EUROPEAN COMMISSION
DIRECTORATE-GENERAL
TAXATION AND CUSTOMS UNION
Indirect Taxation and Tax administration
Value added tax

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VALUE ADDED TAX COMMITTEE
(ARTICLE 398 OF DIRECTIVE 2006/112/EC)
WORKING PAPER NO 1047

CONSULTATION
PROVIDED FOR UNDER DIRECTIVE 2006/112/EC

ORIGIN:	**Denmark**
REFERENCE:	**Article 318**
SUBJECT:	**Global margin scheme**

1. INTRODUCTION

Denmark wishes to consult the VAT Committee on changes to be made to the global margin scheme applied under their national legislation, in accordance with Article 318(1) of the VAT Directive[1]. That follows the consultation made when the global margin scheme was first introduced[2].

It will be for the Minister of Taxation to set the date of entry into force of the proposed provisions for amendment of the global margin scheme.

The text of the consultation submitted by Denmark is attached in annex. The relevant national draft provision accompanied by an extract of the explanatory memorandum are also enclosed.

2. SUBJECT MATTER

The special arrangements for second-hand goods, works of art, collectors' items and antiques provided for in Chapter 4 of Title XII of the VAT Directive (hereinafter 'the margin scheme') stipulate that VAT is to be paid on the margin in respect of each individual item.

Article 318 of the VAT Directive, however, provides the Member States with an option to introduce a global margin scheme into their national legislation to simplify the procedure for collecting the tax. Member States may provide that, for certain transactions or for certain categories of taxable dealers, the taxable amount in respect of supplies of goods subject to the margin scheme is to be determined for each tax period during which the taxable dealer must submit the VAT return. If use is made of this option, the taxable amount in respect of supplies of goods to which the same rate of VAT is applied will be the total profit margin made by the taxable dealer less the amount of VAT relating to that margin.

The very wording of Article 318 makes it clear that the global margin scheme can only be implemented after the VAT Committee has been consulted.

3. THE NATIONAL LEGISLATION ON THE GLOBAL MARGIN SCHEME

In Denmark, it is generally so that taxable dealers applying the margin scheme have to calculate VAT on the margin of each individual item based on the difference between the purchase and selling price which is assessed for the tax period applicable. Separating the price of one item from that of another, for example when buying from an estate where purchase is often settled against an overall price or when selling in lots where no price is set for individual items, is heavy in terms of administrative burden and time spent by taxable dealers. Where the purchase or selling price of individual items is unknown,

1 Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ L 347, 11.12.2006).

2 Document XXI/1907/94 *Consultations de la Belgique, du Danemark, de l'Allemagne, de la France, de l'Italie et des Pays-Bas*.

taxable dealers are therefore, to overcome those difficulties, allowed to aggregate sales of such items made during the tax period and calculate VAT based on the global profit.

The global margin scheme, however, only applies to items for which the purchase or the selling price is unknown and taxable dealers will therefore be in a situation of having to use more than one scheme. To ease the administrative burden further and also with a view to minimize the costs faced, Denmark intends to allow taxable dealers to choose between a method of aggregation (based on items sold) or a periodic tax assessment method (item by item) for calculating their profit margin irrespective of whether or not the purchase or selling price of individual items is known. This choice does not extend to second-hand cars for which the global margin scheme is not applicable.

Under the aggregation method, any excess arising from the value of purchases exceeding the value of sales made during a tax period may be included in the value of purchases in the subsequent tax period.

4. THE COMMISSION SERVICES' OPINION

The Commission services have examined the amendments to the Danish global margin scheme subject to the present consultation drawing on the information on the measure contemplated as communicated by the Danish administration.

On that basis, the amended scheme under consultation gives rise to the comments set out below.

4.1. Scope of application of the updated global margin scheme

Under the margin scheme, in reflection of the VAT system in general, VAT is calculated on a transaction-by-transaction basis. Room is, however, left for alternative calculation to be permitted by Member States.

