EUROPEAN COMMISSION
DG TAXUD
Rue de la Loi
1000- Bruxelles
Belgium

Brugge, 3 April 2023

Reference: Opinion statement of the International VAT Association on the EU Commission's proposed legislative package - VAT in the Digital Age

Dear Sirs,

The International VAT Association welcomes the opportunity to comment on the VAT in the Digital Age proposals launched by the EU Commission on 8 December 2022.

The International VAT Association (IVA), formed in 1994, is the world's leading non-profit Association of VAT/GST professionals with currently over 180 members covering EU and non-EU countries representing many thousands of businesses and clients, each of whom has a very direct interest in the development of value added and turnover taxes.

Our comments follow the structure of the Commission's proposals, and cover:

I) E-invoicing and digital reporting requirements
II) The platform economy
III) Single VAT Registration and the extension of the One Stop Shop

I. E-invoicing and digital reporting requirements

I.I E-invoicing

Digitalising the issue and receipt of invoices is to be welcomed and should bring EU and non-EU taxpayers into close alignment for intra-EU supplies.

The proposal for one minimum invoicing standard across the EU is also to be welcomed, providing taxpayers certainty of the transmission of their data.

However, implementation of such widespread change is not as easy as it appears, and we would like to highlight the following issues:

1) The shift from, mainly, manual to fully electronic invoicing may increase disproportionately the administrative burden on the following groups of taxpayers:

a. Micro enterprises
b. Small and medium sized enterprises
c. Not-for-profit bodies

Consequently, we would recommend that there be a phased approach or initial exemption for those taxpayers that will find it difficult to upgrade (or even implement) their information technology ("IT") systems in the time frame proposed by the Commission.

2) Larger enterprises that do already use e-invoicing will need at least one year's notice of the final coding for the invoice data in order to upgrade their IT systems. Some may require more than this time frame as IT budgets are often agreed more than one year ahead of change.

3) Software houses will need the EU standard code as soon as possible in order to amend/upgrade existing software to be compliant.

4) Having mandatory e-invoicing for intra-community supplies but optional e-invoicing for domestic transactions may be too complex for a significant number of taxpayers listed at 1) above. It is not clear that the domestic supplies would be accepted by the tax authority systems if a taxpayer were to opt for e-invoicing under the EU standard for all transactions.

5) The window for providing data is very short at two working days and we are aware that those Member States having already adopted e-invoicing solutions, with longer submission windows, have experienced difficulties with compliance.

6) There is an inherent mistrust of data transmission and security within the business community, particularly where bank account details are being proposed as an additional dataset in the electronic invoices. Having said this, we are aware that certain businesses do include bank account details on their invoices that are emailed to customers, which is inherently less safe than secure data transfer! The communications around cyber-security for transmitting data under the EU standard will need to be carefully considered.

7) Whilst it is envisaged that the EU standard will be the basis for e-invoicing and digital reporting, several Member States have already introduced, or are about to introduce, their own standards for e-invoicing and digital reporting. This could lead to businesses needing to make several changes in a relatively short space of time in order to be compliant with the individual Member State's requirements upto the end of 2027 and then to move to a more widespread EU standard from 2028 onwards.

The proposals mention that Member States can have their own systems running in parallel with the EU standard from 2027, but this does not address the issue that businesses may have several systems running at the same time as the EU standard or may face “teething problems” when swapping from one standard to another in order to rationalise the number of systems changes they would need. Recent experience has shown that major industrialised countries administrations also have significant difficulties in implementing and maintaining complex IT systems.

I.II Digital reporting requirements (“DRR”)

Digital reporting of transactions is to be welcomed as it should reduce fraud, particularly where the supplier is not established in the same Member State as the recipient of the supply. However, we have some reservations as follows:

1) The time frame is an issue, particularly where the supplier is not established in the EU, as they may be unaware of their obligations.

2) Where the two working day window straddles a public holiday or weekend, it is conceivable that the time frame may be overlooked. In addition, each Member State has a significant number of different public holidays, so a consistent definition of “working days” or a list of non-working days in each Member State may be required to be published. One answer may be to have a 5 or 7-day window for the submission of data, as it is unlikely that public holidays combined with weekends would be this long in practice.

