



Lund University

School of Economics and Management
Department of Business Law

The VAT liability of digital platforms: the EU rules in the light of the OECD Guidelines

by

Dunja Nicole Lisa Jetten

HARN60 Master Thesis

Master's Programme in European and International Tax Law
2020/2021

Spring semester 2021

Supervisor: Marta Papis-Almansa

Examiner: Sigrid Hemels

Word count: 14.953

Date of submission: 26-05-2021

Author's contact information:

Dunjajetten@hotmail.com

+31620947508

Table of contents

| | |
|--|----|
| Summary | 4 |
| Abbreviation list | 5 |
| 1. Introduction | 7 |
| 1.1 Background | 7 |
| 1.2 Aim | 10 |
| 1.3 Method and materials | 11 |
| 1.4 Delimitation | 11 |
| 1.5 Outline | 12 |
| 2. The new VAT liability regime for digital platforms in the EU | 13 |
| 2.1 How does the regime work? | 13 |
| 2.2 Transactions covered | 14 |
| 2.3 The term ‘facilitating’ | 15 |
| 2.4 The involvement of several digital platforms | 17 |
| 2.5 Limited liability of the deemed supplier | 18 |
| 2.6 The presumption of the status of the seller and buyer | 19 |
| 2.7 Chargeability | 20 |
| 2.8 The One Stop Shop | 20 |
| 2.9 Interim conclusion | 21 |
| 3. Comparing the OECD Guidelines | 22 |
| 3.1 The full VAT liability regime for digital platforms according to the OECD | 22 |
| 3.1.1 The operation of a full VAT liability regime | 22 |
| 3.1.3 What are the ‘digital platforms’ for the application of a full VAT liability regime? | 26 |
| 3.1.4 The involvement of several digital platforms | 30 |
| 3.1.5 Limited liability of the deemed supplier | 31 |
| 3.1.6 The presumption of the status of the seller and buyer | 32 |
| 3.1.7 Definition of the taxing point | 33 |
| 3.2 Topics not mentioned by the EU rules | 34 |
| 3.2.1 Returned goods | 34 |
| 3.2.2 Bad debt relief | 35 |
| 3.2.3 Safeguard regarding the exemption for VAT on importation | 35 |
| 3.2.4 Fast-track customs process | 36 |
| 4. Conclusions | 37 |
| 4.1 The identified similarities | 37 |
| 4.2 The identified differences and recommendations for amendments | 38 |

| | |
|-----------------------------|-----------|
| 4.3 Final remarks | 40 |
| Bibliography | 41 |
| EU legislation | 41 |
| Literature | 42 |
| Official publications | 43 |
| Table of cases | 44 |
| Websites | 45 |

Summary

Considering the growing role of digital platforms in e-commerce sales, countries have requested guidance on how to create efficient and effective rules regarding the liability for digital platforms to collect VAT on online sales of goods without creating undue administrative costs and compliance burdens. Therefore, in 2019, the OECD provided guidelines in this regard. The EU adopted the rules regarding the liability for digital platforms to collect VAT on the supply of goods already in 2017, causing the author to wonder if these new EU rules are in line with the OECD Guidelines.

This thesis shows that the new EU rules comply with the OECD Guidelines on important aspects, like the operation of the full VAT liability regime for digital platforms, the broad definition of the term ‘digital platform’ and similar examples of functions considered relevant for enlisting digital platforms under the full VAT liability regime. Nevertheless, paragraph 4.2 has shown there are also many differences between the new EU rules and the OECD Guidelines. There are even several recommendations of the OECD that are not included at all in the new EU rules. To comply with the principles of legal certainty, fiscal neutrality and proportionality, the new EU rules should be reevaluated and the recommendations given by the OECD Guidelines should be taken into account. The author is of the opinion that an approach whereby a digital platform is required to at least be involved in the establishment of the legal relationship between the parties of the supply and handles the payment itself to be liable to collect and remit the VAT could also be considered. This would make the rules less complicated and more effective and efficient for the digital platform as it would have all the information itself to be able to collect and remit the VAT to the tax authorities. It remains to be seen whether, and if so, in what way the new VAT liability rules for digital platforms will be amended. However, in the light of the findings presented in this thesis, it seems clear that the new EU rules should be further reviewed.

Abbreviation list

| | |
|-------------------|---|
| B2B | Business-to-business |
| B2C | Business-to-consumer |
| CJEU | The Court of Justice of the European Union |
| EU | European Union |
| EUR | Euro (currency) |
| Commission | European Commission |
| Explanatory Notes | European Commission, Explanatory Notes on VAT e-commerce rules, Council Directive (EU) 2017/2455, Council Directive (EU) 2019/1995 Council Implementing Regulation (EU) 2019/2026, September 2020. |
| GST | Goods and services tax |
| IOSS | Import One Stop Shop |
| MOSS | Mini One Stop Shop |
| OECD | Organisation for Economic Co-operation and Development |
| OECD Guidelines | OECD (2019), The Role of Digital Platforms in the Collection of VAT/GST on Online Sales, OECD, Paris. www.oecd.org/tax/consumption/the-role-of-digital-platforms-in-the-collection-of-vat-gst-on-online-sales.pdf . |
| OSS | One Stop Shop |
| TBE services | Telecommunication, broadcasting and electronically supplied services |
| The Council | The Council of the EU |

The (new) VAT liability rules for digital platforms / The (new) EU rules

The new EU rules regarding the liability for digital platforms to collect VAT on the supply of goods coming into force on 1 July 2021

UK

United Kingdom

VAT

Value-added tax

VAT Directive

Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, OJ 2006, L 347, p. 1-11

VAT Implementing Regulation

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, OJ L 77, 2011, p. 1–22.

WCO

World Customs Organization

1. Introduction

1.1 Background

Already since 2003 the European Union (EU) has been trying to adjust the VAT system, so it is better equipped to handle the development of e-commerce.¹ The first modernizations have been made regarding business-to-consumer (B2C) telecommunication, broadcasting and electronically supplied (TBE) services. Under the old rules, TBE services were taxed at the supplier's place of establishment, which allowed non-EU suppliers to supply such services to EU customers without EU value-added tax (VAT), while EU businesses supplying similar services had to charge VAT at the rate applicable in their country of establishment.² By changing the taxation of such services to the Member State of consumption, first for non-EU suppliers³ and in 2015⁴ also for EU-suppliers, a level playing field was established requiring all operators to charge VAT at the rate imposed by the country of the final customer. To ease the compliance burden for suppliers having to register for, file and pay VAT in the different Member States where they supply TBE services to consumers, the Mini One Stop Shop (MOSS) was introduced to allow suppliers to register for, file and pay VAT in one Member State.⁵

As e-commerce kept growing with 1.6 billion consumers buying online in 2016 and an estimated growth to 2.2 billion consumers buying online by 2022, the European Commission (Commission) recognized that more changes had to be made.⁶ Therefore, in line with the Digital Single Market strategy of the EU⁷, on 1 December 2016 the Commission adopted a proposal to

¹ Council Directive 2002/38/EC of 7 May 2002 amending and amending temporarily Directive 77/388/EEC as regards value added tax arrangements applicable to radio and television broadcasting services and certain electronically supplied services, OJ 2002, L 128, p. 41–44; M. Papis-Almansa, 'VAT and electronic commerce: the new rules as a means for simplification, combatting fraud and creating a more level playing field?', *ERA Forum*, no. 20, 2019, p. 203.

² Art. 45 VAT Directive.

³ Council Directive 2002/38/EC of 7 May 2002 amending and amending temporarily Directive 77/388/EEC as regards value added tax arrangements applicable to radio and television broadcasting services and certain electronically supplied services, OJ 2002, L 128, p. 41–44.

⁴ Council Directive 2008/8/EC of 12 February 2008, amending Directive 2006/112/EC as regards the place of supply of services, OJ 2008, L 44/11. See also Council Implementing Regulation (EU) No. 1042/2013 of 7 October 2013 Amending Implementing Regulation (EU) No. 282/2011 as Regards the Place of Supply of Services, OJ 2013, L 284/1; M. Papis-Almansa, p. 204.

⁵ European Commission, Explanatory Notes on the EU VAT changes to the place of supply of telecommunications, broadcasting and electronic services that enter into force in 2015, Council Implementing Regulation (EU) No 1042/2013, April 2014.

https://ec.europa.eu/taxation_customs/sites/taxation/files/resources/documents/taxation/vat/how_vat_works/telecom/explanatory_notes_2015_en.pdf; M. Papis-Almansa, p. 204.

⁶ European Commission (2016), Impact Assessment Accompanying the Document Proposals for a Council Directive, a Council Implementing Regulation and a Council Regulation on Modernising VAT for Cross-border B2C e-Commerce, https://ec.europa.eu/taxation_customs/sites/taxation/files/swd_2016_379.pdf, p. 106. See also Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee on an action plan on VAT – Towards a single EU VAT area – Time to decide, COM (2016) 148 final. https://ec.europa.eu/taxation_customs/sites/taxation/files/com_2016_148_en.pdf; Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee on the follow-up to the Action Plan on VAT – Towards a single EU VAT area – Time to act, COM (2017) 566 final. https://ec.europa.eu/taxation_customs/sites/taxation/files/communication_-_towards_a_single_vat_area_en.pdf.

⁷ Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee and the Committee of the Regions on a Digital Single Market Strategy for Europe, COM (2015) 192 final. <https://eurlex.europa.eu/legalcontent/EN/TXT/PDF/?uri=CELEX:52015DC0192&from=EN>.

modernize VAT for cross-border B2C e-commerce⁸ and on 5 December 2017 the VAT e-commerce package was adopted in the EU⁹, followed by a second set of amendments on 21 November 2019.¹⁰ Due to the practical difficulties created by the measures taken to contain the coronavirus pandemic, these new rules now come into force on 1 July 2021.¹¹ ‘The purpose of the VAT e-commerce package is to level the playing field between traditional commerce and e-commerce, eliminate the distortions that currently exist in favor of non-EU businesses, reduce compliance costs and the complexity of VAT obligations for business, and minimize the risk of VAT fraud and non-compliance leading to VAT revenue losses’.¹² To achieve these aims, the new rules include one EU-wide threshold of 10.000 euro (EUR), above which B2C supplies become subject to the VAT rules of the Member State where the customer is established, instead of national thresholds being applied by the different Member States. Moreover, the MOSS will become available to all B2C supplies of goods and services (One Stop Shop¹³) and the exemption on importation for goods with a value of EUR 22 or less will be abolished.

Another important part of these new e-commerce rules that was not included in the original proposal of the Commission of 1 December 2016, but was later adopted by The Council of the EU (the Council) in 2017 is the liability for digital platforms to collect VAT on the supply of goods to consumers in the EU, as research suggests that approximately two in every three e-commerce supplies of goods (within the EU or from third countries) are made via multi-sided digital platforms.¹⁴ These multi-sided platforms such as e-commerce marketplaces have thus

⁸ Proposal for a Council Directive amending Directive 2006/112/EC and Directive 2009/132/EC as regards certain value added tax obligations for supplies of services and distance sales of goods (COM (2016) 757 final). https://ec.europa.eu/taxation_customs/sites/taxation/files/com_2016_757_en.pdf.

⁹ Council Directive (EU) 2017/2455 of 5 December 2017 amending Directive 2006/112/EC and Directive 2009/132/EC as regards certain value added tax obligations for supplies of services and distance sales of goods, OJ L 348, 2017, p. 7-22; Council Regulation (EU) 2017/2454 of 5 December 2017 amending Regulation (EU) No 904/2010 on administrative cooperation and combating fraud in the field of value added tax, OJ L 348, 2017, p. 1-6; Council Implementing Regulation (EU) 2017/2459 of 5 December 2017 amending Implementing Regulation (EU) No 282/2011 laying down implementing measures for Directive 2006/112/EC on the common system of value added tax, OJ L 348, 2017, p. 32-33.

¹⁰ Council Directive (EU) 2019/1995 of 21 November 2019 amending Directive 2006/112/EC as regards provisions relating to distance sales of goods and certain domestic supplies of goods, OJ L 310, 2019, p. 1–5; Council Implementing Regulation (EU) 2019/2026 of 21 November 2019 amending Implementing Regulation (EU) No 282/2011 as regards supplies of goods or services facilitated by electronic interfaces and the special schemes for taxable persons supplying services to non-taxable persons, making distance sales of goods and certain domestic supplies of goods, OJ L 313, 2019, p. 14–27.

¹¹ Council Decision (EU) 2020/1109 of 20 July 2020 amending Directives (EU) 2017/2455 and (EU) 2019/1995 as regards the dates of transposition and application in response to the COVID-19 pandemic, OJ L 244, 2020, p. 3–5; Commission Implementing Regulation (EU) 2020/1318 of 22 September 2020 amending Implementing Regulations (EU) 2020/21 and (EU) No 2020/194 as regards the dates of application in response to the COVID-19 pandemic, OJ L 309, 2020, p. 4–6; Council Implementing Regulation (EU) 2020/1112 of 20 July 2020 amending Implementing Regulation (EU) 2019/2026 as regards the dates of application in response to the COVID-19 pandemic, OJ L 244, 2020, p. 9–10; Council Regulation (EU) 2020/1108 of 20 July 2020 amending Regulation (EU) 2017/2454 as regards the dates of application in response to the COVID-19 pandemic, OJ L 244, 2020, p. 1–2.

¹² Proposal for a Council Directive amending Directive 2006/112/EC and Directive 2009/132/EC as regards certain value added tax obligations for supplies of services and distance sales of goods (COM (2016) 757 final). https://ec.europa.eu/taxation_customs/sites/taxation/files/com_2016_757_en.pdf, p. 2; M. Papis-Almansa., p. 203.

¹³ See further paragraph 2.8.

¹⁴ OECD (2019), The Role of Digital Platforms in the Collection of VAT/GST on Online Sales, OECD, Paris. www.oecd.org/tax/consumption/the-role-of-digital-platforms-in-the-collection-of-vat-gst-on-online-sales.pdf, p. 14.

shown to play a key role in the rapid growth of e-commerce, a position that is only more strengthened by the ongoing Covid-19 crisis.

‘Multi-sided platforms are platforms that enable, by electronic means, direct interactions between two or more customers or participant groups (typically buyers and sellers) with two key characteristics: (i) each group of participants (“side”) are customers of the multi-sided platforms in some meaningful way, and (ii) the multi-sided platform enables a direct interaction between the sides’.¹⁵ Therefore, platforms that sell their own goods directly to customers fall outside the scope of the new EU rules.¹⁶ For the purposes of this thesis, multi-sided platforms are hereafter referred to as ‘digital platforms’. To keep this thesis consistent and clear the term ‘digital platform’ will also be used when referring to other materials where another name for these digital platforms might have been used like for example ‘electronic interface’ in the VAT Directive and the Explanatory Notes.¹⁷

Despite the possibility for Member States to make third parties jointly and severally liable for VAT purposes,¹⁸ the Council came to the conclusion that this measure was insufficient to ensure effective and efficient collection of VAT.¹⁹ To achieve that objective and reduce the administrative burden for suppliers, tax administrations and consumers, the Council ought it necessary for digital platforms who facilitate distances sales of goods to be involved in the collection of VAT by establishing that they are the persons who are deemed to make those sales.²⁰

‘Taking into account the continuously expanding volume of e-commerce sales, and the fact that most of these sales should in principle be subject to VAT[...], the amounts of VAT[...] revenue at stake are considerable’.²¹ Also considering the growing role of digital platforms in e-commerce sales, countries have requested guidance on how to create efficient and effective rules regarding the liability for digital platforms to collect VAT on online sales without creating undue administrative costs and compliance burdens.²² The OECD therefore published specific guidelines in this regard in 2019, referred to in this thesis as the ‘OECD Guidelines’.

However, as mentioned above the EU VAT e-commerce package was already adopted in 2017, two years before the OECD Guidelines were published and in the literature the new EU rules regarding the liability for digital platforms to collect VAT on the supply of goods coming into force on 1 July 2021 (the new VAT liability rules for digital platforms / the new EU rules) have

¹⁵ Ibid.; See also J.I.W Lock et al., ‘De toekomst van de btw bij e-commerce: heffing via platforms (The future of VAT regarding e-commerce: collection via platforms)’, *MBB Maandblad Belasting Beschouwingen*, no. 1, 2019, p. 6-8.

