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Nevia Čičin-Šain

The Involvement of Intermediaries in the Collection of European VAT

33

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IBFD

The Involvement of Intermediaries in the Collection of European VAT

Why this book?

Value added tax in the European Union, a broad-based tax on final consumption, is an indirect tax. While it is intended to tax final consumption of goods and services, VAT is collected from vendors rather than directly from consumers. Yet recently, within the EU VAT system, a deviation from the traditional vendor collection model to an intermediary collection model (ICM) has been witnessed. Further academic research is needed on the principles and justifications underlying the imposition of these rather burdensome VAT related obligations on intermediaries who remain, in essence, external to the contractual relationship between the vendor and the consumer.

Therefore, this book provides an in-depth study of the involvement of various intermediaries in the EU VAT collection process. The main aim of the book is to explore the underlying principles behind third party involvement in this alternative VAT collection model, as well as its scope and limits based on the identified principles and higher-ranking norms. The book investigates the parameters that the EU legislature must consider when designing the ICM in order to achieve policy goals and remain compliant with the legal framework governing any VAT collection model within the EU.

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Nevia Čičin-Šain



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Abstract

Value added tax in the European Union, a broad-based tax on final consumption, is an indirect tax. While it is intended to tax final consumption of goods and services, VAT is collected from vendors rather than directly from consumers. Yet recently, within the EU VAT system, a deviation from the traditional vendor collection model to an intermediary collection model (ICM) can be witnessed. Further academic research was needed on the principles and justifications underlying the imposition of these rather burdensome, VAT related obligations on intermediaries who remain, in essence, external to the contractual relationship between the vendor and the consumer.

This book thus represents an in-depth study of the involvement of various intermediaries in the EU VAT collection process. The main aim of the book is to explore the underlying principles for third party involvement in this alternative VAT collection model, as well as its scope and limits based on the identified principles and higher-ranking norms. The book investigates the parameters that the EU legislature must consider when designing the ICM in order to achieve policy goals and remain compliant with the legal framework governing any VAT collection model within the EU.

<p>This book was awarded the 2025 Maurice Lauré Prize by the International Fiscal Association.</p>
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Foreword

This book represents my habilitation thesis written at the Vienna University of Economics and Business. The book discusses the legal developments up until April 2025.

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you have brought into our lives. I dedicate this book especially to you, my dear little bright girl, as an inspiration for you to make your own mark in the world, in whatever it is you decide to do when you grow up.

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With deepest gratitude,
Nevia

Chapter 1

Setting the Scene

1.1. Identifying the issue: The impact of the ever-growing e-commerce and sharing economy on VAT collection within the EU

In its everyday use, the notion of electronic commerce or “e-commerce” covers various types of economic activities carried out over electronic networks such as the Internet, covering both supplies of goods and services.¹ E-commerce has been encouraged within the European Union as a means for businesses and customers to interact in cross-border situations as they would on a local market. This positively affects market competition and drives product innovation. Classical market operators can reinforce their market presence by offering their goods and services online as well as expanding their markets across borders. E-commerce also enabled the creation of a whole new range of e-services, thus creating new value and opening new workplaces.

A uniform definition of e-commerce is hard to come by.² The European Commission in its 1997 Communication to the Council entitled “*A European Initiative in Electronic Commerce*”³ splits e-commerce into two types of activities: indirect e-commerce – the electronic ordering of tangible goods which must still be physically delivered using traditional channels, such as postal services or express couriers; and direct e-commerce – the on-line ordering, payment and delivery of intangible goods and services such as computer software, entertainment content, or information services on a global scale.

In the same vein, in 2014 the European Commission’s High Level Expert Group on Taxation of the Digital Economy described the typical business models applied in the digital economy in order to better understand the application of the related VAT and corporate income taxes.

The first model is the “Physical e-Commerce model”. This model is the traditional e-commerce business model from the physical world in which a

1. OECD, *Unpacking E-commerce: Business Models, Trends and Policies* p. 14 (2019).

2. *Id.*, at pp. 15, 16.

3. European Commission, *A European Initiative in Electronic Commerce* p. 3 (1997).

physical product is made in the source state and sold online to a customer in the destination state. Since the product is physical, the location of sales, distribution and support is typically in the same country as the customer, i.e. also in the destination state even though it may have been produced elsewhere.⁴

The second model is the “Digital e-Commerce and cloud model” (product or service delivered digitally). In it, the “product” is not physical but digital. It is either distributed over the web as a product or it is kept at a central data centre and distributed as a service. The main difference compared to the physical model is that a digital product can be distributed and supported from locations that are distant to the destination state. Similarly, for cloud services consumers access the central data centre from a location of their choosing (usually the destination state), but the central data centre itself can be located in any source state provided there is Internet access. In the second model, the digital nature of the transaction, whether that be the sale of products or services, makes the source state largely independent from the location of the customers in the destination state. Examples of these models are downloading in return for a fee or online streaming services in return for a fee.⁵

