

HARMONISING THE TAX POLICY WITH THE EU. THE FRAMEWORK AND OPPORTUNITIES FOR UKRAINE



Funded by the European Union

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DATE:

15 June 2023

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The research was carried out with the financial support of the European Union. The content of the research is the sole responsibility of the Centre for Economic Strategy and does not necessarily reflect the views of the European Union.

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1. KEY POINTS

The main goal of harmonisation of the tax policy of the EU Member States is to ensure the functioning of the single internal market of the EU – a territory without internal borders, where the free movement of goods, persons, services and capital is ensured.

Non-harmonised indirect taxes, which at their core are a markup to the consumer's final price, can significantly impact the single market. They create barriers to the movement of goods and services, distorting market incentives and competition.

Therefore, the European Commission coordinates and harmonises the policies of Member States regarding indirect taxes, namely value-added tax (VAT) and excise duties. The main instrument for this is the relevant European Union Directives establishing general principles and framework for the application of indirect taxes, as well as individual derogations, or exceptions from the general framework, allowed to EU Member States under appropriate circumstances, and mechanisms for harmonising such exceptions and derogations.

Practical implementation of indirect taxation within the framework of harmonised standards and tax administration remain the authority of EU Member States.

Policy on direct taxation (income, capital, property) remains the responsibility of EU Member States. The European Union establishes only separate harmonised standards for the taxation of enterprises and individuals in view of the principles of the EU single market. Thus, double taxation of the income of individuals within the EU would contradict the principle of free movement of human capital.

We reviewed the current system of VAT rates, mechanisms for obtaining VAT exemptions and derogations from general rules that may be applied during the transition period after the state's accession to the EU, as well as those applied by Member States.

The note contains an overview of special schemes provided in the EU for small enterprises and farmers, in particular, the flat rate mechanism, which has no analogue in the current Ukrainian tax system.

The note also describes the general rules of the excise tax system and specific directives establishing the framework for harmonised excise taxes on alcohol, tobacco, fuel and energy resources, in particular, simplifications for small producers of alcoholic beverages that may be applicable to Ukrainian businesses.

The European VAT system is currently undergoing a reform aimed at adapting to the digital economy, in particular, expanding the role of digital platforms that act as intermediaries between suppliers and consumers and increasing the volumes of digital services.

Among the key changes is the introduction of harmonised Digital Reporting Requirements (*DRRs*) and standardised electronic invoicing. Another important change is the expansion of mechanisms that allow VAT payers supplying goods and services in more than one Member State to register as a VAT payer only once, through the One-Stop Shop. European VAT is also moving towards a definitive system where all transactions are taxed at the place of delivery.

The overview includes references to key legislative instruments, regulations and studies and can be a starting point for delving into specific areas of regulation. Given Ukraine's status as a candidate for EU membership, it is especially important that the widest range of Ukrainian policymakers, experts and entrepreneurs have a systematic understanding of the European harmonised system of indirect taxes and the vector of its reform – for easier integration into the EU single market on the conditions that will ensure rapid development of Ukrainian business, economy, and growth of the welfare of Ukrainians.

2. INTRODUCTION

The Treaty of Lisbon is the foundation of the modern tax policy of the European Union and the document defining its philosophy and goals. It establishes the functioning of the EU single internal market – a territory without internal borders, where the free movement of goods, persons, services, and capital is ensured¹.

Tax provisions are set out in Articles 110–113 of the Treaty. They provide that no Member State will impose on the products of other Member States any taxation in excess of that imposed on similar domestic products and will not use taxes and their refunds for protectionism and export support.

Article 113 establishes that the Council of Europe shall adopt provisions necessary for the harmonisation of legislation concerning indirect taxation to the extent necessary to ensure the functioning of the internal market and to avoid distortion of competition.

The EU tax system has two components: direct and indirect taxes.

Policy on direct taxation remains the responsibility of EU Member States. Direct taxes include taxation of personal and corporate income, wealth and capital (including property). The European Union establishes only certain harmonised standards for the taxation of enterprises and individuals in view of the principles of the EU single market (for example, double taxation of the income of individuals within the EU will be contrary to the principle of free movement of human capital), and the Member States take joint measures to prevent tax optimisation and double taxation.

At the same time, the policy concerning indirect taxation is determined by the bodies of the European Union. Indirect taxes are established through the price markup paid by buyers of goods and services and are paid to the budget by sellers or producers. Therefore, significant differences between the systems and rates of indirect taxes of Member States would give entrepreneurs of individual countries an unfair advantage and would distort competition in the EU single market.

Therefore, the European Commission coordinates and harmonises legislation on value-added tax and excise duties. The main instrument for this is the relevant European Union Directives, which establish general principles and framework for applying indirect taxes, as well as individual derogations, or exceptions from the general framework, allowed to EU Member States under appropriate circumstances.

Practical implementation of indirect taxation within the framework of harmonised standards remains the authority of EU Member States.

