INSTITUT FÜR DIGITALISIERUNG IM STEUERRECHT

Institut für Digitalisierung im Steuerrecht e.V.
Klingsorstr. 93C
12167 Berlin

+49 89 5419 7805
info@idst.tax
www.idst.tax

Mr. Patrice PILLET
European Commission
Directorate-General for Taxation and Customs Union
Indirect taxation and tax administration
Value added tax
SPA 3 – 5/110
B-1049 Brussels/Belgium

Berlin, April 3, 2023

Feedback on the Commission's proposal as of December 8, 2022 regarding „VAT in the Digital Age"

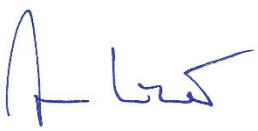
Dear Patrice,

The Institute for Digitalisation in Tax Law ("Institut für Digitalisierung im Steuerrecht e.V.", IDSt) is a German non-profit organisation for the fostering of digitalisation in the field of taxes. Our members are wide-spread and come from the Public Sector (including tax administration), academia, business, Tax advisors, and associations. In case you want to learn more about IDSt, you may find additional information here: https://idst.tax/en/about-us/, including a list of our members. IDSt is registered in the EU Transparency Register (number 878255144626-94).

IDSt gladly contributes the views of its members to the Feedback on the Commission's proposal as of December 8, 2022 regarding "VAT in the Digital Age". IDSt welcomes the standardisation approaches of the Commission in the legislative package "VAT in the Digital Age" (hereinafter: ViDA) for the most uniform electronic invoicing possible in the EU. However, though ViDA has many strengths, it has also problematic points, especially in its practical implementation. For more details, please refer to our in-depth-analysis of most of the elements of ViDA in our attachment to this letter.

IDSt will be glad to support you further in the EU-Commission´s initiative "VAT in the Digital Age" with our practical experiences from many Member States and our technological knowledge. Please do not hesitate to contact us for further discussions!

Best regards,



Georg Geberth
Chairman of the Board

Jan Koerner
Chair Committee III on Transactional Reporting

IDSt Feedback on the Commission's Draft Legislation of 08.12.2022 "VAT in the Digital Age" (ViDA)

A. Introduction

IDSt welcomes the standardisation approaches of the Commission in the legislative package "VAT in the Digital Age" (hereinafter: ViDA) for the most uniform electronic invoicing possible in the EU. The same is true for the approaches to standardise the highly fractionalised procedures of the Member States regarding their national transactional VAT reporting obligations.

We must point out, however, that a considerable lead time is necessary for the tax administrations as well as for the taxpayers to ensure the technical implementation. However, technical development will only begin once the necessary legal and administrative regulations have been issued to implement the changes of the ViDA package. Experience from the "Quick Fixes" as of December 2018 shows that the implementation period of around 13 months at that time was not sufficient, for example, to implement the necessary reports on recapitulative statements under the simplification provision of Article 17a of the VAT Directive in all Member States.

Request

> **IDSt therefore urges that Article 5(4) of the Draft VAT Directive (Document COM(2022) 701 final) be amended so that Member States adopt and publish the laws, regulations and administrative provisions necessary to comply with Article 4 of this Directive already by 31st December 2024.**

B. Part 1: planned changes as of 1st January 2024

1. Re Article 217 of the Draft VAT Directive - Amendment of the definition of electronic invoice

IDSt welcomes the change in the definition of electronic invoices towards the requirement of a structured electronic format.

The definition of the "electronic invoice" as a structured data record is the prerequisite for automated and process-safe data processing, which on the one hand takes place without media discontinuity and on the other hand is based on firmly agreed syntactic and semantic contents. Despite the use of artificial intelligence, the conversion of "image-based" invoice formats into structured formats (e.g., by means of scanners and the use of optical character recognition (OCR) software) always leads to an error rate in invoice transmission that

requires manual corrections and is therefore unacceptable within the framework of an automated digital process.

However, within the framework of the recognition of permissible invoice formats in Article 218 (1) Draft VAT Directive, it is necessary to expand Article 217 Draft VAT Directive definitionally to the effect that invoices that were created electronically but do not contain structured data, for example invoices containing the data as raster graphics (pixels), are considered as invoices in another form and can be used in principle. Otherwise, due to the amendments to Article 218 (1) Draft VAT Directive, only invoice transmission in a structured electronic format or on paper would be permissible.

Request

> **Addition of a sentence 2 to Article 217 of the Draft VAT Directive:**
>
> **Invoices issued, transmitted and received in an electronic format that does not comply with the requirements of sentence 1 shall be deemed to be documents in another electronic format.**

It should also be clarified that no "transmission" is required if an invoice is created directly using the customer's corresponding invoice creation software. Otherwise, an efficient way of creating electronic invoices in a structured data format, especially for small and medium-sized enterprises (SMEs) when supplying larger companies, would be made impossible.

Request

> **Addition of a sentence 3 to Article 217 of the Draft VAT Directive:**
>
> **An electronic invoice within the meaning of sentence 1 or in another form within the meaning of sentence 2 shall also be deemed to have been issued, transmitted and received if such invoice is created directly in an IT system of the invoice recipient by the invoice issuer or by a third party on behalf of the invoice issuer.**

2. Re Article 218 (1) of the Draft VAT Directive - Amendment of the definition of documents to be recognised as invoices

Until 31.12.2023, the definition of an electronic invoice also includes such electronically created, transmitted and received documents that do not contain the data in a structured electronic format but, for example, as raster graphics. In order to ensure that this option for creating and transmitting invoices (e.g., an e-mail with attached pdf file), which is used in particular by small businesses, can continue to be used, it is necessary to clarify the wording in Article 218 (1) of the Draft VAT Directive in its version as of 1 January 2024 that "electronic form" in Article 218 (1) of the VAT Directive-E does not exclusively mean "electronic invoices" within the meaning of Article 217 of the VAT Directive-E.