Finally, the Commission’s High Level Expert Group identified a third model, known as the “Multi-dimensional model”. The third model combines two or more dimensions. Examples of these multi-dimensional business models include search engines, social networks or other free digital service websites combined with advertising business. The first dimension concerns a free digital service for a group of users in a certain destination state. This generates value by selling advertising seen by users in that destination state. The sale of advertisement space to business customers is the second dimension in this business model. Data is typically collected from the users in the first destination state which allows the advertisements to be better targeted. The irrelevance of location is even more pronounced in the multi-dimensional model: the physical location of users in the first dimension can be different from the physical location of business customers in the second. In addition, both are independent of the source state, which is the location of the service provider.⁶

4. Commission High Level Expert Group on Taxation of the Digital Economy, *Report of the Commission Expert Group on Taxation of the Digital Economy* p. 21 (28 May 2014), available at https://taxation-customs.ec.europa.eu/document/download/cb640cdf-02f6-42f3-81a2-6db6b256577c_en?filename=report_digital_economy.pdf (accessed 6 Mar. 2024). However, the author considers that the location of the sale can very often be the source state where the goods have been produced, as one can see from the issues underlying the VAT e-commerce package.

5. *Id.*, at p. 22.

6. *Id.*

The High Level Expert Group also clarified that the notion of “transactions in the digital economy” encompasses three different supplies from a VAT perspective: a) the supply of electronic services b) the supply of services over the internet other than electronic services and c) the supply of goods ordered online. The VAT treatment differs depending on the type of supply and the recipient of the good or service (business or consumer). Both of these circumstances have an impact on the place of supply (country of taxation) and the deductibility of VAT.

For the purposes of this book, however, the following terms will be distinguished and referred to: 1) e-services – will refer to the supply of services ordered and delivered online, 2) e-commerce – will refer to the sale of tangible goods ordered online, but physically shipped to the customer, and lastly 3) sharing economy – will refer to a specific type of services ordered online but rendered physically or online.

With regard to the first category of supplies, namely e-services, the realisation of the internal market, globalisation, deregulation and technological advances have all contributed to enormous changes in the volume and pattern of trade in services. It became increasingly possible for a number of services to be supplied at a distance. Therefore, in response, piecemeal steps had to be taken over the years to tackle this expansion in order to achieve proper and fairer taxation of such supplies.⁷

E-commerce, on the other hand, is distinguished by several characteristics: (i) time-sensitive goods flow, (ii) high volumes of small packages, (iii) the participation of unknown players and (iv) return/refund processes required.⁸ A large portion of these sales is facilitated by platforms. Research shows that 57% of online sales happen over only three of the largest retail platforms.⁹ Recent calculations estimate that the European e-commerce market is set to continue its rapid ascent with revenues reaching nearly USD 900 billion by 2028. This is also due to online shopping becoming increasingly popular among European consumers, particularly in the aftermath of the coronavirus

7. Recital 1 of the Preamble to Council Directive 2008/8/EC of 12 February 2008 amending Directive 2006/112/EC as regards the place of supply of services, OJ L 44 (2008) [hereinafter Council Directive (2008/8)].

8. World Customs Organization, *Cross-Border e-Commerce*, available at <http://www.wcoomd.org/en/topics/facilitation/activities-and-programmes/ecommerce.aspx> (accessed 20 Jan. 2021).

9. OECD, *The Role of Digital Platforms in the Collection of VAT/GST on Online Sales* p. 14 (OECD 20 June 2019), available at https://www.oecd-ilibrary.org/taxation/the-role-of-digital-platforms-in-the-collection-of-vat-gst-on-online-sales_e0e2dd2d-en (accessed 11 Feb. 2020).

pandemic. For example, e-commerce revenue in Germany grew by more than twenty billion euros between 2019 and 2021. Similarly, France experienced an online sales boom of a comparable scale during the Covid-19 pandemic, with e-commerce sales revenue increasing from 103 billion euros in 2019 to more than 146 billion euros in 2022.¹⁰ E-commerce is also on the rise as a result of the ever-improving internet access. With digital buyer penetration surpassing 65 percent of internet users worldwide in 2021, the e-commerce industry is set to evolve and expand.¹¹ This is particularly true for Europe, where in 2018 almost 69% of European internet users already did their shopping online.¹²

Finally, the sharing economy¹³ is a specific type of economy that essentially consists of supplying services offered online (over applications or over the web), that can be consumed either in the physical world (e.g., by taking a ride via a car sharing app), or online (e.g., by learning a skill via pre-recorded videos or live sessions). Finding a uniform definition of the sharing economy proved to be a challenging task. An attempt was made by the European Commission in its 2016 Communication called *A European Agenda for the Collaborative Economy*¹⁴ which defined it as a business model where activities are facilitated by collaborative platforms that create an open marketplace for the temporary usage of goods or services often provided by private individuals. This definition was more or less replicated *verbatim* in the 2021 study *VAT in the Digital Age, vol. 2, The VAT Treatment of the Platform Economy*¹⁵ made by Economisti Associati et al. for the European Commission.

