

IRISH TAX MONITOR

The Roundtable June 2023

EU Customs Union Reform – VAT proposals

On 17 May 2023, the European Commission put forward proposals for the comprehensive reform of the EU Customs Union (see more here https://taxation-customs.ec.europa.eu/customs-4/eu-customs-reform_en). The proposals include the establishment of a new EU Customs Authority to oversee an EU Customs Data Hub as well as ‘a more modern approach to e-commerce’. Can you assess the Commission’s proposals in relation to e-commerce and VAT?

Philip Nolan, VAT Partner,

BDO: On 17 May 2023 the European Commission put forward proposals for the most ambitious and comprehensive reform of the EU Customs Union since its establishment in 1968 (Customs Proposals).

The Customs Proposals also included some important VAT related changes which build on the July 2021 e-commerce VAT package changes and are consistent with the VAT in the Digital Age (VIDA)



Philip Nolan

proposals which are aimed at:

- modernising and reshaping the EU VAT system for the digital era;
- reducing the VAT compliance burden for business; and,
- strengthening the fight against VAT fraud and in turn reducing the VAT Gap.

The VAT changes under the Customs Proposals, effective from 2028 onwards,

can be briefly summarised as extending the following:

5. the application of the “Deemed Supplier” rule for electronic platforms to distance sales of qualifying imported goods exceeding €150;
6. the IOSS scheme (i.e. Import One Stop Shop scheme) to distance sales of qualifying imported goods exceeding €150; and,
7. the special arrangements for postal operators, express carriers etc. to consignments of qualifying goods exceeding €150.

The proposed VAT changes are extensive and complex and will take some time to fully digest. They are however to be very much welcomed and if approved in their current state will certainly further help to achieve the principle aims of the VIDA proposals as outlined above.

To note, the proposed measures must be unanimously approved by all EU member states to become effective (which will be challenging), so they will be subject to robust debate during 2023 and possibly further revised. However, affected businesses should begin to familiarise themselves with the proposals so they can assess the likely impact on their business.

DAC 8

In May 2023, EU finance ministers reached agreement on a compromise text for the Directive on administrative cooperation (DAC8) which will extend the scope of the current rules on the exchange of tax-relevant information. Can you outline the key changes as relevant to Irish taxpayers?

Michelle Adams, Manager, Financial Services Tax, BDO: In December 2022, the European Commission proposed new tax transparency rules for all service providers facilitating transactions in crypto-assets for customers resident in the EU from 1 January 2026 (DAC8). This was in response to the notable increase in people investing in crypto-assets and e-money in recent years.

DAC8 extends the scope of automatic exchange of information requiring crypto-asset service providers to report on reportable transactions and transfers involving assets and e-money. Several other DAC provisions are also amended by DAC8 such as the reporting and communication of the Tax Identification Numbers to help tax authorities to identify relevant taxpayers and correctly assess the related taxes. These proposed rules complement the Markets in Crypto-assets (MiCA) Regulation and anti-money laundering rules.

On 16 May 2023, EU finance ministers



Michelle Adams

reached political agreement on a compromise text for DAC8 which made the following changes:

- The extension of the exchange of advance cross-border rulings to high-net-worth individuals has been removed and instead, the compromise text extends the scope to either advance cross-border rulings concerning and involving the tax affairs of one or more natural persons where the amount of the transaction or series of transactions exceeds €1.5 million, or advance cross-border rulings determining the tax residence of a natural person in a Member State.

- The Member State should exchange information on advance cross-border rulings for natural persons issued, amended or renewed after 1 January 2026 instead of between 1 January 2020 to 31 December 2025 which was originally proposed.
- Removal of the regime on minimum penalties for non-compliance across DAC requirements. The choice for imposing penalties will now be at the discretion of the Member State and should be effective, proportionate and dissuasive.
- The starting date for communication of TINs has been amended depending on the item of information.
- The Commission has until 31 December 2026 to develop a secure member state central directory for recording information.
- The Model Competent Authority Agreement, the CARF and the CRS are all referenced as sources of illustrative and interpretation of DAC8.
- DAC8 amends DAC6 in line with a CJEU decision in a recent case which ruled that DAC6's obligation for a lawyer to inform other intermediaries is not necessary.

The compromise text has introduced important changes from the initial proposal and any potentially affected organisations should begin the process of how they will implement these new rules.