

## EBF CONTRIBUTION TO THE CONSULTATION REVIEW OF EXISTING LEGISLATION ON VAT REDUCED RATES

(Register of Interest Representatives N°: 9031106115-62)

Brussels, 26 December 2012

### IDENTIFICATION OF THE STAKEHOLDER

- You are included in one of the following groups:

#### European Association

- Name of your organisation/ entity/ company

European Booksellers Federation.

- Country of domicile Belgium

- Brief description of your activity or your sector

Representation of booksellers interests with the European institutions, umbrella organization for booksellers associations

- Do you agree to the publication of your personal data?

Yes

- Do you agree to have your response to the consultation published along with other responses?

Yes

The European Booksellers Federation [“EBF”] is a non-commercial umbrella organisation representing national Booksellers Associations in the European Union within the EU and the EEA. Through its members, EBF speaks on behalf of more than 25,000 individual booksellers. Depending on the country, booksellers represented include independent booksellers, national bookshop chains, supermarkets, internet retailers and other cultural or general outlets selling books.

The objectives of EBF are to:

- Enhance the image of ‘The Bookseller’
- Strengthen links between booksellers’ associations
- Assist booksellers’ associations in promoting excellence in the profession
- Represent the interest of the bookselling trade in the European institutions.

In view of this last point, EBF very much welcomes the opportunity to send comments on the Consultation paper, *Review of existing legislation on VAT reduced rates*. EBF has chosen, as suggested by the Commission, to reply only to the questions which are of concern to our members.

*Q1 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.*

EBF has noted that France and Luxembourg have taken the unilateral decision to apply reduced VAT to electronic books. Whilst EBF has reasons to rejoice that two Member States have understood the importance of applying favourable tax regimes to paper and electronic books, it is also aware that booksellers operating in Member States which comply with the present European legislation are, for the time being, strongly disadvantaged.

This means in practice that until 31.12.2014, e-retailers based in Luxembourg will be applying a 3% VAT rate to e-books sold to non-taxable persons anywhere in the European Union.

This creates a very strong competitive disadvantage for those of the e-book markets where large international e-retailers based in Luxembourg are dominant. The cross-border nature and instant fulfilment of internet commerce means this anomaly in VAT rates is much more keenly felt than were it simply the case of different rates applying to physical books in bookstores: for example, a €10 book inclusive of 20% VAT will retail for €8.58 inclusive of 3% VAT if sold from Luxembourg.

EBF has noted that the Commission is aware of the situation and has initiated procedures to put an end to this situation.

#### **SIMILAR GOODS AND SERVICES SHOULD BE SUBJECT TO THE SAME VAT RATE**

This third guiding principle raises the issue of certain goods or services to which Member States may apply a reduced rate in accordance with Annex III and for which, as a result of technological development, a comparable product is available on-line.

The following topics obviously require further examination in the light of the third guiding principle:

- on-line publications compared to paper publications (books, newspapers, magazines, etc.) and audio books;
- radio and television broadcasting on-line and off-line.

Considering the increasing development of new technologies, other examples might appear in the future, but parameters which might determine equivalence are not always straightforward.

#### **EBF COMMENT:**

EBF particularly welcomes the statement in the Communication on the Future of VAT issued by the Commission in December 2011 according to which *“similar goods and services should be subject to the same VAT rate and progress in technology should be taken into account in this respect, so that the challenge of convergence between the on-line and the physical environment is addressed”*.

Indeed EBF has always insisted that content, in any format, provides the same cultural and educational benefits to consumers and fully supports an equal treatment for paper and electronic books in terms of taxation.

The EBF position has always been *“Don’t tax reading”* – whatever format the content might be on.

## **IMPACT OF THE CHANGE OF THE PLACE OF SUPPLY RULES ON 1 JANUARY 2015**

On-line publications and on-line radio and television broadcasting are, for the purposes of VAT, considered as electronically supplied services which, according to Article 98(2) of the VAT Directive, are excluded from the scope of reduced VAT rates.

Currently, the place of supply of electronic services by a taxable person established within the EU to a non-taxable person is determined in accordance with the general rule of Article 45 of the VAT Directive, namely the place where the supplier has established his business.

From 1 January 2015, these supplies will, however, be taxed at the rate of the Member State where the consumer is established, independent from the place where the supplier is established. It is for that reason that exploring the potential of applying a reduced rate to these products is in any event to be put in the "after 2015" context. A change in a context where these B2C electronic services would be taxable at the place of establishment of the supplier would indeed be contradictory to the first guiding principle of this review (having distorting effects on the internal market).

Since all electronic services should currently be taxed at the standard VAT rate, the issue of defining what is to be considered an e-book, an on-line newspaper, etc and what is to be considered as a different product has not arisen until now.

