EUROPEAN COMMISSION
DIRECTORATE-GENERAL
TAXATION AND CUSTOMS UNION
Indirect Taxation and Tax Administration
Value Added Tax Policy

taxud.c.1(2025)11627393 – EN

Brussels, 11 November 2025

VALUE ADDED TAX COMMITTEE
(ARTICLE 398 OF DIRECTIVE 2006/112/EC)
WORKING PAPER NO 1118

QUESTION
CONCERNING THE APPLICATION OF EU VAT PROVISIONS

ORIGIN:	**Italy**
REFERENCE:	**Article 2(1)(c)**
SUBJECT:	**VAT treatment of IT services provided in exchange for the provision of users' personal data**

1. INTRODUCTION

The Italian Authorities have asked the opinion of the VAT Committee on whether the supply of IT services provided by a social media platform to its users can be considered VAT relevant and taxable. Specifically, whether there can be a direct link between the IT services supplied and the consideration in the form of personal data received from the customer. According to the Italian tax authorities, such supplies would appear to fall under Article 2(1)(c) of the VAT Directive[1], and so are relevant for tax purposes.

A translation of the text of the question is annexed to this document.

2. SUBJECT MATTER

2.1. Previous VAT Committee discussion

2.1.1. Working paper 958

It should be recalled that this issue was discussed in October 2018 at the 111th VAT Committee meeting, following a question submitted by Germany, which formed the basis of Working paper No 958[2]. The questions specifically asked by Germany were:

- Does a user of IT services supplied free of charge provide an economic benefit to the IT provider when, in return for that service, he or she consents to his or her personal and use-related data being recorded and used?
- Is there a direct link between the provision of IT services for use on the one hand and consent to the recording and use of personal and use-related data on the other, and does the provision of use rights constitute the value actually given in return for use of the internet services?
- If so, what criteria should be used to determine the taxable amount for the services supplied by the IT provider?

2.1.2. Guidelines as a result of the 111th meeting

The debate in the VAT Committee led to the following unanimous guidelines[3]:

> *1. When, to be able as a user to accede IT services offered by a taxable person without a monetary consideration, an individual grants permission for that taxable person to use his personal data, the VAT Committee unanimously agrees that the provision of data by that individual does not constitute an economic activity and therefore is not a taxable supply of services, unless for that activity the individual uses human or material resources similar to those of a producer, trader or a person supplying services within the meaning of the second subparagraph of Article 9(1) of the VAT Directive.*

---

1 Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ L 347, 11.12.2006, p. 1).

2 Working paper No 958 – Conditions for there being a taxable transaction when Internet services are provided in exchange for user data – taxud.c.1 (2018) 6248826

3 Guidelines resulting from the 111th meeting of 30 November 2018 Document B – taxud.c.1(2015)4128689 – 862 (p. 192).

> *2. When a taxable person provides IT services without requesting monetary consideration to a user of the Internet in exchange for that user's permission to use his personal data, the VAT Committee unanimously agrees that the provision of those IT services does not constitute a taxable transaction for VAT purposes as long as those services are offered under the same conditions to all users of the Internet, irrespective of the quantity and quality of the personal data they provide individually, in such a way that no direct link can be established between the IT services provided and the consideration in the form of personal data received.*

These guidelines essentially say the following:

Regarding the **provision of personal data** from the user of the IT services to the provider of the services, this is not an economic activity, and therefore not a taxable supply, unless the individual uses resources similar to those of a producer, trader or person supplying services within the meaning of Article 9(1) of the VAT Directive. This would generally not be the case when an individual is simply using a social media platform and (explicitly or implicitly) allowing their data to be used by that platform.

Regarding the **provision of the IT services** to the user of the platform, those services are not a taxable transaction as long as they are offered for free under the same conditions to all users of the platform irrespective of how they allow their personal data to be used, thereby not enabling the establishment of a direct link between the services provided and the personal data supplied by the user.

The current question put by Italy concerns the second part of these Guidelines and looks at instances where such a direct link may be established between the provision of the IT service and the personal data provided by the use, in the light of developing business models.