The basis of that option is Article 318 of the VAT Directive by which Member States, in order to simplify the procedure for collecting the tax, may provide that, under certain circumstances, the margin is calculated for each tax period, so globally, rather than transaction-by-transaction.

It is an option granted to Member States. Should the decision be left to those taxable dealers, this ought to have been spelt out. That is for example the case with the option of taxation where Article 137 of the VAT Directive specifies that Member States may allow taxable persons the right of option for taxation of certain transactions. With Article 318 of the VAT Directive, the option for VAT to be calculated on the global margin is not granted to taxable dealers but to Member States for them to exercise within the limitations set out. Once applied by Member States, it must therefore be seen as binding on all the taxable dealers concerned. That is a point previously made to the VAT Committee[3].

With the amendment of the global margin scheme envisaged by Denmark, taxable dealers will be able to opt for use of the global margin scheme regardless of whether the purchase and selling price of individual items is known. The purpose of leaving the option entirely in the hands of taxable dealers is to avoid the risk of them having to handle separate

3 Ibid., p. 1.

schemes. The change seeks to simplify the procedure for collecting the tax further and as such, it is Denmark's assessment that the expansion can be made in accordance with Article 318 of the VAT Directive.

While, pursuant to the VAT Directive, simplification is a condition *sine qua non* for application of the global margin scheme[4], it is inconceivable that this scheme could be applied for cases where there is no difficulty in taxing the margin on a transaction-by-transaction basis. It would nullify the method of taxation otherwise envisaged under the margin scheme.

The reference made in Article 318 of the VAT Directive to "certain transactions" and "certain categories of taxable dealers" entails restrictions to the effect that the global margin cannot be applied to all transactions (or all taxable dealers)[5]. This is nevertheless what is envisaged by the amendment at the centre of the consultation of Denmark, with the global margin scheme no longer limited to supplies for which it is difficult to tax the margin on a transaction-by-transaction basis. Instead, taxable dealers, except those reselling second-hand cars, will be able to freely opt for application of that scheme for all or some of their transactions.

Upon sale of second-hand cars, VAT is, in accordance with Article 328 of the VAT Directive, due on the sales price as it would have been under the normal rules, less the amount of VAT regarded as being incorporated by the taxable dealer in the purchase price of the car. Application of this method of taxation is authorised under Article 327 of the VAT Directive by way of transitional arrangements. With second-hand cars not being taxed on the margin, taxable dealers are consequently excluded from the global margin scheme. This still leaves access to that scheme possible for the bulk of taxable dealers, with no particular categories targeted.

While the purpose of the amendment contemplated is to provide for simplification, this does not in itself justify going beyond what is allowed under the VAT Directive. As it stands, Article 318 of the VAT Directive does not leave room for use of the global margin scheme to all transactions or to all taxable dealers. The Commission services nevertheless believe this to be the reality of the amendment made by Denmark.

The Danish delegation is invited to comment on this point.

4.2. Limitation of carrying forward losses to the next tax period

Already under the current global margin scheme, Denmark allows loss to be carried over from one tax period to the next. It is included as part of the value of purchases made in the subsequent period.

There is no apparent limit for the loss carry-forward. That leaves the potential for losses to be carried forward for too long. Although this has not, according to the Danish delegation, previously caused any problems, the lack of a clear limitation to safeguard against that is apparent.

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4 For past discussions of the VAT Committee, see e.g. Working paper No 205, p. 1, and Working paper No 413, p. 1.

5 See Working paper No 196, p. 1.

As previously pointed out to the VAT Committee[6], the Commission services consider that a procedure whereby negative margins can be carried over indefinitely is fundamentally incompatible with the nature of taxation of second-hand goods, which is effected on a transaction-by-transaction basis. The only possible way of proceeding is to set time limits beyond which offsetting is no longer possible.

The Danish delegation is invited to clarify this point.

4.3. Safeguard measures

Article 318(3) of the VAT Directive requires Member States to take the measures necessary to ensure that taxable dealers do not enjoy unjustified advantage or sustain unjustified harm as a result of application of the global margin scheme. Despite widening the discretion enjoyed by taxable dealers to access this scheme, it appears that Denmark has not found it necessary to introduce or strengthen safeguard measures already in place.

