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From: Confederation of Swedish Enterprise  
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## The Confederation of Swedish Enterprise – Comments on the European Commission's Public Consultation on 'VAT in the Digital Age' 20 January 2022 – 05 May 2022

The Confederation of Swedish Enterprise is Sweden's largest business federation representing 49 member organizations and some 60 000 member companies in Sweden.

The Confederation of Swedish Enterprise welcomes and supports the European Commission's work under the 'VAT in the Digital Age' initiative. However, we strongly believe that digitalization is not itself an answer to the complexity of the current VAT rules. A major EU overhaul is needed where the first step should be a broader tax base.

In addition to our responses to the questionnaire, we are pleased to provide additional comments on this subject. All answers provided in the questionnaire should be read together with what is stated in this document.

### Part 1 - Digital Reporting Requirements

- A. DRRs and e-invoicing can indeed bring simplification for businesses and lower compliance costs. However, as stated above, digitalization is not itself an answer to the complexity of the current VAT rules. To simplify the reporting process and generate an efficient and facilitating system that benefit both businesses and tax authorities, legislative simplifications and modifications need to take place at an earlier stage. The current VAT legislation contains demarcation issues that is not necessarily codable and unsuitable for an automated system. Several transactions are interpreted differently due to a lack of harmonization and different wordings in the Member States.
- B. Current legislation is deficient in many aspects. The biggest problem is the VAT exemptions that result in hidden (blocked input) VAT. A major EU overhaul is needed where the first step should be a broader tax base. It is crucial that the VAT rules are simplified and modernized to achieve the set goals. A smooth functioning DRR presupposes simplifications, e.g. the same treatment of goods and services,

fewer exceptions and special regulations, uniform definitions (for example regarding mediation) and multiple and composite supplies. Another example is that the margin schemes often cannot be handled within ERP, which makes it difficult to apply and manage by a DRR.

- C. Regardless of the preferred solution there must be flexibility. Companies interact with multiple ERP- and IT-systems and must have the possibility to produce, calculate, and check the data in their own systems, and subsequently convert the data to the reporting environment. To facilitate and harmonize an e-invoicing solution a standard is necessary. However, to ensure flexibility we would like to stress that there is not a necessity to limit the standard to one. In certain cases, it would be preferable for companies to choose between a few different standards that best suit their situation. From a Swedish point of view, we are not convinced that an EU-wide DRR for both cross-border **and** domestic transactions is the best option. Since Sweden doesn't have a domestic DRR there is a risk to be locked into a solution that will have a negative impact on purely domestic companies.
- D. The introduction of an EU-wide DRR will require considerable IT investments, significant spending on employees, digital skills and IT equipment for both business and tax authorities. Consequently, sufficient preparation time and appropriate guidance are crucial. The effect of the hasty introduction of DRR in some countries has led to companies that operate in these countries, having to remove domestic transaction and instead turning them into EU transactions. As a result, this has led to increased transport and a negative impact on the environment. This can also be questioned from a neutrality point of view. Furthermore, any introduction should be gradual, focusing on large businesses first with the option for SMEs to join in.
- E. There is also a fundamental key to obtain a high level of data security and provisions for reported data. This type of transformation puts a lot of pressure on both businesses and tax authorities. Larger data flows raise questions regarding business integrity, confidentiality, and potential misuse of information. Regardless of the final solution, there is a need to constitute when and where data could or should be used, the timeframe when data is up to date, the amount of data that should be reported and the potential rectification of data. The data required should not extend beyond what is needed for tax analysis and purposes other than taxation. All these aspects must be clarified for both business and tax authorities in a fast-paced digital environment. In addition, there is a need for companies to be able to quickly correct data that is submitted.

## **Part 2 – The VAT Treatment of the Platform Economy**

- A. To ensure a future proof application, a more modern approach to the concept 'platforms' must be the base for the forthcoming discussion. The platform economy is constantly evolving and to limit the discussion to only the major e-commerce platforms will only aim to solve some of the current problems. Broadening the view is not about the, in our opinion, impossible task of trying to define a platform as such, but rather, instead of only focusing on the largest sectors like accommodation and transport all sectors should be included in the discussion. This applies to both transactions in other sectors that already today are handled through platforms and

those that soon will be. For example, how should we handle transactions via refrigerators, cars, dishwashers and washing machines? The exchange of information between these platforms will most likely increase due to changes in energy prices and the question then becomes how such platforms should be treated from a VAT point of view.

