Connect. Engage. Impact.

1200 G Street, N.W., Suite 300
Washington, D.C. 20005-3814
202.638.5601
tei.org

European Commission
Directorate-General for Taxation and Customs Union

Submitted via the VAT in the digital age submissions portal

Dear Sir or Madam:

On behalf of Tax Executives Institute, Inc. ("TEI"), I am pleased to provide our comments on the proposals for VAT in the Digital Age, published on 8 December 2022 (the "Proposal").[1] For our earlier contributions on this topic, we kindly refer to the preliminary views submitted to the Commission on 17 March and 30 May 2022 in response to the Commission's "Call for evidence for an Impact Assessment," as well as the on-line questionnaire submitted on 4 May 2022.

About Tax Executives Institute, Inc.

TEI is a nonprofit organization founded in the United States in 1944 to serve the needs of business tax professionals.[2] Today, the organization has 56 chapters spread across Europe, North and South America, and Asia, and our nearly 6,500 individual members represent over 2,800 of the leading companies in the world. A significant number of TEI's members are resident in European Union Member States, and many of our non-EU members' companies also conduct business in the European Union.

TEI members are responsible for the tax affairs of their employers and must contend daily with provisions of the tax law relating to the operation of business enterprises in the European Union. TEI is dedicated to the development of sound tax policy, compliance with and uniform enforcement of tax laws, and minimization of administration and compliance costs to the mutual benefit of government and taxpayers. We are committed to fostering a tax system that

[1] Proposal for a COUNCIL IMPLEMENTING REGULATION amending Implementing Regulation (EU) No 282/2011 as regards information requirements for certain VAT schemes, COM(2022)704 (08 Dec. 2022).

[2] TEI is organized under the Not-For-Profit Corporation Law of the State of New York, U.S.A. It is exempt from U.S. Federal Income Tax under section 501(c)(6) of the U.S. Internal Revenue Code of 1986, as amended. TEI is in the EU Transparency Register (No 52413445902-12).

works—one that is administrable and with which taxpayers can comply in a cost-efficient manner. The following recommendations reflect the views of TEI as a whole but, more particularly, our members based in the European Union. We believe the diversity, professional training, and global viewpoints of our members enable TEI to offer balanced and practical comments on the Proposal.

Comments on the Proposal

We commend the Commission for taking the time and expending the resources necessary to undertake the comprehensive analysis that underlies the Proposal. We agree with and welcome the Commission's efforts to standardize VAT reporting obligations and prevent further uncoordinated introduction of variances by Member States. This standardization is more aligned with business processes and will ultimately reduce the costs of compliance, making it less burdensome for companies to undertake activities in multiple EU Member States.

We also welcome the extension of the deemed supplier rules for supplies of goods within the European Union, which not only simplifies business processes, but also better respects the horizontal neutrality of both EU and non-EU established businesses. The measure whereby platforms will have to account for VAT when they move goods owned by the underlying sellers across EU-borders, instead of the underlying seller, is also appreciated, as it will prevent sellers (albeit largely smaller sellers) from having to register in multiple EU Member States. With respect to the platform economy, we commend the Commission's efforts to harmonize the VAT treatment of short-term rentals across the EU. In view of minimizing administration and compliance costs, we support the Commission in further streamlining reporting and recordkeeping obligations for electronic interfaces and platforms, ideally by only requesting the same data once.

While TEI members enthusiastically support the above aspects of the Proposal, we do believe there is more work to be done. As with any undertaking of this magnitude, the devil is in the details, and there remain significant opportunities to further harmonize the European VAT system, increase horizontal neutrality, and eliminate unnecessary administrative burden. To this end, we have identified a number of concerns in portions of the Proposal pertaining to VAT reporting obligations, the Platform Economy, and the single VAT registration. These concerns are addressed in turn below.

<u>VAT reporting obligations</u>

Failure to integrate Intrastat reporting obligations. The Proposal does not call for the integration of Intrastat reporting obligations. We believe this omission is a missed opportunity, as the streamlining would have further reduced compliance costs and the need for businesses to remain registered in countries other than their country of establishment.

Unrealistic timeframe for implementing rules for valid electronic invoicing. It appears that beginning 1 January 2024, sellers will not be entitled to claim a VAT deduction unless they are able to receive a valid electronic invoice. The time required for sellers to implement the new requirements for existing inbound e-invoices should not be underestimated, and the time allowed for analyzing, implementing, and managing the changes is unrealistic. In addition, this measure will not stand alone, as individual Member States are already introducing and will likely continue to introduce their own digital reporting requirements for local transactions notwithstanding the Proposal. To ensure a fair and effective implementation of new e-invoicing requirements, we propose a minimum implementation period of not less than 18 months beginning on the date that final rules are published. It is important that this implementation timeframe applies to measures coming from this proposal, as well as those introduced by individual Member States.