2.2. Question from Italy

2.2.1 IT services in exchange for personal data in the light of new business models

Italy's question concerns IT services provided by social networking platforms to domestic (Italian) users. The platforms providing these services do not consider them to be VAT relevant because they are provided free of charge. It is the opinion of the Italian Authorities that these categories of services fall within the scope of Article 2(1)(c) of the VAT Directive and that they are relevant for VAT. In short, the Italian tax authorities have taken the view that:

- The granting of the social network right for the user to use the platform (the electronic service), in exchange for the provision of personal data which is processed and used by the social network could be considered as a barter transaction.
- Because business models are evolving, it is now possible to establish a direct link between the quality and quantity of data provided by the user and the level of IT services provided. In this sense, Italy argues that, where a user deletes certain settings on the social network which reduces that network's ability to collect and process (use) the data, there is a corresponding restricted use of the services the social network offers (for example, in the deletion of videos and photos on the platform, restricted access to certain websites etc).

- In this sense, Italy argues that the conditions set out in Working paper No 958 of October 2018, and the subsequent guidelines have been met, and that there is a direct link between the quantity and quality of the personal data provided and the IT services received. Thus, such services are within the scope of VAT and should be subject to VAT.

Italy is seeking the opinion of the VAT Committee on the following:

> Can the supply of services in question (IT services provided in exchange for personal data from the user) be considered VAT relevant and taxable, and specifically have the conditions set out in Working Paper No 958 of 30 October 2018 and subsequent guidelines be deemed to have been met?

3. COMMISSION SERVICES' OPINION

3.1. Is such a transaction a taxable transaction for VAT purposes?

As outlined in the first paragraph of the guidelines resulting from the 111th meeting of the VAT Committee, it is unanimously agreed that the supply of personal data from the individual to the IT supplier does not constitute an economic activity and therefore is not a taxable supply of services, unless for that activity the individual uses human or material resources similar to that of a producer, trader or person supplying similar services to those in Article 9(1).

In the opinion of Italy, a barter transaction is carried out between:

- On the one side, the granting by the company to its users of access and use of the social networking services;
- And, on the other side, the provision by users of their personal data to the social network.

In the present case there is only one taxable transaction, that from the provider of the IT services to the user of the services because, as established in the guidelines, the provider of the personal data is not carrying out an economic activity. Section 3.1 of the previous Working paper goes into detail as to why the supply of personal data is not a taxable transaction.

The taxable transaction at issue would be the transaction of the supply of IT services, for which the 'payment' (consideration) is the personal data provided by the user of those services.

3.2. Can a direct link be established between the provision of the personal data and the supply of IT services?

3.2.1 Introduction

It should be stressed that it is not the purpose of the VAT Committee to express an opinion on a specific issue relating to a specific business or businesses in a Member State. The purpose of the Committee is to discuss the application of EU VAT provisions and in this sense, this Working paper will not look at specific wordings, for example, in specific

terms and conditions, or 'Statements of responsibilities' but will look, in a more general sense, at the issue in question.

3.2.2 The Italian position

In general terms then, the situation is as follows:

Italy has considered a situation in which the level of access to a social network could be linked to the quality and quantity of data received. This may be achieved by the user choosing to adjust certain settings in the platform, which restricts the use of the data provided by the user, but will in turn lead to a restriction in access to certain features of the platform (for example, the individual may not be able to access third party websites through the app, or they may have restricted access to those websites, or they may lose photos and videos etc.).

It is the opinion of Italy that, in such a situation, and because here the platform is not providing the same access to all users of that platform irrespective of the quantity and quality of the data provided, a link can be established between the provision of the IT service and the personal data supplied.

The Italian analysis appears to go further than the Guidelines in that, because there is a direct link between a reduction of the quantity and quality of personal data provided and a reduction of the IT services provided when the user adjusts certain settings, then there should also be a direct link between the user not restricting the platform's use of their data and the platform providing full access to its IT services 'free of charge'.

The Commission services are also aware of further models which exist, in which a user can opt to pay a subscription fee to the platform, in exchange for access to the full services of the platform but without the corresponding advertisements (and by inference, the use of their data to 'target' these advertisements).

Each model should be regarded separately to see whether a direct link can be established between the IT services supplied and the personal data provided by the customer.