¹⁶ J.I.W. Lock et al., p. 6-7.

¹⁷ Article 2(2) Council Directive (EU) 2017/2455; European Commission, Explanatory Notes on VAT e-commerce rules, Council Directive (EU) 2017/2455, Council Directive (EU) 2019/1995 Council Implementing Regulation (EU) 2019/2026, September 2020.

https://ec.europa.eu/taxation_customs/sites/taxation/files/vatecommerceexplanatory_28102020_en.pdf, p. 8-9.

¹⁸ Art. 205 VAT Directive.

¹⁹ Council Directive (EU) 2017/2455, p. 8 (sub 7). See also J. Sol, ‘EU VAT E-Commerce Package – Trust in MOSS and in Electronic Interfaces as Collection Methods’, *International VAT Monitor*, vol. 32, no. 2, 2021, p. 1-2.

²⁰ Council Directive (EU) 2017/2455 of 5 December 2017, p. 8 (sub 7); European Commission, September 2020, p. 11.

²¹ OECD (2019), p. 14.

²² Ibid., p. 17.

also been criticized on several occasions²³ causing the author to wonder if the new VAT liability rules for digital platforms are in line with the OECD Guidelines.

1.2 Aim

The EU VAT system does not operate in a vacuum, but in a broader international context. It is therefore important that the EU VAT system is compatible with the VAT/GST systems of other OECD members as 'greater consistency among country approaches will further facilitate compliance, particularly by businesses that are faced with multi-jurisdictional obligations, reduce compliance costs and improve the effectiveness and quality of compliance processes. For tax and customs authorities, consistency is also likely to support the effective international co-operation in tax administration and enforcement'.²⁴ Moreover, the aim of the OECD Guidelines is not only to give guidance on how to create efficient and effective rules regarding the liability for digital platforms to collect VAT on online sales without creating undue administrative costs and compliance burdens - similar to the objective of the new EU rules²⁵ -, but also takes into consideration the principles considered by the general OECD VAT/GST guidelines²⁶ and the Ottawa Taxation Framework Conditions²⁷, which are also important principles of the EU VAT system as considered by the The Court of Justice of the European Union (CJEU) like the principle of fiscal neutrality²⁸, the principle of legal certainty²⁹ and the principle of proportionality.³⁰

The aim of this thesis is therefore to analyze if the new VAT liability rules for digital platforms are in line with the OECD Guidelines. This thesis further seeks to give an overview of the

²³ M. Papis-Almansa, p. 215-220; M. Lamensch, 'Rendering Platforms Liable to Collect and Pay VAT on B2C Imports: A Silver Bullet?', *International VAT Monitor*, vol. 29, no. 2, 2018, p. 48-49; J.I.W. Lock et al., p. 13-17; A.M. Bal, 'The Changing Landscape of the EU VAT: Digital VAT Package and Definitive VAT System', *European Taxation*, vol. 59, no. 11, 2019, p. 77; M.M.W.D. Merckx, *The wizard of OSS: effective collection of VAT in cross-border e-commerce*, Amsterdam, Stichting NLFiscaal, 2020, p. 38-39; M. Lamensch, 'Adoption of the E-Commerce VAT Package: The Road Ahead Is Still a Rocky One', *EC Tax Review*, vol. 27, no. 4, 2018, p. 191; European Court of Auditors, E-commerce: many of the challenges of collecting VAT and customs duties remain to be resolved, Special Report, no 12/2019. <https://op.europa.eu/webpub/eca/special-reports/e-commerce-12-2019/en/>.

²⁴ OECD (2019), p. 17.

²⁵ European Commission, September 2020, p. 11.

²⁶ OECD (2017), *International VAT/GST Guidelines*, OECD Publishing, Paris. <http://dx.doi.org/10.1787/9789264271401-en>.

²⁷ OECD (2019), p. 18. The Ottawa Taxation Framework Conditions were welcomed by Ministers and the Ministerial Conference on Electronic Commerce held in Ottawa on 7 – 9 October 1998. See also OECD (2001), *Taxation and Electronic Commerce – Implementing the Ottawa Taxation Framework Conditions*, OECD, Paris. <https://www.oecd.org/tax/consumption/Taxation%20and%20eCommerce%202001.pdf>.

²⁸ See for example: Judgement of 29 October 2009, *NCC*, C-174/08, ECLI:EU:C:2009:669, par. 41-42; Judgement of 15 November 2012, *Zimmermann*, C-174/11, ECLI:EU:C:2012:716, par 46-50; Judgment of 3 May 2001, *Commission v. France*, C-481/98, ECLI:EU:C:2001:237, par 21-22; Judgement of 10 September 2002, *Kügler*, C-141/00, ECLI:EU:C:2002:473, par 30. See also Terra B. J. M., Kajus, J., *Introduction to European VAT - Chapter 2 Legal principles*, Global Topics IBFD, last updated 1 September 2020, p. 27-31.

²⁹ See for example: Judgement of 3 June 2008, *Intertanko and others*, C-308/06, ECLI:EU:C:2008:312, par 69; Judgement of 22 November 2001, *Kingdom of the Netherlands v Council of the European Union*, C-301/97, ECLI:EU:C:2001:621, par 43; Judgment of 21 February 2006, *Halifax plc*, C-255/02, ECLI:EU:C:2006:121, par 72; Judgement of 29 April 2004, *Leusden*, C-487/01, ECLI:EU:C:2004:263, par 57; Judgement of 3 December 1998, *Belgocodex*, C-381/97, ECLI:EU:C:1998:589, par 26; Judgement of 8 June 2000, *Schlossstrasse*, C-396/98, ECLI:EU:C:2000:303, par 44. See also Terra B. J. M., Kajus, J.

³⁰ See for example Judgement of 29 July 2010, *Profaktor Kulesza, Frankowski, Józwiak, Orłowski*, C-188/09, ECLI:EU:C:2010:454, par. 26.

similarities and differences between these OECD Guidelines and the new VAT liability rules for digital platforms and provide recommendations for amendments of these rules so they are more in line with the OECD Guidelines and the principles these guidelines are based on.

The research question being answered in this thesis is therefore:

“Are the new VAT liability rules for digital platforms in line with the OECD Guidelines and the principles these guidelines are based on? If not, which recommendations for amendments can be given?”

1.3 Method and materials

The above mentioned aim is achieved by applying the traditional legal dogmatic method.³¹ The analysis is based on the new VAT liability rules for digital platforms in the VAT Directive and the Implementing Regulation.³² There is no case law of the CJEU relating to these provisions (yet) and therefore the methods of interpretation of EU law applied by CJEU need to be followed, namely the literal, contextual and teleological interpretation methods.³³ To come to the right interpretation of the EU rules it might also be necessary to analyze the Explanatory Notes. Even though the Explanatory Notes are considered non-binding rules, they give guidance on how the new rules in the VAT Directive and the Implementing Regulation should be applied in practice in the view of the Commission.³⁴

To achieve the aim set out in paragraph 1.2, the OECD Guidelines will also be analyzed and compared to the new VAT liability rules for digital platforms. The choice for the OECD Guidelines is based on the fact that the OECD, where the EU is a part of,³⁵ has an unique reservoir of expertise by constantly monitoring the tax policies within and outside its member states via statistical data collection and analysis, discussions and peer reviews.³⁶

To give a more comprehensive view on the question being addressed in this thesis other earlier guidelines of the OECD, relevant literature and related rules in other jurisdictions like the UK and Australia will be consulted to support the argumentation.

1.4 Delimitation

This thesis first focuses on the new VAT liability rules for digital platforms. Therefore, the special schemes of the new VAT e-commerce rules are not analyzed in depth, but only

³¹ S.C.W. Douma, *Legal Research in International and EU Tax Law*, Enschede, Wolters Kluwer, 2014, p. 17-18.

³² See for an overview of all the relevant articles regarding the liability of platforms to collect VAT in the EU: European Commission, September 2020, p. 11.

³³ See for example Judgement of 12 February 2009, *Klarenberg*, C-466/07, ECLI:EU:C:2009:85, par. 37 and the case law cited therein; M. Poires Maduro, ‘Interpreting European Law: Judicial Adjudication in a Context of Constitutional Pluralism’, *European Journal of Legal Studies*, vol. 1, no. 2, 2007, p. 4.

³⁴ European Commission, ‘Modernising VAT for cross-border e-commerce’, *EC Europa*, https://ec.europa.eu/taxation_customs/business/vat/modernising-vat-cross-border-e-commerce_en, (accessed 16 March 2021).

³⁵ OECD, ‘European Union and the OECD’, *OECD org*, <https://www.oecd.org/eu/european-union-and-oecd.htm#:~:text=The%20Commission%20of%20the%20European,Economic%20Co%20operation%20and%20Development.&text=At%20the%20same%20time%2C%20the,fundamental%20goals%20of%20the%20Organization>, (accessed 17 March 2021).

³⁶ OECD, ‘About’, *OECD org*, <https://www.oecd.org/about/>, (accessed 17 March 2021).

mentioned where relevant in connection with the liability for digital platforms to collect VAT in the EU.

Furthermore, the VAT liability rules for digital platforms covering the supply of services as described by article 9a of the VAT Implementing Regulation are out of scope for this thesis³⁷ as the OECD Guidelines focus on the supply of goods³⁸ and another guideline from the OECD regarding the VAT liability for digital platforms covering the supply of services is expected in the future.³⁹ This thesis will also not focus on the liability of digital platforms to collect VAT in the light of the sharing and gig economy, as separate guidelines of the OECD have been published recently in this regard.⁴⁰

When analyzing the OECD Guidelines, the focus is on the full VAT liability regime for digital platforms concerning goods⁴¹ as that is the system that will come into force in the EU on 1 July 2021. Therefore, the OECD Guidelines regarding other roles for digital platforms to support the collection of VAT on online sales like for example reporting obligations and administrative cooperation will not be discussed as such.

Moreover, there will not be given an extensive overview of the VAT/GST liability regimes for digital platforms in other jurisdictions as these foreign systems are only used as examples to support the argumentation in this thesis.

It is also not the aim of this thesis to extensively discuss the different principles underlying EU tax law and more specifically the EU VAT system, as it is assumed that the reader of this research has knowledge of EU tax law and the EU VAT system.

1.5 Outline

In chapter 2 the new VAT liability rules for digital platforms will be discussed. In chapter 3 the OECD guidelines will be compared to the new EU rules, also covering topics not mentioned by these new rules. In chapter 4 the conclusion of this thesis will be given summarizing the identified similarities and differences between the new VAT liability rules for digital platforms and the OECD guidelines. Furthermore, recommendations for amendments of the new VAT liability rules for digital platforms will be given.

³⁷ On article 9a of the VAT Implementing Regulation see further: European Commission, April 2014.

³⁸ OECD (2019), p. 7.

³⁹ Ibid., p. 30.

⁴⁰ OECD (2021), The Impact of the Growth of the Sharing and Gig Economy on VAT/GST Policy and Administration, OECD, Paris. [The Impact of the Growth of the Sharing and Gig Economy on VAT/GST Policy ... - OECD - Google Boeken](#).

⁴¹ See chapter 2 of the OECD Guidelines.

2. The new VAT liability regime for digital platforms in the EU

2.1 How does the regime work?

The central article governing the VAT liability regime for digital platforms in the EU regarding the supply goods is the new article 14a of the VAT Directive. This article introduces a deeming provision for VAT purposes as it states that a digital platform ‘who facilitates the supply of goods shall be deemed to have received and supplied the goods himself’.⁴² Applying the literal and teleological interpretation of the CJEU, article 14a thus creates two supplies when an underlying supplier uses a digital platform to sell goods to final customers in the EU, namely a supply from the underlying supplier to the digital platform (deemed business-to-business (B2B) supply) and a supply from the digital platform to the final customer (deemed B2C supply).⁴³

The new article 36b VAT Directive, also introduced as part of the new VAT liability rules for digital platforms, states that transport is allocated to the deemed B2C supply and not to the deemed B2B supply, thereby making sure that the deemed B2C supply is not regarded as a local supply as this would cause none of the supplies to qualify as distance sales of imported goods⁴⁴, which would make it impossible for a digital platform to use the OSS.⁴⁵

When the deemed B2B supply is a supply of goods within the EU as described by paragraph 2 of article 14a VAT Directive, the new rules state that the deemed B2B supply is exempt from VAT with the right of deduction for the underlying supplier.⁴⁶ In this case a VAT invoice has to be issued by the underlying supplier to the digital platform, being the deemed supplier, in accordance with the rules of the Member State where the supply takes place.⁴⁷ In the Commission’s view self-billing arrangements, whereby the digital platform issues the invoice to the underlying supplier, following the rules of the Member State where the supply takes place can also be applied.⁴⁸ When the deemed B2B supply regards a distance sales of imported goods as described by paragraph 1 of article 14a VAT Directive no EU VAT or invoicing obligations apply as the supply takes place outside the EU.⁴⁹ Under the new rules, the digital platform will thus have to collect and remit the VAT on the deemed B2C supply as shown in picture 1. In principle there are no invoicing obligations for (deemed) B2C supplies.⁵⁰ However, Member States can impose an VAT invoice obligation on these deemed B2C supplies.⁵¹ For intra-EU distance sales of goods there is no invoice obligation when the OSS is used, but an invoice is required when the OSS is not used.⁵² When the OSS is used the invoicing rules of the Member

⁴² Article 2(2) Council Directive (EU) 2017/2455.

⁴³ See also European Commission, September 2020, p. 13-14.

⁴⁴ Article 14(4) VAT Directive.

⁴⁵ M. Papis-Almansa, p. 219. On the OSS see further paragraph 2.8.

⁴⁶ Article 1(3) and article 1(4) Council Directive (EU) 2019/1995; See also European Commission, September 2020, p. 14.

⁴⁷ Article 220(1) VAT Directive; Article 219a(1) VAT Directive; See also European Commission, September 2020, p. 14.

⁴⁸ European Commission, September 2020, p. 14.

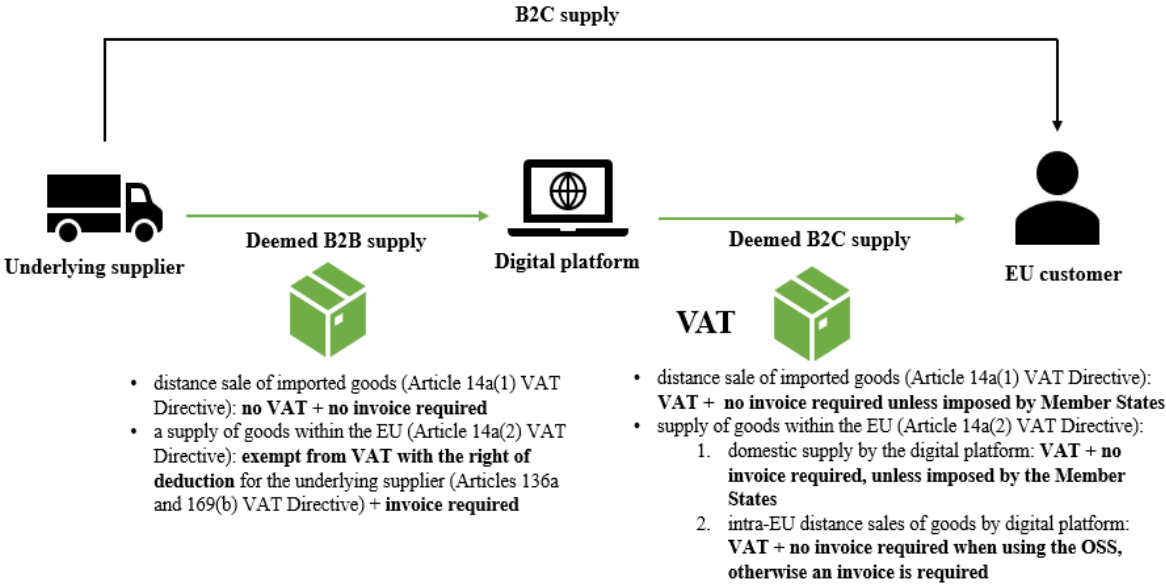
⁴⁹ Article 2(1) VAT Directive; Article 220 VAT Directive; See also European Commission, September 2020, p. 14.

