

VAT NEWS

VAT IN THE DIGITAL AGE - SIGNIFICANT CHANGES PROPOSED BY THE EUROPEAN COMMISSION

On 8 December the European Commission (“EC”) launched its long-awaited proposals to modernize the VAT rules within the EU collectively known as “VAT in the Digital Age package” (“ViDA”). Please see below a summary of the proposed changes together with some initial comments. To note, the ViDA proposals will now be discussed by the EU Member States and ultimately the ViDA proposals will require unanimous approval by all Member States to come into law. It is therefore expected that there will be a number of developments regarding ViDA during 2023 of which we will keep you updated.

The ViDA consists of three key parts, commonly referred to as the following:

- ▶ Digital reporting and E-invoicing;
- ▶ The Platform economy; and,
- ▶ The Single VAT registration.

I. Digital reporting and E-invoicing

Key takeaway - the introduction of e-invoicing and a two working day digital reporting requirement for all intra-Community B2B supplies with effect from 1 January 2028.

Rationale - the EU seeks to quickly identify and follow up on missing trader intra-Community (“MTIC”) VAT fraud to close the “VAT Gap” (i.e. lost or unreported VAT Revenue).

The main features of the proposed legislation are:

- ▶ Electronic invoices will be the default system for the issuing of all B2B intra-Community invoices.
- ▶ The deadline for issuing invoices for intra-Community supplies or for which the reverse charge rule applies (including the extended reverse charge rule - see below) is set to **two working days** after the chargeable event takes place. Additional data is to be included in the invoice as to ensure the use of the electronic invoice to automate the process of reporting.
- ▶ A new digital reporting requirement system (a new central VIES system) for intra-Community transactions will be set up, which will provide information on a transaction-by-transaction-basis. This information will feed into the risk analysis systems of the Member States to help them counter VAT fraud. The information for the digital reporting requirement system will have to be transmitted by taxable persons **within two working days** after the issuance of the invoice to their domestic Tax Authority. If the data is not transmitted or does not contain the correct information the exemption with credit/zero rating for intra-Community supplies cannot be applied.

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- ▶ The information collected by the Member States must be transmitted within one day after the collection to the central VIES system. The information remains available within the central VIES system for five years.
- ▶ Other features/points to note:
 - EU Member States may not impose any additional reporting obligations on the transactions that are covered by the digital reporting requirements. In case the reverse charge rule applies, a tax representative has been appointed as the one liable for payment of VAT and in case of intra-Community acquisitions the person liable for these transactions must submit the data.
 - It will no longer be possible to issue summary invoices.
 - Recapitulative statements will be abolished, but instead taxpayers that make intra-Community acquisitions of goods (i.e. the purchaser) must provide data to their local Tax Authority. It is currently optional for Member States to require the provision of this data.
 - Member States can opt to introduce or maintain a digital reporting system for other transactions. If they do they need to have a system in place that includes the features of the harmonized reporting system used for intra-Community supplies mentioned above.
 - Use of paper invoices is only permissible where EU Member States authorize the use of them. Paper invoices cannot be used for intra-Community supplies within scope of the digital reporting requirement system. The requirement for authorization of the recipient to issue an electronic invoice is no longer applicable and is to be deleted from the VAT Directive (the latter change will already apply as of 1 January 2024).
 - Taxable persons will always be allowed to issue electronic invoices according to the European Standard (the one adopted by the Commission Implementing Regulation 2017/1870) (this will apply as of 1 January 2024).
 - There is to be no pre-clearing of e-invoices (this will apply as of 1 January 2024, but an exception is made for special measures authorized under art. 395 VAT Directive already implemented at the time the directive enters into force. Therefore the e-invoicing system with clearance as used by Italy will in our view be allowed until 1 January 2028)

The rules are proposed to be applicable as of 1 January 2028 if not indicated otherwise above.

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Our initial observations: The EC has made a choice for e-invoicing and near real time reporting of intra-Community supplies, while harmonizing the rules for EU Member States that want to apply a similar system for domestic supplies. From a business perspective harmonization is to be welcomed, because of the current fragmentation of rules. Still the reporting requirements will put an additional burden on businesses whereas we also have doubts whether businesses will be able to issue invoices within two working days. In our view, the EC will have a difficult time achieving unanimity for this proposal, as it will have to convince both EU Member States that have had a digital reporting requirement system in place for years and those that do not yet have one (and may not want to have one) to accept the harmonized system.

II. The platform economy

Key takeaway - the introduction of a “deemed supplier” for VAT purposes for certain Platforms in the short-term accommodation rental and passenger transport sectors with effect from 1 January 2025.

Rationale - to ensure a level playing field from a VAT perspective for all supplies in the short-term accommodation rental and passenger transport sectors.

The main features of the proposed legislation are:

- ▶ A “deemed supplier” rule for Platforms is to be introduced for short-term accommodation rental and passenger transport in situations where the underlying supplier does not charge VAT, for example because it is a non-taxable person or it uses the exemption for small businesses.
- ▶ The platform will charge VAT on the underlying supply because it is deemed to make the supply to the customer (and to receive it from the supplier).
- ▶ The supply of the underlying supplier to the Platform shall be regarded as “exempt” without a right to deduct VAT.
- ▶ The supply by the Platform for which it is a “deemed supplier” will be taxed as outlined below and shall not affect the Platforms VAT deduction entitlement.