Opportunity to add status of registrations to the VAT Information Exchange System ("VIES"). The Proposal would require VIES upgrades, and it is the perfect opportunity to add a widely needed datapoint to the system: whether a VAT registration is attributable to an establishment/fixed establishment or if it is a non-established VAT registration. These data elements are essential for businesses applying the correct VAT treatment and fulfilling obligatory reporting obligations. Without the information, businesses will continue struggling to determine what entity is liable to account for the VAT, resulting in incorrect filings and system and process inefficiencies.

Opportunity to adopt a unified method of transmission. There is currently no standardized method for transmitting VAT data to the various Member States. The Proposal does not address this important point, but rather leaves it to Member States to decide. This lack of uniformity creates unnecessary administrative burdens for taxpayers, and we urge the Commission to consider addressing this point by adopting a unified standard across the European Union.

Unrealistic timeframe for issuing and reporting invoices. TEI members have expressed significant concerns as to their ability to comply with the proposed two-working-day requirement for issuing and reporting an invoice, and we question whether the burden of managing such short deadlines would be proportional to the benefits sought through the new rules. Importantly, it is not clear how bank holidays, which are not harmonized within the European Union, would impact the proposed timing requirement. In addition, proper functioning of the timeline would require a common understanding of the operative tax-point, which currently does not exist in practice, as some Members States consider the time of dispatch as the tax-point, while others deem the tax point as the moment of arrival or make it dependent on the agreed Incoterms. Historically, these variances have not led to significant compliance challenges because of more lenient issuing and reporting deadlines. The proposed two-working day requirement could result in instances in which a buyer is required to report a

transaction before receiving an invoice or having the information needed to report, while the seller is required to report at a later date.

The proposed two-working-day rule also does not align with standard processes for handling incoming invoices. In standard business practice, invoices are not reported until confirmation that goods have been received in the agreed quantity and quality and that the prices invoiced are aligned with the contractual provisions have been validated. These checks, more often than not, take more than two days given the number of internal touch points. Thus, the proposed rule may require in the reporting of incorrect invoices for VAT purposes, which under proper accounting procedures, are not yet recorded in the general ledger, hence resulting in mismatches between the VAT treatment and the accounting treatment. Additionally, companies may also be required to report a transaction before receiving an invoice. In such instances, the company would not have critical information needed to determine the VAT treatment (e.g., the ship-from location). The variances that would occur under a two-working-day rule would require, on a constant basis, various exception reportings, reconciliations, manual interventions and corrections. This would increase the likelihood of mistakes and counteract the increased efficiency and alignment sought by the VAT in the Digital Age initiative. Based on member experience, a minimum period of two weeks is necessary to complete tasks for accurate issuing and reporting of invoices, and we therefore strongly urge the Commission to expand the two-working-day requirement to a minimum period of two weeks.

Need for invoice standardization across all Member States. We applaud the Commission for setting forth the content needed in an invoice. While Member States do generally align their VAT laws with the requirements of the VAT Directive, they also have other rules and regulations providing additional invoice requirements. We strongly encourage the Commission to take the additional steps of proscribing Member States from requiring additional invoice requirements whilst permitting businesses to include additional information, such as a purchase order number, that is essential from a business perspective for processing invoices.

Reconsider the abolishment of summary invoices. Summary invoices are of great practical value for businesses, whether for stock call-off arrangements, goods subject to regular price fluctuations, or small businesses that are not able to issue invoices for individual transactions. Considering these aspects, we respectfully contend that eliminating summary invoicing in all instances goes too far. We therefore urge the Commission to consider allowing the use of summary invoices in limited circumstances when it is impracticable to match buyer and seller data on a transactional basis. If the abolishment is necessary for the proper functioning of the future VIES, we still encourage summary invoices to remain available for domestic transactions.

Flexibility needed to properly issue and report credit invoices. Credit invoices are widely used for corrections and adjustments over a certain period, such as volume rebates and transfer-pricing adjustments. Because the number of invoices related to such adjustments could be

significant, potentially exceeding the capacity of the data-fields, we strongly urge the Commission to allow for some flexibility by also allowing the use of time periods or other references.

