ICC response to the VAT in the Digital Age proposals

The International Chamber of Commerce ('ICC') welcomes the opportunity to provide feedback on the Commission's VAT in the Digital Age proposals published on 8 December 2022. We commend the Commission on its continued commitment to realising the goals of its 2020 Action Plan, of which the VAT in the Digital Age proposals are a significant component.

The following comments relate primarily to the Digital Reporting elements of the proposals. This is the area which is likely to be most invasive to existing business processes, and most costly to the widest range of taxpayers. Despite that cost, however, we agree with the Commission that the current situation with multiple systems is itself costly and should not be allowed to continue. If we continue on the path of each Member State introducing its own bespoke Digital Reporting system for VAT we could in theory have twenty seven different systems – twenty seven different solutions for essentially the same problem, which is clearly inefficient. Given that alternative the ICC embraces the Commission's proposal to harmonise Digital Reporting. Whilst that principle is sound, however, we have set out a number of points that we feel require further consideration or clarification to ensure that the DRR proposals achieve the maximum positive effect whilst minimising any additional compliance burden and avoiding disruption to commercial practices. We would also refer the Commission to the ICC's publication "Practice Principles For Implementation of Continuous Transaction", which echoes or expands on the comments herein.

ALIGNMENT OF THE DRR PROPOSALS TO THE STATED POLICY OBJECTIVES

The VAT in the Digital Age Report asserts that the Commission's policy objectives in respect of DRR are to

1. Foster the adoption of DRRs that optimise the use of digital technologies, to fight VAT fraud, and in particular Missing Trader Intra-Community ('MTIC fraud); and

2. Rationalise Digital Reporting Requirements, to improve legal certainty, reduce market fragmentation and ease compliance.

Looking at the first of those objectives, any reduction in fraud as a result of the Continuous Transaction Controls ('CTC') proposals should logically be reflected in an increase in VAT revenue. In that light we note that both the Report and the Impact Assessment highlighted uncertainty over whether a CTC-based approach is any better than a Periodic? Transaction Control ('PTC')-based approach in that regard.

"3.3. Benefits: VAT revenue

"The results only provide a partial support to the hypothesis that PTCs and CTCs have a different impact on VAT revenue. Under the C-efficiency model, ***the analysis shows that there is no statistically significant difference between the impacts of PTCs and CTCs on VAT revenue****"*

"Therefore, ***both in the assessment of the current situation and in the analysis of impacts, it is considered that PTCs and CTCs have the same impact on VAT revenue.****"*

"The results on any differential impact of PTCs and CTCs are conflicting and non-conclusive, and this likely depends on the very short period and limited number of Member States which implemented the latter. ***In a nutshell, as far as the impact of CTCs in the EU Member States, it is yet too early to tell****."*

That current lack of evidence for a clear advantage of CTCs over PTCs in terms of additional revenue raises the question of whether this is the best way to achieve the first of the Commission's objectives, a reduction in VAT fraud. Certainly if no Member State had yet implemented a DRR it could be argued that the CTC-based approach set out in the Proposal (with its intrinsically higher costs for both tax authorities and taxpayers) would not be justified, at least not until the supposed benefit of existing CTC-based DRR had been better evidenced over time. Given the rapid pace of change and divergence in DRR amongst Member States, however, it seems clear that if the second of the Commission's DRR policy objectives is to be met, i.e. rationalisation of the DRR landscape, action is required sooner rather than later, so we strongly support that impetus for change.

However, the report highlighted well that any DRR is a net cost to businesses of all sizes, whether SME's or MNC's, and CTC is more expensive than PTC. It is therefore essential that there are clear and quantifiable benefits to the businesses which will have to incur the additional costs if these proposals are implemented. The ICC welcomes that this aspect was expressly mentioned in both the Report and VIDA Proposals, with recognition of the differing requirements of SMEs and MNCs in this regard. We hope that this core theme will continue to retain focus as the proposals progress, since the relative impact of cost will likely be relative higher for the small- and medium sized enterprises. ICC is also mindful

that the implementation of the proposal will have a significant cost impact for tax authorities.

DATA SECURITY

The proposal calls for all data to be stored in Central VIES, which could pose a significant security risk to commercially sensitive information. Once all obligated EU companies follow the new rules, this database would contain all cross-border transactions within the EU. Therefore, it may be preferable to store local data locally, and for local tax administrations to request data from other countries' databases when necessary. Regardless of the chosen approach, it is critical to ensure the highest standard of data security to protect against potential attacks by bad actors. It is also necessary to consider which party should have liability in the event of a data breach.

