TAX EXECUTIVES INSTITUTE

1200 G Street, N.W., Suite 300
Washington, D.C. 20005-3814
202.638.5601
tei.org

2 November 2020

Mr. Patrice Pillet
Head of Unit
European Commission
Directorate-General for Taxation and Customs Union
Indirect Taxation and Tax Administration
Value Added Tax
SPA 3 – 5/110
B-1049 Brussels/Belgium

Via Email: patrice.pillet@ec.europa.eu

Re: Intervention Requested to Assist Businesses Survive COVID-19 Disruptions

Dear Mr. Pillet:

Since its inception as a public health emergency, the COVID-19 pandemic has quickly mutated into an unprecedented economic crisis that is destroying jobs and affecting societies and economies at their core. We appreciate the European Commission's (Commission) quick action to coordinate a common European response to the pandemic and firmly agree with the Commission's bilateral strategy of taking resolute action to reinforce our public health sectors and mitigate the socio-economic impact in the European Union (EU).

The temporary suspension of customs duties and VAT on protective equipment, testing kits, and medical devices was a sound first step in responding to difficulties businesses are facing due to the pandemic. As discussed herein, we believe additional intervention is needed to assist businesses facing liquidity challenges survive the financial crisis resulting from the pandemic.

About Tax Executives Institute, Inc.

Tax Executives Institute (TEI) is a nonprofit organization founded in the United States in 1944 to serve the needs of business tax professionals.[1] Today, the organization has 57 chapters spread across Europe, North and South America, and Asia. As the preeminent association of in-house tax professionals worldwide, TEI has a significant interest in promoting sound tax policy, as well as the fair and efficient administration of the tax laws, at all levels of government. Our nearly 7,000 individual members represent over 2,800 of the leading companies in the world. A significant number of TEI's members are resident in EU Member States (Member States), and many of our non-EU members' companies also conduct business in the EU.

Requested Intervention

TEI is grateful for the VAT deferment measures adopted by several Member States, which allow companies to defer VAT payments during the period of COVID-19 lockdown. Under the "OECD sequenced policy approach," however, VAT payments can no longer be deferred once the confinement period is lifted. Elimination of deferral creates cash flow shortages for businesses that continue to be impacted by COVID-19 disruptions.

We encourage the Commission to deploy other "fiscal stimulus" measures that already exist in the field of VAT to gradually improve the cash flow of affected companies and allow for economic recovery. With two exceptions,[2] the measures proposed by TEI to ease cash flow shortages do not require reform of the VAT Directive 2006/112 (the "VAT Directive"). Indeed, they are supported by various options offered in the VAT Directive as interpreted by the European Court of Justice ("ECJ") throughout the years. We urge the Commission to recommend that Member States adapt their VAT legislation in eight different areas and adopt proposals to slightly amend VAT Directive articles 11 and 306, as a matter of urgency.

1. ***Revisit guarantees/securities in place for declaration and payment of import VAT and continue the work towards the centralized clearance for VAT purposes***

Prior to the COVID-19 outbreak, multinational businesses commonly selected certain Member States as central entry points into the EU market because of their beneficial import VAT deferment regimes and practical customs clearance procedures. Examples of such Member States include Spain and Belgium.

---

1 TEI is organized under the Not-For-Profit Corporation Law of the State of New York, U.S.A. It is exempt from U.S. Federal Income Tax under section 501(c)(6) of the U.S. Internal Revenue Code of 1986, as amended.

2 The exceptions being proposals in Items 3 and 8, below, which would require amendment of the VAT Directive.

TEI fully supports such regimes and encourages other Member States to adopt such practices to facilitate trade and investment and reinvigorate their economies.

COVID-19 disruptions have required businesses to make significant changes to their supply chains. These unforeseeable changes have upset carefully structured operations, resulting in increased compliance costs from declaration and payment of import VAT.

All Member States apply either immediate payment, postponed accounting, deferred payment method, or some combination of the foregoing for declaration and payment of import VAT. In most Member States adopting import VAT deferral, the requirements to take advantage of this measure are not necessarily accessible because bank guarantees or other securities must be provided for VAT and/or customs purposes for various reasons (e.g., VAT registration via fiscal representative, specific licenses).

To assist businesses in this urgent time of need, we urge the Commission to adopt a fiscal measure allowing all businesses operating in the EU to use the postponed accounting method for the payment of import VAT as a replacement for the deferred payment method and to advise Member States to participate in the centralized clearance for imports into their territories. Alternatively, the Commission should urge Member States to eliminate the guarantees/securities requirement altogether or adopt objective criterion for reducing the monetary amount of guarantees/securities required to be in place.

