TAX EXECUTIVES INSTITUTE, INC.

17 March 2017

European Commission
Directorate-General for Taxation and Customs Union
VAT - Unit TAXUD/C1
Rue Joseph II 79, Office J79 05/065
B-1049 Brussels
Belgium

Via Email: TAXUD-C1-SECTOR- D@ec.europa.eu

RE: Response to Public Consultation on the Reform of VAT Rates

Dear Sir or Madam:

We write in response to the European Commission's (Commission) Public Consultation on the Reform of VAT Rates (Consultation). Tax Executives Institute (TEI) appreciates the Commission's interest to balance the need for harmonisation against Member States' autonomy in setting VAT rates and supports the Commission's efforts to revise the rules contained in Council Directive 2006/112/EC (Common System of Value Added Tax). 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 for business or tax authorities. Moreover, TEI supports the Commission's efforts to protect the neutrality, simplicity, and workability of the VAT system.

Comments and Recommendations

TEI represents a wide variety of business sectors with diverse interests. TEI thus seeks to provide an explanation for its position on VAT rate reform rather than responding to the specific questions posed in the Consultation.

TEI agrees with the Commission that the current system of VAT rates requires reform. Businesses face challenges when trading in more than one Member State, as the rules for rates vary, e.g., a supply may qualify for a reduced rate in one Member State but be taxable at the standard rate in another. This variation creates uncertainty for businesses and increases administrative costs to ensure that supplies are properly taxed. TEI thus welcomes simplification of the current system with respect to VAT rates.

In general, TEI is not opposed to the Commission setting a minimum standard rate of 15%. While it appears that the current place of supply rules have largely curtailed VAT "rate shopping," TEI believes a minimum rate should help ensure a level playing field across the European Union (EU). TEI does not believe there is a similar need to set an upper VAT rate, as upper rates will likely be self-regulating, i.e., Member States must balance tax revenues driven by a higher rate against the risk of shifting supplies based upon competition or towards the black market if rates cross an upper threshold.

TEI recognizes that Member States require some flexibility concerning rates and understands the necessity of reduced rates. TEI maintains, however, that such flexibility should not create undue complexity that would hinder cross-border trade. TEI thus encourages the Commission to define the services and goods benefiting from reduced rates consistently across all Member States to ensure the workability and neutrality of the VAT system, i.e., a supply that qualifies for the reduced rate in one Member State should not be subject to the standard rate/exempt elsewhere.

TEI notes there are many examples under the current system - food, feeding stuffs, and catering - where the status of the supplier, recipient, place of consumption, and the individual product can result in different VAT rates. Further, with respect to medicines, rates can vary significantly (from 0% to 27%) within the EU, depending on the exact definition of the product and who provides it. The differences among Member State definitions are often subtle and lead to confusion and errors. Thus, TEI supports an alignment of definitions at EU level (rather than national level) for all types of supplies to avoid uncertainty and undue compliance burdens, e.g. having to seek advice from local experts in several different Member States.

TEI also maintains that a single reduced rate should be sufficient and it is not necessary to provide multiple reduced rates per territory. Maintaining a single reduced rate would allow flexibility, e.g., to target/promote certain supplies whilst minimising the risk of confusion for businesses. Again, the alignment of definitions for reduced rate items across Member States at the EU level is crucial to accomplishing this objective.

Reducing the number of rates available per country would minimise complexity, should enable business to set up their ERP systems appropriately, and would reduce the risk of system errors/non-compliance. It would also aid systems maintenance by reducing the number and frequency of VAT rate changes, and thus keep compliance costs manageable. Reducing complexity may also encourage cross-border trade, which is consistent with the Commission's goal to reduce barriers, for small and medium-sized enterprises in particular, creating a "true single" market. If the definitions for and application of reduced rates were aligned between Member States, small businesses would be more confident to expand to markets outside their own territory.

In contrast, VAT rate derogations cause difficulties, e.g., exceptions need to be tracked on a case-by-case basis. TEI thus maintains that the number of available derogations should be reduced wherever possible to promote simplicity and prevent the distortion of competition. TEI acknowledges the insistence of certain Member States to maintain derogations, and that there may be limited room for negotiation at this point. However, derogations and exceptions should be granted only in exceptional cases, when they are consistent with current aims and practice. For example, the UK derogations in respect of food are complicated and could potentially be simplified.

Furthermore, it may be challenging to maintain an up-to-date, clear list of exceptions subject to reduced rates. One current example involves the dispute regarding eBooks, which has been ongoing for many years and treats e-Publications differently than their physical counterparts. It would be difficult for lists to keep up with technological advances and thus reliance on such lists may result in more problems/distortions. Any lists would therefore have to be revisited frequently and a mechanism would need to be established to ensure that updates could be made in a timely manner. Further, as discussed above, alignment of definitions across all Member States is very important to avoid uncertainty, reduce the risk of error, and ease compliance burdens.

While TEI acknowledges that Member States need a certain degree of flexibility, harmonisation is essential to enable businesses to manage their VAT compliance efficiently and effectively. Too many VAT rates make it difficult to automate processes and/or to determine the applicable rates. For example, in many businesses, accounts payable staff responsible for processing invoices need training to ensure costs are allocated to the correct tax codes. Too many choices may lead to errors, e.g., incorrect recovery of VAT or non-recovery of eligible amounts and penalties. Providing Member States with unnecessary flexibility may also hinder cross-border trade for smaller businesses because they cannot afford advisors for every territory to investigate the VAT treatment of their (potential) supplies.

Several Member States have recently introduced the use of SAF-T, requiring system transaction detailed information. Tax codes are key to such data reporting. The more tax rates and the more tax exceptions and rules, the more tax codes are needed. The benefit of SAF-T will be lost to all if the rates and rules are not harmonized, nor stable.

TEI thus supports the use of automation and limitation of exceptions. Doing so will not only be good for business, but will also be beneficial for tax authorities and audits, e.g., it would be easier for tax authorities to carry out audits/e-audits of businesses under a harmonised system – saving time, money, and resources for both business and the tax authorities.

Conclusion

TEI appreciates the opportunity to share its suggestions with the Commission regarding the reform of VAT rates 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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