



## **Public Consultation – Improving the Situation of EU Citizens as Taxpayers for Indirect Tax**

The Covid-19 outbreak is an unprecedented situation, with repercussions in all aspects of day-to-day business operations. Exceptional tax measures have been put in place in member states, such as tax deferrals, and are playing an essential role in protecting businesses and jobs. Action at member state-level continues to be supported at EU level by a rapid and wide-ranging response, such as the temporary waiver of VAT on imports from non-EU countries of medical devices and protective medical equipment.

In this light, we thoroughly welcome the Commission's initiative on improving EU taxpayers' rights, both of private individuals and businesses, across the EU Single Market. This well-timed initiative presents an ideal opportunity for member states to identify and improve certain measures in this field, and, in particular, exchange best practices on some VAT-related measures. We highlight in particular the several VAT-measures that tax authorities took during the outbreak of the Covid-19 pandemic to support the economy, and we hope that the member states' recognition of the importance of VAT to businesses' liquidity can continue both during and after the Covid-19 crisis.

### **VAT Refund**

Many member states offered a postponement of the payment of VAT, and dropped interest fines on late VAT returns. Such tax deferrals were helpful and essential, and tax authorities have shown strong commitment to ensure these measures were rapidly put in place.

However in future, tax administrations should also ensure that the process of refunds of VAT already paid (i.e. companies' excess input VAT) is accelerated. With business closures as a result of a series of lockdowns, businesses were still incurring VAT on their running (fixed) costs (with only limited sales and thus output VAT). This has led to an increasing number of businesses being in a refund position with the tax authorities. Several member states - such as France, Romania and Malta - had therefore committed themselves to have an accelerated reimbursement of VAT to businesses and we strongly share these tax authorities' recognition of the importance of swift VAT refunds. The increasing digitalisation of tax systems, both with national authorities and businesses, should not only allow for an ever-increasing speed in the refunding of VAT, but also for a level of full automaticity, without the obligation for taxpayers to make individual requests and we hope member states take the opportunity to share some best-practices in this area.

What matters most to businesses in terms of VAT refunds is certainty: refunds should be paid out in an unbureaucratic way by the tax authorities within a pre-agreed timeframe - ideally within 1 week after the respective VAT return has been filed - and by applying timely and efficient risk management procedures focusing on the avoidance of fraud. Lengthy and bureaucratic procedures like audits of VAT refunds, etc. must be avoided as much as possible. During crises, it is also worth considering allowing those businesses which are on an annual or quarterly VAT return filing to apply for filing monthly VAT returns with their tax authorities in order to get earlier access to VAT



refunds and therefore avoid liquidity issues.

As more and more cross-border transactions are moving towards the One-Stop Shop regime, it is also worth exploring how to move the VAT refund portal closer together with the One-Stop-Shop.

We would like to stress that quicker VAT-refund procedures should not just be regarded as a tool to provide necessary support to business liquidity in times of crisis. Overall, continuing this practice in a post Covid-19 economy will also serve as a good indicator of a supportive relationship between businesses and tax authorities, and will foster a conducive business environment for trade growth.

### **VAT Bad Debt Relief Mechanism**

As a result of multiple lockdowns, businesses were faced with multiple non-payments by customers. This posed a heavy challenge to the current VAT Debt Relief Mechanism in EU member states, and it became quickly clear that the lack of a proper-working bad debt mechanism posed a great deal of administrative burden to businesses. Member states currently apply different criteria regarding bad debt under Article 90 of the VAT Directive. This results in a disproportionate burden for businesses active in multiple member states and fragmentation in the single market as businesses are subject to diverging rules. In some member states, a bad debt mechanism is not even available at all.

Therefore, a bad debt recovery procedure should be mandatory and operational in each and every EU member state, working on the basis of a EU-harmonised, simple and clear definition of bad debt. Much like accelerated VAT refunds, a properly-working bad debt relief-mechanism should not only be regarded as a helpful measure to support businesses in times of crisis, but can and should also serve its purpose in better times and can act as a further demonstration of a country's cooperative support to businesses.

Businesses whose invoices have not been paid by their customers within the agreed payment term conditions, should be able to claim relief from VAT on bad debts in a timely and simple way. Such a system is preferably harmonized at EU-level as much as possible. A simplified and efficient mechanism can be achieved by reducing the minimum period of payment delay that is required for VAT on issued invoices in order to be eligible to obtain relief. As an example, if an invoice is not paid within e.g. 20 working days after the agreed payment term conditions between the trading parties, or if there are no payment term conditions agreed between the trading parties, the supplier should – after e.g. 20 working days - be able to claim a bad debt relief in his respective VAT return for VAT issued in his invoices which he has paid to his tax authorities.