The Commission should supplement its plan to create the Central VIES system by also addressing critical upgrades required to the functionality made available to taxpayers to check the validity of VAT numbers. The requirement to check VAT number validity is now a core part of VAT compliance and the ability to perform such checks in an efficient and scalable way is an essential tool businesses use to manage risk. As such, demands on the existing VIES system have expanded way beyond its original remit, and it is no longer fit for purpose. This creates inefficiency and risk for businesses, and missed opportunities for compliant businesses to help weed out non-compliance from the system. VIES must urgently be upgraded to handle bulk validations, enhance the quality of information held within it, and enable real-time updates and reduced downtime.

INVOICES

Time limit to issue and report invoices

The two-day time limit for issuing invoices represents a significant departure from the current system and may not be feasible in many situations. For instance, there may be cases where it is not commercially viable to issue an invoice within this timeframe. Some examples include:

- When a customer requires urgent delivery of goods or services, which are provided before any contractual or pricing arrangements are agreed upon.
- In cases where goods deliveries are involved, the logistics tracking system may not update the billing system with delivery information within such a short timeframe.

- In situations where goods or services are delivered through subsidiaries within a corporate group or subcontractors, the exact time of delivery, and therefore the chargeable event, may take time to be communicated between the parties.
- For professional services firms, chargeable hours may be reported weekly, and it may be impossible to meet the two-day deadline if the hours are reported after the chargeable event has already taken place.
- When goods or services are delivered before the customer is added to the billing system.
- Under a framework agreement where any company in the group could call off services and receive the invoice directly, but not all companies are added as an e-invoicing client in the system from the start.

Allowing only a two-day window for digital reporting of these supplies is likely to pose a practical challenge. Businesses with significant volumes of invoices may find it difficult to generate reports within the given timeframe since all IT systems require time to complete the process, especially when dealing with millions of invoices. This could result in a high number of errors that will need to be corrected later. Hence, there is a need for a robust and simple framework that enables businesses to make corrections effectively. We are concerned that the current proposal lacks any details on this aspect.

In a similar vein we would urge the Commission to give detailed consideration to how businesses should manage the range of normal commercial documents other than standard invoices (e.g. credit notes, corrective invoices, adjustments, debit notes) with the DRR mechanism in a simple and natural manner. If an invoice is reported in January but corrected in a later month then, in theory, an incorrect VAT return has been filed for January. It is important to have clarification on how the proposed reporting obligations will accommodate these normal commercial occurrences and not penalise them. It would be critical to the success of a DRR that such details are well considered in advance and implemented consistently across all Member States

Of course reporting is only one half of the data sharing equation - receiving those reports and analysing the data in a timely fashion will be the responsibility of the various tax authorities. The VAT in the Digital Age Report indicated that Member States will need to scale up their human and technical IT resources considerably to make meaningful use of all of this additional data – analysing, communicating the results of that analysis to taxpayers in a timely fashion, etc. Has consideration been given to the way in which such a short time limit might affect those processes? Particularly during the engineering and implementation of a DRR such as that proposed the tax authorities are likely to be competing with taxpayers to recruit and retain suitably qualified staff in a market.

Another point to consider is the digital reporting of purchases. The reporting deadline implies that invoices must be reported based on when they are received, even if they are received within the given timeframe (which is not guaranteed). This is contrary to standard business processes, which require incoming invoices to be reviewed before being booked, as a matter of essential governance and financial control. Only once booked, invoices would be available to be reported from an ERP system. For instance, the similar SII regime in Spain requires incoming invoices to be reported within four days of their being booked. Therefore, we strongly recommend that the Commission amends the proposal to adopt a similar approach based on the date of invoice acceptance. Failure to do so risks putting businesses in a position where it is impossible to comply without abandoning normal commercial controls and potentially exposing them to regular penalties for incorrect filing.

Summary invoicing

The Proposal for the Directive seeks to justify the removal of the possibility to issue summary invoices on the grounds that "The aim of the new reporting system is to provide information on transactions in almost real-time to the tax administrations and foster the use of electronic invoices. The possibility to issue summary invoices for a calendar month goes against those goals."

We respectfully disagree with that argument. The key goal is surely to mitigate or eliminate entirely any lag between the reporting of a chargeable event by the seller and the purchaser, but it is not evident why that should exclude the many summary invoicing arrangements that are prevalent across many business sectors.

The removal of the ability to issue summary invoices will result in a significant increase in costs, as businesses will need to issue a greater number of invoices. This will impact both the invoice issuance process, as the cost of sending an invoice is likely to be higher due to the need for many businesses to rely on third-party experts to issue correctly structured electronic invoices. Additionally, the increased number of invoices received will require additional processing, which will also come with associated costs. The removal of the ability to issue summary invoices will also disrupt established commercial arrangements and lead to unforeseen cashflow impacts for suppliers and customers, possibly also tax authorities themselves as the number of invoices to be processed will increase

- Examples:
    - In certain financing arrangements, a telecommunications company (Telco 1) may sell a mobile phone to another telecommunications company (Telco 2), which in turn leases the phone to a customer or facilitates an instalment purchase with a consumer. With the disallowance of summary invoices, it raises

the question of whether each phone from Telco 1 to Telco 2 should be invoiced separately or if all deliveries within a day should be grouped together. To clarify whether the grouping of supplies of goods between the same parties on the same day, week, or month will still be allowed would be beneficial.