- B. Healthcare services have traditionally been performed via physical appointments in recognized healthcare facilities. In recent years, an increased number of healthcare services have been replaced or supplemented with a digital element. This has resulted in the service being deemed to be subject to VAT and increased the blocked input VAT for the sector.

The Covid19-pandemic highlighted the problems with the exemptions for education, healthcare, social care and blocked input VAT. The pandemic exposed the need for digital online education, online doctors, health controls, mobile x-ray devices, respiratory aids, alarms, medicine robots etc. Such services are provided from a variety of platforms, but the VAT system does not support such needs due to the blocked input VAT.

To ensure the neutrality of taxation of all economic activities, and further the objectives of the exemptions, there is a need for adjusting the articles in the EU VAT directive concerning health care and the discretion of Member States. The objectives pursued by the exemptions are to reduce the costs of providing these services and make them more accessible to the individuals who may benefit from them. The structure of the articles, together with case law that lacks sufficient clearness, has given rise to national interpretations which contradict both the neutrality of the VAT system and the concrete objectives of the exemptions.

The *first* option would be to add a clarification in article 132.1 c) stipulating that the concept of "medical care" should apply regardless of in what stage the healthcare service is provided, dismissing facts such as underlying contracts and overall responsibility.

The *second* option would be to add a third point to article 132 stipulating that the Member States may for the purpose of b) and c) introduce any restrictions necessary to uphold the objectives of the exemptions.

The *third* option would be to add article 132.1 c) in the enumerated provisions in article 133 giving the Member States the discretion to limit the extension of the healthcare exemption, for example excluding actors who systematically aim to make a profit.

This would enable the Member States to establish a predictable outcome for many actors in the health care sector. Today many of these actors, especially those who operate on behalf of recognized institutions, must find themselves uncertain if their services are subject to VAT or not.

**Proposal for amendments to the text of the Directive:**

<b>Current wording</b>	<b>Proposed wording</b>
<p style="text-align: center;"><b>Article 132.1 c)</b></p> <p>The provision of medical care in the exercise of the medical and paramedical professions as defined by the Member State concerned;</p>	<p style="text-align: center;"><b>Article 132.1 c)</b></p> <p>The provision of medical care <i>regardless of what stage and to whom by contractual grounds the services are provided</i> in the exercise of the medical and paramedical professions as defined by the Member State concerned;</p>
	<p style="text-align: center;"><b>Article 132.3</b></p> <p><i>For the purpose of point b) and c) of paragraph 1, Member States may introduce any restrictions necessary, particular as regards the objective of the exemptions to reduce costs for providing the services and ensuring the accessibility for individuals who may benefit from them.</i></p>
<p style="text-align: center;"><b>Article 133</b></p> <p>Member States may make the granting to bodies other than those governed by public law of each exemption provided for in points (b), (g), (h), (i), (l), (m) and (n) of Article 132(1) subject in each individual case to one or more of the following conditions:</p>	<p style="text-align: center;"><b>Article 133</b></p> <p>Member States may make the granting to bodies other than those governed by public law of each exemption provided for in points (b), (c), (g), (h), (i), (l), (m) and (n) of Article 132(1) subject in each individual case to one or more of the following conditions:</p>

- C. One important issue is the division between goods and services. The platform economy replaces traditional supplies, where the question arise which transaction drives the taxation: the service provided through the platform or the underlining transaction? Recently we have received examples of companies selling a function rather than a good. For example, companies selling the function light instead of a lamp or tire miles instead of selling tires. In addition, sales of electric cars are expected to increase by more than 100% in Sweden this year and the charging industry is growing just as fast. This development will continue for the foreseeable future and contains important questions that needs to be resolved in a harmonized way. This relates to whether charging services should be treated as a good or a service and whether a private person is a taxable person or not when providing a charging post.
- D. Another concern is the lack of a clear definition of intermediation in the current VAT Directive and in the national legislation in the Member States. One of the main reasons for the differential treatment of platforms in the Member States is that there are six different concepts of intermediate in the VAT Directive. In the Swedish VAT Act there are 13 different concepts of intermediation. In the platform economy the

definition of intermediate is central. As of today, there are no clear guidelines or definitions regarding intermediation that entail uncertainty as well as double- or non-taxation. To find and define the “deemed supplier” in a cross-border transaction, there needs to be a clarification of the intermediary to avoid mistakes or uncertainties.

