

Position Paper

VAT in the Digital Age

3 April 2023

EU-Initiative “VAT in the Digital Age”

The European Commission proposed its VAT in the Digital Age package, consisting of three elements: modernising VAT reporting obligations, updating VAT rules for the platform economy, and improving and expanding the single VAT registration for businesses through the VAT One Stop Shop. Its main goal is to modernize the EU's Value Added Tax (VAT) system, make it work better for businesses and more resilient to fraud by embracing and promoting digitalization.

This EU-Initiative is of high importance for Bitkom and we welcome the opportunity to express our views on the proposal. We recognize that VAT has become an increasingly important source of revenue for EU Member States and is also an important EU own resource. The current EU VAT system is very complex and above all varies highly in the different EU Member States. Furthermore, the current VAT system still does not meet the needs of the age of digitization.

Therefore, Bitkom appreciates any initiative by the European Commission to simplify the current VAT system and to adapt the VAT system to the digital age. We are grateful for the opportunity to contribute to the initiative.

In short, we support the introduction of real-time digital reporting for VAT purposes. However, we also recommend the promotion of interoperability and standardization. In addition, the scope of reporting and deadlines should be critically reviewed. Furthermore, the potential of e-invoicing to reduce administrative burdens and stimulate economic growth in Europe should be enhanced. In principle, we support the Commission's approach to adapting the VAT system to the platform economy. However, both the implementation effort and the significant costs for platforms to collect the necessary data should be considered. We strongly support the transfer module introduced in the Single VAT ID workstream to report the cross-border transfer of own goods and the extension of the IOSS system to domestic B2C sales. We also welcome the EU harmonized reverse charge mechanism for domestic B2B sales. These three elements taken together will hugely simplify VAT registration obligations for businesses storing inventory cross border and selling from remote storage hubs.

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However, as part of long-term reforms, a solution should be found for the types of transactions excluded from the OSS.

Part 1 – Digital Reporting Requirements (DRR)

Bitkom supports the initiative to digitalize tax reporting in Europe. The proposal adds important elements that will contribute to this goal. We welcome the use of the existing European standard EN 16931 as a basis for the domestic introduction of e-invoicing by Member States as an important step forward. It is also the right signal to remove the need for Member States to apply for an exemption to introduce e-invoicing. We support the idea of a decentralized approach and hope that the initiative will lead to further process digitization in public and private organizations. However, we see room for improvement in the following areas:

Advancing interoperability and standardization

Although we support the idea of creating a tax reporting approach from 2028 that is compatible with the specifications of all European Union member states, we believe that the proposals must go much further to achieve sufficient levels of harmonization to make a significant difference to EU businesses, in particular by seeking to harmonize not only the invoice structure, but also 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 and methods should be considered for this purpose, including those associated with the PEPPOL network. Doing so would vastly simplify implementation for businesses and Member States, reduce costs and ensure compliance, while not doing so will be prohibitive for some businesses, thus exacerbating administrative borders within the Single Market.

Lead-time in relation to Member State's domestic regimes

While we appreciate that Member States wish to be free to implement domestic e-invoicing at their own discretion, without needing to seek a derogation from the Commission, we foresee a risk that some Member States could seek to rush e-invoicing mandates into place without appropriate lead-time or consultation with stakeholders. This is a grave risk to business continuity given the fundamental role that invoices play in every day commercial operations. It is vital that all parties (businesses, e-invoice service providers and Member States) have enough time to prepare for new e-invoicing rules. We therefore call on the Commission to add guardrails to the proposed legislation that mandate a period of lead time prior to imposition of new domestic e-

invoicing mandates, ideally specifying a minimum period of at least 12 months from the date of release of legislation and technical guidance.

Evaluating reporting scope and deadlines

The standardization of the content of invoices is generally welcomed, but some of the details, such as the quantity and nature of goods or services or the price per article could reveal confidential data, thus undermining the principle of data minimization. In certain business scenarios providing the actual and final IBAN and payment terms on an invoice is a disproportionate obstacle. In some cases, invoices are offset against other business transactions. For compliance reasons, the IBAN is sometimes taken from the creditor master data and not from the invoice. According to the dual control principle, invoice verification and creation of creditor master data must be performed by different team members within a company. Moreover, the 2-day deadlines for preparing and sending invoices (Art 222) seem unreasonably short, especially in the absence of efficient systems to support automation, which is the case for SMEs, i.e., it is likely that this timeline will not be achievable in many cases. Italy for example, where e-invoicing has already been introduced, has a 12-day deadline for reporting invoices.

For the reporting of sales invoices, a 2-day reporting period seems reasonable for the issuer. However, in the case of EU cross-border purchase invoices, the invoice-verification will regularly take longer than 2 days. This could therefore lead to many correction reports. In France foreign purchase invoices need to be reported within 10 to 20 days.

According to Art. 263 the buyer must fulfill his tax-reporting obligation after two days even if the seller did not send out any invoice. Currently, such a comparable audit plan exists only at the end of the year to make provisions for outstanding invoices. It seems disproportionate to require this every other day.

