Accountancy Europe – Additional comments

We would like to make further comments to expand on points made in the consultation.

Question 4.4
This is a very broad question. The first consideration is whether this initiative is focusing on the platforms or the millions of very small businesses selling via the platforms, many of whom are earning low levels of income\profit and have little financial security. Automatic exchange of data may not necessarily be the best means of dealing with the issues arising from sellers as it could result in an enormous amount of information for tax authorities to process with little net additional tax revenue.

In these circumstances, it could be argued that a withholding tax may be more appropriate to ensure that businesses comply with their tax obligations - and it could indeed ease their administrative burden. However, low income earners should not be penalised by withholding taxes not ultimately due, which would disincentive them from seeking income. A withholding tax could also be difficult to apply in the case of non-resident parties and lead to additional administrative burden.

Belgium has recognised that it may be counterproductive to impose excessive burdens on low-income persons who generate additional revenue via online platforms - both in terms of supressing economic activity and also in the administrative costs that the tax authority would incur in policing such transactions. Consequently, they have introduced a 6 000 euro exemption for workers that provide services, including through use of online / collaborative platforms and apps. The platform must be formally recognised by the Belgian authorities and has specific transparency requirements, including exchange of income information.

By their diverse nature, the platforms can have an impact on the national tax collection of a variety of taxes. There is potential loss of corporate income tax and VAT on the activities of the platforms themselves. By using self-employed service providers instead of employees, there is a potential loss of social security payments at a national level if there is substantial divergence between the social security treatment of employed and self-employed persons.

Platforms can be genuinely used for the sharing\circular economy, enabling people to either share existing assets or skills, or to gain some recompense for assets that are no longer used, or used rarely. In these circumstances, the risk of tax avoidance and evasion (and the financial return for tax authorities of data transfer) is low and should be excluded from any proposed measures. In this context, tax avoidance would be the seller using legal structures or loopholes to avoid the tax due as intended by legislators. Tax evasion and fraud would be the deliberate non-reporting, or under reporting, income received by the sellers.

The second use of platforms is to generate profits – here there is risk of tax loss either through deliberate non-compliance or simply being unaware that taxable activities are taking place, as the rules governing intention to trade are often complex and judgemental. This applies to both supply of goods and services and to the various services that we have highlighted in 4.6 – albeit the taxes at risk may be different in each category.

In respect of the users of the platforms, for the supply of goods there is a potential impact on import duties, VAT and on income or corporate income tax. For the providers of services, there is a potential impact on collection of VAT, income tax or corporate income tax and social security payments.

In respect of the activities carried out by the platforms, there is probably a relatively minor risk of tax evasion or fraud given the size and nature of many of the platform providers.

However, given the global nature of the larger platforms, additional regulations may be advisable.

In respect of the activities carried out on the platforms by re-sellers of goods or services, there is considerable potential for evasion or fraud. We are aware of claims of large suppliers based outside the EU using the platforms to supply goods into Europe using false customs declarations and the small consignment exemption, and failing to account for the VAT on the sales. This situation should be improved from 1 January 2021 when the full provisions of directive 2017/2455/EU take effect.

Before introducing new legislation, we would also recommend examining the impact of other EU legislation introduced recently that could affect platforms – specifically, making platforms jointly and severally liable to underdeclared VAT and the impacts of automatic exchange of payment information.

Apart from deliberate avoidance or evasion, the platforms have greatly broadened the potential pool of persons that can earn significant untaxed income from the supply of goods and services. Many of these will not have existing experience of indirect taxes or self-employment and may be completely unaware of the need to register and return income, and of the deadlines by which to need to do so. Others will believe that their chances of being caught are small given the anonymity provided by the internet. The French government has recognised these issues and has responded with article 242 bis of the Code Général des Impôts, which requires platforms to send a clear notice of the individual's obligations under French tax law when goods or services are exchanged or shared via a platform.

