3 April 2023

Attn Mr Patrice Pillet
Head of Unit
DG TAXUD - Unit C1
European Commission
1049 Bruxelles
Belgium

Subject: European Commission VAT in the Digital Age - public consultation

PwC International Ltd on behalf of its network of member firms (PwC) welcomes the opportunity to respond to the public consultation '*VAT in the Digital Age*'.

Introduction

The European Commission's (Commission) VAT in the Digital Age (ViDA) initiative covers a number of issues that we believe are significant in the context of modernising and improving the smooth functioning of the EU VAT system, particularly with regard to the reduction of administrative burdens for businesses trading cross-border. We have set out in this letter and the accompanying appendices a comprehensive response to the proposals tabled by the Commission. For ease of reference, we have also summarised our key comments and recommendations immediately below.

This submission follows on from PwC's original submission (dated 22 May 2022) as part of the public consultation. As a network, we have gathered feedback in relation to ViDA and this feedback is reflected in this letter.

Overall, we:

- Support the uniform application of the proposed rules and a system that is designed to ensure greater efficiency in the VAT system;
- Contend that any VAT compliance should be easier and not harder (both in terms of costs and reducing the number of VAT registrations) after the implementation of the ViDA proposals;

- Caution that any proposal should be supported by an appropriate impact assessment before implementation ie. the new rules need to be effective, and businesses need a realistic timeframe to implement in order to reduce administrative burdens and compliance costs; and
- Observe that the ViDA proposals have been presented as one overall package. However, we consider that the topics are important enough in themselves to be able to be handled separately. This approach will allow momentum to be generated and no one single measure will need to wait for a resolution of other measures.

Summary

1. Digital reporting requirements (DRRs)

PwC welcomes the proposed change to the VAT legislation to make electronic invoicing the rule rather than the exception. Such provision will be a significant driver for accelerated automation in the exchange of business and financial data in the EU and beyond.

In addition, the initiative taken by the Commission to introduce a harmonised framework for digital reporting of intra-EU transactions, with the possibility of extending such a system also to cover domestic transactions, is timely and pivotal for a smooth functioning of the VAT-system. This will allow Member States to, if desired, implement measures that fit with their economic and social objectives whilst avoiding further fragmentation and diversity of these types of requirements in the EU market.

However, further careful consideration of certain provisions will be crucial in order to achieve the goals of reducing VAT fraud and structurally relieve the administrative burden for businesses.

Further detailed comments on the proposed requirements are provided in Appendix 1.

2. VAT treatment of the platform economy

Whilst we welcome the Commission's intention to reform the VAT treatment of the platform economy, create neutrality between online and offline operating models and prevent the risk or fraudulent activity, it is important that reforms to rules in this area are carefully formulated to ensure simplicity, reduce complexity and to not stifle innovation in this area. The Commission might consider the following approach:

- Clarify and harmonise the application of existing rules to the platform economy.
- Continue to explore the range of potential roles for platforms in addressing relevant VAT issues and review the implementation of deemed supplier regimes from those already in operation (e.g. Canada and India).

- As far as possible, follow international best practice (e.g. see the 2021 OECD's report 'The Impact of the Growth of the Sharing and Gig Economy on VAT/GST Policy and Administration') and globally consistent solutions for any reform of VAT rules and information reporting rules.
- Revisit and consolidate data obligations to limit reporting and record keeping requirements to what is strictly necessary to calculate the final VAT or tax liability, and implement more efficient and effective means of sharing information internally at a tax authority level.
- Allow platforms and largescale VAT-registered accommodation providers the ability (under an opt-out rule) for the underlying supplier to account for the VAT if this is easier and more efficient from a systems point of view. This is the position in the recently passed law in New Zealand (with a start date 1 April 2024).

Additional comments on the proposals with respect to these aims and concerns are provided in Appendix 2.

3. Single VAT registration in the EU and Import One Stop Shop (IOSS)

Changes and improvements of the EU VAT Directive to ease the compliance burden and make the VAT system more transparent and accessible are welcome and necessary. Overall, the changes within the third pillar (single VAT registration (SVR), extension of the special schemes OSS and IOSS) are from our perspective seen as positive. Additional comments are provided in Appendix 3.

Concluding comment and PwC contacts

For any clarification on this response, please do not hesitate to contact me or one of the persons listed below. We look forward to discussing any questions you may have and we welcome the opportunity to contribute further to the discussion.

Yours sincerely

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PwC IL is registered under number 60402754518-05 in the EU Transparency Register.

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Appendix 1 - DRRs

Introduction

Our detailed comments to the proposed texts

- **E-invoicing will be the general rule for the issuance of invoices: Articles 217, 218 and 232**

Definition of an electronic invoice

According to the proposed text, the definition of *electronic invoice* in the VAT Directive will be changed to align the concept with the one in Directive 2014/55/EU on electronic invoicing in public procurement, which regulates electronic invoicing in business-to-government (B2G) transactions. There is no doubt that the use of structured, standardised data is a precondition for interoperability and automation – and, with that, a key condition for tax administrations to receive high-quality data via digital reporting. The effort needed to shift to a 100% structured invoice process (in an EU market that still is very much concentrated around paper and PDF invoicing), should however not be underestimated, and requires a carefully thought out approach that takes into account all possible business use cases.

