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Uwagi Europejskiego Kongresu Finansowego odnośnie do propozycji Komisji Europejskiej dotyczącej zmiany dyrektywy 2006/112/EC w zakresie zasad stosowania stawek VAT

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. Obecnie same stawki VAT nie wpływają znacząco na podejmowanie decyzji o tym, gdzie kupować czy dokąd sprzedawać. Natomiast stosowanie stawek nastręcza problemy w naszym kraju i w transakcjach z innymi krajami członkowskimi UE. Problemy te wynikają m.in. z konieczności posługiwania się normami wynikającymi ze statystycznej klasyfikacji towarów i usług. Prowadzić to może do naruszenia (ograniczenia) konkurencji.

2. Lista towarów z aneksu III dyrektywy VAT (stawki obniżone) powinna podlegać regularnym przeglądom. Dobrym przykładem jest opodatkowanie e-book i ostatnia, choć spóźniona inicjatywa Komisji Europejskiej, aby objąć je takimi stawkami jak książki tradycyjne. Zwiększenie elastyczności w zakresie stosowania przez kraje członkowskie stawek obniżonych może prowadzić do naruszenia konkurencji.

3. W opinii naszych ekspertów nieznacznie przeważa pogląd, że prostota systemu VAT jest istotniejsza niż elastyczność stosowania tego systemu przez państwa członkowskie.

4. Opinie ekspertów nt. stosowania stawek super-obniżonych wskazują, że w istocie trudno wybrać zdecydowanie preferowane rozwiązanie w tym zakresie: utrzymanie status quo, zlikwidowanie tego rozwiązania, czy danie wolnej ręki państwom członkowskim w tym zakresie.

5. Należy zachować obecne rozwiązanie dot. podstawowej minimalnej stawki VAT na poziomie 15%, a ilość obecnych stawek jest wystarczająca dla państw członkowskich. Natomiast minimalna stawka obniżona mogłaby być ustalana dowolnie.

6. Przeglądy listy towarów i usług objętych stawką obniżoną powinny być dokonywane przez Komisję Europejską na podstawie propozycji państw członkowskich pod warunkiem, że te propozycje nie będą prowadziły do naruszenie konkurencji. Aby tak się stało ogólne zasady stosowania stawek obniżonych powinny być stosowane, w szczególności należy unikać sytuacji, w których stawki obniżone obejmują wartościowe towary łatwe do przemieszczania (szczególne ryzyko naruszenia konkurencji). Z kolei lista towarów objętych stawką super-obniżoną powinna być przyjmowana na poziomie UE.

7. Gdyby państwa członkowskie posiadały większą elastyczność w doborze stawek VAT, prowadzić by to mogło do erozji podstawy VAT i w efekcie do erozji dochodów z VAT.

8. VAT jest podatkiem ujednolicanym na poziomie europejskim. Dlatego najlepszym narzędziem na dostarczenie prostej, zrozumiałej i pewnej informacji na temat stawek VAT powinna być dostępna dla wszystkich europejska baza danych.

9. Wiedza i doświadczenie naszych ekspertów wskazują, że prostota systemu stawek VAT i pozostawienie elastyczności działania państwom członkowskim w tym zakresie nie są łatwe do pogodzenia. Kluczowe jest zachowanie zdrowej konkurencji na rynku, która mogłaby być naruszona, gdyby zmiany w reżimie stawek VAT prowadziły do konkurowania pomiędzy państwami o samą bazę podatku VAT.

Answers to selected questions in the European Commission's consultation on the reform of VAT rates (proposal for a Council Directive amending Directive 2006/112/EC on the Common system of value added tax as regards the rules governing the application of VAT rates)

Experience with the current rate regime

15. Do you consider that VAT rates in your country, compared to those applied in the country of residence of your cross-border customers, have an influence on their purchasing behaviour?

- ○ Yes, VAT rates are an important factor
- ○ **Yes, but they are a marginal factor**
- ○ No, they are not important
- ○ Not sure / No opinion

18. Have different VAT rates for the same product ever influenced your decision whether to pursue sales opportunities in other EU countries?

