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VALUE ADDED TAX COMMITTEE
(ARTICLE 398 OF DIRECTIVE 2006/112/EC)
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NEW LEGISLATION

MATTERS CONCERNING THE IMPLEMENTATION OF RECENTLY ADOPTED EU VAT PROVISIONS

ORIGIN:	**Commission**
REFERENCES:	**New articles 218 and 232**
SUBJECT:	**Changes in electronic invoicing rules applicable upon the entry into force of the VAT in the Digital Age Directive**

1. INTRODUCTION

On 11 March 2025, the Council reached an agreement on the VAT in the Digital Age (ViDA) package[1]. This package entails a significant change of the VAT rules in the three areas covered by this package: i) Electronic invoicing and digital reporting requirements, ii) Platform economy and iii) Single VAT Registration. Each part of the ViDA package has different dates of application. For the part on electronic invoicing and digital reporting requirements, this date is 1 July 2030.

However, upon entry into force the ViDA Directive provides for the immediate application of amendments to Articles 218 and 232 of the VAT Directive[2], related to electronic invoicing. These amendments will be in force and apply from the twentieth day following the publication in the *Official Journal of the European Union* of the ViDA Directive up until 1 July 2030, where they will be replaced.

The Commission services believe that, with a view to ensuring the uniform application of those new rules, it is necessary to come to a common understanding on what are the possibilities given to Member States through them.

2. SUBJECT MATTER

Before the entry into force of the ViDA package, Article 218 of the VAT Directive provided that Member States had to accept electronic invoices as invoices, putting them on equal footing with paper invoices. However, Article 232 required the acceptance by the recipient for the issuance of an electronic invoice. Therefore, it was not possible for a Member State to put in place the mandatory use of electronic invoices because i) paper invoices had the same validity as electronic invoices and ii) if the recipient did not accept to receive an electronic invoice, such an invoice could not be issued.

An important element for the fight against VAT fraud is the obtention of information by tax administrations as soon as possible, preferably in real-time. Several Member States considered that the best way to implement systems to report invoice data to the tax administration was to base such systems on electronic invoicing.

To put in place reporting systems based on electronic invoicing, it was necessary for Member States, based on Article 395, to request a derogation from Articles 218 and 232 of the VAT Directive, in order to be able to i) make electronic invoices the only format allowed for the issuance of invoices and ii) oblige the recipient to accept electronic invoices. Italy, Poland, France, Germany, Romania and Greece requested and obtained such derogations[3].

The ViDA package foresees electronic invoicing as the default method for the issuance of invoices. Paper invoices shall only be used upon authorisation from the Member State, which cannot be granted if the transaction is subject to a reporting obligation either for

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[1] Taxation: Council adopts VAT in the digital age package - Consilium

[2] Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ L 347, 11.12.2006, p. 1), as amended.

[3] List of VAT derogations

domestic or intra-Community transactions (the new Article 218(2)). However, given the IT impact for taxable persons and tax administrations derived from the reform, the application of the electronic invoicing and digital reporting part of the ViDA package was postponed to 1 July 2030.

Still, it was considered necessary to allow those Member States that wanted to implement mandatory electronic invoicing to do so without having to request a derogation from the VAT Directive. That would ease the adaptation to the upcoming reform derived from ViDA. For that reason, Articles 218 and 232 were amended from the date of entry into force of the ViDA Directive. Those amendments will remain in place until 1 July 2030, where these Articles will be amended once again.

The wording used for these Articles for this transitional period is very similar to that of the derogations granted to the Member States mentioned above, replicating their scope. From the date of entry into force of the ViDA Directive and up until 1 July 2030, these Articles read as follows:

New Article 218

1. For the purposes of this Directive, Member States shall accept documents or messages on paper or in electronic form as invoices if they meet the conditions laid down in this Chapter.

2. By way of derogation from the first paragraph of this Article, Member States may, in accordance with the conditions they lay down, require taxable persons established within their territory to issue electronic invoices for supplies of goods and services within their territory, other than those referred to in Article 262.

New Article 232

1. The use of an electronic invoice shall be subject to acceptance by the recipient.

2. By way of derogation from the first paragraph of this Article, Member States which exercise the option set out in Article 218, second paragraph, may provide that the use of electronic invoices issued by taxable persons established within their territory is not to be subject to the acceptance of the recipient established in their territory.

Below, the Commission services will analyse the possibilities given to Member States in the field of electronic invoicing by the amendments made to these Articles.

3. COMMISSION SERVICES' OPINION

The analysis focuses on the transactions that can be subject to mandatory electronic invoicing, the taxpayers that can fall under the scope of the obligation, the impact on reporting systems and the interaction with the rules that will apply from 1 July 2030.

3.1. Transactions that may be subject to mandatory electronic invoicing

The new Article 218(2) of the VAT Directive allows Member States to impose the obligation to issue electronic invoices "*for supplies of goods and services within their territory, other than those referred to in Article 262*".

