

Position Paper

Review of existing legislation on VAT reduced rates

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The Federal Association for Information Technology, Telecommunications and New Media (BITKOM) represents more than 1,700 companies in Germany. Its 1,100 direct members generate a sales volume of 135 billion Euros annually and employ 700,000 people. They include providers of software and IT services, telecommunications and Internet services, manufacturers of hardware and consumer electronics, and digital media businesses. BITKOM campaigns in particular for a modernization of the education system, for an economic policy oriented to innovation and a modern Internet policy.

BITKOM is pleased to take this opportunity to comment the current review of existing legislation on VAT reduced rates. In essence, we observe an unjustified unequal treatment with regards to VAT charging to printed books and e-books that should be rectified to foster a digital single market for creative works. With this in mind, the current considerations should be extended to charging of reduced VAT rates to musical and audio-visual works, as well.

Question 1: 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.

Member States charge books with different VAT rates, depending on their mode of publication. Germany, for instance, applies a rate of 7% VAT to printed books and 19% VAT to e-books. The two different VAT rates are employed, even if the content of a publication is exactly the same. This unequal treatment is not justifiable. It is rather detrimental for electronic media and limits the diffusion of electronic content. All books irrespective of the format in which they are presented should non-discriminatorily benefit from the same reduced VAT rate of 7%. The cultural content and educational value is the same whether delivered in digital or printed form. E-books offer great benefits to consumers, publishers, authors, retailers. They encourage reading, allow convenient and easy access to a broad range of culturally diverse content and provide new opportunities and revenue streams for publishers and authors.

In Germany, the e-book market segment is still nascent, but has significant growth potential, particularly if e-books are priced according to customer expectation. Applying a reduced VAT rate would allow a pricing of e-books that meet customer expectation, which would help drive the acceptance of e-books. The application of the regular VAT rate, in contrast, has the opposite effect. It reduces the margin in a disproportionate way, which in consideration of the fact that book publishers and service providers have to invest into this new market segment (e.g. creating new business processes, new technical requirements etc.) would hinder the development of this evolving and promising market segment.

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BITKOM is aware that two member states (namely France and Luxemburg) have decided to apply a reduced VAT rate to e-books. The compliance of this practice with European law (VAT Directive 2006/112/EC) is yet to be confirmed by the European Court of Justice. Nevertheless we support the approach of these two Member States and advocate its implementation throughout the European Union, because it helps to open the access to new media and to cultural content for a large number of European citizens. Furthermore it eliminates market distortion because of differences in the tax systems.

Question 6 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?

We believe that the starting point for reform of the VAT rate strategy should be the consumer's experience with and expectations of a product, including its retail price. The current differences in VAT rates across Europe hinder that objective. The application of standard VAT rates on digital products may have the perverse effect of making digital products more expensive than their physical equivalent, deterring consumers from buying the digital versions of these products. This effect is magnified as consumers reasonably expect to pay a lower price per unit for digital content as a result of lower production and distribution costs in comparison to similar or identical physical goods.

The current VAT rate structure therefore creates a barrier for consumers who should be able to benefit from a genuine digital single market in buying both physical and digital products at the best possible price from any supplier across Europe.

Therefore, equal treatment of similar or identical physical and digital version of a product should be a priority in order to support customer choice and adoption and to stimulate investments in technology, platforms and products. The VAT rate structure should seek to respond to and support this objective, irrespective of the format of a particular product or the means of distribution. This would be achieved best by a broad definition in the VAT Directive. A broad-based definition is also more likely to be future-proof and support the development of new products and platforms. To ensure legal certainty and equal treatment it should be complemented by an executive order with binding interpretation rules.

In addition, the new EU VAT rate policy for e-commerce related services should be aligned with the policy objectives of supporting innovation, economic growth and maintenance and creation of employment in the EU. In doing so it should also consider the cost of compliance, especially for SMEs that want to engage in cross-border trade in the Digital Single Market.

Question 7 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?

E-books constitute an emerging and promising segment. In the same way as their physical counterpart, e-books help spreading information, support education and promote culture in society. The content is the same, only the format is different (digital or physical). The additional functionality such as links to further

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information within the text reflects nothing more than footnotes or endnotes in a paper book. Therefore, VAT rates on physical and digital books should be aligned – there is no objective justification for a discriminatory treatment.

By aligning the VAT rates for both physical and digital books at reduced rates, consumers will be able to freely choose between digital and physical versions based on the content and their preferred “reading” experience.

We believe that a European wide definition of (e-)books is not necessary for achieving a uniform and future proofed approach at EU level. Nevertheless it would be helpful to implement a consistent application of the tax rules throughout the European Union. However, as this market segment is still nascent, a future definition should be as broad as possible and should reflect consumers’ expectations and focus on the content and “reading” experience rather than on the means of distribution or technology used.

Question 8 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?

See answer to question 7

Question 9 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?

The definition is not quite clear on online radio programs and should be revised and made more precise in this respect in order for such programs to fall under the lower VAT rate.