It should be carefully considered whether the developed standard for B2G transactions will or can be all-encompassing, to also serve for all different types of B2B transactions. Where relevant, it should be further adapted to be able to support such B2B scenarios as much as possible. Furthermore, the Commission should consider the continued need to include data (for specific business use cases) that cannot be easily standardised or automated.

Interoperability requirements

In order to truly meet the requirements around **interoperability of the future model**, it would be beneficial for the Commission to, alongside the alignment around the European Standard for E-invoicing (EN16931), also define the foundations of an eDelivery or exchange model that details the process of exchanging invoices between taxpayers. In order to avoid further fragmentation in the market in relation to the digital reporting requirement, the technical specifications for the delivery of the information towards the tax administration should also be standardised to the largest extent possible.

Abolition of the requirement to ask for a derogation from the European Commission to implement a B2B e-invoicing mandate

We agree with the Commission's decision to allow Member States the ability to impose mandatory e-invoicing without requiring a derogation. However, it must be recognised that the derogation requirement has in recent years acted as a sensible process to create a measured pace of e-invoicing introduction in the EU that both taxpayers and Member States can cope with. In the absence of this requirement, we foresee a risk that some countries will rush to implement mandatory e-invoicing from 2024 without a meaningful implementation lead time or appropriate consultation with stakeholders. This is a major risk for EU businesses who would, at best, be operating in a climate of regulatory uncertainty and, at worst, could be facing business continuity issues if a regime is rushed into place without enough time to prepare. We believe the legislation can be altered to reduce this risk and provide certainty for stakeholders that Member States will act in a proportionate manner as regards lead time.

Prior authorisation or validation

Based on the proposed text, the issuance and transmission of electronic invoices cannot be **conditional on a prior authorisation or validation** by the tax authorities of the Member State in order to be sent to the recipient (i.e. so-called “clearance models” or “distributed clearance models” will no longer be acceptable going forward).

Although we support this notion as part of the overriding objective for tax administrations controls to not interrupt the flow of commerce and trade.

The Commission is encouraged to provide a **more extensive and specific definition** of “prior authorisation or validation”. Many different types of controls may be performed on invoices or invoice data received by a tax authority platform in the context of Digital Reporting Requirements. These range from syntax/technical ‘schema’ validation; validation of the presence of data in mandatory fields; validation of the right type of data e.g., numbers vs letters; taxpayer identity checks; mathematical consistency between line items and aggregates, etc. There is no universally accepted distinction between ‘substantive’ and ‘formal’ data controls. As regards the latter, it is practically impossible (and not advisable) for an invoice exchange platform (e.g., in Italy, Poland and Romania) not to perform at least a minimum of controls on suppliers’ invoice data prior to sending this to buyers. However, even in a DRR scheme without such central transmission functions, the practicality of the tax administration platform performing no controls on the data whatsoever is questionable as at a minimum certain syntax/’schema’ checks must be performed to return the acknowledgement message that business information systems must receive to complete the reporting task. Finally, tax administrations in other regions that practice various forms of material controls prior to authorizing an invoice to be processed further attach varying tax consequences to such clearance, and in all cases we are aware that such invoices may later be challenged on the basis of material issues arising from subsequent analysis or audit. These aspects should be further discussed with e-invoicing practitioners in both the public and private sectors.

- **Deadline for the issuance of invoices on intra-Community supplies of goods and supplies of services where the reverse charge applies: Article 222**

The proposed term within which invoices must be issued (**2 working days** following the chargeable event) and whether this is in proportion to the pursued goal, will likely have important ramifications for businesses. In addition, timing mismatches may occur given that the rules regarding the taxable event deviate from Member State to Member State.

- **Elimination of the possibility to issue summary invoices: Article 223**

- **Content of the invoices: Article 226**

- **Digital reporting system for intra-Community transactions: Articles 262 to 271**

- **Overall implementation timing**

The implementation timing envisaged seems to be very ambitious, and many elements required for a successful implementation of the new provisions are still under discussion at EU and Member State level.

If negotiations take more time, the implementation timelines proposed by the draft proposal should be adjusted accordingly, especially given the important overhaul of practices that will be required, to ensure that businesses will have sufficient lead time to make the necessary adjustments to their existing systems and processes.

Appendix 2 - VAT treatment of the platform economy

Introduction

The VAT Treatment of the Platform Economy

Of the three components of ViDA, reforming the VAT treatment of the platform economy may be the most difficult to successfully navigate given the complexity of the sector itself and the divergent views expressed across different stakeholders. In seeking to maximise the opportunities afforded by the platform economy, we believe it is important to understand the economic impact of any change in VAT treatment on the different models in operation and ensure that any changes do not discourage activity and innovation. Given the role that platforms will continue to play in a dynamic and modern digital economy, a pro-innovation approach to VAT rules in this area is required to drive economic growth.

The ultimate aim of reforming the VAT treatment of the platform economy should be to **ensure VAT neutrality across online and offline models, simplify the system both for platforms themselves and suppliers and enable innovation and development of new technologies**. However, a key concern remains as to how many new and small-scale economic actors and activities should be pulled within the ambit of the VAT system. This calls for carefully balanced, coherent and logical tax policy choices, keeping additional tax requirements simple, predictable, easy to comply with, globally consistent and supported by access to appropriate information and guidance. It is also worth mentioning that the implementation of the new DAC7 rules has created a heavy workload at this time for platforms to prepare their systems and processes for the new reporting environment.