3.2.3 Manipulation of settings to reduce the use of personal data

As outlined in the submission by Italy, there are situations in which a user may adjust various settings in the platform, which in turn reduces the quality and quantity of data supplied, which leads to a corresponding drop in the level of IT services. If we look at this scenario through the lens of settled case law[4], we must ask the following questions:

- Is there a legal relationship between the supplier and the purchaser?
- Is there a link between the service supplied and the consideration received?

In terms of a legal relationship between the supplier and the purchaser, in these terms it can be seen that such a relationship could exist depending on the nature of the agreement between the user of the platform and the provider of the IT service, normally via the 'terms and conditions' the user agrees to when they sign up for the platform. These 'terms and conditions' would generally lay out what the platform can do with the users' data, and what the platform provides the user.

[4] See footnote of the Italian submission.

In terms of the explicit link between the service supplied and the consideration received – here it could be argued that there is a link, because there is a reduction in the IT service alongside a reduction in the personal data which is able to be used by the IT service provider. However, this would need to be looked at carefully on a case-by-case basis, because it may be that the reduction in IT services is not a result of the platform 'valuing' the personal data at a lower level of consideration, but simply that the access to various elements of the platform is simply a natural consequence of the reduced personal data – that the provision of certain data is an integral part of providing access to certain functionalities (for example if you do not allow the platform to pass on images to third parties, then you will no longer be able to use the platform to post photos via that platform on another platform or website).

3.2.4 Where there is no manipulation of settings to reduce personal data

Whereas a direct link could be made (depending on the circumstances) between a reduction of the personal data provided and the reduction of IT services received, such a link would be more difficult to establish in circumstances where the users do not adjust their settings to reduce their provision of personal data, but they still have the full access to the IT services. Here, for each user, the experience is the same and it would be more difficult to show, for example, a link between personal data and a particular IT service provided. It would be prudent, at this point, to turn to the previous Working paper, which argued that there are users who continually use a social network, and so provide a lot of personal data, and those who use the service infrequently, so the personal data provided by them is insignificant:

> *'However, all of them receive the same services from the IT company. The IT provider does not offer different levels of service depending on the amount or quality of data provided by the users. Nor is there an obligation to provide a certain amount of data periodically to remain connected to the service.'*

Therefore, it follows that, in cases where the user makes a deliberate choice to reduce the amount of data available by adjusting certain settings and therefore receiving a reduced level of IT service in return (and thereby ascertaining a direct link), it would be harder to ascertain such a direct link where no such choice has been made, and the level of IT service remains the same irrespective of the level of use of the platform. Therefore, it follows that if no link can be made between the supply and the consideration, then such a supply is not a supply for taxable purposes.

3.2.5 Where there is a subscription payment

Whilst not being explicitly mentioned in the Italian submission, the Commission services are aware of situations in which users are asked to pay a monthly fee to enjoy an 'ad-free' version of the IT service. Here there are two aspects to be considered.

The first is the treatment of the transaction for which the user pays the fee. Here it is clear that there could be a taxable transaction – the user pays a monthly fee, for which they receive an IT service. Depending on the platform and the terms of service, this fee could, however, simply be the fee for not seeing advertisements on the platform, but would not necessarily reduce the use of the personal data gathered by the platform, which could be used for more general marketing/consumer research etc, rather than being specifically tailored for targeted advertising.

The other aspect of this model could be the establishment of a consideration, a value of the IT services supplied. That is, if users are willing to pay, for example EUR 10 per month to receive the IT services, then the value of the personal data provided by those not paying this subscription is also EUR 10 per month.

However, the Commission services would again come back to the point made in section 3.2.4, that the level of data supplied is different depending on how much a user uses the platform, thus it would be difficult to justify the view that the value of each person's data is the same per month irrespective of how much data is provided.

This is not the case with the 'free' service, for which there is a reduced functionality, a basic supply, which is the same for all users who do not pay the subscription, irrespective of how much they use the service, and as such it would be difficult to argue that a direct link can be made between the two.

3.3. Conclusion

In the view of the Commission there are three distinct situations:

1) A situation in which there is no adjustment to the settings, and the IT service is provided for 'free', and the provider uses the data provided by the user;
2) A situation in which there is an adjustment to the settings, and the IT service which is provided is a reduced service;
3) A situation in which a user pays a monthly fee for the use of the IT service.

