European Commission

INCEPTION IMPACT ASSESSMENT

TITLE OF THE INITIATIVE	DSM - Modernising VAT for cross-border e-commerce		
LEAD DG – RESPONSIBLE UNIT – AP NUMBER	TAXUD – C1 - 2016/TAXUD/002	**DATE OF ROADMAP**	08/07/2015
LIKELY TYPE OF INITIATIVE	Legislative		
INDICATIVE PLANNING	*Insert hyperlink to forecast report*		
ADDITIONAL INFORMATION	*http://ec.europa.eu/taxation_customs/taxation/vat/digital_single_market/index_en.htm*		

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A. Context, Subsidiarity Check and Objectives

Context

The complications of having to deal with many different national systems represent a real obstacle for companies trying to trade cross-border both on and offline. Since 1 January 2015, with the entry into force of new "place of supply" rules, VAT on all telecommunications, broadcasting and electronic services is levied where the customer is based, rather than where the supplier is located.

In parallel, an electronic registration and payment system (the Mini One Stop Shop[1]), has been implemented to reduce the costs and administrative burdens for businesses concerned. This should be extended to tangible goods ordered online both within and outside the EU. Instead of having to declare and pay VAT to each individual Member State where their customers are based, businesses would be able to make a single declaration and payment in their own Member State.

Currently goods ordered online from third country suppliers can benefit from the small consignment import exemption[2] allowing shipment free of VAT to EU private customers. This gives them a competitive advantage over EU suppliers that do not benefit from such exemption and market distortions have already been signalled in various Member States. Such an exemption would no longer be needed if VAT were to be collected through a single and simplified electronic registration and payment mechanism.

The Commission is working to minimise burdens attached to cross-border e-commerce arising from different VAT regimes, provide a level playing field for EU business and ensure that VAT revenues accrue to the Member State of the consumer.

The broad issue was considered by the Commission Expert group on taxation of the Digital Economy who reported in May 2014 and made a number of recommendations in respect of modernising VAT for cross-border e-commerce[3].

Having carefully considered these issues, the Commission made a commitment in the Communication 'A Digital Single Market Strategy for Europe' (Com (2015) 192 final[4]) indicating that it will make legislative proposals in 2016 to reduce the administrative burden on businesses arising from different VAT regimes including

(i) extending the current single electronic registration and payment mechanism to intra-EU and 3rd country online sales of tangible goods,

(ii) introducing a common EU-wide simplification measure (VAT threshold) to help small start-up e-commerce businesses,

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[1] The Mini-One Stop Shop is the name given to the electronic registration and payment system in place since 1 January 2015 where a business can account for taxes due to other Member States in respect of B2C supplies of telecommunications, broadcasting and electronically supplied services.

[2] Member States have some discretion in applying this exemption. It can be EUR 10 or 22. Supplies through mail order (e.g. e-commerce) can be excluded from the exemption. Some Member States have applied restrictions to the exemption. It is also relevant that Member States applying different import exemptions and applying restrictions can increase complexity and lead to uncertainty.

[3] http://ec.europa.eu/taxation_customs/taxation/gen_info/good_governance_matters/digital_economy/index_en.htm#section_6

[4] http://ec.europa.eu/priorities/digital-single-market/docs/dsm-communication_en.pdf

(iii) allowing for home country controls including a single audit of cross-border businesses for VAT purposes and

(iv) removing the VAT exemption for the importation of small consignments from suppliers in third countries.

The initiative is also part of the Regulatory Fitness and Performance Programme (REFIT).

As part of the preparatory work for these proposals, the Commission will carry out an ex-post assessment of the implementation of the 2015 changes to the place of supply rules and the accompanying simplification measure, the Mini One Stop Shop (given the measures have been in place only since the beginning of 2015, no full evaluation is yet possible). The initial assessment will cover the first six months of the operation of new rules and will be subsequently updated to cover the period up to Q2 2016. A study to gather the necessary evidence has been launched and is currently on-going (initial results are expected in early 2016). All stakeholders will have the opportunity to contribute to this assessment through the open public consultation (for details, see section C).