The Commission is suggested to take into account the following key principles when considering the platform proposals:

- *Legal certainty and simplicity* - structuring rules in a way that they are clear and easy to apply so that taxpayers, particularly micro businesses, SMEs and non-VAT experts, can anticipate with reasonable certainty the tax consequences of a transaction and apply the correct VAT treatment.
- *Fiscal and channel neutrality* - providing a level playing field for businesses engaged in the same activities irrespective of the channels that sales are made through.
- *Consistency* - a stable and consistent tax environment, both in an EU and global context, should reduce cost for all parties, increase compliance and allow for international cooperation and enforcement. This may mean not introducing any new regimes (as observed by the OECD in the 2021 report titled "The Impact of the Growth of the Sharing and Gig Economy on VAT/GST Policy and Administration" - see pg 10: "*The preferred policy response is one that is consistent with the general rules and principles of the jurisdiction's existing VAT/GST system and limits the introduction of new exceptions or special regimes*.").
- *Proportionality* - limiting rules to what is strictly necessary for the administration of the tax and in such a way so as not to deter participation and innovation in the sector.
- *Continued consultation with business* - this is key to ensuring that policies are fit for purpose, capable of practical application (with a reasonable period of lead time) and future proof as far as possible to create a sustainable framework of taxation that can adapt to the emergence of new business models.
- *Appropriate lead time* - assigning sufficient lead-time for the implementation of new rules in order that businesses can make adequate preparations, in particular from an IT perspective.
- *Ability to automate* - given the significant scale of transactions and the number of parties involved, the ability to automate rules efficiently and effectively is key to compliance.
- *No double taxation* - this could arise if facilitation / intermediation fees are subject to VAT or if the potential consequences from article 136b are not duly considered.

We provide comments below in respect of the draft articles in light of these considerations.

Problem statement

Platforms: Articles 28a, 46a, 135 (3), 136b, 172a, 242a, 306

Under the ViDA proposals, the deemed supplier model is proposed to work as follows in relation to targeted services sold via the platform (pg 17 of the Explanatory Memorandum):

a. A deemed supplier regime will be introduced (from January 2025) in the short-term accommodation rental, and passenger transport sectors of the platform economy (article 28a).
b. Where the underlying supplier does not charge VAT because they are, for example, a natural person or they make use of the special scheme for small enterprises, the platform will charge and account for the VAT on the underlying supply.
c. This is designed to ensure a **level playing field** between platforms offering services and other traditional suppliers qualifying as taxable persons, while not imposing a burden on the underlying suppliers operating through the platform. The 'deemed supplier' model is stated to be a **simplification measure** intended to facilitate the collection of VAT in specific situations.

Global examples of Full VAT Liability Regimes

The ViDA proposals and the accompanying legislation propose a system where certain platforms become deemed suppliers and take on responsibility for collecting and paying VAT to tax authorities - a full (VAT) liability regime (FLR). Such regimes have been implemented in other countries - Canada, India, Argentina (recently enacted from 1 April 2023) and New Zealand (start date of 1 April 2024). It is early days for an established pattern to emerge from other countries that have implemented a FLR in relation to platforms operating and facilitating supplies in the sharing economy. However, there have been mixed outcomes and several practical challenges for businesses. These are generally well documented at an international level and include:

- Lack of legal certainty in certain areas due to unclear and unharmonised VAT rules.
- Complexity of the VAT system and difficulties in interpreting key concepts such as taxable status, as well as the nature of a supply and its corresponding VAT liability and place of taxation. The complexity aspect can also lead to global inconsistencies depending on how individual countries deal with the VAT/GST issues in the sharing economy. There is a need to avoid inconsistencies as that creates additional compliance burdens.
- Potential lack of channel neutrality and revenue reduction arises due to the shift in economic activity from the more traditional economy tax base to the platform economy

tax base with a larger number of smaller, possibly less visible, and often unregistered service providers.

- Complexities driven by the increasing scale of the platform economy, the multi-sided nature and diversity of business models, and the inherent difficulty in defining what the platform economy is and what it encompasses. It is also necessary to bear in mind the difficulties of drafting legislation that is sufficiently flexible to address innovation and trends not yet foreseen - as ever, ring-fencing digital activity remains impractical and given the complexities outlined above, there is no one-size-fits-all solution.
- In terms of early responses to date in other parts of the world, some countries have introduced **FLRs** (eg. Canada, India and New Zealand (start date of 1 April 2024) while other countries are introducing **platform information reporting regimes** that do not impose a full liability on the platforms (eg. Australia, see link: https://www.pwc.com.au/tax-alerts/sharing-economy-reporting-regime-for-marketplaces-coming-soon-update.html). There have been teething issues in countries that have introduced FLRs - see below discussion.

Complexities arising from the selective approach to platforms and services

The ViDA proposals also contend for certain businesses (platforms) to account for VAT on certain services (short term accommodation and transportation of passengers). This **selective approach** - of seeking to impose VAT on *certain (but not all)* businesses and *certain (but not all)* services - is unusual, unprecedented and arguably not logical from a VAT policy perspective. Introducing a “deemed supplier” rule on some (but not all) parts of the platform economy comes with different questions and complexities compared to the Electronically Supplied Services (ESS) and Low Value Imported Goods (LVIG) regimes. This is due to the nature of the parties involved (including uncertainty as to whether the platform would know the status of the underlying supplier or ultimate customer as a B or a C), the variety of VAT treatments that might apply to different types of supply, as well as the sheer diversity of business models in operation. It is clear that there is a real risk of these rules creating more complexity in the VAT system for both suppliers and platforms, contrary to the Commission’s well intended aims in this respect. Following the relevant impact assessments being made, it will be necessary to consider the most appropriate policy approach in this area and whether it is necessary to isolate certain services or not.

