



EUROPEAN COMMISSION
DIRECTORATE-GENERAL
TAXATION AND CUSTOMS UNION
Indirect Taxation and Tax administration
Tax administration and fight against tax fraud

taxud.c.4(2018) 1507602

12.03.2018

EU VAT Forum



*Consolidated report on
Cooperation between Member States and Businesses
in the field of e-Commerce/modern commerce*

Prepared by the EU VAT Forum subgroup
*on administrative cooperation between Member States and Businesses
in the field of VAT fraud, cooperative compliance and e-commerce*

Table of contents

1	INTRODUCTION	4
1.1	Context	4
1.2	Aim and scope of the report	4
2	UNDERSTANDING E-COMMERCE - KEY FUNCTIONS / FIXED FUNCTIONS IN THE STRUCTURE	5
3	CHALLENGES	5
3.1	Global reach of e-Commerce	5
3.2	Tax administrations	6
3.3	Business	6
4	MEETING THE CHALLENGES	7
4.1	Considerations	7
4.2	Short term initiatives	8
4.2.1	Access and exchange of relevant data	8
4.2.2	General exchange of information on non-compliant traders and practices	9
4.2.3	Education of users / sellers	9
4.2.4	Online registration and compliance process	9
4.2.5	Business responsibilities	10
4.2.6	Tax authorities responsibilities	10
4.2.7	Encourage voluntary disclosure and corrections	10
4.3	Longer term initiatives	10
4.3.1	Enforcement measure / compliance programs with non-EU countries	10
4.3.2	Clear rules to collection, exchange and process of data	10
4.3.3	VAT-legislation needs to support digitalisation	11
5	CONCLUSION	11
	ANNEX	12

1 INTRODUCTION

Through globalisation and technological developments such as the internet, smartphones, and online marketplaces, it has become easier for consumers to buy goods and services from across the globe. Consumers value speed of delivery, service, reliability, price, convenience and privacy. Business models based on online intermediaries and marketplaces are evolving bringing together large numbers of buyers and sellers through third party platforms, which are often not directly involved in the supply chain for VAT purposes. The different business models have made it very easy and inexpensive for small businesses to multiply their business opportunities globally and for individuals to set up their own global business.

VAT is a transaction based tax on consumption of goods and services borne by the final consumer. VAT applies on the majority of transactions. The correct VAT treatment needs to be determined at a transaction level and should not slow down transactions. With this starting point, efforts should be taken to ensure easy compliance noting that businesses are not by nature VAT-experts and so the VAT system and related rules needs to be explained in simple terms.

So, on the one hand businesses and consumers must be enabled to benefit from the opportunities presented by this responsive and globalized economy, but on the other hand, tax administrations must ensure the effective collection of VAT and the detection of fraud and evasion in order to protect both the budgets of EU Member States and the viability of legitimate and compliant businesses. Tax administrations must balance these priorities to ensure that honest taxpayers do not ultimately bear the burden of VAT evasion and fraud, and suffer the consequences of unfair competition. The collection and administration of VAT must be kept simple and efficient for both tax administrations and business.

1.1 Context

With current technology, among others small businesses are no longer bound by national borders – suppliers and customers can reach global markets. Digital economy actors, both small and large, can become international very quickly. Both data and activities can be transmitted anywhere in the world making it difficult to identify all the traders and trade patterns. Enforcement of national legislation can be challenging in cross border situations where businesses required to charge VAT are located outside of a country's jurisdiction. The global reach of e-Commerce brings challenges for business as well as tax administrations in terms of compliance and access to information.

The initiative should also be seen in the context of the new VAT proposals regarding B2C eCommerce adopted by the Council on 5 December 2017. The new legislation envisages a level playing field between EU established and third country-established e-Commerce suppliers selling on-line to consumers in the EU. Better administrative cooperation between Member States administrations and businesses is crucial in this context.