Issue

Overview of the Problem

The complications of having to deal with many different national VAT systems represent a real obstacle for companies trying to trade cross-border both on and offline.

The general principle of EU VAT law is that taxation should take place in the country where the good or service is consumed (the destination principle), which is in line with the international agreed OECD guidelines. The destination principle can cause difficulties for business in the EU as they are faced with different rules in different Member States.

Cross-Border supplies of Goods

Since the introduction of VAT in the EU, the destination principle has effectively applied to the intra-EU supply of goods.

To ease the burden on business and tax administrations of applying the destination principle and to facilitate trade simplification measures are in place such as the Intra-EU distance sales thresholds (since 1993) and the VAT exemption for the importation of small consignments (since 1983). While these measures have been useful in the past, it is increasingly evident that they are now causing distortions and complexity due to the high and sustained growth in global e-commerce (see summary of the problems below).

- **High complexity** – Business who wish to trade cross-border face different VAT rules dependent on the Member State they are supplying to. The vast majority of Member States require that a non-established business will need to register and account for tax on the supply of goods via e-Commerce where sales are expected to be in excess of EUR 35 000. Once this threshold is reached they will need a VAT registration in the other Member States, they may need to engage a fiscal representative, they are facing different national legislation which in many cases is in a different language and different accounting periods. These complexities apply to each Member State the business wishes to make supplies to, and therefore represent a significant barrier to the single market. In addition, such businesses can face audits from the tax administration in each Member State they supply to. Separately, operators dealing with imports of small consignments are faced with non-harmonised customs procedures across the EU, as well as different VAT treatments depending on the nature of goods (alcohol, perfumes, etc.) or type of dispatch (e.g. mail order), different thresholds (between EUR 10 and EUR 22) and different interpretations on the import value in customs. All this contributes to increase in administrative burden. As a result, many businesses consider that VAT is a disincentive to trading cross-border.
- **High costs** – Complexity has a high cost. Business estimates that the minimum VAT cost annually for intra-EU e-Commerce is EUR 5 000 per Member State. This can cover registration, the appointment of a fiscal representative, VAT returns, statistical returns etc. Regarding the importation of small consignments, there is a significant difference between the compliance requirements for goods below the VAT threshold and the ones that are above the VAT or customs threshold. This is due to non-harmonised procedures across EU as well as due to the fact that the compliance is made on a transaction basis and is shown by the associated costs or fees charged by postal operators and courier firms for the clearance of goods. In case of goods below the VAT threshold the postal operators will not charge a clearance fee and the cost for courier firms is in average EUR 2.34. When goods are above the VAT threshold the postal operators charge a fee between EUR 0-21.41 and the courier firms have an average cost of EUR 8.96- EUR 9.21.
- **No level playing-field** – The same good purchased by a consumer in one Member State can have multiple tax treatments depending on where the supplier is located – this can mean no tax in the case of the imports of small value and lower taxes in respect of supplies from other Member States. There are

also differences in the level of administrative burden, with no compliance costs at all for imports of small value, local compliance rules applying for domestic sales and foreign registrations for EU cross-border sales. These different tax treatments mean that there is not a level playing field for business. Indeed the current system puts EU business at a disadvantage compared to non-EU suppliers.

- **Compliance challenges for Member States** – The different rules applicable in Member States create compliance challenges for tax administrations as there can be uncertainty about the tax treatment. There is also evidence of mis-declaration and even some abuse which can also lead to an un-level playing field for tax compliant business. Simple EU legislation would ensure that there is no difference in VAT treatment between goods and services ordered cross-border and domestically.

Cross-Border Supplies of Services

The situation with services is somewhat different to the supply of goods. Many services are taxed where they are carried out such as hotel accommodation; restaurant and catering services; and work on immovable property. On the contrary, until the end of 2014, VAT on all telecommunications, broadcasting and electronic services was levied in the country where the supplier was located but now, since 1 January 2015, with the coming into effect of new rules, VAT on those electronic services is levied instead where the consumer is located (in accordance with the country of consumption principle). This change was agreed by Council in 2008 to address revenue losses due to business relocating in Member States with low VAT rates as well as significant distortions faced by business as the differential in VAT rates ranged between 12 and 24% by applying the VAT rate of the place of the supplier.

