

VAT IN THE DIGITAL AGE

**Proposal for a
COUNCIL DIRECTIVE**

**amending Directive 2006/112/EC as regards VAT rules for the digital age
{SEC (2022) 433 final} - {SWD (2022) 393 final} - {SWD (2022) 394 final}**

April 2023

ABI comments

ABI very much welcomes the work of the European Commission in seeking to review the appropriateness of current VAT rules in the EU considering changes brought about by digitalisation of the economy.

The ABI is concerned that the introduction of non-harmonised digital reporting requirements and e-invoicing is effectively fragmenting the single market. While the ABI does not consider that Member States should be required to implement such requirements, if they do decide to do so the ABI considers that it is highly desirable that the systems should be implemented in so far as possible in a harmonised manner. They should also be implemented in a manner that seeks to minimise the burdens on businesses.

In seeking to support the Commission in this objective, ABI wishes to highlight the following issues:

- 1) discrepancies exist between Member States as to whether supplies are made by a platform or the individual using the platform services, resulting in double or non-taxation: a precise definition of the concept of "platform" needs to be identified to prevent activities of simple provision of online systems for intermediating collections and payments from being drawn into cumbersome administrative procedures for financial businesses.
- 2) The solution that aims to extend the VAT payment rule in the State of the customer by the service provider is not a simplification. This means both for B2C and for a part of B2B (now regulated with the reverse charge method) it would still be necessary to investigate the VAT rules of each individual Member State with difficulties in terms not only of rates, but also of determination of the tax bases.
- 3) The OSS regime is presented as simplifying, and this is true to the extent that it replaces registration in each country where the services are rendered, but it does not in any case reduce the negative impact referred to in point 2 (to be direct: it cannot be understood how we extend the perimeter of the VAT applied by the supplier so much then he can use the OSS regime).
- 4) Financial and insurance services should always stand outside the framework of VAT rules for e-service, as they should not change their nature and territoriality rules depending on how they are provided. Therefore, we suggest distinguishing the system of banking and financial services from the purely electronic services, extracting pure financial services from the world of the platform economy. This would lead to the financial world being excluded from the world of platformsⁱ.
- 5) It would be useful to obtain an official EU interpretation that finally allows to define the role of payment circuits and VAT treatment to overcome the current conflicting interpretations on VAT. Moreover, an official interpretative document (or at least a document of the VAT Committee) could mark a clarification with which all operators could comply for the future, saving previously held behaviours.
- 6) Finally, over the past few years, several EU countries have been busy introducing mandatory e-invoicing. Italy, however, has gone the furthest. Italian regulations stipulate not only that public contracting authorities must be able to receive e-invoices, but also that all invoices must be sent in electronic format, including invoices sent to companies and private citizens. Any proposal for a directive should consider Member States' experiences, especially Italy's solution, which is proving to work well.

ABI hopes that its feedback on this consultation provides helpful input for the Commission in its process of considering the various policy options. ABI reiterates its position that it welcomes the work of the European Commission in seeking to review the appropriateness of current VAT rules in the EU considering changes brought about by digitalisation of the economy and remains available to assist in any further stakeholder consultation processes.

(1) In support of the above thesis, we refer to two documents issued by the EU VAT Committee on the topic of Crowdfunding platforms (Working Paper no. 836 "VAT treatment of crowdfunding" of February 6, 2015 and Working Paper no. 878 "VAT treatment of sharing economy" of 22 September 2015) dealing with the issue, also focusing on the nature of the services provided by the online portal which, after receiving contributions from investors, transmits orders to banks and intermediaries authorized for the purpose of underwriting the financial instruments subject to the offer, subject to deduction of a commission. The EU VAT Committee has provided an interesting operational guideline indicating that the sums withheld by way of commission by the online portals are included in the VAT field and that, depending on their nature, they can be included among the technical-commercial services, taxable VAT, or among the financial intermediation services, exempt pursuant to art. 135, par. 1 of the Directive n. 2006/112/EC. The VAT Committee, in the aforementioned documents, also recognizes as an element in favour of the exemption the fact that the online portal deals directly with payments and money transfers. Circumstance, which, as underlined in the aforementioned Working Paper no. 836, is not common to the activity carried out by all online portals.