KONFEDERACJA LEWIATAN

Warsaw, 4 November 2026

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European Commission

In connection with the ongoing "call for evidence" regarding the initiative on VAT and the circular economy, which aims to support the transition to a circular economy by modernizing certain VAT rules that may hinder circular business models and sustainable choices, we would like to submit our comments, with a request that they be analyzed and taken into account during further work.

Yours sincerely,

Marek Górski
President of the Polish Confederation Lewiatan

Attachment:

1. Lewiatan position paper on the European Commission initiative – VAT and the circular economy.

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Lewiatan position paper on the European Commission initiative – VAT and the circular economy.

1. General asseement and objectives

In response to the European Commission's call for evidence on the initiative concerning VAT and the circular economy, we present our position on modernising rules that may hinder the development of circular business models and sustainable choices. We support the direction of the reform, covering the treatment of second-hand goods and circular production chains, the destruction of functional goods, and VAT deductions for passenger cars.

The reform should facilitate the reuse, repair, refurbishment and remanufacturing of products, the use of production waste, and the donation of useful goods for social purposes. It should also support zero-emission mobility without undermining the proportionality of burdens on businesses or VAT neutrality in taxable economic activities.

Clear definitions that are consistent across the Union, legal certainty, effective safeguards against abuse, and reduced administrative costs. Market participants' responsibilities should reflect their actual access to information and ability to verify it.

Below, we present a detailed elaboration of our position, along with proposals for legislative changes.

2. Second-hand goods: definition and application of the margin scheme

We share the view that VAT rules for trade in second-hand goods need to be simplified and adapted to the growth of the resale market, including e-commerce. The proposed amendment to the definition of second-hand goods should establish uniform classification criteria, particularly for the purposes of the VAT margin scheme, and reduce differences between Member States.

2.1. Clear criteria and guidance

The definition should be precise and accompanied by practical guidance to reduce the risk of new goods being declared as second-hand. The following cases should be clarified unequivocally:

- whether removing protective film means that a product is second-hand;
- whether removing labels justifies classifying a product as second-hand;
- whether merely owning an item for a specified period, for example at least six months, is sufficient for such classification;
- whether refurbishing or repairing a used product allows it to retain its status as a second-hand good;
- whether a display product should be treated as a second-hand good.

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The criteria should reflect the actual condition and history of the product, rather than solely a formal declaration by the seller. We recommend consulting customs authorities on their experience in verifying the declared status of second-hand goods and combating false declarations. The aim should be to draw on enforcement experience without automatically equating customs rules with VAT rules.

2.2. Platform liability in the 3P model and C2C sales

In the 3P model, where independent sellers offer goods through a platform, the platform generally has no physical control over the products. Its ability to verify their condition is therefore limited, and classification as second-hand goods may rely on information and declarations provided by the seller, for example confirmation via a checkbox.

Similar difficulties arise in sales declared to be between private individuals (C2C). A platform may not have full knowledge of a seller's activities, including transactions outside its own service. It should therefore not bear unconditional liability for determining whether the seller is genuinely acting as a private individual or as a business.

We call for a safe harbour mechanism modelled on the arrangements under the VAT e-commerce package. A platform should be exempt from liability for incorrect VAT treatment resulting from inaccurate information provided by the seller if it exercised due diligence, acted in good faith and demonstrated that all of the following conditions were met:

- it relied on information provided by the seller;
- that information proved to be incorrect;
- it did not know and could not have known that the information was incorrect.

The mechanism should cover both the status of the goods and the status of the seller. Guidance should specify a proportionate scope of due diligence and how to document declarations and respond to indications of irregularities. Protection should not extend to cases where such indications are knowingly ignored.

3. Circular production chains: refurbishment, remanufacturing and the use of waste

We agree that the VAT system should provide stronger support for the reuse, refurbishment and remanufacturing of products, including electronic devices and other equipment, as well as the manufacture of products from production waste. These activities extend product lifetimes and reduce demand for primary raw materials. The reform should remove tax barriers that make these activities less economically attractive than purchasing new products. However, any changes to the current regulations should not lead to a fragmentation of national rules. We understand that the proposal might potentially include the following tax preferences:

- VAT exemption;

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- Lower VAT rate;
- Taxation of the refurbisher's margin only.

All options require further analysis. We need to be careful not to make settlement of VAT for second-hand goods more complex by diverging practices between Member States, as well as not to encourage fraud. VAT exemption or lower VAT rate for such goods might create incentive to intentionally declare the goods as used or to artificially alter the status of goods to declare them as second- hand. Settlement of second-hand goods outside the VAT margin scheme will involve the possibility to deduct VAT. It is therefore crucial to include strong anti-abuse mechanisms at every stage of the supply chains if these options should be considered.

The regulations should also clearly specify whether products made from waste or recycled components are eligible for preferential treatment, as well as the exact conditions under which they would qualify for such treatment. For products made from production waste or recycled components, the conditions for applying tax preferences and the rules for determining the taxable amount should be specified separately, so that the buyback model for used devices is not automatically applied to different production processes.

4. Functional goods: donations instead of destruction

We support introducing a VAT exemption for in-kind donations made by businesses to eligible public-benefit organisations, provided that the goods received are used for socially beneficial purposes. This measure should remove an economic barrier that may limit donations of fully usable goods to those in need.

A fundamental principle of the reform should be to allow businesses to donate useful and safe goods they no longer need without incurring an additional VAT liability solely because the goods are transferred free of charge. When designing the preference, its relationship with the right to deduct input VAT should also be clarified so as not to weaken the incentive to donate.

The risk of abuse should be limited through simple and proportionate obligations covering:

- documenting the transfer and identifying the donated goods;
- specifying the socially beneficial purpose of the donation;
- confirming the eligible status of the organisation receiving the goods;
- confirming that the goods are allocated to the declared purpose to the extent that the donor and recipient can demonstrate this.

5. Passenger cars: supporting zero-emission mobility

We support using the VAT system to promote zero-emission mobility, including full VAT deduction on the purchase and leasing of zero-emission passenger cars used for taxable economic activities. The rules governing vehicle eligibility and use should be unambiguous.

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However, we do not support a uniform, mandatory ban on VAT deductions for other passenger cars as a regulatory option under consideration. The pace of development of the zero-emission vehicle market and the availability of charging infrastructure differ between Member States. The impact assessment should take these differences into account, including conditions in Poland and the availability of charging along the TEN-T network.

Mandatory removal of the right to deduct VAT could place a disproportionate burden on businesses operating in markets where replacing existing vehicles with zero-emission vehicles is difficult. Positive tax incentives should be prioritised over punitive restrictions on VAT deductions for other vehicles.

If the option of introducing such restrictions is retained, Member States should at least retain the discretion to decide whether to apply them. The reform should be accompanied by proportionate transitional arrangements that take account of vehicle and infrastructure availability and the needs of business activities.

6. Implementation conditions and impact assessment

The changes should be developed in dialogue with businesses, online marketplaces, civil society organisations, and tax and customs authorities. We recommend common guidance, practical examples of product classification, and sufficient time to adapt sales and VAT accounting systems.

The impact assessment should, in particular, take account of:

- the impact of each option on the prices of refurbished products, the economic viability of circular activities, and the right to deduct input VAT;
- the costs of documenting the origin and status of goods and the status of sellers;
- the risk of abuse and the ability of individual market participants to verify data;
- the impact of rules on donations and the destruction of goods on the scale of product reuse;
- differences in zero-emission vehicle markets and charging infrastructure, based on comparable data with a clearly specified reference period;
- the consistency of cross-border arrangements and a level playing field in the internal market.

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