In parallel with this change and in order to simplify compliance with the new rules, a mini "One Stop Shop" has been introduced, which reduced the costs and administrative burdens for businesses concerned. Instead of having to declare and pay VAT directly to each individual Member State where their customers are based, businesses are able to make a single declaration and payment in their own Member State. Suppliers can use a web portal in their Member State of establishment to account for the VAT due on sales in other Member States. In this way a vendor of electronically supplied services has to charge the VAT of the country in which the consumer is located, but is only required to register and account for VAT in their home country.

An analysis of the implementation of the new place of supply rules and the MOSS will take place as part of the impact assessment work on the VAT initiatives included in the Communication on 'A Digital Single Market Strategy for Europe'. Preliminary data indicates that in excess of 8 000 businesses are registered for MOSS, VAT receipts for 2015 should be in the region of EUR 3 billion which reflects sales of approximately EUR 18 billion.

Nevertheless, problems have been identified with the new rules. Business, particularly in the UK which has a very high domestic exemption threshold, have complained that the lack of a threshold for intra-EU supplies of telecommunications, broadcasting and electronic supplied services has meant that they have to account through the MOSS for negligible sales to other Member States and this is acting as a barrier. They have also highlighted that the requirement in EU law to keep records for 10 years which is over and above national requirements is an onerous burden as well as needing to know the rules applicable to invoicing, bad debt reliefs etc. The DSM communication has committed to the introduction of a threshold as well as home country rules which should alleviate the issues of most concern to business arising from the application of the destination principle to these supplies. The level of the threshold will require careful analysis. It is critical that the threshold proposed does not create new distortions which could lead to business locating in Member States with low VAT rates to gain an unfair advantage or lead business to relocate to another Member State in order to benefit from the new cross-border threshold.

Subsidiarity check

The legal basis is Article 113 of the TFEU states that

"The Council shall, acting unanimously in accordance with a special legislative procedure and after consulting the European Parliament and the Economic and Social Committee, adopt provisions for the harmonisation of legislation concerning turnover taxes, excise duties and other forms of indirect taxation to the extent that such harmonisation is necessary to ensure the establishment and the functioning of the internal market and to avoid distortion of competition"

The main problems which have been identified (distorting effects, high administrative costs, etc.) are triggered by the rules of the existing VAT Directive. Member States are currently not allowed by themselves to set different rules and therefore any initiative to modernise VAT for cross-border e-commerce requires a proposal by the Commission to amend the VAT Directive. Therefore, it is appropriate for the Commission, which has responsibility for ensuring the smooth functioning of the Internal Market and promoting the general interest of the European Union, to propose action to improve the situation.

Main policy objectives

The overall objective is to minimise burdens attached to cross-border e-commerce arising from different VAT regimes, provide a level playing field for EU business and ensure that VAT revenues accrue to the Member State of the consumer.

Therefore, the proposals adopted in 2016 should ensure:

1. Simplicity

Engaging in cross-border business to consumer trade should be made as easy as possible. Simple rules also benefit tax administrations who are responsible for ensuring that tax revenues are collected and in turn compliance risks are minimised. Simplification of rules will reduce the administrative burden.

2. A level playing field

There should be no difference in VAT treatment between goods ordered from websites in 3rd countries, other Member States or domestically. The same rules should apply to goods and services.

3. Certainty

There should be clear legislation and supporting measures to provide certainty for business and allow business to confidently plan for engaging in cross-border e-commerce.

B. Option Mapping

The options identified below generally reflect the overall orientation of the Commission in the recent Communication on 'A Digital Single Market Strategy for Europe' while at the same time ensuring that alternative approaches are not discounted. The options outlined below do not preclude the possibility that alternative approaches may emerge through the public and stakeholder consultations.

