Ecommerce Europe's feedback on the VAT in the Digital Age proposal

Ecommerce Europe welcomes the opportunity to provide feedback on the "VAT in the Digital Age" proposal[1] of the European Commission, which is a big step forward to delivering a simplified and modernised VAT system in the EU. Our paper addresses first and foremost the pillar on Single VAT Registration in the EU[2] as this will be a key simplifier for businesses operating in the EU. However, alongside the comments on the changes to the Union One Stop Shop (UOSS) and the Import One Stop Shop (IOSS), this paper will also touch upon the main changes proposed by the Platform economy and Digital reporting requirements pillars.

As technical discussions progress, we encourage the EU Commission and EU countries to consider a phased approach to adopt the proposal. To strengthen the EU Single Market and remove blockers for cross-border trade, the most urgent action is needed to ensure the implementation of the single VAT registration concept, including the introduction of the transfer module and the expansion of the Union One Stop Shop scheme.

1. Feedback concerning the Single VAT Registration in the EU

(a) Feedback on the Union One Stop Shop

Ecommerce Europe warmly welcomes the extension of the UOSS to cross border movement of own inventory across the EU and to domestic sales from distribution hubs by a business that is not established in that country. **Ecommerce Europe encourages Member States to reach consensus on this pillar**, as it would be a pivotal tool to reduce the need for costly, time-consuming and often prohibitive need for businesses wanting to sell products across the EU to maintain multiple VAT registrations in different Member States. Amendments to the text of the proposal should be in line with the main objective of reducing the VAT administrative burden for businesses. To achieve this, it is key that there is no (or very limited) negative VAT cash flow impact when businesses opt to report through the UOSS and the transfer module. Any newly introduced obligations for businesses and for electronic interfaces facilitating the transfer and/or the sale of goods should be proportional and ensure a level playing field.

The Union One Stop Shop (in place since 1 July 2021) is a great step forward in simplifying VAT for businesses as it provides a great base from which to build an EU single VAT registration. Key to this is the proposed expansion such that taxpayers can use it for use cases that were not included in the 1 July 2021's VAT E-commerce Package.

In particular, in line with our existing campaign on this topic (see https://simplify-vat.eu/), we welcome (i) the introduction of the transfer module for the reporting of intra-EU transfers of own inventory, (ii) the extension of the UOSS to domestic B2C sales and (iii) the introduction of an EU harmonized reverse charge

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[1] Proposal for a directive as regards VAT rules for the digital age – COM(2022) 701

[2] Proposal for an implementing regulation as regards information requirements for certain VAT schemes – COM(2022) 704

mechanism for domestic B2B sales. These three components together remove the need for businesses storing and selling across the EU to VAT register in multiple EU countries.

An extremely positive reform is the introduction of the transfer module for the reporting of **transfers of own goods**, which were found to be the most crucial area to solve for in the VAT in the Digital Age Impact Assessment study. This is an important use case for a wide variety of industries, *i.e.* the benefits are not limited to e-commerce. A well-designed system that includes cross-border transfers of own goods would benefit lessors of moveable property, customers of toll manufacturers, retailers & wholesalers using remote fulfilment, consignment stock sellers, e-mobility providers, agricultural producers, touring events companies, businesses engaged in sale-or-return contracts and many more.

We also welcome the introduction of a harmonised **reverse charge mechanism** for B2B supplies from remote inventory where the supplier is not established for VAT purposes in the Member States in which VAT is due. This solution, to prevent suppliers' registration obligations as a result of B2B sales, is key as businesses often make supplies to both B2B and B2C customers, and the EU single VAT ID simplification for B2C sales would be undermined if there is no VAT registration relief for B2B sales. From our understanding, the introduction of this reverse charge mechanism is mandatory for Member States, but still optional for suppliers.

