UNITED STATES COUNCIL FOR INTERNATIONAL BUSINESS

April 28, 2022

The Honorable Paolo Gentiloni
European Commissioner for Economic and Financial Affairs,
Taxation and Customs European Commission
Rue de la Loi/Wetstraat 200
1049 Brussels Belgium

Re: Consultation Letter on VAT in the Digital Age

Dear Commissioner Gentiloni,

The VAT Subcommittee of the United States Council for International Business (USCIB) welcomes the opportunity to comment on the "VAT in the Digital Age" project (the "project") of the European Commission (the "Commission").

Our comments follow the order of the three project workstreams:

1. Modernizing VAT reporting obligations and considering the further extension of e-invoicing;
2. Adapting the VAT treatment of the "platform economy" so that it fits the new developments in this area; and
3. Facilitating VAT registration and compliance, including a revision of the existing rules requiring the registration of non-established taxpayers, the One-Stop-Shop (OSS) and the Import One-Stop-Shop (IOSS) regimes.

1. Modernizing VAT reporting obligations and e-invoicing

Harmonization

Over the last several years Member States have been introducing mandatory e-invoicing solutions. Today, businesses need to cope with different systems and solutions due to more Member States considering the introduction and implementation of a national e-invoicing system. USCIB would welcome a Commission initiative where all these systems would be harmonized so that businesses only bear the burden and cost of one implementation. Such harmonization poses the risk that the most demanding existing e-invoicing system becomes the European standard, however. Therefore, any harmonization proposal should be preceded by a careful analysis regarding what data needs to be collected, how it will be processed and what will be the use of such data for the tax authority. USCIB proposes that the development of the harmonization solution includes a test period with voluntary taxpayers and tax authorities verifying whether data is efficiently collected as well as efficiently processed and applied. Following harmonization, the system should be regularly reviewed by analyzing the end-to-end process. Based on the post-harmonization analysis and the capture of empirical data regarding the use of e-invoicing, further simplifications or adjustments can and should be made to the rules.

Implementation

From a technical perspective, USCIB encourages the Commission to propose the use of established technical standards which will mitigate the implementation cost for businesses. The Commission

should issue clear implementation guidelines. Businesses should be allowed sufficient time to implement e-invoicing.

Furthermore, it should be ensured that the technical standards allow for a broad range of (enterprise resource planning or "ERP") and accounting software providers offering the solution. This will foster competition in this area and further drive the costs down for businesses.

Due to the sensitivity of the information shared through e-invoicing with tax authorities, the government portal should be highly secure in order to avoid any data breach or other violation of data privacy regulations. The government portal should also have sufficient capacity. Businesses should be able to have "24/7" fast access to the government portal with clear alternative procedures to be followed when the portal is in maintenance or in repair.

Existing VAT obligations

E-invoicing allows the collection of transaction-by-transaction data and provides tax authorities the opportunity to analyze and summarize the data. Therefore, both the existing EU sales list and the national recapitulative statements required by national tax authorities should be abolished. It should be avoided that the taxpayer has to provide the same information to the tax authority twice. Taxpayers should be able to keep purchase and sales ledgers in a free electronic format as long as there is an audit trail between a "box" of a VAT return and the underlying transactions.

If data is collected in real time, the data retention period and statute of limitation term in VAT matters should be harmonized. We recommend a three-year period in all cases. A three-year period, which is already applied in several Member States, is a sufficiently long period considering the accelerated data collection that allows accelerated auditing.

2. Adapting the VAT treatment of the "platform economy"

Taxation of the sharing economy should be considered carefully and in light of regional and global solutions in order to impose a regime that benefits the EU, is reasonable for companies and participants in the sharing economy to manage and which continues to encourage organic economic growth. Taxation of the sharing economy should also keep in mind the burdens on small to medium platforms and not impose compliance burdens on companies that would inhibit growth, and, thus, the overall impact to the EU economy. Most importantly, any regime should conform to the internationally accepted VAT principles - namely, neutrality, simplicity and certainty.

The assumption that there are distortions of competition between traditional and online economic transactions is not as simplistic as it may seem. We strongly recommend that the Commission considers additional facts on a sector-by-sector basis in order to fully understand the challenges and solutions relating to VAT. By way of example, evidence suggests that Hosts on short-term rental platforms do not cannibalize traditional hospitality supply and, thus, they do not add to a VAT gap. Rather, platform Guests and Hosts grow the tourism pie. The variety of unique, affordable, and flexible accommodation options offered by hosts attract many visitors who might otherwise not have travelled to the EU, would not have been able to stay in locations not supported by traditional hospitality (e.g., smaller towns) or would not have been able to stay as long, were it not for accommodations available via these platforms. In many cases home sharing has simply grown the tourism sector and has helped communities who want to increase tourism capacity, without building new hotels.

