



Position of the Austrian Federal Economic Chamber regarding a temporary exemption for a general reverse charge system

Vienna, 12 December 2016

Structure

- What is it all about?
- RC exemption in the context of the single market
 - Objectives of an European VAT System
 - Better Regulation
- Effects of RC exemption on the Austrian legislation and businesses
 - Administrative burden and business structure in Austria
 - Studies on RC considering administrative burdens
 - National legal consequences
- Effects of RC exemption on EU VAT System
- Austrian VAT GAP compared with other EU members
- Negative spillover of fraud scenarios to other EU member states
- Position of the Austrian Federal Economic Chamber

What is it all about?

Outcome of ECOFIN meeting, 17 June 2016

"The Commission commits to present, before the end of the year, a legislative proposal allowing individual Member States to derogate from the common system of value added tax so as to apply a generalised reverse charge mechanism to domestic supplies above a defined threshold and preserving the Internal Market."

Objectives of an European VAT-System (1)

The simpler the system,
the easier it is for taxpayers to comply with the rules

„A taxable person active across the EU should be faced with a single set of clear and simple VAT rules.“

COM(2011) 851 final; Communication on the future of VAT: Towards a simpler, more robust and efficient VAT system tailored to the single market

It (the VAT-system) now urgently needs reform: **It needs to be simpler for businesses to use.** Compliance costs are significantly higher in single market trade than in domestic trade, while complexity is stifling business, especially small and medium-sized businesses (SMEs);

COM(2016) 148 final; Communication on an action plan on VAT

Objectives of an European VAT System (2)

“We consider that the reverse charge is a useful tool to fight against fraud when it is applied consistently by all Member States to these risky sectors. Otherwise, fraudsters move to the Member State in which the reverse charge is not applied thereby limiting the capacity to tackle VAT fraud at EU level (See ECA Special Report No 6/2015 on the integrity and implementation of the EU Emissions Trading Scheme).”

European Court of Auditors; Special Report 2015; Tackling intra-Community VAT fraud: More action needed

Objectives of an European VAT System (3)

EU legislation is currently drafted and developed with a common framework in mind. A European Community **with two fundamentally different VAT systems** would necessitate consideration of both systems when drafting and discussing legislation. It would be **extremely difficult to add further developments** to such a dual system in order to match the evolving internal market. This is particularly important when it comes to two completely different sets of obligations. Such a based system would **put future harmonisation of VAT** at major risk as Member States' interests in making improvements would differ depending on the system they apply.

COM(2008)109 final, Communication on measures to change the VAT system to fight fraud

Objectives of an European VAT System (4)

It is also the Commission's view 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.**

COM(2015) 538 final Communication in accordance with Article 395 of Council Directive 2006/112/EC

Better Regulation (1)

"Better Regulation" means designing EU policies and laws so that they **achieve their objectives at minimum cost.**

EU action must lead to a **simple, clear, stable and predictable regulatory framework for businesses, workers and citizens** that continue to add value as problems evolve, new solutions emerge and political priorities change.

COM (2015) 215 final; SWD(2015) 111 final. Commission Staff working document „Better Regulation Guidelines“

Better Regulation (2)

The Austrian Chamber of Tax Advisors shows in a report, that the tax-legislation is not practical for business and complicated to implement (in particular the recent implementation of rules for the use of cash registers).

KWT Wahrnehmungsbereich 2014-2016

The compliance costs of an Reverse Charge Pilot-Project in Austria will make this situation even worse!

Legal effects in the case of temporary introduction of a general Reverse Charge-System as a pilot project in Austria (1)

- Massive increase of administration expenditures: New reporting obligations
- Considerable adaption costs and on-going annual costs for companies
 - 7.300.- € one time costs and 4.400.- € ongoing annual costs per year for small businesses;
 - 261.400.- € one time costs and 72.500.- € ongoing annual costs per year for large companies

PWC (2007)

Legal effects in the case of temporary introduction of a general Reverse Charge-System as a pilot project in Austria (2)

- Declarations of conformity and obligations to record
- Administration of four VAT-systems by companies:
 1. Intrastate the „old“ VAT-system;
 2. Intrastate the „new“ RC-System;
 3. Within the EU intracommunity supplies and intracommunity acquisitions
 4. Export deliveries to Non-EU countries.
- Danger of failure of the project and return to the actual VAT-System
- Enormous implementation problems for small businesses