In the opinion of the Commission, it can be argued that for situation 1), there is no taxable supply if no direct link can be ascertained between the IT services supplied and the data provided by the user.

For situation 3), it is clear the user is paying for the use of the IT services, and so a taxable supply has been carried out by the IT provider.

However, for situation 2 there may be situations in which a link can be more easily made between the IT service supplied and the data provided by the user. However, it would be difficult to quantify to any extent what the taxable amount would be. It may be possible to use the 'monthly fee' in situation 3 as a basis to arrive at a taxable amount of a supply in situation 2 (if both situations are covered by the same supplier); however, it would require consideration on a case-by-case basis and care would be needed to ensure that the result is fair and practicable.

It may be that the best approach is beyond the remit of the VAT Committee and legislative changes to the Directive would be necessary.

4. DELEGATIONS' OPINION

Delegations are asked to express their opinion on the Commission services' opinion.

*
* *

ANNEX

Question from Italy

Subject: **VAT Committee – proposed question concerning the VAT treatment of IT services provided in exchange for the provision of users' personal data.**

Reference is made to paragraph two of the VAT Committee's Guidelines on the VAT treatment of IT services provided in exchange for the users' permission to use their personal data, DOCUMENT B – taxud.c.1(2019)3722302 – 967 [*Guidelines resulting from the 111th meeting of 30 November 2018*], originating from the document dated 30 October 2018 WP 958 *Conditions for there being a taxable transaction when Internet services are provided in exchange for user data* [taxud.c.1(2018)6248826].

This section of the Guidelines states that the provision of IT services does not constitute a taxable transaction for VAT purposes as long as the services are offered under the same conditions to all users of the Internet, irrespective of the quantity and quality of the data provided, in such a way that no direct link appears to exists between the IT services provided and the consideration in the form of personal data received.

In this regard, the intention is to verify whether, under certain conditions, "*a sufficient direct link exists between the IT services provided and the customer's data received*" such that the service supplied can be considered taxable for VAT purposes.

Question

The case concerns IT services provided by a social networking platform to domestic users. These services are not considered VAT-relevant by the platform providing them, as they are free of charge. However, since they seem to fall within the category of services for consideration referred to in Article 2(1)(c) of Directive 2006/112/EC, they would appear to be taxable for VAT purposes.

In the case under examination, each user, in order to be able to make use of the IT functionalities of the social networks, is required to accept, upon registration, a series of terms and conditions unilaterally determined by the platform operator. These conditions, together with other documents concerning i) the processing of personal data, ii) the use of cookies, and content policies, constitute to all intents and purposes a contract – although the term is never expressly used – concluded between the user and the service provider.

Each user is informed that i) the platform, in order to provide the service, collects and processes information about him/her and that ii) the type of data elements acquired depends on the manner in which the platform is used.

With regard to the destination and use of the data collected, the social network specifies several purposes within its data policy (*Terms and Conditions*), including the "*provision of measurements, statistical data, and other services for companies*". Indeed, the company's main business purpose is to provide advertising space to third parties, marketing operators, allowing them to reach users through their products on the basis of a constant profiling process of subscribers, based on the collection and making available of a variety of factors and data, including age, gender, location, interests, and habits.

In the case under examination, tax auditors have qualified the transaction as a barter transaction consisting of the following two services provided for consideration as well as simultaneously and reciprocally between the parties, within a relationship capable of constituting an atypical contract for the "*exchange of intangible property*" under civil law:

- on the one side, the granting by the company to its users of access and utilization of the social networking services;
- and, on the other, the provision by users, in favour of the social network, of their personal data communicated to the social platform or otherwise collected by it.

As a consequence, tax auditors have assessed that this transaction would satisfy all the criteria (subjective, objective, and territorial ones) required by the VAT Directive in order to constitute a VAT-relevant transaction.

Regarding the subjective condition, the platform carries out an independent economic activity for the provision of services.

As regards the services provided to users located in Italy, the territorial requirement is likewise met. Indeed, according to Article 58 of the VAT Directive, as amended by Directive 2017/2455, "*the place of supply of the following services to a non-taxable person shall be the place where that person is established, has his permanent address or usually resides:*

a) telecommunications services;

b) radio and television broadcasting services;

c) electronically supplied services, particularly those referred to in Annex II".

