



March 27, 2023

In-House Tax Forum

VAT in the Digital Age ("ViDA")

Input into the Public Consultation of the European Commission

The In-House Tax Forum ("IHTF") is an informal network in Belgium of in-house tax experts focusing on Belgian, European and Global direct and indirect tax legislation and developments. The IHTF comprises of 270 tax experts from over 110 companies (Belgian, European and non-European, both listed and unlisted) out of various industries and employing over 165,000 employees in Belgium.

To note: Reference to articles mentioned in this document are referring to the EU VAT Directive 2006/112/EC unless mentioned differently.

We welcome the proposal of the European Commission on VAT in the Digital Age ("ViDA") which should lead to an acceptable level of standardization and harmonization of E-Invoicing and Near Real Time reporting, combat fraud and efficient and productive work process in a quickly developing digitalized world.

The below input relates mainly to the changes for the implementation of Digital Reporting Requirements ("DRR")

Main suggestions (worked out in detail in next sections)

- **Maximum level of standardization and harmonization**
- **Urgent need to come up with more realistic implementation dates of the measures**
- **The preparation of e-invoices max. 2 days after the supply and the DRR 2 days after issuance of the invoice should be longer. From the acquiror's perspective, processing of incoming invoices in 2 days is practically not possible**
- **Businesses should be able to continue the use of summary invoices**
- **DRR as substantive condition for intra-EU VAT exemption should be reconsidered**

What works

- **Clearance models are not longer possible as of 2028 (Art. 218(2))**
- **Use of an electronic invoice is not subject to the acceptance of the recipient (Art. 232 deleted)**
- **Member States can not require that additional info is required on DRR.**
- **The push for a European Norm (EN 16931)**

Suggestions not included in the proposal

- **Reduce the number of options for Member States.** The proposal includes a number of options to the Member States to implement ViDA. While options offer flexibility to implement ViDA for Member States, businesses may be confronted with the complexity leading to higher costs and practical issues. For instance, offering different models for e-invoices and invoices in other formats may create complexities and risks in terms of interoperability and communication with suppliers, customers and tax authorities. **The number of options should be reduced to the absolute minimum and a maximum level of standardization and harmonization should be achieved.**
- **Incentivize the optimal implementation of ViDA for businesses.** Needless to say that the implementation of ViDA will be a huge cost for companies short term which will (hopefully) be offset with more cost efficient processes on a long term basis. **Measures as faster VAT refunds, VAT**

deduction on these investments for VAT exempted businesses and investment incentives from a direct tax perspective may need to be considered. At the other hand, pre-filled VAT returns are not needed. While it may be useful for SME's (or rather, for their tax accounting service provider), pre-filled VAT returns are not a source of simplification for MNE's. On the contrary, they will inevitably result in additional workload for companies to reconcile the amounts in the pre-filled VAT return and the accounting books. For example, there will inevitably be gaps due to the time lag between issuance of invoices by suppliers and processing of these invoices by customers. **Need for more realistic timelines for introduction of ViDA:** The implementation of the first changes is on January 1, 2024. This will give businesses maximum only 9 months after finalization of the public consultation on ViDA. Per January 23, 2023, also the proposal of the European Commission is only available in English. Till end of December 2023, the European Commission and the Member States need to review, discuss and agree on the proposed changes and implemented in the legislation of the Member States. Also the concerns that businesses have due to the significant impact of ViDA on business processes and systems which will be time consuming and labour intensive. **Therefore, it would be good for both policy makers and businesses to propose more realistic timelines with a minimum of 24 months between the publication of the approved version of ViDA and the implementation of the first measures.**

