged by other EU policies. This could notably be the case for goods and services harmful to the environment, health and welfare;
- Similar goods and services should be subject to the same VAT rate and progress in technology should be taken into account in this respect, so that the challenge of convergence between the on-line and the physical environment is addressed.

The Communication indicates that this assessment should be launched in 2012 and should constitute the basis for a proposal, by the end of 2013, along the above mentioned lines after ample consultation with stakeholders and Member States.

The Commission services have made a first evaluation of the current VAT rates structure and the goods and services mentioned hereafter are those which require further examination in the light of the three guiding principles.

With this public consultation, the Commission services are now seeking the opinion of stakeholders.

It is important to point out that at this stage no decision has been taken as regards a possible abolition or extension of the scope of reduced VAT rates. This consultation is essentially of a technical nature.

Also, should the situation arise that, at the end of the process, an abolition of reduced rates was the preferred policy option, this would not automatically mean that it would trigger an increase in the overall VAT/tax burden or would jeopardize the social or other policy goals which are at the basis of the reduced rates currently applied. Indeed, additional revenues from abolishing reduced rates could be used for both providing more targeted financial support for pursuing these policy goals and for reducing the standard VAT rate accordingly.

### **3. CURRENT EU LEGISLATIVE FRAMEWORK**

The VAT Directive<sup>3</sup> provides in Articles 93 to 130 and Annex III a legal framework for the application of VAT rates in Member States.

The basic rules are the following:

- Member States shall apply a single standard rate of at least 15%,
- Member States may opt to apply one or two reduced rates of not less than 5% to a restricted list of goods and services (Annex III to the VAT Directive). However, Member States remain free to apply a reduced rate to a whole category or to restrict its application to an (even very small) part of it.

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3 Council Directive 2006/112/EC of 28 November 2006, OJ L 347, 11.12.2006, p. 1.

- However, because of the risks of distorting effects on the internal market, all electronically supplied services are currently excluded from the scope of reduced VAT rates (Article 98(2) of the VAT Directive).

This simple structure is complicated by a multitude of derogations of a different nature.

Some of these derogations were granted to individual Member States during the negotiations in Council or in the Acts of Accession.

Examples of such derogations are:

- the zero rates or super reduced rates: Member States applying them on 1 January 1991 may continue to apply them (mainly the United Kingdom and Ireland).
- the super reduced rates: Member States which on 1 January 1993 had to increase their standard rate by more than 2% (Spain and Luxemburg) could apply reduced rate lower than 5% on the categories of Annex III.
- the parking rates (or intermediary rates): Member States which on 1 January 1991 were applying a reduced rate to goods and services not specified in Annex III may continue to apply this reduced rate provided it is not lower than 12% (Belgium, Ireland, Luxembourg, Austria and Portugal).

Others are included in specific Articles of the VAT Directive and are open to any Member State, such as the possibility of applying a reduced rate, after consultation of the VAT Committee, to the supply of natural gas, electricity or district heating. Member States have also the possibility of applying a reduced rate to the importation of works of art, collectors' items and antiques, as well as to the supply of live plants and other floricultural products and of wood for use as firewood.

Most of these derogations apply until the adoption of the definitive VAT arrangements.

A general overview of the various derogations mentioned above can be found in an information document available at the following link:

[http://ec.europa.eu/taxation\\_customs/resources/documents/taxation/vat/how\\_vat\\_works/rates/vat\\_rates\\_en.pdf](http://ec.europa.eu/taxation_customs/resources/documents/taxation/vat/how_vat_works/rates/vat_rates_en.pdf)

In the context of the review of the VAT rates structure announced in the Communication of 2011, the term "reduced VAT rates" covers all VAT rates applied in the EU other than the standard rate. It includes zero rates, super reduced rates and also parking rates. The term should also be understood that way for the purposes of this public consultation.

#### **4. THE GENERAL FRAMEWORK OF THE REVIEW**

The Communication on the future of VAT puts the review of the VAT rates structure in the context of the current economic and financial climate.