As a trade off for the real-time tax reporting the archiving period should be limited on an EU-Level to 5 years maximum instead of current period of 10 years.

Collective invoicing should also remain possible, the removal of this possibility will cause disruption for many businesses, impacting on established commercial practices and driving up costs for businesses who will have to issue and ingest many more invoices per day. The reasoning for this requirement from an anti-fraud perspective are unclear and should be revisited with appropriate business input.

Advocate for e-invoicing to drive economic growth

The system needs to bring advantages to public authorities and private organizations of all sizes. The implementation of digital reporting requirements should be accompanied by measures that reduce costs and administrative burden for businesses and create scale effects from electronic invoicing. For example, pre-filled VAT returns

could help small and medium-sized enterprises. The advantages of electronic invoice exchange should be proactively communicated through a communication campaign, as one-sided reporting obligations could be perceived as a burden. It is also important to support small and medium-sized enterprises in the adoption of e-invoicing so that the efficiency gains can have a positive impact on the backbone of Europe's economy.

A key point in this process is to ensure that the proposal works in practice for businesses and tax authorities. Thus, we are supportive of a plan to create a 'central VIES' system, addressing critical upgrades required to the functionality made available to taxpayers to check the validity of VAT numbers. The ability to perform such checks in an efficient and scalable way is essential tool businesses to manage risk. VAT number validity checks are also increasingly required under other legislations, such as DAC7. As such, demands on the VIES system have expanded way beyond its original remit, and it is no longer fit for purpose. VIES must urgently be upgraded to handle bulk validations, enhance the quality of information held within it, enable real-time updates and reduce downtime.

The EU KOM Proposal "VAT in the Digital Age" is a necessary step towards modernizing the European Union's VAT system. If designed properly, it could provide an impetus for the use of structured data to analyze and optimize value chains, for faster invoicing processes and VAT refunds and for strong gains in business automation in the European Union.

Part 2 – The VAT treatment of the platform economy

Extension of deemed supplier rules

The extension of the deemed supplier rules to all intracommunity deliveries via electronic interfaces is a very comprehensive extension. This will have a significant impact on marketplace operators. From the perspective of online retailers who sell their products via marketplaces, it is positive that this will eliminate registration obligations in other EU countries. However, it must be considered that even larger marketplaces regularly do not have the technical means and human resources to enforce these requirements. For SMEs, on the other hand, this is often more difficult to implement. Smaller marketplaces will not be able to implement the technical processes within the specified time.

The deemed supplier rules for electronic platforms and marketplaces in Article 14a VAT Directive are to be extended to all intra-community transfers as well as transfers of merchant's own goods from one EU country to another one. While the current (limited) deemed supplier regime is hailed as a success in fighting VAT fraud and improving VAT surveillance for tax administrations, it has caused major additional bureaucratic burdens and costs for platforms due to the responsibilities of promptly

collecting, recording and verifying information of suppliers and deliveries. Platforms are left with substantial issues in day-to-day operations of the deemed supplier rules. For example, the VAT liability of sales between sellers and consumers which the platform is effectively not part of remains extensive. It applies regardless of why the seller does not make his VAT payments. The platform is therefore also liable in the event of insolvency of the marketplace trader.

Additionally, recording and keeping all necessary information of these sales creates a major bookkeeping and archiving expense. Platforms effectively become the data storage of all sellers on its platform and the tax administration without any compensation.

The proposed expanded scope of deemed supplier rules including all supplies of goods within the EU facilitated by a platform, irrespective of where the underlying supplier is established and irrespective of the status of the purchaser, will exponentially increase these costs and issues at the sole expense of platforms. At the same time the platforms are not presented with any comparable relief for taking over all responsibilities of sellers.

The lack of proportionality is exasperated by the lack of added benefit of expanding the scope. While the deemed supplier rules for imports and sales of non-EU sellers have proven successful in increasing VAT compliance, it is doubtful that the same success can be expected when applying them to intra EU transactions. These sales are already subject to tax enforcement like any other domestic or European sales. It is also incomprehensible why this VAT would need to be ensured with an additional liability debtor just because the taxpayer acts via a platform. Also, purely from a local fiscal law point of view, it is already now possible to enforce outstanding merchant's tax liabilities directly from the used online platform (e.g., see sec. 308 of the German Fiscal Code).

It should furthermore be noted that the current deemed supplier rules are in its early years. While benefits on tax collection may have been measurable, the new system has not passed any tax audits in practice. Neither tax administrations nor platforms have any practical experience with this new set of rules and the resulting changes in data collection, storage or liability. Any extension of the deemed supplier rules should be postponed to thoroughly examine its experience in practice.

Another critical aspect is that the DAC7 as well as the CESOP directives conflict with the provisions of the ViDA regulation. The platforms are subject to a double declaration obligation via both regulations. On the one hand, platforms must identify which sales by partners of the platform are to be reported under DAC7. On the other hand, partner sales must be declared in the platform's own tax return via the ViDA directive, since the platform is made the tax debtor here. The question is where the additional information content lies on the part of the tax administration. From a VAT perspective, everything is already covered, as the platform reports the VAT. This would make DAC7 obsolete for VAT purposes.