2. ***Simplify and unify bad debt relief***

Bad debt relief allows VAT not to become an additional cost to suppliers when customers are unable to pay their invoices (in part or in full) by providing a refund of the output VAT the supplier has already paid to the authorities. Member States administer a variety of different procedural rules and conditions for obtaining bad debt relief. Such rules and conditions differ considerably among Member States, and, for many multinational businesses, the administrative burden of complying with the myriad of rules may outweigh the benefits of seeking relief.

The current convergence of rising customer defaults with dwindling supplier cash flows piques the need for a uniform system of simplified bad debt relief procedures. In this environment, we urge the Commission to advance a uniform procedure that relaxes conditions that are overly burdensome where reasonable alternatives exist. We offer the following suggestion for doing so.

Several Member States commonly require suppliers to wait until a company files for bankruptcy or up to a year or more after the tax point date places an undue financial burden on the supplier. It is likewise common for Member States to place time limits on supplier claims for bad debt refunds. These two conditions, taken together, require suppliers to meticulously monitor their suppliers in order to submit bad debt claims within a precise window of opportunity. This exercise quickly becomes impracticable when suppliers have hundreds, perhaps thousands, of defaulted payments to monitor—a problem that is exacerbated in today's COVID-19 environment. The existing conditions also fail to recognize earlier decision points that reasonably signal a bad debt.

A reasonable alternative is to require suppliers to document that a payment is at least 90 days past due and that at least three unanswered payment reminders have been sent demanding payment. This proposal does not put a Member State at risk of losing VAT revenue because bad debt claims would be reversed under current legislation if a payment is subsequently made by a customer to a supplier. Rather, if this proposal is implemented, the correct VAT would be collected by the Member States without putting a disproportional financing burden on suppliers. It would also achieve the overarching purpose of the EU VAT system to harmonize VATs within the EU VAT area and provide the highest degree of simplicity and neutrality.

3. *Do not limit VAT grouping to locally established companies*

VAT grouping is an important simplification measure that increases the efficiency of VAT reporting of multinational groups. Such procedures allow related entities to file consolidated VAT returns and bring various advantages, such as removing intercompany charges from VAT and improving the overall right to deduct input VAT where one or more group members does not have a full right to deduct input VAT. The administrative benefits of these rules are significant as they allow principals and subsidiaries to offset VAT receivables with VAT payables or allow them simply to stop invoicing each other with local VAT for supplies of goods.

Unfortunately, a number of Member States (e.g., Germany) place a variety of limitations and restrictions on VAT grouping under a strict interpretation of VAT Directive, article 11. These restrictions and limitations raise compliance costs and, in some cases, make it impracticable for multinational groups operating in numerous jurisdictions to comply. A common example is to restrict VAT groups to locally established companies, which makes the simplifying measure far less beneficial for multinational enterprises with complex supply chains. For a simple example, assume a multinational enterprise maintains its headquarters in Norway and has a Germany-established subsidiary that is in a VAT payment position. The parent company has no fixed establishment in Germany but is VAT registered there because it carries out taxable activities in Germany. The parent company is in a VAT repayment position. Under current rules, both entities are forced to file separate and distinct VAT returns, and they are unable to offset their respective positions. However, had they been allowed to form a VAT group, they would be able to utilize their VAT credits more effectively.

Further, it is extraordinarily time consuming and burdensome for multinational businesses to track all the different Member State requirements. Making an incorrect determination on whether VAT grouping is or is not available in a particular country on a specific transaction can have a significantly negative impact, resulting in additional conflicts between the tax authorities and taxpayers.

TEI urges the Commission to recommend that the EU Council amend article 11 to remove the term "established" from that provision and, once that is accomplished, to strongly encourage Member States to remove country-specific restrictions from their VAT grouping rules in the interest of advancing uniform rules across all Member States. Such a simplifying measure would immediately improve the operational efficiencies of multinational groups and alleviate challenges they are presently facing with COVID-19- related disruptions in supply chains. We appreciate that revisions to the VAT grouping regime would require anti-abuse rules to avert any abuse of the proposed scheme. TEI would be pleased to offer suggestions should this recommendation be advanced.

4. ***Eliminate reciprocity conditions from 13th Directive procedures***

The 13th Directive governs the general conditions for refunding VAT to non-EU established companies that are not VAT registered in the countries where the VAT is due. Article 2.2 of the Directive provides that it is not mandatory for Member States to impose reciprocity in the VAT recovery for foreigners in the State where the claimant is resident. In practice, the article means the country where the applicant is established is not required to refund the VAT or the equivalent tax to the Member State concerned as a precondition for the latter accepting the refund claim of the non-EU company.