- ○ **No, we never considered potential difficulties with VAT rates to be important**
- ○ We feared difficulties with VAT rates but entered the market anyway
- ○ We feared difficulties with VAT rates, and this was one of the factors why we did not enter that market
- ○ Not sure / No opinion

19. What kind of problems, if any, do you usually face in identifying the VAT rate applicable to your transactions?

More than one choice possible

- ☐ We encounter no particular difficulty
- ☐ **Difficult to identify the VAT rate applicable in our Member State**
- ☐ **Difficult to identify the VAT rate applicable in another Member State (in case of a cross-border supply)**
- ☐ Other
- ☐ Not sure / No opinion

20. If you indicated that you encounter difficulties, you may describe them here in greater detail:

- **There are some difficulties with treatment of services connected with financial transactions – whether to apply VAT exemption or standard VAT rate.**
- **More detailed information about the rates and their application in the different MS is not always easily available.**
- **Application of reduced rates related to work on residential buildings.**

21. Do you consult outside specialists (consultants, accountants etc.) to help you deal with VAT obligations related to cross-border transactions?

- ◉ **Yes**
- ○ No
- ○ Not sure / No opinion

22. Currently, the list of goods and services eligible for reduced VAT rates is contained in Annex III of the VAT Directive. This list is not regularly updated. Is the range of goods and services eligible for reduced rate treatment adequate?

- ○ Yes, the coverage of the list is adequate
- ◉ **No, the list leaves out some goods or services which should be included**
- ○ Not sure / No opinion

23. Please indicate for which specific goods/services in respect of which there is a need for updating the list and why?

- **Treatment of e-publications (annex III pos. 6) is clearly not adequate. Commission proposal of 1.12.2016 deals properly with this.**
- **Diapers for children (similar hygienic products for elderly people or for women benefit from the reduced rate – there is no reason to discriminate children)**

24. In most cases, current rules limit the possible difference in VAT rates within one Member State or between Member States. Sometimes, however, the differences can be relatively large, for example when a Member State has received a specific derogation allowing it to apply super-reduced rates of less than 5% or a zero rate, whereas other Member States apply a standard rate.

Are you aware of any distortion of competition resulting from the application of a reduced, super-reduced or zero rate? One example of distortion would be a case where a business obtained

a significant advantage over a competitor mainly because it benefited from a lower rate on sales in the same market.

Note: Please limit your answer only to cases where the distortion stems from VAT; differences in other taxes, fees or social contributions are not relevant here.

- **Yes, I know of such cases of distortion within the same Member State**
- Yes, I know of such cases between two Member States
- Yes, I know of cases both within the same and between different Member States
- No, I am not aware of any such case

25. Could you specify what were the goods/services concerned and how the difference in VAT rates affected fair competition?

- **Polish examples – application of reduced rates is typically based on statistical classification. However, in some cases specific purpose prevails; the same product with medical certificate benefits from reduced rate – the product without certificate is standard rated. Similar cakes, wafers, water etc. may be subject to standard or reduced rate.**
- **E-books**

26. On the basis of your experience, do you think granting additional flexibility to Member States would create new distortions of competition?

- Yes, this is very likely
- **Yes, this is somewhat likely**
- No, this is unlikely
- No, this can be excluded
- Not sure / No opinion

27. Could you specify what would be the goods or services concerned and why new distortion of competition would be created?

- **If Member States were granted flexibility to set up VAT rates, this could influence the costs of production of goods or services. Therefore, the States with lower VAT rates would be more competitive.**
- **As long as within one category listed in Annex III MS are allowed to freely choose products subject to reduced rates leaving other goods (even almost identical) subject to standard rate the problem will continue.**

Views on the reform

28. As already mentioned, the VAT directive establishes a minimum standard VAT rate of 15% and a list of goods and services which can be subject to a reduced rate of no less than 5%. This system offers harmonisation at EU level but in some cases may limit Member States choices in various ways, for example by ruling out a reduced VAT rate on certain goods or services or by setting a minimum level to the VAT rate.

A reform could grant Member States greater room for manoeuvre in this regard. However, this might result in an increase in complexity, creating additional costs for businesses and generating legal uncertainty; this is because, in a destination based system, businesses in each Member State must generally apply the VAT rate applicable in the Member States where they are selling. What should the reform prioritise?

- ○ Priority should be given to more flexibility for Member States even if it implies a complication of the VAT system or greater differences between VAT rates
- ○ **Priority should be given to maintain the simplicity of the VAT system and limit rate differences, even if this limits the room for manoeuvre of Member States**
- ○ Not sure / No opinion

29. The reform should propose a solution for the future of super-reduced rates. Many of these derogations were only granted on a temporary basis and are set to expire when the definitive regime is adopted.

One option would be to extend the scope of super-reduced rates to all Member States. This would ensure equal treatment among them. However, this could add complication to the VAT system and introduce a risk of erosion of VAT revenues.

