



VAT IN THE DIGITAL AGE

Issued 30 March 2023

ICAEW welcomes the opportunity to comment on the VAT in the Digital Age proposals published by the European Commission on 8 December 2022, a copy of which is available from this [link](#).

ICAEW is listed in the EU Transparency Register (ID number: 7719382720-34).

For questions on this representation please contact our Tax Faculty team at taxfac@icaew.com quoting REP 28/23.

This response of 27 March 2023 has been prepared by the ICAEW Tax Faculty. Internationally recognised as a source of expertise, the ICAEW Tax Faculty is a leading authority on taxation and is the voice of tax for ICAEW. It is responsible for making all submissions to tax authorities on behalf of ICAEW, drawing upon the knowledge and experience of ICAEW's membership. The Tax Faculty's work is directly supported by over 130 active members, many of them well-known names in the tax world, who work across the complete spectrum of tax, both in practice and in business. ICAEW Tax Faculty's Ten Tenets for a Better Tax System, by which we benchmark the tax system and changes to it, are summarised in Appendix 1.

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ICAEW

Chartered Accountants' Hall Moorgate Place London EC2R 6EA UK
icaew.com

REPRESENTATION

1. Thank you for this opportunity to provide comments on the Commission's proposals for a directive, a regulation and an implementing regulation with respect to the introduction of the Commission's proposals on 'VAT in the Digital Age', which will cover:
 - a) VAT reporting obligations and e-invoicing
 - b) VAT treatment of the platform economy
 - c) Single (place of) EU VAT registration.

VAT reporting obligations and e-invoicing

2. A number of our members, operating through affiliates in the EU, have expressed concern as to the costs involved in moving from a Member State's existing e-invoicing obligations or Digital Reporting Requirements (DRR) (some of which are only now being introduced, eg France, Germany, Belgium) to the new EU wide system. For the EU wide system to be effective and to achieve the goal of substantially reducing levels of VAT fraud, our members have suggested that the lead-time for the convergence of national systems to the EU system should be extended beyond 2028.
3. The EU system will not, we understand, have a pre-clearance function built in, which is likely to lead to disputes with customers not accepting electronic invoices, or only processing them after a significant delay. With pre-clearance through the Member State of despatch, ie establishment or registration national system, together with the Member State of arrival's system, this could ensure lower rejection rates and improved acceptance of electronic invoices, reducing potentially onerous levels of manual reconciliations.
4. The proposals contain a provision to remove the ability to issue summary invoices for any type of supply, goods/services and for both domestic and intra-EU. This provision (the removal of summary invoices) is likely to cause difficulty where there are multiple operations between the same supplier and customer each period – each operation being required to be invoiced separately and the invoice issued (for intra-EU supplies) within two days of the supply taking place. We recommend retaining the option to use summary invoicing for 'domestic' supplies where VAT is charged (ie excluding transactions falling within the scope of article 194)?

VAT treatment of the platform economy

Definition of Platform

5. Currently, there is no definition of 'platform'. The draft legislation (article 28a in the Directive) merely refers to an 'electronic interface such as a platform, portal or similar means'.
6. To ensure the legislative proposals provide certainty to businesses, we would recommend that the definition of a 'platform facilitating' a supply within the scope of article 28a is further tightened within the Implementing Regulation article 9a.

Interaction with Tour Operators' Margin Scheme

7. The proposals confirm that platforms making a deemed supply under the new rules will not be allowed to account for VAT within the Tour Operators' Margin Scheme (TOMS).
8. However, at present, based on CJEU case law, a platform, which deals with customers in its own name, making a supply of short-term accommodation rental or passenger transport, may fall within TOMS.
9. If this difference remains, it could create an incentive for a platform to change its business model to be deemed to be acting in its own name (and falling outside any of the provisions of the proposed Article 9b.1 of the Implementing Regulation) when acting in relation to, for example, an underlying supplier applying the special scheme for small enterprises. In this case, VAT would only be due on the platform's margin in its Member state of establishment.