What is specific about the sharing economy is that it *necessarily* involves the presence of platforms. These platforms put service providers who share

10. L. Beyrouthy, *E-Commerce in the European Union*, Statista (10 Jan. 2024), available at <https://www.statista.com/topics/3792/e-commerce-in-europe/> (accessed 6 Mar. 2024).

11. D. Coppola, *Global Digital Buyer Reach 2021*, Statista, available at <https://www.statista.com/statistics/261676/digital-buyer-penetration-worldwide/> (accessed 4 Jan. 2021).

12. https://ec.europa.eu/eurostat/statistics-explained/index.php/E-commerce_statistics_for_individuals

13. Also called gig economy. Examples of other terms that are used interchangeably include: “collaborative economy”, “peer-to-peer economy”, “on-demand economy” and “1099 economy”. See G. Beretta, *European VAT and the Sharing Economy* p. 385 (Kluwer Law International 2019).

14. European Commission, *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, A European Agenda for the Collaborative Economy, COM(2016) 356 Final* p. 3 (2016).

15. Economisti Associati et al., *VAT in the Digital Age, Vol. 2, The VAT Treatment of the Platform Economy* p. 13 (2021).

assets, resources, time and/or skills into contact with users of these services. The providers can be private individuals offering services on an occasional basis or service providers acting in their professional capacity. Transactions in the sharing economy generally do not involve a change of ownership and can be carried out for profit or not-for-profit.¹⁶ Although the sharing economy emerged relatively recently, it is expanding at a rapid rate, evolving from a niche concept to a mainstream industry within a mere decade.¹⁷ This trend is not expected to be reversed.

This staggering increase in the digitalisation of the economy has put an unprecedented strain on the existing VAT collection model. Value added tax (VAT) is a major source of government revenue in all EU Member States. In 2023, it accounted for approximately 17.8% of the total tax revenue in EU Member States on average.¹⁸ Additionally, it is also a key source of financing for the EU budget since 0.3% of VAT collected at the national level is transferred to the EU as own resources, representing 11% of the total EU budget (in 2021).¹⁹

However, VAT is not optimally collected. Abundant data from the European Union signal an important gap between expected VAT revenues and VAT that is actually collected.²⁰ The revenue loss, known as the ‘VAT gap’, delineates the issues caused by sub-optimal VAT collection and control. It is defined as the difference between the expected VAT revenues (VAT Total Tax Liability (VTTL) – an estimated amount of VAT that is theoretically collectable based on VAT legislation and ancillary regulations) and the amount of VAT that is actually collected and can be calculated in absolute or percentage terms.²¹

Statistics show that the VAT Gap in the European Union decreased slightly from 2017 to 2019 (the VAT Gap amounted to EUR 146 billion in 2017

16. European Commission, *supra* n. 14, at p. 3. Throughout this book, this type of economy will only be referred to as “sharing economy”.

17. European Parliament, Directorate-General for Parliamentary Research Services, *The Collaborative Economy and Taxation - Taxing the Value Created in the Collaborative Economy : In-Depth Analysis* p. 3 (2018).

18. Eurostat, *Tax Revenue Statistics - Tables for Statistics Explained*, available at https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Tax_revenue_statistics#Differences_in_the_structure_of_tax_revenue_across_the_EU (accessed 18 Nov. 2024).

19. European Commission, *2023 VAT Gap Report* p. 6, available at <https://op.europa.eu/en/publication-detail/-/publication/84ba1bdf-7230-11ee-9220-01aa75ed71a1/language-en> (accessed 6 Mar. 2024).

20. European Commission, *supra* n. 19.

21. *VAT Gap: Frequently Asked Questions*, European Commission - European Commission, available at https://ec.europa.eu/commission/presscorner/detail/en/qanda_20_1580 (accessed 5 Jan. 2021).

and EUR 140 billion in 2019) before declining sharply, partially due to the effects of the COVID-19 pandemic, in the following two years (EUR 99 billion in 2020 and EUR 61 billion in 2021). The VAT Gap provides an estimate of revenue loss mainly due to different phenomena such as: tax fraud, tax evasion, tax avoidance, bankruptcies or insolvencies, administrative errors, and miscalculations. It is also influenced by different factors such as the economic conditions and structure of the Member States, as well as the organisation of national statistics. Even though the VAT gap measurement is composed of multiple elements that together account for this loss in revenues, an important part of these losses is due to fraudulent or evasive and avoidance schemes, parts of which are facilitated by the rise of the digital economy.

