

6. NEW LEGISLATION – MATTERS CONCERNING THE IMPLEMENTATION OF RECENTLY ADOPTED EU VAT PROVISIONS

- 6.2 Origin:** Commission
References: New Articles 284, 284a-284e, 288, 288a 292a-292d of the VAT Directive
Articles 17(1)(a) and (2), 21(2b), 31(2a), 32(1) and 37a-37b of the VAT Administrative Cooperation Regulation
Subject: The SME scheme updated as of 1 January 2025
(Document taxud.c.1(2023)11242551 – Working paper No 1073)

Definitions

1. For the purposes of the present guidelines,
 - a) “SME scheme” shall mean the special scheme for small enterprises laid down in Title XII, Chapter 1, of the VAT Directive¹;
 - b) “Windsor Framework arrangements” shall mean the arrangements adopted by the Joint Committee established by the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community as enshrined in its Decision No 1/2023 of 24 March 2023 laying down arrangements relating to the Windsor Framework [2023/819];
 - c) “Member State of establishment” shall mean the Member State in which a taxable person eligible for exemption on its supplies of goods and services under the SME scheme is established²;
 - d) “Member State of exemption” shall mean any Member State other than that of establishment in which a taxable person is eligible for exemption under the SME scheme on its supplies of goods and services;

¹ Any reference made to provisions governing the SME scheme referred to throughout these guidelines shall be taken to be to the provisions in their wording as of 1 January 2025.

² To determine what it takes to be seen as established in a Member State, see also [guidelines](#) resulting from the 123rd meeting of 20 November 2023 – Document A – taxud.c.1(2024)794997 – Working paper No 1075 (p. 295).

- e) “domestic exemption” shall mean the exemption granted to a taxable person established in the Member State in which VAT is due as provided for under Article 284(1) of the VAT Directive;
- f) “cross-border exemption” shall mean the exemption granted to a taxable person established in a Member State other than that in which VAT is due as provided for under Article 284(2) of the VAT Directive;
- g) “domestic threshold” or “domestic thresholds” shall mean the annual turnover threshold or thresholds fixed by the Member State in line with Article 284(1) of the VAT Directive as the upper limit for the application of exemption under the SME scheme;
- h) “Union threshold” shall mean the Union annual turnover threshold laid down in Article 284(2)(a) of the VAT Directive the purpose of which is to ensure that taxable persons benefiting from the cross-border exemption are small enterprises;
- i) “EX number” shall mean the individual identification number with the suffix 'EX' by which, as provided for under Article 284(3) of the VAT Directive, the Member State of establishment identifies a taxable person wanting to benefit from the cross-border exemption.

Territorial scope

- 2. In line with the arrangements put in place by the Windsor Framework, the VAT Committee **unanimously** confirms that the SME scheme shall not apply to the following transactions:
 - a) supply of goods made by a taxable person established in a Member State where the place of that supply is located in Northern Ireland;
 - b) the supply of goods made by a taxable person established in Northern Ireland where the place of that supply is located in a Member State.

General features of the SME scheme

- 3. The VAT Committee **unanimously** agrees that with the SME scheme not being mandatory, it is for each Member State to decide whether or not to apply the domestic exemption. Where a Member State has put in place the domestic exemption, the VAT Committee however **unanimously** agrees that the Member State shall be required also to apply the cross-border exemption.

4. The VAT Committee **unanimously** agrees that the exemption under the SME scheme shall, in line with Article 290 of the VAT Directive, be optional for taxable persons to apply. To be able to avail of the cross-border exemption, the VAT Committee **unanimously** agrees that the taxable person shall not be required also to apply the domestic exemption.
5. Where, in a particular Member State, a taxable person avails of exemption under the SME scheme be it domestic or cross-border, the VAT Committee **unanimously** agrees that the exemption shall apply to all the supplies of goods and services made by the taxable person within that Member State except only for those excluded from the SME scheme under Article 283 of the VAT Directive. The VAT Committee **unanimously** agrees that exemption under the SME scheme shall not apply to supplies of goods and services made to or importation of goods made by the taxable person.
6. Should use be made of exemption in a Member State under the SME scheme, the VAT Committee agrees by **unanimity** that the taxable person may not apply the normal VAT arrangements for any of its supplies in that Member State except for those excluded by the Member State granting the exemption by way of Article 283 of the VAT Directive. The VAT Committee agrees **unanimously** that when Member States decide to exclude supplies from the SME scheme, any such exclusion shall be based on objective criteria.