Underlying Supplier

10. Under the proposals, the platform will be deemed to supply the underlying service, and therefore be responsible for the payment of VAT, when:
 - a) it facilitates a supply of short-term accommodation rental or passenger transport; and
 - b) the underlying service provider falls within one of the categories of business set out in article 28a.
11. Our understanding is that this is intended to make platforms liable where the underlying supplier is genuinely not liable to pay VAT under local legislation.
12. Do the proposals also make the platform liable where the underlying supplier is liable to pay VAT but non-compliant and does not provide a valid VAT number to the platform (see article 9c of the Implementing Regulations)? If so, should the liability to account for the VAT due remain with the underlying supplier in this case and not with the platform?
13. On the 'facilitation services' the new article 46a (Directive) makes it clear that these services are not to be treated as 'electronically supplied services' within the meaning of article 58 and Annex II of the Directive. The platform will therefore have to apply the VAT to this service determined in accordance with the place of supply of the underlying service. As to be within the scope of article 28a the underlying supplier must be one of the businesses listed in that article ie the 'Group of Four', then any VAT charged by the platform is likely to be non-deductible, implying a cost to the underlying supplier.
14. The effect could be to persuade the underlying supplier to register for VAT (and therefore fall outside the scope of article 28a) and claim back any input tax incurred in providing the underlying supply. In the case of accommodation, this could exceed the tax due on its supplies due to the differential VAT rates often applied to accommodation in the hotel sector. For tax administrations, this could significantly increase the administrative burden.

Single (place of) EU VAT registration

15. The Commission's proposals on the Single (place of) EU VAT registration are very welcome as the proposals will go a long way towards simplifying the VAT reporting and filing obligations for businesses not established within the EU. Our members have however noted that the proposals to extend the One Stop Shop (OSS) and to render article 194 as a compulsory provision in the Directive will not allow non-established businesses to offset any locally incurred VAT against any VAT collected in relation to the locally made supplies – creating negative cashflow effects for businesses.
16. We recommend that this should be considered further and that the OSS is extended to being both a payment and recovery mechanism.

SMEs

17. While we appreciate that the Commission has carried out an impact assessment of the proposals, we are concerned that insufficient consideration is given, in the proposals, to small and very small businesses, for example, implementation lead-times, reporting obligations and issuing invoices within very short time frames etc. Small businesses are likely to bear a far greater relative cost in relation to the implementation and on-going compliance with these proposals than large multi-national entities.
18. ICAEW hopes that the above comments are helpful and is available to discuss any item with the Commission in relation to the proposed Directive, the Implementing Regulation and the Regulation on Administrative Cooperation.

APPENDIX 1

ICAEW TAX FACULTY'S TEN TENETS FOR A BETTER TAX SYSTEM

The tax system should be:

1. Statutory: tax legislation should be enacted by statute and subject to proper democratic scrutiny by Parliament.
2. Certain: in virtually all circumstances the application of the tax rules should be certain. It should not normally be necessary for anyone to resort to the courts in order to resolve how the rules operate in relation to his or her tax affairs.
3. Simple: the tax rules should aim to be simple, understandable and clear in their objectives.
4. Easy to collect and to calculate: a person's tax liability should be easy to calculate and straightforward and cheap to collect.
5. Properly targeted: when anti-avoidance legislation is passed, due regard should be had to maintaining the simplicity and certainty of the tax system by targeting it to close specific loopholes.
6. Constant: Changes to the underlying rules should be kept to a minimum. There should be a justifiable economic and/or social basis for any change to the tax rules and this justification should be made public and the underlying policy made clear.
7. Subject to proper consultation: other than in exceptional circumstances, the Government should allow adequate time for both the drafting of tax legislation and full consultation on it.
8. Regularly reviewed: the tax rules should be subject to a regular public review to determine their continuing relevance and whether their original justification has been realised. If a tax rule is no longer relevant, then it should be repealed.
9. Fair and reasonable: the revenue authorities have a duty to exercise their powers reasonably. There should be a right of appeal to an independent tribunal against all their decisions.
10. Competitive: tax rules and rates should be framed so as to encourage investment, capital and trade in and with the UK.

These are explained in more detail in our discussion document published in October 1999 as TAXGUIDE 4/99 (see <https://goo.gl/x6UjJ5>).