⁵⁰ Article 220 VAT Directive; See also European Commission, September 2020, p. 15.

⁵¹ Article 221 VAT Directive; See also European Commission, September 2020, p. 15.

⁵² Corrigendum to Council Directive (EU) 2017/2455 of 5 December 2017 amending Directive 2006/112/EC and Directive 2009/132/EC, OJ L 348, 2017; See also European Commission, September 2020, p. 15.

State of identification apply, otherwise the invoicing rules of the Member State in which the supply of goods takes place apply.⁵³



Picture 1: Consequences of the new deemed supplier model

2.2 Transactions covered

The EU has chosen to have a limited scope of transactions covered by the new VAT liability rules for digital platforms. Under the new article 14a VAT Directive digital platforms are considered to be a deemed supplier for ‘distance sales of goods imported from third territories or third countries in consignments of an intrinsic value not exceeding EUR 150, frequently referred to as low value goods’.⁵⁴ For these low value goods no customs duties have to be paid, except for alcoholic products, perfumes, toilet waters, tobacco and tobacco products.⁵⁵ The other transactions covered by article 14a VAT Directive are ‘supplies of goods within the Community by a taxable person not established there to a non-taxable person; both domestic supplies and intra-Community distance sales of goods are covered’.⁵⁶

Following the literal interpretation of the law by the CJEU by looking at the text and wording of the law and also in line with the Explanatory Notes it can thus be concluded that the following transactions are not covered by the new rules coming into force 1 July 2021 regarding the liability of digital platforms to collect VAT in the EU:

- (i) ‘goods in consignments where the intrinsic value is exceeding EUR 150 imported in the EU, irrespective of where the underlying supplier/seller is established; and

⁵³ Article 219a VAT Directive; See also European Commission, September 2020, p. 15-16.
⁵⁴ Article 2(2) Council Directive (EU) 2017/2455; European Commission, September 2020, p. 11-12.
⁵⁵ Council Regulation (EC) No 1186/2009 of 16 November 2009 setting up a Community system of reliefs from customs duty, OJ L 324, 2009.
⁵⁶ Article 2(2) Council Directive (EU) 2017/2455; European Commission, September 2020, p. 11-12.

(ii) goods which were already released into free circulation in the EU and goods which are located in the EU and supplied to customers in the EU, irrespective of their value, where the underlying supplier/seller is established in the EU'.⁵⁷

As discussed in paragraph 1.1, the Council wanted to adopt new rules making digital platforms liable to collect VAT on the supply of goods, because digital platforms are the main facilitator of cross-border transactions of goods and to ensure effective and efficient collection of VAT, while at the same time reducing the administrative burden for suppliers, tax administrations and consumers. Applying the teleological interpretation of the CJEU to article 14a VAT Directive in this regard, the scope of the transactions covered by article 14a VAT Directive could have been made broader as the purpose of article 14a VAT Directive would be better met then. This is assuming that the digital platforms covered by the new VAT liability regime can indeed ensure effective and efficient collection of VAT.⁵⁸ Unfortunately it has not been further discussed in for example the Explanatory Notes why the transactions covered by the new VAT liability regime for digital platforms don't include goods above the threshold for low value goods, goods which were already released into free circulation in the EU or goods which are located in the EU and supplied to EU customers by an EU established supplier.

2.3 The term 'facilitating'

For the digital platform to become a deemed supplier and thus become liable to collect VAT under the new EU rules, the digital platform has to facilitate the supply of goods.⁵⁹ According to article 5b of the VAT Implementing Regulation the term 'facilitate' means 'the use of a digital platform to allow a customer and a supplier, offering goods for sale through the digital platform, to enter into contact, which results in a supply of goods being made through the digital platform to that customer'.⁶⁰ Applying the teleological interpretation of the CJEU, a digital platform thus becomes a deemed supplier when a contract for the supply of goods is made between the underlying supplier and the customer via the digital platform. The Commission states the same, namely that 'the sale-purchase from the seller to the customer is realized/concluded with the help of the taxable person operating the digital platform. The concept encompasses situations where customers initiate the purchase process or make an offer for purchasing goods and underlying suppliers accept the offer via the digital platform'.⁶¹ Popular digital platforms that fall under these new rules are for example Amazon or AliExpress, but payment providers like Klarna or Afterpay don't seem to fall under the new rules as they don't initiate a contract between the underlying supplier and the customer.

However, the next part of article 5b of the VAT Implementing Regulation broadens the term facilitating in contrast to the above-mentioned definition. It is stated that '[...] a taxable person is not facilitating a supply of goods where all of the following conditions are met:

(a) that taxable person does not set, either directly or indirectly, any of the terms and conditions under which the supply of goods is made;

⁵⁷ European Commission, September 2020, p. 12. See for example Judgement of 12 February 2009, *Klarenberg*, C-466/07, ECLI:EU:C:2009:85, par. 37 and the case law cited therein; M. Poirés Maduro, p. 4.

⁵⁸ See paragraph 3.1.3.

⁵⁹ Article 2(2) Council Directive (EU) 2017/2455.

⁶⁰ Article 1(1)(b) Council Implementing Regulation (EU) 2019/2026.

⁶¹ European Commission, September 2020, p. 17.

(b) that taxable person is not, either directly or indirectly, involved in authorising the charge to the customer in respect of the payment made;

(c) that taxable person is not, either directly or indirectly, involved in the ordering or delivery of the goods'.⁶²

Applying the literal interpretation method of the CJEU and also looking at the view of the Commission in the Explanatory Notes these conditions need to be fulfilled cumulatively by a taxable person in order to be considered as not facilitating the supply.⁶³ The term 'facilitating' seems to be considered very broad especially when also looking at the examples given in the Explanatory Notes in this regard. The Explanatory Notes specifically state that the concept of a digital platform setting the terms and conditions under which the supply of goods is made, should be interpreted broadly and the fact that the digital platform for example provides 'for the technical solution for the order taking process or the buying initiation (e.g. by placing the goods in a shopping cart) or owns or manages the technical platform through which the goods are supplied' is enough to fall under the concept of setting the terms and conditions as set out in article 5b VAT Implementing Regulation.⁶⁴

The second condition being that the digital platform needs to be involved in charging the customer in respect of the payment made, is also very broad as it 'refers to the situation where the digital platform can influence whether, at what time or under which conditions the customer pays. The concept does not imply that the digital platform has to effectively collect or receive the payment or that it should be involved in each step of the payment process'.⁶⁵ When the digital platform for example 'initiates the process through which the customer is charged or communicates to the customer information about the payment such as the price to be paid, its components, any additional charges due, the time for the payment, methods of payment etc., the digital platform will already be considered involved in charging the customer in respect of the payment made'.⁶⁶

The third condition being that the digital platform needs to be involved in the ordering or delivery of the goods should also be interpreted broadly according to the Explanatory Notes 'as the concept refers to situations where the digital platform can influence the ordering of goods in any way'.⁶⁷ The digital platform is for example already considered to be involved in the ordering or delivery of the goods when the digital platform 'charges to the underlying supplier a fee or commission based on the order's value, provides the shopping cart/check-out process or sends approval to start delivery of the goods/instructs the underlying supplier or a third party to deliver the goods'.⁶⁸

Taking into account all the broad examples in the Explanatory Notes and the fact that the conditions to not 'facilitate' the supply of goods as mentioned in article 5b of the VAT Implementing Regulation have to be fulfilled cumulatively making a digital platform facilitate

⁶² Article 1(1)(b) Council Implementing Regulation (EU) 2019/2026.

⁶³ European Commission, September 2020, p. 17. See for example Judgement of 12 February 2009, *Klarenberg*, C-466/07, ECLI:EU:C:2009:85, par. 37 and the case law cited therein; M. Paires Maduro, p. 4.

⁶⁴ European Commission, September 2020, p. 18.

⁶⁵ *Ibid.*, p. 19.

⁶⁶ *Ibid.*

⁶⁷ *Ibid.*, p. 20.

⁶⁸ *Ibid.*

the supply when one of the conditions is met⁶⁹, it is safe to say that many digital platforms will be covered by the term ‘facilitating’ as described in article 14a of the VAT Directive and article 5b of the VAT Implementing Regulation. Applying the teleological interpretation of the CJEU it is however questionable if such a broad scope of the term ‘facilitating’ is in line with the purpose of the new rules to ensure effective and efficient collection of VAT as not all digital platforms covered by the new rules might be able to collect the VAT.⁷⁰

Article 5b of the VAT Implementing Regulation decreases the scope of article 14a of the VAT Directive somewhat by stating that article 14a of the VAT Directive ‘shall not apply to a taxable person who only provides any of the following:

- (a) the processing of payments in relation to the supply of goods;
- (b) the listing or advertising of goods;
- (c) the redirecting or transferring of customers to other electronic interfaces where goods are offered for sale, without any further intervention in the supply’.⁷¹

However, this negative list doesn’t apply to many digital platforms, which is why the scope of the term ‘facilitating’ in article 14a of the VAT Directive and article 5b VAT Implementing Regulation remains very broad, covering many taxable persons operating a digital platform.⁷² It seems that it is not just popular digital platforms like Amazon, AliExpress or Zalando that fall under the new rules, but also Klarna and Afterpay as next to providing payment processing services, they are also indirectly involved in the ordering or delivery of the goods and setting the terms and conditions under which the supply of goods is made. The order of the goods can for example be declined by Klarna and Afterpay when there is indication that the customer is not able to pay.⁷³ PayPal might also be considered a deemed supplier, facilitating the supply of goods as described by article 14a VAT Directive and article 5b VAT Implementing Regulation, as it not only processes payments, but also sets terms and conditions of the supply by providing dispute management procedures for suppliers and customers and restricting access to funds.⁷⁴

2.4 The involvement of several digital platforms

The new EU rules do not give specific guidance in the VAT Directive or the VAT Implementing Regulation on who is liable to collect the VAT when several digital platforms are involved in the supply of the goods. This seems inconsistent with the broad scope of the term ‘facilitating’

⁶⁹ Ibid., p. 17.

⁷⁰ See further paragraph 3.1.3.

⁷¹ Article 1(1)(b) Council Implementing Regulation (EU) 2019/2026; See also European Commission, September 2020, p. 17.

⁷² See also M. Papis-Almansa, p. 217-218; M. Lamensch, ‘Rendering Platforms Liable to Collect and Pay VAT on B2C Imports: A Silver Bullet?’, p. 48; J.I.W. Lock et al., p. 13-16.

⁷³ See for example: Klarna, ‘Why wasn’t my purchase approved with Klarna?’, *Klarna.com*, <https://www.klarna.com/us/customer-service/why-wasnt-my-purchase-approved-with-klarna/>, (accessed 1 May 2021); Afterpay, ‘Payment Conditions’, *Afterpay.nl*, <https://www.afterpay.nl/en/about/pay-with-afterpay/payment-conditions>, (accessed 1 May 2021).

⁷⁴ European Commission, September 2020, p. 19; PayPal, ‘Helping you resolve cases’, *PayPal*, <https://www.paypal.com/uk/webapps/mpp/resolve-disputes-chargebacks>, (accessed 6 May 2021). PayPal, ‘Why is my PayPal payment Under Review?’, *PayPal*, <https://www.paypal.com/uk/smarthelp/article/why-is-my-paypal-payment-under-review-faq495>, (accessed 6 May 2021).

as discussed in paragraph 2.3. There are for example many digital platforms like Amazon or Bestseller that work together with digital platforms like Klarna and Afterpay allowing a customer to pay for the goods after having received them.

According to the Commission's view in the Explanatory Notes article 5b of the VAT Implementing regulation must be interpreted that there can only be one digital platform that is the deemed supplier under the new rules. This is the digital platform 'where the order is taken and through which the supply is concluded'.⁷⁵ 'Any other intermediary in the supply chain typically carries out a B2B supply either to the underlying supplier, to the digital platform being the deemed supplier or to potentially any other digital platform'.⁷⁶ So in the Commission's view if there are multiple digital platforms involved in the supply of goods, it is the digital platform where the sale is concluded with the customer (for example Amazon) and not the digital platform providing the payment service (for example Klarna) that is the deemed supplier and thus liable to collect the VAT under the new rules. However, there is no provisions in the VAT Directive or the VAT Implementing Regulation that justify such an interpretation by the Commission. As such, it is still unclear which digital platform is liable to collect the VAT when several digital platforms are involved in the supply of the goods.

2.5 Limited liability of the deemed supplier

Article 5c of the VAT Implementing Regulation states that a digital platform liable to collect VAT 'shall not be held liable for the payment of VAT in excess of the VAT which he declared and paid on the supplies, where all of the following conditions are met:

- a) the taxable person is dependent on information provided by suppliers selling goods through his digital platform or by other third parties in order to correctly declare and pay the VAT on those supplies;
- b) the information provided from the suppliers of goods referred to in point (a) is erroneous;
- c) the taxable person can demonstrate that he did not and could not reasonably know that the information received was incorrect'.⁷⁷

When the digital platform is not liable to collect the VAT based on article 5c of the VAT Implementing Regulation, the liability of the underlying supplier to collect the VAT can be invoked when the Member States have introduced national rules to make the underlying supplier jointly and several liable to collect the VAT.⁷⁸

The burden of proof to be able to rely on the limited liability provision of article 5c of the VAT Implementing Regulation lies thus on the digital platform. Moreover, according to the Explanatory Notes 'the assessment on when the conditions are fulfilled has to be made on a case-by-case basis and therefore no well-defined guidelines can be provided'.⁷⁹ Only on 'condition c' as mentioned above the Explanatory Notes give some further comments including that the digital platform should 'within the commercial relationship with the underlying supplier

⁷⁵ European Commission, September 2020, p. 21.

⁷⁶ Ibid.

⁷⁷ Article 1(1)(b) Council Implementing Regulation (EU) 2019/2026; See also European Commission, September 2020, p. 22-23.

⁷⁸ Article 205 VAT Directive; See also European Commission, September 2020, p. 23.

⁷⁹ European Commission, September 2020, p. 24.

insist on and make the underlying supplier aware of the importance of providing all relevant information'.⁸⁰ Moreover, the digital platform needs to act in good faith and should exercise due commercial care. In this regard the Explanatory Notes state that the case law of the CJEU has to be followed where was stressed that 'a trader should act in good faith and take every step which could reasonably be asked of him to ensure that the transaction which he is carrying out does not result in tax evasion'.⁸¹ 'Therefore, the responsibility of the taxable person is limited to what is a normal trader's due diligence or (due commercial care⁸²) in the course of his business'.⁸³ 'Whether this is indeed the case, should be assessed based on the particular circumstances of the supply, but also taking into account the internal organization of the electronic interface and the information that can be available within the digital platforms systems/environment'.⁸⁴ However, the Explanatory Notes state that it is likely impossible to avoid that digital platforms have to change their business model to apply the due commercial care.⁸⁵

2.6 The presumption of the status of the seller and buyer

Article 5d of the VAT Implementing regulation aims to provide more legal certainty to the digital platforms liable to collect VAT on the supply of goods by stating that 'unless he has information to the contrary, the taxable person deemed to have received and supplied the goods pursuant to article 14a VAT Directive shall regard the person selling goods through a digital platform as a taxable person and the person buying the goods as a non-taxable person'.⁸⁶

Regarding the presumption on the status of the seller according to the Commission 'the mere absence of the VAT identification number or tax reference number (for instance no such number was provided during the registration/subscription process with the digital platform by the supplier) does not automatically mean that the underlying supplier is not a taxable person'.⁸⁷ Also the digital platform should have a verification process in place for the situation where the underlying supplier indicates to act as a non-taxable person 'to assess whether the supplies of the underlying supplier would not qualify him as a taxable person'.⁸⁸

Regarding the presumption on the status of the customer the VAT identification number is an important element of proof of the status of a taxable person according to the Commission. So 'if during the registration/subscription process with the digital platform the customer did not provide the VAT identification number, the digital platform shall treat the customer as a non-taxable person'.⁸⁹

⁸⁰ Ibid.

