

Uwagi Europejskiego Kongresu Finansowego odnośnie do propozycji Komisji Europejskiej dotyczącej zmiany systemu VAT dla wewnątrzspółnotowych transakcji firma-do-firmy (B2B)

Europejski Kongres Finansowego przygotował poniższe opinie w oparciu o odpowiedzi i komentarze ekspertów z rynku polskiego przekazane w konsultacjach przeprowadzonych przez EKF na rynku krajowym. Odpowiedzi otrzymano od przedstawicieli firm prawniczych i konsultingowych, doradców podatkowych, a także przedstawicieli biznesu i środowiska akademickiego.

1. Obecny system VAT wpływa zniechęcająco zarówno na zakupy jak i na sprzedaż wewnątrzspółnotową głównie z powodu dodatkowych kosztów i ryzyk związanych np. z koniecznością poznania i zrozumienia systemu VAT w kraju docelowym, czy koniecznością dodatkowej rejestracji dla celów VAT w innych krajach. Dotyczy to w szczególności małych i średnich przedsiębiorstw.
2. Obecny system VAT nie zabezpiecza wystarczająco przed nadużyciami w VAT. Obecne narzędzie z dyrektywy, tj. odwrócone obciążenie (*reverse charge*), ogranicza te nadużycia, ale powoduje zwiększenie kosztów administracyjnych po stronie przedsiębiorców.
3. W systemie docelowym VAT powinno się rejestrować jedną transakcję w obrocie wewnątrzspółnotowym, podobnie jak obecnie w obrocie krajowym. Opodatkowanie dostawy powinno nastąpić w kraju, do którego trafia towar, a nie w kraju, w którym zlokalizowany jest konsument. Takie rozwiązanie przyniesie prawdopodobnie nieznaczne ograniczenie kosztów.
4. Opodatkowanie wewnątrzspółnotowych transakcji B2B pomogłoby w walce z nadużyciami w VAT.
5. Zasada *one-stop-shop* powinna być rozciągnięta na dostawy wewnątrzspółnotowe i spowodować, że nie będzie konieczna rejestracja dla potrzeb VAT w innych krajach członkowskich.
6. Pojęcie „Certyfikowanego Podatnika”, który odprowadzałby podatek, mogłoby być wprowadzone. Zasady otrzymywania takiego statusu powinny być harmonizowane na poziomie UE. Najważniejsze kryteria, które powinny być brane pod uwagę przy przyznawaniu takiego statusu to: (i) okres działania podmiotu, (ii) zabezpieczenie lub gwarancja z banku itp. (dla start-upu), (iii) przeprowadzenie samooceny ryzyka oraz (iv) standardowy audyt podatkowy.

Answers to selected questions in the European Commission's consultation on the Definitive VAT system for Business to Business intra-EU transactions on goods

The current situation of B2B intra-EU supplies of goods

Under the current transitional VAT arrangements, goods sold cross border between businesses established in different Member States are exempt from VAT in the Member State of departure of the goods and the customer has to self-assess and pay the VAT due in the Member State of arrival.

From the VAT technical point of view, there are two transactions: an exempt supply of goods on the side of the supplier in the Member State of departure and an intra-EU acquisition of goods in the Member State of arrival on which the customer has to account for VAT (and normally, he can deduct the input VAT at the same time).

The following questions aim to assess the main shortcomings of the current system.

15. Currently, domestic and intra-EU supplies of goods are treated differently for VAT purposes. Could this situation be discouraging/encouraging for some businesses **to supply** goods cross-border?

- Very discouraging
- Discouraging**
- Neutral
- Encouraging
- Very encouraging
- No opinion

16. Currently, domestic and intra-EU supplies of goods are treated differently for VAT purposes. Could this situation be discouraging/encouraging for some businesses **to acquire** goods cross-border?

- Very discouraging
- Discouraging**
- Neutral
- Encouraging
- Very encouraging
- No opinion

17. Are there any additional compliance costs for business linked with the application of the VAT rules to intra-EU supplies of goods, as compared with domestic supplies of goods?

- Many
- Some**
- Very few
- None
- No opinion

18. Please indicate the burdens that you have experienced, if any, in accounting for VAT in Member States where you are not established (multiple answers possible)?

- Obligation to register for VAT**
- Completion of VAT returns**
- Understanding the rules in other Member States (e.g. VAT rates, invoicing rules)
- Dealing with tax audits
- No burdens
- Other

19. Are small companies deterred from doing business cross-border because of additional compliance costs, if any, linked with the application of the VAT rules?