Further complexities for platforms

We have also highlighted, in the previous section, the inherent complexity in establishing the VAT treatment associated with assets that are used for both business and private purposes, and this is not an area that a deemed supplier could oversee on behalf of an underlying provider. In addition, where the platform is located offshore, there are pros and cons of shifting the VAT liability from individual local providers onto a non-resident platform. Indeed, as we have stressed in our previous responses to consultations on this matter, **one of the most challenging policy questions is why certain platforms and services should be covered by the FLR, but others not**.

Clarifying the current rules

The ViDA proposals have attempted to update the existing VAT rules, provide clarity on certain aspects and simply who has to collect VAT, however, this has been done against the backdrop of assuming that a FLR for platforms is the most optimal option.

In our view, ensuring the **uniform application of existing rules** and concepts for the same activities would seem more immediately preferable versus creating an entirely new, different and specific VAT framework for the platform economy. This is based on our experience that specific measures that depart from normal rules and basic principles potentially bring a host of issues in terms of complexity and high compliance costs, boundary or scoping issues, and difficulties with anticipating future developments and innovation. Another issue to stress is that many countries are considering changes to their existing LVIG and ESS rules, and any new platform rules dealing with the sharing economy would be another layer on top of all the other VAT/GST changes. 2025 is right around the corner, if you take into account other rules introduced recently such as DAC7, where to date 6 Member States are yet to publish their draft laws in this respect. A postponement would therefore be welcomed.

Policy options and considerations

Areas for further policy consideration

As regards relevant areas for consideration, in our view, the following aspects are relevant to the ultimate success in this area:

- **Determining the nature of the services provided** by the platform and their corresponding place of supply would appear an obvious area that would benefit from clarification. Rather than creating a new and specific rule for the platform economy (which might add complexity and scoping issues - and definitional refinements over time as has been the case with India), it would seem useful to clarify the classification and associated VAT treatment under existing rules - e.g. considering whether the services should be deemed to be qualified as that of disclosed intermediation or the provision of ESS. Given the current uncertainty in this area and the fact that different Member States are beginning to take different approaches, the exact classification appears less important than the consistency with which the rule is applied. That said, the available options would still need to be tested with appropriate modeling and an

impact assessment. The One Stop Shop (‘OSS’) registration mechanism should also help to alleviate some of the burden associated with additional VAT registration requirements.

- **Determining the taxable person status of the underlying supplier** is also a key area for clarification in order to determine the VAT treatment of the underlying supplies themselves. For the most part, this relates to the interpretation of article 9 of the VAT Directive and whether a party independently carries out an economic activity that consequently falls within the scope of the VAT system. However, this is an uncertain area which is constantly evolving in the context of ECJ case law, and not likely to be easy to resolve. To some extent the essence of this issue concerns the concept and application of VAT registration thresholds - i.e. balancing the desire to collect revenue against the practicalities of having to administer and enforce compliance over a larger number of taxpayers who might, due to their limited size and scale, have a limited capacity for tax compliance. In addition, it is worth noting the significant complexity those taxpayers would be required to deal with in terms of both output VAT and input VAT rules - e.g. determining not only the VAT treatment of ongoing service fees and any income generated from the sale of a relevant asset, but also establishing the VAT recovery position in relation to assets subject to mixed (business and private) use. Whilst the implementation of thresholds may fall more within the competence of Member States, it may be worth considering an EU-wide registration threshold as currently exists for ESS and distance sales. More immediately, pertinent to the case at hand is the fact that a platform needs to know the taxable person status of the underlying supplier in order to determine the correct treatment of its services, its invoicing obligations and which party is responsible for VAT collection. In this regard, we would recommend simplicity - e.g. a **presumption that the provider is considered not to be a taxable person <u>unless</u> they communicate a valid VAT identification number to the platform.** Requiring further declarations from providers or additional verification activities for platforms would seem impractical or would place undue burden on the parties involved, in particular on the platforms given that they have 100,000s of customers and the exercise would be an enormous undertaking.
- The need to align closely the status of the underlying supplier for VAT purposes with regulation in other related areas, such as employment status and examples may be found in how labour law approaches these types of contracts. Case law is unfolding globally on the status of workers who provide the actual services (one example is New Zealand and the case of *E Tu Inc & Anor v Rasier Operations BV & Ors* (EmpC 230/2021) [2022] NZEmpC 192).
    - For example, where an underlying supplier is deemed to be an employee, they would not then be capable of carrying out economic activity in an independent manner for VAT purposes. Consequently, we believe it important to take a holistic approach, having regard for both tax and non-tax issues, including other Commission work streams in this area, so as to ensure a consistent and coherent approach.

- It may be necessary to consider implementing an **opt-out possibility** for certain categories of suppliers or property owners (for example, under the proposed New Zealand rules it's possible for a platform and large scale accommodation supplier to agree for the GST-registered accommodation supplier to account for GST). The benefit of such an opt-out is that it can easily be traced and registered in a platform's system and it should maintain overall efficiency both in terms of VAT reporting and compliance costs.
- As a final point, we note that legislative clarifications and amendments would be further enhanced by the adoption of accompanying Explanatory Notes which have over the years provided invaluable support to the understanding and uniform interpretation of new EU legislation.