According to this provision, electronically supplied services, such as those provided in this case by the platform, are considered to be carried out in the territory of the State if provided to non-taxable customers domiciled or resident in Italy without a domicile abroad.

With reference to the objective requirement, tax auditors have considered the activity carried out by the social network would fall under "*the obligation to tolerate an act or situation*". From this perspective, for VAT purposes, it would constitute a supply of services covered by Articles 24 and 25 of the VAT Directive.

However, for being subject to VAT, the service would also have to be provided for consideration[1].

[1] It follows from settled case-law that "*a supply of services is made for consideration, within the meaning of the VAT Directive, and hence is taxable, only if there is a legal relationship between the provider of the service and the recipient pursuant to which there is reciprocal performance, the remuneration received by the provider of the service constituting the value actually given in return for the service supplied to the recipient. That is the case if there is a direct link between the service supplied and the consideration received, the sums paid constituting actual consideration for an identifiable service supplied in the context of a legal relationship pursuant to which there is reciprocal performance*" (thus Judgment of 25 November 2021, *Amper Metal Kft.*, Case C-334/20, paragraph 26, in accordance with judgment of 21 January 2021, *UCMR – ADA*, Case C-501/19, paragraph 31; judgment of 11 June 2020, *Vodafone Portugal*, Case C-43/19, paragraph 31; judgment of 22 November 2018, *MEO – Serviços de Comunicações e Multimédia*, Case C-295/17, paragraph 39; judgment of 18 January 2017, *SAWP*, Case C-37/16, paragraphs 25 and 26).

Assuming that for the reciprocity of the two transactions constituting the barter transaction, the lack of a monetary consideration does not constitute an obstacle to taxability, the services provided by the company are to be considered to take place for consideration in cases where there is a direct link between them and the consideration, consisting in making available of personal data by the users.

In the view of tax auditors, the synallagmatic nature of the services and the fact that they are not free of charge in the present case appear to be confirmed by the "*Statements of Rights and Responsibilities*" set out in the social platform's app, where it is stated that: "*Our goal is to provide advertising and other valuable commercial or sponsored content to users and advertisers. To this end, users agree to the following: users provide (editor's note: social network) with permission to use their name, profile picture, content, and information in connection with commercial, sponsored, or related content (e.g., favourite brands) published or supported by (editor's note: social network).*"

Tax auditors' opinion was also impacted by a innovative judgment by the Italian Council of State issued in 2021 following an appeal against a decision by the *Autorità Garante della Concorrenza e del Mercato* (Italian Antitrust Authority), which, pursuant to the Consumer Code, had recognized:

- on the one hand, **a deceptive practice**, the behaviour of a social platform to the extent that it "*would not adequately and immediately inform the user, during the activation of the account, of the collection and use, for informational and/or commercial purposes, of the data that he/she gives, making him/her aware only of the gratuitousness of the use of the service, so as to induce him/her to take a decision that he/she would not otherwise have taken (registration and permanence on the platform)*";

- on the other hand, **an aggressive practice**, consisting of "*undue influence over registered consumers, who, in exchange for using the social platform, would be forced to allow the platform itself or third parties to collect and use, for informative and/or commercial purposes, the data concerning them in an unconscious and automatic way, through a system of pre-selection of consent to the transfer and use of the data*";

In particular, in view of the fact that, in order to enable the use of the software and related digital services, the platform acquires and manages the personal data of its members for commercial purposes, the judgement states that the social media service is not to be regarded as free of charge, contrary to what is represented to the user, and that the relationship existing between the social network operator and its users has a synallagmatic nature and therefore commercial, insofar as the service provided by the owner of the social network — identified as the provision of the software — would correspond, as a consideration by subscribers, to the recognition of a "license to use" their personal data and intellectual property content, whether directly provided by them or indirectly collected by the operator. More specifically, the administrative judge, highlighting its intrinsic potential, considers it necessary to recognize that the exploitation of personal data, in addition to legal protection, also has an economic value, echoing the same concept already expressed by the European Commission in the document "*Guidance on the interpretation and application of Directive 2005/29/EC of the European Parliament and of the Council concerning unfair business-to-consumer commercial practices in the internal market*" of

25 May 2016, which states that "*personal data, consumer preferences and other user-generated content have a de facto economic value*".