To conclude, the expansion of the Union One Stop Shop ('UOSS'), the introduction of a transfer module and the EU harmonised reverse charge for B2B domestic sales allowing businesses to use one single VAT registration to report transfers of own inventory to locations across the EU, as well as the onward sales in those locations, is a key reform for businesses. Centralising and standardising VAT registration and reporting requirements in this manner is a win-win approach where the European Commission can unlock major benefits for governments, tax authorities, businesses, consumers and the environment:

- Tax authorities will benefit from increased compliance, facilitated reporting and auditing of cross-border goods movements and increased on-shoring of goods and services trade.
- National governments will benefit from a more competitive EU market and increased trade, leading to additional tax revenues.
- Businesses, particularly SMEs, will gain greater access to intra-EU trade, be more competitive and incur fewer tax compliance fees.
- Customers will be able to access more competitive prices, faster delivery and a greater choice of goods.
- The environmental impact of EU consumption will be reduced. For example, a regime covering pan-EU inventory storage in e-commerce would encourage bulk inventory placements close to customers, which cause considerably lower CO_2 emissions than orders individually shipped for long distances.
- Customs authorities will have a reduced workload as bulk shipments from third countries for onward distribution within the EU will be encouraged. This will reduce the current influx of individual packet shipments from third countries.

Ecommerce Europe's recommendations

- Ecommerce Europe strongly supports the introduction of the transfer module, the extension of the UOSS and the EU harmonized reverse charge mechanism for B2B domestic sales. We encourage

EU countries to prioiritise negotiations on this part of the proposal, given the significant simplification potential for businesses it holds.

- Taking account of the massive and consistent changes and improvements for the e-commerce sector in Europe that the VAT in the Digital Age proposal puts forward, **there are a number of areas in the proposal that would merit further clarification to avoid any legal uncertainty**.

Taking stock of the implementation of the different UOSS schemes in the EU Member States throughout 2021 and 2022, Ecommerce Europe would also like to call on the European Commission to provide for **Member States' technical solutions and guidance for OSS returns**. In this regard, the Member States have sometimes failed to provide a file upload / technical solution for the OSS returns.

Therefore, the following measures should be taken into consideration:

- Make sufficient **technical specifications** available to businesses to ensure that OSS returns do not differ from country to country;
- Possibility for a **file upload** to submit the OSS return (this file upload shall include all relevant transaction types and also corrections of previous OSS returns);
- Recommendations for Member States to foresee si**mplified processes in case only tax-exempt supplies would lead to a registration obligation**.

With regard to the proposed B2C extensions, Ecommerce Europe would like to raise some concerns regarding the inclusion of second-hand goods in the UOSS scheme:

- First of all, a need for guidance and clear interpretation lays in the **link between second-hand products and the margin scheme of a deemed supplier**. From our understanding, the proposed legislation would consider platforms as deemed suppliers for sales of goods subject to marginal VAT. However, it would be impossible for a marketplace to know the margin realised by a third-party seller, as the marketplace does not have visibility into where, how or at what price sellers get their inventory supply. Furthermore, the margin is a commercially sensible data, which, even if on a purely declarative basis, sellers may be reluctant to share with the marketplaces. Therefore, this measure would not lead to channel neutrality as it would mean that second-hand products sold through marketplaces could virtually never benefit from the marginal VAT scheme, creating unfair competition with identical products sold through other channels. Overall, this measure would be detrimental to the circular economy, as it would increase prices paid by consumers for refurbished and second-hand goods when sold via marketplaces.

- Secondly, while the European Committee for Standardisation (CEN) has accepted a 5th mandate to further develop and where necessary revise or enhance existing technical and message related standards for the delivery of postal items (postal, express and parcel consignments containing goods and merchandise), this work will need 48 months. Parallel, the necessary European Norms (*e.g.* e-Invoicing; the issuing of consignments codes by authorised entities; the harmonisation of electronic data to be linked to B2C supplies) need to be developed and enhanced, including their interdependency and accessibility to authorities. Businesses need time to implement the changes and to comply to the new legislation and regulation, as the digitalisation will need investment, new processes and upgrading: starting from goods related warehouse management to interconnectivity

when applying unique consignment IDs issued by authenticated logistic providers, to e-Invoicing on B2C supply level, and the related VAT and returns management.