Request

> **Clarification in *Explanatory Notes that* the wording "electronic documents" in Article 218 (1) of the Draft VAT Directive also includes such electronic documents that are not "electronic invoices" within the meaning of Article 217 of the Draft VAT Directive.**

3. Re Article 218 (2) of the Draft VAT Directive - Option to issue invoices exclusively by electronic means

a) On the admissibility of electronic invoices that comply with the European standard for electronic invoicing, Article 218 (2) sentences 1 and 2 of the Draft VAT Directive

IDSt warmly welcomes the fact that, in accordance with Article 218 (2) sentence 1 Draft VAT Directive, Member States shall allow the issuing of electronic invoices that comply with the European standard for electronic invoicing and the list of syntaxes pursuant to Directive 2014/55/EU of the European Parliament and of the Council.

However, the European Standard and the list of syntaxes are not contained in Directive 2014/55/EU, but rather in the Commission's Implementing Decision (EU) 2017/1870 as of 16 October 2017, adopted on the basis of Articles 3(2) and 11 of Directive 2014/55/EU. Accordingly, the European standard for electronic invoicing EN 16931-1:2017, "Electronic invoicing - Part 1: Semantic data model of the core elements of an electronic invoice" is authoritative. The list of permitted syntaxes is derived from the Technical Specification "CEN/TS 16931-2-2017, Electronic invoicing - Part 2: List of syntaxes complying with EN 16931-1" (hereinafter referred to collectively as "EN 16931").

In principle, EN 16931 represents a solid framework for the creation of electronic invoices, which must, however, be further specified, concretised, and expanded with regard to the planned application scenario in B2B transactions.

In order to be able to ensure automated further processing both in the exchange of invoices between traders and between traders and the tax authorities, it is necessary to precisely define and standardise the information relevant for further processing in the invoice core data set in order to minimise the scope for interpretation of the invoice information contained in the invoice data set.

For example, in the core data set (mandatory fields), further standardisation should be carried out regarding the use of the type codes for the invoice types (380, 381, 384 and 386) in connection with the algebraic signs for invoice items and item totals in order to eliminate the scope for interpretation in information processing that currently exists in the status quo of EN 16931.

In addition, a number of information relevant to further processing is currently not structured, but can only be mapped via free text fields (e.g., final invoices and their VAT assessment, the referencing of several previous interim invoices and the mapping of cash discounts). These exemplary problem points could be minimised and optimised using additional fields in combination with supplementary business rules.

The EN 16931 framework should basically be able to map all information contained in the invoice core data record that is required for further processing in a structured manner. For this purpose, it is necessary, among other things, to add fields to the core data set that could previously only be used optionally.

Request

> **Taxpayers should be given a framework in the form of a Multi Stakeholder Forum to drive the necessary adaptations of EN 16931 to VAT requirements together with other stakeholders, such as in the "Connecting Europe Facility".**
>
> **The annex to this feedback lists a number of additions to EN 16931 in order to meet the greatly expanded scope of application resulting from Article 218 (2) sentence 1 of the Draft VAT Directive.**

b) On the means of transmission of electronic invoices pursuant to Article 218 (2) sentence 3 of the Draft VAT Directive

IDSt welcomes the ban on prior approval or verification by the tax authorities (clearing). The problem with clearing is that the draft invoices are first sent to the tax authorities and may only be transmitted after the tax authorities have sent back a clearing number. This "ping-pong process" delays invoicing and thus leads to additional costs.

Request

> **With regard to the derogation in the third sentence, it should be clarified, in order to avoid uncertainty for the tax administrations concerned but also for taxable persons, that the required "implementation" means a technical implementation of the special measures approved under Article 395 VAT Directive before the entry into force of the amending Directive concerned here on 1 January 2024. It should be clarified as well that a mere transposition of the special measure into legal measures without a technical implementation having taken place is not sufficient.**

We recommend including basic regulations on the transmission network ("transmission protocol"). If both business partners agree, the continued use of existing point-to-point connections (EDI) should be possible as "opt out" solutions. However, the basic accessibility via a Europe-wide transmission network should be guaranteed as a fallback solution for all companies operating throughout Europe. All these regulations can also be implemented in secondary legislation (implementing regulation - or similar).

Request

> **Preferably, regulations on the transmission network should be included in the VAT Implementing Regulation (EU 282/2011) or in another legal form. This should regulate the basic accessibility for issuing and, above all, receiving electronic invoices via a Europe-wide transmission network; likewise, the possibility for taxable persons to continue to use existing point-to-point connections (EDI) shall be ensured.**

c) On the geographical scope of application of Article 218 (2) of the Draft VAT Directive

In principle, the territorial applicability of the invoicing rules is regulated in Article 219a of the VAT Directive. However, as this follows Articles 217 and 218 in terms of its systematic position in the VAT Directive, it is unclear whether Article 219a is applicable to them. Furthermore, it has been common practice in the Member States to date to impose the obligations for electronic invoicing only on those taxable persons who are established or at least have a fixed establishment in their territory. This is based on Article 219a (1) and (2) VAT Directive. However, these rules *de facto* focus exclusively on the taxable person making the supply. Due to the elimination of the requirement for the consent of the invoice recipient through the deletion of Article 232 VAT Directive, the latter may suddenly be exposed to the requirements of electronic invoicing in the sense of a necessary readiness to receive structured electronic data records in Member States in which he is neither established nor has a fixed establishment. This is particularly problematic for small and medium-sized

enterprises (SMEs) that do not have structures for receiving, reading and processing invoices in xml-format (as provided by EN 16931). As long as electronic invoicing is not the basic legislative case (as planned from 1.1.2028), it should therefore be the norm for the transitional period that Member States can only impose the obligation to issue, transmit and receive invoices electronically on taxable persons who are either established in the territory of that Member State or have a fixed establishment there.