We will focus on the two main EU indirect taxes, VAT and excise duties, and explore their legislative framework established by the *EU acquis* to better understand the existing space and limitations for implementing national tax policy in the context of harmonising the Ukrainian tax system with EU requirements.

¹ Article 26, Treaty on the Functioning of the European Union, https://eur-lex.europa.eu/eli/treaty/tfeu_2012/oj

3. VALUE ADDED TAX

3.1 BACKGROUND INFORMATION

The national legislation of Member States concerning value-added tax is based, first of all, on the European Directive 2006/112/EC on the common system of VAT². The EU Directive establishes the principles of the VAT system, which can be implemented in different ways at the level of national legislation. The EU Directive clearly establishes derogations available to Member States and the principles of their application.

Today, the EU has a so-called transitional VAT system, as opposed to the definitive system, where the principle of the country of destination already applies to most transactions, while some transactions are still taxed according to the country of origin. This is a legacy of the EU's original intention to build a definitive VAT system based on the country of origin principle, which was abandoned in the 1990s due to the inability to reach a political agreement between Member States.

3.2 RATES

A harmonised rate level is one of the key guarantees for the functioning of the barrier-free EU internal market without distorting competition.

The VAT Directive defines the types of rates that Member States must apply depending on a number of conditions: (i) standard rates, (ii) reduced rates and (iii) other rates, which are also called derogations because they deviate from the general rules.

3.2.1 STANDARD RATE

Member States shall apply the standard rate but may determine its amount themselves subject to the following conditions:

- the rate may not be less than 15% of the taxable amount (Article 97);
- the rate must be the same for all transactions for the supply of goods and services (Article 96).

Member States may apply a maximum of two reduced rates under the following conditions:

- the rate is at least 5%;
- reduced rates are applicable only to goods and services listed in Annex III of the EU Directive;
- reduced rates shall be applied to goods and services set out in no more than 24 points of Annex III (mostly goods and services that are considered to provide basic needs – supply of food, water, medicine, pharmaceutical products, health care and hygiene products, transportation of persons and some cultural objects (books and periodicals) (Article 98).

What is more, with the adoption of Directive 2022/542 dated 5 April 2022, Member States have been able to set a rate below 5% or apply VAT exemption with the possibility of crediting the input tax credit to goods and services from certain points of Annex III (no more than 7 points in total)

3.2.2 DEROGATIONS

We are also interested in the derogations from the general rules concerning rates. Many EU countries have been granted the right to temporary derogations from the general rules for a transitional period, mainly for

² Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, <http://data.europa.eu/eli/dir/2006/112/oj>

historical reasons, in order to gradually bring national tax legislation in line with the requirements of the VAT Directive. Some derogations are set geographically.

Thus, certain Member States have the right to apply derogations for certain territories (Article 104).

The most interesting example in the context of Ukraine is Greece, which has the right to apply rates that are 30% less than the standard rates of the mainland of the country on several islands and archipelagos, such as the North Aegean (Leros, Lesbos, Chios, Samos, Kos), Cyclades and the Dodecanese. All these islands are located in the Aegean Sea, most of them in close proximity to Turkey (see Figure 1).

Figure 1. Groups of islands belonging to Greece



Source: <https://santorinidave.com/greece-map>

Currently, applicable rates on these islands are 4, 9, and 17%, compared to mainland VAT rates of 6, 13, and 24%, respectively.

Greece received the right to reduced rates for the first time in 2018, motivating the reduction by the migration crisis, provided that these islands continue to accept refugees from third countries. The reduced rate application was supposed to be evaluated every six months, but in 2021, the Greek Parliament fixed permanently reduced rates for five North Aegean islands.³

The experience of Greece may be relevant for the Crimean Peninsula after its de-occupation.

Portugal can apply reduced rates for the Azores and the Madeira archipelago.

³ <https://news.gtp.gr/2021/06/25/parliament-approves-permanent-vat-reduction-for-5-greek-islands/>

Austria is entitled to apply a second standard rate lower than the standard Austrian one in two remote mountain communes, but today it is a “symbolic” reduction to 19% against the standard rate of 20%.

It is also important that for countries that, as of 1 January 2021, applied reduced rates more widely than those established by Directive 2022/542 of 5 April 2022, a transitional period is provided until 1 January 2032 or until the final VAT system is introduced, whichever occurs first.

3.3 VAT EXEMPTION

Section IX of the European Directive provides an extensive list of transactions for which Member States: (i) are obliged to apply VAT exemption, (ii) may exempt from VAT at their discretion under certain conditions, and (iii) may leave the choice of VAT exemption to entrepreneurs.

The mandatory VAT exemption applies to the supply of some goods and services in the public interest: state postal services, state or similar medical services, dentistry, supply of goods and services directly related to social assistance and support, education, including private tutoring services related to school or university curriculum, non-profit activities of state (public) television and radio broadcasting bodies, cultural events held by state institutions, etc.

