CONFINDUSTRIA

Public Consultation

VAT and the Circular Economy

Position Paper

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Abstract

The revision of the VAT rules represents an important opportunity to strengthen the alignment of the European tax system with the objectives of the circular economy, by removing distortions that hinder the reuse of goods and the development of sustainable production and consumption models. In this regard, Confindustria considers it a priority to address the three areas identified by the European Commission through solutions that ensure VAT neutrality, legal certainty, proportionate compliance requirements and fair conditions of competition within the internal market.

The revision should also take broader account of recycling value chains, which are currently affected by weak demand for secondary raw materials and competition from virgin materials. In this context, it would be appropriate to assess how VAT rules could support the use of recycled materials and promote more consistent conditions of competition in waste management activities. Any measures should be proportionate, verifiable and consistent with the principles underlying VAT, while complementing the industrial and environmental policy instruments of the forthcoming Circular Economy Act.

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1. Margin scheme, second-hand goods and recovered materials

The margin scheme is an important instrument for ensuring VAT neutrality in the trade in second-hand goods, preventing VAT that was not deducted at earlier stages of the supply chain from giving rise to cumulative taxation. It is therefore essential to preserve its function and keep its application optional, allowing operators to choose the normal VAT arrangements, as provided for in Article 319 of the VAT Directive. In this regard, any revision should prioritise simple and legally certain rules, ensuring that eligibility for the scheme depends on the objective characteristics of transactions rather than on sectoral or administrative classifications of businesses.

One issue deserving particular attention is the treatment of goods for which VAT was only partially deducted at earlier stages of the supply chain. The current conditions for applying the margin scheme, laid down in particular in Article 314 of the Directive, may not fully neutralise the tax remaining embedded in the price, potentially resulting in cumulative taxation on subsequent resales. It would therefore be appropriate to consider targeted adjustments which, while respecting the principle of VAT neutrality, would prevent such effects without creating duplicate or unjustified advantages. This assessment could also extend to goods and materials that are recovered and subsequently reused in production processes, for which it is necessary to determine whether the instruments currently available are sufficient to prevent similar distortions. More generally, the assessment should be extended to the entire recycling value chain, whose economic viability is currently affected by weak demand for secondary raw materials and competition from virgin materials. Strengthening end markets for recycled materials is an essential condition for supporting collection, sorting and recycling activities and the related investments.

In this context, the contribution of VAT to promoting the circular economy should be assessed in light of the actual effectiveness of tax instruments. Any reduced VAT rates for repair and reuse activities or for products containing recycled materials should be considered within the limits permitted by EU legislation, or in the context of a future revision of that legislation, with careful assessment of their economic and environmental effects and with the aim of overcoming differences between Member States and ensuring fair conditions of competition in the single market, including between public and private operators.

It should also be borne in mind that such measures may encourage final consumption but are generally less effective in transactions between businesses entitled to deduct VAT in full. Supporting industrial demand for secondary raw materials therefore also requires instruments other than VAT, capable of having a more direct impact on the competitiveness of recovered materials compared with virgin raw materials. Any tax incentives should, in any event, be based on objective, harmonised and readily verifiable criteria, ensuring equal treatment of EU and imported products. These criteria should be accompanied by reliable

control systems designed to prevent fraud and ensure that the benefits are effectively granted only to products meeting the prescribed requirements.

Finally, as regards waste collection, treatment and recycling services, it would be appropriate to consider a more consistent application of the options for preferential VAT treatment already provided for in Annex III, point 18, of the VAT Directive, within the limits of the activities covered, including in order to avoid competitive disparities between operators in different Member States. Any intervention should be consistent with the Union's environmental objectives and the waste hierarchy, avoiding incentives for less sustainable forms of recovery at the expense of prevention, reuse and recycling.

2. Donations of usable goods and destruction of surplus stock

VAT rules should encourage the recovery and donation of goods that can still be used, preventing their destruction from being more advantageous for VAT purposes than their use for purposes of general interest. To this end, it would be appropriate to introduce specific treatment for qualifying donations of food and non-food goods that would entail neither the charging of output VAT nor an adjustment of input VAT lawfully deducted. In view of the general rules governing supplies of goods free of charge under Article 16 of the VAT Directive, achieving this objective would require a targeted legislative amendment at EU level; a simple exemption coupled with an obligation to adjust the VAT deducted would not suffice. Eligibility for such treatment should be subject to objective criteria relating to the safety and usability of the goods and their actual allocation to purposes of general interest, without requiring them to have lost all their economic value.