Request

> **Extension of Article 218 of the Draft VAT Directive by a paragraph 3:**
>
> **"Member States shall apply Article 219a (1) and (2) to the obligation on the issuer to issue and transmit invoices by electronic means. If the recipient of the invoice is not established in the Member State which requires the issue of electronic invoices in accordance with Article 218 (2), first sentence, and does not have a fixed establishment in that Member State, he may require the invoice issuer to send him the invoice on paper or in another form."**

4. Necessary adjustment of Article 45a of the VAT Implementation Regulation (Regulation (EU) 282/2011) as of 1.1.2024

On the one hand, the introduction of electronic invoices by Member States pursuant to Article 218 (2) of the Draft VAT Directive may be counteracted by the fact that Member States may require the supporting documents of Article 45a (3) of the VAT Implementation Regulation (Regulation (EU) 282/2011) to be in paper form. This could lead, for example, to the carrier having to issue his invoice in a structured electronic data format, while the invoice recipient, who uses the carrier's invoice in another Member State as proof of the intra-Community transport or dispatch, then must print it out and present it in paper form.

In addition, Regulation (EU) 2020/1056 of 15.07.2020 (OJ L 249, 33) on electronic freight transport information obliges the introduction of electronic freight transport information (eFTI) with effect from 21.08.2024, Article 18 (2) Regulation (EU) 2020/1056.

Request

> **Article 45a paragraph 3 of Regulation (EU) 282/2011 shall be amended by the following sentence 2 with effect from 1.1.2024:**
>
> **"Member States shall also accept such evidence in electronic form, in particular in the form referred to in Article 217 of the VAT Directive, or as 'electronic freight information' or 'eFTI' within the meaning of Article 3 (4) of Regulation (EU) 2020/1056 of 15.07.2020 (OJ 2020 L 249, 33)."**

C. Part 2: planned changes as of 1st January 2025

1. Re Article 14a (2) of the Draft VAT Directive - Extension of the chain transaction fiction ("deeming provision") to B2B transactions

In principle, the extension of the chain transaction fiction ("deeming provision") in the case of facilitation by electronic interfaces or similar means the supplies by traders established in the Union is understandable. However, the extension of the fiction on the acquirer's side to acquirers who must tax on the corresponding intra-Community acquisitions is already incomprehensible in its motivation. It leads particularly to certainly unintended effects if affiliated companies use a joint ERP system (ERP system ... Enterprise Resource Planning System), through which, for example, orders from the customer as well as intra-group orders are processed, and the intra-group transfer prices are calculated automatically (e.g. on the basis of the customer's order price using the resale price-minus method).

It is therefore important to create a definitional distinction so that, especially in the case of the joint use of ERP systems by associated companies, an electronic interface is not unintentionally established which facilitates supplies within the Community within the meaning of Article 14a (2) of the Draft VAT Directive.

Request

The definition of "facilitating" through the use of an electronic interface must be adapted to the planned amendment of Article 14a (2) Draft VAT Directive. The use of a common ERP system by affiliated companies only fulfils the requirement of a "facilitating" electronic interface if the typical characteristics of an "online marketplace" are additionally fulfilled by means of the ERP system:

- **Operation of the "ERP Marketplace" by a "platform operator" in the group of companies**
- **Administration of a group of suppliers in the ERP system**
- **Administration of a group of potential buyers in the ERP system**
- **Provision of goods or services by the supplier**
- **Operation of a communication channel between the group of sellers and buyers for the purpose of conducting "marketplace transactions".**

It should also be clarified that in the case of cloud solutions or software-as-a-service (SaaS) solutions relating to ERP systems, the operator of the interface must be located within the using group of companies (e.g. the main licensee or a company designated by the group of companies), but it cannot be the software provider of the ERP system.

2. Re Article 194 of the Draft VAT Directive – Introduction of an optional reverse charge mechanism

The introduction of a reverse charge option for supplies of goods or services by non-established traders is very welcome. It is one of the decisive elements of the legislative package to reduce the compliance costs of taxable persons. The option to exercise the reverse charge under Article 194 of the Draft VAT Directive should definitely be set out in the Directive itself or in the VAT Regulation (Regulation (EU) 282/2011), otherwise there is a risk of new additional compliance costs due to the fragmentation of the legal framework. This is all the more important as comprehensive reporting obligations are linked to the reverse charge under Article 194 of the Draft VAT Directive (see below).

Furthermore, it is necessary to clarify whether the recipient of the supplies of goods or services, who for his part is not established in the Member State of taxation and whose own supplies of goods or services would therefore also fall within the scope of Article 194 Draft VAT Directive, can voluntarily register for VAT in this Member State in order to receive the supplies of goods or services from his also non-established supplier under the reverse charge mechanism. Otherwise, there would be a risk of a "ping-pong" between the application of the reverse charge under Article 194 of the Draft VAT Directive and its non-application, especially in the case of successive supplies by non-established taxable persons (but also in case of certain services, e.g., if these services are related to real estate).

Request

> **The method how to exercise the reverse charge option under Article 194 of the Draft VAT Directive must be defined in the Directive itself or in the VAT Implementation Regulation (Regulation (EU) 282/2011), otherwise there is a risk of a new fragmentation of the European legal framework in value added taxation, which is particularly worrying in view of the inclusion of these supplies in the Digital Reporting Requirements.**
>
> **It must be made clear that non-established taxable persons whose output supplies would in principle fall within the scope of Article 194 of the Draft VAT Directive may voluntarily register for VAT in the Member State of taxation in order to be able to receive supplies of goods or services on their input side in that Member State under the reverse charge procedure pursuant to Article 194 of the Draft VAT Directive.**

3. Re Article 222 of the Draft VAT Directive - Extension of the Invoicing Deadline to Supplies under the Reverse Charge pursuant to Article 194 of the Draft VAT Directive

As the deadline for issuing invoices (no later than the 15th day of the following month) is not shortened in this new version of Article 222 of the Draft VAT Directive, this extension of Article 222 of the VAT Directive as of 1.1.2025 seems to be unproblematic.