This said, the main problem is the scope of the Danish global margin scheme. That entails that it cannot be excluded that the scheme might be applied beyond what is allowed under the VAT Directive thus possibly triggering unjustified advantages or harm to taxable dealers. That is so as the global margin scheme can be applied also in the situation whereby a taxable dealer carries out only a small proportion of transactions in bulk, while for the most of his supplies taxation would be perfectly possible on a transaction-by-transaction basis. Application of the global margin for the latter would not sit well with the view expressed by the Commission services that the global margin cannot be applied to all transactions[7].

The Danish delegation is invited to provide clarifications on this aspect.

5. DELEGATIONS' OPINION

The delegations are invited to give their opinion on the measures envisaged by Denmark and on the Commission services' comments.

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6 Ibid., p. 2.
7 Ibid., p. 1.

ANNEX I

Consultation of the VAT Committee – Article 318 of the VAT Directive

The Danish delegation to the VAT Committee wishes to consult the VAT Committee in accordance with Article 318 of the VAT Directive.

Background

Following a political wish to simplify the VAT rules, a proposal has been prepared to amend the Danish VAT Act regarding taxable dealers' statement of VAT. The proposal adjusts the procedures for the calculation the taxable margin for taxable dealers so that they may calculate per tax period instead of per sale.

Chapter 4 of Title XII of the VAT Directive (incorporated in Chapter 17 of the Danish VAT Act), introduces special arrangements for VAT treatment of second-hand goods, works of art, collectors' items, and antiques. According to the Danish VAT Act, VAT consists of the difference between the purchase price and the sale price. The arrangements are optional, and it is possible for taxable dealers to apply the general rules of the Danish VAT Act. When buying things from e.g., estates, it can be associated with great difficulty to separate the prices for the individual product. This entails heavy administrative burdens and high time consumption spent by the taxable dealer, as the purchase price on the individual item in those cases are unknown, due to the item being sold in lots.

Proposed change

To ease the administrative burdens and minimize costs for taxable dealers Denmark intends to broaden the procedures for calculating VAT. Denmark intends to put into practice a procedure whereby taxable dealers are given the opportunity to choose either the aggregation method (based on goods sold) or the periodic tax assessment method for calculating the profit margin. In both cases the regulations will apply to the profit margin on the taxable income of the dealer or the trader.

The proposal entails that - except for taxable dealers reselling second-hand cars - taxable dealers that resell second-hand goods, works of art, collectors' items, and antiques can choose to apply the aggregation method, regardless of whether the purchase prices and selling prices of the goods are known or not.

In the event the value of the purchase during the VAT period exceeds the value of sales during the period, the excess amount may be included in the value of the purchases in the subsequent VAT period, as is case in the current procedure (aggregation method).

Negative profit margin

With a new and simplified method for calculating VAT a negative profit margin may arise, e.g., in cases where the value of purchases in a given period exceeds the value of the sales in the same period. In those cases, the excess amount, as in the current aggregation method, will be included in the value of the purchases in the subsequent period. This solution has not previously caused any problems.

In relation to EU law

As the purpose of the proposed change is to simplify the procedure for collecting the VAT, it is thus Denmark's assessment that the expansion can be made in accordance with Article 318 of the VAT Directive.

Finally, we regret not having sent this letter concerning the consultation to you sooner. We do hope, however, that you will be able to submit the matter before the VAT Committee as soon as possible.

ANNEX II

Current Danish VAT Act

§ 70. ---

Paragraph 2. Where the tax is calculated in accordance with the rules laid down in this Chapter, the invoice relating to the supply in question must not refer to an amount of tax or contain another indication from which the amount of the tax may be calculated.

Paragraph 3. In the case of exports of second-hand goods etc. outside the EU, the general rules of the Act may apply. When applying the Act's general rules for goods covered by paragraph 5, the taxable amount must be established on the basis of the purchase price of the product. If this purchase price cannot be verified by the company, it must be calculated on the basis of the sale price of the goods minus the costs and profit generally taken into account for the supply of such goods.