Interaction with other taxes and accounting practices

We also note that under a FLR there can be various disconnects with commercial income, income tax, accounting rules, and VAT obligations. Taking a very simple example with respect to the supply of passenger transport under the new platform rules:

- Assume a platform charges a 20% fee on a EUR 100 ride and generates commercial income of EUR 20 (ignoring other expenses) - VAT is payable on EUR 100 (and indeed VAT may exceed the commercial income of the platform);
- A VAT-registered driver claims VAT on expenses (but the platform pays VAT on the income);
- The driver also pays income tax on any income (but not VAT);
- For accounting purposes the income (in respect of the driving service) is reported by the driver and not the platform;
- Finally, there is a need to avoid double tax i.e. the platform paying VAT on the underlying services as well as the intermediation / facilitation service. Under ViDA the platform services (provided to underlying suppliers) are not intended to be taxed, however, some countries do tax platform or intermediation services.

Impact on platforms, compliance costs and innovation

The early evidence with FLRs in **other countries** is still developing but it has been a mixed experience to date. To add to the potential new obligations in the EU, the wider and more complex global challenges have included:

- There can be a double up of VAT/GST on the facilitation fee as well as the underlying supply (e.g. New Zealand);
- Some platforms are also merchants of record (as they buy and then on-sell products) so this is an added complexity requiring clarity;

- Some countries - like New Zealand - are introducing the concept of a flat-rate tax credit (FRTC). The FRTC will be paid by the platform to the service provider who is not registered for VAT/GST (to substitute the GST that could have been claimed by the underlying supplier had they been registered for VAT/GST). This is practically difficult to administer and may not work very well if the underlying supplier is found to be an employee of the platform;
- The FRTC regime requires practical systems changes (as well as new reporting and tracking), and will also require systems changes to manage the compliance disclosures and cash flow impact in relation to payments to underlying sellers who are not GST-registered;
- There is no consistent approach to the types of services covered by the FLR and this will cause challenges to platforms who operate across the globe;
- In India there have been issues with delivery charges and whether they are a part of the GST-able base under their platform rules that apply to food delivery services;
- In India there have been issues with the definition of restaurant services (and particularly whether certain packaged foods are covered) as well as confusion around reporting income for income tax and accounting purposes;
- If a FLR does come into effect, a significant lead in time is required (12 months or more) for businesses to make the relevant systems and contractual changes.

The other point to make is that the ESS and LVIG rules have been relatively successful to date because they are grounded in sound VAT policy, and their focus is on the actual supplies made be it facilitation / platform services or goods supplied by the underlying supplier (directly or via the platform) with separate reporting in the former case where the so-called (M)OSS regime provides convenience. The extension under ViDA seeks to impose VAT liability on the platform on a “deemed” supply (of the underlying service eg. accommodation, transportation of passengers) whereas the platform (or intermediation) service is an entirely different supply and will lead to ballooning revenues for those platforms for VAT purposes, and will in principle be reportable in their own VAT return, whilst from an accounting perspective their revenue will not change.

It is clear that traditional businesses and platform economy businesses have divergent views in terms of their recommended approach - for example, see the UK’s 2020 VAT and the Sharing Economy call for evidence and summary of responses. On one hand, the report sets out calls by some respondents to make platforms liable for VAT collection on supplies made by underlying providers, whilst on the other hand there are equally strong views to the contrary. The complexity of the issues at stake, combined with the divergent views of those potentially impacted, makes this an intrinsically difficult area for policymakers to address.

Streamlining information sharing and recordkeeping obligations

The value of data has never been greater. In a rapidly evolving information landscape, policymakers are looking for ways to improve tax administration and collection via the accumulation of data both from individuals and from businesses. In an EU setting, a number of information sharing and recordkeeping obligations have recently been introduced or are awaiting implementation:

- Under the 2021 LVIG rules, deemed suppliers are obliged to keep records as if they were the legal supplier - ie, in line with normal VAT accounting rules. Furthermore, according to article 242a of the VAT Directive, platforms are required to keep records of B2C supplies of goods and services which they facilitate but in respect of which they are not the deemed supplier. For tax auditing purposes, such records must be retained for a period of ten years and made available electronically on request. This administrative burden is further compounded by additional reporting obligations which have been introduced or proposed at national level.
- In addition to these VAT accounting rules, the DAC7 Directive introduces new record keeping obligations for platforms to collect, verify and report information on the underlying providers that use their platforms, including the income obtained from supplies facilitated by the platform.
- EU payment service provider ('PSP') rules come into effect at the beginning of 2024 under the so-called Central Electronic System of Payment information ('CESOP') Directive and Regulation. These rules require EU PSPs to share information with local tax authorities when the payer is located in a Member State and the supplier (wherever located) receives in excess of 25 payments per quarter. Once collected, each Member State must transfer the information to the Commission for data exchange and administrative cooperation with other Member States. Similar rules are emerging in other countries e.g. New Zealand.