4. Re Articles 369xa et seq. of the Draft VAT Directive - One-stop shop for reporting intra-Community transfers (Transfer OSS)

IDSt warmly welcomes the introduction of the one-stop shop for reporting intra-Community transfers (Transfer OSS) in Title XII, Chapter 6, Section 5 of the VAT Directive (Article 369xa et seq. Draft VAT Directive). It is a crucial element of the legislative package to reduce the compliance costs of taxable persons. It demonstrates how modern digital reporting procedures can avoid significant compliance costs for both tax administrations and taxpayers without jeopardising tax revenue.

The restriction of the regulation with regard to "capital goods", which are excluded from the application of the Transfer-OSS, is all the more incomprehensible. On the one hand, there is a risk of new legal compliance costs here due to the fragmentation of the legal framework, as the definition of "capital goods" under Article 189 (a) VAT Directive is left in the hands of the individual Member States. It is also unclear how this affects the rule of Article 369xb subparagraph 2 Draft VAT Directive ("all-or-nothing rule"), if one Member State has defined the relevant goods as "capital goods" and can thus *de facto* block the application of the Transfer OSS for all other Member States.

On the other hand, particularly cases of the leasing of movable assets that are transferred to other Member States for the purpose of leasing (we refer to case constellations such as those that formed the basis of Case C-242/19 "CHEP Equipment Pooling", ECJ judgment of 11.06.2020 – cross-border leasing of pallets), which are excluded from the application of the Transfer OSS. It must not be forgotten that according to the competence provision of Article 113 TFEU, the European VAT system is there to ensure the functioning of the Internal Market.

Request

> **The exclusion rule in Article 369xa, subparagraph 1, no. 1 of the VAT Directive should be replaced by a positive definition of the scope of application of the special schemes with the following wording:**
>
> **"1. 'intra-company transfers of goods' means the transfer of goods for the purpose of carrying out supplies or services in another Member State in accordance with Article 17(1), ..."**

The second half of the sentence in Article 369xa, first subparagraph, point 1 of the VAT Directive: "... and does not include..." should be deleted.

4. Further necessary regulations to avoid multiple VAT registrations

Unfortunately, the legislative package of "quick fixes" as of 1.1.2020 did not include a provision for export chain transactions in Article 36a of the VAT Directive. Particularly in the case of chain of pick-up transactions involving transport or dispatch to third countries, many Member States apply rules according to which the penultimate purchaser in the chain transaction (usually a taxable person established in the third country) must register for VAT in the Member State in order to declare the tax-exempt export supplies, although under customs law it is usually the first supplier in the chain transaction (usually the last taxable person established in the EU in the chain transaction) who has handled the customs export process as exporter. This is a considerable competitive disadvantage for the European export industry, especially for deliveries to Asia with delivery conditions "FOB European port", compared to comparable deliveries from the USA, for example.

Request

In order to avoid such competitive disadvantages for the European export industry in the case of third-country series transactions with delivery conditions "FOB European port", a solution should be set forth in the VAT Directive either by means of a corresponding extension of the "Non-Union OSS" (Article 358a et seq. VAT Directive) or tax exemptions prior to the export according to VAT laws in the export chain transaction, if necessary in connection with the data of the export process under customs law.

D. Part 4: planned changes as of 1st January 2028

1. Re Article 218 of the Draft VAT Directive – Invoicing

a) On the principle of electronic invoicing, Article 218 sentence 1 of the Draft VAT Directive

IDSt welcomes the regulation that, as of 1 January 2028, invoices must generally be issued in structured electronic format. This can lead to considerable efficiency gains, especially at the level of the invoice recipient, due to the automated processing of invoices.

b) On the exceptions to the principle of electronic invoicing, Article 218 sentence 2 of the Draft VAT Directive

The issuing of invoices on paper or in other formats should be limited to invoices to private customers (B2C) in order to comprehensively ensure efficiency gains in incoming invoice processing.

Request

> **Restriction of the exception in Article 218 sentence 2 of the Draft VAT Directive for transactions to non-taxable persons.**

c) On the admissibility of electronic invoices that comply with the European standard for electronic invoicing, Article 218 sentence 3 Draft VAT Directive

IDSt warmly welcomes this. We refer to our detailed comments above under B. 3. a) of this feedback letter, especially with regard to the need for the standard format to be unambiguous and leave little room for interpretation, as well as the need for additions to EN 16931 for VAT purposes in the B2B-context.

d) On the abolition of the derogations for state clearing, Article 218 sentence 4 Draft VAT Directive

Invoices are basically private documents whose exchange takes place on a civil law basis. The specification of a state clearing system is therefore not expedient. Instead of a prior clearing procedure, plausibility checks of the formal invoice content should be carried out downstream after the data has been transmitted to the respective tax administration in accordance with the procedures standardised in Articles 262 to 264 of the VAT Directive, such as checking the validity and allocation of the VAT identification numbers used.

We refer to our detailed opinion above under B. 3. b) with regard to the need for regulations on the transmission network.

2. Re Article 222(1) of the Draft VAT Directive – Shortening the time limit for issuing invoices

For Article 222 VAT Directive-E to be implementable in practice at all, a clear definition of the "chargeable event" in the VAT Directive is needed, especially for supplies of goods. At present, views in the Member States differ widely as to when "right to dispose as owner" is transferred within the meaning of Article 14 (1) of the VAT Directive. While many Member States consider the start of transport or dispatch to the customer to be the time of delivery, others rely on the time of transfer of risk, which they derive from the delivery conditions used in accordance with INCOTERMS. In the EU, however, this may well lead to a difference of two weeks in the assessment of the time of delivery in the case of a delivery from Poland to Malta, for example. The same applies to the distinction between continuous deliveries within the meaning of Article 64 (2) VAT Directive and individual deliveries.

