CFE tax advisers europe

OPINION STATEMENT

Opinion Statement FC 3/2022 on the EU Commission VAT in the Digital Age Consultation

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CFE Tax Advisers Europe is the European umbrella association of tax advisers. Founded in 1959, CFE brings together 33 national tax institutes, associations and tax advisers' chambers from 24 European countries. CFE was the initiator of the Global Tax Advisers Platform through which it is associated with more than 600,000 tax advisers worldwide. CFE is part of the EU Transparency Register no. 3543183647-05.

We would be pleased to answer any questions you may have concerning our Opinion Statement. For further information, please contact Bruno Gouthière, Chair of the CFE Fiscal Committee or Aleksandar Ivanovski, Director of Tax Policy at info@taxadviserseurope.org. For further information regarding CFE Tax Advisers Europe please visit our web page http://www.taxadviserseurope.org/

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1. Introduction

CFE Tax Advisers Europe welcomes the work of the European Commission in seeking to review the appropriateness of current VAT rules in the EU in light of changes brought about by digitalisation of the economy.

In seeking to support the Commission in this objective, CFE wishes to highlight the following issues in relation to the questionnaire and the various policy options being considered by the Commission.

2. Part I - Digital Reporting Requirements

The CFE is very concerned that the introduction of non-harmonised digital reporting requirements and e-invoicing is effectively fragmenting the single market. While the CFE does not consider that Member States should be required to implement such requirements, if they do decide to do so the CFE considers that it is highly desirable that the systems should be implemented in so far as possible in a harmonised manner. They should also be implemented in a manner that seeks to minimise the burdens on businesses and in particular SMEs, since such requirements can be particularly burdensome for them.

A key element to be considered in relation to digital reporting requirements is not the gathering of data alone, but the software and tools required to analyse the data for various purposes. It must be ensured that any EU-wide reporting requirements are carried out using an effective tool that is fit for purpose. Whatever solution is to be used, whether it be distributed ledger technology which can produce proof of every step in a supply chain, or any other type of system, it must be scalable and proportionate. It is obvious that the introduction of a new level of reporting requirements will likely require companies to implement hugely expensive new IT systems which may or may not be communicative or compliant with new rules. The burden is even higher for SMEs, which may only trade in a single Member State and yet still be required to comply with new requirements.

In respect of the cost of implementing digital reporting requirements, although it may be the case that taxpayers face an initial investment cost in implementing new software, CFE has received some positive feedback that these systems can bring with them a longer term cost saving in terms of book keeping if there is a government created system, for example, as is the case in Italy, and Slovenia, where a special government platform has been established for local business to public authority and public authority to public authority supplies with a view to reducing the costs for small businesses. However, this highlights the importance of measures being taken to minimise the cost of implementation. Cost of implementation and ease of operation should be key considerations in implementing any new EU-wide

system. Smaller businesses may have particular difficulties in adjusting to any changes and may find the new requirements particularly burdensome, especially if it requires them to engage outside consultants, even if the Italian experience suggests that there may be some long term benefits. Larger businesses are unlikely to experience any benefits because they are already likely to have systems in place, so any new requirements would only impose added burdens on them with no corresponding business benefits.

In order to find the most effective means to fight intra-EU VAT fraud through digital reporting requirements, consideration should also be given to ensuring the possibility to investigate fraud in the transactions being reported. There is a clear need for authorities to be able to monitor domestic transactions, as carousel fraud cannot function without domestic transactions taking place. If uniform rules are not adopted, it is possible that fraud will then take place in Member States where the reporting measures are not in place. However, CFE is of the view that requirements should be standardised but not automatically imposed, and left to Member States to determine whether it is necessary to introduce the requirements.

It should be noted that the VIES system can be problematic, for example in Spain, as it does not enable one to see the owner of a VAT registration number, only whether it is valid or not. Similarly, CFE members report instances of tax authorities in different Member States producing different data from the VIES system in relation to the same supply. In Germany, CFE is aware that for domestic transactions the reporting format is different, and that an EU-format is only able to be accessed for cross-border trade. Issues such as these are obvious barriers to proper and smooth cross-border digital reporting, and are of concern to CFE should the VIES system be extended.