1.2 Aim and scope of the report

The aim of the report is to initiate and facilitate co-operation between businesses and tax administrations. The report specifically addresses the issues related to access to information in the e-commerce supply chain and the exchange of this information. For tax administrations, one of the biggest challenges is how to ensure the access to data, while businesses face the challenges of meeting both a different legal environment and different information requirements in each and every country as well as facing competitors in the market place who may not be compliant. It is also important to support legitimate trade, making this as simple as possible, while on the other side ensuring that non-compliant businesses can be targeted as efficiently as possible by the Tax Administrations without imposing undue burdens on legitimate businesses.

The availability and exchange of data is important to promote and support VAT compliance in order to fight non-compliance and VAT fraud; foster and ease compliance to create a level playing for

business and safeguard VAT revenues for governments. To this end the following points are of particular relevance:

- a better commercial understanding of ecommerce - commercial activities, parties involved, etc. – including which commercial data is available from each party (function) in the digital value chain;
- working and agreeing on the data that is relevant for the assessment of VAT liabilities and facilitating a consistent approach on data requests by the tax authorities across the 28 EU Member States;
- a better general exchange of information process regarding non-compliant traders and practices; and
- a better and more pro-active interaction with legitimate business before new measures to fight non-compliance are introduced in order to evaluate impacts on legitimate business.

2 UNDERSTANDING E-COMMERCE - KEY FUNCTIONS / FIXED FUNCTIONS IN THE STRUCTURE

Modern e-commerce is evolving together with business models, consumers' habits and technology. The stakeholders involved are numerous and constantly adapt their own organisation in response to market evolution with a wide range of different commercial and legal models. As a result, there is no one size fits all solution, and the practical aspects must be considered in detail. Therefore, trying to define the different stakeholders and their precise tasks and roles in the business chain, may be an unproductive exercise for the purpose of this document. It is of more assistance to understand the businesses' key functions and commercial background in order to identify who holds the information, the background of the transactions and understand the risks. We have listed the 4 key functions relevant for both goods and services (hereinafter "products") below:

1. **Introduction:** Bringing buyers and sellers together.
Examples: own online-shop, search engines, referrals, third party marketplace
2. **Trust:** Providing a safe environment to conduct transactions for buyers and sellers
Examples: own online-shop, trust facilitators, third party marketplace
3. **Payment:** Processing payments from buyers to sellers, including PSP's and payment gateways.
Examples: Payment intermediators, on-platform payments, direct payments (bank transfer, direct debit, cash, and cryptocurrency)
4. **Fulfilment/execution:** Delivering products from sellers to buyers.
Examples: Delivery/fulfilment managed by marketplace, by third party logistic organization, by own means

In all cases it is possible for the supplier to insource all the functions, outsource them all, or use a combination of insourcing and outsourcing.

3 CHALLENGES

3.1 Global reach of e-Commerce

The global reach of e-Commerce is the main challenge for both tax administrations and businesses from a VAT perspective. A number of the challenges originate from the fact that legislation is usually national or regional, while the e-Commerce business models are becoming increasingly global. Thus participants in the VAT chain are often located in another country and not necessarily in the EU. Therefore, an increasing number of traders – especially small traders - are not familiar with the EU or National VAT System and the different practical implementations and compliance obligations in the different Member States.

These challenges have always existed but they have multiplied as e-Commerce has increased in terms of distance, volume, speed and complexity.

3.2 Tax administrations

Large numbers of businesses are now able to reach a wide international consumer base by utilizing the services provided by online intermediaries and or payment service providers. This has created both fundamental and practical challenges for Tax Administrations in ensuring that these businesses are complying with their VAT requirements:

- **Non registration:** Businesses selling online may fail to correctly register for VAT when and where required either because they are unaware of the requirement to register or they seek to deliberately evade VAT. Tax Administrations often have no records to identify the businesses as such data is often held in another jurisdiction (in the country of the establishment of the seller) or by a third party intermediary involved in the e-Commerce value chain.
- **Under declaration of VAT by registered traders:** Businesses selling online that are registered for VAT may fail to declare and pay the correct amount of VAT either because the business is unaware of the requirements or due to evasion. As mentioned above, in these situations Tax Administrations often have no or only limited records to determine the correct taxable amount.
- **Disguised transactions as a result of criminal activity:** Organized criminals can also be involved in facilitating deliberate non-compliance disguised as legitimate transactions. This can include, but is not limited to, arranging for movement and storage of the goods, setting up fake businesses and selling counterfeit goods.
- **Access to and exchange of data:** The traditional cooperation to combat VAT fraud and non-compliance is between tax authorities and is based on sets of records/information held by the businesses directly involved in the transaction chain being at the disposal of tax authorities. However, in the cross-border online supplies, this information may not be directly available, therefore the "traditional" cooperation between Tax Authorities is not enough. Data may for example be stored in another jurisdiction. Tax Administrations often need access to data held by online platforms, payment service providers and other intermediaries that are not part of the transaction chain, in order to identify any non-compliance. This presents legal and practical challenges depending on how and where the data is held.
- **Enforceability:** Many businesses involved in e-Commerce trade across borders. It is therefore often quite difficult to enforce local rules and requirements on businesses established outside the country of consumption, where their VAT liability arises. This is especially the case where there are no legal agreements in place between the countries involved. This potentially creates unfair competition for compliant businesses.

3.3 Business

Businesses involved in e-Commerce face multiple challenges. In the context of this document, the major challenges are:

- **Conflicts between tax and other legal obligations:** Different ways of accessing banking information combined with different legislation in the MS set different standards for the amount and type of data businesses can share, especially if there is no specific business or transaction under suspicion. Other legislation like the Data Protection legislation, or anti-money laundering legislation, also set different requirements and in practice can be a significant challenge to current data sharing.
- **Maintenance of customer/consumer privacy and trust:** The maintenance of trust between customer/consumers and the intermediaries (and sellers) is essential for e-commerce as consumers react very quickly on any breaches or indications that undermine the level of trust.
- **Complex and inconsistent international VAT rules:** Complex and inconsistent international VAT rules, including different scope and proportionality of the liabilities placed on the different participants do not easily fit with rapidly evolving online business models making it difficult for businesses to comply and undermining legal certainty.
- **Compliance burden:** Lack of harmonization and cooperation within and between tax/customs authorities, locally and internationally is a source of increased compliance costs. Diverse information requests and audit processes by Tax Administrations increase the administrative

burden. Businesses need to maintain simplicity of the transactions with regards to data collected from the customer and use of data by the tax authorities.

- **Lack of efficient tools to support on-line compliance.** Businesses are challenged from the lack of sufficient tools and IT developments to support VAT compliance efficiently and at scale. The electronic process of identifying vendors and customers by using information systems like VIES is challenging at best, and the information is not always up-to date and does not contain a public log-file for documentation of changes. Other examples include the absence of a VAT rates database allowing for online verification and lack of local guidance in main languages makes it challenging if at all possible to automate VAT compliance.
- **Lack of understanding of the business models** by the Tax Administrations (not limited to e-commerce players).
- **Effective communication between business and tax administrations but also between tax administrations themselves.** If there is a lack of effective cooperation then this poses as a significant challenge.

4 MEETING THE CHALLENGES

4.1 Considerations

Provision of data: A key issue is the legal challenges around the provision of data. Tax Administrations need relevant data from online platforms, payment service providers and other intermediaries in order to identify and tackle those businesses that do not comply with their VAT obligations, including non-registration. Therefore, Tax Administrations expect businesses to understand and assist them in their requests for data by assisting in identifying the relevant data and finding ways of facilitate the exchange of data when requested and where it is possible to do so. Whereas business understands the data needs of tax authorities, it should, however, be made as easy as possible for business to provide the relevant data (consistent data sets) and it should be commercially available data only. It should be recognised that sometimes the expected data is not available at all, or difficult to extract at scale, and therefore alternatives have to be identified.