The OECD identified two main tax challenges that VAT is faced with in the digital economy: (i) the import of low-value parcels from online sales which are treated as VAT exempt in many jurisdictions, and (ii) the strong growth in the trade of services and intangibles, particularly sales to consumers, on which VAT is often not levied or is levied at an inappropriately low amount due to the complexity of enforcement.²² Additionally, sharing economy business models, that are taking up an increasing portion of the market usually served by the traditional economy, bring along their own set of complexities.

Increasing efforts are therefore being put into addressing these challenges. One of the major reasons why VAT collection came under stress at the advent of the digitalised economy is the traditional VAT collection model itself. VAT collection, since the conception of the tax in the 1950's, is based on the vendor collection model. As its name suggests, this model relies on the vendor collecting VAT from the consumer on behalf of the State. In this model, the vendor is the taxable person who needs to account for VAT, even though ultimately the tax burden is shifted onto the consumer. Since the vendor needs to remit the collected VAT to the Treasury, effective compliance enforcement and surveillance mechanisms over the vendor need to be implemented into the system.

The vendor collection model has been praised for its inherent resistance to fraud, owing to an integrated mechanism of checks and balances.²³ Yet the possibility of distance selling of goods and services over the Internet

22. OECD, *Addressing the Tax Challenges of the Digital Economy, Action 1 - 2015 Final Report* para. 309 (2015).

23. R.E. Krever, *Designing and Drafting VAT Laws for Africa*, in *VAT in Africa* p. 12 (R.E. Krever ed., Pretoria University Law Press 2008).

exacerbated the relocation of production and installation of vendors into third countries. In light of these new circumstances, instances where the vendor, the customer and the goods or services sold are all located in the same state have decreased. Consequently, ensuring compliance of a growing number of non-resident vendors became a critical challenge for the classical vendor collection model in the European Union. As Lamensch points out: *“The structure of the model itself suffers from inadequacies since it has been designed in and for another era.”*²⁴

Due to the decreasing ability to enforce rules on dislocated vendors, making the VAT collection system more vulnerable to massive fraud or non-compliance, the OECD, as well as the European Union, have been investigating alternative VAT collection models.

First on the agenda were electronically supplied services (e-services). This is because the supply side of such services was particularly easy to relocate to low VAT countries, since the suppliers were not geographically limited by restrictive transport costs, typically associated with the supply of goods. In addition, verifying whether adequate levels of VAT have been levied was particularly difficult in cases when these supplies were made to consumers (B2C). These circumstances warranted a switch to the destination principle in order to ensure that VAT on such services is indeed collected within the country of consumption. The European Commission put forward a set of principles and guidelines in 1998,²⁵ adopted by the ECOFIN in July 1998, that represented the basis of a consistent Community input to the Ottawa Conference on electronic commerce held by the OECD in October of the same year.²⁶ At that important conference, the Ottawa Taxation Framework Conditions were endorsed on an international level by governments and business representatives, identifying the implementation of a consumption tax system that conformed to traditional broad taxation principles including neutrality, efficiency, certainty and simplicity as being a particular priority.²⁷

24. M. Lamensch, *Adoption of the E-Commerce VAT Package: The Road Ahead Is Still a Rocky One*, 27 EC Tax Review 4 (2018).

25. European Commission, *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee COM(1998) 374 Final* p. 6 (1998).

26. While there are certain differences in the wording and presentation between the Ottawa conclusions and the ECOFIN principles, these were not significant and simply reflected the OECD's wider focus.

27. Other tangible outputs of the OECD's work in this area were reports: OECD, *Taxation and Electronic Commerce: Implementing the Ottawa Taxation Framework Conditions*, (2001); OECD, *Consumption Taxation of Cross-Border Services and Intangible Property in the Context of E-commerce: Guidelines on the Definition on the Place of Consumption*

Both the EU and the OECD considered that digital products (e-services, intangibles) should be treated as services and not goods and should be taxed in the country of consumption.

However, achieving the latter goal required accompanying measures to make the supplier's compliance easy, proportionate and effective.²⁸ In accordance with the principles set out at the level of the OECD, the EU adopted Council Directive 2002/38/EC which applied the destination principle to all supplies of TBE (telecommunications, broadcasting and electronic) services, with the exception of intra-EU B2C supplies, and introduced a special scheme permitting non-resident suppliers of inbound B2C TBE services to register in a single Member State.²⁹ Achieving the same for intra-EU TBE services proved to be far more difficult in terms of gaining political compromise. Even though the switch in jurisdiction principle for intra-EU B2C TBE services was ultimately foreseen by Council Directive 2008/8,³⁰ there was a particularly long transition period³¹ that Luxembourg essentially insisted on.³² It was not until January 1st, 2015, that all TBE services supplied B2C (i.e. including those by EU suppliers) finally became taxable in the Member State of the customer regardless of where the taxable person supplying those services is established.³³ Apart from creating the possibility of paying VAT at a single point of collection, further facilitation measures were also required in respect of e-services that were supplied to the final consumer

(2003), complemented by the OECD reports, *Commentary on Place of Consumption for Business-to-Business Supplies (Business Presence)* (2003) and OECD, *Simplified Registration Guidance* (2003).