In its conclusions<sup>4</sup> of 15 May 2012 related to this Communication, the Council emphasised that *"the current financial and economic situation is difficult and complex and demands a strong fiscal consolidation of national budgets, as reflected in the European Council Conclusions<sup>5</sup> of 1/2 March 2012"*. The Council also recalled that the European Council invited *"Member States, where appropriate, to review their tax systems with the aim of making them more effective and efficient, removing unjustified exemptions, broadening the tax base, shifting taxes away from labour, improving the efficiency of tax collection and tackling tax evasion."*

The Council then indicated that *"This should be taken into account at EU level in the implementation of the objectives of the Communication. Value Added Tax constitutes a major source of revenue for the national budgets and reform of the current EU VAT system should, in particular, aim at making it more effective and efficient, removing unjustified exemptions and broadening the tax base, in order to contribute to fiscal consolidation and growth."*

Limiting the use of reduced rates is a way of broadening the tax base.

This general framework of the review is the reason why the first two guiding principles only mention "the abolition of reduced rates". Any extension of the application of reduced VAT rates based on these two guiding principles is therefore not envisaged and consequently falls out of the scope of this public consultation.

Only the third guiding principle is formulated in a neutral way, which implies that the guiding principle could lead to either an extension or to an abolition of a reduced VAT rate.

## **5. ABOLITION OF THOSE REDUCED RATES CONSTITUTING AN OBSTACLE TO THE PROPER FUNCTIONING OF THE INTERNAL MARKET**

This chapter is based on a review of the work that has already been carried out over the years on reduced VAT rates.

### **5.1. THE INTRODUCTION OF THE SINGLE MARKET**

The basis for the current rates structure, including most of the content of Annex III, was adopted in October 1992 with the aim of ensuring a sufficient degree of VAT rate approximation in the context of the introduction of the Single Market.

The Commission presented several reports<sup>6</sup> on the scope of reduced rates. In the 1994 and 1997 reports, the Commission estimated that there had been no real significant distortions of competition or deflection of trade as a result of the disparities in VAT rates. The report presented in 2001 was more critical about the complexity of the rules. In 2003, the Commission tabled a proposal<sup>7</sup>, the explanatory memorandum of which also served as a report and assessed the impact of the structure of VAT rates on the functioning of the internal market. The proposal contained changes and rationalisation of rules and derogations.

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4 Full text of the Council conclusions is available on its website at the following link: [http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/en/ecofin/130257.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ecofin/130257.pdf)

5 Full text available at: [http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/en/ec/128520.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/128520.pdf)

6 COM(94) 584, COM(97) 559 and COM(2001) 599

7 COM(2003) 397

## **5.2. THE LABOUR-INTENSIVE SERVICES EXPERIMENT**

The only major legislative change that occurred since 1992 is the introduction of reduced VAT rates for labour-intensive services. As a follow up to the conclusions of the European Council of December 1998, the Commission made a proposal<sup>8</sup> allowing Member States to experiment with reduced VAT rates on labour-intensive services which are not exposed to cross-border competition, in order to test their impact in terms of job creation and in combating the black economy. The experiment started in 2000 for a period of 3 years and was extended 4 times. Finally in 2009, with the adoption of Council Directive 2009/47/EC, the optional use of reduced rates of VAT for certain labour-intensive local services, including restaurant services, became permanent and open to all Member States.

## **5.3. THE COPENHAGEN ECONOMICS STUDY OF 2007**

In this experiment with reduced VAT rates for labour intensive services, the information supplied by Member States and the inherent limitation of the analytical methods applied did not identify solid evidence that such reductions led to job creation. For reduction in the black economy, the same observation can be made. Therefore, during the negotiations on the scope of reduced VAT rates, the European Council in February 2006 requested the Commission to present an overall assessment report on the impact of VAT reduced rates in terms of job creation, economic growth and the proper functioning of the internal market, on the basis of a study carried out by an independent economic think-tank.

The study was awarded to Copenhagen Economics<sup>9</sup>. The study mainly examined the impact of reduced VAT rates notably on income distribution, the informal economy and on compliance costs for businesses.

