

Position Paper

UEAPME's¹ comments on a temporary application of a generalised reverse charge mechanism in the area of VAT (COM(2016) 811)

Executive Summary

- UEAPME is against a temporary reverse charge system applied by some Member States, because it will lead to uncertainty as well as to additional risks and costs for SMEs.
- A reversed charge mechanism will create new barriers within the Single Market.
- A reversed charge mechanism will block the move to a definitive system.
- In case of such a system, SMEs have to be put in a situation that they can clearly- with legal certainty - identify, if a client is a business and invoicing can be made without VAT.
- UEAPME has also concerns about a generalised reverse charge mechanism, because of its higher risk for fraud compared to multi-stage collection.
- Finally, UEAPME rejects split payment mechanism, because it will create problems for SMEs on both side of a transaction related to administrative burdens and cash-flow problems.

I. General comments

As already stated in [our position](#) on the VAT Action Plan in October 2016, **“UEAPME is against a temporary reverse charge system applied by some Member States, because:**

- **it creates additional administrative burdens for SMEs**
- **it will lead to legal uncertainty and SMEs would have to carry the risks and costs, if a transaction was wrongly qualified as B to B transaction;**
- **it will create new barriers within the Single Market and**
- **it will block the move to a definitive system.**

In case of an introduction of reverse charge mechanisms as a temporary and optional measure, one has to be aware that, if they are only implemented temporarily and only by certain Member States, they create

¹ UEAPME subscribes to the European Commission's Register of Interest Representatives and to the related code of conduct as requested by the European Transparency Initiative. Our ID number is [55820581197-35](#).

additional costs and uncertainty for SMEs, who have to deal with different clients in different ways and have adaptation costs, at the beginning and the end of such temporary measures.

Furthermore, in case of a reverse charge system for B2B transactions, SMEs have to be put in a situation that they can clearly identify, if a client is a business and invoicing can be made without VAT. Otherwise, SMEs have to carry the risk and the costs, if it turns out that a transaction would have had to be classified as B2C.

Finally, as regards a general RC mechanism for all Member States as definitive regime, we stated that a generalised reverse charge mechanism entails thus a higher risk compared to multi-stage collection, because it puts the whole risk at the final stage in the production / consumption chain.

In addition to the overall assessment and rejection of a general RC mechanism, **UEAPME also see massive problems with split payment mechanism for VAT.** With a split payment mechanism, Companies currently having to pay VAT to their suppliers, would have to make two payments and would have which doubles the administrative burdens and compliance costs. On the other hand, companies currently receiving VAT payments from their costumers and have to compensate them with receivable VAT paid to suppliers will lose out of money inflow and may get problems with cash-flow.

II. Comments specific aspects most relevant for SMEs

1) Temporary and national solutions are distortive for the EU VAT system in general

Even the European Institution argued several times against such a proposal. In its Communication on measures to change the VAT system to fight fraud² the European Commission stated that “there is, however, a major problem with the concept of an optional reverse-charge system. This is because the reverse charge would be a fundamentally different system to the one currently applied. It would necessitate the definition of a second system at EU level and thus have negative consequences on operation of the internal market; it also would undermine harmonization and possibilities for future improvement of the VAT system.”

Regardless our general concerns about the introduction of an EU-wide reverse charge system for b2b-transaction such a system would according to a special report³ by the European Court of Auditors need to be applied consistently by all Member States to risky sectors in order for it to be a useful tool to fight against fraud Otherwise, fraudsters would move to the Member State in which the reverse charge is not applied thereby limiting the capacity to tackle VAT fraud at EU level“.

² Communication from the Commission to the Council and the European Parliament on measures to change the VAT system to fight fraud COM/2008/0109 final, 22.2.2008

³ Special report of the European Court of Auditors no 24/2015: Tackling intra-Community VAT fraud: More action needed.

Furthermore, the Commission clarifies this by advocating that “any substantial change to the principles of the VAT system should be decided at EU level in the context of the reform of the VAT system, and not through stand-alone national solutions.”⁴

2) Reverse charge may not be the most sufficient instrument to tackle VAT fraud

The proposed draft directive should help to reduce the VAT gap (the difference between the expected VAT receipts if all the VAT which is due is collected and the actual VAT collected by Member States) in the individual Member States. The VAT gap is the result of different reasons: domestic fraud, tax evasion, legal tax avoidance, insolvencies, bankruptcies, miscalculations etc. On EU average less than a quarter (the EU average is around 24 %) of the VAT gap is caused by carousel fraud. Furthermore, allowing a Member State to apply a RC mechanism will preserve its inability of properly carrying out fiscal control.

It is justified to question if a RC mechanism is the most sufficient instrument to tackle VAT fraud. In its VAT Action Plan⁵ the Commission has already identified ways to put in place appropriate measures to tackle the problem, inter alia improving the cooperation between Member States, enabling them to exchange, share and analyse key information, improving tax compliance (the easier the tax system, the broader will be the degree of compliance for tax payers), fostering the modernization of tax administration to prevent and fight against fraud.

Entrepreneurs are already obliged to electronically report their data to the financial authorities on a regular basis. A systematic data cross-check of the VAT declaration with VIES (VAT Information Exchange System) data in the recapitulative statement is implemented. Thus, the tax administrations have the possibility to detect irregularities and anomalies on a regular basis.

Furthermore UEAPME welcomes the initiative for a Transaction Network Analysis (TNA) as agreed upon in the ECOFIN Council of 25 May 2016. UEAPME supports this IT-tool which creates the possibility to use information on transactions already available in Member States in an effective way, so that international fraud networks can be identified faster and more complete. UEAPME supports the goal oriented approach of the TNA. A broad implementation by Member States of this IT-tool, which could already start in 2018, could reduce the growing number of anti-fraud measures by individual Member States. Those national measures often lead to overkill, i.e. needless substantial extra costs for legitimate SMEs.

3) Reverse charge mechanism will increase the burden on SMEs

Under the general reverse charge system, the entrepreneurial capacity of the customer has to be checked via his VAT Identification Number for deliveries within a Member State. Still, the entrepreneur is expected not to rely on the number submitted and its implications (the entrepreneurial capacity of the

⁴ Communication from the Commission to the Council in accordance with Article 395 of Council Directive 2006/112/EC; COM(2015) 538 final, 28.10.2015

⁵ Communication of the Commission to the European Parliament, the Council and the European Economic and Social Committee on an action plan on VAT - Towards a single EU VAT area - Time to decide; COM (2016) 148 7.4.2016

trading partner) for future transactions. This represents a major supplementary burden to the entrepreneur. Therefore, a reliable data bank providing the possibility to check the VAT status of every possible contract partner should be provided by the EU. When relying on the information extracted from this data bank the protection of legitimate expectations should be granted to the supplying entrepreneur. Thus, he should not be held liable for incorrect information provided by this data bank. The establishment of such a data bank is the foremost condition for the introduction of a reverse charge system. However, in our view, the positive impacts of the reverse charge system by fighting tax fraud do not compensate for the administrative burdens it would impose on SMEs.

Furthermore and additional burdensome for SMEs is the introduction of national generalised reverse charge mechanisms with a value threshold (EUR 10.000) for transaction, which will result in the creation of dual tax systems, depending on the value of each transaction.

Moreover, the introduction of a threshold is likely to cause difficulties when it comes to the identification of transactions' actual value in case split payments and/or multiple but linked transactions of lower amounts occur.

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