The supplies of goods and services referred to in Article 262 of the VAT Directive are intra-Community supplies of goods made in accordance with the conditions specified in Article 138(1) and point (c) of Article 138(2), supplies of goods making part of triangular transactions and supplies of services, other than those exempted from VAT, to taxable persons and non-taxable persons identified for VAT purposes when the supplier is not established within the territory of the Member State of taxation and the recipient is liable to pay the tax pursuant to Article 196 of the VAT Directive.

Therefore, intra-Community supplies of goods, domestic supplies of goods carried out within the framework of a triangular transaction and supplies of services to a Member State where the supplier is not established and for which the customer is liable to pay the tax cannot be subject to mandatory electronic invoicing by any of the Member States involved in the transactions.

The remaining transactions taking place within the territory of a Member State can, in principle, be subject to the obligation to issue electronic invoices. However, this does not imply that, when a Member State decides to implement such obligation, it has to cover all the transactions taking place in their territory. The new Article 218(2) of the VAT Directive states that Member States can implement it "*in accordance with the conditions they lay down*". These conditions can, for instance, limit the scope of the measure to a particular group of transactions, subject to the respect of general principles of EU Law such as neutrality, proportionality and equal treatment.

3.2. Taxpayers that can be covered by the electronic invoicing obligation

According to the new Article 218(2) of the VAT Directive, the obligation to issue electronic invoices can be imposed "*to taxable persons established within their territory*". According to the new Article 232(2), Member States "*may provide that the use of electronic invoices issued by taxable persons established within their territory is not to be subject to the acceptance of the recipient established in their territory*".

Therefore, a Member State cannot impose the obligation to issue electronic invoices to taxable persons not established in their territory. Further, they cannot oblige recipients not established within their territory to accept electronic invoices.

While imports and exports are transactions taking place within the territory of a Member State, there cannot be an obligation to issue electronic invoices in relation to these transactions, when the supplier or the recipient is not established in the territory of the Member State.

In relation to purely domestic supplies of goods and services, it should be noted that while reference is made to "taxable persons" for the issuance of electronic invoices (new Article 218(2)), for the acceptance of the electronic invoice, reference is made to "the recipient" (new Article 232(2)). Therefore, the possibility to mandate the use of electronic invoices is not limited to transactions between taxable persons. It can cover both business-to-consumer (B2B) and business-to-consumer (B2C) transactions.

The limitation set in the VAT Directive is that both parties to the transaction must be established in the territory of the Member State. Thus, it is necessary to clarify what it is understood by "established".

The VAT Directive does not include a definition of the place of establishment of a business. The VAT Implementing Regulation[4] on the other hand does include such a definition in Article 10 and a definition of fixed establishment in Article 11, even though for the purpose of determining the place of supply of services[5].

According to Article 10 of the VAT Implementing Regulation a business is established in "*the place where the functions of the business' central administration are carried out*". According to Article 11 of the same Regulation a fixed establishment is any establishment, other than the place of establishment of the business, "*characterised by a sufficient degree of permanence and a suitable structure in terms of human and technical resources*". Further, for natural persons and non-taxable legal persons there are other provisions in the Regulation regarding their permanent address, usual residence or place of establishment[6].

The Commission services consider that these definitions can be applied by analogy to determine when a taxable person or a non-taxable person are established within the territory of a Member State for the purposes of the new Articles 218 and 232 of the VAT Directive.

Therefore, for taxable persons, it is necessary that they carry out the central administration of the business in that Member State or that they have a fixed establishment there, which is involved in the supply of goods/services or in the reception of goods/services, and which has a sufficient degree of permanence and a suitable structure in terms of human and technical resources.

The fact that a taxable person is registered for VAT in a Member State but is not established nor has a fixed establishment which is involved in the supply/acquisition in the territory of that Member State, is not enough to be covered by the scope of the obligation to issue or receive electronic invoices.

However, this does not imply that Member States cannot impose reporting obligations on taxable persons registered but not established within their territory. They can impose such obligations, but they just cannot be based on mandatory electronic invoicing. Thus, Member States can impose on these taxable persons the obligation to report transaction data to the tax administration. They can offer to these registered but non-established taxable persons the possibility to comply with such an obligation by using electronic invoicing, but they will have to offer other possibilities to comply with the said reporting obligations.

Similarly to what was stated in section 3.1, the fact that a Member State can impose an obligation to issue and accept electronic invoices on taxable persons and recipients established within the territory of that Member State does not imply that, when a Member State decides to implement such an obligation, it has to cover all the taxpayers established within its territory. The new Article 218(2) states that Member States can implement it "*in accordance with the conditions they lay down*". These conditions can limit the scope of

[4] Council Implementing Regulation (EU) No 282/2011 of 15 March 2011 laying down implementing measures for Directive 2006/112/EC on the common system of value added tax (recast) (OJ L 77, 23.3.2011, p. 1).