Concerning the Single Market aspect, there was a firm assessment that the locally supplied services could never give rise to distortions within the Single Market.

Copenhagen Economics also looked at cross-border trade. They came to the conclusion that tradability is very much linked to one characteristic, namely "price per kilo". As consumers have to carry the goods, weight is an issue and VAT differentials are more likely to trigger trade in products with high intrinsic value and low weight.

In their analysis, Copenhagen Economics looked in particular at the purchasing pattern of Danish consumers carrying out cross-border shopping. For foodstuffs (which are subject to a VAT rate of 7% in Germany and 25% in Denmark), the share of total consumption abroad is 0.6% while for sports equipment (subject to the standard rate in both Member States) it is above 25%.

Copenhagen Economics came to the conclusion that whilst the reduced rate on food in Germany creates a larger VAT differential than for other goods, this does not compensate for the fact that food is simply not a natural candidate for cross-border shopping.

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8 COM(1999) 62 final, OJ C 102, 13.4.1999, p. 10.

9 Study by Copenhagen Economics ApS, Nyropsgade 13/1, DK-1602 Copenhagen (2007) on the reduced rates of VAT applied to goods and services in the EU Member States, available on the Commission's website at the following address:

[http://ec.europa.eu/taxation\\_customs/taxation/gen\\_info/economic\\_analysis/economic\\_studies/index\\_en.htm](http://ec.europa.eu/taxation_customs/taxation/gen_info/economic_analysis/economic_studies/index_en.htm)

The study did not reveal any specific goods or services for which the application of a reduced rate is problematic from a Single Market point of view. The study made however a strong case that reduced VAT rates create significant compliance costs for businesses and tax authorities.

#### **5.4. PUBLIC CONSULTATIONS IN 2008 AND 2010**

In 2008 the Commission launched a public consultation on the review of existing legislation on VAT reduced rates<sup>10</sup> to which a total of 560 submissions were received.

This public consultation did not reveal any specific problems for the functioning of the Single Market. The complexity of the VAT rates structure and the compliance costs this entails were however raised by many respondents.

The Green Paper on the future of VAT presented in December 2010 launched a broad consultation on all aspects of the VAT system. It contained a specific question as to whether the current VAT rates structure creates major obstacles for the smooth functioning of the Single Market.

A number of respondents pointed out that distortions of competition could arise in border regions where private companies and VAT-exempt traders can exploit the VAT rates differentials when the variations are sizeable.

One practical case mentioned were farmers under the special scheme who organise purchases in Member States where a reduced VAT rate is applied on certain products, and purchase amounts that ensure that they will not exceed the threshold for the acquisition. Because of the threshold, these cross-border purchases remain of a limited scale.

#### **5.5. THE RETROSPECTIVE EVALUATION OF THE VAT SYSTEM**

In parallel with the consultation process launched by the Green Paper on the future of VAT, the Commission contracted a study on a retrospective evaluation of the consequences, in economic terms, of the functioning of the most significant elements of the current EU VAT system<sup>11</sup>. The evaluation study did not signal any specific distortions in the Single Market resulting from reduced rates.

Based on an econometric model, the study indicated that a reduction of the dissimilarity of VAT rates for specific goods and services by 50% increases intra-EU trade by 9.8%. However, the contractor who made the study on behalf of the Commission immediately tempered this result by indicating that it was most likely overstated.

#### **5.6. CONCLUSIONS THAT CAN ALREADY BE DRAWN ON THE SINGLE MARKET ASPECT**

There are a number of categories of goods and services in Annex III of the VAT Directive for which there is sufficient material for stating that the optional application of a reduced rate does not cause any distortion of competition within the Single Market. This is logically the case for locally supplied services as they are taxed where they are supplied (categories 10, 10a, 10b, 11, 12a, 19, 20, 21).

