EXPLANATORY MEMORANDUM FOR EUROPEAN UNION VAT IN THE DIGITAL AGE LEGISLATIVE PROPOSALS AND THEIR IMPACT ON NORTHERN IRELAND.

COM(2022) 701, 703 and 704

SEC(2022) 433 final - SWD(2022) 393 final - SWD(2022) 394 final

Submitted by HM Treasury 18th Jan 2023

Proposal for a European Union Directive amending Council Directive 2006/112/EC as regards VAT rules for the digital age.

Proposal for Council Regulation amending Regulation (EU) No 904/2010 as regards the VAT administrative cooperation arrangements needed for the digital age.

Proposal for a Council Implementing Regulation amending Implementing Regulation (EU) No 282/2011 as regards information requirements for certain VAT schemes.

SUBJECT MATTER

1. On the 8 December 2022 the EU published proposals as part of its VAT in the Digital Age (VITDA) initiative. The measures proposed are subject to change and there is no certainty that they will come into force in their current form or at all. This EM explains the proposed changes as they are currently drafted.
2. In accordance with the Northern Ireland Protocol, Northern Ireland remains aligned with EU VAT rules concerning goods. Therefore, the VITDA proposal has the potential to impact Northern Ireland, although the UK Government would thoroughly review the finalised set of proposals and look to negotiate changes to any aspects which could negatively impact Northern Ireland. Most of the proposed VITDA amendments are to the EU's VAT Directive which governs the treatment of VAT throughout the EU. However, to achieve comprehensive implementation of the VITDA proposals, amendments are also proposed to the EU's supporting legislation; the Implementing Regulation and the VAT Administration Co-operation Regulation.
3. The objective of the VITDA proposal is to adapt existing VAT rules and to use digital technology to better combat VAT fraud and improve businesses' EU VAT experience in the digital age. To achieve this aim, the proposal targets three broad policy areas for improvement.
4. Firstly, the EU propose to adapt VAT rules on goods applied to the platform economy (online marketplaces). Secondly, they hope to expand the scope of the

EU’s VAT accounting systems. Finally, they want to modernise EU VAT reporting and invoicing rules. A proposed timeline is outlined below, staggering the changes introduced throughout 2024-2030.

5. In 2024 the proposed changes for this year would simply lay the foundations for subsequent key VITDA proposed amendments, whilst also further clarifying existing VAT e-commerce policies.
6. From 2025, to address VAT non-compliance, it is proposed that online marketplaces facilitating the sales of goods would have greater responsibility to collect VAT on behalf of suppliers. The current EU rules limit online marketplace liability to overseas suppliers selling to EU consumers through an online platform. The EU’s VITDA proposal extends this liability to intra-EU supplies, meaning supplies made by EU businesses fall in scope. It also provides that Online Marketplaces are liable regardless of whether the sale is business-to-business or business-to-consumer.
7. Additionally, to further strengthen VAT compliance, use of the EU’s Import One Stop Shop would become mandatory for online marketplaces. This is the EU’s import VAT accounting scheme used for imported low value goods supplied from businesses to consumers. Further VITDA proposals for 2025 also extend online marketplace liability to sectors of the sharing economy such as short-term rental accommodation. However, as this concerns services and not goods, it would not impact Northern Ireland.
8. Furthermore, the EU proposes the expansion of the One Stop Shop (OSS): an intra EU VAT accounting scheme for business to consumer trade. They propose that a broader range of goods could be reported through OSS, including the movement of a business’s own stock.
9. It is also proposed that Member States will be required to accept the cross-border reverse charge. The reverse charge is currently an optional facilitation for business-to-business sales where the supplier is not established in the Member State it is supplying to. It moves the burden of VAT payment to the buyer rather than the seller, meaning that the overseas seller does not need to register for VAT in the EU country it is supplying to.
10. The key VITDA proposals relating to EU reporting and invoicing are proposed to be implemented in 2028, although amendments in the years prior would help prepare for this. Their aim is to establish standardised digital reporting to further combat VAT non-compliance and address differing reporting standards across the EU
11. The introduction of Digital Reporting Requirements is proposed for intra-EU transactions of goods, replacing the use of recapitulative statements. The new Digital Reporting Requirements would progress towards transaction-by-transaction reporting for intra EU business-to-business supplies. This would also require a greater level of information about the sale to be recorded to facilitate identifying VAT non-compliance. Additionally, e-invoicing would be mandated for intra-EU supplies of goods and services.

