Council Directive (EU) 2018/1713 of 6 November 2018 amending Directive 2006/112/EC as regards rates of value added tax applied to books, newspapers and periodicals

COUNCIL DIRECTIVE (EU) 2018/1713

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amending Directive 2006/112/EC as regards rates of value added tax applied to books, newspapers and periodicals

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 113 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Parliament[(1)],

Having regard to the opinion of the European Economic and Social Committee[(2)],

Acting in accordance with a special legislative procedure,

Whereas:

(1) Council Directive 2006/112/EC[(3)] provides that Member States may apply reduced rates of value added tax (VAT) to publications on any physical means of support. However, a reduced VAT rate cannot be applied to electronically supplied publications, which have to be taxed at the standard VAT rate.

(2) In line with the communication of the Commission of 6 May 2015 on a Digital Single Market Strategy for Europe and in order to keep abreast of technological progress in a digital economy, Member States should be enabled to align VAT rates for electronically supplied publications with lower VAT rates for publications that are supplied on physical means of support.

(3) In its communication of 7 April 2016 on an action plan on VAT, the Commission outlined that electronically supplied publications should be able to benefit from the same preferential VAT rate treatment as publications that are supplied on physical means of support. In its recent judgment in case C-390/15[(4)], the Court of Justice considered that the supply of digital publications on physical means of support and the supply of digital publications electronically amount to comparable situations. Therefore, it is appropriate to introduce the possibility for all Member States to apply a reduced VAT rate to the supply of books, newspapers and periodicals, irrespective of whether they are supplied on physical means of support or electronically. For the same reasons, it is appropriate to allow those Member States that, in accordance with Union law, currently apply VAT rates lower than the minimum laid down in Article 99 of Directive 2006/112/

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EC or that grant exemptions with deductibility of the VAT paid at the preceding stage to certain books, newspapers or periodicals supplied on physical means of support, to apply the same VAT treatment to such books, newspapers or periodicals when supplied electronically.

(4) Since 1 January 2015, VAT on all electronically supplied services has been levied in the Member State where the customer is based. Given the implementation of the destination-based principle, it is no longer necessary to apply the standard rate to electronically supplied publications in order to ensure the establishment and the functioning of the internal market and to avoid distortion of competition.

(5) In order to prevent the extensive use of reduced VAT rates on audiovisual content, Member States should be enabled to apply a reduced rate to books, newspapers and periodicals only if those publications, regardless of whether they are supplied on physical means of support or electronically, do not wholly or predominantly consist of music or video content.

(6) Member States should maintain discretion to set VAT rates for publications and restrict the scope of reduced VAT rates, including, subject to objective justification, where digital publications offer the same reading content.

(7) Since the objective of this Directive, namely enabling Member States to apply the same VAT rates to electronically supplied publications as the VAT rates they currently apply to publications on any physical means of support, cannot be sufficiently achieved by the Member States and can be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.

(8) Directive 2006/112/EC should therefore be amended accordingly,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Directive 2006/112/EC is amended as follows:

(1) in Article 98(2), the second subparagraph is replaced by the following:

> The reduced rates shall not apply to electronically supplied services with the exception of those falling under point (6) of Annex III.;

(2) in Article 99, the following paragraph is added:

3. By way of derogation from paragraphs 1 and 2 of this Article, and in addition to the rates referred to in paragraph 1 of Article 98, Member States which, on 1 January 2017, applied, in accordance with Union law, reduced rates lower than the minimum laid down in this Article or granted exemptions with deductibility of the VAT paid at the preceding stage to the supply of certain goods referred to in point (6) of Annex III, may also apply the same VAT treatment where that supply is supplied electronically, as referred to in point (6) of Annex III.;