States may also exempt transactions of non-governmental entities from VAT in respect of similar transactions on an individual basis when the following conditions are met:

- non-profitability and reinvestment of profits to improve services;
- prices for goods/services are set or limited by the state or are lower than similar prices at commercial institutions;
- the exemption does not distort the market, which worsens the commercial institutions’ position.

The supply of goods to buyers in other countries within the EU, exports outside the EU, maintenance and fuelling of international vessels and aircraft and other transactions are also VAT-exempt (with some exceptions).

3.4 DEROGATIONS

Member States may obtain authorisation from the European Council for derogation from the common VAT rules under Article 395 of the VAT Directive to simplify the procedure for collecting VAT or to prevent tax evasion or avoidance.

For this purpose, Member States submit an application to the European Commission, which may dismiss the requested derogation or submit a proposal to the European Council for approval.

However, measures intended to simplify the procedure for collecting VAT may not reduce the Member State’s tax revenues.

3.5 SPECIAL SCHEMES

European VAT laws provide for some special schemes aimed at simplifying tax compliance for certain types of businesses and transactions.

3.5.1 SPECIAL SCHEMES FOR SMALL ENTERPRISES

Today, three special schemes exist for small enterprises in the EU.

- (i) Simplified VAT charging and collection

Member States may, after consulting the VAT Committee of the Council of Europe, apply simplified procedures for charging and collecting VAT for small enterprises, such as flat-rate tax to their turnover with the loss of VAT credit right (flat-rate scheme) (Article 281 of Title XII “Special Schemes”). See Section 3.6.2, “Special Scheme for Farmers,” for a detailed description of the flat-rate scheme.

(ii) VAT exemption (Articles 283–287 of the VAT Directive)

Member States may exempt businesses with less than a certain annual turnover from VAT. VAT exemption is voluntary, and small enterprises may exercise the option for a simplified or common VAT system with partial/graduated tax relief if applicable in their country of registration.

Interestingly, current provisions of the VAT Directive that establish a limit on annual turnover for the application of VAT exemption for transactions were set up in 1977 by Directive 77/388/EEC⁴.

These provisions allowed Member States of the European Economic Community (EEC), which, as of 17 May 1977, exempted small enterprises with annual turnover higher than ECU 5,000⁵, to maintain this limit and raise it to maintain the value in real terms while the rest of then Member States set a limit of ECU 5,000 (now EUR).

For states which acceded to the EEC or EU after this date, permissible annual turnover limits for VAT exemption were set separately after accession negotiations and based on the simplified system terms (if any) in force at the time of accession and ranged from ECU/EUR 10,000 (Greece, Portugal, Poland, etc.) to EUR 37,000 (Malta).

Given the insufficiency of such limits, most states have subsequently asked the European Commission for authorisation to increase the annual turnover limit for small enterprises. As of 1 April 2023, the highest annual turnover limits were EUR 85,000 in the Czech Republic, Hungary, Italy, and Poland and EUR 88,500 in Romania⁶. All relevant authorisations approved by decisions of the Council of Europe are temporary, for 2–3 years, and are subject to extension by separate decisions.

The existing scheme is outdated and does not reduce the administrative burden on small enterprises, as it was designed for a VAT system based on the principle of taxation in the state of origin.

It exempts only companies registered in the same country where VAT liabilities arise. This complicates competition for small enterprises registered in other countries supplying goods/services to the market of the country applying the VAT exemption.

Table 1. Annual turnover limits for VAT exemption at the time of entry into force of Directive 77/388/EEC or at the time of accession to the EU and the current limits⁷

Date of accession to the EU	Country	Initial limit	Currency	Limits as of 1 April 2023, EUR
1 July 2013	Croatia	35,000	EUR	45,000
1 January 2007	Bulgaria	25,600	EUR	51,130
1 January 2007	Romania	35,000	EUR	88,500
1 May 2004	Cyprus	15,600	EUR	15,600

⁴ Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes – Common system of value added tax: uniform basis of assessment, <http://data.europa.eu/eli/dir/1977/388/oj>

⁵ European Currency Unit

⁶ VAT derogations schedule, 1 April 2023, https://taxation-customs.ec.europa.eu/system/files/2023-05/vat_index_derogations_2023_en.pdf

1 May 2004	Czech Republic	35,000	EUR	85,000
1 May 2004	Estonia	16,000	EUR	40,000
1 May 2004	Hungary	35,000	EUR	85,000
1 May 2004	Latvia	17,200	EUR	40,000
1 May 2004	Lithuania	29,000	EUR	55,000
1 May 2004	Malta	14,600–37,000	EUR	30,000
1 May 2004	Poland	10,000	EUR	85,000
1 May 2004	Slovakia	35,000	EUR	35,000
1 May 2004	Slovenia	25,000	EUR	50,000
1 January 1995	Austria	35,000	ECU	35,000
1 January 1995	Finland	10,000	ECU	15,000
1 January 1995	Sweden	10,000	ECU	10,000
1 January 1986	Portugal	10,000	ECU	10,000
1 January 1986	Spain	10,000	ECU	10,000
1 January 1981	Greece	10,000	EUA ⁸	10,000
1 January 1973	Denmark	5,000	EUA	5,000
1 January 1973	Ireland	5,000	EUA	5,000
25 March 1957	Belgium	5,000	EUA	25,000
25 March 1957	France	5,000	EUA	5,000
25 March 1957	Germany	5,000	EUA	5,000
25 March 1957	Italy	5,000	EUA	85,000
25 March 1957	Luxembourg	5,000	EUA	35,000
25 March 1957	Netherlands	5,000	EUA	25,000