The impact of these obligations is to **increase the administrative burden on platforms** and other parties that facilitate e-commerce transactions such as PSPs. Whilst businesses understand the significance of data and information sharing with tax authorities for tax administration purposes, we believe it important for government and industry to work together in identifying effective and proportionate data reporting requirements, also ensuring that requirements are not duplicated across different regimes - i.e. we would advocate a 'once and done' approach. This may require:

- Revisiting and consolidating data obligations to limit reporting and record keeping requirements to what is strictly necessary to calculate the final VAT or tax liability.
- Limiting obligations to issue VAT invoices in a B2C environment.
- Reducing the frequency of filing and payment requirements.
- Reducing the storage period for keeping records.

- Implementing more efficient and effective means of sharing information internally at a tax authority level. In this respect, innovative and coordinated means of reporting and retaining data, such as at an overall EU level via an OSS portal or similar, would be helpful, as would the facilitation of accounting and tax reporting software solutions.
- Having an approach that is consistent with global standards and best practices. As identified in the Commission's digital reporting requirements review, the implementation across the world of different compliance and reporting rules according to different formats, technologies and requiring different data sets is currently overwhelming businesses.

Summary and suggested approach

Given the inherent complexities and multiple new reporting obligations being placed on platforms globally, we consider that a prudent and measured approach is required at this point in time. We consider that it would make sense to consider adopting policy changes on an incremental basis over time, for example:

- Clarify and harmonise the application of existing rules to the platform economy, and until this can happen defer the introduction of the proposed digital platform rules.
- Continue to gather information and develop a broader understanding on the size and nature of the platform economy prior to proceeding with more comprehensive reform.
- Continue to explore the range of potential roles for platforms in addressing the relevant VAT issues and look to gain additional practical experience of deemed supplier regimes from those already in operation (noted above).
- Consider any new deemed supplier rules in the context of experience gained in the EU via the 2015 and 2021 changes - the 2021 changes in particular are not long implemented and require further bedding in and to some extent re-evaluation and refinement. In addition, other countries have also implemented deemed supplier models including in the context of the platform economy. For example, in 2020 Canada introduced a deemed supplier regime to all supplies of short-term accommodation made by private residential property owners that are facilitated through digital platforms. In addition, in 2022 India introduced full deemed supplier liability rules for restaurant services and expanded its existing rules for passenger transport services. There are undoubtedly important lessons to learn from the practical implementation of these regimes that would inform and enhance an EU approach, in addition to the EU's own experience, as well as data collected through the DAC7 regime which would provide detailed information for further reflection.
- Importantly, consider how other approaches might work in practice as an alternative. For example, Australia is adopting a platform reporting regime (but not a FLR) from July 2023 - it would be instructive to see how successful this approach is compared with a deemed supplier model along the lines of a FLR;

- As far as possible, follow international best practice and globally consistent solutions for any reform of VAT rules and information reporting rules, with particular reference made to the work of the OECD;
- Aim to accommodate the diversity of business models and sectors within the platform economy. That might make the case for applying a narrower or gradual approach that is sector specific and able to target certain issues that may be different from one sector to another - e.g. as seen in Canada and India. However, equally, weighed against this would be the need for broad application to ensure consistency of treatment and a level playing field whilst limiting the risks of displacement.

In addition to the above general approach, we have highlighted below **several specific points** requiring attention based on the article proposed to be introduced or varied.

Article 14a Deemed Supplier Regime for supplies of goods

- It's unclear whether **physical auctions** accompanied by **online auctioning** are captured by the definition of electronic interface. Clarifying this example in the explanatory notes we expect to be published would be welcome.
- The following point applies equally to articles 14a and 28a: no consideration seems to have been given to the *payment* and the fact that the platform now needs to collect VAT from the customer besides the value of the supply. As payment services are often outsourced to third parties, it is in our view important to consider this for the VAT liability created for the platform by the deemed supplier rules and to create an out if no VAT is received at all through a so-called bad debts procedure (clarifying that article 90 EU VAT Directive applies equally here).

Article 28a Deemed Supplier Regime for accommodation and transport

- We repeat our earlier point concerning the lack of reasoning as to why the deemed supplier rules will apply to some parts of the 'gig economy' but not others. Further elaboration as to why passenger transport and accommodation are targeted, but not for example food delivery, mail delivery and other courier services.
- The distinction between the various categories of suppliers where the deemed supplier regime applies is generally considered too broad. A more generic distinction, e.g. those transacting with/through their own valid VAT ID and those that don't, would be a welcome change and ensure legal certainty without the need for platforms to carry out an in-depth categorisation of suppliers, which could take years given that some platforms have millions of suppliers onboarded.
- By adding the taxable person subject to SMEs under (f), VAT becomes due in situations where it currently is not due as the taxable person makes use of a specific exemption. Consideration should be given to whether it is better for this specific proposed category to be disregarded.

Article 46a - Platforms should be deemed an intermediary service

- We recommend that more clarity is provided on the manner of VAT reporting, i.e. do the transactions all get reported in the regular VAT return for the platform? If yes, do the individual Member States' VAT return reporting formats need to be adjusted in the countries involved, or would these transactions fall under the regular VAT return boxes for those transactions? The latter approach would make it difficult to separate 'platform' transactions from 'own' transactions performed by the platform.

Article 135 (3) - No exemption for accommodation

- No further comments.