Bulgaria, Cyprus, Czech Republic, Germany, Greece, Estonia, Spain, France, U.K, Croatia, Hungary, Italy, Lithuania, Latvia, Malta, Poland, Portugal, Romania, Slovakia and Slovenia currently impose reciprocity conditions for non-EU companies that incur VAT in these jurisdictions. As a result, the affected non-EU companies have limited ability to recover VAT in those locations. Furthermore, non-resident taxable persons who are registered for VAT in Slovakia and who are performing transactions subject to a local reverse-charge (i.e., local business-to-business supplies) cannot deduct attributable input VAT through the VAT return.

The Netherlands is one of the few countries that does not impose reciprocity conditions on non-EU companies and, as a result, is perceived as a business-friendly country for multinational enterprises. We urge the Commission to adopt the Netherlands' approach as a best practice and urge Member States not to impose reciprocity conditions in the VAT recovery for foreigners. Such action would have a materially positive impact on non-EU companies that purchase goods and services from EU suppliers and help eliminate the view of Europe as a region where VAT compliance is excessively burdensome and the costs of doing business are prohibitively high.

5. *Eliminate procedural obstacles to requesting refunds*

Member States administer a variety of measures that delay monthly VAT refunds. In a normal environment, businesses can withstand such delays without too much trouble, but, in the current environment of unprecedented declines in operating cash-flow, delayed VAT refunds are becoming a meaningful operational issue. In this environment, liquidity from VAT refunds is needed to pay bills to keep the enterprise functioning, as well as employee wages to keep them safe and secure.

Member States, such as Spain, condition monthly VAT refunds on the filing of electronic transactional invoice data for both sales and purchases (known as Immediate Supply of Information on VAT or "SII"). Other Member States, such as Italy, require businesses to satisfy a number of different conditions in order to request a refund. The economic burdens associated with delays caused by these conditions far outweigh any administrative benefit obtained by the tax administrator. A common example is requiring bank guarantees to support the refunded amount even after refunds are repaid to the claimants.

It is well documented that these measures create obstacles to the proper functioning of the VAT system and erode the neutrality principle. Now, more than ever before, the measures are having material adverse effects on businesses straining to remain solvent during the pandemic. Cash is essentially being trapped in the hands of governments and withheld from the businesses that need VAT refunds to survive. Accordingly, we urge the Commission to adopt a streamlined refund approach that can be adopted by Member States following the best practices of Germany, Austria, and The Netherlands.

6. *Eliminate restrictions to input VAT deduction*

The tax deduction for input VAT is an integral structural element of all VAT systems, as it is the mechanism by which the burden of VAT is passed through intermediate purchasers and finally to the ultimate consumer. It is not a privilege or obligation, but rather a right.

The ECJ has held that Member State restrictions on input VAT deductions cannot exceed the material requirements necessary for the exercise of such right; they cannot make the exercise of the right to deduct impossible or excessively difficult (judgment of 14-7-1988, Jeunehomme and others, C-123/87 and C-330/87). Despite the consistency of ECJ rulings on this matter, many Member States place undue formalities on input VAT deductions, making recovery administratively burdensome, costly, and, in some instances, impracticable for large multinational businesses. For example, some Member States, severely shorten the timing to exercise this right, and if the deduction is not immediately exercised, the right to deduct the VAT cannot be realized.

Those additional restrictions to exercise the right of deduction could also be understood as an infringement of the principle of neutrality, which is a basic foundation of the VAT system. The principle of neutrality precludes any improper limitation of the right to deduct. Based on this principle, taxpayers cannot be deprived of their right to VAT deduction if they meet the substantive requirements to exercise such right, even when they fail to comply with formal requirements (judgement of 30-09-2010, Uszodaépítő kft. And APEH Központi Hivatal Hatósági Főosztály).

TEI requests the Commission to encourage Member States that limit the time to exercise the input VAT deduction (e.g., Belgium, Bulgaria, Italy and Slovenia) to align their statute of limitations for both input VAT deduction and refund and for reassessing output VAT.

7. *Reduced rate for Tourism sector*

The COVID-19 pandemic has proved to be an unprecedented crisis for the tourism economy. It is clearly one of the most damaged sectors in our economies as confirmed by the International Monetary Fund and Organisation for Economic Co-operation and Development (OECD).[3] The pandemic has shrunk the available income of individuals to spend on vacations and that, combined with the unprecedented unemployment in this sector, demonstrates an urgent need to find solutions to help boost consumption and otherwise ameliorate this critical situation.

