

European Commission
DG for Taxation and Customs Union
Indirect taxation and tax administration
Value added tax (TAXUD.C.1)
TAXUD-C1-SECTOR-C@ec.europa.eu

Luxembourg, 3 May 2022

Object: European Commission public consultation on VAT in the digital age

Dear Madam,
Dear Sir,

ALFI welcomes the publication of the public consultation regarding VAT in the digital age and is pleased to hereby provide its views in this respect.

The digitalisation of the economy implies also challenges for the financial industry as a whole including for the fund industry. These challenges are, on the one hand, some services rendered by platforms to the investors, and, on the other hand, some services rendered by the platforms to various actors in the value chain such as asset managers, distributors, administrative agents, etc.

These two categories of services are faced with the same difficulty to determine whether these services should qualify as exempt financial services or as taxable “general” or “electronic” services fully taxable at the standard rate. It is, for example, not always easy to determine whether the services provided by a platform to an investor willing to acquire or sell shares or units in a fund qualify as exempt intermediary services (article 135.1.f) of the EU VAT Directive). The platform would effectively act as an intermediary in the meaning of article 135.1.f) of the EU VAT Directive as interpreted by the Court of Justice of the European Union. Alternatively, this service might be viewed as a taxable service of access to the platform which gives the opportunity to the investor to reach fund distributors and to conclude at their intervention the buy or sale transaction and that would then be remunerated by a specific fee (different from the fee paid for the access to the platform), paid either by the investor or by the platform.

Similar questions arise for other services of platforms in relation to investment funds as described above.

While the CJEU has ruled that the fact that a service is executed in an electronic manner does not affect the VAT analysis and the application of VAT exemption, ALFI notes that issues continue to exist in respect of the application of this jurisprudence: lack of guidelines, lack of harmonization, lack of clarity, etc.

The qualification of a service as a financial one or as an electronic one may affect not only the benefit of the exemption but also the place of supply rules for B2C services. Indeed, the place of supply would be the place of establishment of the supplier for financial service, which is the easiest to apply and manage, while it would be the place of the consumer in case of electronic services which would imply the registration in the Member State of the client or the use of the OSS and the knowledge and mastering of the local rules. Some service offerings may include electronic and financial services. In this case, it might be even more difficult for the service provider to determine and apply the correct VAT treatment and this difficulty is increased by the fact that, for electronic services, the supplier is faced with multiple legislations (i.e. the rules of each Member State where the supplier has clients). This difficulty is well illustrated by the “Q-GmbH” decision (C-907/19 of 25 March 2021) and the numerous decisions of the CJEU regarding single, composite and multiple supplies which is far from easy to understand, interpret and apply.

ALFI thus supports a clarification of the rules applicable to financial services in the light of answers to the recent public consultation organised by the European Commission which indicated strong support for the principle of VAT exemption, the need to maintain it and the need for clarification and modernisation including adaptation to the digitalisation.

We are grateful in advance for your attention and remain at your disposal for any additional information you may wish to receive.

Sincerely yours,

ALFI