CFE tax advisers europe

OPINION STATEMENT

Opinion Statement FC 6/2023 - Further CFE Comments on the EU Commission's VIDA Proposals of 8 December 2022

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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/

CFE Tax Advisers Europe Office I 188A, Avenue de Tervueren, 1150 Brussels, Belgium
Tel. +32 2 761 00 92 I info@taxadviserseurope.org I www.taxadviserseurope.org

1. Background

CFE Tax Advisers Europe submitted representations on 4 April 2023 to the European Commission on legislative proposals published on 8 December 2022 on the VAT in the Digital Age package. Since those representations were submitted the CFE has held a Forum on the proposals in Brussels on 20 April 2023. This in turn has stimulated further debate within the CFE on the proposals.

As we explained in our initial representations, the CFE broadly welcomes the proposals. We also greatly appreciate the contribution that Agnes Fekete, from the Commission, made to the discussions at the CFE Forum. However, there are a number of issues that we continue to have considerable concerns about. Many of these concerns are set out in our earlier Statement. We are not seeking in this Statement to repeat all those points which we continue to endorse. However, we thought that there would be merit in further developing some of the points that we made in our earlier representations and also making some further observations.

2. Digital Reporting

One issue that we commented on was the practical difficulties that the short 2-day reporting window will impose particularly on those receiving supplies. This is an issue that we continue to have very significant concerns about. In this regard we further observe that:

(i) even if no other changes are made, we consider that the proposals should be amended to permit extended reporting periods when the currently proposed windows fall on a public holiday. This particularly applies to requirements to report the receipt of supplies. We are concerned that the current short requirements are likely to be especially burdensome for small businesses. What is a sole trader expected to do if his business receives an invoice when he is on holiday in a location with no mobile connection?

(ii) the proposals do not envisage the use of pre-clearance procedures. If a longer reporting window were permitted, we agree with that stance. However, if it is otherwise proposed to retain the current tight reporting requirements, the use of a pre-clearance procedure should enable the removal of reporting requirements on the recipients of supplies because the pre-clearance procedure can then perform that function. If that can be achieved and it is proposed to retain the current tight reporting requirements, then there may be greater merits in adopting that model.

3. Single Place of VAT Registration

We observe that changes will need to be made to Article 138 of the VAT Directive to ensure that the exemption is available for those using the extension to the One Stop Shop for transfers of own goods, since the proposals are premised on the owner of the goods that are transferred not being registered in the country that the goods are transferred to and it is currently a condition to obtaining

exemption under Article 138 that the recipient of the transferred goods is registered in the state where the acquisition occurs.

While the proposals may reduce the need for registrations in other Member states they do not remove the need for all such registrations. For example, it will remain necessary for a business to register in another Member state if it makes supplies in that state to a person established in a different state (and who is not VAT registered in the Member state where the supply takes place) or with a view to their export. As we previously indicated, in practice the utility of these changes is reduced by the fact that many businesses will still consider that they need to register to enable input tax to be recovered more speedily. The proposed changes would in practice have greater utility if they also facilitated speedier input tax recovery.

The increasing application of the destination principle inevitably increases the burdens on particularly small businesses by increasing the extent to which they are required to account for VAT by applying the rules in the country where their customers are established, which they are less likely to be familiar with. The One Stop Shop helps to reduce these burdens but does not eliminate them. In particular, one issue that we continue to have significant concerns about is what happens when there are disputes with national tax administrations about VAT charges, for example about rates of VAT charged on the supplies. A small business will in particular find it very difficult and burdensome to have to conduct litigation in a different jurisdiction and frequently in a different language than that used in the country in which it is established. We consider that this is also an issue that needs to be addressed with urgency. The 2021 e-commerce changes are still recent and so it is probably too soon for a material number of disputes to arise. However, we are very concerned that this is going to become an increasing problem going forward and we consider that steps should be taken to mitigate these problems by ensuring that any disputes about liabilities are determined in the country where the trader is registered for the purposes of the OSS when utilised.

4. The Platform Economy

As we indicated in our representations of 4 April, the CFE has particular reservations about the proposals to extend the circumstances in which platforms are deemed to make supplies. In addition to the points already raised, we would like to highlight the following issues:

(i) in the interests of legal certainty we can see merit in providing a tighter definition of an "electronic interface" , we are concerned that the current definition is very vague;

(ii) even if it is considered justifiable to extend the deemed supply rule to most supplies of short term accommodation, we have particular concerns about the fact that the current proposals will extend to platforms facilitating the exchange of accommodation. Since such exchanges are clearly likely to relate to individuals acting in a personal capacity, there appears to us to be far less justification for extending the deemed supplier rule to this situation since we consider that the owners are not in any real sense acting in competition with the hotel sector. Treating consideration in kind as being taxable will also cause huge practical

problems for platforms who will not be in a position to easily determine how much VAT to charge. We would therefore suggest that the deemed supplier rules should not extend to imposing a charge on non-cash consideration, possibly with suitable safeguards to prevent avoidance;

(iii) we are concerned that problems are likely to be caused by the fact that some Member states require businesses benefiting from the exemption for small enterprises to have a VAT number and they may be required to provide that number for other regulatory reasons or other VAT reasons, for example to benefit from the reverse charging provisions in Article 196 of the Directive. It may therefore make sense to have an alternative control mechanism, apart from the provision of a VAT number. The proposals also do not make it explicitly clear what the potential liability of both the Platform and the underlying supplier is in a situation where the VAT number is provided to the Platform in error and the Platform assumes that the supplies made by the underlying supplier to the customer are taxable and that Article 28a therefore does not apply. We consider that it should be made even clearer that the Platform will have no liability in these circumstances. The reverse could also conceivably be an issue. For example, the underlying supplier could fail to notify the Platform that his supplies are subject to VAT and fail to provide his VAT number to the Platform. We assume that the Platform as a matter of strict law will not be subject to the deemed supply rules in such a case and any VAT charged in error by the Platform will be repaid to it:

(iv) we also consider that there is a strong case for shortening the 45-day period that the proposed changes to Article 135(3) of the VAT Directive will treat as taxable supplies since in practice this is much longer that most temporary holiday visitors are likely to stay in any one set of premises. Having an unduly long period when the exemption does not apply increases burdens on business but also on tax authorities who will be faced with more VAT registrations and increased claims to recover input tax;

(v) with passenger transport, we consider that the proposals should apply purely to taxi like services and should not apply, as currently proposed, for example, to non-established persons selling tickets on commercial passenger aircraft or public transport, for example buses. It is therefore considered that a more targeted definition would be more appropriate;

(vi) we are also concerned about the general complexity of the rules for platforms. In this regard we observe that there may be cases where:

(a) they have to account for VAT under Article 28a when they are acting as an agent in relation to supplies falling within that proposed article;

(b) they may have to account for VAT under the TOMS scheme when they are acting as principal and Article 28a does not apply, for example when they are buying in supplies from other taxable persons (and acting in their own name vis à vis the customers), since there is no need for Article 28a to deem the platform to make supplies when it is in any event the supplier under Article 306;

(c) given the different approaches in the Member states to the application of the TOMS scheme there may be cases where they account for VAT as principal on a non-margin scheme basis;

(d) they just account for VAT as a disclosed agent in cases where the proposed article 28a does not apply.

When it has VAT benefits it is also to be noted that the platform may seek to switch its model to secure those benefits.

5. Conclusion

CFE Tax Advisers Europe hopes that these further observations provide helpful input. 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.