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19 March 2017

European Commission
Directorate-General for Taxation and Customs Union
VAT - Unit TAXUD/C1
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Via Email: TAXUD-C1-SECTOR-B@ec.europa.eu

RE: Response to Public Consultation on the Definitive VAT System for Business to Business (B2B) Intra-EU Transactions on Goods

Dear Sir or Madam:

We write in response to the European Commission's (Commission) Public Consultation on the Definitive VAT System for Business to Business (B2B) Intra-EU Transactions on Goods (Consultation). Tax Executives Institute (TEI) appreciates the Commission's efforts to revise and simplify the rules concerning cross-border supplies and level the playing field for companies in European Union (EU) market. We welcome the opportunity to speak with you regarding the comments and recommendations contained in this letter.

About Tax Executives Institute

TEI is the preeminent association of in-house tax professionals worldwide and was founded in 1944 to serve the professional needs of business tax professionals. 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. 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. Many of these members' companies have a business presence and/or sell into all 28 EU Member States.

TEI believes it is critical to maintain a dialogue between businesses and revenue authorities when developing VAT rules to ensure such rules are workable and not overly burdensome on business or tax authorities. Moreover, TEI supports the Commission's efforts to protect the neutrality, simplicity, and workability of the VAT system.

Comments

The following comments elaborate on TEI's responses to the questions posed by the Commission.

Question 15: The current system, which treats domestic and intra-EU supplies of goods differently for VAT purposes, discourages some businesses from supplying goods cross-border. In particular, the current system discourages small and medium-sized enterprises (SMEs) from cross-border sales because the documentation and compliance burdens (transport documentation, EC sales listings) are higher for intra-EU cross-border supplies of goods than domestic supplies. In addition, the Intrastat requirements imposed upon intra-EU cross-border supplies constitute an additional burden compared to mere domestic supplies for larger businesses.

Question 16: The current system treating domestic and intra-EU supplies of goods differently for VAT purposes is relatively neutral for businesses acquiring goods cross-border, as it creates pros and cons for cross-border acquisitions. On the pro-side, the current system may encourage cross-border acquisitions by creating cash flow advantages. Businesses do not face non-recovery issues and have no risk with respect to input VAT deductions that can result from invoice issues. On the con-side, the administration of acquisition taxation may be difficult for SMEs.

Question 17: The VAT rules imposed upon intra-EU cross-border supplies of goods compared to domestic supplies create compliance costs for businesses. Such costs stem from the need to document intra-EU supplies, different treatment of Incoterms by Member States, and invoicing requirements.

Question 19: Small companies are deterred, to a certain extent, from doing business cross-border because of additional compliance costs linked with the application of the VAT rules. Such costs may be offset partially, however, by advantages such as not having to charge VAT in cross-border situations.

Question 21: The application of the reverse charge has significantly increased the compliance costs for businesses operating in impacted sectors where the type of products and/or thresholds must be accounted for when applying the local reverse charge.

Question 22: It is unclear whether a reverse charge is an effective measure to combat tax fraud. The business community would like to see reliable figures regarding the success fighting VAT fraud by sectoral reverse charge.

Question 23: The VAT identification number should be deemed reliable proof of the customer's status as a taxable person when provided in the context of intra-EU cross-border supplies. Other means of proof also should be admissible for this purpose.

Question 24: The lack of a valid VAT identification number should not imply that the intra-EU supply should not be exempt in the Member State of departure, as the VAT Information Exchange System (VIES) works differently in Member States and some Member States provide information very late to VIES.

Question 25: The legislative improvements to the current transactional rules should address VAT rules related to chain transactions. The current system, with a different set of rules, makes accounting for VAT unworkable and distorts commercial arrangements, particularly for logistic arrangements.

Question 26: The legislative improvements to the current transitional rules should address issues linked with the proof required to demonstrate that the goods were moved from one Member State to another. The proof of intra-Community movement is burdensome in the current system, particularly due to the multitude of requirements in several Member States. Legal certainty in this regard is an asset as such, particularly from the perspective that you will not need a separate process for every Member State from which you supply.

Question 28: Member States should be required to provide proven and reliable information regarding the reduction of VAT fraud due to the implementation of a generalised reverse charge.