One such measure would be the temporary reduction of the VAT rate applicable to tourist services until December 2021, which aligns with VAT Directive, Annex III, indents 5 (Transport of passengers and their accompanying luggage), 12 (accommodation provided in hotels and in similar establishments) and 12a (restaurants and catering services). Travel agencies should also be allowed to take advantage of this reduced rate.

Several Member States have already acted, offering best practices in respect to applying low rates to this sector. Examples include Hungary (5% rate for accommodation and restaurants), Malta (7% rate for

---

[3] The OECD's revised scenarios indicate the implied shock of the pandemic could amount to a 60-80% decline in the international tourism economy in 2020, depending on the duration of the crisis and the speed of recovery. *See* OECD, *Tourism Policy Responses to the coronavirus (COVID-19)*, (updated 2 June 2020) *available at* https://www.oecd.org/coronavirus/policy-responses/tourism-policy-responses-to-the-coronavirus-covid-19-6466aa20/.

accommodation), Belgium (6% rate for accommodation and restaurants), Portugal (6% rate for transport and accommodation), and Luxembourg (3% rate for all categories mentioned above).

8. *Tour Operators Margin Scheme (TOMS)*

TOMS is the special VAT scheme for businesses that purchase and resell travel, accommodation, and certain other services as a principal or undisclosed agent. The regime aims to simplify the accounting of VAT on travel supplies, relieving businesses from having to register and account for VAT in each Member State where the services and goods are consumed. The Commission commissioned a review of the regime because of flaws and inconsistencies in its application across Member States and, in December 2017, issued its final report (the Study).[4] TEI welcomed this review, as it was important to provide a level playing field for all participants in this sector and ensure the VAT neutrality principle was not distorted in business-to-business (B2B) transactions. The Study correctly acknowledges:[5]

> One of the main features of the Special Scheme is that it prevents the deduction of input tax on the costs of goods and services supplied within the scheme. Given that input tax cannot be deducted, it is necessary for travel businesses to pass on costs, which include irrecoverable VAT charged by suppliers, to the travel agent.

The inability of travel businesses to deduct input tax was a known inequity before the crushing blow of COVID-19. It has since grown to a significant issue in the travel sector's ability to recover from the pandemic. Accordingly, TEI urges the Commission to amend VAT Directive article 306 to provide an opt-out from the TOMS scheme for B2B transactions – for instance, by excepting from TOMS any VAT stated on invoices issued by tour operators to business customers. This action is vitally important to the economic well-being of the overall travel sector as it would encourage businesses to restart travel spending, which would directly and immediately spur recovery of the tourist sector. The proposed measure would not only allow companies receiving travel services to recover the VAT on such purchases, but also allow the travel industry to recover the competitiveness it is currently lacking compared to its peers in other regions not subject to TOMS or to intermediaries operating outside the special scheme within the EU or to EU suppliers of similar services.

Closing remarks

COVID-19 disruptions have brought grave economic conditions to multinational businesses operating in the EU. Complying with the myriad of different VAT rules administered by Member States was challenging prior to the pandemic. Changes in supply chains, reductions in cash flows, and alterations

---

4 Directorate-General for Taxation and Customs Union, Study on the review of the VAT Special Scheme for travel agents and options for reform, Final Report TAXUD/2016/AO-05 (Dec. 2017) *available at* https://ec.europa.eu/taxation_customs/sites/taxation/files/travel_agents_special_vat_scheme_en.pdf.

5 *Id*. at Section 5.5.1, page 56.

to working environments—all resulting from the pandemic— have made VAT compliance exceedingly challenging and inefficient. Thoughtful temporary changes to VAT procedures will ease cash flow shortages, allowing businesses to maintain economic stability and recover over time. Allowing the eroding business climate to worsen will result in continued economic instability, reduced cross-border activity, shortages of products in the EU marketplace, and, ultimately, disappearance of jobs and hope. Thus, we strongly urge the Commission to act to implement the measures expressed herein and those advocated by other business organizations.

These comments were prepared by TEI's European Indirect Tax Committee, whose chair is Srdjan Timotic and whose legal staff liaison is Patrick Evans. Should you have any questions about our recommendations or wish to discuss them, please contact Mr. Timotic at Srdjan.Timotic@lamresearch.com or Mr. Evans at pevans@tei.org.

Respectfully submitted,

TAX EXECUTIVES INSTITUTE, INC.

James A Kennedy
International President

cc: Ludwig de Winter, Deputy Head of Unit—DG TAXUD—VAT Unit
ludwig.de-winter@ec.europa.eu