Request

> **A binding definition of the "occurrence of the chargeable event" should be standardised, especially for supplies of goods, preferably in the VAT Implementation Regulation (Regulation (EU) 282/2011). In the case of supplies of goods, this should be based on the start of the transport or dispatch of the supplied goods, especially if the supplier issues the invoice.**

The deadline of two days for issuing the invoice in Article 222 (1) of the Draft VAT Directive is disproportionately short. Italy, for example, the only country with actual experience in comprehensive electronic invoicing for VAT purposes, has set a deadline of 12 days for issuing an invoice. In particular, also with regard to the five-year period of Article 24h (6) Draft Regulation (EU) 904/2010 (Document COM(2022) 703 final), it is not comprehensible why this extremely short period for the creation of an invoice and subsequent reporting should be necessary if the Member States subsequently have the data available for verification for at least five years.

Furthermore, there is no provision for small and medium-sized enterprises (SMEs) that does justice to their special features. For example, in the construction sector, acceptance by the building owner determines the time of performance. However, this requires the prior preparation of a measurement by the lead contractor, which the client checks and changes if necessary. Only then is the scope of performance clear.

In addition, the extremely short invoice issuance period of two days will lead to a large number of provisional invoices (possibly based on estimates of the supplies or the price), to pro forma invoicing or to an increased number of partial or interim invoices, which will subsequently have to be corrected, as the invoice issuers will simply not know how to manage otherwise. The number of invoices to be reported will therefore multiply due to the considerable number of corrective invoices that will then be generated.

All in all, the regulation has been drafted without taking into account the economic realities and is therefore likely to jeopardise the functioning of the Internal Market, contrary to its enabling basis in Article 113 TFEU.

Request

> **The period should be extended along the lines of existing periods in the Member States. A standardisation of a period of 15 calendar days for issuing invoices in Article 222 (1) of the Draft VAT Directive is sensible and guarantees the functioning of the Internal Market.**

3. On the deletion of Article 223 of the VAT Directive

The general and undifferentiated abolition of the Member States' option to allow for monthly collective invoices will lead to a multiplication of the number of invoices. It has not been clarified whether the IT systems of the Member States in particular, if they make use of the option under Article 271a of the Draft VAT Directive, but also the electronic reporting systems of the Commission and the Member States provided for in Article 24g (1) and (2) of the Draft Regulation (EU) 904/2010, will be able to cope with this multiplication of the number of invoices and the resulting much higher data transfer.

Furthermore, it is unclear which deliveries or services of the same kind may still be combined in one invoice and to what extent, or which directly related matters, for example in project business, may still be invoiced together.

In general, the undifferentiated deletion of Article 223 of the VAT Directive violates the principle of proportionality under EU law, as the possibility of monthly collective invoicing is also deleted for supplies or other services that are not subject to the new reporting procedure according to Article 262 et seq. VAT Directive-E.

Request

> **In analogy to our previous proposal on Article 222 (1) of the Draft VAT Directive, the issuing of summary invoices for supplies of goods and services where the VAT becomes chargeable within 15 consecutive calendar days is to be permitted in Article 223 of the VAT Directive on a mandatory basis for all Member States for invoices subject to the reporting system under Title XI, Chapter 6, Section 1.**
>
> **In addition, for all other invoices not subject to the reporting system under Title XI, Chapter 6, Section 1, Member States shall continue to be given the option to allow monthly summary invoices.**

4. On the extension of Article 226 of the Draft VAT Directive

a.) On the addition of No. 16 to Article 226 of the Draft VAT Directive

It is not clear how to proceed in case of a reissue of an invoice after a previous cancellation of the invoice to be corrected. If necessary, it should be clarified in the form of *explanatory notes* that the cancellation document itself is a correction document and therefore the newly issued invoice itself is a third document that no longer requires a reference to the cancelled invoice.

It is also common practice to correct several invoices of a period with one correction invoice. In some cases, it is also common practise to refer to the number of the discount or bonus agreement or the contract number in general instead of individual invoice numbers.

Request

> **Reference to the sequential numbers of several corrected invoices must be allowed. It must also be permitted to refer to the number (or similar identifier) of the agreement (such as discount or bonus agreements) from which the adjustment arises instead of the sequential numbers of adjusted invoices.**

b) On the addition of No. 17 to Article 226 of the Draft VAT Directive

The specification of a single IBAN number of the account to which the payment is to be made exclusively represents a disproportionate process complexity for the invoice issuer and invoice recipient. In regular business relationships, the invoice recipient usually already has the IBAN number maintained in the supplier master data (based on a contractual agreement at the beginning of the business relationship) and therefore does not use the IBAN number indicated on the invoice for the payment. Taking into account the bank details as indicated in the invoice also contradicts the principle of four-eyes-controls; for compliance reasons, other employees will process invoices and payments than those employees who maintain the bank details in the supplier master data. A comparison of the possibly differing bank accounts between the invoice and the master data increases the complexity of the process.

In the area of small and medium-sized enterprises (SMEs), it is also common to specify IBANs of several bank accounts to which the payment of the invoice can be made, as the financing of these SMEs often takes place via several banks. This would be made impossible by the provision of Article 226 No. 17 of the Draft VAT Directive, which allows the specification of only one bank account.

In addition, there are numerous deliveries or services for which no payment is made, but which are, for example, offset against deliveries or services of the invoice recipient. Examples of this are so-called “geographical swaps”, which are intended to prevent the

unnecessary transport of so-called "commodities" (bulk goods). The situation is similar in the case of services between affiliated companies, where as a rule no payment is made but only an offset.

Many invoices are also paid by credit card, which would also be made impossible by the provision of Article 226 No. 17 of the VAT Directive, which requires the provision of the IBAN of a bank account. The same applies to invoice settlement by way of factoring.

Furthermore, the directive does not explain how the IBAN number of a single bank account is supposed to contribute to the prevention of VAT fraud. As far as recital (13) of the draft VAT Directive refers to the tracking of financial flows, this is meaningless, as it is not explained how the tracking of payment flows is supposed to be relevant for VAT in the context of the intended reporting obligations.