From the standpoint of tax control, there are clear benefits when eCommerce intermediaries' data can be utilised by the tax authorities in the performance of their duties ensuring a more efficient and accurate levy of taxes. Where currently collected under national regulations, fragmented requests and variations of data fields requested by tax authorities can be burdensome for intermediaries. Uniform regulations and standardised data acquiring requirements will help intermediaries to foresee which data and in which frequency they are expected to provide the tax relevant data to the tax administrations. This should reduce administrative burden, which is most likely increasing, and therefore of benefit to business itself.

Use of data by Tax Administrations: In promoting the sharing of data with Tax Administrations, businesses expect that this data is used responsibly by Tax Administrations to initially assist traders by encouraging voluntary compliance and only if necessary moving to enforcement action. If data analytics reveals systematic mistakes/unintentional non-compliance this should lead to an evaluation and amendment of relevant guidance and legislation by tax administrations. This is important for maintaining trust between traders and businesses in addition to ensuring that businesses who may be willing to be compliant, if offered the opportunity, do not move into less visible markets.

Sensitive information and customer privacy – It should be respected that online intermediaries will not be willing to share competitive or business sensitive information which, in any case, is unlikely to be a requirement for determining the correct amount of VAT due on sales by a trader. Furthermore, businesses highlight that the trust of customers is very important – if not business critical - to online intermediaries; they are therefore very sensitive to customer privacy and expect that, as a starting point, the only relevant customer data is the country of delivery. Additionally, data on any sales should be shared in at an aggregated rather than transactional level in the first

instance in order to minimise administrative burden. These considerations should form a part of the identification process of tax relevant data.

Supporting compliance: Whilst intermediaries are generally not in a position to be able to establish the overall VAT compliance of business trading on their platforms or using their services they do sometimes have access to data that would allow them to determine whether or not a business should be registered for VAT. Where online intermediaries do have information that allows them to determine the business is non-compliant, then it should take reasonable (legally possible) steps to encourage compliance. It should be recognized that intermediaries will not always be able to verify third party data (seller information) during this process.

Parity/Equivalence: Businesses engaged in e-Commerce need a level playing field for all participants involved in the transactions. Businesses understand the need for a risk based approach by Tax Administrations that may imply different approaches, but administrative cooperation between MSs should ensure that the burden for all businesses remain proportionate. Tax authorities will expect all relevant intermediaries irrespective of their size or jurisdiction to provide relevant data when requested. Any request to share data should take into consideration the principle of proportionality and international cooperation should be explored in order to ensure a level playing field.

Clear Guidance: Tax administrations should ensure and encourage easy compliance to the different VAT-regimes. A harmonized approach to compliance supported by online guidance in relevant languages that explain in lay-man's terms the relevant VAT rules, rates and practices.

4.2 Short term initiatives

4.2.1 Access and exchange of relevant data

For control purposes the key data points can be summarized to the following:

- Identification of sellers;
- Are they selling to an EU-country (or a specific MS) and
- The value of what is being sold
- Goods/services
- Period of transactions

With this data Tax Administrations can perform risk assessments enabling them to narrow the data needed for further control purposes. More (targeted) data points may be required depending on the activity being looked at by tax administrations.

4.2.1.1 Clarification of the legal requirements

Where possible tax administrations expect intermediaries to provide tax relevant data both in bulk and on a case-by-case basis. When asked to do so it will also be helpful on a European Level to explain what kind of tax relevant data can be transmitted and how it can be exchanged under the existing legislation.

In order to facilitate exchange of data, promote legal certainty and ensure a level playing field, the legal requirements of data protection, banking regulation and other relevant legal instruments in the MS's should be clarified in order to identify the tax relevant data that can be shared without legal concerns. The new General Data Protection Regulation entering into force in May 2018 is a current source of concern. This could ensure a common reference point and ease discussions between tax administrations and online intermediaries.

4.2.1.2 Establish a mechanism to align data requests

In case there is a variety in the data sets requested from the Member States, the data providers (for instance platforms) would then need to adjust and implement individual technical solutions. In some instances, part of the information is hashed in order to remove personal / sensitive information. The format of the data is also relevant/important.