Articles 136a and b - Supply from supplier to platform is VAT exempt with no right to deduction

- Working with an exemption without credit for services/supplies to a platform may lead to undesired consequences. One particular example is where a supplier falls in scope of the proposed article 28a and just has a local VAT registration not valid for EU purposes. If that entity is currently VAT paying, for example on accommodation services to private persons, it will not be subject to VAT any longer because of its supplies to the platform, leading to a limited VAT recovery right. It may be necessary to consider qualifying these transactions as being outside the scope of VAT, without an adverse impact on the recovery right for either party. In New Zealand, the GST law deems a supply from the underlying supplier to the platform and such a supply is taxable but zero-rated (and zero-rating allows GST recovery).

Article 172a - Deemed supply by platform has no impact on deduction right

- We welcome this clarification. We presume the Commission will clarify what is meant with 'shall not affect' and whether or not such turnover is part of various amounts e.g. the partial exemption calculation of a platform.

Article 242a - Records for supplies falling outside the deemed supplier model

- 10 years is a long period for record keeping and we'd recommend to adhere to existing averages in EU Member States which are anywhere between 5 and 10 years.

Article 306 - special scheme for travel agents

- The special scheme for travel agents, the so-called Tour Operators Margin Scheme (TOMS), will not apply to passenger transport and accommodation services supplied and subject to the deemed supplier regime of the proposed article 28a. Potentially, difficulty is created when platforms are providing both passenger transport and accommodation at the same time and arranged with third parties. Packaged travel services (purchased from third parties) are particularly targeted by the TOMS rules, which is why it may be considered necessary to insert the wording "either of the individual" between "to" and “supplies” to ensure that when a platform provides two services at the same time, the deemed supplier rules don’t apply. This will avoid further complexity with requalifying the respective transactions and updating their treatment.

Appendix 3 - Single VAT registration in the EU and IOSS

Introduction

We welcome the fact that, building on the success of the OSS and IOSS scheme, a Single VAT registration (or SVR) will be introduced by improving and expanding the current schemes along with the reverse charge mechanism. However, in our view, there are still hurdles that should at least be considered for removal on the way to a "Single-VAT-Registration". Our reflections in this respect are listed and discussed below (the order of the comments follow the structure of the proposal).

Problem statement

Article 14a

The suggestion is to extend the deemed supplier concept to all supplies of goods within the EU (article 14a (2)), independently of the origin of the underlying supplier and status of the buyer. However, an analysis of the potential consequences this might have seems to be missing. We are concerned that the burden put on electrical interfaces (as also SMEs fall within the definition) might distort the balance and climate of fair competition on the EU internal market i.e. the burden might be too heavy for SMEs which may put the larger platform organisations in a larger power position. The mandatory application of the deemed supplier provision will also mean that businesses which only sell within their Member State of establishment will always be in a VAT refund position. This will result in a VAT pre-financing, which, depending on the timeframe within which the VAT refund will be made, may result in a negative cash flow effect (certainly for SMEs).
According to article 14a (3), the deemed supplier rules should also apply to the transfer of the supplier's own goods (with the exception of capital goods, among others), provided that the transfer is supported by the use of an electronic interface and alike. Here it would be good to understand how exactly the term "supported" is to be interpreted in this context.

In addition, we are concerned that it might be difficult to comply with tracking the movement of goods owned by the underlying supplier (i.e. one's own goods), for the electrical interface as such information might not be easily extracted from the ERP systems for neither the underlying supplier nor the platform. Also, we constructively question if the changes will have the desired effect of reducing VAT avoidance.

- *Example 1:*
  With reference to the deemed-supplier rules, which are also to be extensively expanded from 1 January 2025 onwards, this should mean, for example, for

platforms that are active throughout the EU, that in B2B cases they must register for the declaration of intra-Community supplies in every EU member state in which their suppliers maintain warehouses.

Supplier A uses a warehouse in Belgium and sells goods via a marketplace to B2B-customers in Germany. The supply from supplier A to the marketplace is tax-exempt (Article 136a) whereas the supply from the marketplace to the B2B-customer is taxable in Belgium and under further conditions tax exempt as an intra-Community supply. Besides the fact that the platform does not have the logistic documents to prove that the goods have been transported from Belgium to Germany, the result of this is exactly the opposite of what is intended with the concept of "Single-VAT-Registration" - at least for the platforms under the assumption that the extension of the deemed supplier rules will kick-in.

- *Example 2:*
  Let's assume that the deemed supplier rules will not be extended, but remain as they are currently whereby for the transfer of own goods the OSS special scheme will be implemented in order to avoid any VAT registration obligations for the companies (due to the reporting of deemed intra-Community acquisitions). But even in these cases, the idea of a single VAT registration quickly reaches its limits, namely in cases where the supplier sells their goods (via a platform) to businesses in other EU Member States. And to declare the intra-Community supply, supplier A must register for VAT purposes locally as the turnover cannot be reported via OSS.

  Supplier A from DE sells goods to customers (B2B and B2C) via a platform. The platform takes over the corresponding fulfilment services for supplier A and transports Supplier A's goods from DE to other EU Member States in order to be able to serve the demand more quickly. In our example case, Supplier A's goods are to be shipped from DE to PL and then sold via the marketplace to customers (a) in Poland and (b) in neighbouring EU Member States.
  The transfer of the goods from DE to PL can be reported by Supplier A under the OSS special scheme (assumption is made that article 14a will not be extended), VAT registration in PL is not required as the intra-Community acquisition is tax exempt.