From this point of view, too, the provision of Article 226 no. 17 of the Draft VAT Directive is disproportionate.

Request

Article 226 No. 17 of the Draft VAT Directive is to be deleted.

c) On the addition of No. 18 to Article 226 of the Draft VAT Directive

The same problems arise here as with Article 226 No. 17 of the Draft VAT Directive. Economic operators are free to determine different payment modes where there is no due date per invoice, for example in current account clearing. Such a common and widespread business practice would be *de facto* prohibited by the requirement to specify a due date.

Furthermore, the indication of the due date on invoices is often made with reference to contractual agreements, such as "due within 30 days after receipt of invoice". This common and widespread business practice would also be *de facto* prohibited by the requirement to indicate a specific due date.

Here, too, the directive does not explain how the indication of the due date of the invoice is supposed to contribute to the prevention of VAT fraud. Insofar as recital (13) of the Draft VAT Directive refers to the tracking of financial flows, this is meaningless as well, as it is not explained how specifically the tracking of payment flows is to be relevant for VAT in the context of the intended reporting obligations.

The provision of Article 226 No. 18 of the Draft VAT Directive is therefore disproportionate.

Request

Article 226 No. 18 of the Draft VAT Directive is to be deleted.

5. Re Articles 262 and 263 of the Draft VAT Directive

According to Article 262 of the Draft VAT Directive, taxable persons are to submit data on "each supply and transfer of goods" or "each intra-Community acquisition" and "each service supplied". According to the first sentence of the first subparagraph of Article 263 (1) of the Draft VAT Directive, this is to be done for "each individual transaction carried out by the taxable person".

However, it is unclear who can determine the scope of the "individual transaction". Can "one supply" be understood to mean the totality of goods dispatched per day to one customer and goods destination, even if these are loaded on several lorries for logistical reasons, for example? Or is a single delivery to be assumed for each lorry? Can consignments of goods be grouped together within the two-day period of Article 222 of the Draft VAT Directive?

Request

> **It should be regulated uniformly throughout the Union, for example in the VAT Regulation (Regulation (EU) 282/2011), that the taxable person supplying the goods or services can decide for himself the extent to which he wishes to combine a supply of goods or services for the purposes of issuing an invoice (subject to the time limits of Article 222 of the Draft VAT Directive) and reporting under Articles 262 et seq. of the Draft VAT Directive.**

6. Re Article 263 (1), first subparagraph, first sentence, of the Draft VAT Directive Draft

In principle, the two-working-day reporting period of Article 263 (1), first subparagraph, first sentence of the Draft VAT Directive is far less problematic than the invoice issuing period of Article 222 of the VAT Directive. However, this does not apply to small and medium-sized enterprises (SMEs) if they use other systems for the reporting obligations under Article 262 et seq. Draft VAT Directive than the systems they use for invoicing. This means that SMEs and micro-enterprises in particular are burdened with additional bureaucracy and face difficulties in dealing with public holidays, vacation days, and special situations such as illness.

Furthermore, the two-working-day reporting deadline of Article 263 (1), first subparagraph, first sentence of the Draft VAT Directive is problematic for recipients of services or intra-Community acquirers who, according to Articles 267 and 268 of the Draft VAT Directive, have “comply with the obligation, laid down in the Chapter, to submit the data” or "to submit data on those transactions as provided for in this chapter". For these, compliance with the reporting deadline is very problematic, as it is usually not possible to carry out a meaningful invoice check within two days. This is not feasible with the currently existing processes and systems. Even with full automation, the review and approval require considerably more than two days - possibly several weeks in the case of invoiced items requiring clarification. If this

deadline were to be maintained, all incoming invoices would have to be reported first, subject to a later invoice correction.

Particularly critical is the obligation to report by the recipient of the service or intra-Community purchaser if no invoice has been issued at all.

For comparison: The French e-invoice concept provides for the reporting of foreign incoming invoices in a ten-day time window. The report is due ten days after the end of the respective time window. This results in an effective reporting period of 11-20 days after receipt of the incoming invoice.

Request

> **The reporting deadline in the first sentence of the first subparagraph of Article 263(1) of the Draft VAT Directive must be extended to two weeks after the expiry of the deadline for issuing invoices and an exemption from the fiction of the expiry of the deadline must be created in favour of the recipient of the supply or the intra-Community acquirer in relation to their reporting obligations under Articles 267 and 268 of the Draft VAT Directive if the supplier does not fulfil his obligation to issue an invoice.**

7. Re Article 264 of the Draft VAT Directive

The envisaged scope of the reporting obligations is not necessary for combating VAT fraud and is therefore not compatible with the principle of data minimisation.

To achieve the objective (combating VAT fraud), it is sufficient to report a small part of the information contained in an electronic invoice. This is far smaller than envisaged in the EU Commission's proposal. For tax purposes in EU trade in goods B2B, for example, it is sufficient to transmit the data on the invoice number, contracting parties (VAT-IDs), reason for tax exemption or reverse charge and total amount of the invoice. With the aforementioned information, invoices can be verified as tax-exempt intra-Community supplies of goods through the envisaged double reporting requirement of the supplier and the acquirer, thus counteracting the currently prevalent fraud practices, including carousel transactions in international trade in goods. Further parts of the invoices for order and payment processing are generally not required for this purpose.

The reporting of the type and quantity of the delivered items or the scope and type of the service provided is not considered necessary. A prerequisite for comparability would be the standardisation of the item descriptions. On the one hand, practice shows that the descriptions differ considerably and are not comparable. Furthermore, an invoice can contain hundreds of individual items, all of which are also to be stored at European level in the Central VIES and will considerably inflate this system. On the other hand, and this is

crucial in the context of combating VAT fraud, it is not to be expected that the contents of invoices that may differ from the actual delivery of goods will be detected, since the information on the outgoing and incoming invoices will be identical or - if there is an intention to defraud - mutually incorrect. Last but not least, in order to protect data security and business secrets, it seems advisable not to collect all transaction contents in a central place. This is all the more the case as the armed forces within the framework of the Common Foreign and Defence Policy would also be obliged to report on an item-by-item basis by Articles 22 and 268 of the Draft VAT Directive.