Source: CES analysis based on the European directives and the derogation register (see notes 6 and 8)

A new special VAT scheme for small enterprises⁹ that is more consistent with the new realities of the EU single market will come into force on 1 January 2025.

All Member States will be entitled to apply the VAT exemption to transactions of small enterprises with an annual turnover of up to EUR 85,000. The exemption will also apply to small enterprises registered in other EU countries if their aggregate annual turnover in all EU countries is less than EUR 100,000. The new rules also provide for a One-Stop Shop in the country of registration for VAT exemption and simplified reporting.

(iii) Graduated/partial tax relief (Articles 282–292 of the VAT Directive)

⁸ The European Unit of Account (EUA) was a unit of account used in the European Communities from 1975 to 1979, when it was replaced at parity by the ECU, which, in turn, was replaced at parity by the euro in 1999.

⁹ Council Directive (EU) 2020/285 of 18 February 2020 amending Directive 2006/112/EC on the common system of value-added tax as regards the special scheme for small enterprises and Regulation (EU) No. 904/2010 as regards the administrative cooperation and exchange of information for the purpose of monitoring the correct application of the special scheme for small enterprises, <http://data.europa.eu/eli/dir/2020/285/oj>

Member States may introduce partial tax relief for small enterprises that go beyond the criteria for full VAT exemption. Such enterprises must register for VAT and receive an exemption on the part of their turnover. As turnover increases, the exemption gradually decreases until the limit is reached. Today, only a few countries are applying such exemptions.

3.5.2 SPECIAL SCHEME FOR FARMERS

Member States may apply a flat-rate scheme for small farmers instead of VAT (Articles 295–305 of the VAT Directive). The main purpose of the scheme is to reduce the administrative burden while relatively maintaining neutrality in taxation and preventing tax evasion schemes.

A flat-rate scheme shall be applied to crop production (growing cereals, vegetables, fruit, flowers and ornamental plants, viticulture, production of mushrooms, spices, seeds, and running of nurseries), stock farming, forestry, fisheries, and fish, shellfish, and frogs farming; agricultural services such as field work, packaging, crop processing and storage, rental and maintenance of agricultural equipment, field cultivation and irrigation.

The VAT Directive recommends allowing a flat-rate scheme for small farmers in cases where the application of the normal VAT arrangements or special schemes for small enterprises may “give rise to difficulties” and excluding from this scheme certain categories of farmers and agricultural service providers for whom the normal VAT arrangements or special schemes for small enterprises are not likely to give rise to significant administrative difficulties. However, farm enterprises may choose one of the above schemes at their discretion (Article 296 of the VAT Directive).

Farmers who decide to switch to a flat-rate scheme are exempt from VAT. To compensate for the loss of the input tax credit, a flat rate is applied to their transactions, calculated for the agricultural sector based on national statistical accounts for the three preceding years. The rate is based on sectoral input-output tables showing the costs of farm enterprises subject to VAT.

Farmers add the flat rate to sales, in which case, their buyers include the rate in their VAT credit based on invoices issued by farmers, and farmers retain the proceeds as compensation for input VAT paid. Alternatively, buyers of farm products issue invoices to farmers, which is the basis for VAT compensation by the state.

Farmers shall be entitled to VAT compensation at a flat rate. Similarly, importers from EU countries applying the flat rate can apply for VAT compensation from the exporter’s Member State.

VAT compensation at a flat rate cannot exceed the amount of farmers’ input VAT.

The flat rate does not apply to sales to VAT-exempt individuals or other farmers applying the scheme.

Member States notify the European Commission of respective flat rates, and the latter monitors whether the scheme is used to provide hidden subsidies to agriculture.¹⁰

3.5.3 MARGIN SCHEME FOR SECOND-HAND GOODS

Dealers of second-hand goods, antiques, works of art and collectors’ items may opt for this scheme (Articles 311–325 and 342–343).

Under this scheme, dealers pay VAT on the difference between the purchase and sale prices, i.e., on the margin, while transactions are not subject to VAT and do not entitle them to a tax credit.

If VAT was paid on purchase (e.g. from the work’s author or seller under the common VAT system), the dealer might apply standard VAT rules to the goods concerned instead of the special scheme.