Option 1: Status quo – 2015 Place of Supply Rules, MOSS, current distance sales thresholds for goods, no threshold for intra-EU supplies of services, VAT exemption for the importation of small consignments into the EU (EUR 10-22 with option to exclude mail-order/e-commerce supplies), no simplification for B2C imports of goods above the small consignments exemption and below the customs exemption of EUR 150

Option 2: Removal of the distance sales thresholds and the small consignments exemption.

Option 3: Option 2 but with the introduction a common VAT exemption threshold for intra-EU sales of both goods and services – which would come in addition to the

	existing domestic thresholds (up to EUR 114 000);
Option 4:	Option 3 plus a Single Electronic Mechanism applying to intra-EU supplies of goods and services and to the import of all goods under the customs threshold of 150 EUR[5],
Option 5:	Option 4 plus amendments to the Single Electronic Mechanism (home country legislation and home country control, subject to applying rate/exemptions of the Member State of Consumption);
Option 6:	Option 4 plus fully harmonised EU rules for Single Electronic Mechanism, subject to applying the rates/exemption of the Member State of Consumption.

Baseline scenario – no EU policy change

The baseline scenario is the 2015 Place of Supply Rules, MOSS, current distance sales thresholds for goods of EUR 35 000 or 100 000 to be decided by the Member State, no threshold for intra-EU supplies of services, VAT exemption for the importation of small consignments into the EU (EUR 10/22 with option to exclude mail-order/e-commerce supplies), no simplification for business to consumer (B2C) imports of goods above the small consignments exemption and below the customs exemption of EUR 150.

Options of improving implementation and enforcement of existing legislation or doing less/simplifying existing legislation

Any changes require an amendment to EU VAT law. In effect, the measures intended are a simplification of existing law. The options presented above take a stepped approach to addressing the problems. Option 2 for instance addresses the identified distortions. Option 3 includes an additional measure which is designed to assist small start-up business. Option 4 extends the single electronic registration and payment system to the cross-border supply of goods and services, while Options 5 and 6 are envisaged to bring improvements to the single electronic registration and payment system and introduce more certainty to businesses.

Alternative policy approaches

None.

Alternative policy instruments

It is not considered that there are any alternative policy instruments available which will address the problem..

Alternative/differentiated scope

The options identified allow the measure of a differentiated scope.

Options that take account of new technological developments

A key driver of the proposal is to utilise electronic technologies which allow a business to register remotely and account for tax through the single registration and payment system hosted by the member State where it is established. This system is already built and is working for the cross-border supply of telecommunications, broadcasting ad electronically supplied services. A physical presence in every Member State where the consumers are located is not mandatory.

[5] With three options offered to business on import: supplier registration, intermediary registration or simplified customs declaration.

Preliminary proportionality check

The proposed options do not go beyond what is necessary to make the EU VAT system more efficient. The Commission will only pursue options that are proportionate to the objective to be achieved, after assessment of the possible impact of these. Moreover, the options under consideration are built into existing legislation and procedures and should not entail significant changes.

C. Data Collection and Better Regulation Instruments

Data collection

The Commission recognises the need to have robust data to support the case for the proposal to bring effect to VAT measures included in the Communication on 'A Digital Single Market for Europe'.

A study[6] on the assessment of the application and the impact of the VAT exemption for importation of small consignments was published on 22 May 2015. The Study carried out for the Commission presents an overview of the legal framework and procedures in place in all EU Member States, as well as an economic analysis of the low value consignments market from 1999 until 2013, including an estimation of the potential VAT foregone by tax authorities due to this exemption.

A second study is underway to assist with the collection of comprehensive data which will amongst other things measure the level of cross-border sales of goods and services, the costs of doing business in other Member States and the first analysis of the implementation of the 2015 changes including the impact on business and Member State revenues. The key deliverables of the Study will be published in early 2016.

Consultation approach

It is envisaged that an open public consultation will be launched in September 2015. The consultation will be on a dedicated web on the DG TAXUD website http://ec.europa.eu/taxation_customs/index_en.htm. The Commission will advise stakeholders of the public consultation through EU business representative organisations, the SME panel and by advising Member States. The consultation will also collect views from stakeholders on the 2015 changes.

There will be a targeted consultation of stakeholders as part of the ongoing Study on options for the modernisation of cross-border e-commerce. This will involve in-depth interviews with business and Member States on the implementation of the 2015 changes.

