

The Future of VAT: What Could Possibly Go Wrong?



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VAT

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Alexis Tsielepis is widely considered as the foremost expert on Value Added Tax (VAT) in Cyprus with over 15 years of experience in the field. When he says that all he knows about the future of VAT is that he knows nothing, then the rest of us should sit up and take notice of this elusive and capricious tax.



Socratic Paradox:
“All I know is that I know nothing.”

On 20 January 2022, the Court of Justice of the European Union delivered its judgment in the case of Apcoa Parking Danmark A/S (Apcoa). Apcoa was a private company offering parking services to the public. Customers would park their car for a fee but, if they did not park within the lines or if the parking ticket was not visible on the windscreen, Apcoa also charged penalties which it called ‘control fees’. In fact, there were 13 different situations leading to control fees. The question was whether these control fees were part of a parking service and therefore subject to VAT, or were a form of VAT exempt compensation. Apcoa argued that VAT was not applicable, not surprising given that control fees amounted to more than €10m per year, forming around one third of its annual income. The Danish Tax Department had a different opinion. It is a little more than 55 years from when VAT was introduced across the EU. One would think that it should be clear by now how it applies to common parking services. Apparently not. And considering the more complex type of transactions that are available in today’s virtual business world, it is worrying that future of VAT is still so unclear.

FRAUD, COMPLIANCE AND SMES

One topic of discussion is fraud. The latest estimation is that VAT fraud amounts to €117 billion

across the EU. Action must be taken! Yes, although three of the 27 EU countries – Italy (€30.1 billion), Germany (€23.4 billion) and France (€13.9 billion) – make up more than 57% of the estimated fraud. Historically, this has always been the case. Perhaps attention should be focused there rather than instigating collective action. Small businesses do not have the economic capacity to cope with the increased administrative requirements of VAT compliance. Yet their existence appears to often be glossed over in the sweeping VAT amendments of national and EU VAT law. There is a proposal to simplify certain VAT rules for SMEs in a bid to alleviate their VAT burden, although coming from a member state where the large majority of businesses are SMEs, these do not address the problem fundamentally. The European Commission is finalising a blueprint for the VAT definitive scheme, which has been almost 30 years in the making. The main attribute is that the tax will be levied where the customer will be located, because that is where consumption takes place, and VAT is a consumption tax. Yes, 30 years in the making.

CAROUSEL FRAUD

One of the things being proposed is the abolition of a type of a VAT transaction known as the ‘intra-community acquisition’. It was put in place in 1993 as a means to tax the intra-EU supply of goods in an EU market where national borders

had been removed. Maurice Lauré, born in 1917 and known affectionately as the father of the EU VAT system, was alive in 1993 and protested against this new type of VAT transaction. He feared it would open up the system to fraud. It was a prophecy that would have made Nostradamus proud. It is now estimated to account for around €50 billion a year of the VAT fraud through carousel fraud. Kudos to the Commission for now putting it on the ‘bin list’.

VAT RATES

VAT rates today stand to serve historic compromises made when new countries joined the EU. There are rules, then there are exceptions and then there are bespoke country derogations. There is some uniformity and much dis-harmonisation as some countries were granted what they wanted. The new proposals on the VAT rates will slowly put an end to these imbalances, by allowing all countries the ability to copy each other, more or less. Emphasis is rightly placed on goods and services that serve a green policy or a social purpose or are important in the digital transformation.

E-COMMERCE AND VAT IN THE DIGITAL AGE

The success of the VAT reporting and payment simplification known as the One Stop Shop, which initial-

ly only covered telecommunications, broadcasting and electronically supplied services, led to its expansion in mid-2021 to include certain sup-

plies of goods and other services. This is probably one of the most innovative and successful ventures of the EU VAT legislature. There is a discussion to increase its scope even further once the wrinkles have been ironed out. There is also an active discussion on how to proceed with taxing in the digital age. Yet whilst the discussions are ongoing, technology is evolving, as are the platform economies. The initiative reflects on how tax authorities can use technology to overcome VAT fraud and, at the same time, modernise VAT formalities to benefit businesses. The devil is in the detail. Historically, what the Commission means when it uses words such as ‘benefit’ and what subsequently arises when the ‘Al Khalili Bazaar’ of give-and-take commences between the member states in finalising VAT amendments to the VAT Directive, is seldom beneficial for businesses. It is usually worse for SMEs.

IN CONCLUSION

What’s in store for VAT in the future? The answer is best summed up by the Socratic Paradox, which says: All I know is that I know nothing.