CFE tax advisers europe

OPINION STATEMENT

Opinion Statement FC 4/2023 on the EU Commission VAT in the Digital Age Legislative Proposal Package

Issued by CFE Tax Advisers Europe
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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

The CFE broadly welcomes the EU Commission's VAT in the Digital Age legislative proposals which aim to adapt 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 proposals put forward by the Commission, further to the Opinion Statement submitted by CFE on 5 May 2022 in response to the EU Commission public consultation when policy options for the VAT in the Digital Age proposal were being considered.

2. E-Invoicing and Digital Reporting Requirements

Although the CFE broadly welcomes the proposals to harmonise the rules, it does have the following concerns with the proposals:

(i) The CFE has concerns that the time limits in the proposal concerning e-invoicing and digital reporting requirements will be overly burdensome for businesses to comply with, in particular for SMEs. CFE is of the view that the current time limit to submit invoices within 2 working days and the subsequent reporting window of 2 working days will be very challenging for companies, and the CFE is aware that this issue has been raised already by some Member States, including The Netherlands. The CFE is also concerned that the timeline for implementation of the digital reporting requirements (2028) is too short and will be problematic in practice for many businesses.

CFE Members have experienced problems in practice under existing e-invoicing systems with receiving invoices from suppliers in time to enable businesses to comply with short submission deadlines to the tax authorities. In particular we observe that we understand that businesses in the Czech Republic have experienced problems with a 4-day window for issuing invoices and reporting transactions. This suggests that a longer period should be set as the minimum. In this regard we consider that it is significant that after significant consultations and after taking account of the experiences of other member states, in particular the Czech Republic and Spain, the French Government suggested a 10-day reporting window under its proposed e-invoicing and e-reporting reforms. Even that much longer period was considered problematic by businesses. We observe that having such a short window means that customers are given very little time to consider the accuracy of invoices and to make any observations on errors. Businesses receiving invoices generally need about two weeks to enter these in their accounting system. we are therefore very concerned about the practicalities of requiring a report of incoming invoices within In this respect it is also important that a tight time frame will result in incorrect data when based on inaccurate invoices, which data require correction at a later stage.

(ii) We also observe that the proposals surprisingly contain no reference to the particular burdens that they will place on small businesses. Some of them may need to engage outside professional assistance to comply with the proposals. Especially if, as currently appears to be the position, no attempt is being made to create exceptions for such businesses, it would have been helpful if the proposal had contained recommendations of steps that Member States should take to assist in reducing the burdens on such businesses. It could also help to reduce the burdens being placed on such businesses if they are given a longer window in which to issue invoices and to report transactions or possibly a dispensation from complying with them. Especially if a business needs to use outside professional agents to ensure it is compliant (which may be the position with smaller businesses that are less confident about making such on-line submissions), this may assist in reducing the costs that the business incurs (since the costs that the business incurs in engaging the professional agent are likely be lower if information can be submitted less frequently). The CFE would therefore welcome the implementation of a threshold for these digital reporting requirements. Such threshold should enable small business not to be burdened by onerous reporting obligations.

(iii) Another related concern relates to identifying the precise moment when the proposed 2-day reporting window commences. Under the proposals, E-invoicing is required for intracommunity transactions. The E-invoice needs to be issued by the supplier within a period of two working days following the date of the chargeable event, which is the time when the purchaser acquires the right to dispose of the goods as owner. Determining the timing of this in practice is not always easy, especially since there is no article in the Directive that requires a customer to provide a supplier with evidence of the precise time of this chargeable event. In some cases there could be weeks between the shipment of goods by a supplier and their receipt by a customer. A clearer rule for the time of intra-community transactions would add certainty for compliance with reporting requirements. This would also help with chain transactions, where problems are still being experienced in practice despite the Quick Fixes.

(iv) Certain Member Organisations within CFE are concerned by the granularity of data required to be transmitted under the proposed EU system of Digital Reporting Requirements (DRR) and the access that tax authorities will have to business sensitive information. Lesser requirements would appear to be more proportionate and more in accord with principles of data protection. If the aim of the proposed legislation is to ensure that the information provided by the seller and buyer marries up for VAT collection purposes, then it is arguable that the required level of granularity, such as the requirement to provide price per unit, is not necessary to achieve this aim. The level of data being required, including line level detail on invoices for purchasing and sales, raises significant issues around confidentiality of business information. The granularity of the requirements will also add to the level of onerous compliance for businesses, again in particular for SMEs. The CFE observes that for example in Slovakia where digital invoicing and exchange of data on invoicing occurs with the tax authorities, only the data needed to control VAT compliance is extracted and uploaded to the interface of the tax authorities. The proportionality of requiring the

publication of banking details in invoices could also be open to question especially if it is not envisaged that payment will be made by bank transfer. With smaller transactions in particular, it may be envisaged that payment will be made by credit card.