⁸¹ Judgement of 14 June 2017, *Santogal M-Comércio e Reparação de Automóveis*, C-26/16, ECLI:EU:C:2017:453, par. 71-72; Judgement of 6 September 2012, *Mecsek-Gabona*, C-273/11, ECLI:EU:C:2012:547, par. 48; Judgement of 31 January 2013, *LVK – 56*, C-643/11, ECLI:EU:C:2013:55, par. 63; Judgement of 21 February 2008, *Netto Supermarkt*, C-271/06, ECLI:EU:C:2008:105, par. 24-25; Judgement of 6 September 2012, *Gábor Tóth*, C-324/11, ECLI:EU:C:2012:549, par. 45.

⁸² Judgement of 21 February 2008, *Netto Supermarkt*, C-271/06, ECLI:EU:C:2008:105, par. 27.

⁸³ European Commission, September 2020, p. 25.

⁸⁴ Ibid., p. 24.

⁸⁵ Ibid., p. 25.

⁸⁶ Article 1(1)(b) Council Implementing Regulation (EU) 2019/2026; See also European Commission, September 2020, p. 26.

⁸⁷ European Commission, September 2020, p. 26.

⁸⁸ Ibid.

⁸⁹ Ibid.

2.7 Chargeability

The Explanatory Notes only mention chargeability in the practical examples given in the end, not in a separate section.⁹⁰ Nevertheless, this is an important topic that needs to be discussed when analyzing the new VAT liability rules for digital platforms as the digital platform should know when it should pay the VAT on the supplies carried out through its platform, for which it has VAT liability.

According to the new rule in the VAT Directive: ‘by way of derogation from Articles 63, 64 and 65, the chargeable event of the supply of goods by a taxable person who is deemed to have received and supplied the goods in accordance with Article 14a and of the supply of goods to that taxable person shall occur and VAT shall become chargeable at the time when the payment has been accepted’.⁹¹ The chargeable event thus applies to both the deemed B2B supply and the deemed B2C supply. Further clarification is given by the new article 41a of the VAT Implementing Regulation stating that ‘for the application of Article 66a, the time when the payment has been accepted means the time when the payment confirmation, the payment authorization message or a commitment for payment from the customer is received by or on behalf of the supplier selling goods through the digital platform, regardless of when the actual payment of money is made, whichever is the earliest’.⁹²

Under these new rules it thus becomes crucial for a digital platform that doesn’t process the payments of the supplies to get the information from the underlying supplier or third party about when the payment is accepted.⁹³ The digital platforms might also have to pre finance the VAT to the tax authorities, when the actual payment doesn’t occur when the payment is accepted. This could be an issue for digital platforms that for security purposes want to keep the money until the shipment confirmation of the goods has been given. The digital platform that doesn’t process the payment of the supplies will have to rely on the underlying supplier to pay the VAT back to him.

2.8 The One Stop Shop

As discussed in paragraph 1.1 the EU implemented the MOSS allowing suppliers to register for, file and pay VAT in one Member State to ease the compliance burden of having to register for, file and pay VAT in all the different Member States where they supply TBE services to consumers. The MOSS has been evaluated positively⁹⁴ and as the place of supply of intra-Community distance sales of goods shall in principle be deemed to be in the Member State where the transport of the goods to the customer ends under the new rules⁹⁵ causing many suppliers having to register for VAT in other EU countries, the MOSS is broadened to a One

⁹⁰ European Commission, September 2020, p. 83 and further.

⁹¹ Article 1(2) Council Directive (EU) 2019/1995. Note the change in the wording of article 66a in Council Directive (EU) 2019/1995 compared to article 2(8) Council Directive (EU) 2017/2455.

⁹² Article 1(3) Council Implementing Regulation (EU) 2019/2026.

⁹³ See also J.I.W. Lock et al., p. 22.

⁹⁴ European Commission, ‘VAT Mini One Stop Shop (VAT MOSS)’, September 2019.

https://ec.europa.eu/taxation_customs/sites/taxation/files/moss-statistics-2019.pdf.

⁹⁵ Article 2(3) Council Directive (EU) 2017/2455. A new threshold of EUR 10,000 will be introduced whereby, if the total value of the supplies does not exceed EUR 10,000 in the current or preceding year, the place of supply will be in the Member State where the transport or dispatch of the goods begins. See article 32 VAT Directive that will change the old threshold as described in article 34 VAT Directive.

Stop Shop (OSS) from 1 July 2021. Taxable persons will be able to use the Union scheme, Non-Union scheme or Import scheme to register, file and pay the VAT in their Member State of identification⁹⁶, which includes all VAT to be paid in each Member State of consumption they sell to. The One Stop Shop will thus significantly decrease the administrative burden for taxable persons liable to collect and remit VAT on the supply of goods as they can register, file and pay the VAT at one tax authority and in one language regardless of in how many countries they sell their goods.⁹⁷

The Non-Union scheme can be used by taxable persons not established in the EU who provide services to customers in the EU. This scheme can thus not be used by digital platforms as they are not liable to collect and remit VAT on the supply of services.⁹⁸

The Union scheme can be used by EU and Non-EU established taxable persons and digital platforms supplying intra-Community distance sales of goods, taxable persons established in the EU supplying services to non-taxable persons taking place in a Member State where that taxable person has no establishment and digital platform carrying out domestic supplies of goods.⁹⁹

The Import scheme can be used by any taxable person who carries out distance sales of goods imported from a third territory or a third country in consignments not exceeding EUR 150. If the taxable person has no establishment in the EU, an intermediary needs to be appointed to be able to use the scheme.¹⁰⁰

2.9 Interim conclusion

The central article of the new VAT liability rules for digital platforms, article 14a VAT Directive, introduces a deeming provision whereby the taxable person operating a digital platform is deemed to have received and supplied the goods himself and will therefore be liable to collect the VAT on these supplies. The new VAT liability rules for digital platforms have been adopted, because digital platforms are the main facilitator of cross-border transactions of goods and to ensure effective and efficient collection of VAT, while at the same time reducing the administrative burden for suppliers, tax administrations and consumers. In this regard it is, however, unclear why the transactions covered by the new VAT liability rules for digital platforms don't include goods above the threshold for low value goods, goods which were already released into free circulation in the EU or goods which are located in the EU and supplied to EU customers by an EU established supplier.

Moreover, many digital platforms, like for example Amazon, Klarna and PayPal, will be covered by the term 'facilitating' as described in article 14a of the VAT Directive and article 5b of the VAT Implementing Regulation. It is however questionable if such a broad scope of the term 'facilitating' is in line with the purpose of the new EU rules to ensure effective and

⁹⁶ The Member State of identification depends on where the taxable person is established, and which scheme is being used. See further European Commission, March 2021, p. 10-13.

⁹⁷ See for further details on the One Stop Shop J. Sol; European Commission, September 2020; European Commission, March 2021.

⁹⁸ Article 2(16) Council Directive (EU) 2017/2455.

⁹⁹ Article 2(23) Council Directive (EU) 2017/2455; European Commission, September 2020, p. 36-37.

¹⁰⁰ Article 2(30) Council Directive (EU) 2017/2455.

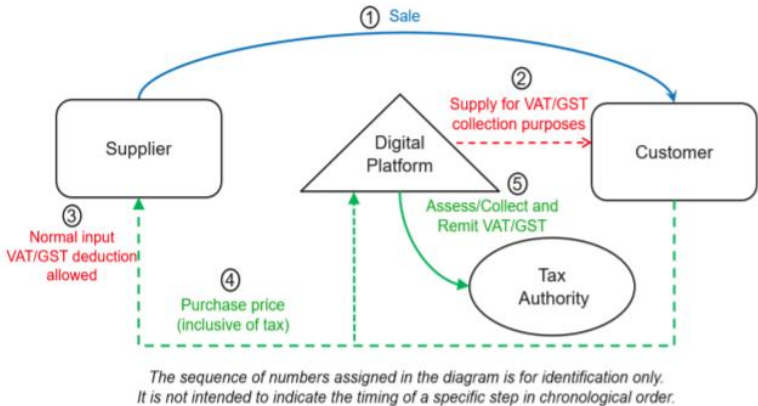
efficient collection of VAT as not all digital platforms covered by the new EU rules might be able to collect the VAT. Considering the many digital platforms covered by the new EU rules it is surprising and undesirable that there is no provision in the VAT Directive or the VAT Implementing Regulation that regulates which digital platform is liable to collect the VAT when several digital platforms are involved in the supply of the goods.

Under the new chargeability rules of article 66a VAT Directive and article 41a VAT Implementing Regulation it becomes crucial for a digital platform that doesn't process the payments of the supplies to get the information from the underlying supplier or third party about when the payment is accepted. The digital platforms might also have to pre finance the VAT to the tax authorities, when the actual payment doesn't occur when the payment is accepted. The digital platform that doesn't process the payment of the supplies will have to rely on the underlying supplier to pay the VAT back to him. Therefore it is very important that the liability of the digital platform to collect the VAT is limited when the underlying supplier or third party is non-compliant in providing the necessary information to collect the VAT or doesn't pay the VAT amount back to the digital platform. However, the new EU rules don't seem able to adequately protect digital platforms in this regard as the limited liability provision of article 5c of the VAT Implementing Regulation, next to being unclear, only covers the situation where erroneous information is provided to digital platforms.

3. Comparing the OECD Guidelines

3.1 The full VAT liability regime for digital platforms according to the OECD

3.1.1 The operation of a full VAT liability regime



Picture 2: The basic operation of a full VAT liability regime according to the OECD Guidelines¹⁰¹

The OECD Guidelines set out the mechanism for the collection and payment of the VAT under a full VAT liability regime.¹⁰² Under a full VAT liability regime, the digital platform assumes

¹⁰¹ OECD (2019), p. 23.
¹⁰² Ibid.

full VAT liability as if it has effected the underlying sale to the customer itself (number 2 and 5 in picture 2). Moreover, the underlying supplier is in principle relieved from any VAT liability on the supply to the customer, to avoid double taxation.¹⁰³ As discussed in paragraph 2.2, the new EU rules are in line with these recommendations as the digital platform is liable to pay VAT on the deemed B2C supply and the underlying supplier does not have to account for VAT on the deemed B2B supply.¹⁰⁴ When the deemed B2B supply is a distance sales of imported goods as described in article 14a(1) VAT Directive, the supply takes place outside the EU and the EU VAT rules therefore do not apply.¹⁰⁵ When the deemed B2B supply is a supply of goods within the EU as described in article 14a(2) of the VAT Directive, the deemed B2B supply is exempt from VAT with the right of deduction for the underlying supplier in line with articles 136a and 169(b) VAT Directive.¹⁰⁶ Hereby the new EU rules also comply with two other core recommendations of the OECD Guidelines. The first recommendation is to not deviate from normal EU VAT rules as this might create complexity for compliance and administration. Secondly, the EU has to make sure that the full VAT liability regime doesn't have any impact on the right of the underlying supplier to deduct the associated input VAT (number 3 in picture 2).¹⁰⁷

Furthermore, the OECD Guidelines recommend that 'in order to avoid a break in the staged collection chain, the full VAT[...] liability regime may treat the digital platform as having received the supply from the underlying supplier and having supplied it onwards to the customer in the jurisdiction of taxation. Each of these supplies is then subject to the appropriate VAT[...] rules, including invoicing and reporting requirements. Such an approach allows the underlying supplier and the digital platform to process the sale for VAT[...] purposes, incl. the deduction of the associated input VAT[...] by the underlying supplier and the entry of an input transaction that corresponds to the output transaction into the digital platform's VAT[...] accounts'.¹⁰⁸

As discussed in paragraph 2.1, the VAT liability regime for digital platforms in the EU is in accordance with the staged collection process as the digital platform will be considered for VAT purposes to have purchased the goods from the underlying supplier and sold them onwards to the customer. In the OECD Guidelines it is recognized that because of this approach there 'may be cash flow costs for digital platforms from having to pay VAT[...] to the underlying supplier and revenue risks for tax authorities (i.e. the risk of generation recoverable VAT[...] for digital platforms that needs to be collected from the underlying supplier)'.¹⁰⁹ The new EU rules counter these problems by treating the deemed B2B supply, being a supply of goods within the EU, as exempt, which is also the recommended solution by the OECD.¹¹⁰

Moreover, the OECD Guidelines recommend the EU to use the OSS arrangement. 'Under such an arrangement, the digital platform could register in one member country to fulfil its compliance obligations under the full VAT[...] liability regime in all member countries, including remitting the tax in the country of registration followed by a transfer of the tax to the country of registration to the country of taxation (e.g. the country of final destination of the

¹⁰³ Ibid., p. 24.

¹⁰⁴ See picture 1.

¹⁰⁵ Article 2(1) VAT Directive; See also European Commission, September 2020, p. 14.

¹⁰⁶ See also European Commission, September 2020, p. 14.

¹⁰⁷ See also *ibid.*, p. 14-15.

¹⁰⁸ OECD (2019), p. 24.

¹⁰⁹ *Ibid.*

¹¹⁰ *Ibid.*

imported item)'.¹¹¹ The OECD Guidelines stress that making the OSS arrangement available for digital platforms will facilitate the compliance process under the VAT liability regime. It is especially important for non-resident platforms that the compliance processes are as simple and efficient as possible. Complex compliance procedures can create an incentive for non-EU digital platforms to be non-compliant or decline to serve customers in certain jurisdictions.¹¹² In 2018, such complex compliance procedures led Amazon to block Australian customers from their US store, which frequently has cheaper goods and a greater range compared with the Australian Amazon store, because Amazon was liable to collect the GST under the new Australian rules and needed time to put the necessary infrastructure in place.¹¹³ As discussed in paragraph 2.8, digital platforms can use the OSS arrangement in the EU, which makes the compliance processes for digital platforms simpler and more efficient, as recommended by the OECD Guidelines.

Considering the above, the VAT liability regime for digital platforms in the EU thus complies with the OECD Guidelines recommended operation of a full VAT liability regime.¹¹⁴

3.1.2 Transactions covered

3.1.2.1 Imported goods: low-value goods vs. all goods

As discussed in paragraph 2.2, the VAT liability regime for digital platforms in the EU only covers transactions regarding imported goods supplied to EU customers with a value not exceeding EUR 150. Although there is no direct reason given in the EU legislation for only including imported goods with a value not exceeding EUR 150, the most obvious reason is probably the fact that as the OECD Guidelines mention that 'data suggests that imports of low-value goods represents the vast majority of packages that reach the borders from online trade, and create increasingly significant logistical challenges for customs authorities to process'.¹¹⁵ 'By requiring the digital platforms to collect the VAT[...] on imports of low-value goods will limit or remove the need for customs authorities to intervene in revenue collection processes for imports that are not subject to customs duties. This is expected to lower the cost of collection of VAT[...] on imports of low-value goods significantly. It also allows customs authorities to fully allocate their resources and capacity on the other key roles they perform, notably to ensure the safety and security of the value chain (e.g. detection and prevention of the unlawful movement of illicit and counterfeited goods)'.¹¹⁶

However, the OECD Guidelines also mention that 'tax and customs administrations are facing challenges in respect of collection of VAT[...] at importation above the EUR 150 threshold'.¹¹⁷

¹¹¹ Ibid., p. 36 and p. 43.

¹¹² Ibid., p. 37.

¹¹³ Naaman Zhou, 'Amazon to block Australians from using US store after new GST rules', *theguardian.com*, <https://www.theguardian.com/australia-news/2018/may/31/amazon-to-block-australians-from-using-us-store-after-new-gst-rules>, (accessed 29 March 2021); Richard Bowden, 'Amazon and Australia's updated GST – what it all means for you', *accru.com*, <https://www.accru.com/2019/01/amazon-and-australias-updated-gst/>, (accessed 29 March 2021).

¹¹⁴ See also M. Papis-Almansa, p. 217.

¹¹⁵ Pitney Bowes (2017), Global Parcel Shipping Index. http://news.pb.com/article_display.cfm?article_id=5784; OECD (2019), p. 31.

¹¹⁶ OECD (2019), p. 32.

¹¹⁷ Ibid., p. 16.