Requiring IBAN numbers on invoices may be problematic. TEI members have expressed concerns with the proposed requirement to add a **bank account number (IBAN)** as a reporting requirement. Many businesses share multiple IBAN numbers on their invoices and allow their customers to select the most convenient one. Large businesses with advanced fraud detection and elimination procedures may not use the IBAN as detailed on an invoice, but instead determine the correct IBAN through their own procedures. The proposed requirement may cause customers to feel obliged to use the IBAN reported on the invoice, circumventing advanced fraud elimination procedures and resulting in unintended consequences. The Proposal also fails to address Fintech payment options, e.g., PayPal, Stripe, and others, that do not use bank account numbers.

Exception for small and medium-sized businesses. Large businesses should be better positioned (with the additional implementation time requested above) to implement the Proposal than their small and medium-sized counterparts for which the costs of required specialists and IT implementation may be disproportionally burdensome. Thus, we urge the Commission to consider adding optional, simplification measures, such as the use of paper invoices, for businesses with gross revenues below a designated threshold.

Terms and concepts that require clarification. We respectfully request that the Commission update the Proposal to provide a more precise description or clarification of the following:

- what constitutes a "transaction"
- the relationship between electronic invoices and invoices used for customs purposes and pro-forma invoices
- the (possible) documents required for the movement of a business's own goods
- the interaction and rules around e-archiving.

<u>The Platform Economy</u>

Further study is needed before proposing changes impacting the tourism sector. We acknowledge the importance of a level playing field for short-term rental and passenger transportation, but we are somewhat surprised by the assertion in the Proposal that VAT is an important pricing factor, creating a difference in pricing between 8-17%. According to information on the Commission's website, the average VAT rate in the European Union varies between 11-13%[3],while several key tourist destinations in the EU have a VAT exemption in

[3] *See* European Commission, *Tourism-related taxes across the EU*, https://single-market-economy.ec.europa.eu/sectors/tourism/eu-funding-and-businesses/business-portal/financing-your-business/tourism-related-taxes-across-eu_en (last visited 25 March 2023).

place for short term rentals (e.g. France, Spain, Italy, Greece). Both sectors also are allowed to deduct the VAT on their expenses, which should mean that the impact of the VAT (if any[4]) will be significantly below these percentages. Because significant uncertainty exists as to the true impact of VAT on tourism, we believe further study on the root cause of the price difference and the role of VAT is needed before a solution that is proportional to the problem can be proposed.

In addition to raising proportionality concerns, the Proposal also creates tension with the principle of VAT-neutrality because services provided by non-VAT registered persons would carry a VAT burden, while no right of VAT deduction would be given.[5] These concerns may encourage Member States of the main travel destinations, such as France, Spain, Greece and Italy, to address inequalities with the hotel sector by reconsidering the exemption currently applied on short-term rentals. Providers of impacted services could also alleviate the consequences by obtaining a VAT registration number. Such registration number would not necessarily have to match with the country where the services are conducted, not guaranteeing that the VAT would be accounted for in the country where the supply is taking place. Thus, the measures would likely create a further imbalance when it comes to channel neutrality, and there would be a risk that providers of services would switch to non-qualifying platforms/advertising sites or offline agents which do not have to collect VAT and, in the case of offline agents, would also not need to share data on providers similar to DAC-7.

Need for a council regulation to support proposed expansion of the deeming provision to electronic interfaces. The proposed expansion of the deeming provision to electronic interfaces facilitating short term rental and passenger transport would require improved legal certainty on the concepts of: an electronic interface or platform, direct/indirect intervention in setting terms and conditions, and the collection of payment. The current guidance regarding electronic interfaces facilitating goods or electronically supplied services is captured in the "EC Explanatory Notes" and is not legally binding. Given the complexity of the gig and sharing economy, we urge adoption of a council regulation to address these points. In this regulation, the determination of the deemed supplies should be addressed in more complex scenarios, for example, where there is a chain of platforms, whereby one platform is contracting with providers knowing their VAT status, a following platform processes bookings in their system, while another platform is facilitating the booking with the traveler possibly complemented with a third-party payment services provider.