Often, the rules governing when activities become business activities rather than 'hobby' activities are complex and based on historic case law. Even if people are aware that they may have to pay tax on the income or gains generated from their activities on platforms they will likely have little idea of how to calculate the amount due and how to report it. Additionally, they are likely to be inexperienced in dealing with revenue authorities and unlikely to have professional contacts that could help them deal with these requirements.

Questions 4.11 – 4.17

Given the disruptive effects that platforms have had in many areas, there are good arguments for reporting directly from the platform to the relevant tax administration - such as assisting in providing a level playing field and providing more intelligence for tax authorities.

However, as per our comment on question 4.10, the solution must be based around a common international framework that facilitates easy digitalisation. If international agreement cannot be reached, a European standard establishing a clear legal framework for reporting seller transactions by the platforms would be the next best solution. The need for 'a sound, simple, robust and consistently applied EU legal VAT framework' was highlighted in the final report of the EU's VAT Expert Group report '*Upgrading the EU VAT System – A Reflection on Possible Ways Forward*' published on 4 March. Although this is specific to VAT, the point also applies in this context, particularly as VAT is one of the taxes potentially at most risk from the tax avoidance and evasion that could be facilitated using platforms.

A digitalised solution reduces the administrative burden for platforms and will assist tax authorities in running risk analysis on the data. It would also potentially assist smaller or start-up platforms deal with their reporting obligations. Although all platforms should, ideally, be covered by the provisions, if a simple digital reporting solution cannot be found, it will be

necessary to consider how to scale the requirements such that the provision of data does not become a barrier to entry for small platforms and start-ups. If this cannot be designed into the proposals at inception, then consideration should be given to restricting the data exchange provisions to the large platforms until a better idea of the issues and solutions can be gleaned.

There should be no difference in reporting requirements between goods and services. Given the increased 'service-isation' of the economy, it is becoming increasingly difficult to differentiate between the supply of goods and the supply of services so it would be dangerous to differentiate reporting requirements solely on this basis.

Questions 5.1-5.5

Although there are existing tools to deal with practices of presence of foreign tax inspectors in administrative offices, participation in administrative enquiries and simultaneous controls, these fall well short of the potential simplification offered by joint tax audits. Joint tax audits offer the potential to reduce double taxation, increase efficiency and reduce costs, and to enhance legal certainty for taxpayers and tax authorities.

We believe that to make joint tax audits effective there should be harmonised rules in the legislation of the Member States concerned. This should include a legal framework that harmonises throughout the EU the procedure and conduct of joint tax audits and procedures for appeal and the payment / recovery of underpaid / overpaid taxation.

The legal framework should specify that the joint tax audit procedures and the subsequent report should take advantage of the new technology available – for example, the use of digital platforms for the exchange of data and collaborative working.

Assuming that the joint tax audit report would specify, for example, the amount of, and procedures for payment and repayment, of under and overpaid tax in each of the Member States concerned, a single agreed report would be very beneficial. In the absence of a single agreed report, a Mutual Agreement Procedure (MAP) would probably be necessary (for all taxes including VAT), adding to the complexity of the process.

We fully agree that the tax authorities participating in joint tax audits should be obliged to reach agreement on the joint report to avoid situations of either double taxation or double non-taxation arising from a joint audit. Failure to do so would potentially render the process useless.

In case of a mandatory joint report, a MAP would be unnecessary. The results of a joint tax audit should be taken into account in cases where an Advanced Pricing Arrangement is sought by the taxpayer.

For the process to be effective, it should be mandatory that all tax authorities participate in a joint tax audit when requested by another Member State's tax authority.

As a minimum, taxpayers should be given the right to request a joint tax audit where there is a risk of double taxation – as is the current situation with the MAP. Potentially, the relevant tax authorities should be obliged to participate. However, given the potential burden on tax authorities it should be considered whether requests from taxpayers should be restricted to certain circumstances – if only for an initial period whilst the procedure is being developed.