Research suggests that there is also a considerable non-compliance regarding the collection of VAT above the EUR 150 threshold (when custom duties have to be paid).¹¹⁸ The OECD Guidelines propose to also involve digital platforms in the collection of VAT that supply goods above the EUR 150 threshold to make it easier for customs authorities to ‘carry out many other critical functions including the facilitation of trade, the control of drugs and drug precursors, the control of intellectual property rights and importantly the safety of citizens in respect of the importation of dangerous goods and the threat of terrorism’.¹¹⁹

Including all imported goods in the VAT liability regime for digital platforms would make the rules less complicated and costly for digital platforms as the digital platforms would not have to assess on a transactional basis if it is considered a deemed supplier or not with regard to imported goods.¹²⁰ This would ensure effective and efficient collection of VAT – as is the main aim of both the new EU rules and the OECD Guidelines – and is more in line with the principle of legal certainty as the rules will be less complicated to comply with.¹²¹ Of course, the digital platforms have to be capable of complying with the VAT obligations to ensure effective and efficient collection of VAT.¹²² This will be discussed in paragraph 3.1.3.

3.1.2.2 Foreign suppliers and/or domestic suppliers

As discussed in paragraph 2.2, for supplies covering goods which were already released into free circulation in the EU and goods which are located in the EU and supplied to customers in the EU by suppliers established in the EU, digital platforms are not liable to collect VAT. A reason for limiting the scope of the transactions of the VAT liability regime for digital platforms to non-EU established suppliers in this regard could be that it is more challenging for tax authorities to enforce compliance on (potentially millions) of non-EU established suppliers compared to EU established suppliers.¹²³ However, the OECD Guidelines recognize that limiting the VAT liability regime for digital platforms to transactions carried out by non-EU established suppliers is likely to create compliance complexities for digital platforms as there has to be distinguished between EU and non-EU established suppliers. Moreover, audit challenges for tax administrations will most likely be created as the location of the suppliers has to be checked and, for EU suppliers, whether these have remitted the local VAT on the sales that they carried out through the digital platform.¹²⁴ Alternatively, the OECD Guidelines recommend allowing digital platforms to agree with their EU suppliers that the digital platform will be fully liable for the VAT obligations in respect of the supplies made by these suppliers.¹²⁵

¹¹⁸ Copenhagen Economics (2016), E-commerce Imports into Europe: VAT and Customs Treatment. https://www.copenhageneconomics.com/dyn/resources/Publication/publicationPDF/8/348/1462798608/e-commerce-imports-into-europe_vat-and-customs-treatment.pdf; OECD (2019), p. 16.

¹¹⁹ OECD (2019), p. 16.

¹²⁰ See also European Commission, September 2020, p. 16.

¹²¹ See for example: Judgement of 3 June 2008, *Intertanko and others*, C-308/06, ECLI:EU:C:2008:312, par 69; Judgement of 22 November 2001, *Kingdom of the Netherlands v Council of the European Union*, C-301/97, ECLI:EU:C:2001:621, par 43; Judgment of 21 February 2006, *Halifax plc*, C-255/02, ECLI:EU:C:2006:121, par 72; Judgement of 29 April 2004, *Leusden*, C-487/01, ECLI:EU:C:2004:263, par 57; Judgement of 3 December 1998, *Belgocodex*, C-381/97, ECLI:EU:C:1998:589, par 26; Judgement of 8 June 2000, *Schlossstrasse*, C-396/98, ECLI:EU:C:2000:303, par 44. See also Terra B. J. M., Kajus, J.

¹²² OECD (2019), p. 25.

¹²³ *Ibid.*, p. 29.

¹²⁴ *Ibid.*

¹²⁵ *Ibid.*

Including transactions by suppliers established in the EU in the VAT liability regime for digital platforms would make the rules less complicated and costly for digital platforms. The digital platforms would not have to distinguish between EU and non-EU established suppliers when its determining on a transactional basis if it is considered a deemed supplier or not.¹²⁶ This would ensure effective and efficient collection of VAT – as is the main aim of both the new EU rules and the OECD Guidelines – and is more in line with the principle of legal certainty as the rules will be less complicated to comply with.¹²⁷ Of course the digital platforms have to be capable of complying with the VAT obligations to ensure effective and efficient collection of VAT.¹²⁸ This will be discussed in paragraph 3.1.3.

3.1.3 What are the ‘digital platforms’ for the application of a full VAT liability regime?

Before the OECD Guidelines consider the indicators that are relevant for the application of the full VAT liability regime, they stress that the concept of a ‘digital platform’ is not meant to be defined as it is a concept likely to evolve over time due to technological improvements, which thus requires the term to be broad.¹²⁹ The EU rules comply with this recommendation as article 14a VAT Directive uses the wording ‘electronic interface such as a marketplace, platform, portal or similar means’ and the Explanatory Notes state that a digital platform ‘should be understood as a broad concept which allows two independent systems or a system and the end user to communicate with the help of a device or programme’.¹³⁰ A digital platform could for example encompass among others a website, portal, gateway, marketplace or application program interface (API).¹³¹ By making the definition of ‘digital platform’ broad and ‘building indicators based on functions performed by digital platforms is likely to be more future-proof and encourages greater consistency in the tax treatment of digital platforms performing similar functions irrespective of the business and delivery model used’.¹³² Possible approaches in this regard could be according to the OECD Guidelines to ‘include the use of list(s) of functions that are considered indicative of a digital platform’s capability to take on the full VAT[...] liability obligation (i.e. a positive list); and/or of digital platform’s inability to take on the full VAT[...] liability obligation (i.e. a negative list)’.¹³³

The EU thus complies with the recommendations of the OECD Guidelines by having a broad definition of ‘digital platform’ and using indicators based on functions with negatives lists to assess which digital platforms are liable to collect VAT in the EU.¹³⁴

When considering which digital platforms are in the scope of the full VAT liability regime, the OECD Guidelines recommend that the digital platform should be able to comply with the

¹²⁶ See also European Commission, September 2020, p. 16.

¹²⁷ See for example: Judgement of 3 June 2008, *Intertanko and others*, C-308/06, ECLI:EU:C:2008:312, par 69; Judgement of 22 November 2001, *Kingdom of the Netherlands v Council of the European Union*, C-301/97, ECLI:EU:C:2001:621, par 43; Judgment of 21 February 2006, *Halifax plc*, C-255/02, ECLI:EU:C:2006:121, par 72; Judgement of 29 April 2004, *Leusden*, C-487/01, ECLI:EU:C:2004:263, par 57; Judgement of 3 December 1998, *Belgocodex*, C-381/97, ECLI:EU:C:1998:589, par 26; Judgement of 8 June 2000, *Schlossstrasse*, C-396/98, ECLI:EU:C:2000:303, par 44. See also Terra B. J. M., Kajus, J.

¹²⁸ OECD (2019), p. 25.

¹²⁹ *Ibid.*, p. 26-28.

¹³⁰ European Commission, September 2020, p. 8-9.

¹³¹ *Ibid.*

¹³² OECD (2019), p. 28.

¹³³ *Ibid.*, p. 27.

¹³⁴ See paragraph 2.3.

obligations of a full VAT liability regime.¹³⁵ ‘To be able to comply with the VAT obligations under a full VAT liability regime, according to the OECD Guidelines it is reasonable to assume that a digital platform will be able to comply with these obligations if:

(i) the digital platform holds or has access to sufficient and accurate information as required to make the appropriate VAT determination; and

(ii) the digital platform has the means (is able) to collect the VAT on the supply’.¹³⁶

According to the OECD Guidelines ‘key elements that can be considered relevant for digital platforms to make the correct VAT determination under the full liability regime may include next to the assumption that the underlying suppliers that are selling through their platform are businesses¹³⁷:

- Customer status;
- The nature of the supply;
- Elements to determine the place of taxation and/or the applicable VAT collection regime;
- VAT exemption threshold for VAT registration and/or collection purposes (if in place);
- The value of the supply and the applicable VAT rate;
- The taxing point (i.e. the point at which VAT liability arises)’.¹³⁸

The new EU rules also give similar examples of functions as given by the OECD Guidelines considered relevant for enlisting digital platforms under the full VAT liability regime (e.g. setting the terms and conditions either directly or indirectly, direct or indirect involvement in the payment processing and direct and indirect involvement in the ordering or delivering of the goods).¹³⁹ However, there is no clear guidance from the OECD on whether these functions should be as broad as the EU rules allow them to be by stating that only carrying out one of the above listed activities and ‘any’ involvement in the above listed activities is enough for a digital platform to become liable to collect the VAT.¹⁴⁰ The UK has for example a more limited scope of the VAT liability regime for digital platforms stating that for a digital platform to be liable to collect and remit VAT it should ‘set the terms and conditions on how goods are supplied to the customer, be involved in authorizing or facilitating customers’ payments and also be involved in the ordering or delivery of the goods’.¹⁴¹

¹³⁵ OECD (2019), p. 26.

¹³⁶ Ibid.

¹³⁷ See paragraph 3.1.6.

¹³⁸ OECD (2019), p. 33-34. See also Group on the future of VAT, Council Directive EU 2017/2455 of 5 December 2017 amending Directive 2006/112/EC and Directive 2009/132/EC as regards certain value added tax obligations for supplies of services and distance sales of goods Electronic interfaces – considerations for the implementing provisions, No 071, taxud.c.1(2018)1410119 – EN, 7 March 2018.

<https://circabc.europa.eu/ui/group/cb1eaff7-eedd-413d-ab88-94f761f9773b/library/8edf0101-aea9-4f91-bc7a-78f907dc6b4d/details>, p. 3.

¹³⁹ OECD (2019), p. 73.

¹⁴⁰ Article 1(1)(b) Council Implementing Regulation (EU) 2019/2026; See also European Commission, September 2020, p. 17.

¹⁴¹ HM Revenue & Customs, ‘Guidance. VAT and overseas goods sold to customers in the UK using online marketplaces’, gov.uk, <https://www.gov.uk/guidance/vat-and-overseas-goods-sold-to-customers-in-the-uk-using-online-marketplaces>, (accessed 1 April 2021); A.M. Bal, ‘E-Commerce in a Post-Brexit World’, *Tax Notes International*, vol. 101, 2021, p. 1147.

It seems that OECD Guidelines allow the scope of the functions considered relevant for enlisting digital platforms under the full VAT liability regime to be broad, as long as the digital platforms hold or have access to sufficient and accurate information to make the appropriate VAT assessment and are able to collect and remit the VAT on the supply. In this regard, the OECD Guidelines recommend that the indicators for digital platforms to fall under the full VAT liability regime should be clear, thus providing the required legal certainty for digital platforms.¹⁴² As shown in paragraph 2.3, the EU rules are not clear as the facilitator definition in article 5b VAT Implementing Regulation does not align very well with the first negative list given in the same article. The first list provides a much broader scope of the term ‘facilitating’ than the definition given in article 5b VAT Implementing Regulation.

The broad scope of the indicators that the EU rules are going to use to access which digital platforms are liable to collect VAT seems to prevent some digital platforms from holding sufficient and accurate information as required to make the appropriate VAT assessment. As followed from paragraph 2.3, a digital platform that for example only directly or indirectly sets the general terms under which the supply of goods is made, is liable to collect VAT under the new EU rules. This could be digital platforms that use a marketplace-concept that for example ‘own or manage the technical platform through which the goods are supplied, set rules for the listing and selling of goods through the platform, offer a communication tool and hold customer data related to the supply’¹⁴³, which allows the buyer and seller to go into a legal relationship with each other through the digital platform and set up a supply of the goods. However, because these digital platforms do not have any information on the payment or the delivery of the goods, which is handled by the customer and the supplier themselves, these digital platforms will not hold sufficient and accurate information as required to make the appropriate VAT determination.¹⁴⁴

Moreover, a digital platform that is only directly or indirectly involved in the ordering or delivery of the goods, for example by sending approval to start delivery of the goods/instructing the underlying supplier or a third party to deliver the goods or offering fulfilment services to the underlying supplier¹⁴⁵, seems sufficient to fall within the scope of the new VAT liability rules for digital platforms.¹⁴⁶ Also, in these cases, the digital platform will not hold sufficient and accurate information as required to make the appropriate VAT assessment as the digital platform will most likely have no information about the legal relationship between the parties to the supply and/or the payment made.¹⁴⁷ Especially when the digital platform offers fulfilment services it could be that this only includes storage services, limiting the information the digital platform has even more, compared to fulfilment services where the digital platform takes care of the transport on the suppliers behalf from the fulfilment warehouse.¹⁴⁸

The digital platforms that do not hold the sufficient and accurate information to make the appropriate VAT assessment themselves, have to rely on the underlying suppliers to obtain this information. As described in paragraph 2.5, the EU has implemented rules on the limited liability for digital platforms in this regard. However, these rules are strict not covering

¹⁴² OECD (2019), p. 28.

¹⁴³ European Commission, September 2020, p. 18.

¹⁴⁴ See also J.I.W. Lock et al., p. 14-17.

¹⁴⁵ European Commission, September 2020, p. 20-21.

¹⁴⁶ Article 1(1)(b) Council Implementing Regulation (EU) 2019/2026.

¹⁴⁷ European Commission, September 2020, p. 20.

¹⁴⁸ M.M.W.D. Merckx, p. 40.

situations where the underlying supplier doesn't provide any information to the digital platform at all, not very clear and even state that digital platforms might have to change their business model to comply with the rules. It can therefore be heavily questioned if the new EU rules comply with the principles the OECD Guidelines and also the CJEU wants jurisdictions to follow.¹⁴⁹ Digital platforms having to change their business model would be costly, compromising the certainty and simplicity of the new rules¹⁵⁰ and the effective and efficient collection of the VAT and might also lead to the digital platform losing customers to competitors, which would not be in line with the principle of fiscal neutrality.¹⁵¹

Another practical problem is that a digital platform that does not handle the payment process will have to build a new business infrastructure to collect VAT from the underlying supplier on every supply or it will have to rely on the underlying supplier or payment intermediaries to receive the amount of VAT collected from transactions that it facilitates. This will result in a significant compliance burden and will contain a non-negligible element of financial risk (for example in case of the non-payment or insolvency of the supplier or payment intermediary) as the digital platform will remain liable to remit the VAT to the tax authorities.¹⁵² The OECD Guidelines therefore consider it very important that there is a provision in place to cover this financial risk. However, the VAT liability regime for digital platforms in the EU doesn't provide for a specific bad debt relief arrangement.¹⁵³

As discussed before, when considering which platforms are in the scope of the full VAT liability regime, the OECD Guidelines also recommend that the digital platform has the means (is able) to collect the VAT on the supply. In this regard, according to the OECD Guidelines due consideration should be given to the proportionality aspect. 'A digital platform may for instance be eligible for the application of a full VAT[...] liability regime based on the functions it performs, whereas the application of this regime would in fact result in disproportionate compliance burden given the platform's technological or financial capabilities. This may notably be the case for small and medium digital platforms and for start-ups'.¹⁵⁴ The OECD Guidelines therefore recommend an approach that allows digital platforms 'to prove on the basis of compelling evidence that a full VAT[...] liability obligation would be disproportionate'.¹⁵⁵ However, in that regard, the OECD Guidelines stress that to be able to comply with the principle of fiscal neutrality, which requires that digital platforms in similar situations are treated equally,¹⁵⁶ 'the exclusion of a digital platform from the full VAT[...]

¹⁴⁹ See further on this topic paragraph 2.5 and 3.1.5.

¹⁵⁰ OECD (2019), p. 18; M. Papis-Almansa, p. 218-219. See for ECJ cases for example: Judgement of 3 June 2008, *Intertanko and others*, C-308/06, ECLI:EU:C:2008:312, par 69; Judgement of 22 November 2001, *Kingdom of the Netherlands v Council of the European Union*, C-301/97, ECLI:EU:C:2001:621, par 43; Judgment of 21 February 2006, *Halifax plc*, C-255/02, ECLI:EU:C:2006:121, par 72; Judgement of 29 April 2004, *Leusden*, C-487/01, ECLI:EU:C:2004:263, par 57; Judgement of 3 December 1998, *Belgocodex*, C-381/97, ECLI:EU:C:1998:589, par 26; Judgement of 8 June 2000, *Schlossstrasse*, C-396/98, ECLI:EU:C:2000:303, par 44.

¹⁵¹ OECD (2019), p. 18; See for example Judgment of 3 May 2001, *Commission v. France*, C-481/98, ECLI:EU:C:2001:237, par. 21-22.

¹⁵² A.M. Bal, 2019, p. 77; M. Lamensch, 'Rendering Platforms Liable to Collect and Pay VAT on B2C Imports: A Silver Bullet?', p. 48.

¹⁵³ See paragraph 3.2.2.

¹⁵⁴ OECD (2019), p. 27.