CFE would also like to stress that reporting requirements and the need for them to effectively address VAT fraud must be balanced against taxpayers' rights. Many taxpayers are wary of Member States goldplating any requirements, and requiring even further evidence than may be necessary under any common rules adopted, and being pursued unfairly by overly zealous tax authorities. CFE believes that the risks to taxpayers' rights could be balanced by ensuring that taxpayers have full access to the data which can be viewed by the tax authorities. The costs of any proposed measures especially for SMEs are also a very important consideration when determining how any measures should be implemented.

3. Part II – The VAT Treatment of the Platform Economy

Discrepancies exist between Member States as to whether supplies are made by a platform or the individual using the platform services, resulting in double or non-taxation. For example, CFE is aware that there are various positions being taken in relation to food delivery platform services and whether the persons delivering the food are a taxable person or not. This raises issues with thresholds for small enterprises, if these individuals are to be seen as entrepreneurs. This could have a significant impact on VAT recovery on costs.

CFE is of the view that there should be a rebuttable presumption concerning whether or not an individual registered on a platform is deemed to be an entrepreneur. The CFE does not consider that all persons undertaking transactions via a platform should be considered taxable persons, for example a person selling their own personal possessions should not be, and the same possibly applies to persons exchanging use of their homes. There are obvious issues as to input tax recovery and how to define this at an EU-level, as to who should recover input tax and to what extent. It is appropriate to have a rule governing this, but CFE is of the view that if one is considered a taxable person, one should have the right of recovery of input VAT. The volume of VAT registrations which may flow from such a rule should also be considered, in terms of compliance and oversight burdens for tax administrations.

Issues with accommodation platforms include that you can have multiple resellers in a supply chain, i.e. it is not a situation of A to B, but B to C to D. Any deeming provision could impact on multiple parties selling the same hotel room. Although it may on the surface appear positive to have a deeming provision, in a multiple supply chain this could have a significant impact. It is necessary to consider whether any measure should only capture the final seller to the retail customer. It is also necessary to consider the interaction with situations where a party is acting as a tourist agent, where one may be the deemed supplier but not the party supplying the services.

While CFE Tax Advisers Europe can see that there may be sectors where it is reasonable to have a presumption that everyone using a platform to sell goods and services is acting as a taxable person, it does have concerns about how far such presumptions should be taken. For example it does not consider that individuals who are exchanging use of their owns homes should be presumed to be taxable persons. Similarly persons using a platform to sell their own personal possessions should not be so regarded.

This leads to the industry concern on the extent to which one can expect suppliers outside of the EU to be compliant. Although there would be an overall major positive impact in adopting EU-wide positions on some of these issues, there must be a clear definition which cannot be avoided, for example as is seen in the travel sector where offshore providers are used to avoid the application of EU rules. Clarity is needed also on the deemed place of supply to avoid multiple registrations, to identify the deemed supply and its interaction with the TOMS scheme.

4. Part III – Single VAT Registration in the EU and IOSS

CFE is of the view that the OSS should be extended to supplies with installation with the final consumer and in chain supplies where extending it would be desirable. CFE is of the view that the IOSS should also be extended as the current financial threshold significantly limits the utility of the system. We also consider that there would be merit in extending the OSS to business to business supplies in cases where VAT is not accounted for using the reverse charge under Article 194 of the Directive.

The CFE also believes there ought to be a facilitation scheme available for supplies of greater value, although this would of course need to include customs requirements when the value of goods is over 150 Euro. However, CFE considers that it would be ideal if the system could incorporate both purposes, both customs and VAT requirements. CFE is of the view that this will benefit SMEs given the cost of compliance versus the volume of sales.

The legal position of intermediaries should also be amended with the introduction of a good faith clause similar to that already provided for platforms. Intermediaries play a significant role in the implementation and execution of IOSS and its acceptance by non-EU sellers, and we consider that it would be appropriate for them to be given this extra protection.

5. Conclusion

CFE Tax Advisers Europe hopes that its feedback on this consultation provides helpful input for the Commission in its process of considering the various policy options. CFE reiterates its position that it welcomes the work of the European Commission in seeking to review the appropriateness of current VAT rules in the EU in light of changes brought about by digitalisation of the economy, and remains available to assist in any further stakeholder consultation processes.