

Position Paper

UEAPME's¹ comments on the first steps towards a Single EU VAT

Executive Summary

- UEAPME supports the goal of the proposal to make the VAT system more robust, less open to fraud and simpler, but SMEs are not convinced that this proposal will lead to simpler rules for SMEs and will tackle overall VAT fraud.
- UEAPME opposes the two-step approach and asks for a full overview about a definitive system before irreversible decisions are taken.
- UEAPME sees huge costs and risks for SMEs, if they have to apply VAT rates of the Member State of destination and if they have to differentiate between costumers applying normal rules and those who are a "Certified Taxable Person" (CTP).
- In any case, SMEs need easy access to up-dated information about VAT rates applicable in all Member States and SMEs may not be made responsible, if they apply wrong rates received from an official portal.
- SMEs, which are not able to apply for becoming a "Certified Taxable Person", due to lack of resources for a complicate certification process, may suffer from being an untrustworthy costumer and will have less cash flow compared to larger companies with CTP status.
- UEAPME will only support such a system, if it ensures a simple and inexpensive access to the status of CTP for all regular micro, small and medium sized companies, which have not infringed tax law and are financially stable.
- As regards the four "Quick Fixes", UEAPME supports the included simplification, but demands that they have to be accessible to all taxable persons.

1. General comments

The European Commission has published on 4 October 2017 a communication "Towards a single EU VAT area – Time to act" (COM (2017) 566) and several legislative proposals, including a notion of a "Certified Taxable Person" (CTP), which is a category of trusted business that will benefit from much simpler and time-saving rules. Finally, it includes four "quick fixes", which should come into force in 2019.

UEAPME supports the goals of the proposal to make the VAT system more robust, less open to fraud and simpler. SMEs see tax fraud as a serious problem because it creates unfair competition and reduce tax revenues. Still, we are not convinced that the proposals will lead to a simpler system for SMEs and will

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](#).

tackle overall VAT fraud. In our view the proposed taxation of intra EU supplies will just lead to a shift of fraud from cross border to domestic situations.

Furthermore, the fight against tax fraud should not lead to additional burdens for those companies, which behave legally.

Finally, we strongly oppose the two-step approach presented by the European Commission. The proposals include many details which need further specification and clarification. Those details will be presented by the Commission at a later stage. This approach might result in irreversible decision-making on the cornerstones of the new system without information on the full impact of the proposals on SMEs.

2. Specific Comments on a definitive VAT system for intra-community trade

It is proposed that the definitive VAT system will be based on the principle of taxation in the Member State of destination. According to the proposed taxation rules for intra-Community cross-border supplies of goods, the supplier would charge the VAT to his customer at the rate of the Member State of destination. This would mean a significant change for the supplier. In the proposed system, the supplier would have to declare and pay VAT of the Member State of destination. Only if the customer is certified as a compliant business by its tax administration (CTP), the customer would continue to be liable for the VAT on goods purchased from other Member States as is currently the case. The crosscheck of such information would be a difficult and time-consuming task.

The VAT would be declared and paid in the Member State via a one-stop-shop mechanism. However, in our view, even though the one-stop-shop system could provide the accurate information on VAT rates in Members States, the application of VAT rates and rules of another Member State may cause various questions for the supplier. The development of technology, digitalisation and formation of new business models will bring up new questions and interpretations problems. An incorrect interpretation of foreign VAT rules could result in financial risk for the supplier. In addition, the transition to the new VAT system would also cause administrative burden for the companies and they would need to update their invoicing system continuously to follow the VAT rates and rules in other Member States, e.g. regarding credit notes. This could be specifically burdensome for micro and small enterprises, which hardly have CTP costumers.

Therefore, SMEs have to get easy access to up-dated information about the VAT rates applicable in different Member States. In this regard it is important that SMEs have legal certainty about the rate they have to apply. UEAPME will insist that all relevant information can be accessed via an electronic portal, which is easy to be used, which is free of costs and which provides up-dated information on rates. SMEs should have the possibility to receive information about changes/updates of an existing rate (e.g. email alert). Finally, SMEs should not be made responsible, if they apply rates provided by such portals, even if they are not up-to-date or incorrect.