28. European Commission, *supra* n. 25, at pp. 7, 8.

29. Council Directive 2002/38/EC of 7 May 2002 amending and amending temporarily Directive 77/388/EEC as regards the value added tax arrangements applicable to radio and television broadcasting services and certain electronically supplied services, OJ L 128 (2002) [hereinafter Council Directive (2002/38)]. D. Raponi & D. O'Sullivan, *VAT and Taxation of the Digital Economy from the Perspective of the EU Policy Maker*, in *Value Added Tax and the Digital Economy: The 2015 EU Rules and Broader Issues* p. 12 (M. Lamensch, E. Traversa & S. van Thiel eds., Kluwer Law International 2015).

30. Introducing changes to the rules on the place of supply of services in the EU VAT system as part of the 'VAT Package'. The changes came into force gradually over the period from 2010 – 2015.

31. Recital 10 of the Preamble to Council Directive 2008/8 states the following: "*Some of the changes made to the place of supply of services could have a considerable impact on the budget of Member States. To ensure a smooth transition these changes should be introduced over time.*"

32. M. Lamensch, *European Value Added Tax in the Digital Era: A Critical Analysis and Proposals for Reform* sec. 2.3.2. (IBFD doctoral series No. 36, IBFD Publications 2015).

33. If the services supplied are actually consumed outside the European Union, Member States could decide to avail themselves of the effective use and enjoyment rule provided for in point (a) of Article 59a of the VAT Directive and refrain from taxing the supply.

in long chains involving many interposed operators. This issue was not addressed by the work of the OECD, because it only crystallised as an issue in practice later. Nonetheless, in order to address it, the EU introduced (ir)refutable presumptions in the VAT Implementing Regulation regarding who is to be considered as the supplier in such supplies. These will be addressed in much detail later.

Further issues in consumption taxes caused by digitisation were discussed within the scope of the G20/OECD Base Erosion and Profit Shifting (BEPS) 2013 initiative in Action 1 (“Addressing the Tax Challenges of the Digital Economy”)³⁴ as well as the Final Report on Action 1 released in October 2015.³⁵ Adding to that, the OECD published the “International VAT/GST Guidelines” in 2017 and the “Report on the Mechanisms for the Effective Collection of VAT/GST” that was discussed at the fourth meeting of the Global Forum on VAT in 2017. Moreover, the OECD added another report on “The Role of Digital Platforms in the Collection of VAT/GST on Online Sales” (March 2019) to this body of work, as well as “The Impact of the Growth of the Sharing and Gig Economy on VAT/GST Policy and Administration” (April 2021).

In turn, the European Union followed suit and passed a legislative package called the VAT e-commerce package as one of the priorities under the Digital Single Market Strategy. The VAT e-commerce package, adopted on December 5th, 2017, consists of: Council Directive (EU) 2017/2455, Council Regulation (EU) 2017/2454 and Council Implementing Regulation (EU) 2017/2459. Furthermore, on November 21st, 2019, the Council adopted the implementing measures for the VAT e-commerce package consisting of: Council Directive (EU) 2019/1995 and Council Implementing Regulation (EU) 2019/2026. Finally, on February 12th, 2020, the Commission adopted the Implementing Regulation (EU) 2020/194 laying down details on the working of the VAT One Stop Shop.³⁶

Furthermore, the European Commission proposed the VAT in a Digital Age package (ViDA) on December 8th, 2022. It consists of: the Proposal for a Council Directive (EU) amending Directive 2006/112/EC as regards VAT rules for the digital age COM/2022/701 final, the Proposal for a Council Regulation amending Regulation (EU) No 904/2010 as regards

34. OECD/G20, *Base Erosion and Profit Shifting Project* (2013) available at www.oecd.org/ctp/beps-actions.htm (accessed 4 May 2020).