Domestic exemption

- conditions to meet for exemption to apply

7. The VAT Committee agrees by **unanimity** that the domestic exemption shall only apply insofar as the total value of goods and services supplied by the taxable person established in the Member State granting the exemption does not exceed the domestic threshold applied by that Member State. In fixing that threshold, the VAT Committee agrees by **unanimity** that as is the case when calculating the total value, the amount making up that threshold shall not include VAT.

- varying thresholds

8. Where, for the application of the domestic exemption, a Member State applies more than one threshold as authorised, the VAT Committee **unanimously** agrees that no matter how its domestic thresholds are composed these thresholds must all be seen as sectoral. Thus, the VAT Committee **unanimously** agrees that a Member State applying more than one domestic threshold shall be required to take all steps necessary to ensure that a taxable person can only benefit from one of those thresholds.
9. Where a Member State applies more than one domestic threshold, the VAT Committee unanimously agrees that to enable determining which threshold is applicable, the Member State concerned shall introduce clear and precise criteria for the scope and application of these thresholds. The VAT Committee **unanimously** agrees that this must be done based on objective criteria such as the supplies made, with recourse made, for instance, to the common nomenclature (CN) or the statistical classification of products by activity (CPA), or the sector of activity, based on the statistical classification of economic activities (NACE), and may not see a threshold reserved for a particular category of taxable persons.
10. The VAT Committee **almost unanimously** agrees that with thresholds based on objective criteria, it cannot be left to the taxable person to decide which of the domestic thresholds to apply. Having determined based on the facts available which domestic threshold is applicable, the VAT Committee **almost unanimously** agrees that to avoid legal uncertainty for a taxable person whose activities may fluctuate over the year, Member States shall only require the shift from one threshold to another once a year at the beginning of each calendar year based on activities reported during the preceding calendar year.

- calculation of turnover

11. Where, in accordance with Article 17 of the VAT Directive, the transfer of goods forming part of the business assets of a taxable person to another Member State is to be treated as a supply of goods for consideration, the VAT Committee **unanimously** agrees that the amount attributable to that supply, made up by the purchase price, or in the absence of a purchase price, the cost price of those goods pursuant to Article 76 of the VAT Directive, shall be included in the calculation of the taxable person's turnover in the Member State of dispatch of the goods under Article 288 of the VAT Directive.

Cross-border exemption

- access to exemption

12. The VAT Committee **unanimously** agrees that the cross-border exemption shall apply only if the Union annual turnover of the taxable person does not exceed the Union threshold of EUR 100 000 and the total value of goods and services supplied in the Member State of exemption does not exceed the domestic threshold applied by that Member State of exemption. Given that these conditions are cumulative, the VAT Committee **unanimously** agrees that even though the domestic threshold of a Member State of exemption may not be exceeded, a taxable person whose Union annual turnover exceeds the Union threshold of EUR 100 000 shall be excluded from the cross-border exemption in all of the Member States of exemption. The VAT Committee **unanimously** however agrees that where the Union threshold is exceeded, this shall not deprive the taxable person of access to exemption in the Member State of establishment.

13. The VAT Committee **unanimously** agrees that in order to benefit from the cross-border exemption the taxable person shall submit a prior notification to its Member State of establishment and be identified by an EX number. Not to delay access to the cross-border exemption, the VAT Committee unanimously agrees that the Member State of establishment shall issue the EX number or update it as soon as it receives confirmation from any of the Member States of exemption, with updates to follow, and inform the taxable person of access to exemption in that Member State rather than waiting for confirmation to be received from all the Member States of exemption. The VAT Committee **unanimously** agrees that if it is informed by a Member State of exemption that the conditions of exemption are not met, the Member State of establishment shall adopt the same approach.

14. Where, in specific cases, a Member State of exemption needs additional time to carry out the necessary checks to prevent tax evasion or avoidance, the VAT Committee **unanimously** agrees that the Member State in question shall, further to Article 284(5) of the VAT Directive, inform the Member State of establishment to enable it to keep the taxable person concerned aware of the delay. If, pursuant to Article 37b(2) of the VAT Administrative Cooperation Regulation, the Member State of establishment receives no information that the taxable person does not meet the conditions for the cross-border exemption to apply and it is not informed by the Member State of exemption that additional time for checks is needed, the VAT Committee **almost unanimously** agrees that the Member State of establishment may, in view of its obligation under Article 284(5) of the VAT Directive, assume that the taxable person is eligible for exemption but only at such time as to be able to meet the set deadline of 35 working days following receipt of the prior notification.
15. Where a taxable person wants to avail itself only of the domestic exemption, the VAT Committee **almost unanimously** agrees that the taxable person shall not be required to submit a prior notification pursuant to Article 284(3) of the VAT Directive unless obliged to do so by the Member State of establishment. Where the taxable person wants to avail itself both of the domestic and of the cross-border exemption, the VAT Committee **almost unanimously** however agrees that a prior notification shall be required. Where a taxable person making use of the cross-border exemption wants to extend its use to other Member States of exemption or where the taxable person wants to cease applying the cross-border exemption in one or more Member States of exemption, the VAT Committee **almost unanimously** agrees that the taxable person shall be required to make an update to the prior notification in line with Article 284(4) of the VAT Directive.