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10 [http://ec.europa.eu/taxation\\_customs/common/consultations/tax/article\\_4850\\_en.htm](http://ec.europa.eu/taxation_customs/common/consultations/tax/article_4850_en.htm)

11 [http://ec.europa.eu/taxation\\_customs/common/publications/studies/index\\_en.htm](http://ec.europa.eu/taxation_customs/common/publications/studies/index_en.htm)

But more generally, while the issue of the potential for distortion of competition was raised on several occasions in the past, neither the two public consultations (the most recent in 2011 with the Green Paper on the future of VAT), nor the two studies, have revealed any major anomalies in this respect with the reduced rates as they are applied today.

Q1 Are there any concrete situations that you are aware of whereby the application of a reduced rate on certain goods and services by one or more Member States is effectively resulting in material distortion of competition within the Single Market? Please explain and, if possible, give an indication of the economic impact of the distortive effects.

## **6. ABOLITION OF REDUCED RATES ON GOODS AND SERVICES FOR WHICH THE CONSUMPTION IS DISCOURAGED BY OTHER EU POLICIES**

Commission services responsible for policies other than taxation have been involved in this first evaluation exercise and have pointed out certain inconsistencies between the application of reduced VAT rates for certain goods and services, and the objectives pursued in their policy area, notably climate change mitigation and environmental policies.

These inconsistencies which concern in particular the supply of water, of energy and of services provided in connection with street cleaning, refuse collection and waste treatment, are described below. Stakeholders are given the opportunity to put forward in a concise way their arguments for or against the abolition or restriction of a reduced VAT rate.

It should be pointed out that the reduced VAT rate for passenger transport services has also been raised. This however is an issue much broader than the question of the VAT rate. There are issues about the place of taxation for international passenger transport, the exemption applied to certain types of transport services and the distortion of competition between modes of transport. It is therefore more appropriate to handle all aspects of VAT on passenger transport services globally. The issue of the VAT rate on passenger transport services will therefore not be raised here.

### **6.1. WATER**

The Water Framework Directive<sup>12</sup> states that Member States shall ensure by 2010 that water-pricing policies provide adequate incentives for users to use water resources efficiently, and thereby contribute to the environmental objectives of that Directive.

The supply of water is on the list of goods and services to which a reduced VAT rate may be applied. Given the current shortages in certain regions and the expectation that water will become scarcer due to climate change, the question arises as to whether a reduced VAT rate is compatible with resource efficiency objectives.

The reduced VAT rate for water is motivated by social reasons, since it is considered as a basic need for households. Water is however an important input for a lot of economic activities, which illustrates the difficulty of ensuring that the application of a reduced VAT rate is targeted to its objective.

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12 Directive 2000/60/EC of the European Parliament and the Council of 23 October 2000 establishing a framework for Community action in the field of water policy.

But even the water consumption of households can be diverse with water being used for other than basic needs, such as swimming pools, fishponds, decorative gardening, etc. The argument therefore arises that social objectives could be better achieved by national social policies, targeted to the vulnerable social groups.

Q2	Which arguments (social, economic, legal, etc) do you wish to put forward in the context of the assessment of the reduced VAT rate for water?
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## 6.2. ENERGY

The EU has developed strong policies to improve energy efficiency as a contribution to increase energy security and as part of climate change mitigation policies.

Taxation can play an important role in these policies and this is the reason why the main objective of the proposal<sup>13</sup> to revise the Energy Taxation Directive (which does not concern VAT), presented by the Commission in April 2011, is to bring it more closely into line with the EU's energy and climate change objectives.

Application of reduced VAT rates might significantly distort decisions on the optimal energy mix as well as the optimal level of consumption. Indeed, certain Member States apply reduced VAT rates to more polluting products for which the Energy Taxation Directive proposes a higher taxation.

Applying a reduced VAT rate in such circumstances seems to undermine the objectives the Energy Taxation Directive intends to achieve. Applying the standard VAT rate to all energy products would ensure neutrality and not interfere with these objectives.

If this would imply that expenses on energy commodities would become too burdensome for vulnerable social groups, this should be addressed by targeted national policies.