In this regard, it would be important to establish harmonised definitions of the requirements for recipient organisations, the characteristics of goods eligible for donation and the purposes justifying such donations. This would entail recognising charitable bodies and other organisations pursuing equivalent purposes across Member States, while ensuring a clear distinction between goods donated for reuse and goods intended for disposal or recovery as scrap. Documentation requirements should be simple and proportionate, making use of records already available to the donor, a standardised acknowledgement of receipt and verification tools that can also be used for cross-border transactions. VAT responsibilities arising from subsequent distribution and any resale for charitable purposes should also be clarified, with appropriate controls to prevent abuse without imposing excessive traceability requirements.

As regards the destruction of goods, it would not be appropriate to introduce general restrictions on the right to deduct VAT as a means of encouraging donations. Destruction may be justified by safety requirements, quality-related reasons, legal obligations or the

absence of practically feasible distribution alternatives. In this context, it is essential to ensure uniform application of Article 185(2) of the VAT Directive, avoiding divergent interpretations that could lead, particularly in cases of voluntary destruction, to obligations to adjust VAT deductions that are inconsistent with principles already recognised in EU case law. In this regard, in the context of a future revision of the Directive, consideration should be given to clarifying the provision, including through common, objective criteria that ensure legal certainty and uniform application, while adequately distinguishing cases of duly evidenced or justified destruction from cases in which goods that can still be used are supplied free of charge. Here too, documentation requirements should be proportionate and based, as far as possible, on information normally available to businesses.

3. VAT rules on vehicles and corporate mobility

The VAT rules applicable to passenger cars should continue to be based on the principle of VAT neutrality, ensuring that the right to deduct VAT reflects the actual use of vehicles for economic activities and that any private consumption is subject to appropriate tax treatment. Environmental sustainability objectives, while deserving attention, should be pursued through instruments that do not alter the fundamental principles of VAT, thereby avoiding distortions or additional complexity for businesses. In this regard, the uptake of vehicles with a lower environmental impact should be supported through incentive measures, including consideration of a possible extension of reduced VAT rates.

A future revision of the Directive could also provide an opportunity to simplify and harmonise the treatment of vehicles used for both business and private purposes, promoting solutions that more closely align VAT deduction with actual business use while ensuring appropriate taxation of private use. To this end, it would be appropriate to clarify the treatment of different forms of vehicle use, distinguishing in particular between vehicles provided to employees free of charge and those provided in return for payment. Consideration could also be given to standardised, simple and verifiable methods for determining private use, capable of ensuring legal certainty and reducing administrative burdens without requiring disproportionate tracking systems.

Another area for consideration is the VAT treatment of sustainable mobility initiatives promoted by businesses, particularly home-to-work transport services. It would be useful to establish common criteria for identifying cases in which such services meet genuine organisational and operational needs, distinguishing them from mobility arrangements relating to employees' private sphere. Any legislative measures should encourage clearly identifiable and verifiable corporate mobility programmes, ensuring consistent treatment of the various solutions adopted, from collective transport to shared mobility and bicycles, while also addressing the proper taxation of any private consumption.

As part of measures supporting sustainable mobility, the VAT treatment of electricity used to charge vehicles, including electricity made available to employees at the workplace, also deserves attention. The options for applying reduced rates already provided for in Annex III, point 22, of the VAT Directive for supplies of electricity could serve as a starting point for considering possible measures, bearing in mind that the current rules do not allow for the general application of reduced VAT rates to purchases of electric passenger cars. Any further measure should therefore be defined in accordance with the EU legal framework or through an express revision of that framework.

More generally, the use of VAT as an instrument to promote sustainable mobility should be guided by effectiveness, proportionality and VAT neutrality. Any preferential treatment should be assessed in terms of its actual capacity to influence consumption choices, the expected environmental benefits and the administrative costs for businesses. Such an assessment should also take account of the different ways in which vehicles are used and acquired, including rental and leasing arrangements, the second-hand market and cross-border transactions, ensuring coordination with other tax and environmental instruments and avoiding overlaps or unjustifiably different treatment.

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