¹⁰ Cnossen, S. VAT and agriculture: lessons from Europe. *Int Tax Public Finance* 25, 519–551 (2018), <https://doi.org/10.1007/s10797-017-9453-4>

3.6 VAT IN THE DIGITAL AGE

In December 2022, the European Commission proposed modernising and digitalising the VAT system to reduce the burden on business and prevent fraud – “VAT in the Digital Age”.

The proposal, which has already been reviewed by the European Parliament’s task force on indirect taxation and has a good chance of being adopted, includes draft changes to the VAT Directive¹¹ and two related regulations^{12 13} that address three important issues of the European VAT system.

3.6.1 DIGITAL REPORTING REQUIREMENTS (DRR)

Today, the VAT Directive does not provide for digital reporting. Some Member States have been authorised by the European Commission to derogate from the general rules and have introduced one type of digital reporting¹⁴:

- clearance e-invoicing (Italy);
- real-time reporting (Spain and Hungary);
- SAF-T¹⁵ reporting (Lithuania, Poland, and Portugal);
- VAT listing¹⁶ (Bulgaria, Czech Republic, Estonia, Croatia, Latvia, and Slovakia).

France will introduce e-invoicing, and Greece will introduce an automated VAT listing system in 2024.

E-invoicing and real-time reporting are continuous transaction control systems, while SAF-T and VAT listing are periodic transaction control systems. Accordingly, they have different tax compliance costs.

According to a study commissioned by the European Commission¹⁷, the annual cost of tax compliance for micro businesses ranges from EUR 200 for a periodic control system to EUR 500 for a continuous control system. For larger companies, the cost amounts from EUR 2,000 to EUR 15,000 for e-invoicing systems.

However, the biggest problem is that all current systems are not harmonised, which increases the costs of complying with national reporting requirements for companies operating in multiple EU countries. According to the same estimates, due to the fragmentation of VAT reporting systems, multinational companies’ losses reach EUR 1.6 billion and will increase with the introduction of such systems by other countries.

The lack of harmonisation of national systems and the outdated system for reporting transactions between countries within the single market (recapitulative statements) also complicate the fight against tax fraud, in particular carousel schemes involving companies from several Member States. Annual VAT fraud losses in EU countries are estimated at EUR 22–27 billion.

Changes proposed by the EC include:

¹¹ Proposal for a Council Directive amending Directive 2006/112/EC as regards VAT rules for the digital age, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52022PC0701>

¹² Proposal for a Council Implementing Regulation amending Implementing Regulation (EU) No. 282/2011 as regards information requirements for certain VAT schemes, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52022PC0704&qid=1670828009652>

¹³ Proposal for a Council Regulation amending Regulation (EU) No. 904/2010 as regards the VAT administrative cooperation arrangements needed for the digital age, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52022PC0703&qid=1674472194063>

¹⁴ VAT in the Digital Age Executive Summary, European Commission Report, p. 8

¹⁵ Standard Audit File for Tax is an international standard for exchanging accounting data as described by the Organisation for Economic Co-operation and Development (OECD)

¹⁶ Regular submission of data on issued and received tax invoices to a tax administration, often along with the VAT return – see “VAT listings – implementation in EU Member States Report, by Fiscalis Project Group 074”, https://taxation-customs.ec.europa.eu/system/files/2018-01/vat_listings_in_eu_en.pdf

¹⁷ VAT in the Digital Age Executive Summary, European Commission Report

- at the first stage, introducing standardised digital reporting requirements without prior transaction authorisation by tax authorities and introducing standardised e-invoicing for B2B and B2G transactions between countries within the EU single market (intra-community transactions) without the condition of accepting invoices by recipients; and
- at the second stage, from 2028, mandatory standardised e-invoicing, and mandatory digital reporting, waiving the current system of reporting cross-border transactions between EU Member States with aggregation in terms of counterparties (recapitulative statements).

3.6.2 VAT TREATMENT OF THE PLATFORM ECONOMY

During the last decade, the segment of platforms – multi-sided transactions where digital platforms facilitate the connection between sets of providers and consumers of goods and services – has been growing rapidly both in the EU and Ukraine.

The largest sub-sectors include e-commerce (marketplaces), transport (car sharing, delivery services, and trip booking), accommodation (accommodation booking, renting, and home sharing), finance (crowdfunding, loans, and investing), professional and household services and online advertising.

The current design of the harmonised VAT system is poorly adapted to the platform economy. In particular, it does not provide certainty as to the taxable status of providers operating via digital platforms, the nature of platforms' facilitation services and their place of supply, and the reporting and record-keeping obligations. For example, the approach of treating platform services as e-services prevails among Member States, while some Member States consider these services as auxiliary.

A second problem is enforcing VAT compliance by the platform economy participants, in particular, because of gaps and heterogeneous accounting and reporting requirements in Member States' national legislation.

The third problem is the lack of VAT equality and neutrality in the platform economy. Some providers through platforms are small enterprises applying special schemes provided for them (see Clause 3.5.1). At the same time, by using platforms, they benefit from large network effects by being VAT-exempted, which distorts competition and contradicts the principles laid down in the special schemes for small enterprises.