- Yes, very much
- Yes, to a certain extent**
- Not that much
- Not at all
- There are no additional costs
- No opinion

20. Do you agree that the current taxation system is not sufficiently resistant to VAT fraud within the EU?

- Strongly agree
- Agree**
- Disagree
- Strongly disagree
- No opinion

21. *Under the current system, VAT is normally charged by any taxable person making a taxable supply. There are, however, situations in certain sectors (or in relation to specific goods and services) where it is the customer who is obliged to account for and to pay the VAT (domestic reverse charge).*

Has the application of a reverse charge in certain sectors increased or reduced compliance costs for businesses operating in those sectors?

- They are significantly reduced
- They are slightly reduced
- They are not affected
- They are slightly increased**
- They are significantly increased
- No opinion

22. Is a reverse charge, as it has been used until now in certain sectors, an effective measure to combat tax fraud?

- Yes, very much
- Yes, to certain extent**
- Not that much
- Not at all
- No opinion

Possible short term improvements regarding the current transitional VAT system

While working on the definitive VAT system that will replace the current transitional VAT arrangements, improvements can be envisaged in selected areas in order to address the most pressing problems within the existing legislation.

The following questions seek your opinion on these possible short term improvements of the current VAT system.

23. Is a VAT identification number provided by the customer in the context of an intra-EU supply, a reliable proof of his status as a taxable person?

- Yes, it is a reliable proof
- Only to certain extent
- No, it is not**
- No opinion

24. Do you agree that in the case of an intra-EU supply, a lack of a valid VAT identification number of the customer should imply that the intra-EU supply should not be exempt in the Member State of departure?

- Strongly agree
- Agree**
- Disagree
- Strongly disagree
- No opinion

25. *In general, the term "chain transactions" refers to the situation where the goods are supplied via intermediary suppliers and the goods are dispatched or transported directly from the first supplier to the final purchaser.*

Should the legislative improvements to the current transitional rules address VAT issues linked with chain transactions?

- Yes, they should**
- No, they should not
- No opinion

26. Should the legislative improvements to the current transitional rules address issues linked with the proof required to demonstrate that the goods were moved from one Member State to another?

- Yes, they should**
- No, they should not
- No opinion

27. *In general, the term "call-off stock" refers to the situation where the supplier moves his own goods from one Member State to another Member State where they are kept in a warehouse from which the (already known) customer may take them when he needs them.*

Should the legislative improvements to the current transitional rules address issues linked with call-off stock?

- Yes, they should**
- No, they should not
- No opinion

28. *Under the reverse charge mechanism it is the customer who is obliged to account for and to pay the VAT.*

Do you think that an optional application by Member States of a generalised reverse charge on domestic transactions above a certain threshold per invoice would help in fighting tax fraud?

- Strongly agree
- Agree**
- Disagree
- Strongly disagree
- No opinion

29. Would the optional application by Member States of a generalised reverse charge on domestic transactions increase or reduce compliance costs to businesses?

- They will be significantly reduced
- They will be slightly reduced
- They will not be affected
- They will be slightly increased**
- They will be significantly increased
- No opinion

30. Would the optional application by Member States of a generalised reverse charge on domestic transactions increase or reduce administrative/ procedural/budgetary costs (burdens) to Member States' tax administration?

- They will be significantly reduced
- They will be slightly reduced
- They will not be affected
- They will be slightly increased**
- They will be significantly increased
- No opinion

Changes aiming at the introduction of the definitive VAT system based on the principle of taxation of the supply in the Member State of destination

The design of the future system for B2B intra-EU supplies of goods will focus on identifying which solution best assures taxation at the Member State of destination (i.e. where the consumption takes place) and who should be responsible for the payment of VAT. In this regard the following elements must be mentioned:

(i) From the technical point of view the two transactions (an intra-EU supply and an intra-EU acquisition) of the transitional VAT arrangements will be replaced by one single supply.

(ii) Concerning taxation at the Member State of destination two approaches are considered: 1) taxation at the place where the goods arrive and 2) taxation at the place where the customer is located.

(iii) In addition it has to be determined who should be obliged to account for VAT: 1) the supplier or rather 2) the customer.

Further, together with the introduction of the definitive system, some simplification measures are considered, such as the extension of the One Stop Shop (OSS) and the introduction of a "Certified Taxable Person" (CTP).

The OSS would lower burden for businesses by allowing them the use of an internet ready electronic platform for the payment of the VAT. As for the CTP, compliant businesses certified by their tax administrations, including SMEs, could continue to be liable for payment of the VAT on goods purchased from other Member States, which would grant additional simplifications to trustworthy economic operators.

31. Currently, under the transitional VAT arrangements, intra-EU supplies of goods are, as a rule, exempt and intra-EU acquisitions are taxable.

Do you agree that, under the definitive system, there should be only one taxed transaction i.e. a taxed intra-EU supply of goods as it is currently the case with the domestic supplies?