(b) Feedback on the Import One Stop Shop

Together with the extension of the UOSS, the VAT in the Digital Age proposal includes an extension of the deemed supplier regime and a mandatory IOSS scheme for marketplaces facilitating distance sales of imported goods with an intrinsic value of up to €150. We support the idea of a strengthened IOSS that is reliant and fraud-proof. However, we would like to point out to some areas which would require a **careful assessment of the impact and possible compliance costs for businesses**.

As the mandatory regime might come with implementation costs and increased administrative burden, Ecommerce Europe would like to underline that, when making the IOSS obligatory for marketplaces, it should also be a matter of priority to **strengthen the functioning and performance of the IOSS system** and to make sure that it first works seamlessly and safely for all. In particular:

- The system should be **resistant to misuses of the IOSS number**. The VAT in the Digital Age proposal grants customs authorities access to the information about IOSS registered businesses. However, this measure does not holistically solve the problem because consistent changes should respectively be made to the customs procedures and IT systems. Whilst it has not been identified as a significant issue to date, businesses who make use of the IOSS are still acutely aware that IOSS numbers can be misused by businesses intentionally or by mistake. As taxpayers' IOSS accounting begins to be audited, this could lead ultimately to an administrative and possibly legal burden on the faithful IOSS registrant.

- **Inconsistencies between national customs authorities should be removed**, as businesses are often confronted with a non-unified approach by the customs authorities of different Member States in terms of the interpretation and practical application of customs legislation. Combined with a highly diverging risk perception across Member States, this results in:
  o Very significant differences in pre-clearance and clearance processes as well as average lead times and inspection rates across Member States and, also, among various customs offices within single Member States.
  o A tariff classification of a good approved in one Member State is challenged by another Member State. HS-code, and their leading role when describing and classifying goods need further harmonisation.

- Remaining **misalignments between VAT and customs legislation should be addressed**. For example, the scope of VAT and the new customs competent office rule under Article 212(4) of the UCC/IA has led to non-IOSS eligible shipments under €150 (*e.g.*, B2B excisable products) requiring direct clearance in the final delivery country. This has led to capability issues with brokers and customs logistics partners. Alignment in the area of low value consignments of B2B and B2C supplies is highly recommended.

- **Pre-existing issues, such as double taxation, should be solved**. In the past, the customs' IT systems in several key import landing counties have not been ready to recognise IOSS numbers

in H7 customs declarations, causing double taxation for shipments declared under an H7 customs declaration even though these shipments were IOSS-eligible. Ecommerce Europe appreciate the progress made by the European Commission to implement a mechanism to recover double taxation. However, this is an interim solution only and comes with customer experience disadvantages and additional administrative burden for taxpayers. It is therefore crucial that the root causes of double taxation are addressed. In addition, shipments containing **Prohibition & Restriction (P&R) goods** are currently also triggering double VAT taxation as an H1 customs declaration is required for these, and customs authorities have been unable to recognise IOSS numbers in this type of declaration.

Ecommerce Europe's recommendations

In light of the above, Ecommerce Europe would like to recommend the EU legislators to undertake the following actions on short and medium term:

- Introduce a **testing environment** that enables merchants to test the OSS returns upfront.

- With regards to the P&R taxation, further **harmonisation of customs systems and processes** is urgently needed. The P&R lists vary across Member States and trigger complex documentation requirements for businesses. In addition, these lists are not transparently available in each Member State, making it very difficult for businesses to anticipate the customs treatment at the EU border. We recommend the legislators to address this issue by **increasing transparency of the P&R lists[3]**, while working towards an EU harmonised P&R list on longer term.

- Improve the **green lane status of IOSS-eligible shipments** through supporting national customs to enable their IT systems to handle IOSS for all customs declaration types, especially H7 and including H1, in order to eliminate the risk double taxation of shipments.