I.III Summary invoices

Article 223 of Directive 2006/112/EC currently allows businesses to issue ‘Summary’ invoices. This provision is deleted from 1 January 2028 for both intra-EU and ‘domestic’ supplies leading to a very substantial increase in the numbers of invoices to be issued (one per transaction) with the resulting increase in reconciliation exercises having to be carried out. Whilst we understand the need to have very granular levels of data for intra-EU supplies to achieve the important objective of reducing VAT fraud, would it be possible to retain article 223 in relation to supplies on which VAT is charged?

II. The platform economy

The proposal presented by the European Commission establishes, with effect from 1 January 2025, a deemed supplier regime which will be introduced into two sectors of activity when they are carried out through the use of digital platforms, ‘facilitating’ the underlying supply, namely, the short-term accommodation rental, and passenger transport.

These activities, when carried out through platforms have been perceived to lead to a potential distortion of competition when compared to the same or similar supplies carried out, within those same sectors of activity, in the traditional economy.

The European Commission proposes a set of rules to tackle this perceived distortion of competition by changing the role that platforms, 'facilitating' the supplies', play in the collection of VAT.

By adding a new article 28a to the VAT Directive, a deeming provision is introduced. Platforms would be required to charge VAT when the underlying supplier does not charge it because they are within the so called "Group of four".

In relation to the measures proposed by the European Commission, we would like to make the following comments:

- In relation to short-term accommodation rental, the proposal defines as such an activity that has a duration of a maximum of 45 days in accordance with the definition given in the proposed text of Article 135(3) of the VAT Directive. There does not seem to be any certain and concrete reason for setting the time limit at 45 days. It would be more reasonable and even easier for its computation if the duration of the rental were 30 days. In fact, if the purpose is to establish that the rental has a function similar to that of the hotel sector, the time limit should, in our view, be significantly shorter since, as a general rule, few hotel stays have durations of 45 days or more. Probably, after 15 days of accommodation, the service cannot be compared to that provided by a hotel.

- It is proposed to introduce a new paragraph 9c in the Implementing Regulation 282/2011, establishing that Article 28a of the VAT Directive shall apply where the underlying supplier does not provide the taxable person facilitating the service (the platform) with a valid VAT identification number. Moreover, the proposed article 9c also establishes that where the person providing the underlying service has a VAT identification number and is within the "Group of four" (something that can occur in a variety of situations), that VAT identification number shall not be communicated to the platform.

We understand that this prohibition of communicating a VAT identification number may be difficult to reconcile with other provisions, not only relating to VAT, in relation to the obligation to provide and obtain information from the parties involved in certain economic transactions. Moreover, it seems difficult to prove that the underlying supplier has not provided its VAT number to the platform, leaving the latter in a situation of risk. We consider, therefore, that an alternative control mechanism should be put in place in order to make the platform comfortable when applying the new deeming provision. For example, some form of confirmation from the underlying supplier that it is indeed within the "Group of four".

- A question arises in cases where the underlying supplier mistakenly, or because it overlooks the applicable requirements, provides the platform with a valid VAT number. That is, the platform meets all the requirements to be a 'facilitator', but it is nevertheless provided by error with a VAT identification number by the underlying supplier. Under these circumstances, from the proposal it is not entirely clear whether the deeming provision will apply.

- Regarding the facilitation services (new article 46a to be added to the VAT Directive), the way in which the measure is intended to be implemented is that the facilitation service provided by the platform is a completely separate transaction from the deemed supply (the supply of the service from the underlying supplier to the platform – exempt under article 136b). As a separate transaction, it will be treated for VAT purposes differently from the deemed supply. In other words, in addition to the deemed supply of services from the supplier to the platform, the latter will charge the former a facilitation fee, to which it will apply the applicable standard VAT rate. This rate will depend on where the underlying service is deemed to be supplied (ie where the underlying transaction takes place). As the underlying supplier is one of the Group of four, this VAT charged by the platform is likely to be non-deductible, implying considerable cost to the underlying supplier. This could create a competitive disadvantage between suppliers, ie between those using and not using a 'facilitating' platform. Precisely avoiding such disadvantages and establishing a level playing field was the purpose of this measure.