35. OECD, *Action 1 Final Report* (2015).

36. https://ec.europa.eu/taxation_customs/business/vat/modernising-vat-cross-border-commerce_en

the VAT administrative cooperation arrangements needed for the digital age COM/2022/703 final and the Proposal for a Council Implementing Regulation amending Implementing Regulation (EU) No 282/2011 as regards information requirements for certain VAT schemes COM/2022/704 final. Amongst other amendments,³⁷ the Commission proposed a further replacement of the vendor collection model by the intermediary collection model in certain sharing economy sectors, as in several other transactions recurrent in e-commerce. The EU finance ministers reached a consensus on the entire ViDA package during an ECOFIN meeting on November 5th, 2024. Owing to substantial differences between the text of the Commission's initial proposal – on which the European Parliament was first consulted – and the version agreed upon by the Council, the European Parliament was reconsulted on the revised text and issued its legislative resolution on February 12th, 2025. When this book was completed (in April 2025), the ViDA package had been formally adopted by the Council on March 11th, 2025, and published in the Official Journal on March 25th, 2025.³⁸ The ViDA package entered into force 20 days after being published in the Official Journal, i.e. April 14th, 2025.³⁹

Additionally, on May 17th, 2023, the European Commission made a Proposal for a Council Directive amending Directive 2006/112/EC as regards VAT rules relating to taxable persons who facilitate distance sales of imported goods and the application of the special scheme for distance sales of goods imported from third territories or third countries and special arrangements for declaration and payment of import VAT (Proposal COM/2023/262

37. The ViDA package contains legislative proposals regarding: Digital reporting requirements based on e-invoicing, (2) VAT rules for the platform economy related to passenger transport and short-term accommodation rentals and (3) Single VAT registration for businesses across the EU.

38. Council Directive (EU) 2025/516 of 11 March 2025 amending Directive 2006/112/EC as regards VAT rules for the digital age, OJ L 516 (2025) [hereinafter ViDA Directive (2025)]; Council Implementing Regulation (EU) 2025/518 of 11 March 2025 amending Implementing Regulation (EU) No 282/2011 as regards information requirements for certain VAT schemes, OJ L 518 (2025) [hereinafter ViDA Implementing Regulation (2025)]; Council Regulation (EU) 2025/517 of 11 March 2025 amending Regulation (EU) No 904/2010 as regards the VAT administrative cooperation arrangements needed for the digital age, OJ L 517 (2025) [hereinafter ViDA Regulation (2025)].

39. However, the deemed supplier rules for sharing economy platforms (Article 28a of the VAT Directive and the related articles in the VAT Implementing Regulation) are part of amendments to the VAT Directive with effect from July 1st, 2028. Accordingly, the Member States have to transpose the sharing economy platform deemed supplier rules into their national legislations by June 30th, 2028 and apply them from July 1st, 2028, with the option to postpone their application until January 1st, 2030 at the latest. *See* Council Directive (EU) 2025/516 amending Directive 2006/112/EC as regards VAT rules for the digital age, Article 6 (Transposition).

final).⁴⁰ This proposal is part of a broader proposed reform of the Customs Union,⁴¹ the object of which is to impose customs and import VAT collection obligations onto intermediaries. At the point of completion of this manuscript, this proposal is still under discussion.

By analysing all these materials, it becomes apparent that, as far as e-services, e-commerce and the sharing economy are concerned, there is a distinct switch occurring from the basic vendor collection model to an alternative collection model – more precisely – the intermediary collection model (hereinafter: ICM). In the ICM, the traditional roles and obligations of the vendor are shifted onto other key stakeholders in the online sale and delivery process – the intermediaries. Different categories of intermediaries have been considered in the process, notably platforms,⁴² as well as postal operators, express couriers or fulfilment houses, but also payment intermediaries.⁴³

1.2. Research objective

Against this backdrop, it becomes evident that the exponential growth of the digitalised economy and the overwhelming presence of intermediaries in facilitating the sale of goods and services has led to an increasing number of governments and international organisations to introduce stopgap measures to overcome fundamental limitations in traditional VAT collection. Examples include joint and several liability provisions for intermediaries (e.g., Austria, France, Germany, the U.K.) or their full liability as

40. Proposal for a Council Directive amending Directive 2006/112/EC as regards VAT rules relating to taxable persons who facilitate distance sales of imported goods and the application of the special scheme for distance sales of goods imported from third territories or third countries and special arrangements for declaration and payment of import VAT, 262 [hereinafter COM(2023)262 final].

41. Proposal for a Regulation of the European Parliament and of the Council establishing the Union Customs Code, the European Union Customs Data Hub and the European Union Customs Authority, and repealing Regulation (EU) 952/2013 and the proposal for a Council Regulation amending Council Regulation (EC) No 1186/2009 of 16 November 2009 setting up a Community system of reliefs from customs duty and Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff.

42. At the outset it should be stated that the term “platform” used in this work, and found in definitions in EU legislation, relates not to the software used for the platform, but to the actual entity which runs and owns the platform. Group on the Future of VAT, *VAT in the Platform Economy - Focus on Specific Issues - Follow-up*, GFV No 116 p. 3 (26 Jan. 2022).