Will an Implementation plan be established?

✔ Yes ☐ No

While dependent on what is adopted, it is expected that the implementation plan will include amendments to the VAT implementing regulation, guidelines for business/tax administrations, building of pan EU IT systems and an extensive communication plan. As with other VAT measures, stakeholders and Member States will be consulted on the implementation through seminars, workshops, the VAT Expert Group, the Standing Committee on Administrative Cooperation, the Standing Committee on Information Technology and the VAT Committee.

D. Information on the Impact Assessment Process

The Impact Assessment work has already commenced through the data collection and analysis of options through the ongoing Study on modernising VAT for cross-border e-commerce, It is also relevant that the broad problem was considered by the Commission and the dedicated Commission project team in the context of the Communication on a 'Digital Single Market Strategy for Europe'.

An Inter-Service Group (ISG) has been established. DG TAXUD is the lead service responsible for the proposal. The members of the ISG include representatives from COMP, CONNECT, OLAF, ECFIN, JUST, GROW, SG and SJ.

Three meetings of the ISG have been held to date. The ISG will oversee the ongoing Study which will feed into

[6] http://ec.europa.eu/taxation_customs/resources/documents/common/publications/studies/lvcr-study.pdf

the impact assessment.

E. Preliminary Assessment of Expected Impacts

The following preliminary assessments do not preclude the findings of the Impact Assessment the Commission will undertake.

Likely economic impacts

Positive. The measures proposed will assist in developing a digital single market for Europe. As tax compliance will be easier, there should be a positive impact on VAT revenues and existing distortions will be removed where EU business is at a disadvantage. An increase in cross-border e-commerce may provide greater choice for consumers, increase competition and possibly reduce prices.

Likely social impacts

No impacts expected.

Likely environmental impacts

No impacts expected.

Likely impacts on simplification and/or administrative burden

Positive. Currently it costs a business engaged in cross-border business to consumer sales of goods approximately EUR 5000[7] annually in VAT compliance costs. For importation of goods above the VAT threshold the average cost is almost EUR 9 per transaction[8]. An extension of the single registration and payment system means that such suppliers can account for taxes through their own tax administration or for non-resident ones through one administration of choice using the national rules (excluding rates/exemptions) in place in their 'home' Member State.

Likely impacts on SMEs

Positive. It will further remove distortions from the distance sales thresholds and the VAT exemption for the importation of small consignments where non-EU suppliers can make supplies VAT free into the EU. The introduction of home country rules for those SMEs using the scheme will mean that they only have to deal with one set of rules such as for invoicing and will only be subject to audit by their own Member State. Currently such businesses need to conform with the invoicing rules in place in the Member State of the customer and could conceivably be subject to audit and enquiries by the tax administration in each Member State in which it makes supplies to. This will also apply to the storage of records. The introduction of an EU wide threshold to ensure that business who make a small level of sales to another Member State are not unnecessarily brought into the MOSS will also be deemed as positive.

Likely impacts on competitiveness and innovation

Positive. It will bring a level playing field between domestic, intra-EU and non-EU supplies and simplify administrative burden.

Likely impacts on public administrations

Positive. The current VAT arrangements are complex and cause compliance challenges for tax administrations. Simpler VAT legislation with clearer rules should ensure that the compliance challenges are reduced.

Likely impacts on third countries, international trade or investment

Positive. Currently VAT is collected directly from the customer on transactions above the small consignment exemption threshold. Postal and courier companies charge customers an administrative clearance fee in addition to the VAT charges. Extending the single registration and payment system to goods from outside the EU will enable the supplier to properly address the expectations of the client in terms of pricing, charge VAT, remit it to the Member State and benefit from a fast track customs procedure. This will ensure tax is paid, but at the same time facilitate trade.

[7] See http://ec.europa.eu/priorities/digital-single-market/docs/dsm-swd_en.pdf Pages 31 - 33

[8] See http://ec.europa.eu/taxation_customs/resources/documents/common/publications/studies/execsummary_lvcr-study.pdf Page 3