Furthermore, although we support the aim of the proposal to prevent VAT fraud within the EU, in our opinion, the possibility of VAT fraud cannot be excluded in the proposed system in case a dishonest supplier decides not to declare the VAT charged to his customer instead of paying the tax to the Member State. The proposed taxation of intra EU supplies will potentially contribute to a reduction of missing trader fraud as far as it is related to border crossing, but it is to be expected that this kind of fraud will shift to domestic situations.

3. Specific Comments on the concept of “Certified Taxable Person”

The concept of certified taxable person (CTP) is based on an attestation that a particular business can officially identified as a reliable taxpayer. Certified taxable persons would benefit from certain simplifications. However, the system at it is foreseen at present might be harmful for micro and small enterprises.

In our opinion, more attention should be paid to the fact that SMEs do not regularly have the resources to go through a burdensome certification processes and thus, may not benefit from the simplified system. Small businesses, that do not manage to obtain the CTP status or do not have the necessary resources for the certification process, might be considered by potential suppliers as untrustworthy. In addition, such companies have a significant economic disadvantage by paying VAT to cross border suppliers while those with a CTP status do not pay VAT and profit from high cash flows.

Therefore, the certification process for CTP-status should be as simple as possible for SMEs in order to avoid additional discrimination compared to larger companies.

The implementation of two systems (CTP-status/no-CTP-status) in invoicing may also cause administrative burden for the SMEs in many cases, where SMEs deliver to both types of customers. Furthermore, it adds to legal fragmentation, which makes the system not simpler, but more insecure and probably less fair.

Therefore, UEAPME will only support such a system, if it ensures a simple and inexpensive access to the status of CTP for all regular micro, small and medium sized companies, which have not infringed tax law and are financially stable.

4. Specific Comments on the four “Quick Fixes”

The Commission also presented four quick fixes to improve the day-to-day functioning of the current VAT system, until the definitive regime will have been fully agreed and implemented.

- i. Simplification of VAT rules for companies moving goods from one Member State to another Member State where they are to be stored before being supplied to a customer known in advance. The described situation is referred to as "call-off stock arrangements". This simplification is limited only to certified taxable persons.

UEAPME expressly welcomes the Commission’s intent to establish a clear and single legal basis for the existing, partly already simplified rules, which should be available for all EU Member States. It is, however, incomprehensible, why the use of such call-off stock arrangements should only be open for certified taxable persons and, consequently, a substantial part of EU taxable persons should be excluded from such a clear and simple tax provision. **The proposed system should therefore be available to all taxable persons under the conditions set out in Article 17a.**

- ii. Simplification provided for chain transactions identifying the supply with which the intra-Community transport of goods should be linked. This simplification is limited only to certified taxable persons.

UEAPME expressly welcomes the establishment of clear EU-wide rules for chain transactions. It is, however, incomprehensible, why the proposed chain transaction rules are only applicable to certified taxable persons. In the light of European Union Law, it is not acceptable to exclude the majority of taxable persons from clear rules. **The proposed scheme of chain transactions should therefore be accessible to all taxable persons.**

- iii. Simplification of the proof of transport of goods between two Member States needed for the application of the exemption to intra-Community supplies. This simplification is limited only to certified taxable persons.

UEAPME expressly welcomes the inclusion of a list of relevant evidence confirming the transport or dispatch in the implementing regulation. However, it is again not acceptable that the provision should only apply to certified taxable persons. **Again, UEAPME demands the scheme to be applicable to all taxable persons.**

- iv. Clarification that, in addition to the proof of transport, the VAT number of the commercial partners recorded in the electronic EU VAT-number verification system (VIES) is required in order to apply the cross-border VAT exemption under the current rules.

Currently, the VAT identification number and the recapitulative statement (RS) are formal requirements for the tax exemption of an intra-Community supply. In the proposed new version of Art 138 (1) of the VAT directive, the VAT identification number and the recapitulative statement are foreseen to be substantive legal conditions for the tax exemption of intra-Community supplies. These changes do not only undermine the established case law of the European Court of Justice but also the basic principle of the EU VAT system. Such a measure would clearly run counter to the defined objective of reducing bureaucracy and simplifying administration (see also the REFIT measures) and would entail unjustified tax tightening. **This constitutes an unjustified aggravation of the previous legal situation, precludes ECJ jurisprudence, and is therefore rejected.**

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