- prior notification

16. In addition to information already foreseen by Article 284a(1) of the VAT Directive, the VAT Committee **almost unanimously** agrees that Member States shall ensure that taxable persons in their prior notification and any update made to the prior notification also include information about any number by which they may be identified for VAT purposes in the Member State(s) of exemption. The VAT Committee **almost unanimously** agrees that, as soon as access is granted to the SME scheme, the Member State of exemption shall take all the steps necessary to ensure that the taxable person ceases, in respect of supplies of goods and services made in that Member State falling under the SME scheme, to be identified there.

17. The VAT Committee **almost unanimously** agrees that should a Member State, as authorised under Article 288a(1) of the VAT Directive, opt to extend the period of exclusion to two calendar years when a taxable person exceeds the domestic threshold, the prior notification must in regard to that Member State contain the total value of supplies of goods and services made not only in the current and the preceding calendar year but also in the calendar year prior to that.
18. The VAT Committee **almost unanimously** agrees that should a Member State, as authorised under Article 284(1), second subparagraph, of the VAT Directive, have opted to apply more than one domestic threshold, the taxable person must in the prior notification for that Member State report separately the total value of supplies of goods and services in respect of each of the thresholds applied by that Member State.
19. Where, for example being a start-up, a taxable person has made no supplies in the preceding calendar year, the VAT Committee **unanimously** agrees that this shall not prevent the taxable person from benefiting from the cross-border exemption. The VAT Committee **unanimously** agrees that in any such case, the taxable person shall, as is the case with quarterly reports submitted under Article 284b of the VAT Directive, indicate in the prior notification the absence of supplies made by ‘0’.

- correction to the prior notification

20. With a view to ensure that information contained in the prior notification is accurate and complete, the VAT Committee **unanimously** agrees that a taxable person who prior to admission to the SME scheme detects material errors in the information submitted shall be required to correct the prior notification. The VAT Committee **unanimously** agrees that where such correction is made, this shall see the original prior notification replaced by a new prior notification. For any such new prior notification, the VAT Committee **unanimously** agrees that calculation of the 35 working days laid down in Article 284(5), second subparagraph, of the VAT Directive shall start anew from the date of submission of that new prior notification.

21. Where a taxable person detects material errors in the prior notification after being admitted to the SME scheme and given an EX number, the VAT Committee **unanimously** agrees that correction shall be made by way of an update to the prior notification. The VAT Committee unanimously agrees that for omissions such as missing out on listing a Member State in which the taxable person wants to avail of exemption, an update to the prior notification shall be required pursuant to Article 284(4) of the VAT Directive. If an update to a prior notification is submitted before the prior notification is fully processed, the VAT Committee **unanimously** agrees that the update shall be seen as received only once the prior notification has been processed in respect of all the Member States of exemption concerned and the taxable person has been informed of the outcome.

- reporting

22. To avoid duplication of information already available, the VAT Committee **almost unanimously** agrees that the total value of supplies of goods and/or services to be reported by the taxable person for the calendar quarter following admission to the SME scheme shall not include the value of supplies contained in the prior notification submitted during that same calendar quarter. To avoid a gap in reporting, the VAT Committee **almost unanimously** agrees that the total value of supplies of goods and/or services to be reported by the taxable person for the calendar quarter after being admitted to the SME scheme must, where the prior notification is submitted prior to that calendar quarter, also separately indicate the value of supplies made during the preceding calendar quarter if not contained in the prior notification to capture supplies made after submission of that prior notification but before admission to the SME scheme.

- correction to the quarterly report

23. Where a taxable person detects errors in a quarterly report, the VAT Committee **unanimously** agrees that correction shall be done by resubmission of the original quarterly report. The VAT Committee agrees **unanimously** that the same shall apply if as a result of cancellation of transactions carried out in a calendar quarter, the value reported for that calendar quarter is no longer accurate.

- other obligations

24. While invoices may be required, the VAT Committee **unanimously** agrees that if this is the case the taxable person shall, as envisaged under Article 220a(1)(c) of the VAT Directive, be allowed to issue simplified invoices in line with Article 226b of the VAT Directive. The VAT Committee confirms by **almost unanimity** that as to gain access to exemption under the SME scheme the taxable person must for that purpose be identified in the Member State of establishment only. The VAT Committee therefore agrees **unanimously** that a taxable person required to issue invoices for supplies falling under the SME scheme in a Member State of exemption may not on that account be obliged to register in that Member State.