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► Other features/points to note:

- For situations where the Platform is not a “deemed supplier” for short-term accommodation rental or passenger transport services a record keeping obligation applies. Records must be retained for ten years both in the situation where the platform is a “deemed supplier” and in the situation it is not.
- The facilitation service provided by the Platform to the supplier operating on the Platform is to be regarded as an intermediary service where the recipient of the supply is a non-taxable person.
- Short-term accommodation rental is to be regarded as taxable if it is rented out for a maximum of 45 days with or without the provision of other ancillary services. Such a rental is to be regarded as having a similar function to the hotel sector.
- For supplies falling outside the “deemed supplier” model, the platform will need to keep records for both B2B and B2C supplies.

The rules are proposed to be applicable as of 1 January 2025.

***Our initial observations:** It was expected that “deeming” provisions were to be extended to cover transactions in the sharing economy. For now this is limited to two sectors. We however expect that with successful application of the “deeming” provision in these two sectors, the application of the “deeming” provision will be extended to cover other sectors in the future, as we currently see with “deeming” provision for e-commerce transactions. VAT taxation without the underlying supplier being entitled to deduction would seem to violate the neutrality principle. However, as there is effectively an opt-out for taxpayers by applying for a VAT identification number and waiving the small business exemption, this in our view should be acceptable. We expect the EC to have less difficulty in getting EU Member States to agree to the proposals here as they will get more revenue under the measures proposed.*

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III. Single VAT registration

Key takeaway - the extension of the reverse charge rule and the One Stop Shop (“OSS”) and the introduction of new rules for the transfer of own goods with effect from 1 January 2025.

Rationale - to reduce the VAT compliance cost and administrative burden of cross border EU trade.

The main features of the proposed legislation are:

- ▶ A mandatory reverse charge rule for supplies of goods and services for all intra-Community B2B supplies where:
 1. The supplier is not established in the Member State in which the VAT is due; and,
 2. The purchaser/recipient is VAT registered in that latter Member State.
- ▶ To note, the reverse charge rule does not apply where goods are supplied under a margin scheme.
- ▶ The OSS is extended to cover B2C-supplies of goods including domestic supplies, installation or assembly supplies, supply of goods on board of ships, aircrafts or trains and supply of gas, electricity, heating and cooling.
- ▶ Platforms will be the “deemed supplier” for all supplies of goods within the EU facilitated by them. Under the new provision they will be assumed to have received and supplied those goods. The extension includes B2C supplies of goods within the EU by EU-businesses operating on the platform and B2B supplies. Platforms that are established in one EU Member State and only facilitate domestic supplies in that Member State are not in scope of the “deeming provision”.
- ▶ Platforms will become the “deemed supplier” for transfer of own goods if they facilitate the transfer of those goods and those goods are not capital goods or goods in relation to which there is not a full entitlement to VAT deduction.
- ▶ In all cases where the Platform is a “deemed supplier”, records must be kept about the suppliers whose sales the Platform has facilitated. This includes the name, postal address and electronic address or website of the supplier, its VAT id or tax id number and its bank account. The idea behind this seems to be the reconciliation of the information with CESOP information (EU cross-border payments reporting).
- ▶ Use of the I-OSS will be mandatory for Platforms. The €150 threshold is to be maintained for now.

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- ▶ The transfer of own goods for which a Platform is not the “deemed supplier” can be reported under a new special OSS scheme for transfer of own goods. Capital goods and goods in relation to which there is not a full entitlement to VAT deduction cannot be reported under the scheme. The use of the scheme is optional. If the special scheme is used, the intra-Community acquisition of such goods shall be exempt with credit / zero rated in the Member State to which the goods are dispatched or transported. A record-keeping provision applies. The retention period is 5 years.
- ▶ Call-off stock arrangements that were introduced in 2020 will be abolished. EU Member States will not be allowed to use the arrangement after 31 December 2024. Goods however can continue to be supplied under the regime until 31 December 2025.
- ▶ Second-hand goods supplied under the margin schemes, works of arts, collector’s items and antiques will be subject to distance selling rules making them subject to VAT in the Member State of arrival of the goods. If works of art or antiques are not transported or dispatched or the transport starts and ends in the same EU Member state the supply will be subject to VAT where the customer is established, has its permanent address or usually resides.

The rules are proposed to be applicable as of 1 January 2025.

Our initial observations: extension of the reverse charge rule and the OSS will be welcomed by businesses that can avoid multiple VAT registrations with the related administrative and cost burdens. It should be noted that supplies covered by the new reverse charge rule will also be covered by the digital reporting requirements addressed above as of 1 January 2028. The extension of the “deeming provision” for Platforms in our view comes as a surprise and we have doubts about the proportionality of such a measure, in particular as regards B2B supplies and smaller Platforms. The success of the e-commerce changes in 2021 seem to be the reason for this extension. It is unfortunate that transfers of own goods still have to be declared, but the OSS does make this process easier. Businesses will need to make sure to comply with the rules to avoid penalties or exclusion from the scheme.

Concluding remark: As you will see from the above, the proposed rules are extremely complex and will take some time to fully digest. There is no doubt there will be much debate on the rules in 2023 and we at BDO very much look forward to contributing to this debate and keeping you updated on same.

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