- Strengthen the **security of the IOSS ID** and end-to-end integrity of the existing IOSS programme. We urge the Commission to consult with the industry very early on to ensure that solutions are adapted to e-commerce reality and practically feasible for all stakeholders.

- Ecommerce Europe would like to point out that, despite the improvements and simplifications measures already provided by the VAT E-commerce Package and the draft VAT in the Digital Age, a constraint for businesses is the **complexity of operating multiple OSS registrations**. In fact, there are currently three separate registrations for their EU VAT obligations: IOSS, UOSS and non-UOSS. This makes the reporting complex, and we believe that there is an opportunity to consolidate the schemes so that all supplies (imported goods, services and domestic sales) can be reported via one single portal.

- Finally, the mandatory IOSS scheme and the parallel extension of the deemed supplier regime do not cover businesses which sell their goods to EU consumers in a direct-to-consumer model, without using digital platforms services. The **exclusion of this business from the scope** of the

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[3] An option would be to allow access to those lists maintained by the EU MS within the UPU environment already done – e.g. via the current access regime under UPU treaties and regulations open to Wider Postal Sector Players

proposed legislation eliminates key entities that sell the goods to consumers in low-value shipments.

As advocated already in previous occasions, Ecommerce Europe calls for a thorough evaluation of the pros and cons of making the IOSS mandatory, and would like to reiterate that **the changes related to the IOSS scheme should be supported by a realistically wider implementation timeline**. The European Commission has in fact proposed to apply the UOSS extension regime on 1 January 2025. Conscious of the ongoing negotiations within the Council of the EU and the timeframe required by the Member States to find an ultimate agreement, Ecommerce Europe would like to propose a **longer period allowing the various actors time enough to adapt to the new legislation**, in order to prevent fragmented compliance and implementation that would ultimately lead to more administrative burdens for companies, especially SMEs, and for platforms facilitating B2C sales, especially smaller marketplaces.

2. Feedback concerning the Extension of Deemed Supplier Rules

(a) General feedback

As a general observation, Ecommerce Europe welcomes the initiatives adopted by the European Commission to streamline and improve the EU regulatory framework in the platform economy. However, we would like to raise concerns regarding how the provisions included in this pillar would interplay with the existing legislative framework. We fear that the introduction of another set of rules – alongside the proposal for a Short-term rental Regulation[4], Passenger Transport, DAC7, the Digital Services Act, and others – needs a careful consideration of the pros and cons. It is important to ensure that the new rules are proportionate, balanced and enforceable, and are followed by a smooth implementation in terms of legal clarity and harmonisation.

With a specific regard to the extension of the deemed supplier regime, Ecommerce Europe believes that the pros and cons need to be considered, in light of the concerns that have been pointed out below:

- The deemed supplier rules for electronic platforms and marketplaces in Article 14a VAT Directive are to be extended to transfers of merchant's own goods from one EU country to another one and onward sales. 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. In practice platforms are left with substantial issues in day-to-day operations of the deemed supplier rules.

- 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 legal and accounting costs and issues at the sole expense of platforms**. The platforms registering to OSS system need to apply for a refund of overpaid VAT, which in practice will affect their cash flow due to long

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[4] Regulation on data collection and sharing relating to short-term accommodation rental services – COM(2022) 571

VAT refund deadlines, tax audits verifying justification of these refunds. At the same time the platforms are not presented with any comparable relief for taking over all responsibilities of sellers.

- While the extension of the rules may seem natural, the **lack of proportionality** is exasperated by the absence 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 questioned 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).

- Moreover, with the implementation of DAC7 reporting obligations, tax authorities within the EU already have all data on the platform transactions readily available. **Avoiding duplication of regulations, technologies and data sharing** in this respect is key to keeping any platform economy reforms as simple as possible for European businesses.

- On the contrary, **enforcement deficits remain relating to platform operators based in third countries**, since both the enforcement of the transmission of the data to be recorded to the tax authorities and the enforcement of liability notices are likely to be difficult or impossible, meaning that the large platforms operated outside the EU are effectively not prosecuted. As a consequence, new obligations would create a competitive disadvantage for EU platforms and sellers compare to non-EU ones.