Q3	Which arguments (social, economic, legal, etc) do you wish to put forward in the context of the assessment of the reduced VAT rate for certain energy products?
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## 6.3. WASTE

Member States may apply a reduced VAT rate to the supplies of services provided in connection with street cleaning, refuse collection and waste treatment.

The application of this reduced VAT rate may be inconsistent with the objectives of the EU's waste management policy. The Waste Framework Directive<sup>14</sup> introduces a five-step waste hierarchy where prevention is the best option, followed by re-use, recycling and other forms of recovery, with disposal such as landfill as the last resort. EU waste legislation aims to move waste management up the waste hierarchy.

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13 COM(2011) 169/3 Proposal for a COUNCIL DIRECTIVE amending Directive 2003/96/EC restructuring the Community framework for the taxation of energy products and electricity.

14 Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste.

The services to which the reduced VAT rate may be applied are formulated in a rather broad way, not taking into account the hierarchy set out by the Waste Framework Directive.

Q4 Which arguments (social, economic, legal, etc) do you wish to put forward in the context of the assessment of the reduced VAT rate for street cleaning, refuse collection and waste treatment? In your view, how can the hierarchy set out by the Waste Framework Directive be reflected in the VAT rates structure?

#### **6.4. HOUSING**

Supplies related to housing (provision, construction, renovation and alternation) are subject to reduced VAT rates in several Member States, under varying conditions.

The Commission presented in September 2011 a Roadmap to a Resource Efficient Europe<sup>15</sup>. Housing is pointed out as one of the sectors with a substantial environmental impact. Better construction and use of buildings in the EU would influence 42% of final energy consumption, 35% of greenhouse gas emissions and more than 50% of all extracted materials.

Significant improvements in resource and energy use during the life-cycle – with improved sustainable materials, higher waste recycling and improved design - should contribute to the development of a resource efficient building stock.

Coherence with this EU policy would require that the scope of the reduced VAT rates that can be applied by the Member States to housing would be restricted to those supplies that take this resource efficiency aspect into consideration.

On the other hand certain questions could be put forward as to the way to implement this VAT rate differentiation in practice and whether this will not result in adding a substantial level of complexity for taxable persons active in the housing sector.

Q5 In your view, how can the reduced VAT rate for housing be best applied in order to take the resource efficiency element into account, and how should/can this be achieved with a minimum of increase in the administrative burden for businesses, in particular SME's, providing supplies of goods and services in the housing sector?

#### **7. SIMILAR GOODS AND SERVICES SHOULD BE SUBJECT TO THE SAME VAT RATE**

This third guiding principle raises the issue of certain goods or services to which Member States may apply a reduced rate in accordance with Annex III and for which, as a result of technological development, a comparable product is available on-line.

The following topics obviously require further examination in the light of the third guiding principle:

- on-line publications compared to paper publications (books, newspapers, magazines, etc.) and audio books,
- radio and television broadcasting on-line and off-line.

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15 COM(2011)571 of 20 September 2011

Considering the increasing development of new technologies, other examples might appear in the future but parameters which might determine equivalence are not always straightforward.

### **7.1. IMPACT OF THE CHANGE OF THE PLACE OF SUPPLY RULES ON 1 JANUARY 2015**

On-line publications, and on-line radio and television broadcasting are, for the purposes of VAT, considered as electronically supplied services which, according to Article 98(2) of the VAT Directive, are excluded from the scope of reduced VAT rates.

Currently, the place of supply of electronic services by a taxable person established within the EU to a non-taxable person is determined in accordance with the general rule of Article 45 of the VAT Directive, namely the place where the supplier has established his business.

From 1 January 2015, these supplies will however be taxed at the rate of the Member State where the consumer is established, independent from the place where the supplier is established.

It is for that reason that exploring the potential of applying a reduced rate to these products is in any event to be put in the "after 2015" context. A change in a context where these B2C electronic services would be taxable at the place of establishment of the supplier would indeed be contradictory to the first guiding principle of this review (having distorting effects on the internal market).