As a subset, the reporting data record according to the Draft should also contain the VAT rate and amount. In the case of tax-exempt intra-Community supplies of goods, this is data that is only collected at the level of the invoice recipient in the course of the taxation of the acquisition and therefore cannot be included in the invoicing party's outgoing invoice. From his point of view these are tax-exempt outgoing transactions or those that are subject to the reverse charge mechanism, for which in any case no VAT is to be shown on the invoice.

There are also major concerns about recording and reporting an account to which payment is credited. In practice, the account details are regularly stored in the systems of the invoice recipient and thus provide security against bogus invoices that could cause the recipient to transfer to a newly indicated account of a fraudulent invoice issuer. This security against fraud or error would run counter to an obligation to use an account to be specified in the invoice. On the disproportionality of the corresponding requirement as a mandatory invoice feature, we refer to our opinion on Article 222 No. 17 of the Draft VAT Directive above.

A data protection-compliant design must, among other things, observe the principles of purpose limitation (Article 5 No. 1 b) of the EU GDPR) and data minimisation (Article 5 No. 1 c) of the EU GDPR). In order to be able to carry out a compliance assessment, a precise definition of the objectives of the VIDA initiative must first exist. This definition of objectives is currently being discussed and negotiated.

Request

> **VAT in the Digital Age" must first clarify how the reporting system as a whole should be designed in order to comply with the principles of purpose limitation (Art. 5 No. 1 b) of the EU GDPR) and data minimisation (Art. 5 No. 1 c) of the EU GDPR). In particular, it must be defined how the reporting process on the part of the service recipients or intra-Community acquirers is designed - should they only report the invoice data received (in which case most of the invoice features to be reported are superfluous) or should they report any corrections that they feel need to be made (in which case more time is needed to check the invoice, and it must also be defined how these corrections are to be reported).**
>
> **On the basis of the current state of the discussion - i.e. the recipients of services or intra-Community acquirers simply report the invoice data received**

without any obligation to correct - the references to Article 226(6), (8), (9), (10), (16), (17) and (18) should be deleted from Article 264 (a) of the Draft VAT Directive in accordance with the principle of data minimisation (Article 5(1)(c) of the EU GDPR).

If the European legislator cannot decide to delete the references to Article 226 (6), (8), (9), (10), (16), (17) and (18) in Article 264 (a) of the Draft VAT Directive, the parties obliged to report data will be threatened with considerable bureaucratic burdens in addition to aspects of data security through data minimisation. This is all the more worrying as these data are also part of the surveys on statistics on trade between Member States according to Regulation (EEC) 3330/91 ("Intrastat"). In order to mitigate this, according to the principle of economical data collection ("report only once"), the reported data must also be used for Intrastat purposes, otherwise taxpayers and statistics providers will be subject to double reporting obligations with essentially the same content.

Moreover, in this case the reporting system according to Articles 24g et seq. Draft Regulation (EU) 904/2010 must at the same time relieve the taxable person of his archiving obligations, as the five-year period of Article 24h (6) Draft Regulation (EU) 904/2010 is oriented more to the national limitation periods for VAT than to the interest of a timely analysis of deviations.

Request

In the event that the references to Article 226(6), (8), (9), (10), (16), (17) and (18) in Article 264 (a) of the Draft VAT Directive are not deleted, the reporting taxable persons will be exempted from their corresponding reporting obligations to Intrastat (on the output and input side) in accordance with the principle of economical data collection ("*report only once*").

Taxable persons who have fulfilled their reporting obligations under Articles 262 to 264, and 267 or 268 of the Draft VAT Directive should be enabled to choose to use the reporting system under Articles 24g et seq. Draft Regulation (EU) 904/2010 to fulfil their archiving obligations under national VAT laws.

8. On the deletion of Article 266 of the VAT Directive

IDSt welcomes the deletion of Article 266 of the VAT Directive. The deletion avoids deviations from the intended harmonisation of reporting obligations.

9. On the reporting obligations of recipients of supplies and intra-Community acquirers, Articles 267 and 268 of the Draft VAT Directive

Because of the deadlines of Article 263 (1), first subparagraph, first sentence of the VAT Directive and the scope of the items to be reported, it is necessary to clarify the content of the reporting obligation of the recipient of the supplies under Article 267 of the Draft VAT Directive or the intra-Community acquirer under Article 268 of the Draft VAT Directive. According to the submitted legal text of Articles 267 and 268 of the Draft VAT Directive, it is sufficient that the recipient or acquirer transmits the same data as the issuer of the invoice without being obliged to submit a correction report. Furthermore, it must be clarified that no civil law positions of the supplying traders can be derived from the fulfilment of the reporting obligations, in particular no recognition of the correctness of the invoice under civil laws. Compliance with the reporting obligations of Articles 267 and 268 of the Draft VAT Directive must not have any effect on civil law disputes between the parties involved in the respective transaction.

Request

> **The legal text of Articles 267 and 268 of the Draft VAT Directive must clarify that the recipient of the service or intra-Community acquirer only has to transmit the data as it was transmitted to him by the supplier in the invoice for the respective transaction.**
>
> **Otherwise, the obligation to transmit data must be extended to two weeks after the expiry of the deadline for issuing invoices and an exemption must be created with regard to the fiction of the expiry of the deadline in favour of the recipient of the supply or intra-Community acquirer with regard to their reporting obligations under Articles 267 and 268 of the Draft VAT Directive if the supplying trader does not comply with his obligation to issue an invoice.**
>
> **It must also be made clear in the legal text of Articles 267 and 268 of the Draft VAT Directive that the parties to the civil law transaction underlying the reporting obligations cannot derive any civil law claims or defences from compliance with those reporting obligations.**

10. Re Article 271a of the Draft VAT Directive

The requirements for reporting systems for national and cross-border transactions in the EU should be the same. In particular, small and medium-sized enterprises (SMEs) tend to avoid cross-border transactions and concentrate their activities on the domestic market when the administrative burden for cross-border transactions is increased. This leads *de facto* to an impediment of activities in the Internal Market.