The proposed place-of-supply rules are problematic and would benefit from alignment with principles in the OECD VAT/GST Guidelines. The vast majority of countries that have introduced VAT or GST on electronically supplied services (ESS) deem the place of supply as the

[4] The Commission's website, *Tourism Taxes across the EU*, states as follows: "In some cases where reduced rates apply on their outputs, businesses may find that input VAT exceeds output VAT."
[5] This principle is still in applicable following article 2 of the 1st VAT Directive (67/227/ECC)

place where either the vendor or customer is established. In contrast, the Proposal aligns the place of supply with the place where the property is located. This divergence will trigger situations of double taxation, both in the country of the non-VAT registered customer or supplier and the country where the property is located. Further, for transport services involving multiple countries (for example, from Denmark to France), the service provider would be required to inform the platform of the apportionment to the respective countries in order to determine the amount subject to VAT in each of the countries (in the example, the amount would be subject to Danish, German and French VAT). This information is often only known after the service has been completed, which may not be well aligned with how platforms operate.[6] Accordingly, we urge the Commission to reconsider the Proposal's place of supply rules and align them more closely to principles as set out by the OECD in the VAT/GST Guidelines and included in the OECD VAT Digital Toolkits.

Expansion of the OSS is needed to avoid unnecessary administrative burden. When the deeming provision is applicable in a platform-to-business transaction, the platform will have to account for VAT in the country where the underlying property is located both on the commission, as well as on the underlying accommodation service. Because the OSS does not cover B2B transactions, platforms will potentially have to register in every country in which they offer accommodation. To prevent this additional administrative burden, we strongly recommend expansion of the OSS to include this type of transaction.

The Proposal results in divergent VAT treatment for platforms providing the same travel agent services. Under the Proposal, online travel agent platforms acting as disclosed agents could potentially be treated as deemed suppliers where the provider is a natural person, requiring such disclosed intermediaries to register for VAT and collect and remit local VATs throughout the European Union. On the other hand, online tour operator platforms acting as undisclosed agents would be required to apply TOMS and would owe VAT only on their margin in their country of establishment (subject to EU TOMS reform). Thus, platforms essentially providing the same services may have very different VAT outcomes, depending on whether the online travel agents act as disclosed or undisclosed intermediaries. We urge the Commission to resolve this unequal treatment either by clarifying the concept of disclosed versus undisclosed intermediaries for VAT purposes or through an EU TOMS reform proposal.

[6] *See* Kluwer International Tax Blog, *Newly proposed VAT rules for sharing economy platforms – some fine-tuning needed?*, https://kluwertaxblog.com/2023/03/22/newly-proposed-vat-rules-for-sharing-economy-platforms-some-fine-tuning-needed/ (last visited 25 March 2023).

The ever-increasing reporting obligations for platform operators are unduly onerous and could stifle innovation. In recent years, the Commission has introduced several reporting obligations in relation to platform operators, such as article 242a VAT Directive, DAC-7, CESOP, and the new reporting obligations for platforms announced in the Customs Action Plan[7]. The current proposal under article 242a now requires "on demand" reporting. In our experience, certain Member States already require similar reports on a permanent basis (e.g., Austria). Although there may be different actors involved (such as on CESOP), we urge the Commission to consider streamlining the reporting obligations as the current myriad of reporting obligations could become a barrier for start-ups and innovative companies establishing in or already active in the European Union.

Terms and concepts requiring clarification. We respectfully request that the Commission clarify the following terms and concepts to ensure they are applied as intended:

- clarity on the type of accommodations that would be captured, i.e., only vacation rentals with or without hotel services or also Guesthouses, Aparthotels, B&Bs – and how the differentiation will need to be made
- guidance on the VAT treatment of ancillary supplies (e.g., lodging tax, cleaning, breakfast) as not all Member States take the same approach
- guidance on who and how to manage VAT recovery previously paid to the tax authorities in case of cancellations, no-shows, and refunds and whether no-shows are in or outside the scope of VAT (where again we see different approaches being taken by Member States)
- clarity in cases where a non-EU based **undisclosed intermediary** active on another platform provides a non-EU VAT ID to the platform – does the platform need to act as a deemed supplier if an EU VAT ID is not provided even if the non-EU based undisclosed intermediary applies TOMS? We would assume that if TOMS applies, a non-EU VAT ID should be acceptable for the platform and the platform should not act as deemed supplier.

Single VAT Registration

The proposed treatment of the supply of second-hand goods as Intra-Community sales is problematic and should be reconsidered. The Proposal's treatment of "supply of second-hand goods, works of art, etc." as Intra-Community sales of goods may impose serious practical challenges. Today, most businesses supplying such goods apply the so-called margin scheme, whereby VAT is due on the margin realized. For this margin scheme to function with the deemed seller provisions, the underlying vendor would need to communicate, on a transactional basis, the margin that has been realized. This communication would have to be immediate (upon sale), and many businesses active in this space may not be able to produce and share this information at that time. The margin scheme also allows for the VAT to be

[7] European Commission, *Taking the Customs Union to the Next Level: a Plan for Action*, COM (2020) 501 Final (28 Sept. 2020).

calculated over a certain period instead of on a transaction-by-transaction basis. Under this option, it would not be possible to determine the margin at the moment of sale. Hence, the basis on which VAT needs to be calculated would be missing. The Proposed treatment of such goods also implicates commercial practices. Underlying vendors may not want their margin to be dependent on where the goods are shipped, as their margin will be dependent on the VAT rates in the ship-to country. This element can be quite material as today the VAT rates in the EU vary from 16% to 27%. This aspect would also require platforms to be able to display variable prices dependent on the ship-to destination, adding even more complexity to an already complex situation.