Effects of Reverse charge on the European VAT-System

- Study in respect of introducing an optional reverse charge mechanism in the EU VAT Directive,
PriceWaterhouseCoopers, Final Report to the European Commission, 20 June 2007
„Introducing a reverse charge mechanism leads to both additional one-time and recurring administrative costs.“
- Systembezogene Änderungen bei der Umsatzbesteuerung
Peters Schönberger, Wirtschaftsprüfungsgesellschaft, November 2005
„For the reverse charge mechanism in the year of the transition the amount of approximately 1,6 billion Euro to 2 billion Euro is estimated.“
- Austrian Institute for SME Research indicates that the **one-off costs for SMEs** would vary between € 12 750 and € 20 000, while the **on-going annual costs** would amount to between € 6 000 and € 9 000.
- For cost estimations of „Reverse Charge“-System see also COM (2008) 109 final Communication on measures to change the VAT system to fight fraud

Enterprise Structure by Employment Size Class

Employment Size	Absolut	Percentage
0-4	425.419	88,1%
5-9	26.128	5,4%
10-19	15.311	3,2%
20-49	9.927	2,1%
50-99	2.955	0,6%
100-149	1.106	0,2%
150-199	540	0,1%
200-249	331	0,1%
250-499	654	0,1%
500-999	253	0,1%
1.000+	178	0,0%
Sum	482.802	100%

Source: WKÖ Beschäftigungsstatistik

about **60 %** or **290.000**
Self Employed

Source: WKÖ EPU Auswertung

Self employed and small enterprises face:

- relatively higher administration costs
- have to use reverse charge only once in while in case their purchases or sales pass threshold of 10.000 €
- legal compliance is much more burdensome for the smallest businesses (complexity, relative time usage, legal uncertainty due to minor knowledge of VAT regulation)

Legal effects in the case of temporary introduction of a general Reverse Charge System as a pilot project in Austria (3)

Lots of legal aspects, for example:

- Which importance has the invoice-limit in connection with continuous deliveries?
- How can delivering companies in good faith be protected against false informations of the performance receiver?
- How can the performance receiver know whether or what reduced VAT-rate should be applied by delivering company?
- How can the performance receiver apply the correct VAT-rate, if the delivering company has the choice to treat the sales as subject to VAT or free of charge?
- Which importance has the invoice-limit in connection with continuous deliveries?

Legal effects in the case of temporary introduction of a general Reverse Charge System as a pilot project in Austria (4)

- Will VAT-exempted companies suddenly be subjects to VAT?
- How can delivering companies check the validity of the VAT-Number of the performance receiving company?
- How can the delivering company ensure, that the performance receiver does not use the supply within his non-entrepreneurial area?
- How is to proceed with regard of the 10.000.- Euro limit when various achievements are part of one invoice?

Legal effects within the EU in the case of temporary introduction of a general Reverse Charge-System through some member states

- Serious legal fragmentation of the EU-VAT-System.
- Increase of VAT-fraud in memberstates which do not introduce the general RC-System.

VAT Gap (1)

Due to:

- Non-compliance of VAT - Tax fraud
- Insolvencies
- Bankruptcies
- Administrative errors
- Legal tax optimization

There are many reasons for the VAT Gap. The introduction of a general Reverse Charge System may only prevent the Tax fraud by the Missing Trader!

VAT Gap Estimates 2013 - 2014*

VAT Gap Estimates 2013 – 2014*

	Country	VAT Gap 2013 in million EUR	VAT Gap 2013 (%)	VAT Gap 2014 in million EUR	VAT Gap 2014 (%)
1.	Sweden	492	1,24	489	1,24
2.	Luxembourg	116	3,29	147	3,80
3.	Finnland	1140	5,69	1409	6,92
4.	Slovenia	214	6,57	280	8,14
5.	Austria	2446	8,93	2882	10,17
	Czech Republic	2761	19,10	2233	16,14
25.	Greece	6347	33,51	4926	27,99
26.	Lithuania	1642	38,61	1612	36,84
27.	Malta	375	39,20	351	35,32
	Median		13,81		10,40

* Study and Reports on the VAT gap in the EU-28 Member States, CASE, Institute for Advanced Studies, Warsaw August 2016

VAT Gap (2)

Austria shows a small VAT-Gap compared to the other Member States. It has the fifth best result in the European Union!

2014, Austria introduced reverse VAT charges on a range of goods, including:

- The supply of gas and electricity,
- The supply of precious metal,
- Sales of laptops, tablets and games consoles.

An improvement of the gap cannot be identified by these measures. There is a slight increase in the gap 2014!

VAT Gap (3)

Since the beginning of 2015, Austria has continued to take measures to combat VAT fraud:

Obligatory receipts for cash payments, obligatory cash registers, increased tax rates (10% to 13%) for accommodation, domestic passenger transport in aviation, living plants and animals, arts services, cinema shows, delivery of works of art, animal feed, etc.

All these measures, which have already been implemented, will lead to further reduction of the VAT-Gap in Austria!

Improvement of the VAT Gap by selected Member States 2013/2014 (1)

Belgium: 2013: 12%; 2014: 8% ↓ 4%points

Improvement in VAT compliance

Czech Republic: 2013: 19%; 2014: 16% ↓ 3%points

Since 2014 fraudulent companies are publicly listed on the tax authorities' website and electronic VAT reporting became compulsory.