The analysis contained in the previous paragraphs could provide new elements with respect to the analysis developed in Working Paper No. 958 of 30 October 2018, as well as the aforementioned Guidelines, unanimously approved by the VAT Committee, allowing for the identification of the direct link between the services offered by the social network and the consideration received by users, as indicated by the VAT Committee.

Indeed, it was stated in the conclusions of the working document that: "*The provision of an IT service without a monetary consideration, which allows the supplier to use the personal data of his customer, does not constitute a taxable transaction for VAT purposes as there is no direct link between the service provided and the consideration received. The data for which use is granted varies in quantity and quality from one user to the other, it being even possible that the user only provides false data to the supplier. For that reason, it is not possible to establish such a direct link, which is a condition for the transaction to be regarded as taxable. If, however, it were to be found that a sufficient direct link exists between the IT services provided and the customer's data received without a monetary consideration being requested, there would then be a taxable transaction. In such case, the taxable amount would be the cost for the supplier of providing the service to the customer*".

Precisely in the light of the above analysis, according to tax auditors evaluation, the facts and circumstances of the present case would show that the quantity and quality of the personal data transferred would have a significant impact on the conditions for providing the services offered. For instance, the deletion of certain settings by the user affects the services offered by the company: in particular, if the user restricts the sharing of his or her data and contents, this may entail disadvantages, consisting in a limited use of the services.

In particular, if users decide to deactivate the platform's apps:

- they will not be able to access websites and apps via the social network;
- the apps and websites that have been accessed via the social network could delete the account or activities;
- posts, videos and photos on the social network that the apps and websites have published could be deleted;
- they may not be able to fully interact with other websites and apps and/or share content on social media using social plug-ins[2] such as "share" and "like" buttons;
- accounts with other apps and websites connected to the social media site will be disconnected.

Taking into consideration the above elements, which would reflect the presence of a direct link between the data provided and the services received, in the view of tax auditors, the service provided by the platform would be considered a service supplied for consideration and therefore taxable pursuant to Article 2(1)(c) of the VAT Directive.

[2] A social plug-in is a software component that integrates with a website or application to add social networking functionalities. These plug-ins allow users to interact with social media directly from the website, such as sharing content, liking, commenting or following pages.

Italy would be interested to know the VAT Committee's opinion on the VAT relevance and taxability of the services in question.

Opinion

The quantity and quality of personal data transferred to the company in this case would appear to have a substantial impact on the way the platform provides its services. When users deselect one or more settings, thereby limiting the quantity or quality of data they allow the platform to collect and use, they suffer several disadvantages, consisting in limited access to the service.

In particular, only if the 'apps and websites' function remains activated, the user may:

- access other apps and websites using the account already activated when registering with the company;
- play online games using specific platforms;
- interact with other websites and apps;
- share content using the social network's social plug-ins;
- link his or her accounts on other websites and apps (such as loyalty programmes and news subscriptions) to the social network.

The foregoing analysis would suggest the possibility to argue for the synallagmatic nature of the rights and obligations of the parties, insofar as the quantity and quality of the data made available to the platform by the user affect the availability of the services supplied by the platform in terms of interaction and usability of the related functions.

Bearing in mind that in the view of tax auditors, the factual elements acquired seem to be suitable to configure the realization of transactions subject to VAT, in accordance with the provisions of the harmonised legislation, we would like to ask for VAT Committee's opinion.

Therefore, the VAT Committee's opinion is sought on whether the supply of the services in question can be considered VAT-relevant and taxable, and specifically on whether the conditions set out by the VAT Committee in Working Paper No. 958 of 30 October 2018 and subsequent Guidelines are deemed to be met. According to the Guidelines, the supply of IT services constitutes a taxable transaction for VAT purposes, provided that such services are offered to Internet users under differentiated conditions, depending on the quantity and quality of the personal data provided individually, so that a direct link is established between the IT services supplied and the consideration in the form of personal data received.

We thank the Commission services for addressing this question at the next VAT Committee meeting.