- E. The platform economy is pervading many areas and transactions and to achieve an overall desired effect, the harmonization of the rules or recommendations regarding “deemed supplier” is needed in every sector of the platform economy.
- F. The difficulty to locate whether sales are made to a private or legal person and the difficulties of keeping track of all the different invoice rules as well as tax rates causes distortion of the competition. In many cases the administration to locate the buyer is too large and expensive in relation to the transaction/revenue, especially when it in many cases is a matter of a one-time sale, and it is therefore easier and more favorable for especially SMEs to block cross-border sales to private persons. The result is a reduced number of transactions and thus tax revenue.

### Part 3 – Single VAT Registration in the EU and IOSS

- A. The OSS and the IOSS is a step in the right direction because it facilitates VAT compliance, especially for SMEs. However, companies may not benefit from an extension of the OSS and IOSS depending on how their business is structured. Therefore, it is important that any progression or extension is flexible and not mandatory. In addition, the most significant feature of a future extension of the OSS is the inclusion of a deduction mechanism within the system. Otherwise, substantial administrative cost will occur due to the (not so well functioning) refund/reclaim process and will not be a particularly attractive solution for businesses. Before changes are made to the OSSes, improvements need to be made in the IOSS e.g. by removing the €150 threshold and thus include all third country transactions.
- B. **A simple procedure for cooperation between the Member States and joint VAT audits:** According to the European Court of Auditors’ special report,<sup>1</sup> many challenges in collecting correct amounts of VAT and customs duties on e-commerce remains to be resolved. In particular, EU controls are insufficient to prevent fraud and detect abuse, while enforcement of collection is still not effective.

As mentioned above (re platforms) there are huge difficulties and costs involved in determining in which Member State the customer (B2C) is located, to fulfil the invoicing rules in the different Member States and to charge the relevant VAT rate of that Member State for that specific transaction (in total over 80 VAT rates in the EU). Therefore, there are sellers within the EU that simply charge the VAT rate in the Member State of origin and not the MS of destination. Even though the VAT is paid in the wrong Member State, we question the incentive for the Member State of origin to review and reduce their VAT revenue. The European Court of Auditors’ report highlights the lack of tax audits regarding the MOSS and a lack of cooperation

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<sup>1</sup> [European Court of Auditors’ special report no 12/2019: E-commerce: many of the challenges of collecting VAT and customs duties remain to be resolved.](#)

between the Member states. If this is not remedied before expanding the OSS there is a risk of other kinds of VAT losses and fraud.

- C. In several Member States the customs authorities' IT systems are not ready to recognize IOSS numbers in H1 customs declarations which have led to double taxation for shipments declared under an H1 customs declaration, even though these shipments are IOSS-eligible.
- D. There is a potential misuse of IOSS number under the current system due to the optionality of the IOSS, the fact that IOSS numbers cannot be kept confidential and the lack of transparency of IOSS holders to customs authorities. Furthermore, other issues remain due to misalignment between VAT and customs legislation.
- E. E-invoicing could be a suitable base for an intra EU-DRR. We have learned from business that all information that must be in an invoice is not applicable for automation or code e.g. pure text.
- F. Non-EU established entities may have three separate registrations for their VAT obligations in the EU: IOSS, UOSS and Non-Union OSS and there is a complexity in operating multiple OSS registrations in the current system.
- G. Credit notes and adjustments on the OSS returns are commonplace to correct invoicing errors. The requirement to split adjustments by country and by period has made the reporting of credit/adjustments burdensome for companies.
- H. There is a suggestion made by DG TAXUD from 2020<sup>2</sup> about an introduction of reporting requirements for excise duties in the OSS or in a similar solution. The excise duties are still complicated to handle locally and while the OSS and IOSS has facilitated VAT compliance, a similar procedure should be considered for excise duties.

On behalf of the Confederation of Swedish Enterprise

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<sup>2</sup> [DG TAXAUD 2020, Study assessing articles 32 and 36 of Council Directive 2008/218/EC concerning the general arrangements for excise duty, Final report.](#)