Suggestions on the changes in the VAT legislation in the ViDA proposal

Changes proposed per Jan 1, 2024

- **[Art. 217 & 218] Definition of a European Standard of Electronic Invoice:** Art. 217 & 218 refer to the issuance of electronic invoices which comply with the European standard on electronic invoicing and the list of its syntaxes pursuant to [Directive 2014/55/EU](#) of the European Parliament and of the Council. This European Standard has been defined in Art. 3 of the Directive 2014/55/EU and following art. 3(2) is published in the Official Journal of the European Union by May 2017.. The [Commission Implementing decision 2017/1870 of October 16, 2017](#) on the publication of the reference of the European standard on electronic invoicing and the list of its syntaxes pursuant to Directive 2014/55/EU of the European Parliament and of the Council was published in the Official Journal of the European Commission on October 17, 2017 ([link](#)). The Commission Implementing decision 2017/1870 refers to: *"On 28 June 2017 the European Committee for Standardisation (CEN) issued the European standard EN 16931-1:2017, Electronic invoicing — Part 1: Semantic data model of the core elements of an electronic invoice and the list of syntaxes CEN/TS 16931-2:2017, Electronic invoicing ([Link](#)) Part 2: List of syntaxes that comply with EN 16931-1, according to CEN system of classification ([Link](#))."* **Businesses are struggling to get their hands on the relevant information on the European Standard of Electronic Invoice EN16931 ("Standard"), the European Commission should publish the Standard on its website to avoid any confusion. Also, EN16931 has been implemented for B2G transactions, it needs to be ensured that the Standard does also work for other (B2B, B2C, ...) transactions.**
- **[Art. 217] Currently, invoices in pdf format with electronic signature are considered electronic invoices.** Following art. 217, this may not longer be possible which may have a significant impact on businesses as it is a well-accepted business practice to exchange invoices between supplier and customer. **For transactions not subject to DRR, an invoice in pdf format with electronic signature should still be accepted as a valid invoice format.**
- **[Art. 217, 218, 232] As of Jan 1, 2024, invoices may be sent by the supplier to customer in electronic format (Art. 218) without prior approval of the customer (Art. 232 deleted).** These provisions propose that no acceptance from the buyer will be required; namely, the supplier should be able to send an e-invoice to any buyer without prior arrangements. This might be an attractive approach for the seller, but can create issues for the buyer due lack of appropriate technical capabilities to receive and process e-invoices (in 2024). **This timing should be changed. It will be extremely challenging for companies to**

be ready to receive any structured format selected by any of their suppliers. In order to avoid business disruption, only already existing PDF with digital signature and invoices following the EN 16931 should be allowed

- **[Art. 218] There is no restriction/limitation to the issuance and the scope of structured e-invoices**, so in theory a Member State could require structured e-invoices for all transactions subject to VAT. It should be expected this only applies to the invoices that are subject to that MS' invoicing rules (see article 219a which explains which MS rules to apply). If they do, Member States are free to choose how, but they must always accept the standard of 2014/55. This standard (EN 16931) may not allow a mix of out of scope elements (e.g. disbursements) on one invoice together with other elements (e.g. service fees), which may mean that the out of scope elements have to be invoiced separately. If standard 2014/55 is used, but add something extra (the out-of-scope elements), would this still qualify as a 2014/55 standard invoice? Why not make electronic invoicing mandatory for ALL supplies of goods and services (domestic, intra-EU, export, exempt supplies)? Because intra-EU acquisitions are based on invoices from intra-EU suppliers, also intra-EU acquisition invoices could be mandatory electronically. Only exception would be importation of goods, where the EU cannot impose invoice obligations in other jurisdictions.

Changes proposed per Jan 1, 2025

- **[Art. 194] Member States "shall allow" that the person liable to pay the VAT is the customer for taxable supplies by non-residents in the Member State where the VAT is due.** Further to art. 220, the general rule is that the taxable person supplying the goods or services is required to issue an invoice. As art. 194 would still be optional to apply, it is basically the supplier who can decide on the application of art. 194 and eventually shift the VAT liability to its customer. In practice however, the business reality may be that the application of art. 194 may lead to discussions between supplier and customer. Moreover, because case by case variations, such an optional approach will require fundamental changes into digital tools used to help in the determination of the appropriate VAT treatment (tax engines for eg) **To ensure a standardized and harmonized approach, art. 194 may be a "shall" (instead of "shall allow") article.** Importantly, such a change will push non-residents into structural credit positions. Such a change should thus be combined with measures to enforce smooth and fast refunds payments. The implementation of DRR is probably a condition for such acceleration of refunds Thus this measure should come into force at the same time as the implementation of DRR i.e. in 2028. It would be clearer if article 194 would become a full-fledged reverse charge obligation without the possibility of agreement between supplier and customer. The extract 'Member States shall allow' shall be deleted