If a bad debt relief has been claimed by the supplier and the supplier has received the payment from his customer at a later stage, he needs to have a process in place to pay the VAT he claimed the bad debt relief for, on to the tax authorities.



## **VAT Cash Accounting**

We encourage member states to provide businesses the option to use the cash accounting regime. Such a tool has shown to be very helpful for start-ups and SMEs in particular.

To ensure a pragmatic approach, input VAT deduction for taxpayers (both supplier and business customer) must follow the VAT operation model chosen: i.e. a tax payer that chose not to use the cash accounting method should always be able to recover his input VAT based on the receipt of an invoice and regardless of whether it was paid already, independently from whether his supplier chose to use cash accounting. Currently, in some member states, taxpayers procuring from suppliers using the cash accounting method are in such cases forced to also have paid the invoice to be entitled to input VAT recovery, which means an additional prerequisite is added because of the supplier's decision to use cash accounting. This is difficult to deal with from both an administrative and accounting system's perspective.

## **Right to Information**

Every taxpayer should have the right to access straightforward and free information regarding his or her tax obligations. Such an approach can only foster correct and timely compliance amongst taxpayers.

The European Commission website already contains many insightful and helpful information tools, such as the improved Taxes in Europe database (TEDB), with in particular a tool for the online consultation of the applicable VAT rates, and the specifications on e-invoicing rules in B2G-transactions (CEF Digital). We truly welcome the efforts that were made in setting these up and we can only support the European Commission's aspirations to have a more "information-sharing role"<sup>1</sup>.

However, there is currently both a lack of public awareness of these tools and, crucially, it is unclear whether these databases are complete or updated (sufficiently) regularly. More regular updates on the VAT aspects combined with more legal certainty (i.e. the rate as shown on the TEDB on the date of the issuance of the invoice should count as the correct legally applicable rate) would be a helpful tool to businesses, especially to those who engage in cross-border transactions.

In our understanding of the database, it seems that national tax authorities can update the information, without an intervention from the European Commission's services. By definition, this should allow tax authorities to automatically update both their own national database as well as the TEDB at the same time when changing VAT-rates. Such an approach can only serve both taxpayers and tax authorities well, by avoiding mistakes and endless disputes on over- or underpayment of VAT.

Such a database should also foresee in the future sufficient information about a country's sanctions and penalty regime. While we understand that tax authorities are not able to

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<sup>1</sup> Communication on Business Taxation for the 21<sup>st</sup> Century – European Commission (p. 6)



address everyone in all the EU languages, more efforts should be made to ensure VAT does not get lost because of translation issues in such a sensitive case as penalties or fines. This is particularly relevant in light of the upcoming implementation of the VAT/E-Commerce package, where more taxpayers, especially SMEs, are bound to VAT register through the One-Stop-Shop. The implication of this is that in the case of a late payment through the OSS, the taxpayer may potentially be subject to the different sanction and interest regimes in up to 26 member states. Without centralized information on the different regimes available, SMEs in particular may find it incredibly difficult to comply with, respond to or appeal to tax authorities (in time) in the different member states of consumption.

Therefore, we call on the member states and the European Commission to ensure that more information is made available, in several EU languages, preferably in the central hub of the Taxes in Europe database, to have an overview of the VAT sanctions and penalties that apply when something does go wrong.

### **VAT Double Taxation**

An issue which was not specifically highlighted in the public consultation is the double taxation of VAT. While the Commission has taken important and beneficial steps in the area of double taxation of corporate income (through the EU Dispute Resolution Mechanism), the current lack of an efficient mechanism to address the same issue in the area of VAT poses an obstacle in today's Single Market.

Data on the magnitude of VAT double taxation are missing and may be extremely complex or even impossible to find. According to our own wide network however, we do see this problem arising more and more. With the digitalization of the economy, and the blurring of lines between goods and services, instances of VAT double taxation are only expected to increase across the EU in the years to come, according to our members. Member States should work with the Commission and businesses to collect as many examples of such disputes as possible to map the revenue cost as close as possible and trace potential sources of legal misinterpretations. This should help in finding a more targeted solution to this issue in the future.

We already would like to refer to the on-going study at the University of Vienna and the Global Tax Policy Centre, which BusinessEurope actively shared amongst its network to provide real-life examples.