Since all electronic services should currently be taxed at the standard VAT rate, the issue of defining what is to be considered an e-book, an on-line newspaper, etc and what is to be considered as a different product has not arisen until now.

The situation is however different when considering the possibility of allowing Member States to apply a reduced rate to those products.

For example, were e-books and on-line newspapers and magazines to be added to Annex III with the detailed definitions left to the competence of the Member States, a supplier (both EU and non EU) would not only have to know which Member States apply a reduced rate and which apply the standard rate, but would also have to know what is exactly understood by an e-book, an on-line newspaper and on-line magazine in each individual Member State applying the reduced rate.

This would create an extra complexity, which large companies might overcome at an extra cost, but which might also hinder the development of cross-border activities for smaller companies. Allowing for the application of a reduced VAT rate for certain electronic services would, in the view of the Commission, require a uniform approach at an EU level in the definition of the qualifying products.

Q6	Do you agree that those electronic services that would qualify for the reduced rate will have to be precisely defined in a uniform way at an EU level or do you consider that a broad definition in the VAT Directive would be sufficient?
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## **7.2. BOOKS COMPARED TO E-BOOKS**

In the majority of Member States books are currently subject to a reduced VAT rate, or even a super reduced or zero rate in certain Member States. Audio books can also be covered by this reduced rate.

However, there are differences amongst Member States of what is covered under the reduced rate and what is not.

An e-book could be defined in general terms as an electronic version of a printed book (or audio-book) which can be read on a computer or a specifically designed handheld device.

However, technology affects the mere nature of books, both in the physical world (paper versions are at times bundled with CD ROMs or access codes for add-ons accessible on-line) and in the on-line world. In between worlds, print-on-demand services contribute to this blurring of traditional distinctions.

Is an electronic product which contains, besides the content of a printed book, background music or a video clip of an actor interpreting all or part of the text still to be considered as a similar product in the sense of the third guiding principle set out above? Moreover, e-books only function in combination with additional hard- and software, which then also adds additional features. Also, the production and distribution, and the costs related to it, of printed books and e-books are quite different.

Defining e-books for the purpose of qualifying for a reduced VAT rate is likely to be controversial as increased functionality (music, videos, live links, etc.) becomes more prevalent. Considering the increasing development of new technologies, the level of similarity between printed and electronic publications seems difficult to predict.

Q7 Considering the need for a uniform and future proofed approach at EU level, what should be the definition of an e-book in EU-law?

## **7.3. NEWSPAPERS AND PERIODICALS COMPARED TO ONLINE PUBLICATIONS**

The situation described above for books is quite similar for newspapers and periodicals. However, the divergences between the national legislations in defining those newspapers and magazines qualifying for a reduced rate are even larger. In accordance with the VAT Directive, the quantity of advertising is sometimes used as a criterion for determining whether a reduced rate applies. In some Member States publications which have a pornographic character or which may incite violence are excluded from the scope of the reduced VAT rate. The frequency of publication or the specific character of the content are criteria used at national level for the distinction between the standard and reduced VAT rate. In some Member States the reduced VAT rate is applied only to publications sold on subscription for a certain period.

The online services of a newspaper or periodical publisher consist very often of different elements. On the one hand there is the information on a website giving an overview of the most important news. The website is updated at regular intervals, often several times a day. The website might give access to photo specials, polls, discussion forums, blogs and TV or video clips.

The access to this website is very often free but, in case it would be provided for a consideration, the question arises as to whether it would meet the criteria of a "similar product".

Another online service consists in providing simply the digital version of the printed newspaper or magazine. It reproduces exactly the same content as the paper magazine or newspaper, for instance in a PDF- format.

This service is mostly not for free. However, subscriptions to the paper version may include access to the online version without being charged extra for it.

An additional on-line service which is mostly not freely available is a search function in the archives of the newspaper or magazine. The service is generally offered together with the on-line subscription. The increasing development of new functionalities makes it difficult to assess to which extent off-line and on-line publications are still be considered as being "similar products" even if commercial practice tends to bundle the subscription to the paper version with the access to the on-line add-ons features.