- It should be acknowledged 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.

- In any case, the extended deemed reseller provision, if maintained, should apply equally across all marketplaces, regardless of their place of establishment in order to preserve a level playing field.

(b) Feedback specific to the STR sector

With a specific regard to the short-term accommodation rental sector, Ecommerce Europe supports the European Commission's work towards further harmonization of the VAT treatment of STRs across the Union. However, we would also like to underline some concerns and areas of improvement for this sector:

- It is of extreme importance to **first see the results of the STR Regulation and DAC7 at EU level before moving forward**, as it is likely that they will have the effect of limiting supply (at least in the cities) and at the same time ensuring that income tax and VAT (where applicable) will be accounted for by providers - thus likely driving up prices.

- Furthermore, the proposed rules might lead to **lack of channel neutrality** and create differences in VAT treatment as well as an **unlevel playing field between players in the STR sector**. Should

this proposal come into effect as is, the same rules will not apply to the same accommodation being offered by non-VAT registered providers via platforms (subject to VAT) compared to 'off-line' providers (not subject to VAT) or own website offerings by search engines (not subject to VAT), thus creating new distortions.

- Furthermore, the **new rules would violate the important principle of VAT neutrality** since homeowners would not be able to deduct VAT, while on the other hand their rents (via platforms) would be subject to output VAT. This would allegedly result in increased rental costs in EU.

- This is all the more concerning considering the **inherent difficulty to define, within the supply chain/platform ecosystem, which platform should be the deemed supplier**. The platform ecosystem is complex: for example, one platform may contract with the providers knowing their VAT status; a next platform may process the booking in their system; a last platform may be then facilitating the booking with the traveller and a third-party payment services provider is involved in the chain having access to the payment. This therefore raises the question: which of these would be considered the deemed supplier for VAT purposes?

- Moreover, this complexity is even further increased when taking into account that **platforms might have to determine the VAT treatment of services they do not control**, such as composite supplies (i.e. breakfast, parking, vouchers, accommodation/tourist/city taxes, etc.). In this case, it could lead to many discussions between the providers and platforms on the VAT calculation that the platforms do even if the platform will be responsible, which we deplore.

- Furthermore, supplies to business travellers are (partially) subject to reverse charge and require VAT invoices; in case of cancellations or refunds, the platforms would have additional administrative burden as they would have to claim back VAT on cancellations from the government.

- It also appears that platforms might need to get a local VAT ID in all member states unless the One-Stop-Shop mechanism is extended to B2B transactions. This would defeat the entire purpose of the ViDA package, which aims at reducing administrative burden for businesses.

- Beyond the major administrative and operational costs for tax authorities and businesses (STR providers and platforms), there is a real risk that prices increase for consumers as they will be the ones bearing the cost of newly added VAT on STR services.

- Finally, the Commission is also proposing to change the place of supply rules for accommodation and transportation platforms in a B2C context to where the properties are located or the rides take place. We are concerned that **this will lead to double taxation in 60+ countries across the globe and would seem to go against the OECD VAT/GST Guidelines and Regional VAT/GST Toolkits in Latin America, Asia Pacific and Africa**.

Ecommerce Europe's recommendations

In order to level the playing field between Union and non-Union traders and minimise the costs of doing business cross-border within the Union, measures should thus be adopted to further **reduce the**

compliance burden for European platforms than increasing them and effectively discouraging marketplace models due too high risks and compliance costs.

In this regard, Ecommerce Europe recommends to:

- Provide **clarity on what type of accommodations would be captured** by the new rules (i.e. only vacation rentals or also Guesthouses, Aparthotels, B&Bs, etc.), and **on how the Commission plans to differentiate between them.**

- Provide **clarity on how ViDA will interact with the STR Regulation, which leaves a lot of room for national interpretation**. For instance, while the ViDA proposal sets 45 days as a maximum cap for STRs, that is not specified in the STR proposal.