43. Even though this option has been discarded. *See infra* at p. 179 (3.3.1.3. Payment intermediaries).

the principal debtor (e.g., Australia, Canada, New Zealand, the U.S. and obviously the EU).

All these measures fall under the notion of ICM. Even though the intermediaries themselves may vary under a particular rule, the driving idea behind the shift is to concentrate the enforcement of collection obligations on a few large participants instead of a multitude of (often non-resident) suppliers of goods and services. This is primarily done for the sake of convenience for the tax administrations to facilitate control over VAT collection, but also to stop the distortion of competition occurring in these sectors. However, the foundations and implications of this new switch for the intermediaries themselves are yet to be properly analysed.

The aim of this research is therefore to establish a principle-based framework upon which the European Union's ICM can be based, but also through which the extent of the potential new obligations imposed on intermediaries can be limited. Accordingly, the broad structure of this book is as follows: (i) identification of the specific features of EU VAT, as well as its surrounding legal framework, that all VAT collection models must comply with; (ii) identification, analysis, and comparison of all instances of ICM throughout the EU VAT system, with particular focus on deemed supplier rules; (iii) critical assessment of whether the EU ICM meets its declared policy goals and legal constraints identified in the beginning of the work. The ultimate goal of the book is to suggest improvements to the rules and set the standards for future rules based on the model.

The value of the research lies in filling the *lacunae* pertaining to the legal role and obligations of the intermediaries in the process. Indeed, despite the evident tendency to shift the VAT-related obligations, especially revenue collection obligations, to parties external to the contractual relationship between the vendor and the customer, further academic research on the underlying principles and constraints of these new obligations is necessary.⁴⁴ In addition, limits to these new obligations need to be determined

44. This book offers an overview of the principles underlying the EU VAT ICM covering all intermediaries, as well as an in-depth comparative analysis of all three sets of deemed supplier rules imposed on platforms, acting as vending intermediaries. This is different from existing literature that covers individual aspects of the EU VAT ICM. Some of the more prominent books and articles written on individual aspects of ICM include the following: E.T. Sroka, *Short-Term Rental Platforms as Deemed Suppliers in the EU VAT System* | Wolters Kluwer Legal & Regulatory (Wolters Kluwer Legal & Regulatory 2024); Beretta, *supra* n. 13; C. Pollak, *Platforms in the EU VAT Law - A Legal Analysis of the Supply of Goods* vol. 70 (Eucotax, Wolters Kluwer); M. Lamensch, E. Traversa & S. van Thiel, *Value Added Tax and the Digital Economy: The 2015 EU Rules and*

and, when doing so, the underlying principles identified in the research need to be applied.

1.3. Scope of the research (material, personal, territorial)

This research focuses on the obligations placed on the intermediaries within a VAT collection model under which VAT assessment and collection obligations – which, in the traditional vendor collection model, are imposed on the vendor – are passed on to an intermediary.⁴⁵ Other obligations related to VAT compliance, such as reporting obligations,⁴⁶ are briefly mentioned, however, they are not the object of an in-depth analysis (material scope). Accordingly, the intermediaries that have been identified are the following: platforms acting as vending intermediaries,⁴⁷ express couriers and postal operators acting as transport intermediaries⁴⁸ (personal scope). The research will focus on the VAT legislation of the European Union but will draw

Broader Issues (Kluwer Law International 2015); S. Messina, *EU “Distance Sales of Goods Imported” and Customs Duties: Mind the “Link”*, 35 *International VAT Monitor* 3 (2024); S. Messina, *VAT E-Commerce Package: Customs Bugs in the System?*, 13 *World Tax Journal* 1 (4 Mar. 2021); M. Papis Almansa & E.T. Sroka, *Questioning the Proportionality of the ViDA Rules on the Platform Economy: Are We Veering off Course?*, 35 *International VAT Monitor* 3 (10 May 2024); M. Lamensch et al., *Qualitative Assessment of Two Recent EU Commission Proposals to Impose (More) VAT Obligations on Platforms*, 16 *World Tax Journal* 1 (Feb. 2024); M. Lamensch et al., *New EU VAT-Related Obligations for E-Commerce Platforms Worldwide: A Qualitative Impact Assessment*, 13 *World Tax Journal* 3 (2021); T. Ehrke-Rabel, S. Hammerl & L. Zechner, *Umsatzsteuer in Einer Digitalisierten Welt* (Institut für Finanzen und Steuern 2021); L. Zechner, *Internetplattformen Und Umsatzsteuerrechtliche Leistungszurechnung Am Beispiel Airbnb*, 11 *Österreichische Steuerzeitung* 2020; L. Zechner & S. Hammerl, *SWK-Spezial Plattformhaftung* (Linde Verlag 2020); M. Lamensch, *Rendering Platforms Liable to Collect and Pay VAT on B2C Imports: A Silver Bullet?*, 29 *International VAT Monitor* 2 (Mar.–Apr. 2018); Lamensch, *Adoption of the E-Commerce VAT Package: The Road Ahead Is Still a Rocky One*, *supra* n. 24; M. Merckx et al., *VAT in the Digital Age Package: Viva La ViDA or Livin’ La ViDA Loca?*, 32 *EC Tax Review* 3 (2023); F. Matesanz, *VAT Treatment of the Sharing Economy*, 32 *International VAT Monitor* 2 (2021); F. Matesanz, *The Increasing Liability of Digital Platforms in the Collection of EU VAT*, 34 *International VAT Monitor* 3 (May 2023); F. Matesanz, *What Does the Fenix Case Mean for VAT Management?*, 14.03.2023. *International Tax Review*; Lamensch, Traversa & Thiel; M. Lamensch, *Tax Assessment in a Digital Context: A Critical Analysis of the 2015 EU Rules*, in *Value Added Tax and the Digital Economy: The 2015 EU Rules and Broader Issues* (M. Lamensch, E. Traversa & S. van Thiel eds., Kluwer Law International 2015).