Paragraph 4. The company must keep separate accounts for the supplies on which tax is paid in accordance with this Chapter. The Minister for Taxation may lay down more detailed rules on accounting.

Paragraph 5. Where the tax on an individual item cannot be paid in accordance with paragraph 1 because there is a collective purchase or sale, the taxable amount for the goods in question must be calculated as a whole for the tax period. The taxable amount is 80% of the difference between the value of purchases and sales during the period. Companies covered by the first sentence may accordingly calculate the taxable amount for other second-hand goods etc. on a periodic basis. If the value of purchases exceeds the value of sales during a period, the excess amount may be included in the value of purchases in the subsequent period. The Minister for Taxation may lay down more detailed rules for calculating the taxable amount.

ANNEX III

Proposal L 106

§ 1

The VAT Act, see Consolidation Act No 1021 of 26 September 2019, as amended by § 4 of Act No 1548 of 18 December 2018, § 4 of Act No 1295 of 5 December 2019, § 9 of Act No 1179 of 8 June 2021 and, most recently, § 5 of Act No 1240 of 11 June 2021, is hereby amended as follows:

…

14. § 70(2) is amended to read as follows:

'Paragraph 2. In the case of the supply of second-hand goods etc., cf. paragraph 1, the company may choose to calculate the taxable amount for all or some of its supplies, except for the supply of second-hand cars, as a whole for the tax period. If the first sentence is applied, the taxable amount must be 80% of the difference between the value of purchases and sales during the period. If the value of purchases exceeds the value of sales during a period, the excess amount may be included in the value of purchases in the subsequent period.'

15. In § 70(3), second sentence, 'paragraph 5' is amended to: 'paragraph 2'.

16. § 70(4) and (5) are repealed.

17. The following is inserted after § 71 in Chapter 17:

'**§ 71a.** *Paragraph 1.* Where the tax is calculated in accordance with the rules laid down in this Chapter, the invoice relating to the supply in question must not refer to an amount of tax or contain another indication from which the amount of the tax may be calculated.

Paragraph 2. Companies must keep separate accounts for supplies on which tax is paid in accordance with this Chapter.

Paragraph 3. The Minister for Taxation may lay down more detailed rules on invoicing requirements and accounting.'

18. In § 80(1), No (2), '§ 70(2)' is amended to: '§ 71a(1)'.

§ 3

Paragraph 1 This Act shall enter into force on 30 June 2022, without prejudice to paragraphs 2 and 3.

…

Paragraph 3 The Minister for Taxation shall determine the date of entry into force of § 1 No (14).

General remarks

The proposal also aims to reduce the administrative burden for certain companies. It is proposed to reduce the administrative burden of calculating VAT for companies applying the special scheme for the sale of second-hand goods, works of art, collectors' items and antiques ('VAT rules on second-hand goods'). The proposal will extend the 'aggregation method', under which companies can calculate their VAT liability per tax period instead of per sale. At present the aggregation method can be used in cases where the price of individual items cannot be identified (e.g. purchase of estates, where all the contents of the property are purchased for a collective price). The simplification will cover all sales with the exception of the sale of second-hand cars, where special rules apply.

…

2.3. Amendment of the special scheme for the sale of second-hand goods, works of art, collectors' items and antiques

2.3.1. Existing law

Non-taxable persons, i.e. persons who are not subject to VAT and are therefore not registered for VAT (e.g. private individuals or VAT-exempt companies), are not permitted to include VAT on invoices when selling goods, including second-hand goods etc. Private individuals and VAT-exempt companies are also unable to deduct their input VAT. When a company purchases second-hand goods etc. from such persons with a view to resale, there is therefore no input tax to deduct nor the possibility of deducting the VAT initially paid by the private individual or the VAT-exempt company. If the resale of the goods is subject to VAT on the entire sale price in accordance with normal VAT rules, the VAT initially paid will be subject to VAT and thus VAT will be paid twice.

