



UEPC POSITION PAPER

PROPOSAL FOR A COUNCIL DIRECTIVE AMENDING DIRECTIVE 2006/112/EC AS REGARDS RATES OF VALUE ADDED TAX

Brussels, 20 March 2018

Introduction

The European Union of Developers and House Builders ('UEPC') would like to share its comments on the European Commission's proposal amending Directive 2006/112/EC as regards rates of value added tax ('VAT Directive'), published on 18 January 2018.

Review

The UEPC welcomes the new approach adopted by the European Commission, which marks a clear break with the past and provides for greater autonomy at the Member State level to determine the application of VAT rates; including for any super reduced rates (lower than 5%). The UEPC would argue that this new approach paves the way for the creation of a mutually supportive common framework for all Member States to adhere to equally when applying VAT rates to goods and services; and clearly recognises that the establishment of such a framework is crucial to developing and maintaining a fair and level playing field for all goods and service providers within the EU, regardless of whether they are public or private bodies.

In particular, the UEPC supports the European Commission's decision to replace Annexe III ('List of goods and services to which the reduced rates referred to in Article 98 may be applied') with Annexe IIIa ('List of supplies of goods and services referred to in Article 98(3) which the reduced rates **cannot** be applied'). This revised Annexe would allow for the constitutive creation of a level-playing field within Member States for housing developers by effectively widening the possible application of super reduced VAT rates to *all* forms of housing – as opposed to only being applicable to *'the provision, construction, renovation and alteration of housing, as part of a social policy'* as previously indicated in point 10 of Annexe III – so long as the application of any reduced VAT rates would benefit *'the final consumer and... in a consistent manner, an objective of general interest'*.



Assessment

1. Final consumer and general interest (art. 98.3)

The new article 98.3 states that *'Reduced rates and exemptions applied pursuant to paragraphs 1 and 2 shall only benefit the final consumer and shall be applied to pursue, in a consistent manner, an objective of general interest.'*

The "final consumer" is the person who acquires goods or services for personal use, as opposed to an economic activity, and therefore bears the tax liability. *Per se*, housing could be defined as benefitting the final consumer, as it provides EU citizens with a final product, namely a house, and bears the tax on the acquisition of real estate.

As the new Directive clearly states, Member states should be allowed "to continue to apply reduced VAT rates that are currently granted as derogations under Chapter 4 of Title VIII of Directive 2006/112/EC" (Recital 3). In theory, this would therefore mean that Luxembourg and Italy could continue to apply super reduced rates to housing for first-time buyers. It would also mean that, in practice, this provision could be opened up to all Member States.

The UEPC believes that all types of housing benefit the final consumer. The European Union recognises in its Charter of Fundamental Rights (2012/C 326/02) *'the right to social and housing assistance'* (art. 34.3). Furthermore, the Council of Europe's European Social Charter (3.V.1996) recognises that *'everyone has the right to housing'* (Art. 31).

Therefore, the UEPC welcomes the revised wording in the newly created Article 98.3. The concept of general interest must be defined by EU Member States, with the European Commission playing the crucial role of verifying and ensuring that this concept is not at odds with EU competition rules, thereby creating a level-playing field between private and public bodies. Allowing Member States to apply a super reduced rate to first-time buyers, which is already the case in Luxembourg or Italy, is thus an objective of general interest and will stimulate growth in the European Union.

The UEPC would like to call on the Commission to ensure that competition rules are respected between private and public bodies, especially in so-called 'closed systems', where private developers cannot build social housing.



2. New Annex IIIa ('List of supplies of goods and services referred to in Article 98.3')

The UEPC welcomes the idea of a negative list to replace Annex III of the Directive 2006/112/EC. It gives a clear incentive to Member States to apply reduced or super reduced rate to all housing, not only as part of a social policy.

There is increasing consumer demand for affordable, good quality housing that the public sector (alone) does not have the capacity to provide. Allowing the application of reduced rates to all types of housing will allow all developers to supply this demand, benefitting the final consumer.

The UEPC would be happy to discuss its comments with any interested parties. All enquiries should be directed to the Secretariat at info@uepc.org or +32 28 93 97 26.