¹⁵⁵ *Ibid.*

¹⁵⁶ See for example Judgement of 15 November 2012, *Zimmermann*, C-174/11, ECLI:EU:C:2012:716, par 48; Judgement of 10 September 2002, *Kügler*, C-141/00, ECLI:EU:C:2002:473, par. 30; Terra B. J. M., Kajus, J., p. 27-31.

liability regime has to be reviewed regularly so as to reflect any changes in the technological or financial capacities of the digital platform concerned'.¹⁵⁷

Although, the aim of the new EU rules is to ensure effective and efficient collection of VAT and the CJEU has stated that the principle of proportionality in relation to VAT entails that 'the measures which the Member States may adopt must not go further than is necessary to attain the objectives of ensuring the correct levying and collection of the tax'¹⁵⁸, this above discussed proportionality safeguard has not been introduced in the new EU rules, thus going against the recommendation of the OECD Guidelines.

To increase legal certainty for the out-of-scope group of digital platforms the OECD Guidelines also recommend to include a measure for these digital platforms to 'enter into an agreement with its underlying suppliers that explicitly confirms the underlying suppliers' obligation to collect and remit the VAT[...] on their supplies made via the digital platform and to fulfil all other associated VAT[...] obligations'.¹⁵⁹ In Australia¹⁶⁰ and New Zealand¹⁶¹ such a measure is already in place. However, in the EU it is not.

Even though the author agrees with the OECD Guidelines recommendations as stated above, an approach whereby a digital platform is required to at least be involved in the establishment of the legal relationship between the parties of the supply (providing the shopping cart/check-out process for example resulting in a supply being made via the digital platform¹⁶²) and handles the payment itself to be liable to collect and remit the VAT could also be considered. This would make the rules less complicated and more effective and efficient for the digital platform as it has all the information itself to be able to collect and remit the VAT to the tax authorities.¹⁶³

3.1.4 The involvement of several digital platforms

With regard to the involvement of several digital platforms in the supply chain being eligible for the full VAT liability regime, the OECD Guidelines only give limited guidance, recommending that there should be hierarchy rules in place.¹⁶⁴ As discussed in paragraph 2.4, the new EU rules do not give guidance in the VAT Directive or the VAT Implementing Regulation on who is liable to collect the VAT when several digital platforms are involved in the supply of the goods. Only the European Commission gives guidance in the non-binding Explanatory Notes. This is not in line with the principle of legal certainty¹⁶⁵ and the

¹⁵⁷ OECD (2019), p. 27.

¹⁵⁸ Judgement of 29 July 2010, *Profaktor Kulesza, Frankowski, Jóźwiak, Orłowski*, C-188/09, ECLI:EU:C:2010:454, par. 26.

¹⁵⁹ OECD (2019), p. 27.

¹⁶⁰ Australian Government / Australia Taxation Office, 'Who charges GST', *ato.gov.au*, <https://www.ato.gov.au/business/international-tax-for-business/gst-on-imported-services-and-digital-products/who-charges-gst/#Informationforelectronicdistributionplat>, (accessed 27 March 2021).

¹⁶¹ Inland Revenue, 'Online marketplaces', *ird.govt.nz*, <https://www.ird.govt.nz/gst/gst-for-overseas-businesses/gst-on-low-value-imported-goods/who-needs-to-charge-gst/online-marketplaces>, (accessed 1 April 2021).

¹⁶² See also paragraph 3.2.3.

¹⁶³ M. Lamensch, 'Adoption of the E-Commerce VAT Package: The Road Ahead Is Still a Rocky One', p. 191; J.I.W. Lock et al., p. 20.

¹⁶⁴ OECD (2019), p. 28.

¹⁶⁵ See for example: Judgement of 3 June 2008, *Intertanko and others*, C-308/06, ECLI:EU:C:2008:312, par 69; Judgement of 22 November 2001, *Kingdom of the Netherlands v Council of the European Union*, C-301/97, ECLI:EU:C:2001:621, par 43; Judgment of 21 February 2006, *Halifax plc*, C-255/02, ECLI:EU:C:2006:121, par 72; Judgement of 29 April 2004, *Leusden*, C-487/01, ECLI:EU:C:2004:263, par 57; Judgement of 3 December

recommendation from the OECD that the rules should be clear and simple to understand.¹⁶⁶ Especially considering the broad scope of the term ‘facilitating’, the VAT Directive and the VAT Implementing Regulation should contain clear and binding hierarchy rules to identify which digital platform involved in a supply of goods is considered the deemed supplier. This will increase the legal certainty for digital platforms like for example Amazon and Klarna.

3.1.5 Limited liability of the deemed supplier

The OECD Guidelines recommend to have a rule in place that ‘reduces or eliminates digital platforms’ liability for mistakes resulting from reliance on inaccurate information from underlying suppliers or third parties, if the digital platform can supply evidence of their good faith and of their reasonable efforts to secure that accuracy and reliability of the information of the basis of which they have acted. What is considered as ‘reasonable efforts’ is for tax authorities to decide and is likely to depend on circumstances’.¹⁶⁷

This recommendation is in line with the limited liability provision of article 5c of the VAT Implementing Regulation and the guidance in the Explanatory Notes as discussed in paragraph 2.5 relying on the good faith of the digital platform and a case-by-case assessment depending on the circumstances. However, there is still a lot of uncertainty for digital platforms regarding these rules, which is not in line with the principle of legal certainty¹⁶⁸ and the recommendation from the OECD that the rules should be clear and simple to understand.¹⁶⁹ If a Member State doesn’t have provisions on joint and several liability the limited liability provision doesn’t apply. Is the digital platform then still fully liable for the VAT even though it doesn’t have the necessary information to collect the VAT? How should the digital platform prove that it is dependent on information of the underlying supplier or a third party?¹⁷⁰

Moreover, the OECD Guidelines recommend that a provision should be in place that allows the digital platforms to claim the VAT on the underlying supply in the situation that the underlying supplier is non-compliant and as a means to decrease compliance risks for digital platforms.¹⁷¹ The limited liability provision in article 5c of the VAT Implementing Regulation does not mention the situation where the underlying supplier doesn’t provide any information at all to the digital platform leaving the digital platform liable to collect the VAT even though it has insufficient information, because the underlying supplier is non-compliant.¹⁷² This is not in line with the OECD Guidelines and of course a very undesirable situation.

1998, *Belgocodex*, C-381/97, ECLI:EU:C:1998:589, par 26; Judgement of 8 June 2000, *Schlossstrasse*, C-396/98, ECLI:EU:C:2000:303, par 44.

¹⁶⁶ OECD (2019), p. 28.

¹⁶⁷ *Ibid.*, p. 34.

¹⁶⁸ See for example: Judgement of 3 June 2008, *Intertanko and others*, C-308/06, ECLI:EU:C:2008:312, par 69; Judgement of 22 November 2001, *Kingdom of the Netherlands v Council of the European Union*, C-301/97, ECLI:EU:C:2001:621, par 43; Judgment of 21 February 2006, *Halifax plc*, C-255/02, ECLI:EU:C:2006:121, par 72; Judgement of 29 April 2004, *Leusden*, C-487/01, ECLI:EU:C:2004:263, par 57; Judgement of 3 December 1998, *Belgocodex*, C-381/97, ECLI:EU:C:1998:589, par 26; Judgement of 8 June 2000, *Schlossstrasse*, C-396/98, ECLI:EU:C:2000:303, par 44.

¹⁶⁹ OECD (2019), p. 28.

¹⁷⁰ M. Papis-Almansa, p. 221.

¹⁷¹ OECD (2019), p. 24.

¹⁷² The non-compliance of foreign underlying suppliers has already been addressed as a problem by the EU. See for example European Commission, Fact Sheet, Modernising VAT for e-commerce: Question and Answer, Brussels, December 2017.

3.1.6 The presumption of the status of the seller and buyer

As discussed in paragraph 3.1.3, the assumption that the underlying supplier selling through the digital platform is a business, is according to the OECD Guidelines a key element that can be considered relevant for digital platforms to make the correct VAT determination. It can further ‘be considered reasonable that digital platforms operate under the assumption that the underlying suppliers that are selling through their platform are businesses, unless the digital platform has information to the contrary’.¹⁷³ The EU rules regarding the presumption of the status of the seller as discussed in paragraph 2.6 are thus in line with the OECD Guidelines, qualifying the absence of a VAT number as having received information to contradict the presumption and requiring the digital platform to have a verification process in place.

Regarding the status of the customer, the OECD Guidelines recommend a different approach where the digital platform plays a more active role in obtaining the status of the customer compared to the new EU rules. According to the OECD Guidelines ‘where a digital platform, acting in good faith and having made reasonable efforts to obtain the appropriate evidence, is unable to establish the status of its customer, a presumption could be applied that the customer is a non-business customer’.¹⁷⁴ ‘What may be considered as reasonable efforts will generally depend on the circumstances. For example, if the customer provided a VAT registration or identification number that has proven to be invalid, the digital platform may presume that the customer is a non-business’.¹⁷⁵

Next to a VAT registration number appropriate evidence could be:

- (i) ‘A certificate issued by the customer’s competent tax authority, which indicates the business identity and registration of the customer;
- (ii) Information available in commercial registers; or
- (iii) Commercial indicia that may provide a reliable indication of the status of the customer, individually or in combination with other indicia. These may include the nature and/or specific features of the supply, the value of the supply, e.g. the high value of a software package could indicate that the customer is a business, the customer’s trading history with the foreign supplier or digital certificates or identity certificates (i.e. electronic credentials that are used to certify the online identity of their owner)’.¹⁷⁶

The new EU rules thus seem too lenient compared to the OECD Guidelines, the latter requiring reasonable efforts being made (including supporting evidence) to obtain the status of the customer. The approach of the OECD provides more certainty that the right VAT treatment of the supply of goods is being made as the EU has different rules for determining the place of taxation and for collecting the tax between B2B and B2C supplies.

https://ec.europa.eu/commission/presscorner/api/files/document/print/en/memo_16_3746/MEMO_16_3746_EN.pdf, p. 4. See also J.I.W. Lock et al., p. 15. See also paragraph 3.2.2.

¹⁷³ OECD (2019), p. 33.

¹⁷⁴ Ibid.; See also OECD (2017), International VAT/GST Guidelines.

¹⁷⁵ Ibid.

¹⁷⁶ OECD (2017), Mechanisms for the Effective Collection of VAT/GST, OECD Publishing, Paris.

<https://www.oecd.org/tax/tax-policy/mechanisms-for-the-effective-collection-of-VAT-GST.pdf>, p. 32; OECD (2019), p. 33.

It seems that the EU sees the verification of the status of the customer as a non-taxable person on every transaction as a disproportionate burden for digital platforms.¹⁷⁷ However, this does not have to be the case for every digital platform. As discussed in paragraph 3.1.3, it is recommended by the OECD that the EU rules incorporate a provision that allows digital platforms to prove on the basis of compelling evidence that a full VAT liability regime would result in a disproportionate compliance burden, based on their technical and financial capabilities. Digital platforms that are financially and technically able to check the status of the customer as a non-taxable person should be required to do so to make sure the right VAT treatment is applied. After all, when the customer is a business then that business is required to collect the VAT on the intra-Community supply of goods and not the digital platform.¹⁷⁸

3.1.7 Definition of the taxing point

As discussed in paragraph 2.7, the EU implemented specific rules regarding the chargeability when designing a full VAT liability regime for digital platforms. The OECD Guidelines consider it necessary that the time at which the digital platform is required to account for the VAT on the supplies carried out through its platforms for which it has VAT liability is specifically defined. ‘Such a specific definition of the taxing point is required, recognizing that the application of the standard rules for determining the taxing point are likely to create significant complexity for digital platforms under the full VAT[...] liability regime’.¹⁷⁹ By defining the taxing point as the time when the payment has been accepted by or on behalf of the underlying supplier there is only one moment of the VAT liability occurring regardless of what payment method the customer uses. Under the standard rules, where the customer prepays the goods, the VAT liability would originate at the moment when the payment is received.¹⁸⁰ However, when a customer uses for example Klarna, Afterpay or a creditcard, the VAT liability would normally originate at the moment of the delivery.¹⁸¹ The OECD Guidelines recognize that ‘a digital platform will not always have all the information that is required to determine the taxing point according to the standard rules and where a digital platform has this information, the standard rules are likely to create an undue compliance burden for digital platforms to make the individual determination for each of the potentially millions of supplies for which it has VAT liability’.¹⁸²

By defining the taxing point as the time at which the confirmation of the payment is received by or on behalf of the underlying supplier like the EU has implemented in the new article 66a VAT Directive, the taxing point of a supply that involves an importation of goods is likely to be prior to shipping or arrival of goods. By using this approach the OECD Guidelines recognize another advantage that customs authorities will not have to collect VAT on the supplies of imported goods, but can focus on tasks like safeguarding health and security.¹⁸³

By defining the taxing point as the time at which the confirmation of the payment is received by or on behalf of the underlying supplier the EU VAT liability regime for digital platforms

¹⁷⁷ European Commission, September 2020, p. 26.

¹⁷⁸ Article 200 VAT Directive. For the place of taxation rules in this regard see article 40 and 41 VAT Directive.

¹⁷⁹ OECD (2019), p. 34.

¹⁸⁰ Article 65 VAT Directive.

¹⁸¹ Article 63 VAT Directive.

¹⁸² OECD (2019), p. 34-35.

¹⁸³ Ibid., p. 35 and 41.

thus complies with the OECD Guidelines. However, to be able to mitigate the financial risk for digital platforms having to pre finance the VAT to the tax authorities when the actual payment does not occur when the payment is accepted, the OECD Guidelines recommend that jurisdictions have an appropriate bad debt relief provision in place.¹⁸⁴ This is not the case in the EU.¹⁸⁵

3.2 Topics not mentioned by the EU rules

3.2.1 Returned goods

A practical issue that has been addressed by the OECD Guidelines and the literature repeatedly¹⁸⁶, but is not mentioned by the new EU rules concerns returned goods. This is quite surprising as ‘it is well known that many goods ordered over the internet (approximately 30%) are returned by consumers’.¹⁸⁷ The OECD Guidelines recognize that when a customer requests a refund of the price of the goods inclusive of VAT, ‘the refund process for this amount of VAT[...] may present challenges, particularly where the VAT[...] has been collected and remitted to the tax authorities by a digital platform under the full VAT[...] liability regime whereas the refund of the price inclusive of VAT[...] is requested from and/or made by the underlying supplier’.¹⁸⁸ In this scenario the underlying supplier will have to claim the VAT amount back from the digital platform to be able to refund it to the customer. However, when the digital platform is not involved in the return process, it creates an additional administrative burden on the digital platform to have to provide proof to the tax authorities that the goods are returned to be able to get the VAT refunded.¹⁸⁹

The OECD Guidelines recommend jurisdictions with a full VAT liability regime for digital platforms to facilitate the VAT adjustments/refunds that need to be made so this process can be handled effective and efficiently and to minimize the risk of fraud. The OECD Guidelines consider the following approaches: ‘the permission for digital platforms, subject to certain conditions, to make the necessary adjustments in their VAT[...] return for VAT[...] remitted under the full VAT liability regime, i.e. to claim back any overpaid VAT[...] resulting from these adjustments or to carry these VAT[...] amounts forward for a reasonable period to offset against future VAT[...] liabilities; allowing digital platforms to base refund claims on (copies of) documentation provided by their underlying suppliers concerning proof or re-export of the returned goods (such as import and/or export declaration and/or proof of order cancellation); establishing electronic refund systems based on reconciliation of data concerning the imported

¹⁸⁴ Ibid., p. 35.

¹⁸⁵ See paragraph 3.2.2.

¹⁸⁶ M. Papis-Almansa, p. 219; A.M. Bal, 2019, p. 77; M. Lamensch, ‘Rendering Platforms Liable to Collect and Pay VAT on B2C Imports: A Silver Bullet?’, p. 48.

¹⁸⁷ M. Lamensch, ‘Rendering Platforms Liable to Collect and Pay VAT on B2C Imports: A Silver Bullet?’, p. 48.

¹⁸⁸ OECD (2019), p. 47.