Changes proposed per Jan 1, 2028

- **[Art. 222] Timeline to issue and report invoices under DRR:** An invoice shall be issued no later than 2 working days following the chargeable event (Art. 222). The data to be reported under Digital Reporting Requirements (Art. 262(1)) shall be transmitted for each individual transaction carried out by the taxable person no later than 2 working days after issuing the invoice, or after the date the invoice had to be issued where the taxable person does not comply with the obligation to issue an invoice. Following art. 268, taxable persons making intra-community acquisitions of goods (Art. 20 & 21) are also required to submit the data as required under Digital Reporting Requirements. **While the issuer of the invoice (the supplier or the customer in case of self-billing) may be able to commit to these guidelines, the timeline of 2 days after invoice date will be too short for the recipient of the invoice (or self-billed invoice). This may due to late receipt of the invoice, time required to process the invoice, etc.** For perspective, before being posted, invoices must go through +/-30 check, for tax purpose but also for accounting and general stewardship purpose to ensure that the amount billed is justified, in line with negotiated price and received quantities and supported by a fully compliance

invoice. **The 2 days' timeline to issue and report the invoice related to purchases should not be linked to the invoice date but to the posting date in the taxable person accounting books. Art. 268 also only refers to intra-community acquisition of goods, transactions subject to art. 194 & 196 should not be reported by the acquirer?**

- **[Art. 223] Elimination of the possibility to issue summary invoices.** Summary of invoices subject to DRR cannot longer be issued while this is currently a major simplification and business practice, also through self-billing e.g. in case of call-off stock. For instance, in case of regular supply of goods between two parties, summary invoices simplify the administrative process of invoices for both the supplier and customer. The alternative is to consider supplies as "continuous supplies of goods and services" (Art. 64). However, there is no definition of continuous supplies in the EU VAT Directive or ECJ Cases. **Summary invoices should not be eliminated. Eventually, summary invoices can be issued on weekly (5 working days) basis. The concept of "continuous supplies" should be clearly defined. As for supply of goods and place of supply definitions for electricity and other energy products, continuous supplies shall be defined for specific products. [Art. 226] Additional content on an invoice (Art. 226).** Three additional fields are to be put on invoices.
 - In case of correction of invoices, the sequential number which identifies the corrected invoice. If it is assumed that a "correction of invoices" includes debit/credit notes issued to adjust the taxable amount in case of discounts, rebates, etc, the impact of this requirement in case of year-end rebates, quantitative discounts, etc, the debit/credit note may adjust a huge number of invoices. **In case a debit/credit note adjusts more than one invoice, also a reference to a range of invoices incl. reference to the period invoices have been issued should be accepted.** Reality is that quarterly/annual credit notes for e.g. quantity/year-end rebates may refer to thousands of invoices – will the XML be even long enough to allow tax payers to insert such a list of references ?
 - The IBAN number of the supplier's bank account: No major impact, though can a supplier still put several bank accounts on an invoice which can be credited? **To be clarified. Because any supplier globally may supply goods or services in the European Union, are all global bank accounts valid on an invoice? Is IBAN a global concept?**
 - The date on which the payment of the supply of goods or services is due. **Is a payment term also sufficient?**
- **[Art. 226] The European Commission made in its proposals reference to [Directive 2014/55/EU of the European Parliament and of the Council of 16 April 2014 on electronic invoicing in public procurement](#).** Article 6 of that Directive talks about the "Core elements of an electronic invoice". Some of these elements are not included in article 226.
 - **Definition: 'core elements of an electronic invoice'** means a set of essential information components which an electronic invoice must contain in order to enable cross-border interoperability, including the necessary information to ensure legal compliance. Art. 6 of Directive 2014/55/EC requires "core elements" which are not necessarily required following art. 226 as e.g. contract reference, delivery details, payment instructions, allowance or charge information, ... At the other hand, it offers the possibility to mention the "invoice period", which may contrary to the objective to eliminate summary invoices.
 - **From 2024 this article will not (yet) change, despite the fact that there will be more (even mandatory) e-invoicing, the invoice is not required to include any information about the electronic address/destination of the invoice (e.g. e-mail address, portal to upload, etc.). Further, MS must always accept the standard of 2014/55/EC, but does this also mean that the core elements of an electronic invoice (see [article 6 of 2014/55/EC](#)) will become mandatory fields? If yes, it seems that some of these fields are not included in the VAT invoice requirements (yet).**
- **[Art. 262] Transactions not to be reported in DRR.** The introductory wording is replaced of this article, which seems to say that when DRR replaces the recapitulative statement there is no change in paragraphs a) – c), which means that transactions that are exempt as e.g. financial transactions should

not be reported (i.e. it is still relevant to carve them out). **This may need to be included in the wording of Art. 262**

- **[Art. 263] Data to be transmitted under DRR shall be transmitted for “each individual transaction”.** The term “individual transaction” should be defined. For instance, in case of a supply of goods, is this understood as the goods shipped per day, is the data required for each product sold, per truck shipped, anything else?
- **[Art. 264] Eliminate Intrastat reporting through eventually requiring additional info to be reported under DRR (Art. 264).**

DRR as condition for intra-EU VAT exemption

The conditions for supporting the VAT exemption linked to the intra-Eu supplies, implemented as of January 1, 2020 in the context of the “quick fixes”, require, a.o., that the supply is correctly reported in the recapitulative statements. Thus, for the VAT exemption to apply, the transaction must be correctly and timely reported in the EU Sales list, unless the supplier can duly justify his shortcoming to the satisfaction of the competent authorities.

