Value Added Tax Breakout
Abuse of Law: taking stock, lessons learned and outlook
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- ***Introduction***

In 2020, the overall VAT gap in the EU was estimated to be €93 billion. Part of this loss was due to missing trader intra-community fraud (MTIC), not collecting enough VAT, not collecting VAT on time, non-payment of VAT and declaring illegally input VAT.

Various EU Member States have adopted new technologies in order to combat the above and remediate the appropriate VAT collection by the tax authorities. For this reason, such EU Member States have introduced e-invoicing and e-reporting obligations for taxpayers to their national legislations.

- ***Abbreviations and main CTC models***

The transaction controls are divided into two categories, based on the timing that the information is submitted to the tax authorities : Periodic Transaction Controls (PTC) and Continuous Transaction Controls (CTC).

PTC are submitted to the tax authorities on a regular basis and include the VAT returns, Recapitulative Statements, SAF-T etc. SAF-T requirement was introduced in principle for audit purposes, but since this provides information on a transaction-by-transaction basis, it is also a useful tool for VAT purposes.

CTC are submitted to the tax authorities before the invoice issuance or at the same time with the invoice issuance of after the invoice issuance and are divided into the following categories: real-time invoice reporting and e-invoicing.

As per the real-time invoice reporting, the information depicted on the invoice is transmitted to the tax authorities, and not the invoice itself.

On the other hand, e-invoicing refers a compliance system and e-invoices are structured documents that should be read by any software.

E-invoicing systems are further divided into clearing and not-clearing ones. As per the clearing e-invoicing systems, the supplier sends the invoice to the tax authorities, the tax authorities perform verification tests and then the tax authorities send the invoice to the customer. In the not-clearing invoicing systems, the tax authorities and the customer receive the invoice issued by the supplier at the same time.

- ***E-invoicing in Poland***

In 2015, Poland experienced carousel VAT fraud and decided to involve technology in order to combat this.

Therefore, antifraud measures were taken in order reduce the VAT gap, inspired also by other EU Member States, such as split payment mechanism (inspired by Romania), e-invoicing (inspired by Italy), electronic cash registers (inspired by Czech Republic) and others.

More spefically, with respect to e-invoicing, Poland introduces the KSeF as mandatory system (which is supported by Peppol, i.e an EU standard for exchanging e-invoices), that will entry into force – as a rule - on the 1st of July 2024. The issuance of an e-invoice via KSeF is summarized as follows:

- The taxpayer authorizes a tax accounting services provider to issue the invoice.
- The services provider extracts the data of the invoice to be reported to the Tax Authorities and transmits this to the latter in a xml file.
- The Tax Authorities verify the services provider and the xml file received.
- The Tax Authorities assign a KSeF number and the invoice is received in few seconds by the customer.

It is noted that B2C transactions are not covered by the KSeF system.

Finally, the Tax Authorities check via the KSeF system only the structure/format of the invoice and do not examine further any potential VAT issues ; a deeper analysis is performed later on for income tax cases.

➢ *E-Invoicing and E-Reporting in France*

France has decided to implement a progressive generalization of e-invoicing and e-reporting.

Large enterprises will have to comply with such obligations as of July 2024. Medium-size enterprises will have to comply with respect to the issuance of the invoice as of January 2025 and small and micro-businesses as of January 2026, while both categories of companies will have to comply with respect to the invoices receipt as of July 2024.

E-invoicing

E-invoicing will be imposed for domestic B2B transactions, while e-reporting for all non domestic B2B and B2C transactions as well. Both systems will cover the delivery of goods and supply of services that are not exempt. However, e-invoicing will be relevant for taxpayers established for VAT in France , while e-reporting for non-established taxpayers as well.

The e-invoices should comply with a compulsory electronic format and may be transmitted to the tax authorities and to the customer either by a private platform or a public platform (Chorus Pro).

Moreover, additional French invoicing requirements will apply and the e-invoices will be send at the same time when these are issued.

E-reporting

Both invoice and payment data will have to be transmitted for the provision of services, via the invoice or the recapitulative statement to the public/private platform, and from such platform to the tax authorities. For the supplies of goods, only the transaction data should be transmitted.

➢ *Comparison of EU Member States choices*

An overview of the different CTC models used by EU Member States was provided, proving the need for harmonization on an EU level via the ViDA (VAT in the Digital Age) Proposal. For example:

- Hungary, Greece and Spain implement real-time reporting.
- Lithuania, Poland and Portugal implement SAF-T reporting.
- Italy implements clearance e-invoicing; via the introduction of this measure, Italy has managed to reduce the VAT gap by EUR 2 billion.

➢ *EU ViDA: e-invoicing project*

As mentioned in the previous sections, EU Member States are free to implement reporting systems without any guidance; the compliance of the businesses with these different systems proved to be burdensome and the cross-border controls are performed inefficiently.

In addition, the EU VAT legislation prohibits Member States from applying mandatory e-invoicing.

Furthermore, the intra-community transactions reporting as it is currently in force appears to be inefficient and outdated, since this has not been changed since 1993, the information is performed in an aggregated way on a monthly/quarterly basis and the obligation to submit EU Purchases Lists is optional (and not mandatory as for the EU Sales Lists) for Member States.

The changes that the ViDA proposal will bring with respect to e-invoicing from the date of entry into force of the relevant Directive, are summarized as follows:

- E-invoices need to be in a structured electronic format.
- Member States will be able to impose mandatory e-invoicing.
- The European standard will be accepted in all Member States.
- The issuance of e-invoices will not depend on their acceptance by the recipient.
- There will be no possibility to issue summary invoices.

The changes that the ViDA proposal will bring with respect to e-invoicing as from 2028 are summarized as follows:

- E-invoicing will be mandatory for transactions covered by a reporting obligations (i.e intra-community supplies of goods and services).
- Member States will have the option to impose e-invoicing for transactions other than the above-mentioned.
- The Member States shall accept e-invoices as per the European standard (which is currently relevant for B2G transactions).
- Additional invoicing requirements will apply, i.e payment details and identification of rectified invoice.
- The transmission of the e-invoices will be performed either by service providers or directly between parties.
- Tax administrations can set up a public portal for the transmission of invoices.

Digital Reporting Requirements (DRR)

- Furthermore, as of 2028, the recapitulative statements will be replaced with a new DRR for intra-community transactions, which aims to combat missing trader fraud.
- It is noted that the Intrastat reporting requirements will not be changed/replaced.
- The DRR for intra-Community transactions will cover the same transactions and transmit the same data that are currently covered by the recapitulative statements, plus the payment details and the reference to invoice rectified.
- The reporting will be performed on a transaction-by-transaction basis to the national tax authorities of the taxable persons and both the supplier and the acquirer will be obliged to the DRR.
- The national tax authorities will send the data on intra-Community transactions to the central VIES, i.e a new database that will be created. Then, a cross-checking of the reported supplies and acquisitions will be performed.
- The transmission of the data may be done according to the European Standard. However, Member States may allow the use of additional formats, in so far as the interoperability with the European standard is guaranteed.
- Member States will have the option to impose DRR for domestic supplies of goods and services, in so far as these follow the features of the intra-community DRR.

➢ <u>Key take away</u>

The e-invoicing and e-reporting obligations are not only relevant for VAT , but also for income tax cases, since more and more online information will be available to the authorities (the gross margin of the companies will be already known to the authorities). In addition, such electronic obligations are expected to result in pre-filed VAT returns; may this also be the case for CIT returns in the future?

Panel members:

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