Both traders and platforms involved in the sale of secondhand goods play an important role in the circular economy, a policy area recognized by the European Green Deal. Because the proper functioning of the margin scheme plays a vital role in this area of great public interest, we urge the Commission to reconsider the proposed treatment of these goods.

The benefits of requiring a unique consignment number should be weighed against the administrative burdens of adding a new datapoint into an already complex IOSS system. Proposed Article 143(1)(a) introduces a "unique consignment number" for businesses using the IOSS. Although no more details are provided at this stage, we urge the Commission to exercise caution when introducing additional administrative obligations on businesses using the IOSS.

The practical aspects of implementing this proposed new requirement should not be underestimated. For example, when an EU buyer purchases something on an online platform, the Proposal would require the online platform to communicate both the IOSS number and the new, unique consignment number, which the seller would need to list on the parcel. The absence of (or errors in) this number would presumably prevent it from being imported. It is not clear how online platforms would receive and transmit the proposed unique consignment numbers given they may not be involved in the transport of the goods, but it is clear that it would require significant administrative and IT changes and mistakes would likely cause material glitches in the import system. Thus, we urge the Commission to reevaluate the benefits of the proposed unique consignment number against the costs and administrative burdens of implementing it.

Missed opportunity to ease administrative burdens of recovering input-VAT. The Proposal does not extend the IOSS, OSS, and Single VAT Return (SVR) to allow for the recovery of input-VAT. We view this omission as a missed opportunity as it would have not only reduced administrative burden, but also allowed for the recovery of VAT which cannot currently be deducted under the 13th Directive Refund procedure due the workings of the reciprocity mechanism. We urge the Commission to reconsider this omission, as it would be a significant improvement to the neutrality of the VAT system.

Flexibility needed in the special scheme for a business's transfer of its own goods. Article 369xa in combination with article 14(a)(3) provides the special scheme for a business's transfer of its own goods. While these rules will reduce the number of required VAT registrations, we urge the Commission to consider providing taxpayers the flexibility to select the transactional flows to which to apply the special scheme instead of making it mandatory for all such transactions. In addition, the scheme as proposed will not reduce the number of required VAT and similar registrations required under Intrastat. We urge the Commission to consider integrating the Intrastat reporting obligations with the special scheme, as such action would further reduce compliance costs for businesses.

Terms and concepts requiring clarification. We respectfully request that the Commission clarify the following terms and concepts to ensure they are applied as intended:

- Please clarify whether the term, "facilitates" in article 14(a)(3) would apply only in situations where marketplaces arrange for the transport.
- The term, "capital goods," in article 14(a)(3) should be defined to ensure uniform application within the EU.
- It is unclear whether the term, "non-taxable person," in article 46a is intended to be the same as or different than what is mentioned in article 28a. These articles also use different wording for platforms: electronic interface, such as a platform, portal or similar means is used in article 28a, compared to the use of platform, portal or similar means in article 46a. We request that the Commission clarify these areas to avoid confusion and misapplication of the new rules.
- If the unique consignment number will become mandatory, the phrase "unique consignment number" should be defined to clarify whether it refers to the seller's consignment number as allocated on dispatch, the forwarder's consignment number as allocated on pick up of the parcel, or something else.

* * *

Thank you for this opportunity to comment on the Proposal. Our comments were prepared by TEI's European Indirect Tax Committee, whose chair is Anna Ogenblad and whose legal staff liaison is Patrick Evans. Please do not hesitate to contact Ms. Ogenblad at annaogenblad@gmail.com or Mr. Evans at pevans@tei.org if you would like to discuss our comments.

Yours faithfully,

TAX EXECUTIVES INSTITUTE, INC.

Wayne G. Monfries
International President

cc: Patrice Pillet, Head of Unit—DG TAXUD—VAT Unit, patrice.pillet@ec.europa.eu
Ludwig de Winter, Deputy Head of Unit—DG TAXUD—VAT Unit, ludwig.de-winter@ec.europa.eu