Tax rate determination

According to the draft, marketplaces will be subject to tax on all supplies in the future. However, there are numerous traders selling goods in the EU that are subject to reduced tax rates. For some marketplaces (e.g., the UK), the standard tax rate will be applied. This is understandable from the marketplace operator's point of view, as there is a certain risk for them if reduced tax rates are applied but the relevant information about the products may not be available to determine the tax rate in the member states conclusively and with legal certainty.

Part 3 – Single VAT registration in the EU and IOSS

Significant simplification for businesses

We support that the EU Commission's proposal will significantly reduce the instances in which businesses will need to obtain VAT registrations outside their home country. The proposal achieves this by 1) the introduction of a transfer module to report the transfer of own goods, 2) extending the existing Union One Stop Shop system to domestic B2C supplies and 3) an EU harmonized reverse charge mechanism for B2B supplies.

Exclusion of individual transaction types

We understand that some transaction types remain excluded from the OSS as there is no consensus e.g., B2B, intracommunity deliveries and input tax. However, especially in online trade, export transactions are important. As there is no VAT due on exports (and thus no VAT risk for governments), we believe exports should be included in the OSS as well.

Regarding VAT refunds, we would suggest: To foresee that studies will be conducted, and solutions will be proposed by the Commission to solve this in the future. In the meantime, and in parallel, it could be worth to investigate possibilities to create a link between the OSS and the VAT refund portal to allow a more automated processing of VAT credits (e.g., upload of OSS data in the refund portal, simultaneous filing periods, etc.) for taxpayers registered in the OSS. This could be done at EU level or in a first step between voluntary Member States via bilateral agreements which will improve the conditions their businesses operate.

Current version of OSS

Especially regarding the technical implementation and in the required data format, several things were identified in the current version of the OSS that are difficult to implement in practice. According to the enabling basis of Article 47 i of the VAT Implementing Regulation, it is specified how the data format of the OSS message should look like. Here, in the course of the extended OSS procedure, the data format would have to be designed in such a way that it can be realistically implemented in practice. Like other member states, a test environment should be created by the tax administration where the taxpayer can upload his report and clarify whether the implementation has been carried out correctly.

Report of transfers

Marketplaces must report the transfer transactions and can now use the new special taxation procedure for this purpose (the transfer module). Further work is needed to define the value to be reported by the marketplace. The purchase prices must be stated as the basis for assessment. From an online retailer's point of view, it does not make sense to report the purchase prices to the marketplaces. From a marketplace perspective, it is critical to obtain the relevant information to be able to declare this accordingly.

IOSS

A new paragraph in Article 369m VAT Directive suggests making the use of the Import One Stop Shop (IOSS) mandatory for electronic interfaces facilitating certain distance sales of imported goods as deemed supplier.

Bitkom supports the idea of IOSS. However, again, the IOSS implementation costs are high. Making IOSS mandatory presents a significant investment decision that many platforms may reject and reconsider certain business channels - particularly due to the current fraud susceptibility. Currently the IOSS system has significant flaws that allow the misuse of IOSS numbers. Addressing these issues before making IOSS mandatory is essential.

Furthermore, mandatory IOSS should only be implemented in close alignment with necessary changes to the Union Customs Code (UCC). Once the technical issues with the use of IOSS have been alleviated, it should become mandatory not only for platforms but all B2C import sales into the EU (including sales not facilitated by platforms) in order to avoid competitive disadvantages of EU platforms vis à vis direct sellers and particularly non-EU direct sellers (and potentially global marketplaces), for whom it could otherwise be difficult to verify if they comply with EU tax and customs regulations.

If the main goal is to combat fraud and undervaluation, eliminating the 150 Euro customs threshold should be the priority. This would provide further simplification to

the VAT e-commerce package and avoid unwelcome surprises for both consumers and suppliers when orders under the 150 Euro threshold are merged into a single shipment, with a consequent VAT charge at the customs agent. Postal operators would also see their activity considerably simplified at the time of customs clearance. A removal of the 150 Euro threshold would ensure a level playing field.

Bitkom represents more than 2,000 companies of the digital economy. Through IT- and communication services alone, our members generate a domestic annual turnover of 190 billion Euros, including 50 billion Euros in exports. The members of Bitkom employ more than 2 million people in Germany. Among these members are 1,000 small and medium-sized businesses, over 500 startups and almost all global players. They offer a wide range of software technologies, IT-services, and telecommunications or internet services, produce hardware and consumer electronics, operate in the digital media sector or are in other ways affiliated with the digital economy. 80 percent of the members' headquarters are located in Germany with an additional 8 percent both in the EU and the USA, as well as 4 percent in other regions of the world. Bitkom promotes the digital transformation of the German economy, as well as of German society at large, enabling citizens to benefit from digitalisation. A strong European digital policy and a fully integrated digital single market are at the heart of Bitkom's concerns, as well as establishing Germany as a key driver of digital change in Europe and globally.