Question 29: A generalised reverse charge on domestic transactions would slightly increase compliance costs for business. As discussed in our response to Question 21, such costs would increase significantly if thresholds are to be taken into account for applying a generalized reverse charge.

Question 32: B2B intra-EU supplies of goods should be taxed in the Member State where the goods arrive. Such a system requires a comprehensive One Stop Shop (OSS), including the allowance of an input VAT deduction.

Question 38: Suppliers should not be required to register for VAT purposes in more than one Member State. This rule also should apply to VAT payers that reside outside the EU.

Question 40: If the OSS extends to taxable intra-EU B2B supplies of goods, it should allow for the payment of output VAT and the deduction of input VAT. A comprehensive OSS is an essential part of the Commission's proposal.

Question 41: The declaration and payment of VAT on supplies of goods through the OSS would only slightly reduce compliance costs because ERP systems will still be set up to enable those systems to deal with multiple VAT jurisdictions.

Question 45: The proven financial solvency or guarantees from banks, insurance companies, etc., should only be acceptable criteria to obtain Certified Taxable Person (CTP) status if such person does not have compliance records over a certain period of time, e.g. start-ups.

General Comments Regarding the Certified Tax Payers Concept – Questions 42 to 47

TEI welcomes the proposal to derogate the current intra-EU transitional regime and replace it with a definitive system based on the destination principle. The current transitional regime is marred by the VAT gap resulting from widespread VAT fraud.

The Commission's proposal to transition to the definitive system contemplates the concept of a CTP, whereby certified compliant taxable persons would be allowed to purchase intra-EU cross-border goods free from VAT in the Member State of departure and pay VAT in the destination country (or via OSS, where established).

Despite the obvious advantages of CTP status, the CTP concept introduces a two-tier system that will be difficult for businesses and tax authorities to administer. TEI is especially concerned about the complexity inherent in distinguishing between CTP-able and non-CTP able transactions.

Moreover, the CTP concept discriminates against businesses which, due to being either new companies (e.g., start-ups or companies incorporated during the course of transfers of a going concern to carry on spun off businesses) or companies established outside the EU without EU VAT registrations, would have no compliance history/records in the EU to qualify for CTP status. The CTP status could then introduce discriminatory practices by businesses seeking to avoid trade based on the CTP status of their customers.

The CTP concept may also drive the VAT system to be closer to a sales tax system because VAT would not be collected on every step of the supply chain. This might particularly be the case in a cascade of cross-border supplies in a value chain, where all parties involved have obtained CTP status, including the retailer. As the retailer would thus be the first person to charge VAT on his supplies – at least according to the approach laid out in the document VEG N°057, *VAT Expert Group – Definitive VAT regime for intra-EU trade – First step – Issues to be Examined* – all the VAT would have to be collected at the last stage of trade instead of the well-proven, staged collection mechanism of VAT.

In addition, the risk of double taxation is not insignificant if the Member State of shipment rebuts the proof of transport and taxes the intra-EU supplies while the ship to Member State also seeks to collect VAT.

If the CTP concept is introduced, it would be essential that there be consistency in how status is determined by Member States. Further, the criteria used to determine CTP status should not introduce excessive costs, particularly in third party fees (e.g. via fees from external auditors). Moreover, the CTP status should be made available to non-EU established entities in the Member State where they are registered for OSS.


Given the above concerns, TEI recommends eliminating the CTP status concept. Absent the CTP concept, suppliers of goods would collect VAT from customers in domestic as well as cross-border supplies from day one, providing consistency and fair treatment that the proposed dual system for domestic and intra-EU transactions lacks. Moreover, the supposed cash flow benefits that CTP status brings could equally be achieved by refining the OSS mechanism in the framework of a clear cut, definitive VAT system where clarity and certainty of the VAT rules prevails.

TEI thus maintains that the development of a comprehensive and well-functioning OSS, including full input VAT recovery, is crucial for the success of the final VAT system and should thus be a top priority for the Commission.

Conclusion

TEI appreciates the opportunity to share its suggestions with the Commission regarding the revision of rules for B2B intra-EU cross-border transactions and welcomes the opportunity to discuss these comments and recommendations further. 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 (696) 52 92 44 or paularegales@gmail.com, or Pilar Mata of TEI's legal staff at +1 202 464-8346 or pmata@tei.org.

Respectfully submitted,
Tax Executives Institute



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