In order to facilitate easier transfer of tax relevant data, it would be helpful to establish a mechanism where online intermediaries and member states can align different information requests from different MS's and agree on data points and data formats on a case by case basis. This voluntary joint mechanism would ensure that data can be shared in the most efficient way and could also allow one MS to front and perform data analytics on behalf of a number MS's – thereby reducing the costs of setting up the data analytics tools needed. (Benefit: 1 point of contact – and 1 it-setup).

4.2.2 General exchange of information on non-compliant traders and practices

4.2.2.1 Contact points in tax administrations for businesses:

Tax administrations are encouraged to set up contact points on an international level and on a national level (Tax Administrations) for businesses, where they can directly share commercial information, i.e. how markets operate. It would be desirable to have permanent access through electronic means with this function. To facilitate a fluent and easy exchange of information both parties, business community and tax administrations, should set up an efficient direct communication channel giving both sides the flexibility to act quickly and in a targeted way. Where it makes sense, as it increases efficiency and ease, a single point of contact from each side could be appointed.

4.2.2.2 Contact points for consumers

Tax Administrations and relevant intermediaries are also encouraged to set up consumer contact points, where consumers can verify whether a trader is registered for VAT or receive guidance on how to look for VAT registration information. This would assist consumers – when encountering a significantly lower price than the competitors – in ensuring that the trader is VAT registered.

4.2.3 Education of users / sellers

Businesses and private sellers (non-taxable persons) are not necessarily experts on VAT legislation, especially when they are from non-EU countries or another member state.

Currently, some platforms educate their users on the general principles of VAT and have software solutions to support this. Other platforms reproduce specific guidance from Member States when available and targeted for their specific segments. There are also Tax Administrations educating taxpayers on their obligations, in order to promote compliance. These efforts are important and is seen as an integrated part of modern business /tax administration practices in order to reach out to the new traders – foreign as well as private consumers.

Easy access to relevant VAT-rates, thresholds and VAT-treatment on an EU-level that differs from general principles is important and should be pursued by Tax Administrations, the EU and businesses. Relevant and up-to-date information should be made available in key foreign languages. It is also important that the information can be interpreted and assessed electronically as compliance needs to be automated and built into software solutions.

4.2.4 Online registration and compliance process

It is important to make it easy to register, to report for VAT purposes and to settle the VAT amount due, in order to encourage compliance. Current examples of challenges are not limited to foreign traders, but also traders within the EU.

Simplifying the registration and compliance process should have a positive impact on the challenge of undeclared VAT / non-registered traders as to encourage traders to register. Establishing easy to use online portals for the registration and compliance processes in addition to granting businesses easy online access to relevant information (such as VAT rates, etc.) via an online EU web portal would be an important facilitator to achieve this.

4.2.5 Business responsibilities

Business facilitating trade and having access to, for instance VAT-numbers, should perform basic checks to verify / validate the VAT-numbers of the parties with whom they interact. For this it is important that an easy to apply up to date VAT number validation facility is in place. The VIES system could be improved, to help businesses, by aligning data sets across member states and storing historical information with a log-file of changes.

Any due diligence checks from these businesses do not replace the responsibility of the Tax Administrations to enforce tax registrations and keep the registers updated, but should be seen as an additional layer in the cooperation between businesses and Tax Administrations to foster compliance within eCommerce.

4.2.6 Tax authorities responsibilities

Investment in advanced IT infrastructure, skills, analytics and knowledge - tax authorities must ensure certain requirements in their data processing such as the protection, security and integrity of the data.

4.2.7 Encourage voluntary disclosure and corrections

It is important to encourage voluntary disclosure and corrections in order to meet the challenge on under-declaration or declaration of VAT in the wrong Member State in case a business discovers that they have unintentionally made errors in their declarations. This is perceived by businesses to be very important both in order to create a level playing field, but also to support the above business responsibilities and efforts to educate the users. If the penalties associated with voluntary corrections are disproportionate to the quantum of tax it may cause businesses to abstain from disclosing the corrections and thus be a driver for non-compliance.