- Strongly agree
- Agree**
- Disagree
- Strongly disagree
- No opinion

32. Should the B2B intra-EU supplies of goods be taxed in the Member State where the goods arrive?

- Yes, they should**
- No, they should not
- No opinion

33. Should the B2B intra-EU supplies of goods be taxed in the Member State where the customer is located?

- Yes, they should
- No, they should not**
- No opinion

34. Who should be liable for the payment of the VAT due on B2B intra-EU supplies of goods?

- The supplier**
- The customer
- Other
- No opinion

35. *Currently intra-EU supplies of goods are exempt in the Member State of departure and intra-EU acquisitions are taxable in the Member State of arrival.*

Will business compliance costs increase or be reduced as a result of the replacement of these two (separate from a legal point of view) transactions by only one taxable supply?

- They will be significantly reduced
- They will be slightly reduced**
- They will not be affected
- They will be slightly increased
- They will be significantly increased
- No opinion

36. *Currently intra-EU supplies of goods are exempt in the Member State of departure and intra-EU acquisitions are taxable in the Member State of arrival.*

Will administrative/procedural/budgetary costs (burdens) increase or be reduced for Member States' tax administration as a result of taxation of intra-EU supplies?

- They will be significantly reduced
- They will be slightly reduced
- They will not be affected
- They will be slightly increased**
- They will be significantly increased
- No opinion

37. Do you think that taxation of B2B intra-EU supplies (which are currently exempt in the Member State of departure of the goods) will help fighting VAT fraud?

- Strongly agree
- Agree**
- Disagree
- Strongly disagree
- No opinion

38. Do you think that the supplier should not be obliged to register for VAT purposes in more than one Member State (as a rule in the Member State of his or her establishment)?

- Strongly agree
- Agree**
- Disagree
- Strongly disagree
- No opinion

39. *The mini One Stop Shop (MOSS) allows taxable persons supplying telecommunications, television and radio broadcasting, and electronically supplied services to non-taxable persons in Member States in which they do not have an establishment to account for the VAT due on those supplies via a web-portal in the Member State in which they are identified. Currently, this scheme is optional and is a simplification measure.*

Do you think that under the definitive VAT system the MOSS should be extended to taxable intra-EU B2B supplies of goods (and in this way become a One Stop Shop (OSS), thus avoiding the need for the supplier to register in Member States where he is not established)?

- Strongly agree**
- Agree
- Disagree
- Strongly disagree
- No opinion

40. Do you think that if the OSS is extended to taxable intra-EU B2B supplies of goods it should allow not only for the payment of output VAT but also for the deduction of input VAT?

- Strongly agree
- Agree**
- Disagree
- Strongly disagree
- No opinion

41. In your opinion, would the declaration and payment of VAT on supplies of goods through the OSS reduce or increase compliance costs and administrative burdens?

- They will be significantly reduced
- They will be slightly reduced**

- They will not be affected
- They will be slightly increased
- They will be significantly increased
- No opinion

42. *Under the legislative changes that could be proposed in intra-EU B2B transactions, VAT on a supply of goods would in general be payable by the supplier. However, a simplification mechanism could be included allowing, if the customer is a Certified Taxable Person (CTP), the reverse charge to apply and the customer to report the VAT in his tax return.*

Do you think that the CTP should be introduced?

- Strongly agree
- Agree**
- Disagree
- Strongly disagree
- No opinion

43. Would the introduction of the concept of CTP reduce or increase the compliance costs of suppliers?

- They will be significantly reduced
- They will be slightly reduced**
- They will not be affected
- They will be slightly increased
- They will be significantly increased
- No opinion

44. Do you think that the criteria for obtaining the CTP status should be laid down by each Member State or harmonized at EU level?

- Laid down by each Member State
- Harmonised at EU level**
- No opinion
- Other

45. *Under the legislative changes to be proposed, the CTP status could be granted upon request of the taxable person if certain objective criteria are met.*

Please evaluate the importance assigned to each of the following criteria (scale of 1-5 with 5 representing the most important, it is possible to assign the same evaluation to different criteria):

	1	2	3	4	5	No opinion
The taxable person's compliance records for a certain period of time				X		
The setting up of an internal control plan on VAT			X			
The carrying out of risk self- assessments by the taxable person		X				
A positive risk assessment audit of VAT procedures by independent external auditors			X			
Proven financial solvency or guarantees from banks, insurance companies etc. (this could apply to start-ups)				X		
Standard Audit File for Tax				X		

46. Are there any other criteria (for granting the status of CTP) than those mentioned in question 45 above that you would like to suggest?

- Yes
- No

46.1 If yes please specify:

- **Track record of the management board**

47. (BO) If CTP provisions were adopted, would you be interested in applying for CTP status?

- Yes, I would be interested in applying for CTP status, regardless of the difficulty of the criteria that would have to be met
- I would be interested in applying for CTP status if the criteria were not too burdensome**
- No, I would not be interested in applying for CTP status, regardless of the difficulty of the criteria that would have to be met