45. For a definition of the ICM, *see infra* at p. 159 (sec. 3.1. The concept of the intermediary collection model (ICM)).

46. *See infra* at p. 183 (sec. 3.3.2.2. Function as an information collector).

47. *See infra* at p. 168 (sec. 3.3.1.1. Vending intermediaries).

48. *See infra* at p. 173 (sec. 3.3.1.2. Transport intermediaries).

inspiration from other legal systems if necessary and useful for the analysis of the EU VAT system (territorial scope).⁴⁹

1.4. Outline of the book

After the introduction (Chapter 1), this book contains an analysis of the foundations of the EU VAT system (Chapter 2). The main features of the basic vendor collection model in VAT and its respective underlying principles are analysed here. The overarching constitutional principles and legal theories underlying all third-party collection obligations are also presented. The research then moves on to the analysis of EU primary law acting as the hard law framework, more specifically the general principles of EU law, fundamental rights and freedoms that are applicable to the conception of any VAT collection process. Additionally, guidance from international VAT law, acting as soft law, is also mentioned in this part.

Afterwards, the book delves into the definition of the concept of the ICM (chapter 3). Various types of intermediary participation, voluntary or compulsory, are addressed there. However, the former are subsequently left aside since their voluntary character does not cause major controversies. On the contrary, those intermediaries who participate in the VAT collection process in a compulsory manner are the focus of this research. These are further classified from both an operational and functional perspective. In the former classification, the intermediaries are categorised according to the operations that they perform in the sale of goods or services (vending, transport, and payment intermediaries). In the latter classification, they are grouped based on the functions that they can have in the VAT collection process (educational function, information collection function, joint and several liability functions or full liability). Afterwards, an overview of the legal “building blocks” for the ICM in EU VAT law is presented, before delving into the details of existing legislation containing ICM rules. These include: the ICM in the context of e-services and certain telecommunication services, the ICM in the context of e-commerce and the ICM in the context of the sharing economy.

The evaluation of the EU ICM shall be contained in the following part of the book (Chapter 4). This part has two sub-parts, the first being an evaluation of whether the ICM rules in the three economic sectors mentioned above achieve the proclaimed policy goals and to what extent. The other sub-part

49. See *infra* at p. 448 (sec. 3.5. Intermediary collection models around the world).

will examine in depth whether the EU ICM rules are compatible with the surrounding legal framework that was identified in Chapter 2 of the book.

Finally, the author presents her conclusions in Chapter 5. The main objective there is to answer the question of whether the imposition of VAT collection obligations on parties peripheral to the contractual relation between the vendor and the customer (i.e. the intermediaries) is justified, or whether such rules create an unjust differentiation in treatment between the traditional and digital economy. The European Commission already admitted back in 1997,⁵⁰ that e-commerce (i.e. electronic trade in goods and services) falls within the scope of VAT, in the same way as more traditional forms of trade do. However, one has to concede the fact that the profound impact of e-commerce on VAT collection (control and enforceability) may warrant adaptations to the basic vendor model or even drastic deviations from it, such as the ICM. The author also attempts to determine how far the legislature can go in burdening intermediaries with VAT collection, and what must be kept in mind when expanding the ICM to other sectors in the future. Namely, general principles of EU law (such as equal treatment, proportionality, prohibition of abuse of law, legal certainty) and fundamental principles of VAT (tax neutrality) need to be respected. The legislature should also be aware that ICM rules should avoid putting excessive burdens on intermediaries since this can endanger their fundamental rights to conduct a business or trade, as well as their right to property. The research offers to discover whether the present EU ICM norms adhere to these standards or not.

50. European Commission, *supra* n. 3, at p. 19.



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