If, despite the concerns raised above, the comprehensive reporting obligations, in particular also with regard to the invoice features under Article 226 (6) and (8) of the Draft VAT Directive, should remain in place, the corresponding national data system should at the same time be usable to fulfil the national archiving requirements with regard to invoices in order to relieve the burden on taxable persons.

The Member States' "grand option" under Article 271a (2) of the Draft VAT Directive is problematic, as it forces taxable persons to issue invoices via Article 271b of the Draft VAT Directive, even where there is currently no obligation to issue invoices for the corresponding B2C transactions (except for intra-Community distance sales).

According to the legal text of Article 271a of the Draft VAT Directive, this option for the Member States cannot create any reporting obligations on the part of the recipients of the supplies. This should be made clearer in the legal text.

11. Re Article 271b of the Draft VAT Directive

The deadline of two working days after the invoicing obligation under national regulations is much less problematic, as there are no reporting obligations on the part of the service recipients.

The use of the European Invoice Standard for the fulfilment of national reporting obligations is very welcome; it contributes decisively to standardisation and thus to cost avoidance for taxpayers but also for tax administrations.

Allowing other data formats is also welcome as it protects investments already made to meet existing national reporting requirements.

12. Re Article 273 subparagraph 2 of the VAT Directive

IDSt warmly welcomes this provision as it prevents deviations from the intended standard and is therefore essential to avoid legal costs due to fragmentation of the VAT legal framework in the Member States.

13. Regarding Article 24h (6) Draft Regulation (EU) 904/2010

The storage of reported data for at least five years in the Central VIES system must be viewed very critically from the point of view of data security through data minimisation (Art. 5 No. 1 c) of the EU GDPR). In particular, if data has to be reported according to Article 226 nos. 6 and 8 of the VAT Directive, all purchasing relationships and conditions of European companies are stored in a central entity that represents a prime target for attack by

interested third countries. Bill of materials and rebates/bonuses of products manufactured in the Union can be hijacked in this way in machine-readable form. No detailed arguments are put forward for the justification that the five-year period would correspond to the minimum period required for analysis and investigation by national tax authorities, this is merely asserted.

Moreover, practical experience shows that tax authorities will use this period if they have five years to carry out an audit. The regulation is thus in contradiction to the pursued goal of being able to counter VAT fraud through a near-real-time reporting system.

Request

> **The retention period is to be limited to one year in order to take into account the aspects of data security through data minimisation and to give the national tax authorities an incentive to evaluate the data promptly.**

14. General aspects of the introduction of digital reporting obligations as of 1.1.2028

The Digital Reporting Obligations will entail high compliance costs for taxpayers, which are not just private producers and traders but to a significant part entities of public administrations like municipalities. These burdens come at a time when the European economy is struggling with problems of a magnitude not seen since the founding of the EEC, exemplified by

- the war of aggression against Ukraine with its effects on the Union,
- high energy costs with high investments to be made at the same time in the transformation to a renewable energy-based industry,
- significant competitive advantages of other regions, for example the USA through the Inflation Reduction Act, or the Gulf states through favourable energy prices.

Any further cost burden on European VAT payers must therefore be avoided under all circumstances.

Proposals such as pre-filled VAT returns can be more of a burden than a relief, especially if taxpayers must check the pre-filled values against their own records.

Moreover, the VAT gaps of the individual Member States will not be closed by the mere introduction of the Digital Reporting Requirements. This requires greater efforts on the part of the Member States.

Request

> **Small and medium-sized enterprises (SMEs) in particular need support in implementing the necessary processes for the Digital Reporting Requirements, e.g., through in-kind contributions from the Union and the Member States such**

as free hardware and especially free software for the fulfilment of the Digital Reporting Requirements. The data to be reported is very valuable, especially as it is structured. Taxpayers' contributions to improving the European VAT system should be rewarded accordingly, for example through a lump sum per reported transaction to cover the compliance costs.

At the same time, it is of utmost importance that the tax administrations of the Member States be equipped with the necessary material and personnel to be able to use the reported data effectively and efficiently to combat VAT fraud.

E. Summary

The legislative initiative "VAT in the Digital Age" has many strengths, but also problematic points, especially in its practical implementation. IDSt, with its extensive experience, is glad to be at your disposal to find possible solutions in an open discussion that will help the legislative initiative to succeed.

Annex – necessary additions to the European invoicing standard

EN 16931 does not currently meet the requirements - but would have to be extended to include the further contents of UBL 2.1 (UBL 2.3). The following information would be lost:

- Further partner functions for routes / series business
    - SellerSupplier Party
    - BuyerCustomer Party
- Order reference at item level
    - Order Line reference
- Taxes/ withholding tax process
    - WithholdingTaxTotal Header and item level
- Various texts at header and position level
    - CUR (Customer remarks)
    - AAK (Price conditions) - discounts, rebates etc. (not standardised so far in EN 16931, only text field...)
    - HAZ (Hazard information) - Environmental information, hazard statements etc.
    - ACB (Additional information)
    - REG (Regulatory information) (e.g., footer with board information)
    - CCI (Customs clearance instructions) (Information referring to the preference authorisation) - Preference information, country of origin, responsible customs clearance, HS Code etc.
- Other points:
    - Sub-item number (SubInvoiceLine)
    - Various references to the delivery note, e.g. : Delivery [0..*] A delivery associated with this invoice line.
        - Only reference to a single order possible per invoice.
    - TaxPointDate [0..1] The date of this invoice line, used to indicate the point at which tax becomes applicable.
    - FreeOfChargeIndicator