Deeming platforms as suppliers of something they do not provide in reality and have no contractual obligation to provide is an improper classification and breaks from internationally accepted VAT/GST principles, most notably neutrality (taxation should seek to be neutral and equitable between conventional and electronic forms of commerce). The law as currently written determines taxability based on the medium used to make the supply, not the supply itself. This is ripe with planning opportunities for companies to remove themselves from the scope of the law, resulting in less VAT revenue than expected.

The growing global trend in meeting and auditing platform users' tax obligations is user data reporting. The EU has adopted DAC 7 data reporting; and many other countries have implemented data reporting regimes for the same purpose. We would encourage the Commission to utilize the solution that is already in place, namely DAC 7. DAC 7 and the data therefrom will provide the following benefits:

1. The user data would give Member States full visibility over sellers' activities across most or all of the sharing economy platforms (and across borders). A significant proportion of online sellers utilize multiple platforms in the sharing economy, so having visibility of all of that activity is crucial to the correct taxation;

2. The user data can be used for income tax, VAT and other tax obligations, depending on the sector;

DAC 7 is "future proof" and captures all players within the sharing economy. Business models vary, both within the same industry and across different industries, and therefore nuanced requirements to "solve" for the underlying supply often result in a failure to capture all players within sectors of the sharing economy - this results in a negative incentive for platforms to "plan" out of a law and a negative incentive for buyers and sellers to "platform shop".

Specific to VAT, we also suggest for platforms to mandatorily inform their users when they are closely approaching or have exceeded relevant VAT registration thresholds. Although platforms only have information relevant to a user's activity on its own platform, it is reasonable to notify a user that they are approaching the threshold and are likely required to register and account for VAT (if their turnover on the platform, alone, reaches the threshold).

VAT solutions to the underlying supply must be considered carefully, as the differences in business models within the sharing economy sectors would render a taxability determination of the supply not by the supplier status, but according to the medium in which the supply is offered and/or booked. This creates a negative incentive for (1) consumers to "platform shop" in order to find "cheaper" supplies, (2) suppliers to consider listing on platforms where their supply is "cheaper" (to encourage maximum sales), and (3) platforms to have opportunities to "plan" out of laws. Regardless of the business model, it is highly likely that the same supply (e.g., an accommodation) is being listed among many of the platforms. Taxability treatment should apply to all platforms in the same way and should not provide advantages or disadvantages to some, based solely on how their business is set up.

We encourage the Commission to focus on the realities of the business models within the sharing economy and the various sectors, and to consider appropriate solutions such as data reporting to solve any perceived VAT needs.

3. Single EU VAT registration – extending the Union One Stop Shop

The optional Union One Stop Shop regime (UOSS) introduced in 2021 has been a great step forward in simplifying VAT obligations for some EU operators. USCIB supports the extension of the UOSS regime to create a true single EU VAT registration.

We support the following three extensions of the UOSS:

- to all B2C supplies made by businesses not established in the Member State where the VAT is due;
- to the extent a domestic reverse charge is not implemented (or does not cover all supplies), to B2B supplies made by businesses not established in the Member State where the VAT is due; and
- to transfers of own goods cross-border within the EU.

The first two of the three extensions above should be straightforward, building upon the existing UOSS rules. However, we recognize that the third extension entails a more substantive, but still achievable, change in law and practice. Transfers of own goods were found to be the most crucial area to solve for in the VAT in the Digital Age study and it is therefore crucial that this transfer be included. This would help a wide variety of industries. A well-designed system that includes cross-border transfers of own goods would benefit retailers using remote fulfilment, lessors of moveable property, businesses that make use of toll manufacturing, consignment stock sellers, e-mobility providers, agricultural producers, touring events companies, and businesses engaged in sale-or-return contracts, among others.

Simply allowing the output VAT due on a transfer of own goods to be paid via UOSS would not help these businesses though. The solution design needs to preserve the neutrality of VAT by mitigating absolute and cash-flow costs of VAT on businesses, maintaining the status quo position where cross-border transfers may trigger a VAT charge, but where there is no associated cost or cash-flow issue given the VAT is immediately recoverable through local VAT registration in the country of arrival.