Q8 Considering the need for a uniform and future proofed approach at EU level, what should be the definition of on-line newspapers and on-line periodicals in EU-law?

#### **7.4. RADIO AND TELEVISION BROADCASTING ON-LINE AND OFF-LINE**

The Audiovisual Media Services Directive<sup>16</sup> contains a number of definitions which are of relevance for this issue. According to that Directive:

- "television broadcasting" means an audiovisual media service provided by a media service provider for simultaneous viewing of programmes on the basis of a programme schedule [Article 1(1)(e)] and provided by electronic communications networks [Article 1(1)(a)];
- "media service provider" means the natural or legal person who has editorial responsibility for the choice of the audiovisual content of the audiovisual media service and determines the manner in which it is organised [Article 1(1)(d)];
- "on-demand audiovisual media service" means an audiovisual media service provided by a media service provider for the viewing of programmes at the moment chosen by the user and at his individual request on the basis of a catalogue of programmes selected by the media service provider [Article 1(1)(g)] and provided by electronic communications networks [Article 1(1)(a)];

The reception of radio and television broadcasting services are covered by Annex III of the VAT Directive. Due to the exclusion from the scope of reduced VAT rates set by Article 98(2) of the VAT Directive, these services are subject to the standard rate when they are electronically supplied. The development of TV like services such as catch up TV raises issues of interpretation as they are the extension of broadcasting services (keeping with the edited programme schedule but offering possibilities to access programmes for a limited period of time after their diffusion) and satisfy the same function.

On the contrary, pure on demand audiovisual media services such as video on demand distributed via internet are probably standard rated in any event.

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16 Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) (OJ L95 of 15.4.2010, p. 1).

On a more general level however, the reality is that the borders between TV and the internet are increasingly blurred. Many broadcasters offer their programmes also over the internet. At the same time manufacturers launch more and more TV sets which allow access not only to traditional TV content but also to content from the internet.

Given that the convergence between "traditional" broadcasting and internet broadcasting is becoming a reality nowadays, the question arises whether such a differentiation will be sustainable in the future.

This raises notably the question of whether the issue of the equal treatment for VAT can be limited to television broadcasting provided via IP networks or via the internet in situations of simultaneous viewing of programmes on the basis of a programme schedule.

Q9 Are the definitions laid down in the Audiovisual Media Services Directive sufficiently clear were a reduced VAT rate allowed for on-line radio and television broadcasting?

## **8. SOME IMPORTANT MESSAGES ABOUT THIS CONSULTATION**

The Commission services would like to point out that this is a very targeted public consultation within the strict framework of the guiding principles put forward for the VAT rates review and explained at the beginning of this document.

It is for that reason highly recommended that stakeholders focus their contribution on the issues covered by the document for consultation.

Stakeholders are, for the same reason, invited to reply to those questions that are of concern for them. Figures and concrete examples of distortion of competition within the internal market or of specific problems encountered due to the current VAT rules would be highly appreciated.

As already indicated above, it is important to keep in mind that this public consultation is part of the assessment process and that no policy decisions have been taken at this stage.

## 9. FINAL OBSERVATIONS

It is important for contributors to identify clearly: name, address, e-mail, activity, other information and, in the event of representative organisations, the level of representation.

It is important to read the specific privacy statement on how your personal data and contribution will be dealt with on the following website: [http://ec.europa.eu/taxation\\_customs/index\\_en.htm](http://ec.europa.eu/taxation_customs/index_en.htm).

In line with the specific privacy statement of this open public consultation, respondents should be aware that **contributions received will be published on the website of DG TAXUD** together with the identity of the contributor **unless the contributor objects to the publication of his personal data** on the grounds that such publication would harm his or her legitimate interests. In this case the contribution may be published in anonymous form. Otherwise the contribution will not be published nor will its content be taken into account.

The results will be summarised in a report to be published on the same website. Feedback would also be presented in the impact assessment report and explanatory memorandum relating to a Proposal for a Directive if the Commission decided to pursue this avenue.