(v) We are also surprised that the proposals completely abolish the rules relating to summary invoices. We in particular have difficulty in seeing why such summary invoicing should not remain an option in a domestic context, where the VAT is charged, in particular in countries that do not adopt digital reporting requirements for such transactions. With supplies of services it is also common to have monthly invoicing and we are concerned about the proportionality of requiring any change. We are also concerned about the implications of the proposals on credit notes. It is common for suppliers to provide their customers with rebates and discounts connected to sales throughout the year. Under the proposals the proposed credit note must explicitly refer to the original invoice. We are concerned that this will be disproportionately burdensome in these situations and some simplifications are required.

3. Single VAT Registration and the extension of the One Stop Shop

While the CFE generally welcomes these proposals, it observes that:

(i) Although the CFE appreciates that some Member States may object to such a proposal, it considers that it is unfortunate the portal is not being extended so that, in addition to reporting output tax liabilities, it can also be used to recover input tax . The absence of such a facility increases the administrative burdens on businesses and also causes cash flow problems, in so far as a business faces delays in recovering input tax under the refund directives. It also means that many businesses are likely to continue to want multiple VAT registrations and discourages the use of the OSS so that they can recover input tax more speedily by submitting national VAT returns.

(ii) We also consider that it is unfortunate that one consequence of the changes is such a speedy phasing out of the current simplification regime for call-off stock introduced as part of the quick fixes. The CFE is concerned that smaller businesses in particular may prefer to use the current simplification regime.

(ii) The CFE also observes that it is unfortunate that in relation to supplies of own goods business are being left with solely two options, one to use the new proposed regime for all supplies of own goods between member states or not to use it at all. We can see no clear reason why the system should not be modified to allow more optionality.

(iii) If the other changes being made in the proposals are to be made, the CFE also considers that changes should be made to the Directive and in particular to article 138, so that the exemption extends to supplies of own goods.

(iv) The CFE considers that it is important that the procedures for correcting errors are made as simple as possible. The CFE can understand that a Member State where a OSS return is submitted will not be happy with the idea that a correction should result in a refund of VAT that exceeds the VAT that is due to a particular Member State in a period. If such a restriction on corrections is to be imposed, then it would be desirable that the rules should make it clear that a credit can be secured by reducing liabilities in future returns until the correction is fully remedied or otherwise remedied by a direct refund from the Member State in which the VAT has been ultimately overpaid. We would hope that the improved information flows resulting from the proposals will make Member States more receptive to agreeing such refunds. However, we consider that it is important that there should be a review of procedures to ensure that they are as simple and speedy as possible.

(vi) CFE Members have identified a potential new issue in relation to Article 194 as concerns the registration of foreign taxable persons in a Member State, that Member States can do so under its own rules.

(vii) In the Slovenian translation of the proposal, there is a concern that the English version has been mistranslated. The English version of the proposal states that Member States are obliged to give a foreign taxable person the possibility to apply a reverse charge regime. However, the wording used in the Slovenian translation means “can”, i.e. not obligatory. We suspect this is an error in the Slovenian version. However, it highlights the need to ensure that the different language versions of the proposals are all consistent.

4. e-Commerce Conditions

The CFE has reservations about the proposals to extend the circumstances in which platforms are deemed to be the suppliers of goods and services sold via the platform. It observes that the proposals may encourage customers not to complete transactions over a platform if they can avoid having to account for VAT by approaching the underlying supplier directly. In this regard it is observed that:

(i) The CFE can see that the issues may be slightly more finely balanced in the transport and accommodation sectors, where the proposals to deem platforms to be suppliers may assist in reducing distortions of competition with for example the traditional hotel sector. However, it would strongly question whether there is any need to extend this to all sales of goods via a taxable person over a platform. We say this especially given the recent changes already made in this area by the e-commerce package that came in to force on 1 July 2021.

(ii) The CFE is concerned that this extension potentially undermines the neutrality of the tax if it results in VAT being charged on the entire payment made by a platform when the person making the supply to the platform has no right to recover VAT. In cases where the underlying supplier is clearly a taxable person but is not required to register because of exemptions for small businesses, the proposals are also likely to encourage such businesses to register, so that they can recover VAT on supplies made to them. If there is a right of recovery if a

business registers, by encouraging them to register, the consequence of the changes will be to increase the administrative burdens on such businesses and the tax administrations.

(iii) As is the position under article 14a(2) of the Directive as currently worded, the changes being proposed to article 14a of the directive, would just appear to apply to supplies by taxable persons via a platform so that the deemed supply rule will not apply to supplies by a person who is not a taxable person. This means that platforms will have to determine whether or not a person is a taxable person in order to determine whether the deemed supplier rules apply. Extending the rules to supplies by non-taxable persons would undermine neutrality except in cases where the platform can take advantage of the special schemes for second-hand goods, works of art and collectors' items in Articles 312-315. This is because the items being sold may well have been subject to VAT when they were originally acquired by the person selling them on the platform.

(iv) If the special scheme for second hand goods, works of art and collectors' items in Articles 312-315 does apply to platforms it raises questions as to how the deemed self-supply under Article 14a is to be calculated.

5. Conclusion

CFE hopes the above comments are helpful and remain available to consult concerning the proposed Directive.