However, as it is currently proposed, it may have an undesirable effect and in fact may encourage underlying suppliers to VAT register, potentially being in a net VAT recovery situation and not raising any VAT, as the VAT rate on their inputs will generally be higher than the VAT rate on their outputs.

III. Single VAT Registration and the extension of the One Stop Shop

The International VAT Association understands the objective followed by the Commission to reduce the number of cases in which a business carrying out taxable transactions in a Member State where it is not established, may have to register for VAT purposes in that other Member State.

We would, however, like to express the following observations / reservations that we have identified in studying the proposed measures:

1) The fact that input VAT deduction will not be possible under the OSS mechanism is a significant obstacle to the development of the OSS for B2C domestic supplies of goods and will mitigate the impact of the proposed measure in respect to the reduction of compliance costs for businesses.

Businesses that are carrying out transactions included in this scheme (supplies after installation and assembly, supplies of goods on board means of transport, supplies of gas or electricity, especially in the e-mobility sector), most often incur local input VAT that they will not be able to

offset against the VAT collected on their sales. Having to claim this VAT back under the refund procedures foreseen in Directive 2008/9/EC and Directive 86/560/EEC will negatively affect their cash-flow positions: they can only claim VAT back on a quarterly basis and refund delays are obviously longer than the possibility to offset directly the input VAT.

In most cases, the process will also be more burdensome: in practice they will face more requests for supporting documentation from the authorities of the Member States of refund than what they would have to face if they were to be locally VAT registered.

2) We would also like the Commission to clarify what is to be understood by the "Mandatory application by Member States of the reverse charge mechanism" as per article 194 of Directive 2006/112/EC.

The wording used above could be understood to mean that both Member States and business will be required to apply the reverse charge mechanism for domestic transactions carried out by a business not established in the Member State where VAT is due.

Such a measure would negatively affect the cash flow position of businesses incurring local input VAT (which is very common) as they would not be able to offset this input VAT against the VAT collected on their sales. Furthermore, should those businesses be established in third countries not having a reciprocity agreement with the Member States where the transactions took place (purchase and supply), they would not be able to deduct the input VAT, hence a breach of the neutrality principle.

We nevertheless understand from the wording of the proposed version of article 194, *"the Member States shall allow that the taxable person liable for the payment of VAT is the person to whom the goods or services are supplied if that person is already identified in that Member State"*, that the reverse charge will be mandatory for Member States but that businesses will have the choice between the application of the reverse charge or a VAT registration in the Member State in which the supply of goods or services is deemed to take place in order to account for VAT on their supplies.

If our understanding is correct, the concern raised above with regards to the negative cash-flow impact is no longer an issue.

However, this second option raises the following concerns:

- If the decision to apply the reverse charge mechanism is at the sole discretion of the business not established in the Member State where VAT is due, the only indication for the client to identify that he has to self-assess the VAT in the country where he is identified is the "Reverse Charge" indication on the invoice issued by the supplier. In practice, we fear that many recipients of the goods or services supplied (by the non-established supplier), especially SMEs, will miss this obligation and thus incur a fiscal risk, both in terms of the VAT itself – see Luxury Trust Automobil

GmbH, case C-247/21, and in terms of penalties – eg in France the penalty is 5% of the VAT not declared – even if it is fully deductible - for not being compliant.

- We also understand that transactions underlying the reverse charge mechanism of article 194 will not have to be reported by the non-established supplier in the digital reporting system for intra-Community transactions (articles 262 to 271). We thus fear that the implementation of a reverse charge without any reporting declaration by the supplier may result in new schemes of missing trader fraud.

3) We are also concerned by the exclusion of capital goods from the scope of the special scheme for the transfers of own goods, and more specifically by the fact that in the absence of a common definition of capital goods among Member States, the exclusion of such goods will be dependent on the definition of capital goods in each Member State. The fact that the special scheme is foreseen in an “all or nothing” approach reinforces our concerns with regards to future differences in the definition of capital goods.

We hope that the above comments are helpful and remain at your disposal to discuss any item with you in relation to the proposed Directive, the Implementing Regulation and the Regulation on Administrative Cooperation.

On behalf of the Board of the International VAT Association.

Yours faithfully,

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