- A distributor of office IT equipment offers a leasing plan to business customers, which entails purchasing laptops from the device manufacturer and charging customers on a subscription basis. The customer is invoiced monthly, on the basis that it is receiving an ongoing supply of services. However, the customer orders laptops for its employees regularly throughout the month, and accordingly the device manufacturer delivers the laptops likewise, throughout the month. Under current rules the distributor can receive one summary invoice from the manufacturer at the end of each month. However, under these new proposals the manufacturer would seem to be required to issue an invoice for each delivery. This means that the distributor will need to pay these invoices earlier than at present, which will have a negative impact on our cash flow. It could negotiate special payment arrangements with the manufacturer (for example, one payment per month), but this could require contractual renegotiation and may not be feasible to implement in ERP systems, as it would require dynamic payment terms to be shown on the invoice (such as the number of days remaining until the end of the month, rather than simply the invoice date plus a set number of days). This creates a particular risk for service companies that charge on a monthly basis but purchase goods that require daily invoices, as it could lead to an imbalance in cash flow.

- Another example could relate to high frequency physical flows of goods in certain scenarios common in border areas. For instance, in the construction industry a warehouse situated in member state A, close to the border with member state B, regularly supplies construction sites in member state B. On a daily basis all kind of materials can be moved from the warehouse to the construction sites, such as boxes of screws or nails, or bags of mortar. Periodic invoicing (e.g. weekly, monthly, etc) is commonly used in such situations, for reasons of administrative convenience.

Other invoicing points requiring clarification.

- The proposal stipulates a two working day deadline for issuing an invoice related to a cross-border supply, but it is unclear which country's working days this refers to. Since there are differences in public holidays across the EU, it is important to clarify this issue.

- There is a need for clarification on the meaning of "prior authorization." For example, in Italy, invoice issuance must meet certain portal conditions, but it is not clear whether this counts as authorization or not.
- It may be necessary to revise rules on self-billing in light of this proposal. Some countries require approval for self-bills, and some existing self-billing processes may not be compatible with the new e-invoicing and digital reporting rules.

IMPLEMENTATION ISSUES

Phased implementation may be preferable to "big bang"

The implementation of the proposals simultaneously across all 27 European markets in 2028 presents an enormous challenge. Despite the appreciated long lead time, the simultaneous implementation will necessitate an unmanageable workload at the point of 'go live,' regardless of the level of preparedness. For instance, the IT resources required for testing, among other things, may go beyond their breaking point. It would be preferable to phase the introduction of the proposals throughout the EU, rather than all systems coming online at once. This approach would potentially provide a more extended lead time for some Member States that may need to make significant domestic changes. The implementation timeline set out in the proposal is ambitious to resolve all of the issues Member States will need to agree on, and it seems unlikely that certain key dates will be kept to. That potential for slippage is already creating uncertainty, and given the scale of the required change and associated investment, we wonder whether the proposed timeline needs to be reviewed.

Customers' ability to receive e-invoices

Regarding the implementation timeline, it has been mentioned in the proposal that from 1 January 2024, approval is no longer required from a customer needed in order to send an e-invoice. This could be interpreted that businesses are obliged to be able to receive e-invoices from that date onwards. In practice would mean that businesses would need to have implemented e-invoicing software by 1 January 2024 as there will be hardly any companies that implement e-invoicing software solely to receive e-invoices. Of course, a commercial rationale will play a role, as the supplier wants to make sure that the invoice is received in order to be paid but clarification on this point would be helpful.

Sensitivity to investment in legacy DRR systems

Several Member States have already established compulsory e-invoice mandates, particularly for domestic transactions. For instance, Italy's system a central hub, the Sistema di Interscambio (SdI), which serves as a repository for e-invoices. It is important to consider how ViDA can protect the significant investments that companies in these Member States have already made to adhere to national e-invoicing requirements. This can be achieved by ensuring compatibility between ViDA and existing approaches or potentially offering stand-still provisions or extended implementation timescales. In assessing the optimal reporting design, should be given to approaches which allow all stakeholders to leverage existing system investments, such as the Decentralized CTC and Exchange model.