4.3 Longer term initiatives

4.3.1 Enforcement measure / compliance programs with non-EU countries

Business and Tax Administrations benefit from EU-wide international agreements with third countries on VAT enforcement, similar to the agreement with Norway. The better and closer Tax Administrations globally cooperate on enforcement, the more difficult it will be to be non-compliant.

4.3.2 Clear rules to collection, exchange and process of data

Businesses and Tax Administrations are looking for a single, harmonized procedure for transmitting, accessing and sharing of data. Even in areas like customs, where a common EU-legislation is in place, the actual practices and procedures are not aligned from Member State to Member State (examples include different interpretations, different sets of documents etc.). Therefore, individual IT-solutions are currently necessary to generate the different datasets in the different formats required. In principle, Tax Administrations should only ask for the same data once and the data requests should be aligned across the Member States in order to make the data easier to provide and comparable across borders.

A common approach for communication between Tax Administrations, tax and customs administrations (within and between MS), as well as communication between Tax Administrations and businesses, should be streamlined on a European level, preferably by introducing harmonised procedures for electronic contacts in order to ensure fast and efficient dialogue.

In the long run, businesses and tax administrations are looking for clear, defined legislation and/or standards to ensure efficient exchange of relevant VAT data. This initiative should take into consideration the other relevant EU-legislation in force or adopted as mentioned under the short-term initiative. Conflicts between different national legislations identified under the short term initiative, such as data privacy, should be cleared.

4.3.3 VAT-legislation needs to support digitalisation

Simple, digital solutions are needed to foster compliance and legal certainty such as a structured approach to VAT-rates (electronically available). In the area of eCommerce, millions of transactions are processed automatically every second, and in order to increase the legal certainty, digital accessible solutions are needed. Tax administrations should also benefit from these solutions as they use the same information for their own control purposes.

When the new regulations with the means of procedures and tools are evaluated, the new technological possibilities and solutions should be investigated very carefully. The continued dialogue between tax administrations and business should also include discussions on the potential use of new technology such as Artificial Intelligence, Blockchain, Chatbots (for instance providing answers on tax compliance questions by using Artificial Intelligence) and evolving data analytics procedures. Increasing the level of automation should be a preliminary target no matter which solution is chosen.

5 CONCLUSION

The digital economy is not a separate business sector of the economy which requires a specific and appropriate set of tax rules; it is a way of doing business, so the general principles of taxation continue to apply. However, supporting e-commerce and modern commerce is important including having appropriate procedures and tools in order to respond to these possibilities and challenges. This report outlines a number of specific challenges, as well as a number of initiatives, which could be considered. The key points are:

- Access and exchange of relevant data
- General exchange of information on non-compliant traders and practices
- Education of users / sellers
- Online registration and compliance process
- Business responsibilities
- Tax authorities responsibilities
- Encourage voluntary disclosure and corrections
- Enforcement measure / compliance programs with non-EU countries
- Clear rules to collection, exchange and process of data
- VAT-legislation needs to support digitalisation

Tax administrations and business should continue the efforts outlined in this document to foster cooperation in this area. Issues of defining the relevant data, having consistent data requests, facilitating an easy exchange of data is important and should be supported by close cooperation and an ongoing dialogue.

Measures to combat non-compliance need to strike the right balance, by ensuring the safeguarding of VAT revenues while not increasing burden on legitimate business. There is also a strong need for efficient international cooperation between business and Tax Administrations. The specific short and long-term initiatives addressed in this report seek to achieve these objectives while adhering to the fundamental principles and taxpayer/tax authorities rights inherent in the VAT system as follows:

- Legal certainty
- Neutrality
- Proportionality
- Transparency – mutual sharing of information

If EU Tax Administrations fail to address E-Commerce risks, in a cooperative and proactive manner, this may lead to reputational damage for both the tax administrations and businesses operating in digital economy markets. To protect legitimate business, tax administrations need to be seen to challenge non-compliance in all areas, regardless of the nature of the trade. Changes to existing regulations may need to be made in order to make this possible.

ANNEX

