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30 May 2022

Camil-Cristian Largeanu
Policy Officer
European Commission
Directorate-General for Taxation and Customs Union

Via Email: Cristian.LARGEANU@ec.europa.eu

Re: Public consultation on VAT in the Digital Age

Dear Mr. Largeanu:

On behalf of Tax Executives Institute, Inc. ("TEI"), I am pleased to provide our additional comments on the public consultation on VAT in the Digital Age. For our earlier contributions, we kindly refer to the preliminary views submitted to the Commission electronically on 17 March in response to the Commission's "Call for evidence for an Impact Assessment," as well as the on-line questionnaire submitted on 4 May.

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.¹ Today, the organization has 57 chapters spread across Europe, North and South America, and Asia, and our nearly 7,000 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.

¹ 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).

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 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 bring a balanced and practical perspective to the Commission’s ongoing study of VAT in the digital age.

Digital reporting requirements, including e-invoicing

We strongly agree with the Commission that preventing fraud and reducing the existing VAT-gap are critical to the proper functioning of the EU VAT system. Businesses across the European Union generally understand and agree with the need for tax authorities to gather and process large amounts of business information and transactional data to address these concerns. The absence of a unified approach for doing so, however, is having materially adverse impacts on the EU VAT system and the internal market.

In addition to the traditional VAT reporting requirements, individual Member States have adopted a wide range of digital VAT reporting requirements (referred to as “Digital Mandates”), including:

- SAF-T following the OECD model as implemented by Portugal;
- SAF-T plus VAT reporting as implemented by Poland;
- Real-time transactional reporting implemented by Hungary and also by Spain as SII;
- E-invoicing as implemented by Italy;
- Complex VAT returns combined with control statements as implemented by the Czech Republic; and
- E-filing of VAT returns.

This list is not comprehensive and merely provides a snapshot that will certainly expand as Member States develop and implement new Digital Mandates.

As illustrated above, Member States have taken very different technological approaches, requiring businesses to develop and implement bespoke solutions for every Member State. This uneven patchwork of Digital Mandates adds significant complexity, administrative burden, and monetary costs to EU VAT compliance for companies with the size and financial wherewithal to make the required investments. Many smaller businesses with less sophisticated systems and processes lack the resources needed to comply with the various Digital Mandates and are left with the unfortunate and unacceptable options of limiting their sales territories or being noncompliant, negatively impacting the functioning of the EU internal market.

To address these concerns and adapt the EU VAT system to the digital age, we encourage the Commission to pursue a two-pronged approach. First, develop and implement a single, EU-wide digital mandate (the “Unified Digital Mandate”) providing:

- unified rules for gathering transactional information,
- a single method for sharing the information amongst EU tax authorities, and
- a single reporting environment for businesses across all Member States.

Second, the Commission should develop a single, EU-wide agreement that provides an exhaustive list of transactional information and other data points that must be reported (the “Unified Disclosure Agreement”). The Unified Disclosure Agreement could be developed independently of a Unified Digital Mandate and would serve two important purposes:

1. it would greatly simplify the review, comparison, and sharing activities among the various tax authorities because they would all be using the same transactional information independent of the Unified Digital Mandate; and
2. it would allow businesses to collect and report the same data across all Members States, thereby simplifying internal processes, allowing for more stringent quality control, and improving the quality of data reported by businesses.

TEI is well-suited to assist the Commission study and develop a Unified Digital Mandate and Unified Disclosure Agreement, and we would be very pleased to invest the time and effort to do so, as it would vastly improve the EU VAT system and prepare it for the digital future. We, however, also recognize the challenges of such an endeavor. If finding common agreement appears too ambitious of an undertaking, we urge the Commission, at a minimum, to coordinate the timing of the implementation of new Digital Mandates in the Member States. A sequential implementation across the European Union would ease the administrative and IT burden for businesses and would ensure smoother implementation and more timely compliance.

Irrespective of the type of digital mandate the Commission ultimately adopts, the following design criteria should be applied:

- (a) **Efficient enabling of automation** for both tax administrators and companies, while respecting proportionality between administrative burden and safeguarding VAT revenues;
- (b) **Respect of existing business processes** and generally used IT system designs to the greatest extent possible, thereby allowing VAT systems to be built upon existing systems;
- (c) **Achieving efficiency through stakeholder (i.e., business) collaboration** from the technology design all the way towards implementation;

- (d) **Standardization across the European Union**, creating one system/process that can be used in every country and for all transactions (goods, services, domestic, intra-community, etc.);
- (e) **Closed list of data-points across the European Union**, ensuring availability of the required information and allowing for more flexibility while limiting administrative costs;
- (f) **Allowing for corrections** based on the universal acknowledgment that reporting solutions are dependent on master-data where errors can inadvertently be made but, upon detection, should allow for an easy and efficient correction process;
- (g) **Preserving flexibility** with companies deciding on the type of solution (e.g., e-invoicing, real time reporting, or SAF-T) to be applied, building on their internal systems and processes;
- (h) **Guaranteeing data-security** when requiring the transfer of personal and business confidential information outside a company-controlled IT environment;
- (i) **Respecting implementation time** required when translating reporting obligations into IT requirements and actual implementation.

