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Executive Director

W. PATRICK EVANS
Chief Tax Counsel

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European Commission
Donato Raponi
Taxation and Customs Union DG
Rue de la Loi 200
B-1049 Brussels
Belgium

Via Email: TAXUD-C1-SECTOR-A@ec.europa.eu;
donato.raponi@ec.europa.eu

Dear Mr. Raponi,

Re: Public Consultation for the Modernisation of VAT on Cross Border E-Commerce Transactions in the European Union

The European Commission ("Commission") has requested input from business and other interested parties to inform legislative proposals it plans to draft with an aim of simplifying value-added tax ("VAT") in respect of cross-border e-commerce transactions in the European Union ("EU") in order to reduce the administrative burden on businesses arising from different VAT regimes. The Commission's legislative effort will be undertaken in connection with the Commission's Digital Single Market strategy.

Tax Executives Institute, Inc. ("TEI") appreciates the Commission's efforts to minimise burdens associated with cross-border e-commerce transactions and to level the playing field for companies in EU market. We welcome the opportunity to discuss the comments contained in this letter in further detail.

About Tax Executives Institute

Founded in 1944 to serve the professional needs of business tax professionals, TEI is the preeminent association of in-house tax professionals worldwide. TEI espouses organisational values and goals that include integrity, effectiveness, efficiency, and dedication to improving the tax system for the benefit of taxpayers and tax administrators.

TEI's approximately 7,000 professionals manage the tax affairs of over 2,800 companies across all industry sectors around the world. Many of these members' companies have a business presence and/or sell into all 28 EU Member States and are involved in the sale and/or distribution of e-

commerce. TEI's members are accountants, lawyers, and other corporate and business employees responsible for the tax affairs of their employers in an executive, administrative, or managerial capacity, and continually monitor consumption tax developments around the world.

TEI believes it is critical to maintain a dialogue between businesses and revenue authorities when developing rules for VAT to ensure they are workable and not overly burdensome on business or tax authorities. It is also critical to protect the neutrality of the VAT system for cross-border transactions by ensuring supplies are not subject to double taxation or, indeed, unintentional non-taxation.

Comments and Recommendations

A. Standardisation and Simplification of Rules

The standardisation and simplification of rules for applying VAT to cross-border e-commerce transactions is perhaps the most important factor affecting the success of the Commission's Digital Single Market strategy.

Businesses selling to customers in a foreign market must understand the VAT rules and compliance obligations. Unfortunately, not all countries publish guidance on the rules applicable to their country. Many smaller advisory firms do not advise on VAT rules outside their own country, thus necessitating the use of large accounting firms to establish the requirements when trading into other countries. Smaller businesses often do not have relationships with these larger firms and, for many businesses (large and small), the cost of obtaining advice often outweighs the benefits of selling into another market. TEI encourages the tax authorities across the EU to publish the rules, forms, and other guidance pertaining to the collection and remittance of VAT relevant to their country in all major international languages (at a minimum, Chinese, English, Spanish, French, and German). This action would help to ensure a standard interpretation of the rules and would be more effective than the current situation, which forces foreign businesses to rely upon interpretations provided by advisors.

Standardisation and simplification also helps to ensure that IT systems properly account for VAT. Automation and the proper functioning of IT systems are essential to the efficient and correct collection and remittance of VAT. Automation reduces the scope for human error, costs, and the opportunities for fraud and tax avoidance. However, IT systems are complex and affect various parts of a business organisation. They also have limitations and cannot always accommodate widely divergent tax rules. Thus, simple, clear, and consistent rules (ideally, globally consistent rules) would facilitate the proper and efficient functioning of VAT accounting in IT systems.

Standardisation and simplification benefits large and small businesses alike. Simplified rules for registration, record keeping, invoicing, compliance, and returns make it easier for all businesses to trade cross border. Legitimate businesses are more likely to comply if rules are simple and clear, and compliance costs are minimal. Increased compliance levels the playing field and improves competition for all businesses because foreign businesses will register and remit VAT on goods and supplies sold into the country.

Finally, standardisation and simplification benefits tax authorities as well. Simple rules provide fewer opportunities for fraud or tax avoidance, and make it easier for tax authorities to determine when businesses not complying with rules do so intentionally rather than because they misunderstand the rules or had a simple error. When the vast majority of businesses comply, tax authorities receive more VAT and have more time to focus on non-compliant businesses.