The arrangements for VAT on second-hand goods in Chapter 17 of the VAT Act are special arrangements under which companies liable for VAT which resell second-hand goods purchased from non-taxable persons may avoid paying VAT twice, since VAT may be calculated only on the profit rather than on the full sale price. These arrangements are optional and it is always possible for companies to apply the general rules of the VAT Act.

Under the arrangements, a taxable dealer of second-hand goods etc. must generally pay the tax on each item sold. The taxable amount is calculated as 80% of the difference between the sale price and the purchase price. If the purchase price exceeds the sale price, the excess amount cannot be deducted from the taxable amount for other sales. This general rule is to be found in § 70(1) of the VAT Act.

In cases where, as mentioned above, tax cannot be paid for each item because there is a collective purchase or sale, and where the price of each item cannot be identified, the taxable amount for the goods in question is calculated as a whole for the tax period. This is also known as the aggregation method. The taxable amount is 80% of the difference between the value of purchases and sales during the period. If the value of purchases exceeds the value of sales during a period, the excess amount may be included in the value of purchases in the subsequent period.

The aggregation method is administratively easier for most companies to apply than the general rule. As further relief, companies applying the aggregation method can use it for all their sales of second-hand goods etc., even if the VAT on some of the items can be

calculated individually under the general rule. They need only use one calculation method for this. The rules on the aggregation method are set out in § 70(5) of the VAT Act.

There are special rules for calculating the taxable amount for the sale of second-hand cars, cf. § 71 of the VAT Act.

There are also more general provisions for applying the rules on the special scheme in Chapter 17. First, under § 70(2) of the VAT Act, a sales invoice must not refer to the amount of VAT or contain another indication from which the amount of VAT may be calculated. Secondly, § 70(4) of the VAT Act provides a legal basis for the Minister for Taxation to lay down more detailed rules on accounting, which in practice are implemented by §§ 116, 116a and 117 of the VAT Order, cf. Order No 808 of 30 June 2015, laying down more detailed requirements for rules on invoices and accounts.

2.3.2. The Ministry of Taxation's considerations and the proposed scheme

With a view to alleviating the administrative burden for companies which, under the current rules, may only use the general rule of the VAT arrangements for second-hand goods whereby the profit and thus the amount of VAT must be calculated for each second-hand item sold, it is considered whether such companies should also be allowed to use the often administratively less burdensome aggregation method, which is actually intended as a special rule in cases where profit cannot be quantified for each item. For example, a calculation per item cannot be carried out if either the purchase price or the sale price of the individual item is not known. This may be the case, for example, where a number of items purchased for a collective price are subsequently sold individually.

It has been taken into account that, under the current rules, companies only dealing in individual items where either the purchase price or the sale price is not known may already apply the aggregation method to all their goods. It is assumed that the vast majority of companies trading in second-hand goods etc. can relatively easily fulfil the condition of having individual items where either the purchase price or the sale price is not known, and it may thus be assumed that the vast majority of companies wishing to use the aggregation method are already doing so.

It is therefore proposed to extend the aggregation method so that the principle of the method can also be applied by companies in which the price of all individual items can be identified. It is also proposed to move the provision on the aggregation method from § 70(5) to a new § 70(2), so that the method immediately follows the general rule in paragraph 1.

The aim of the proposal is to ensure simple and straightforward rules for business.

The proposal means that all taxable companies which resell second-hand goods etc. (with the exception of second-hand cars) may choose to apply the aggregation method regardless of whether the purchase and sale price is known for all items. In cases where the value of purchases during the period exceeds the value of sales, the excess amount may be included in the value of purchases in the subsequent period, as under the current aggregation method. Under the proposal, companies that currently use the aggregation method because they cannot pay tax on all individual items separately on account of a collective purchase or sale of some of them may continue to use the aggregation method as before.