The proposed changes provide that:

- in 2025, platforms' intermediary services to non-taxable persons will be qualified as intermediary services (rather than e-services, as they are now treated by individual Member States). Accordingly, the place of supply of the intermediary service will be the place of supply of the transaction itself between the provider and the consumer under the VAT rules of the Directive;
- a deemed supplier regime will be introduced for the transport and accommodation sectors of the platform economy. Under this regime, if the service provider is not a VAT payer, the intermediary platform will charge and pay VAT on the relevant transactions;
- later, the deemed supplier regime will be extended to all B2B and B2C transactions for the supply of goods manufactured in the EU;
- currently, an optional one-stop shop for importers (Import One-Stop Shop, IOSS) will become mandatory for the supply of certain categories of imports via platforms.

3.6.3 SINGLE VAT REGISTRATION AND ONE-STOP-SHOP (OSS)

Changes to the "e-Commerce VAT" package came into force in the EU on 1 July 2021. In particular, the intra-EU distance-selling threshold, including telecommunications and electronic services, for the application of

the destination principle was reduced to EUR 10,000, and the import VAT exemption for goods valued at up to EUR 22 was terminated.

At the same time, mechanisms of the One-Stop Shop (OSS) and the above-mentioned Import One-Stop Shop were introduced. These allow businesses to declare and pay VAT incurred on some business-to-consumer sales (B2C) without registering in the destination Member States, and thereby reduce the scope of situations requiring VAT registration in other EU Member States (for B2B transactions, this was still possible with the reverse-charge mechanism which imposed the obligation to pay VAT on the buyer in the destination country).

However, there remain some situations that require registration in the country of supply and are becoming more widespread with the development of e-commerce, in particular imported goods.

So, the proposed changes to the “VAT in the Digital Age” package include:

- extension of the OSS scheme to supplies of goods followed by installation or assembly, sales aboard aircraft and ships, energy supplies and domestic supplies of goods;
- opportunity for sellers of second-hand goods applying the Margin Scheme (see Clause 3.5.3) to opt to register through the OSS scheme and declare and pay VAT for cross-border sales;
- mandatory (instead of optional) application of the VAT reverse-charge mechanism;
- extension of the OSS scheme to move own goods cross-border between EU countries and provide suppliers’ services outside the EU to all non-VAT payers.

4. EXCISE DUTIES

The European Union has a harmonised excise duty system for energy products, alcohol, and tobacco. Specific provisions on the harmonisation of the excise duty structure are set out in the Directives for the relevant categories of goods:

- 2003/96/EC (energy products and electricity);
- 92/83/EEC¹⁸ and 92/84/EEC¹⁹ (alcohol and alcoholic beverages); and
- 2011/64/EU (tobacco).

General provisions applicable to goods subject to excise duty under EU legislation are set out in Excise Duty Directive 2020/262²⁰.

Member States may also impose non-harmonised excise duties on other categories of goods (Clause 3 of Article 1 of the Excise Duty Directive), such as a duty on sweets, a duty on beverage containers, excise duty on passenger cars (Poland), and excise duty on coffee (Germany).

4.1 GENERAL RULES

General rules set out in Excise Duty Directive 2020/262 establish a duty suspension arrangement applicable to the production, processing, holding, storage and movement of excisable goods.

The recast Directive increases the free circulation of excisable goods released for consumption on the single EU market. In particular, it digitally controls the circulation of goods between Member States when excise

¹⁸ Council Directive 92/83/EEC of 19 October 1992 on the harmonization of the structures of excise duties on alcohol and alcoholic beverages, <http://data.europa.eu/eli/dir/1992/83/2022-01-01>

¹⁹ Council Directive 92/84/EEC of 19 October 1992 on the approximation of the rates of excise duty on alcohol and alcoholic beverages, <https://eur-lex.europa.eu/eli/dir/1992/84>

²⁰ Council Directive (EU) 2020/262 of 19 December 2019 laying down the general arrangements for excise duty (recast), <http://data.europa.eu/eli/dir/2020/262/oj>

duty has already been paid in the consignor's country, as has already happened with goods under excise duty suspension.

From 13 February 2023, an electronic simplified administrative document applies to goods with already paid excise duty, and an electronic standard administrative document to goods under excise duty suspension. A transitional instrument – a paper-based simplified document for shipments made before 13 February 2023 – is valid until the end of 2023.

Excise duty on commercial transactions is paid in the country of consumption. For this purpose, excise goods may be transported from one Member State to another with duty suspension until they reach their final destination.

If goods are released for consumption (with the payment of customs duty) in one Member State and moved for consumption in another Member State, a refund system is provided to avoid double taxation.

The principle of taxation in the country of destination applies to distance selling (sale to a consumer in another Member State), so the tax liability for excise duty arises for the seller, and the refund mechanism avoids double taxation.

All transactions before the release of excise goods and the payment of excise duty take place in an excise warehouse.

Excise duty is imposed when excise goods are released for consumption.