B. Establishing a Threshold for Registration

TEI encourages the establishment of a reasonable small supplier VAT registration threshold for cross border trade. The exclusion of small suppliers, i.e. suppliers that only generate a very small level of revenues in a particular jurisdiction, from the tax net enables such suppliers to enter cross border markets without cost-prohibitive registration and compliance costs. It saves costs that tax authorities would be required to incur to manage the registrations of small suppliers whose tax remittances are minimal. The registration threshold should thus strike a reasonable balance between the cost of compliance for businesses and the cost of administration for Member States.

An approach that might be considered would be to introduce an EU-wide threshold relating only to cross-border trade. Thus a business would be subject to the threshold (if applicable) in the country where it is established for its domestic activities, but would only be required to charge and comply with VAT rules in other Member States once its cross border trade into other EU countries had exceeded that threshold. Sales cross border whilst the business was beneath that threshold could be subject to the VAT regime in the country in which the business is established, with local VAT being applied to any such sales.

C. Mini One Stop Shop

The Mini One Stop Shop (“MOSS”) is critically important to ensuring VAT compliance does not operate as a barrier to international trade. However, for the MOSS to function efficiently it must be clear whose rules businesses must follow and such rules must be clear, well publicised and up-to-date. Moreover, all communications with the “host” tax authority regarding queries, returns, audits, and other matter should be in the taxpayer’s language.

TEI recommends reducing the time taxpayers using MOSS are required to retain evidence. E-commerce, in particular, relies upon automated systems. Process audits will confirm whether

VAT is being appropriately determined, are more efficient than standard audits, and provide tax authorities with assurance regarding the integrity of IT systems and the accuracy of VAT returns. Process audits also have the benefit of consolidating and/or streamlining audits for Member States: audit once, assure the tax for all 28 Member States.

TEI also recommends allowing businesses to recover input tax credits via a simple mechanism. The current MOSS requires businesses to recover input VAT through their “normal domestic” return and thus requires businesses to employ two separate approaches depending on whether the business is selling into their “home” country or cross border.

Finally, TEI strongly supports the Commission’s proposal to extend the MOSS to tangible goods. Businesses should be able to make a single declaration and payment in their own Member State, as opposed to having to declare and pay VAT to each individual Member States where their customers are based for such transactions. TEI also recommends that non-EU businesses selling goods to consumers into the EU be permitted to participate in the MOSS. Such sellers currently are excluded from the MOSS as they are required, under distance selling rules, to register individually in all EU countries into which they sell. This not only creates a burden for the seller but also increases the number of registrations Member States must individually manage.

D. Invoicing and Evidence

Some countries within the EU oblige businesses who sell to private consumers to raise a tax invoice for each sale that is made. Particularly in an online environment, where transactions are typically very high volume/low value, this obligation to provide tax invoices is hugely burdensome for business. Historically the need for invoices was seen as a way of assuring tax is collected in cash-economies. However, e-commerce uses electronic payment methods rather than cash. Electronic payments provide a clear audit trail for each transaction thus minimising the opportunity for fraud and tax evasion. Tax authorities derive no benefit from the requirement to send consumers invoices for e-commerce sales. Member States should be encouraged to use sellers’ records used in the ordinary course of business for verification of transactions where possible. Norway’s rules provide a good example of flexible invoicing and evidence requirements.

A general comment on evidence, which is something TEI would urge the Commission to give thought to when drafting its forthcoming proposal, is that the most reliable types of evidence is that which a business is collecting as part of its normal business practices. TEI recommends that evidence requirements be more closely aligned with commercial practices. This would result in greater efficiency and inherently more reliable documentary support for taxing decisions.

Conclusion

The EU leads the way on meeting the challenges of a globalised economy through its adaptation of VAT rules and discussing the feasibility of approaches to ensure solutions are workable for business. The EU's rules thus serve as a model for other countries seeking to develop and adopt their own rules and TEI urges the Commission to allow the EU to continue to lead the way in this important area. TEI appreciates the opportunity to share its suggestions with the Commission at the outset of initiative to simplify VAT payments on cross-border e-commerce transactions in the EU.

TEI's comments were prepared by TEI's European Indirect Tax Committee, whose chair is Paula Regales. If you have any questions about TEI's comments, please contact Ms. Regales at +34 (91) 426-3557 or paula.regales@jci.com, or Pilar Mata of TEI's legal staff at +1 202 464-8346 or pmata@tei.org.

Respectfully submitted,
Tax Executives Institute



C.N. (Sandy) Macfarlane
International President