A second option would be to remove the super-reduced rates from the VAT system; this would simplify the VAT system. However, it would require Member States to abolish the super- reduced rates already granted to specific sectors and revert to the normal regime. What is your view?

- ○ Super-reduced rates should be integrated in the VAT system and granted to all Member States even if the VAT system ends up being more complicated
- ○ **Super-reduced rates were only temporary and as such should disappear from the VAT system in order to simplify it**
- ○ The status quo should be maintained; the current temporary derogations should be extended indefinitely, even if this results in different treatment between Member States
- ○ Not sure / No opinion

30. In the current system, Member States are only allowed to apply one standard rate to all transactions and two reduced rates to some transactions (with the exception of super-reduced rates

which are specific derogations). A reform could increase the number of rates available to Member States. This would allow Member States greater flexibility, at the cost of introducing greater complication. Do you think Member States should also receive more flexibility regarding the number of rates they can apply (while remaining limited by the list for the application of reduced rates)?

- Priority should be given to more flexibility for Member States, so Member States should have no limits on the number of rates they can apply
- **The current number of rates provides sufficient room for manoeuvre**
- Not sure / No opinion

31. Should the 15% minimum for the standard rate be maintained?

- **Yes**
- No
- Not sure / No opinion

32. Should the 5% minimum for reduced rate be maintained?

- **Yes, this limits risks of erosion of revenue and of unfair competition**
- No, Member States should be free to set reduced rates at the level they like
- Not sure / No opinion

33. The Commission is now assessing two broad options for the reform of the VAT rate system. The first option aims to keep the standard VAT rate of 15% and update regularly the list of goods and services eligible for reduced rates, on the basis of Member States suggestions. The second option increases flexibility substantially by removing the minimum rate of 15% and abolishing the list, thus granting Member States large discretion to fix their VAT rate. Under both options all currently existing reduced rates, including derogations, legally applied in Member States would be maintained and made available to all Member States, ensuring equal treatment.

Which of these two solutions would you prefer?

- **Regularly review the list of goods and services that can be taxed at a reduced rate. Allow Member States to submit their proposals for adjustment, and charge the European Commission with reporting whether such changes would pose any risk of distortion of competition. Keep the minimum standard VAT rate at 15%.**
- Abolish the list and allow greater freedom on the number of reduced rates and their level. Develop and put in place safeguards to avoid unfair tax competition, guarantee legal certainty and reduce compliance costs.
- It is best to keep the current system
- Not sure / No opinion

34. What kind of safeguards do you think the Commission should put in place to avoid such tax competition between Member States?

More than one choice possible

- [ ] **Basic rules framing the cases in which reduced rates may be applied**
- [ ] **Member States should inform the Commission and other Member States about any new measure they plan to adopt**
- [ ] **Prevent the application of reduced rates to high-value goods and services, in particular easily transportable items**
- [ ] The total number of reduced rates allowed by Member States should be limited
- [ ] Super-reduced rates should only be applied to goods/services specified at EU level
- [ ] No safeguards are necessary
- [ ] Other
- [ ] Not sure / No opinion

36. Do you think the list of Annex III should be extended to allow the goods and services it contains to be taxed at a super-reduced rate ?

- ( ) **Yes**
- ( ) No
- ( ) Yes but only for some of these goods/services
- ( ) Not sure / No opinion

38. Do you think a specific list should be made for goods and services subject to super-reduced rates?

- ( ) **Yes**
- ( ) No
- ( ) Not sure / No opinion

39. Do you think granting Member State greater flexibility could risk creating, because of more intense tax competition between Member States, an erosion of VAT revenues and/or pressures to narrow the tax base for VAT?

- ( ) Yes, this is very likely
- ( ) **Yes, this is somewhat likely**
- ( ) No, this is somewhat unlikely
- ( ) No, this is very unlikely
- ( ) Not sure / No opinion

40. The new regime will require national administrations to provide clear and simple information on their VAT rates. What do you think would be the best way to provide such information?

More than one choice possible

- ☐ Harmonised rules on product categories
- ☐ **Better Member State information on national websites**
- ☐ **European database accessible to everyone**
- ☐ Contact with administration
- ☐ Other
- ☐ Not sure / No opinion

41. Please specify:

- **In Poland there is a problem with obtaining a binding interpretation of the VAT rate. Tax authorities often call on taxpayers to complete the application for an interpretation to provide the number of statistical classification of the operations performed, arguing that they are not entitled to make statistical classification**.