- non-compliance with reporting obligations

25. The VAT Committee **almost unanimously** agrees that the option provided for under Article 284d(3) of the VAT Directive by which a Member State of exemption may impose VAT obligations on a taxable person who fails to comply with the obligation of reporting, shall be exercised with all due consideration to the principle of proportionality. To ensure that such imposition of VAT obligations is proportionate, the VAT Committee **almost unanimously** agrees that in case submission is not timely the Member State of exemption shall only take such a measure if the taxable person is late in the submission of the quarterly report by more than 30 days or where consecutively two or more quarterly reports are submitted late.

- deduction

26. The VAT Committee **unanimously** agrees that, as stipulated in Article 289 of the VAT Directive, taxable persons whose supplies are exempt under the SME scheme shall not be entitled to deduct VAT in accordance with Articles 167 to 171 and Articles 173 to 177 of the VAT Directive. Where a taxable person making supplies exempt under the SME scheme in a Member State (MS1) procures input in MS1 to be used for taxed supplies made in another Member State (MS2) in which the taxable person does not avail of the exemption, the VAT Committee thus agrees **unanimously**, as also confirmed by the Court of Justice of the European Union in its ruling in case C-507/16 *Entertainment Bulgaria System*, that the taxable person shall not, pursuant to Article 169(a) of the VAT Directive, be eligible to deduct VAT.

27. Where the taxable person procures input in MS2 in which it does not avail itself of the exemption, the VAT Committee **unanimously** agrees that the taxable person shall be entitled to deduct VAT but only if the input procured is used for taxed supplies made in MS2. If input is procured in MS2 to be used for making exempt supplies in MS1, the VAT Committee agrees **unanimously** that the taxable person shall not be entitled to deduct VAT in respect of that input.

- *cessation*

28. The VAT Committee **unanimously** agrees that in the case of bankruptcy putting an immediate end to taxable activities being carried out by the taxable person, the cross-border exemption shall, as is the case when the Union threshold is exceeded, cease to apply when bankruptcy is declared. Where for the duration of the bankruptcy procedure the taxable person continues to carry out taxable activities, the VAT Committee however agrees **unanimously** that the cross-border exemption shall only cease to apply upon submission of an update to the prior notification in accordance with Article 284(4) of the VAT Directive.

29. When, during a calendar year, the turnover of a taxable person exceeds the domestic threshold of a particular Member State, the VAT Committee **unanimously** agrees that the taxable person shall, in line with Article 288a(1) of the VAT Directive, be excluded from the exemption in that Member State in the following calendar year or, if so decided, the following two calendar years. Where a taxable person ceases voluntarily to apply the exemption in a particular Member State, the VAT Committee **almost unanimously** agrees that Member States shall when laying down detailed rules and conditions for this voluntary cessation pursuant to Article 290 of the VAT Directive pay due regard to the period of exclusion applied in cases where the domestic threshold is exceeded.

- *(de)activation of the EX number*

30. When a taxable person in line with Article 284b(3) of the VAT Directive informs the Member State of establishment that the Union threshold has been exceeded, the VAT Committee **unanimously** agrees the taxable person's EX number must be deactivated to reflect when the Union threshold was exceeded.

31. The VAT Committee **unanimously** agrees that a taxable person availing of the SME scheme may not be taken to have ceased its activities merely because no quarterly report is submitted. Should no reports be submitted, the VAT Committee **almost unanimously** agrees that to be able to assume that activities are ceased, the Member State of establishment must first take steps to verify the state of affairs with the taxable person or through other means.
32. The VAT Committee **almost unanimously** agrees that a taxable person availing of the SME scheme but reporting to have made no supplies during a calendar quarter shall not be taken to have ceased its activities. If, however, during a period of 8 consecutive calendar quarters no supplies of goods or services are reported, the VAT Committee **almost unanimously** agrees that the taxable person shall, absent information to the contrary, be presumed to have ceased its activities. The VAT Committee **almost unanimously** agrees that as a result, the EX number allocated to the taxable person shall be deactivated in line with point (d) of Article 284e of the VAT Directive if no supplies have been reported for any of the Member States of exemption or adapted should no supplies have been reported for some but not all Member States of exemption.
33. Should a taxable person established in a Member State be granted access to the cross-border exemption, the VAT Committee **almost unanimously** agrees that in the case of prior use in that Member State, the Member State of establishment shall for the identification of that taxable person reactivate the EX number previously allocated.