12. Finally, it is also proposed that a new central EU data system would be created for business-to business sales, to more effectively share data to tackle VAT non-compliance. This would require Member States to develop and maintain a new national IT system to store and transmit data to the EU system. This information is predominately data collected through the new Digital Reporting Requirements and information that identifies the taxable person.

13. **SCRUTINY HISTORY**

14. Council Directive 2006/112/EC was subject to scrutiny as proposal 8470/04, COM(04)246. Recent scrutiny of this Directive have been through proposals 6158/22, COM(22)39; 7749/21, COM(21181; 6145/21, COM(21)53; 14293/20, COM(20)749 and COM(20)360. Council Regulation 904/2010 was subject to scrutiny as proposal 12886/09, COM(09)427. Scrutiny of this EU regulation most recently was through proposal 15508/18. Recent scrutiny of Implementing Regulation (EU) No 282/2011 was through proposals 5394/22, COM(22)8.

15. **MINISTERIAL RESPONSIBILITY**

16. The Chancellor of the Exchequer has responsibility for United Kingdom policy on European Union monetary and economic issues, and on tax policy within the United Kingdom. The Foreign and Commonwealth is responsible for overall United Kingdom policy towards the European Union.

17. **INTEREST OF THE DEVOLVED ADMINISTRATIONS**

18. The taxation proposal contained in the Communication are a reserved matter under the UK's devolution settlements. The devolved administrations have therefore not been consulted in the preparation of this EM. The EM has been reviewed by NI officials.

19. **LEGAL AND PROCEDURAL ISSUES**

i. Legal Base

20. The legal basis for the proposal for a Council Directive and the Administration Cooperation Regulation is Article 113 of the Treaty on the Functioning of the European Union (TFEU). The legal basis for the proposal for a Council Implementing Regulation is Article 397 of Council Directive 2006/112/EC.

ii. European Parliament Procedure

21. Special legislative procedure (SLP) Consultation.

iii. Voting procedure

22. Unanimity

iv. Impact on United Kingdom Law

23. When/If agreed, amendments to Directive 2006/112/EC will need to be transposed into UK law. The Administration Co-operation Regulation and Implementing Regulation will have direct effect in the UK in respect of Northern Ireland.

24. **POLICY IMPLICATIONS**

25. Under the Northern Ireland Protocol, Northern Ireland is required to align to EU VAT law concerning goods. This means that the VITDA amendments have the potential to impact Northern Ireland where they relate to goods. As these are currently only proposals, there is no certainty that the changes will be implemented, and they are likely to be subject to change if they are adopted by the EU.

26. However, if implemented, some of the proposals are likely to require action in Northern Ireland. This includes the proposed amendments to online marketplace liability and efforts for the EU to progress towards single EU VAT registration for intra-EU trade, including proposals for OSS expansion and mandatory acceptance of a reverse charge. The Government will need to monitor developments.

27. The Government will also need to monitor the proposed digital reporting requirements which could require new systems and reporting structures.

28. The UK Government is committed to seeking resolutions with the EU where required so that any changes do not impact Northern Ireland's position within the UK internal market.

CONSULTATION

29. N/A

IMPACT ASSESSMENT

30. The EU has produced an impact assessment for the proposed amendments to the VAT Directive, VAT Administrative Cooperation Regulation and Implementing Regulation. This covers the impact of these proposals could have on the EU, rather than NI.

FINANCIAL IMPLICATIONS

31. Not applicable. No legislative proposals have yet been made in the UK.

Yours sincerely,

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