The situation is, however, different when considering the possibility of allowing Member States to apply a reduced rate to those products.

For example, were e-books and on-line newspapers and magazines to be added to Annex III with the detailed definitions left to the competence of the Member States, a supplier (both EU and non EU) would not only have to know which Member States apply a reduced rate and which apply the standard rate, but would also have to know what is exactly understood by an e-book, an on-line newspaper and on-line magazine in each individual Member State applying the reduced rate.

This would create an extra complexity, which large companies might overcome at an extra cost, but which might also hinder the development of cross-border activities for smaller companies.

Allowing for the application of a reduced VAT rate for certain electronic services would, in the view of the Commission, require a uniform approach at an EU level in the definition of the qualifying products.

### **EBF COMMENT:**

EBF welcomes the change of legislation to take place on 1.1.2015, as it will eventually put an end to the unfair competitive advantage of major e-tailers based in Luxembourg.

*Q6 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?*

EBF agrees that those electronic services that would qualify for the reduced rate will have to be precisely defined in a uniform way at EU level. EBF agrees that not defining precisely what is understood by e-books would be damaging for the development of cross-border activities for smaller companies, whilst large international e-retailers might have the means to take advantage of a lack of precision in the definition of an e-book to circumvent rules.

EBF concurs with FEP in proposing a simple adaptation of Annex III:

“supply including on loan by libraries, of books (including brochures, leaflets and similar matter, children’s picture, drawing or colouring books, music written or in manuscript form, maps and hydrographic or similar charts), newspapers and **serials, accessible on all means of support and formats (including – but not limited to – print, digital, audio) and via any technological means (both offline and online)**, other than material wholly or predominantly devoted to advertising”.

## **7.2. BOOKS COMPARED TO E-BOOKS**

In the majority of Member States, books are currently subject to a reduced VAT rate, or even a super reduced or zero rate in certain Member States. Audio books can also be covered by this reduced rate.

However, there are differences amongst Member States when considering what is covered under the reduced rate and what is not.

An e-book could be defined in general terms as an electronic version of a printed book (or audiobook) which can be read on a computer or a specifically designed handheld device.

However, technology affects the mere nature of books, both in the physical world (paper versions are at times bundled with CD ROMs or access codes for add-ons accessible on-line) and in the online world. In between worlds, print-on-demand services contribute to this blurring of traditional distinctions.

Is an electronic product which contains, besides the content of a printed book, background music or a video clip of an actor interpreting all or part of the text still to be considered as a similar product in the sense of the third guiding principle set out above? Moreover, e-books only function in combination with additional hardware and software, which then also adds additional features. Also, the production and distribution, and the costs related to it, of printed books and e-books are quite different.

Defining e-books for the purpose of qualifying for a reduced VAT rate is likely to be controversial as increased functionality (music, videos, live links, etc.) becomes more prevalent. Considering the increasing development of new technologies, the level of similarity between printed and electronic publications seems difficult to predict.

*Q7 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?*

EBF concurs with FEP’s position: An electronic book is a work, conceived as a whole in one part or within a finite number of parts by its publisher/author(s), consisting predominantly of textual, photographic and/or graphic content or else in the reading or in the audio rendering of the same content, which is made publicly available in an electronic format. An electronic book can be interactive and can contain non-textual ancillary elements, presented in different formats (such as audio, video, hypertext), functionally connected to that predominant content.

A serial is a scientific, peer-reviewed publication either scholarly in nature, or produced by practitioners in miscellaneous fields, involving collections of articles published in volume format from time to time, online and/ or in physical form, consisting predominantly of textual, graphical or diagrammatic content. An electronic serial can be interactive and can contain non-textual elements, presented in different formats (such as audio, video, hypertext), functionally connected to that predominant content.

If required, this definition could be accompanied by some interpretative guidelines, which could both help increase its precision and render it more easily adaptable to technological developments and other relevant conditions than possible solely by means of a Directive.

As stated above, the FEP and the EBF would support a definition that is future-proof and which takes into account technological progress without becoming obsolete in a very short time. We seek to find the ideal wording which affords sufficient precision to prevent all manner of products being considered e-books, but which at the same time is not so narrow that it will require re-writing in 3 years' time because it will have gone out of date. We believe the proposed language above strikes this balance: it meets the needs of a harmonised single market, brings certainty, and reduces the potential for loopholes. This said, we'd like to clarify that we are well aware of how the political sensitiveness of the debate might affect the final decision on the definition.

EBF is at the disposal of the European Commission for further information and co-operation in the VAT issue.

Yours sincerely,

Françoise Dubruille

Director

[fran@europeanbooksellers.eu](mailto:fran@europeanbooksellers.eu)