As we understand the potential difficulties in including a VAT recovery feature in the UOSS, we assess there are two other good options to address this issue:

1. **Option 1**: Remove the issue of VAT recovery altogether by applying a VAT exemption with credit to the transfer of own goods in the country of arrival – i.e., make transfers of own goods purely events that need to be reported but upon which no VAT is due. This is broadly the same as the present-day handling of transfers of own goods given there is no revenue associated with movements of own goods in more than 99% of cases today as outputs and inputs net off in the same VAT return. This reporting function would require a relatively simple addition to the UOSS functionality, or could be included within the wider (digital reporting requirements or "DRR") initiative; or

2. **Option 2:** Limit the VAT cash-flow disadvantage by improving VAT recovery mechanisms for non-established businesses. For example, this could be achieved by allowing taxable persons registered in the UOSS (EU and non-EU established) to recover VAT on transfers of own goods via an 8th Directive refund and by making these refund procedures simpler and faster. We would recommend a data link between the 8th Directive refund system and the UOSS. Member States should be able to immediately validate that VAT claimed on cross-border transfers of own goods matches that reported and paid via the UOSS, allowing for an immediate refund of the VAT by the relevant Member State.

Option 1 above would appear to be a simpler option to maintain the current VAT neutrality of movements of own goods. However, one or the other options must be considered and implemented. We otherwise have a concern that a true single VAT registration will not be achieved and many, if not most, businesses required to hold multiple EU VAT registrations today will continue to do so even with an extension to the UOSS. We therefore urge ambitious policy action on a single EU VAT registration to unlock major benefits for governments, tax authorities, businesses, consumers, and the environment. Under a wide-reaching single EU VAT registration reform, USCIB foresees that:

- 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 small and medium-sized enterprises ("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 and services.
- 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 CO2 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, reducing the current influx of individual packet shipments from third countries.

4. Building upon and improving the Import One Stop Shop

In addition to UOSS extension, we also understand the Commission is considering the extension and improvement of the Import One Stop Shop (IOSS). However, we believe improvement should take priority before any extension of IOSS. In particular, we have identified opportunities to improve the functioning of the IOSS system, including making it more fraud proof:

- We recommend that the IOSS regime should be made mandatory for all businesses or at least all deemed suppliers (i.e., marketplaces). This would ensure a level playing field so that businesses, particularly those that sell through marketplaces, cannot undervalue their goods or misuse IOSS numbers by migrating to marketplaces that have not opted in. While we are aware of most marketplaces 'opting-in' to the IOSS regime, this avenue for abuse remains a possibility.
- The security of the IOSS ID and end-to-end integrity of the existing IOSS program can also be improved. The Commission should mandate the inclusion of a unique parcel number identifier in the customs declaration which would allow customs authorities to cross-check that VAT has indeed genuinely been shipped by the IOSS ID holder (or by a seller on the marketplace of the IOSS ID holder). Alternatively, or in parallel, data sharing could be introduced in respect of IOSS shipments to provide customs authorities with sufficient information to confirm IOSS-eligibility and the fact that EU VAT has been accounted for at the point of sale.
- Longer term, the Commission should strive to reduce complexity caused by the high number of scenarios possible for customs clearance at the border, for example:
    - Whether the (deemed) supplier opted to use the IOSS;
    - Whether the parcel includes excise duty products; and
    - Whether the parcel is sold to a business or private customer.

Reducing the number of scenarios should lead to less friction for suppliers and customers and reduce workload for customs authorities (with more VAT paid for at point of sale), leaving the tax authorities with more resources to fight fraud.

Nonetheless, if an extension of the IOSS to high value shipments (over EUR 150) is considered above or in parallel to improving the IOSS, we recommend careful consideration of the interaction with customs duties. High value shipments are subject to customs duties, and these are to be included in the taxable base for VAT purposes. However, businesses will not necessarily know the customs duty due on products at the point of sale.

To address this issue, an increase in the EU customs duty threshold should be considered. Based on global precedent, there is scope to increase the EU customs duty threshold alongside any increase in the IOSS threshold (e.g., raise both the IOSS threshold and the duty threshold to over EUR 500). The EU has a threshold lower than many major markets around the world (US, Australia, Canada etc.). It would therefore make sense to quantify the trade-off between higher and less costly VAT collections stemming from an increased IOSS threshold versus the lost duty. Given the comparatively low duty rates in the EU compared to VAT rates, we suspect the findings of a study of an increased duty exemption threshold would be positive.

We appreciate the opportunity to submit this consultation letter and are available to discuss with you at your convenience the issues described in this letter in further detail.

Sincerely,

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