- *(a) But where does supplier A - when selling the goods via the platform to customers in PL - have to report its tax-exempt turnover to the platform? In our view, the extension of the OSS does not provide for local tax-exempt B2B supplies to be reported under OSS. Would this then trigger a registration obligation for supplier A in PL? And what is the interaction at this point with the* *reporting obligations under DAC 7? Wouldn't the platform have to report the turnover under DAC 7 under the Polish tax identification number of the supplier - this especially against the background that the deemed supplier rules are of no relevance for the DAC 7 reporting?*

- *(b) Let's assume that the extension of deemed supplier rules is not implemented, but the OSS special rule is implemented for the transfer of own goods. Then, in the case that supplier A sells goods from the Polish fulfilment warehouse to a business company in another EU Member State via the marketplace, this would trigger a VAT registration as intra-Community supplies cannot be reported via OSS.*

- *Article 39a*
  This comment relates to the newly introduced article 39a whereas certain supplies of arts and antiques without a cross border transport should be taxed in the Member State of the consumer based on their permanent address or where they usually reside. This is a deviation from moving towards the destination principle, which seems to be the general aim with the proposal. As this seems to be an unusual solution, we respectfully question if this is worthwhile based on the likelihood of reducing VAT avoidance. In this aspect we have not seen a proper analysis of the potential consequences in the event these types of sales remain as treated as local supplies.

  We are concerned that, as the proposal stands, the VAT allocated (to a particular Member State) may become somewhat arbitrary as the information of the consumer's residency might be difficult to confirm and might not correlate with where the goods are consumed. It will also impose a heavy compliance burden on SMEs, which would be unfortunate and this would completely contradict the general place of supply rules. This would especially be the case for cross border transport, which is where the destination principle typically applies.

- *Article 194*
  We are happy to see that the proposal includes making the article 194 **reverse charge** available for all B2B supplies carried out by non-established suppliers and mandatory for Member States to introduce. Given that, according to the proposals, it will not be possible to reclaim/deduct input VAT through the OSS system (please see our comment relating to article 369j below) we expect that applying article 194 will be optional for the supplier. That is, that the supplier can opt to tax transactions, instead of applying the reverse charge mechanism, and by doing so obtaining a local VAT registration. As mentioned already, we assume that this will be an option but we cannot see that it is clearly dealt with in the proposal. We would strongly welcome such a clarification to avoid different

interpretations between Member States. Apart from the need to provide the mentioned clarification, guidance should also be provided on the application of the reverse charge option (e.g. will a local VAT registration prevent the application of the reverse charge mechanism, if opted for, for how long is the option to be applied, and so on). A clear set of rules should be put forward in this respect to allow businesses to adapt to these new rules but also to facilitate VAT audits by local authorities.

- *Article 369j*
  When broadening the scope of the OSS system the deduction mechanism becomes more critical. The proposal relating to article 369j clarifies that there is no possibility to deduct **input VAT** through the OSS system and that VAT can be refunded through the appropriate refund system. To simplify and avoid unnecessary registrations (please see our comment under article 194), an extension of the OSS system to also include input VAT deductions would be welcome.

  This view is supported by the fact that we are increasingly finding that the advantages of using OSS reaches its limits where businesses claim high amounts of input tax locally. Since this is (currently) not possible within the framework of OSS compliance, the refund must be made within the framework of an input tax refund procedure (assuming there is no local VAT registration in the respective country). However, this procedure is very formalistic, bound by cut-off deadlines and it can also take a very long time to refund the amounts. The last aspect has a major cash-flow disadvantage against the background that VAT has to be paid quarterly without taking into account the input tax amounts and the payment of these amounts via the input tax refund procedure takes many months. Thus, some businesses are forced by economic considerations to decide if they can economically afford to report via OSS.

- *Article 369xb*
  Article 369xb defines the scope of the newly introduced scheme for transfers of own goods as defined by article 369xa. Intra-Community supplies or export supplies cannot be declared within the framework of an OSS declaration. In a large number of EU Member States these supplies trigger local VAT registration obligations - even if it is only a matter of reporting tax-exempt transactions. This also leads to the fact that, in our experience, many businesses (currently) also refrain from using OSS because there is no possibility of reporting all turnover locally for some individual EU Member States and only using OSS for the remaining ones. In order to not have to differentiate for the EU Member States where there are VAT registration obligations (because of the usage of a local warehouse) whether the turnover is to be declared in the local report or via OSS, our experience is that the use of OSS is refrained from. On a positive note, these cases

should be reduced to a minimum through the expansion of OSS (in particular through the reporting of the transfer of own goods, as well as local B2C supplies and the obligatory reverse charge in B2B cases).

- *Article 369xi*
  The article stipulates that under the scheme, the intra-Community acquisitions are exempt in the Member State to which the goods are dispatched or transported. We would welcome further clarifications in this respect as to: (i) the VAT registration obligation - the related exemption for a VAT registration is not explicitly foreseen (ii) Intrastat - in several Member States the Intrastat reporting is linked to a local VAT registration which under the scheme will not be available (iii) exemption of the “deemed” intra-Community supply under the scheme. As no changes are foreseen to Article 138, can the said “deemed” intra-Community supply still benefit from a VAT exemption in the (potential) absence of a VAT registration in the Member State of arrival of the goods.

The timeframe for all changes to be introduced seems short.

- A recast of the VAT Directive seems required.