Goods released for consumption shall mean:

- the departure of excise goods from a duty suspension arrangement;
- the storage of excise goods outside a duty suspension arrangement where excise duty has not been levied pursuant to the applicable provisions of EU law and national legislation;
- the production, including processing, of excise goods outside a duty suspension arrangement;
- the importation of excise goods, unless the excise goods are placed, immediately upon importation, under a duty suspension arrangement.

Excise duty payers are:

- authorised economic operators – warehouses that shall meet some criteria;
- authorised economic operators – registered consignees;
- other persons releasing excise goods.

The excise duty that is valid at the time of release in the country of dispatch is applied.

Each Member State determines the rules for excisable goods production and circulation.

The rules for the movement of goods under excise duty suspension are as follows:

- the movement of goods from the excise warehouse or point of import to other warehouses, the registered consignee or point of export from the EU is allowed;
- (i) a unique identification number of the registered consignor or consignee, (ii) a guarantee from the excise warehouse or consignor (except for energy transportation by pipelines), and (iii) an accompanying electronic document of the Excise Movement and Control System (EMCS) or an alternative paper document, if the system is not available, are required.

The Directive also establishes excise duty exemptions for certain consumers (such as diplomatic and international institutions) and special schemes for certain cases, such as energy transportation by sea.

If excise goods released for consumption in one Member State are transported to another Member State on a commercial basis, excise duty is payable in the destination country. The certified consignee is responsible for payment of the excise duty, provides a guarantee covering the risks of non-payment of excise duty before the

goods are dispatched, gives consent to any checks and is obliged to report within five days after the consignment receipt. The consignment must also be accompanied by an electronic EMCS document.

Member States may, at their discretion:

- set national requirements for fiscal labelling or identification of excise goods;
- exempt small winemakers (up to 1,000 hectolitres per year) from many control procedures;
- establish their own rules for duty-free trade at sea and air ports (until the uniform EU rules are established);
- introduce special mechanisms for goods used for the construction and maintenance of cross-border bridges.

The Directive also authorises the European Commission to adopt delegated acts²¹ and implementing acts²² that:

- set limits for partial natural losses of excise goods (in particular, 0% for tobacco);
- establish procedures for the turnover of electronic administrative documents and their form.

4.2 ALCOHOL

Excise duties on alcohol are governed by two main legislative acts.

4.2.1 DIRECTIVE 92/83/EC AND SIMPLIFICATION FOR SMALL ALCOHOL PRODUCERS

Directive 92/83/EEC describes the structure of excise duties on alcohol and alcoholic beverages, the categories of alcohol and beverages subject to excise duties and the excise duty accrual basis. This directive also contains special provisions such as reduced rates for small breweries and distilleries, individual goods and geographical regions.

This Directive has been amended only three times since its adoption in 1992, twice by the Acts on conditions for the admission of new Member States to the EU (2003 and 2005) and Directive 2020/1151 in 2020, which modernised the provision of the old Directive.

These latest amendments were aimed at simplifying the excise duty administration, primarily for small enterprises. In particular, they include:

- 1) harmonisation of methodology for measuring fractions of dry matter (degree Plato);
- 2) increase of ultimate strength for “low-alcohol” beer (to which lower excise rates apply);
- 3) harmonisation of regulations for the exemption of denatured alcohol from excise duties;
- 4) authorisation of Member States to:
 - establish reduced excise duties for alcohol produced in small quantities by small independent producers. Independent small producer status is confirmed by an annual certificate issued by the Member State, while the Member States may allow self-certification of producers to reduce the administrative burden. Member States are also obliged to recognise such certificates issued by other EU Member States;
 - establish reduced rates for fruit ethyl alcohol produced in fruit producers’ distilleries;
 - exempt from excise duties or establish reduced rates for a limited volume of production of traditional/regional alcohol from ethyl alcohol produced from fruit grown and supplied by individuals from land possessed by them. The prerequisites for such exemptions were proper

²¹ Delegated acts mean non-legislative acts adopted by the European Commission that serve to amend or supplement the non-essential elements of the legislation, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM:delegated_acts

²² Implementing acts mean non-legislative acts adopted by the European Commission that create uniform conditions for the implementation of the European legislative acts, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM:implementing_acts

control of production, consumption, and prevention of sales abroad, in particular through registration of such producers and their distillers. Similar rules were provided only for fermented beverages such as beer and wine.

The European Commission also issued Regulation 2021/2266²³ in 2021, laying down rules for the certification and self-certification of small independent producers of alcoholic beverages.

4.2.2 MINIMUM RATES FOR EXCISE ALCOHOL

Directive 92/84/EEC sets minimum rates for categories of excise alcohol and reduced rates for individual regions of Greece, Italy, and Portugal. European legislation only sets minimum excise rates, so Member States can set any higher rates at their discretion.