- **Clarify which platform should be the deemed supplier** within the supply chain/platform ecosystem should the extension of the deemed supplier rules be maintained.

3. Feedback concerning the Digital Reporting Requirements

Ecommerce Europe welcomes the European Commission's efforts to **increase the level of standardisation of e-invoicing and real-time reporting**. The European business ecosystem can definitely benefit from many ways to optimise and automate business processes, and the current proposal by the EU very much supports this ambition.

However, for this pillar too, Ecommerce Europe calls for more **legal certainty** as the proposed rules could be **prone to interpretation** and likely require tailored solutions in the different countries where business operates. We therefore advocate for **full harmonisation of both cross-border and domestic e-invoicing and reporting requirements**.

The key challenges and rooms for improvement that Ecommerce Europe has identified in the proposal are the following:

- With each Member State designing its own real-time reporting technology for cross-border supplies of goods and services, compliance costs and timing could rise up for businesses. Further, the Member States will still have the ability to implement local e-invoicing and reporting requirements, which may result in requiring tailor-made solutions per Member State.

- Further to the above, the tailor-made solutions per Member States will result in dependencies and will drive up costs for compliance, as companies will not be able to design, implement and maintain these solutions internally into their own systems, requiring third party support.

- Recent developments have shown that Member States are struggling to adjust their local technology to EU standards. The introduction of the OSS and IOSS showed that Member States are sometimes unable to timely implement technology that translates EU legislation into domestic reporting solutions. We are concerned that the need for Member States to implement cross-border real-time reporting technology will lead to issues at the level of local tax authorities, resulting in delayed implementations, manual intervention or temporary fixes for member states to comply.

- The abolition of the summary invoices poses a problem for companies that prefer to consolidate transactions and issue one summary invoice instead of multiple separate invoices. The new invoice requirements (bank and payment information) would add another layer of complexity. This is expected to heavily impact platforms businesses as they lead to increased processing costs and a disproportionate administrative burden on platforms in light of the high number of transactions typically processed.

- Finally, the deadlines for e-invoicing and reporting are extremely short. We understand that in order to monitor cross-border transactions real-time, shorter deadlines are required for businesses to invoice and report their transactions. In the current proposal, the e-invoice for a cross-border supply needs to be issued 2 days after the supply takes place. Currently, businesses have up to 45 days (art. 222 VAT Directive) to issue invoices. Changing this to a 2-day deadline for e-invoicing, a 2-day deadline for reporting and removing the option to issue summary invoices requires many business to change business and finance processes to comply with VAT legislation. This is very impactful for business as a whole and, looking at Accounts Payable for example, not always feasible as business are dealing with approval processes before invoices get booked. We would be in favour of an extension of the invoicing deadline.

Ecommerce Europe's recommendations

To conclude, Ecommerce Europe calls for a clear guidance from the EU when it comes to the functionalities of the technology that needs to be implemented by the Member States, potentially even up to a level that the EU designs one system that all Member States should use for e-invoicing and real-time reporting.

Conclusions

As a general conclusive remark, it is also key that the many important reforms included in the VAT in the Digital Age proposal work in practice for businesses and tax authorities. Therefore, we urge the Commission to supplement its plan to create a 'central VIES' system by also addressing critical upgrades required to the functionality made available to taxpayers to check the validity of VAT numbers. The requirement to check VAT number validity is now a core part of VAT compliance and 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. This creates inefficiency and risk for businesses, and missed opportunities for compliant businesses to help weed out non-compliance from the system. VIES must urgently be upgraded to handle bulk validations, enhance the quality of information held within it, enable real-time updates and reduce downtime.

About Ecommerce Europe

Ecommerce Europe is the sole voice of the European Digital Commerce sector, representing, via its national associations, more than 150,000 companies selling goods and services online to consumers in Europe. Ecommerce Europe acts at European level to help legislators create a better framework for online merchants, so that their sales can grow further.