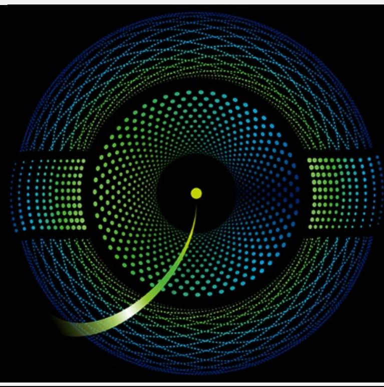

Indirect Tax

VAT alert

VAT in the Digital Age: European Commission proposal for digital reporting requirements and e-invoicing

On 8 December 2022, the European Commission adopted and published its "VAT in the Digital Age" proposal, defining the core areas where European VAT will be modernised in the coming years. Alongside the changes made to the platform economy, e-commerce, and the single VAT registration in the EU, (see our tax alert of 11 December 2022), the proposal highlights the European Commission's ambitious vision for how VAT reporting should embrace digital opportunities, with an implementation timeline set to commence at the beginning of 2028. At the EU level, there would be an obligation to issue structured e-invoices for all intra-EU supplies of goods and services, and to transmit data from these invoices to the relevant national VAT authorities' electronic portal, in near real-time. This would require significant systems and process changes, and investment from all businesses engaged in cross-border trade within the EU, but would be expected to reduce VAT fraud losses for member states by up to EUR 11 billion per year. In a further positive development for businesses, the European Commission has also proposed that future domestic e-reporting changes would be based on the EU model.

The EU initiative in the field of digital reporting requirements (DRR) aims to optimise the use of digital technologies to improve VAT compliance, combat VAT fraud, and reduce the fragmentation of digital reporting obligations currently emerging in Europe, improving legal certainty, and reducing the cost of compliance for businesses.

The European Commission's proposal on DRR includes amendments to Council Directive 2006/112/EC (the EU VAT directive), as well as amendments to Regulation (EU) No 904/2010 (on administrative cooperation and combating fraud in the field of VAT). It responds to the need for increased digitisation and less fragmentation through a "quick fix" modification allowing member states to require taxpayers to use e-invoicing and e-reporting for domestic transactions, followed by a flagship reform implementing digital reporting by mandating e-invoicing for almost all cross-border supplies of goods and services in the EU by 1 January 2028.

Reshaping the e-invoicing context

A new definition of "electronic invoice" or "e-invoice" in EU VAT law would mean an invoice that has been issued, transmitted, and received in a structured electronic format which allows for its automatic and electronic processing. The new definition would introduce a level of uncertainty in respect of the continued use of some existing forms of electronic invoicing, such as .pdf invoices, and whether these would continue to constitute valid alternatives to paper VAT invoices.

With effect from 1 January 2024, if a member state requires businesses to issue structured electronic invoices, these invoices would be permitted to follow the European standard EN 16931. E-invoicing systems with mandatory pre-authorisation or verification of the e-invoices by the tax authorities could no longer be introduced, and any existing models would have to be phased out by the beginning of 2028. An important practical change is that suppliers wishing to issue e-invoices would, from a VAT perspective, no longer be reliant on the agreement of the recipient.

As from 1 January 2028, invoices would be issued in a structured electronic format. Member states would still be permitted exceptions, but not for those transactions that would be subject to e-reporting (see below).

VAT invoices would need to contain more information than currently required under the invoice content requirements laid down in Council Directive 2010/45/EU (the second invoicing directive). New elements include the supplier's International Bank Account Number (IBAN) to which payment for the invoice will be made, the due date(s) for payment of the invoice, and, in the case of corrective invoices, the corrected invoice's sequential number. The ability to issue summary invoices covering multiple supplies made during the same calendar month would be abolished, meaning that invoices would need to be issued on a transactional basis.

Introduction of e-reporting for cross-border transactions within the EU

New obligations for taxpayers involved in intra-EU trade

The focus of the European Commission's proposal is the implementation of a digital reporting requirement covering all intra-Community supplies and acquisitions, as well as for all business-to-business (B2B) services that are taxed in a member state other than that in which the supplier is established, and that therefore are subject to the reverse charge at the level of the recipient. This would cover both general B2B services rendered between taxpayers established in different member states, and also transactions subject to the domestic reverse charge for nonestablished suppliers, which would become mandatory as from 1 January 2025.