[5] Both provisions may be found in Chapter V, Place of taxable transactions, of the VAT Implementing Regulation.

[6] See Articles 12, 13 and 13a of the VAT Implementing Regulation.

the measure to a certain group of taxpayers. Therefore, the obligation to issue and accept electronic invoices can be imposed on both B2B and B2C transactions, only on B2B transactions or only on transactions between certain group or groups of taxable persons, provided that general principles of EU Law are respected.

3.3. Impact on reporting systems and interaction with the rules that are applicable from 1 July 2030

3.3.1. Independence of mandatory electronic invoicing and reporting systems

Some Member States have implemented mandatory electronic invoicing in parallel with reporting systems based on electronic invoicing. These Member States have considered that electronic invoicing helps providing quality data to the tax administration in real-time while enhancing the digitisation of their businesses, thus improving their competitiveness.

However, mandatory electronic invoicing as described in the above sections is independent from the reporting obligation, and one does not have to be linked to the other. Therefore, until 1 July 2030, it is possible for Member States to implement reporting systems that are not based on electronic invoicing, and they can also mandate established taxable persons to issue and accept electronic invoices without having to report the data contained in these invoices to the tax administration.

The modifications introduced by the ViDA package from its entry into force up until 1 July 2030 do not refer to digital reporting requirements. Therefore, the possibility for Member States to implement a domestic reporting system remains as it was before the entry into force of the package. The only difference as from the entry into force of the ViDA package is that it is possible for Member States to mandate the use of electronic invoices without requesting a derogation from the VAT Directive. Thus, they can implement reporting systems based on electronic invoicing. But they could also decide to implement a reporting system without it being based on electronic invoicing.

However, from 1 July 2030, the reporting of data for supplies and acquisitions of goods and for supplies of services within the territory of a Member State, made by taxable persons established or identified for VAT purposes in that territory, will have to comply with the requirements laid down in the new Articles 271a and 271b of the VAT Directive. Therefore, newly introduced domestic reporting systems will have to adapt to these requirements, converging to a common system that will replicate the design foreseen for the reporting of intra-Community transactions and will have to be based on electronic invoicing.

The transitional measures provided for in the ViDA Directive allow to maintain some of the existing domestic reporting systems beyond 1 July 2030, but they will have to comply with the following requirements:

- The convergence of domestic digital real-time transaction-based reporting obligations to the requirements laid down in the new Articles 271a and 271b of the VAT Directive can be postponed until 1 January 2035 in the following cases:
    - The Member State was granted, before 1 January 2024, an authorisation on the basis of Article 395 of the VAT Directive, to apply mandatory electronic invoicing, following which it has implemented or plans to implement a reporting system based on electronic invoicing, **or**

   - o The national legislation for the implementation of the digital real-time transaction-based reporting system (not based on electronic invoicing) was adopted before 1 January 2024.

- Existing domestic general transaction-based reporting obligations other than real-time reporting can be kept beyond 1 July 2030 if they were in place on 1 January 2024, according to the provision provided for in the new Article 273, second and third paragraphs of the VAT Directive.

Domestic reporting systems put in place after the entry into force of the ViDA package are highly unlikely to comply with the abovementioned conditions. Thus, they will necessarily have to converge to the features of the one laid down in ViDA by 1 July 2030. Therefore, it is advisable that, if a Member State decides to put in place a system to report data to their tax administration, such a system replicates the said features, to avoid additional adaptation costs for both taxable persons and the tax administration.

3.3.2. Use of standards

According to the modifications of the VAT Directive that are put in place and will apply between the entry into force of the ViDA package and 1 July 2030, the use of a specific standard for electronic invoicing is not required. Therefore, Member States can freely mandate any electronic invoicing standards they consider appropriate for the exchange of electronic invoices within their territory.

From 1 July 2030, the new Article 218(3) of the VAT Directive states that "*Electronic invoices shall comply with the European standard on electronic invoicing and the list of its syntaxes pursuant to Directive 2014/55/EU of the European Parliament and of the Council*" (the EU standard). It then adds that "*Member States may allow the use of other standards for electronic invoices relating to supplies of goods and services within their territory, other than those referred to in Article 262 of this Directive*".

Therefore, from 1 July 2030, the EU standard will become the only standard acceptable for the transactions referred to in Article 262 of the VAT Directive. For any other transaction, the EU standard will necessarily be one of the standards allowed, even though Member States can allow the use of other standards.

Given that the EU standard will be accepted across the EU and necessarily be used for certain transactions (Article 262), even though Member States have freedom to apply other standards for electronic invoicing during the period between the entry into force of the ViDA package and 1 July 2030, it is advisable that one of the standards accepted, or the only standard accepted, would be the EU standard. That will avoid that taxable persons and tax administrations incur (further) adaptation costs by 1 July 2030.

4. DELEGATIONS' OPINION

Delegations are asked to express their opinion on the issues raised.

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