It is expected that the proposal will mean that more companies will use the aggregation method than under the current rules. This may include companies that have so far chosen to apply the general VAT rules but which in future will opt to apply the aggregation method. However, it is assumed that many companies which have chosen to apply the general VAT rules under the current system will continue to consider this to be advantageous because they either have relatively large volumes of purchases to which the VAT rules on second-hand goods cannot be applied (e.g. because the goods are purchased inclusive of VAT from taxable companies) or because they have relatively large volumes of sales to companies which, because of the right to deduct VAT, prefer the application of general VAT rules.

The current rules on the calculation of the taxable amount for the sale of second-hand cars in § 71 of the VAT Act remain unchanged.

In addition, in order to increase the transparency of the rules, it is proposed that the two general provisions for the application of the VAT rules on second-hand goods – which thus apply irrespective of whether the goods are second-hand goods etc. under § 70 or second-hand cars under § 71 – be moved from the current position in § 70 to a new § 71a.

One of the provisions is contained in § 70(2), which provides that, where the VAT rules on second-hand goods in Chapter 17 are applied, the invoice must not mention an amount of VAT or contain another indication from which the amount of VAT may be calculated. The second provision is contained in § 70(4), the first sentence of which provides that a company must keep separate accounts for supplies for which VAT has been paid in accordance with the VAT rules on second-hand goods in Chapter 17, and the second sentence of which contains a legal basis for the Minister for Taxation to lay down more detailed rules on accounting.

Under the current rules, invoicing requirements are considered to be covered by the term 'accounting'. § 116(3) of the VAT Order lays down requirements for invoicing. In order to ensure a clear legal basis for the rules of the VAT Order on invoicing requirements, it is proposed that the Minister for Taxation be authorised to lay down accounting requirements, which are proposed to be moved to a new § 71a, to which invoicing requirements are added.

9. Relationship to EU law

As regards the proposal amending the special scheme for the sale of second-hand goods, works of art, collectors' items and antiques, it is noted that Article 318 of Council Directive 2006/112/EC of 28 November 2006 allows Member States, after consulting the VAT Committee, to simplify the collection of tax for certain transactions or for certain categories of taxable dealers, so that the taxable amount for supplies of goods covered by that special scheme may be determined for each tax period. It is proposed, cf. § 3(3) of the draft Act, that the Minister for Taxation be authorised to set the date of entry into force of the proposed amendments to the VAT rules on second-hand goods. The amendments to the special scheme are intended to enter into force after consultation of the VAT Committee has been completed (the VAT Committee is in particular a forum for the exchange of views among EU Member States on the interpretation of the VAT Directive in order to achieve uniform application of the rules. The Committee is composed of representatives of the Member States and the European Commission). In this respect, it should be noted that consultation of the VAT Committee does not constitute approval and

therefore, even though it rarely happens, the Commission can always choose to open a case against a Member State if it considers that its national rules are not in line with the underlying EU rules.

Comments on the individual provisions of the draft Act

Regarding § 1

Regarding point 14

Chapter 17 of the VAT Act contains special rules on the taxable amount for supplies of second-hand goods, works of art, collectors' items and antiques ('second-hand goods etc.'). As regards the purpose of the special scheme, see the general remarks in point 2.3.1. The main characteristic of the scheme is that VAT on supplies of second-hand goods etc., other than supplies of second-hand cars, is not calculated on the basis of the sale price as under the general VAT rules, but is based on profit, which is generally the difference between the purchase price and the sale price, cf. § 70(1). The taxable amount is 80%.

Under § 70(5) of the VAT Act, in cases where tax cannot be paid on individual items under § 70(1) of the VAT Act, for example because there is a collective purchase or sale, and where the price of the individual items cannot be identified, the taxable amount may be calculated as the VAT on the goods as a whole during the tax period. This is known as the aggregation method. The taxable amount is 80% of the difference between the value of purchases and sales during the period. If the company also sells goods for which the purchase price is known and which can therefore in principle be calculated separately under § 70(1), it may also choose to apply the aggregation method to those goods in such a way that for all second-hand goods etc. purchased from non-taxable persons (private, non-taxable companies or companies which themselves apply the VAT rules on second-hand goods) covered by the special scheme in Chapter 17 only one calculation method should be used.