¹⁸⁹ Ibid. See also M. Papis-Almansa, p. 219; A.M. Bal, 2019, p. 77; M. Lamensch, ‘Rendering Platforms Liable to Collect and Pay VAT on B2C Imports: A Silver Bullet?’, p. 48; M. Lamensch, ‘Adoption of the E-Commerce VAT Package: The Road Ahead Is Still a Rocky One’, p. 191.

¹⁸⁹ M. Lamensch, ‘Rendering Platforms Liable to Collect and Pay VAT on B2C Imports: A Silver Bullet?’, p. 48; M. Lamensch, ‘Adoption of the E-Commerce VAT Package: The Road Ahead Is Still a Rocky One’, p. 191.

and the returned shipment (if taxes and duties have already been paid) as considered by the World Customs Organization (WCO).¹⁹⁰

3.2.2 Bad debt relief

As discussed in paragraph 2.7, 3.1.3 and 3.1.7, if the digital platform is not involved in the payment process and the customer thus pays the purchase price of the goods he received directly to the underlying supplier or a third party¹⁹¹, the digital platform will need to recover the VAT amount of the sales price of the received goods from the underlying supplier or the third party (plus any fees and commissions).¹⁹² To limit the risk of the underlying supplier or third party not paying or for example going bankrupt, the OECD Guidelines recommend to ‘have an appropriate bad debt relief arrangement in place provided that the digital platform has made reasonable efforts to ensure compliance’.¹⁹³ There is a short comment regarding bad debt relief when using the OSS regime in general, where it seems like the Member States themselves are responsible for bad debt relief arrangements.¹⁹⁴ However, the EU has not provided a special bad debt relief provision for the digital platforms liable to collect the VAT under the new rules. This is not in line with the OECD Guidelines. The financial risk this causes for the digital platform has also been criticized in literature.¹⁹⁵

3.2.3 Safeguard regarding the exemption for VAT on importation

As discussed in paragraph 2.8 and 3.1.2 in line with the OECD Guidelines, the new EU rules allow digital platforms to use the OSS arrangement for their eligible supplies so as to be able to use a simplified registration and compliance mechanism for VAT purposes. When a digital platform uses this OSS arrangement ‘the imports of goods made by them will be exempt upon importation and the VAT will have to be declared and paid via the OSS on a monthly basis’.¹⁹⁶ In this regard, the OECD Guidelines recommend that ‘suitable customs arrangements and processes will need to be in place to efficiently identify the imports that are covered by the full VAT[...] liability regime at the time of their arrival at the border. The full VAT[...] liability regime needs to clearly set out the requirements for the exemption of the VAT[...] on importation of the goods that are covered by the full VAT[...] liability regime, which will require the necessary documentation accompanying the imported goods, including a valid VAT[...] registration number of the digital platform that is liable for the VAT[...] on the supply

¹⁹⁰ OECD (2019), p. 47. See also World Customs Organization, ‘Resolution of the policy commission of the world customs organization on the guiding principles for cross-border e-commerce’, Luxor, December 2017. http://www.wcoomd.org/-/media/wco/public/global/pdf/about-us/legal-instruments/resolutions/policy-commission-resolution-on-cross-border-e-commerce_en.pdf?db=web, p. 5.

¹⁹¹ For example Klarna or Afterpay.

¹⁹² OECD (2019), p. 35.

¹⁹³ Ibid.

¹⁹⁴ European Commission, Guide to the VAT One Stop Shop (applicable from 1 July 2021), Brussels, March 2021. https://ec.europa.eu/taxation_customs/sites/taxation/files/oss_guidelines_en.pdf, p. 48.

¹⁹⁵ M. Lamensch, ‘Adoption of the E-Commerce VAT Package: The Road Ahead Is Still a Rocky One’, p. 191; M. Papis-Almansa, p. 219; A.M. Bal, 2019, p. 77; M. Lamensch, ‘Rendering Platforms Liable to Collect and Pay VAT on B2C Imports: A Silver Bullet?’, p. 48.

¹⁹⁶ M. Lamensch, ‘Rendering Platforms Liable to Collect and Pay VAT on B2C Imports: A Silver Bullet?’, p. 48; See also European Commission, September 2020, p. 51.

of the imported goods from the online sale that it has facilitated, as well as other elements confirming the VAT[...] -paid status of the imported goods'.¹⁹⁷

Under the new EU rules, a valid Import One Stop Shop (IOSS) VAT number has to be provided at the latest in the customs declaration to be able for the digital platform to use the exemption of VAT on importation.¹⁹⁸ The EU rules state, in line with the OECD Guidelines¹⁹⁹, that it is important that 'the supplier or the digital platform as the deemed supplier makes sure that the IOSS VAT identification number is securely transmitted via the supply chain to the customs authorities'.²⁰⁰ The customs authorities are then able to make an automatic validity check of this IOSS VAT identification number against a non-public database.²⁰¹ However, the new EU rules do not have the requirement that next to a valid IOSS VAT number also a unique identifier per consignment should be provided to be able to use the exemption for VAT on importation, which is recommended by the OECD Guidelines.²⁰² Because there is no requirement for a unique identifier per consignment under the new EU rules, the problem can occur that 'because the IOSS VAT number has to be made available to all suppliers making sales via a digital platform (because they will fill the import declaration), these suppliers could also use this IOSS VAT number when selling directly to private customers and thus not pay VAT even though the supplier is liable for it in this case'.²⁰³ The OECD Guidelines do not give more specific guidance on the unique identifier requirement, but the EU could for example research if with the help of technology it would be possible to give the goods supplied through the shopping cart/check-out process of the digital platform a unique identifier, which then would make sure that a supplier selling directly to customers without the use of a digital platform will not be able to use the IOSS VAT number of the digital platform fraudulently for those supplies. Of course, for this to work, the EU has to decrease the scope of digital platforms liable to collect VAT under the new rules as discussed in paragraph 3.1.3, as now for example digital platforms like Klarna or digital platforms that are only involved in the delivery of the goods also seem liable to collect VAT.

Another safeguard that the EU should consider researching to avoid fraud of the exemption of VAT on importation by the digital platform, which would be in line with the OECD Guidelines, is to implement another unique identifier per consignment with the help of technology that confirms that 'VAT[...] has already been accounted for by the digital platform (or that has been declared by the digital platform in a periodic return'.²⁰⁴

3.2.4 Fast-track customs process

As discussed above, a digital platform falling under the new EU rules is exempt from paying VAT on imported goods via the traditional customs process at the border and instead able to use the OSS to pay the VAT on a monthly basis. The goods covered by the full VAT liability regime will need to be checked by the customs authorities even if there is an exemption for

¹⁹⁷ OECD (2019), p. 43-44.

¹⁹⁸ European Commission, September 2020, p. 59.

¹⁹⁹ OECD (2019), p. 44.

²⁰⁰ European Commission, September 2020, p. 57.

²⁰¹ Ibid., p. 59.

²⁰² Ibid., p. 44.

²⁰³ M. Lamensch, 'Rendering Platforms Liable to Collect and Pay VAT on B2C Imports: A Silver Bullet?', p. 48-49.

²⁰⁴ OECD (2019), p. 44-45.

VAT on importation. Inspections must be done to for example make sure no dangerous goods enter the EU, no drugs are being transported and no mis-declaration and undervaluation of the imported goods takes place. The OECD Guidelines therefore recommend providing fast-track processing of imported goods covered by the full VAT liability regime to compliant platforms. These 'trusted' digital platforms will then be encouraged to comply with the full VAT liability regime as speed of delivery of the goods is very important for customer satisfaction.²⁰⁵ In this way VAT revenues can be protected and the situation where underlying suppliers leave the compliant digital platforms and instead sell through a non-compliant digital platform, can be avoided.²⁰⁶

For the fast-track customs process to work, the OECD Guidelines however, deem it necessary that a safeguard like discussed in paragraph 3.2.3, is put in place, where 'goods for which VAT has already been accounted for by the digital platform (or that have been declared by the digital platform in a periodic return) can be identified. Ongoing work at the WCO and Universal Postal Union is expected to further facilitate the operation of full VAT[...] liability regimes for digital platforms in respect of imported goods with fast-track customs processing'.²⁰⁷

4. Conclusions

4.1 The identified similarities

The EU rules comply with the OECD Guidelines recommended operation of a full VAT liability regime for digital platforms. This is of course an important first step in aligning the different VAT liability regimes of digital platforms across jurisdictions. As discussed in paragraph 3.1.2, the operation of the EU VAT liability regime for digital platforms is in line with the OECD Guidelines as the B2C supply of goods by the underlying supplier to the customer is deemed to be supplied by the digital platform. The digital platform is liable to collect and remit the VAT on the supply. The underlying supplier is deemed to supply the goods to the digital platform but will not be liable to collect and remit the VAT to avoid double taxation. The right to deduct input VAT will be kept by the underlying supplier to avoid a break in the collection of VAT in the supply chain. Moreover, the OSS can be used by the digital platform, which will ease the compliance burden for digital platforms and create an incentive for especially non-EU established digital platforms to comply with the rules.

The EU rules comply with the OECD recommendation of a broad concept of the term 'digital platform', by providing a non-exhaustive list of examples like a marketplace, platform, portal, website, gateway or application program interface (API). This makes the VAT liability rules future proof and adaptable to technological changes. The new EU rules also give similar examples of functions as given by the OECD Guidelines considered relevant for enlisting digital platforms under the full VAT liability regime. These functions can be broad, as long as the digital platform holds or has access to sufficient and accurate information to make the right VAT assessment and has the means to collect the VAT and remit it to the tax authorities.

²⁰⁵ Ibid., p. 44-45.

²⁰⁶ Ibid., p. 44.

²⁰⁷ Ibid., p. 45.

Article 5d VAT Implementing regulation is in line with the OECD Guidelines in providing the presumption that the underlying suppliers selling through a digital platform are businesses, unless the digital platform has evidence to the contrary. In this regard, the absence of a VAT number is qualified as having received information to contradict the presumption and the digital platform is required to have a verification process in place.

Moreover, in line with the OECD Guidelines the taxing point is defined as the time when the payment has been accepted by or on behalf of the underlying supplier. This creates more certainty and less complexity for digital platforms as there is only one moment of the VAT liability occurring regardless of what payment method the customer uses. Also, the customs authorities can focus on tasks like safeguarding health and security instead of being involved in the VAT collection process of imported goods.

4.2 The identified differences and recommendations for amendments

As discussed in paragraph 2.2, only imported goods below the customs duties threshold of EUR 150 fall within the scope of the new EU rules. However, the OECD Guidelines recommend to broaden the scope of the VAT liability regime for digital platforms to transactions regarding imported goods supplied to EU customers with a value exceeding EUR 150 as there is also non-compliance with the VAT collection in those cases and it would let the customs authorities focus on health and safety related duties. Including all imported goods in the VAT liability regime for digital platforms would make the rules less complicated and costly for digital platforms as they will not have to assess on a transactional basis if it is considered a deemed supplier or not with regard to imported goods. This would ensure effective and efficient collection of VAT – as is the main aim of both the new EU rules and the OECD Guidelines – and is more in line with the principle of legal certainty.

Moreover, the OECD Guidelines recommend to broaden the transactions covered by the new EU rules with supplies covering non-imported goods supplied to customers in the EU by suppliers established in the EU. The current EU rules limiting the VAT liability regime to transactions carried out by non-EU established suppliers creates compliance complexities for digital platforms as they will have to distinguish between EU- and non-EU established suppliers when determining on a transactional basis whether it is considered a deemed supplier or not.

With a broad scope of functions considered relevant for enlisting digital platforms under the full VAT liability regime the OECD Guidelines consider it important that there is a provision containing a proportionality safeguard in place. This provision would allow digital platforms to prove on the basis of compelling evidence that a full VAT liability regime would be disproportionate, for example taking into consideration technological or financial capabilities. This would make sure that the digital platform has the means (is able) to collect the VAT on the supply. A provision including this proportionality safeguard is however not implemented in the new EU rules.

The OECD Guidelines recommend that the indicators for digital platforms to fall under the full VAT liability regime should be clear, thus providing the required legal certainty for digital platforms. However, the new EU rules are not clear in this regard as the facilitator definition in article 5b VAT Implementing Regulation does not align very well with the first negative list

given in the same article. The first list provides a much broader scope of the term ‘facilitating’ than the definition given in article 5b VAT Implementing Regulation.

Moreover, a digital platform that is not involved in the payment process will need to recover the VAT amount of the sales price of the received goods from the underlying supplier or third party. To mitigate the risk of the underlying supplier or third party not paying or for example going bankrupt, the OECD Guidelines ought it necessary that there is an appropriate bad debt relief provision in place. The new EU rules do not include a specific bad debt relief provision and should therefore be amended to be able to take away the financial risk of the digital platforms covered by the VAT liability regime.

The limited liability provision of article 5c of the VAT Implementing Regulation does not comply with the OECD Guidelines as the provision does not provide for the required legal certainty and does not include the situation where the underlying supplier does not provide any information at all to the digital platform. This leaves the digital platform liable to collect the VAT even though it has insufficient information, because the underlying supplier is non-compliant. Taking into account the broad scope of digital platforms falling within the scope of the VAT liability regime, also including digital platforms that might not have sufficient or accurate information to make the right VAT assessment, the new EU rules should provide for clearer rules protecting the digital platforms from non-compliant suppliers.

To increase legal certainty for the out-of-scope group of digital platforms the OECD Guidelines also recommend to include a measure that these digital platforms enter into an agreement with its underlying suppliers that explicitly confirms the underlying suppliers’ obligation to collect and remit the VAT on their supplies made via the digital platform and to fulfil all other associated VAT obligations. In Australia and New-Zealand such a measure is already in place.

Because of the broad scope of the term ‘facilitating’ in article 14a VAT Directive and article 5b VAT Implementing Regulation, multiple digital platforms can be involved in the supply of goods as a deemed supplier liable to collect the VAT, like Amazon and Klarna. Therefore, the OECD Guidelines recommend jurisdictions to have clear hierarchy rules in place that will give the necessary legal certainty to digital platforms. The current guidance given in the non-binding Explanatory Notes in this regard, should therefore also be provided in the VAT Directive and the VAT Implementing Regulation.

Article 5d VAT Implementing Regulation, which includes the presumption that the buyer of the goods is a non-taxable person, unless the digital platform has evidence to the contrary, is not in line with the OECD Guidelines. Article 5d VAT Implementing Regulation should be amended requiring reasonable efforts being made (including supporting evidence) to obtain the status of the customer. This would provide more certainty that the right VAT treatment of the supply of goods is being made as the EU has different rules for determining the place of taxation and for collecting the tax between B2B and B2C supplies.

In contrast to what the OECD Guidelines recommend, the new EU rules do not provide for a provision on the treatment of returned goods. Clear rules in this regard are especially important for digital platforms that are not involved in the return process. The EU rules should facilitate the VAT adjustments/refunds that need to be made so this process can be handled effectively and efficiently and to minimize the risk of fraud.

The OECD Guidelines recommend having safeguards in place to avoid fraudulent use of the exemption for VAT on importation of goods. The EU should provide for a clear scope of the VAT liability regime and only require digital platforms who as a minimal supply the goods through their shopping cart/check out-process to be liable to collect the VAT. Those goods could then possibly be given a unique identifier, which would make sure that a supplier selling directly to customers without the use of a digital platform will not be able to use the IOSS VAT number of the digital platform fraudulently for those supplies. Moreover, the possibility of implementing a unique identifier per consignment showing that VAT has already been accounted for by the digital platform (or that has been declared by the digital platform in a periodic return when the imported goods arrive at the border), should also be researched by the EU. This could also facilitate a fast-track customs procedure, which is recommended by the OECD Guidelines to encourage digital platforms to comply with the full VAT liability regime as speed of delivery of the goods is very important for customer satisfaction.

4.3 Final remarks

This thesis aimed to clarify the interaction between the new VAT liability rules for digital platforms and the OECD Guidelines answering the following research question:

“Are the new VAT liability rules for digital platforms in line with the OECD Guidelines and the principles these guidelines are based on? If not, which recommendations for amendments can be given?”