With ViDA, the foreseen change in the proposal of amending the VAT Directive is that no EU sales list will exist anymore, as this will be replaced by the (nearly) real time transmission of the e-invoices. However, the provisions linked to the VAT exemption conditions remain in place, which leads to the conclusion that failure to transmit (duly and timely) the e-invoices would lead to losing the right to apply the VAT exemption.

This legal requirement would entail a great risk for the suppliers as they will be liable for the payment of the VAT if this condition (besides all the rest) is not met. By having a deadline of only 2 days – or even a few more extra days, assuming this deadline would be amended in the final version of the proposal - to transmit the e-invoices, imposes a significantly high risk to fail this condition in some situations. If the application of the zero-rate were to be denied by the local VAT authorities, such as because the e-invoices were not correctly/timely transmitted, it will probably be very difficult or even impossible for the supplier to recover the VAT from the purchaser. This would add high costs for the supplier and would lead to double taxation (as the buyer will still be required to apply VAT in the destination country). The frequency of failing the timely reporting would be much higher than today, given the extremely tight deadline for transmission. This entails a real and serious risk for companies carrying out intra-Community supplies on a regular basis.

The proposal from the business environment would be to abolish this condition linked to the application of the VAT exemption of the intra-EU supplies. More exactly, we propose to revert to the situation existing pre-quick fixes, which meant that failure to report the transaction in the EU sales list/and thus, for the future, failure to transmit the e-invoice within the deadline, would lead potentially to fines/penalties, but not rejecting the VAT exemption right (adding between 17 – 27% extra cost to the supplier).

Concretely, we propose to abolish paragraph (1a) of Article 138 and not replace it anymore with the new wording as included in the “Proposal for a COUNCIL DIRECTIVE amending Directive 2006/112/EC as regards VAT rules for the digital age”, namely:

‘1a. The exemption provided for in paragraph 1 of this Article shall not apply where the supplier has not complied with the obligation provided for in Articles 262 and 263 to communicate the data on intra-Community transactions, or that data transmitted does not contain the correct information concerning the supply as required under Article 264, unless the supplier can duly justify any shortcomings to the satisfaction of the competent authorities.’

Other comments

- **Correction of invoices.** Invoices may be wrongly issued leading to non-acceptance of the invoice by the customer. This can eventually lead to long lasting discussion between supplier and customer before invoice is agreed and as a consequence eventually booked and reported late by the customer, lead to

an adjustment to the initial invoice or cancellation of initial invoice and re-issuance of the invoice. **Guidance is required for both the supplier and the customer on the issuance and reporting of invoices corrected later.**

- **ViDA does not mention anything specific on archiving of documents.** As invoice data are reported to the authorities via DRR, will there be any change to well accepted archiving processes?
- **Supplies of goods or services may be made through credit cards whereby the credit card statement is in some Member States is the basis for deduction of input VAT and eventually the only document being processed.** The invoices issued by suppliers through this system may not be processed today. Is ViDA requiring that all invoices, even if a Member State may allow that the credit card statement is deemed to be a valid invoice for VAT deduction purposes, are being processed? Clarification may also be needed in case invoices are included in expense reports of employees. These invoices are typically not recorded separately.
- **Setting a threshold for the use of the E-Invoice and/or insert a provision to allow a marginal percentage usage of non e-invoicing.** For instance, for intercompany charges for low values/recharging of costs which should not be the main target for fighting against fraud. Currently, there are already a lot of e-reporting / e-invoicing providers. It is expected that the number who claim to be compliant with ViDA will increase. **A common set of guidelines are required to certify service providers and to provide proof that their services are compliant with ViDA regulations.** In some well-defined circumstances, service providers should be held accountable for their possible failures.
- **Tax authorities should not longer required the confirmation that a credit note is received and processed by the customers** (e.g. Poland) as data are transmitted electronically.
- **Need for guidance on e-audits by EU tax authorities on e.g. system access, audit processes and procedures** (no fishing expeditions)
- **Businesses should get faster VAT refunds, also for requests under 8th and 13th VAT Directive as E-Invoicing and (near) Real Time Reporting gives immediate and full visibility to transactions.**

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