If the value of purchases exceeds the value of sales during a period, the excess amount may be included in the value of purchases in the subsequent period.

In addition, § 70(5) provides that the Minister for Taxation may lay down more detailed rules for determining the taxable amount under the aggregation method.

It is proposed that § 70(2) of the VAT Act be drafted so that, in the case of supplies of second-hand goods etc., companies may choose to calculate the taxable amount for all or some of their supplies, other than the supply of second-hand cars, as a whole during the tax period. Under this scheme, the taxable amount is 80% of the difference between the value of purchases and sales during the period. If the value of purchases exceeds the value of sales during a period, the excess amount may be included in the value of purchases in the subsequent period.

The proposal means that the provision on the aggregation method in the current § 70(5) is moved to paragraph 2 immediately after the general rule in paragraph 1. The scheme is also extended so that it becomes an option also for companies in which the purchase price of all goods is known.

It is proposed that the current § 70(2) be inserted as paragraph 1 in a new § 71a, cf. § 1(17) of the draft Act.

It is also proposed that the existing legal basis in § 70(5) for the Minister for Taxation to lay down more detailed rules for determining the taxable amount not be included in the new version of the aggregation method in paragraph 2, as the legal basis is not applied in practice.

The effect of the proposal to amend the aggregation method, implemented in a new version of § 70(2), is that taxable companies which resell second-hand goods etc. are given the opportunity to settle VAT on the profit after the tax period. The proposed amendment thus extends the possibility for companies of calculating the taxable amount for the goods concerned as a whole during the tax period. In future, therefore, it will no longer be a condition for the use of the 'aggregation method' that there must be either a collective purchase or sale which makes it impossible to pay tax on each individual item. Under the proposal, traders in second-hand goods etc. will be free to choose between calculating VAT per item sold or after the tax period.

Regarding point 15

§ 70(3), second sentence, of the VAT Act refers to the aggregation method in § 70(5).

It is proposed that this reference in § 70(3), second sentence, of the VAT Act to paragraph 5 be amended to a reference to paragraph 2.

The amendment is a consequence of the fact that the rules on the aggregation method are proposed to be moved from paragraph 5 to paragraph 2, cf. § 1(14) of the draft Act.

Regarding point 16

§ 70(4) of the VAT Act contains a general rule whereby companies must keep separate accounts for supplies on which tax is paid in accordance with the VAT rules on second-hand goods, and a legal basis for the Minister for Taxation to lay down more detailed accounting rules.

§ 70(5) of the VAT Act contains rules on the aggregation method, cf. § 1(14) of the draft Act.

It is proposed that the general accounting rule and the legal basis for the Minister for Taxation to lay down more detailed accounting rules in § 70(4) as well as the general rules for the aggregation method in § 70(5) be repealed.

The proposal to repeal the provisions should first be seen in the light of the fact that the general accounting rules are proposed to be laid down in the proposed new § 71a, as paragraph 2, and that the legal basis for the Minister for Taxation to lay down more detailed accounting rules is proposed to be included as paragraph 3, cf. comments on § 1(17) of the draft Act. Secondly, it should be seen in the light of the fact that § 70(5) containing the rules for the aggregation method is proposed to be set out in § 70(2), which is proposed to be redrafted, cf. the comments on § 1(14) of the draft Act.

Regarding point 17

§ 70(2) and (4) of the VAT Act contain general provisions for the application of the VAT rules on second-hand goods. The rules therefore apply to both the sale of second-hand goods etc. referred to in § 70 and second-hand cars in § 71. § 70(2) provides that, where

VAT rules on second-hand goods are applied, the invoice must not refer to an amount of VAT or contain another indication of how the VAT is calculated. § 70(4), first sentence, provides that companies must keep separate accounts for supplies on which tax is paid in accordance with the VAT rules on second-hand goods, and the second sentence constitutes the legal basis for the Minister for Taxation to lay down more detailed rules on accounting. Under the applicable rules, invoicing requirements are considered to be covered by the term 'accounting' in the existing legal basis.