VAT treatment of the platform economy

The current rules around the VAT treatment of the platform economy are highly complex and subject to different interpretations. This is particularly evident in business-to-consumer (“B2C”) e-commerce sales of goods in combination with the deemed supplier rules introduced as of 1 July 2021 (the Deemed Supplier Rules).² Under the Deemed Supplier Rules, marketplaces may become the deemed supplier when they facilitate certain cross-border B2C transactions of their third-party sellers; and, as a result, they become liable to collect, report, and remit the VAT due from the consumer. Some of the key challenges businesses face when implementing these rules are addressed below.

1. The “ship-from” location and consignment value as determining factors for a platform becoming the deemed seller

When a platform is involved in a transaction of goods, it is critical to know whether the goods are shipped from outside the European Union. In such cases, the deemed supplier rules only apply if the intrinsic value exceeds € 150.

² Article 14a of the EU VAT Directive.

The ship-from location generally depends on which warehouse has the requested goods, and, at the time of sale, the underlying seller or platform may not have this information. Thus, at the time of sale, the platform might not know whether it is the deemed seller liable to account for the VAT.

In addition, it is often challenging for the platform to obtain the consignment information (especially the intrinsic value as it can be different than the sales value) from the underlying seller prior to dispatch. In these cases, the platform has to make a preliminary assumption as to the VAT treatment at the time of sale, report VAT to the appropriate Member State, and, if necessary, report a correction of the initial VAT treatment once the consignment information has been obtained. This process is inefficient and difficult to implement from both IT systems and VAT reporting perspectives.

Rather than relying on the consignment value for VAT determination purposes, we recommend that the VAT treatment be based upon data which is readily available to the marketplace, such as the total order value and/or the value of individual order lines.

2. Different deemed supplier scenarios depending on whether the underlying seller is or is not established in the European Union

For shipments made within the European Union, the deemed supplier rules only apply when the underlying seller is not established within the European Union. Unfortunately, the information required to make this determination is not currently provided in the VAT Information Exchange System (“VIES”), and platforms must instead rely on information provided by the underlying seller. We recommend adding this information to the VIES, and, until doing so, not holding platforms accountable for incorrect information provided by their underlying sellers.

3. Lack of clarity on how the deemed supplier rule applies in the case where the seller is considered not to be a taxable person

It is not infrequent for marketplaces such as eBay and Depop to facilitate sales by sellers that are not taxable persons. While the Commission’s explanatory memorandum does provide presumptions platforms can make with regards to the taxable status of the seller,³ it fails to explain what happens if the seller genuinely demonstrates that they are not a taxable person. We urge the Commission to address this situation in an explanatory note.

Single VAT Registration in the European Union

In relation to improvements around the Import One-Stop Shop (IOSS) and One-Stop Shop (OSS), additional time working within the existing system is required before operational shortcomings can be

³ Explanatory Notes on VAT E-commerce rules as published by the European Commission in September 2020.

more accurately identified and the right measures for improvement proposed. We are nevertheless able to provide the following early observations:

- The IOSS and OSS currently require separate registrations using different forms and also require the filing of different returns. Combining the two registrations into a single return would ease the compliance burden, especially for smaller businesses.
- Extending the OSS to cover sales of domestic supplies would further reduce the administrative burden for businesses that sell goods online in their own name, as well as for platforms characterized as deemed sellers under the Deemed Supplier Rules. We therefore encourage the Commission to consider a further expansion of the OSS.
- Under the IOSS and OSS, local VAT which is incurred can only be recovered through the refund mechanism provided in article 171 of the EU VAT Directive, as opposed to being offset against output tax on a local VAT return. This limitation causes businesses using the IOSS and OSS to have a cash-flow disadvantage, as compared to businesses with local VAT registrations. We encourage the Commission to remove this limitation and allow vendors applying the IOSS and OSS to recover their VAT on EU purchases directly on their VAT returns.

Thank you for this opportunity to provide additional input in the public consultation on VAT in the Digital Age. These comments were prepared by TEI's European Indirect Tax Committee, whose chair is Anna Ogenblad and whose legal staff liaison is Patrick Evans. We welcome the opportunity to contribute to the discussion as this initiative moves forward. To this end, please do not hesitate to contact Ms. Ogenblad at annaogenblad@gmail.com or Mr. Evans at pevans@tei.org.

Yours faithfully,

TAX EXECUTIVES INSTITUTE, INC.



Wayne G. Monfries
Acting International President

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