The new EU rules comply with the OECD Guidelines on important aspects, like the operation of the full VAT liability regime for digital platforms, the broad definition of the term ‘digital platform’ and similar examples of functions considered relevant for enlisting digital platforms under the full VAT liability regime. Nevertheless, paragraph 4.2 has shown there are also many differences between the new EU rules and the OECD Guidelines. There are even several recommendations of the OECD that are not included at all in the new EU rules. To comply with the principles of legal certainty, fiscal neutrality and proportionality, the new EU rules should be reevaluated and the recommendations given by the OECD Guidelines should be taken into account. The author is of the opinion that an approach whereby a digital platform is required to at least be involved in the establishment of the legal relationship between the parties of the supply and handles the payment itself to be liable to collect and remit the VAT could also be considered. This would make the rules less complicated and more effective and efficient for the digital platform as it would have all the information itself to be able to collect and remit the VAT to the tax authorities. It remains to be seen whether, and if so, in what way the new VAT liability rules for digital platforms will be amended. However, in the light of the findings presented in this thesis, it seems clear that the new EU rules should be further reviewed.

Bibliography

EU legislation

Corrigendum to Council Directive (EU) 2017/2455 of 5 December 2017 amending Directive 2006/112/EC and Directive 2009/132/EC, OJ L 348, 2017.

Council Decision (EU) 2020/1109 of 20 July 2020 amending Directives (EU) 2017/2455 and (EU) 2019/1995 as regards the dates of transposition and application in response to the COVID-19 pandemic, OJ L 244, 2020, p. 3–5.

Council Directive (EU) 2019/1995 of 21 November 2019 amending Directive 2006/112/EC as regards provisions relating to distance sales of goods and certain domestic supplies of goods, OJ L 310, 2019, p. 1–5.

Council Directive (EU) 2017/2455 of 5 December 2017 amending Directive 2006/112/EC and Directive 2009/132/EC as regards certain value added tax obligations for supplies of services and distance sales of goods, OJ L 348, 2017, p. 7-22.

Council Directive 2008/8/EC of 12 February 2008, amending Directive 2006/112/EC as regards the place of supply of services, OJ 2008, L 44/11, p. 11-22.

Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, OJ 2006, L 347, p. 1-118.

Council Directive 2002/38/EC of 7 May 2002 amending and amending temporarily Directive 77/388/EEC as regards value added tax arrangements applicable to radio and television broadcasting services and certain electronically supplied services, OJ 2002, L 128, p. 41–44.

Commission Implementing Regulation (EU) 2020/1318 of 22 September 2020 amending Implementing Regulations (EU) 2020/21 and (EU) No 2020/194 as regards the dates of application in response to the COVID-19 pandemic, OJ L 309, 2020, p. 4–6.

Council Implementing Regulation (EU) 2020/1112 of 20 July 2020 amending Implementing Regulation (EU) 2019/2026 as regards the dates of application in response to the COVID-19 pandemic, OJ L 244, 2020, p. 9–10.

Council Implementing Regulation (EU) 2019/2026 of 21 November 2019 amending Implementing Regulation (EU) No 282/2011 as regards supplies of goods or services facilitated by electronic interfaces and the special schemes for taxable persons supplying services to non-taxable persons, making distance sales of goods and certain domestic supplies of goods, OJ L 313, 2019, p. 14–27.

Council Implementing Regulation (EU) 2017/2459 of 5 December 2017 amending Implementing Regulation (EU) No 282/2011 laying down implementing measures for Directive 2006/112/EC on the common system of value added tax, OJ L 348, 2017, p. 32-33.

Council Implementing Regulation (EU) No. 1042/2013 of 7 October 2013 Amending Implementing Regulation (EU) No. 282/2011 as Regards the Place of Supply of Services, OJ 2013, L 284/1, p. 1-9.

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, OJ L 77, 2011, p. 1–22.

Council Regulation (EU) 2020/1108 of 20 July 2020 amending Regulation (EU) 2017/2454 as regards the dates of application in response to the COVID-19 pandemic, OJ L 244, 2020, p. 1–2.

Council Regulation (EU) 2017/2454 of 5 December 2017 amending Regulation (EU) No 904/2010 on administrative cooperation and combating fraud in the field of value added tax, OJ L 348, 2017, p. 1-6.

Council Regulation (EC) No 1186/2009 of 16 November 2009 setting up a Community system of reliefs from customs duty, OJ L 324, 2009, p. 23–57.

Literature

Bal, A.M., ‘E-Commerce in a Post-Brexit World’, *Tax Notes International*, vol. 101, 2021, pp. 1145-1153.

Bal, A.M., ‘The Changing Landscape of the EU VAT: Digital VAT Package and Definitive VAT System’, *European Taxation*, vol. 59, no. 11, 2019, pp. 73-80.

Douma, S.C.W., *Legal Research in International and EU Tax Law*, Enschede, Wolters Kluwer, 2014.

Lamensch, M., ‘Rendering Platforms Liable to Collect and Pay VAT on B2C Imports: A Silver Bullet?’, *International VAT Monitor*, vol. 29, no. 2, 2018, pp. 48-49.

Lamensch, M., ‘Adoption of the E-Commerce VAT Package: The Road Ahead Is Still a Rocky One’, *EC Tax Review*, vol. 27, no. 4, 2018, pp. 186-195.

Lock, J.I.W et al., ‘De toekomst van de btw bij e-commerce: heffing via platforms (The future of VAT regarding e-commerce: collection via platforms)’, *MBB Maandblad Belasting Beschouwingen*, no. 1, 2019, pp. 1-25.

Merkx, M.M.W.D., *The wizard of OSS: effective collection of VAT in cross-border e-commerce*, Amsterdam, Stichting NLFiscaal, 2020.

Papis-Almansa, M., ‘VAT and electronic commerce: the new rules as a means for simplification, combatting fraud and creating a more level playing field?’, *ERA Forum*, no. 20, 2019, pp. 201-223.

Poires Maduro M., ‘Interpreting European Law: Judicial Adjudication in a Context of Constitutional Pluralism’, *European Journal of Legal Studies*, vol. 1, no. 2, 2007, pp. 1-21.

Sol, J., ‘EU VAT E-Commerce Package – Trust in MOSS and in Electronic Interfaces as Collection Methods’, *International VAT Monitor*, vol. 32, no. 2, 2021, pp. 1-13.

Terra, B. J. M. and Kajus, J., *Introduction to European VAT - Chapter 2 Legal principles*, Global Topics IBFD, last updated 1 September 2020.

Official publications

Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee on the follow-up to the Action Plan on VAT – Towards a single EU VAT area – Time to act, COM (2017) 566 final.

https://ec.europa.eu/taxation_customs/sites/taxation/files/communication_-_towards_a_single_vat_area_en.pdf.

Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee on an action plan on VAT – Towards a single EU VAT area – Time to decide, COM (2016) 148 final.

https://ec.europa.eu/taxation_customs/sites/taxation/files/com_2016_148_en.pdf.

Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee and the Committee of the Regions on a Digital Single Market Strategy for Europe, COM(2015) 192 final. <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52015DC0192&from=EN>.

Copenhagen Economics (2016), E-commerce Imports into Europe: VAT and Customs Treatment.

https://www.copenhageneconomics.com/dyn/resources/Publication/publicationPDF/8/348/1462798608/e-commerce-imports-into-europe_vat-and-customs-treatment.pdf.

European Court of Auditors, E-commerce: many of the challenges of collecting VAT and customs duties remain to be resolved, Special Report, no 12/2019.

<https://op.europa.eu/webpub/eca/special-reports/e-commerce-12-2019/en/>.

European Commission, Guide to the VAT One Stop Shop (applicable from 1 July 2021), Brussels, March 2021.

https://ec.europa.eu/taxation_customs/sites/taxation/files/oss_guidelines_en.pdf.

European Commission, Explanatory Notes on VAT e-commerce rules, Council Directive (EU) 2017/2455, Council Directive (EU) 2019/1995 Council Implementing Regulation (EU) 2019/2026, September 2020.

https://ec.europa.eu/taxation_customs/sites/taxation/files/vatecommerceexplanatory_28102020_en.pdf.

European Commission, ‘VAT Mini One Stop Shop (VAT MOSS)’, September 2019.

https://ec.europa.eu/taxation_customs/sites/taxation/files/moss-statistics-2019.pdf.

European Commission, Fact Sheet, Modernising VAT for e-commerce: Question and Answer, Brussels, December 2017.

https://ec.europa.eu/commission/presscorner/api/files/document/print/en/memo_16_3746/MEMO_16_3746_EN.pdf.

European Commission, Impact Assessment Accompanying the Document Proposals for a Council Directive, a Council Implementing Regulation and a Council Regulation on Modernising VAT for Cross-border B2C e-Commerce, December 2016.

https://ec.europa.eu/taxation_customs/sites/taxation/files/swd_2016_379.pdf.

European Commission, Explanatory Notes on the EU VAT changes to the place of supply of telecommunications, broadcasting and electronic services that enter into force in 2015, Council Implementing Regulation (EU) No 1042/2013, April 2014.

https://ec.europa.eu/taxation_customs/sites/taxation/files/resources/documents/taxation/vat/how_vat_works/telecom/explanatory_notes_2015_en.pdf.

Group on the future of VAT, Council Directive EU 2017/2455 of 5 December 2017 amending Directive 2006/112/EC and Directive 2009/132/EC as regards certain value added tax obligations for supplies of services and distance sales of goods Electronic interfaces – considerations for the implementing provisions, No 071, taxud.c.1(2018)1410119 – EN, 7 March 2018. <https://circabc.europa.eu/ui/group/cb1eaff7-eedd-413d-ab88-94f761f9773b/library/8edf0101-aea9-4f91-bc7a-78f907dc6b4d/details>.

OECD (2021), The Impact of the Growth of the Sharing and Gig Economy on VAT/GST Policy and Administration, OECD, Paris. [The Impact of the Growth of the Sharing and Gig Economy on VAT/GST Policy ... - OECD - Google Boeken](#).

OECD (2019), The Role of Digital Platforms in the Collection of VAT/GST on Online Sales, OECD, Paris. www.oecd.org/tax/consumption/the-role-of-digital-platforms-in-the-collection-of-vat-gst-on-online-sales.pdf.

OECD (2017), International VAT/GST Guidelines, OECD Publishing, Paris. [International VAT/GST Guidelines | READ online \(oecd-ilibrary.org\)](#).

OECD (2017), Mechanisms for the Effective Collection of VAT/GST, OECD Publishing, Paris. <https://www.oecd.org/tax/tax-policy/mechanisms-for-the-effective-collection-of-VAT-GST.pdf>.

OECD (2001), Taxation and Electronic Commerce – Implementing the Ottawa Taxation Framework Conditions, OECD, Paris. <https://www.oecd.org/tax/consumption/Taxation%20and%20eCommerce%202001.pdf>.

Pitney Bowes (2017), Global Parcel Shipping Index. http://news.pb.com/article_display.cfm?article_id=5784.

Proposal for a Council Directive amending Directive 2006/112/EC and Directive 2009/132/EC as regards certain value added tax obligations for supplies of services and distance sales of goods (COM (2016) 757 final). https://ec.europa.eu/taxation_customs/sites/taxation/files/com_2016_757_en.pdf.

World Customs Organization, ‘Resolution of the policy commission of the world customs organization on the guiding principles for cross-border e-commerce’, Luxor, December 2017. http://www.wcoomd.org/-/media/wco/public/global/pdf/about-us/legal-instruments/resolutions/policy-commission-resolution-on-cross-border-e-commerce_en.pdf?db=web.

Table of cases

Judgement of 14 June 2017, *Santogal M-Comércio e Reparação de Automóveis*, C-26/16, ECLI:EU:C:2017:453.

Judgement of 31 January 2013, *LVK – 56*, C-643/11, ECLI:EU:C:2013:55.

Judgement of 15 November 2012, *Zimmermann*, C-174/11, ECLI:EU:C:2012:716.

Judgement of 6 September 2012, *Gábor Tóth*, C-324/11, ECLI:EU:C:2012:549.

Judgement of 6 September 2012, *Mecsek-Gabona*, C-273/11, ECLI:EU:C:2012:547.

Judgement of 29 July 2010, *Profaktor Kulesza, Frankowski, Józwiak, Orłowski*, C-188/09, ECLI:EU:C:2010:454.

Judgement of 29 October 2009, *NCC*, C-174/08, ECLI:EU:C:2009:669.

Judgement of 12 February 2009, *Klarenberg*, C-466/07, ECLI:EU:C:2009:85.

Judgement of 3 June 2008, *Intertanko and others*, C-308/06, ECLI:EU:C:2008:312.

Judgement of 21 February 2008, *Netto Supermarkt*, C-271/06, ECLI:EU:C:2008:105.

Judgment of 21 February 2006, *Halifax plc*, C-255/02, ECLI:EU:C:2006:121.

Judgement of 29 April 2004, *Leusden*, C-487/01, ECLI:EU:C:2004:263.

Judgement of 11 September 2003, *Cookies World*, C-155/01, ECLI:EU:C:2003:449.

Judgement of 10 September 2002, *Kügler*, C-141/00, ECLI:EU:C:2002:473.

Judgement of 22 November 2001, *Kingdom of the Netherlands v Council of the European Union*, C-301/97, ECLI:EU:C:2001:621.

Judgment of 3 May 2001, *Commission v. France*, C-481/98, ECLI:EU:C:2001:237.

Judgement of 8 June 2000, *Schlossstrasse*, C-396/98, ECLI:EU:C:2000:303.

Judgement of 3 December 1998, *Belgocodex*, C-381/97, ECLI:EU:C:1998:589.

Judgement of 25 June 1997, *Commission v. Italy*, C-45/95, ECLI:EU:C:1997:315.

Websites

Afterpay, ‘Payment Conditions’, *Afterpay.nl*, <https://www.afterpay.nl/en/about/pay-with-afterpay/payment-conditions>, (accessed 1 May 2021).

Australian Government / Australia Taxation Office, ‘Who charges GST’, *ato.gov.au*, <https://www.ato.gov.au/business/international-tax-for-business/gst-on-imported-services-and-digital-products/who-charges-gst/#Informationforelectronicdistributionplat>, (accessed 27 March 2021).

European Commission, ‘Modernising VAT for cross-border e-commerce’, *EC Europa*, https://ec.europa.eu/taxation_customs/business/vat/modernising-vat-cross-border-e-commerce_en, (accessed 16 March 2021).

HM Revenue & Customs, ‘Guidance. VAT and overseas goods sold to customers in the UK using online marketplaces’, *gov.uk*, <https://www.gov.uk/guidance/vat-and-overseas-goods-sold-to-customers-in-the-uk-using-online-marketplaces>, (accessed 1 April 2021).

Inland Revenue, 'Online marketplaces', *ird.govt.nz*, <https://www.ird.govt.nz/gst/gst-for-overseas-businesses/gst-on-low-value-imported-goods/who-needs-to-charge-gst/online-marketplaces>, (accessed 1 April 2021).

Klarna, 'Why wasn't my purchase approved with Klarna?', *Klarna.com*, <https://www.klarna.com/us/customer-service/why-wasnt-my-purchase-approved-with-klarna/>, (accessed 1 May 2021).

Naaman Zhou, 'Amazon to block Australians from using US store after new GST rules', *theguardian.com*, <https://www.theguardian.com/australia-news/2018/may/31/amazon-to-block-australians-from-using-us-store-after-new-gst-rules>, (accessed 29 March 2021).

OECD, 'About', *OECD org*, <https://www.oecd.org/about/>, (accessed 17 March 2021).

OECD, 'European Union and the OECD', *OECD org*, <https://www.oecd.org/eu/european-union-and-oecd.htm#:~:text=The%20Commission%20of%20the%20European,Economic%20Co%2Doperation%20and%20Development.&text=At%20the%20same%20time%2C%20the,fundamental%20goals%20of%20the%20Organisation>, (accessed 17 March 2021).

PayPal, 'Helping you resolve cases', *PayPal*, <https://www.paypal.com/uk/webapps/mpp/resolve-disputes-chargebacks>, (accessed 6 May 2021).

PayPal, 'Why is my PayPal payment Under Review?'. *PayPal*, <https://www.paypal.com/uk/smarthelp/article/why-is-my-paypal-payment-under-review-faq495>, (accessed 6 May 2021).

Richard Bowden, 'Amazon and Australia's updated GST – what it all means for you', *accru.com*, <https://www.accru.com/2019/01/amazon-and-australias-updated-gst/>, (accessed 29 March 2021).