Invoices for supplies falling within the scope of this digital reporting must be issued no later than two working days after the chargeable event (typically the arrival of the goods or the completion of the service). Subsequently, a dataset containing most of the mandatory VAT invoice details would need to be transmitted on a transaction-level basis, no later than two working days after the invoice was issued (or should have been issued).

This transmission could be done by the taxpayer making the supply, or by a third party on the taxpayer's behalf. The dataset would be provided to a national electronic portal that must allow the transmission of data from electronic invoices meeting the EN 16931 standard. This near real-time reporting is likely to be integrated into the commercial offerings from e-invoice service providers in the future.

The data transmission requirement would not be limited to the supplier of goods and services; taxpayers making intra-Community acquisitions also would be obliged to transmit data on their purchases. This would be a new requirement at the EU level, as only a small number of member states currently require European Purchase Lists (EPLs). As a consequence of the new reporting obligations from 2028, the European Sales (Purchase) Lists (ESL/ESPL) would be abolished.

Setup of the Central VIES system at EU level

To process the data collected on intra-EU trade, a central system for the exchange of VAT information ("Central VIES") would be set up by the European Commission. This system would replace the current VIES that allows the exchange of data on cross-border supplies and on VAT registration numbers between EU member states.

The capability of the Central VIES would be significantly increased; it would be able to store data transmitted on cross-border operations, crosscheck information received on intra-EU supplies and acquisitions, aggregate data to make it available to national tax authorities by VAT registration number, and augment the data from the intra-EU transaction reports with other data sources like the customs surveillance system or the future Central Electronic System of Payment information (CESOP).

In addition to its reporting uses, the Central VIES system would also contain taxpayer's VAT registration data provided by the national tax authorities' databases. Member states would need to update this system immediately, and enter the data obtained on intra-EU transactions into their national portals within one day after receipt.

Access to the data in the Central VIES system would be limited to specific tax officials and national data systems, and would need to meet high standards in terms of data privacy and security. Taxpayers would remain able to access the VAT registration data of their counterparts, as is the case under the current VIES system.

Framework for national e-reporting obligations

Aside from broadening the scope of the current ESPL obligations to include transmission of transaction level data for intra-EU supplies of goods and services, the changes to the VAT directive also set out a strict framework within which member states could impose digital reporting requirements on their taxpayers for other transactions.

In the future, domestic digital reporting requirements could cover both B2B and B2C transactions performed by taxpayers identified for VAT in the specific member state. The systems that member states put in place would need to follow certain features of the intra-EU DRR, including reporting on a transactional basis, transmission of data to the tax authorities within two working days, and the ability to transmit data from structured electronic invoices according to the European standard and potentially other formats.

Member states would have flexibility on other points, such as which data elements must be provided by taxpayers.

With this framework, the proposal aims to achieve a uniform approach across member states introducing domestic DRR to reduce the associated costs for businesses and groups active across the EU. Member states that will have implemented DRRs such as clearance e-invoicing or (near) real-time reporting before the entry into force of the new rules would need to adapt their systems by 1 January 2028. Going forward, member states could still impose additional VAT obligations on taxpayers to ensure accurate collection of VAT and to prevent evasion, but it would not be possible to impose additional invoicing obligations, nor to implement additional reporting obligations, over and above the EU and domestic DRR.

Comments

The European Commission's proposal positions real-time digital reporting based on e-invoicing for businesses as the solution for improving the EU VAT system. This is expected to give tax authorities fighting VAT fraud real time information on cross-border transactions. For businesses, adapting to the proposed changes would mean a significant investment in fast and accurate invoicing processes and reporting capabilities. At the same time, these new digital tools could bring value to businesses by providing valuable insights into their tax position and speed up digitisation of broader business processes, in respect of invoicing, payment, and accounting.

The proposal provides a clear direction that would allow businesses operating across multiple jurisdictions in the EU to start planning their e-invoicing and VAT reporting systems for the future. The proposed strict framework would reduce the current fragmented approach that has been a major pain point for businesses when confronted with the global trend towards e-invoicing and reporting. However, member states would continue to have some freedom with regard to the design and operation of their national data collection systems and processes, which could lead to complexity and additional cost.

Businesses may wish to start analysing as soon as possible these proposed transformational changes, and how mandatory e-invoicing and real-time digital reporting could affect them.

The required unanimous approval of the proposal by all EU member states will take time, but the proposed timeline seems a realistic target date for member states to implement the changes in their national legislation and to adapt government processes and systems, as well as to allow businesses time to prepare.

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