Estonia: 2013: 15%; 2014: 10% ↓ 5%points

A single database and a new system for digital invoice collection, targeting tax evasion and fraud were introduced.

Spain: 2013: 12%; 2014: 9% ↓ 3%points

In 2014 Spain introduced new measures to combat tax non-compliance. An increase in resources in terms of staff working hours was provided to carry out e-audits more effectively.

Improvement of the VAT Gap by selected Member States 2013/2014 (2)

Lativa: 2013: 26%; 2014: 23% ↓ 3% points

Introduction of measures against fraud. A new register of “high risk” entities was created with an obligation for the tax authorities to provide information on such individuals to the commercial register.

Hungary: 2013: 22%; 2014: 18% ↓ 4% points

Introduction of numerous measures to fight VAT fraud and evasion and it extended the use of the VAT RC mechanism. Increased the powers of the VAT inspectors.

Main reasons for decrease in VAT-Gap

- Improvement in VAT compliance
- Fraudulent companies are publicly listed
- A new system for digital invoice
- Increase in resources in terms of staff working hours
- Electronic VAT reporting became compulsory
- Increased the powers of the VAT inspectors
- Extended the use of the VAT RC mechanism

The most effective measures to reduce VAT-Gap are NOT in introducing of (additional) reverse charge applications!

Negative spillover of fraud scenarios to other EU member states (1)

Tax Fraud - Missing Trader - The System is free in movement

“When the Reverse Charge System is applied not by all Member States, fraudsters move to the Members States in which the reverse charge is not applied.”

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

Fraud easily change the sectors and the states. Member States apply Reverse Charge for different sectors.

The graph illustrates the heterogeneous application of Reverse Charge in the neighboring member states of Austria.

Negative spillover of fraud scenarios to other EU member states (2)

Sectors	AT	CZ	DE	HU	IT	SK	SI
Construction work, including repair, cleaning, maintenance, alteration and demolition services	x	x	x	x	x		x
Supply of staff engagement in activities covered by point above	x		x	x	x		x
Supply of immovable property, as referred to in Article 135 (1)(j) and (k), where the supplier has opted for taxation of the supply pursuant to Article 137			x	x	x	x	x
Supply of used material, used material which cannot be re-used in the same state, scrap, industrial and non-industrial waste, recyclable waste, part processed waste and certain goods and services	x	x	x	x	x	x	x

Negative spillover of fraud scenarios to other EU member states (3)

Supply of used material, used material which cannot be re-used in the same state, scrap, industrial and non-industrial waste, recyclable waste, part processed waste and certain goods and services	x	x	x	x	x	x	x
Supply of goods provided as security by one taxable person to another in execution of the security	x		x	x		x	x
Supply of goods following the cession of a reservation of ownership to an assignee and the exercising of this right by the assignee	x					x	
Supply of immovable property sold by a judgment debtor in a compulsory sale procedure	x			x		x	
Transfer of allowances to emit greenhouse gases as defined in Article 3 of Directive 2003/87/EC of the European Parliament and of the Council of 13/10/03	x	x	x	x	x	x	x
Supply of mobile telephones, being devices made or adapted for use in connection with a licensed network and operated on specified frequencies, whether or not they have any other use	x		x		x	x	
Supply of integrated circuit devices such as microprocessors and central processing units in a state prior to integration into end use products	x		x		x	x	
Supplies of gas and electricity to a taxable dealer as defined in Article 38(2)	x		x				
Supply of gas and electricity certificates	x						
Supply of game consoles, tablet PC's and laptops	x						

Negative spillover of fraud scenarios to other EU member states (4)

Supply of cereals and industrial crops including oil seeds and sugar beet, that are not normally used in the unaltered state for final consumption				x		x	
Supply of raw and semi-finished metals, including precious metals, where they are not otherwise covered by point D of Article 199(1), the special arrangements for second-hand goods, works of art, collector's items and antiques pursuant to Articles 311 to 343 or the special scheme for investment gold pursuant to Articles 344 to 356	x					x	

If a general Reverse Charge System is introduced in Austria, the evasion of the missing trader problem the neighboring countries is to be expected!

Position of the Austria Federal Economic Chamber

The Austrian Federal Economic Chamber rejects the introduction of a general Reverse Charge System in one or a few Member States.

The Austrian Federal Economic Chamber supports the fight against tax fraud, but there must be a uniform approach across the whole European Union.

Austrian Federal Economic Chamber

Please contact:

Department for Financial, Fiscal and Trade Policy
Austrian Federal Economic Chamber
Wiedner Hauptstraße 63
1040 Vienna

T: +43 (0)5-90900-4266

F: +43 (0)5-90900-259

E: fhp@wko.at