Table 2. Minimum rates set by the Directive

Product	Excise duty unit	Minimum rate
Beer	Hectolitre per degree Plato	EUR 0.748
	OR hectolitre per degree of pure alcohol	EUR 1.87
Wine (including sparkling one)	Hectolitre of production	EUR 0
Intermediate products	Hectolitre of production	EUR 45
Alcohol	Hectolitre of pure alcohol	EUR 550

Source: Council Directive 92/84/EEC of 19 October 1992 on the approximation of the rates of excise duty on alcohol and alcoholic beverages

4.2.3 DEROGATIONS IN THE APPLICATION OF EXCISE TAXES ON ALCOHOL AND THEIR SUBSTANTIATION

Today, there are two current European Commission decisions which allow France²⁴ and Portugal²⁵ to apply reduced rates of excise duty (below the minimum rates under Directive 92/84/EEC) on rum produced in certain regions of these countries. These decisions are interesting because of their reasoning given in preambles as examples of an effective argument for obtaining preferential treatment in the EU single market, as well as examples of EC control over the preservation of the competitive equilibrium in the single market.

Since the mid-2000s, France and Portugal have applied to the European Commission for authorisations for relevant derogations from general rules and extensions of these authorisations. For example, France is authorised to apply an excise duty rate of up to 50% less than the one set by Directive 92/84/EEC on rum produced in Guadeloupe, French Guiana, Martinique, and Réunion from local sugar cane, with an annual quota of 153,000 hectolitres of pure alcohol.

²³ Commission Implementing Regulation (EU) 2021/2266 of 17 December 2021 laying down rules for the application of Council Directive 92/83/EEC as regards the certification and self-certification of independent small producers of alcoholic beverages for excise duty purposes, http://data.europa.eu/eli/reg_impl/2021/2266/oj

²⁴ Council Decision (EU) 2020/1791 of 16 November 2020 authorising France to apply a reduced rate of certain indirect taxes on 'traditional' rum produced in Guadeloupe, French Guiana, Martinique and Réunion, <https://eur-lex.europa.eu/eli/dec/2020/1791/oj>

²⁵ Council Decision (EU) 2020/1790 of 16 November 2020 authorising Portugal to apply a reduced rate of excise duty on certain alcoholic products produced in the autonomous regions of Madeira and of the Azores, <https://eur-lex.europa.eu/eli/dec/2020/1790/oj>

France substantiates the need for derogations by the fact that distilleries in specified remote regions, given the small local market, can only develop with access to the mainland market (which accounts for 65% of sales). At the same time, the competitiveness of their traditional rum is negatively affected by two factors: high taxes and high production costs.

The high tax burden on the beverage bottle is due to the high alcohol content in rum (up to 59°) and a traditionally large container. The high production cost is caused in particular by the distilleries’ small size and the impact of the topography and remote location of regions on the cost of growing raw materials and other components. Based on France’s application, the European Commission concluded that, given the increased costs to producers and the moderate quota, the fiscal advantage to reduce excise duties on rum would not harm the EU internal market but encourage the development of remote regions in France.

France must also submit a monitoring report to the European Commission two years before the next review of the decision so that the European Commission can examine whether the prerequisites for extending the derogation authorisation still exist. The data in the monitoring report are disclosed in annexes to the decision and include components of production cost, such as the cost of sugar cane and logistics, as well as information on all other benefits and subsidies granted to producers by the state.

A similar approach of temporary derogations from the uniform tax rules with extension based on thorough monitoring of clearly defined criteria applies to the vast majority of other derogations in the indirect tax system of the EU single market.

4.3 TOBACCO

Directive 2011/64/EU²⁶ establishes mandatory minimum excise duty rates for tobacco products, consisting of a specific component – a fixed amount per 1,000 cigarettes, and the ad valorem component – a percentage of the maximum retail price. In addition, the excise duty shall be no less than EUR 90 per 1,000 cigarettes and at least 60% of the weighted average retail price. However, Member States that impose an excise duty of more than EUR 115 per 1,000 cigarettes may not adhere to the weighted average price criterion.

4.4 ENERGY

Minimum excise duty rates for fuel and energy carriers are set by the Energy Taxation Directive 2003/96/EC²⁷. Member States can set higher rates at their discretion.

Table 3. Minimum rates for motor fuels in the EU

Fuel	Excise duty unit	Rate
Leaded petrol	EUR per 1,000 litres	421
Unleaded petrol	EUR per 1,000 litres	359
Gas oil	EUR per 1,000 litres	330
Kerosene	EUR per 1,000 litres	330
LPG	EUR per 1,000 kg	125

²⁶ COUNCIL DIRECTIVE 2011/64/EU of 21 June 2011 on the structure and rates of excise duty applied to manufactured tobacco, <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:176:0024:0036:EN:PDF>

Natural gas	EUR per gigajoule	2.6
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Source: COUNCIL DIRECTIVE 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity

To compare, from 1 July, the current excise rates for petrol and gas oil in Ukraine will be EUR 175 per 1,000 litres and EUR 129.5 per 1,000 litres for LPG.