It is proposed that the content of the provisions in § 70(2) and (4) be moved and inserted in a new § 71a in Chapter 17.

In § 71a(1) it is proposed that where the tax is calculated in accordance with the VAT rules on second-hand goods in Chapter 17, the invoice for the supply in question must not refer to an amount of tax or contain another indication from which the amount of the tax may be calculated.

The proposal corresponds to the current rule in § 70(2) and therefore does not entail any substantive change.

It is also proposed in § 71a(2) that companies must keep a separate account for supplies on which tax is paid under the VAT rules on second-hand goods in Chapter 17.

The proposal corresponds to the current rule in § 70(4), first sentence, and therefore does not entail any substantive change.

It is proposed in § 71a(3) that the Minister for Taxation may lay down more detailed rules on invoicing requirements and accounting.

The proposal means that the existing legal basis in § 70(4), second sentence, for the Minister for Taxation to lay down more detailed rules on accounting is extended so that the Minister for Taxation may lay down more detailed rules on both invoicing requirements and accounting.

First, the proposal aims to increase the transparency of the rules so that it is clear that the provisions of the current § 70(2) and (4) apply regardless of whether or not the goods are second-hand goods etc. under § 70 or second-hand cars under § 71. Secondly, the proposal has the effect of adjusting the legal basis so the Minister for Taxation may lay down more detailed rules on invoicing.

The proposal is in line with current practice and therefore does not entail substantive changes.

ANNEX IV

Act No 904 of 21 June 2022

Act amending the VAT Act
(Amendment of the rules on VAT on second-hand goods, VAT reimbursement and exemption for diplomats and adjustment of the rules on education and tourist sales, etc.)

WE, MARGRETHE THE SECOND, by the Grace of God Queen of Denmark, hereby proclaim:

Parliament (Folketinget) has adopted and We by Our Assent have confirmed the following Act:

§ 1

The VAT Act, see Consolidated Act No 1021 of 26 September 2019, as amended amongst other by § 4 of Act No 1548 of 18 December 2018, § 4 of Act No 1295 of 5 December 2019, § 1 of Act No 1310 of 6 December 2019, § 1 of Act Nr 810 of 9 June 2020, § 9 of Act No 1179 of 8 June 2021 and § 5 of Act No 1240 of 11 June 2021 and most recently by § 5 of Act No 288 of 7 March 2022, is hereby amended as follows:

…

13. § 70(2) is amended to read as follows:

'Paragraph 2. In the case of the supply of second-hand goods etc., cf. paragraph 1, the company may choose to calculate the taxable amount for all or some of its supplies, except for the supply of second-hand cars, as a whole for the tax period. If the first sentence is applied, the taxable amount must be 80% of the difference between the value of purchases and sales during the period. If the value of purchases exceeds the value of sales during a period, the excess amount may be included in the value of purchases in the subsequent period.'

14. In § 70(3), second sentence, 'paragraph 5' is amended to: 'paragraph 2'.

15. § 70(4) and (5) are repealed.

16. The following is inserted after § 71 in Chapter 17:

'**§ 71a.** *Paragraph 1.* Where the tax is calculated in accordance with the rules laid down in this Chapter, the invoice relating to the supply in question must not refer to an amount of tax or contain another indication from which the amount of the tax may be calculated.

Paragraph 2. Companies must keep separate accounts for supplies on which tax is paid in accordance with this Chapter.

Paragraph 3. The Minister for Taxation may lay down more detailed rules on invoicing requirements and accounting.'

187 In § 80(1), No (2), '§ 70(2)' is amended to: '§ 71a(1)'.

…

§ 3

Paragraph 1 This Act shall enter into force on 30 June 2022, without prejudice to paragraphs 2 and 3.

…

Paragraph 3 The Minister for Taxation shall determine the date of entry into force of § 1 No (13)-(17).

Given at Amalienborg, 21 June 2022

By Our Royal Hand and Seal

MARGRETHE R.

/ Jeppe Bruus