Invoice format

- Regarding the invoice format, the proposals appear to be flexible, provided the invoices are structured, as stated in Article 217. However, it is unclear if Member States can impose stricter conditions or whether businesses can use any structured electronic invoice format that meets the basic requirements in Article 217. Therefore, we recommend that it be clarified that companies should be free to adopt any current or future standards that comply with the essential requirements in Article 217.
- The standard itself is difficult to obtain, requiring multiple steps, including registration with Member States' standards bodies, and runs to over 150 pages. This presents legal uncertainty, as the legal requirements are not readily accessible. Once obtained, the complexity of the standard may prevent understanding by anyone other than IT professionals, undermining legal certainty and forcing companies, especially SMEs, to use commercial services at an increased cost. All of these issues can be addressed if companies are allowed to adopt alternate standards that meet Article 217.
- While the proposals seek to harmonize invoice format across the EU, this is only a single facet of a digital reporting system. In order to achieve meaningful levels of harmonization, consideration should also be given to standardizing the transmission protocols and technical specifications for the actual transmission of the invoices to Member State e-invoicing platforms, including any invoice validations and authenticity requirements. Existing international standards should be considered for this purpose.
- Member States are obligated to accept invoices that comply with Directive 2014/, which may make this format the de facto standard if it is the only option that guarantees EU interoperability. However, this creates several issues. Firstly, it may restrict commercial invoicing technology to a specific existing standard, which would hinder future innovations in the field, such as the Peppol network. While it is useful to define a common EU standard for e-invoicing]g and agree on a specific digital

reporting format, it should also anticipate a "future-proof" solution that can evolve as technology advances.

- The new requirement to display IBAN or bank account details on the invoice and payment due date is unclear. It will increase business implementation costs as this data may not necessarily feed into invoicing platforms. If this implies a new VAT requirement to accept only payment into a bank account, it may hinder future innovations in the payment area space, such as the adoption of central bank-issued cryptocurrency.

EXTENSION OF THE REVERSE CHARGE FOR NON-ESTABLISHED TAXABLE PERSONS

The proposed extension of the reverse charge mechanism to cover all supplies by non-established taxable persons to a customer who is VAT registered in that Member State may appear to simplify the process, but it could increase the number of overseas VAT reclaims for certain businesses. It also has the potential to create disputes between supplier and customer on whether a transaction should be subject to reverse-charge or not. Even if the supplier is responsible to deliver a compliant invoice, based on certain factors like e.g. VAT balances on the VAT return (payable or receivable), the parties may have a conflict of interest on whether or not to charge VAT on the invoice. The administrative burdens could be significant, and some tax authorities may reject valid claims for largely insignificant technicalities. Although the process aims for neutrality, in practice, it doesn't always fully support it. To preserve neutrality, NETP RC should be made optional. The current proposal implies that businesses will have the choice to register and apply VAT if they prefer, but the wording is not entirely clear. We recommend amending the wording to remove any ambiguity.

SINGLE VAT REGISTRATION

We are supportive of the EU single VAT registration, noting that the One-Stop Shop (OSS) in place since 1 July 2021 has already been a great step forward in simplifying VAT compliance for cross-border scenarios for B2C businesses. However, neither movements of retail inventory across EU countries for storage, nor the onward sale of that inventory are eligible for the OSS system. As such, businesses still face the burden of VAT registration requirements in every EU country of storage. As indicated in the Commission's Impact Assessment, the extension of the OSS as detailed in the proposal is hence a great improvement, as it will reduce burdens on hundreds of thousands of businesses operating across many industries throughout the EU, allowing them to store inventory closer to their customers, enabling faster and more sustainable delivery, without the requirement to VAT register outside their home country. This simplification will allow businesses and especially

SMEs to take full advantage of the Single Market. It should remain optional, however, certainly until such time as input tax recovery is integrated into the OSS.

In this context and to gain the maximum simplification benefits for business and tax administrations, we would like to highlight one particular point. When fully taxable businesses move own goods including capital assets (such as tools/equipment) from one Member State to another, under the current regulations that triggers burdensome VAT registration obligations merely for reporting purposes. Such businesses are fully entitled to deduct input VAT so, since there are no revenue risks at stake, they could be allowed to use the OSS to fulfill their reporting obligations. When it comes to the movement of own goods by fully taxable businesses, therefore, the exclusion of capital assets should be reconsidered. If not, a great opportunity would be missed to secure a major simplification for a variety of businesses across many sectors.

AREAS OF CONTINUED DIVERGENCE AMONGST MEMBER STATES

While the proposals aim to harmonize, there are some provisions that may perpetuate differences between Member States. For instance, Article 222 allows MS to set different deadlines for issuing invoices for transactions other than those covered by the proposal, and Article 273 permits MS to impose additional requirements to prevent VAT fraud. It would be helpful to have more details on the specific measures the Commission has in mind. Why do MS need the option to set different deadlines for certain transactions, and is it proportionate to introduce further measures to ensure correct VAT collection? Clarification on these points would be useful.