VAT and the Digital Economy

Overview of Policy

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General Context

- Digital Single Market Strategy one of the Top 10 objectives of the Juncker Commission.
- VAT identified by business as one of the Top 3 barriers to cross-border E-Commerce – E-Commerce Europe 2015.
- Costs EUR 8000 annually per Member State for registering and accounting for VAT. 6 Billion costs in total – Preliminary results from Deloitte report.
- Increase of the number of exempted small consignments imported from non EU countries (~+300 % in 15 years, 115 million in 2013), VAT losses from small consignment exemption of up to EUR 650m – EY 2015 report.
- Compliance losses (including non-taxation and incorrect place of taxation) from the current regime estimated at between EUR 2.8 billion and 4.2 billion – Preliminary results from Deloitte report
- **Current system is complex, it is costly, there is a lack of certainty for business, it is not neutral and there are compliance risks <u>and losses</u> for Member States.**

Progress to Date in ensuring taxation from the Digital Economy

- OECD 1998 Ottawa principles – consumptions taxes like VAT should be taxed on the basis of destination i.e. the country where the consumer is established.
- EU has led the way on applying the destination principle
  - 2003 - non-EU supplies,
  - 2015 – intra EU supplies of telecommunications, broadcasting and electronically supplied services.
- Supported by electronic registration and payment – the MOSS.
- The benefits are that tax revenues accrue from such supplies to the country of consumption plus a level playing field.
- If taxation at destination is not applied BEPS issues may arise and this can cause competitive distortions – we saw this in the EU between 2003 and 2015.

Identifying the need for future reforms

2011 Communication on the Future of VAT

- Commission envisaged an extension of the One Stop Shop.
- A level playing field for non-EU and EU suppliers also has to be ensured. The treatment of small consignments and other internet sales is to be tackled in this context.

2014 Commission Expert Group on Taxation of the Digital Economy

As a priority, the Commission should:

- Extend the Mini One Stop Shop to goods and other services.
- Introduce 'home country auditing' to make it business friendly.
- Remove registration thresholds for cross border sales.
- Remove the small consignment exemption with VAT paid through the One Stop Shop, provide for a fast track customs procedure and also include all imports below the Customs thresholds.

Compatibility with the work at OECD

- OECD Task Force on Taxation of the Digital Economy has identified VAT as helping to ensure taxation from the digital economy.
- The experience of the EU feeds into the work at OECD on applying the destination principle for B2C transactions.
- Experience with vendor registration and remittance and customer identification will also be helpful.
- Vendor Registration and remittance model may also offer solutions for taxation of imports.
- Compliance needs to be part of these discussions.

May 2015 - Digital Single Market for Europe Strategy - Overview

- Highest priority for the Commission
- Takes a horizontal approach to address the barriers to the Digital Single Market such as logistics, geo-blocking, taxation etc..
- In terms of VAT:

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.

May 2015 - Digital Single Market for Europe Strategy - VAT Measure

The Commission will make a **legislative proposal 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,

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.

Pathway to the 2016 Proposal

- Deloitte Study
- Fiscalis Seminar
- Public Consultation
- Impact Assessment and Proposal

Pathway to the Proposal – Deloitte Study

- Comprehensive Study on:
  - In-depth economic analysis on VAT aspects of e-Commerce,
  - Analysis of costs, benefits, opportunities and risks in respect of the options for the modernisation of cross-border e-Commerce,
  - Assessment of the Implementation of the 2015 place of supply rules and MOSS – identify best practice and room for possible improvements.
- Launched by the Commission in December 2014.
- Aligned with the DSM Strategy.
- Final report – due mid-2016.
- Commission appreciates the efforts that Member States and business are making to contribute to this Study.

Pathway to the Proposal – Fiscalis seminar

- This seminar is a critical and timely event in preparing for the proposal next year.
- Will feed into both the Deloitte Study, the ex-post evaluation of the 2015 changes and the impact assessment for the proposal.
- The output of the seminar will assist the Commission in shaping the proposal.

Pathway to the Proposal – Public Consultation

- 12 week public consultation is required under the working methods of the Commission.

- Will be launched later this month in all languages.

- Will cover:
  - Implementation of MOSS,
  - Implementation of the 2015 Place of Supply Rules,
  - Future policy options.

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Pathway to the Proposal – Impact Assessment and legislative Proposal

- Impact assessments & ex-post evaluations required under the Better Regulation Agenda.

- Preparations are advancing.

- The Deloitte study, the output of this seminar and the output of the public consultation will feed into this process.

- Proposal will be made in 2016 and is a priority for the Commission.

Other VAT Priorities

- Communication expected in 2016 on the definitive regime for VAT including the possible way forward for VAT rates.

- Preparatory work has commenced to evaluate the VAT regime in the EU for SMEs – not just exemption thresholds but also simplification schemes. Proposal envisaged to be made in 2018.

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Thank you for your attention

Good luck in your work

2015 Place of Supply Rules and MOSS

Review and implementation to date

David O'Sullivan
DG TAXUD

Overview of Presentation

- Recap on the 2015 changes
- Preparation for 2015
- Early Results from MOSS
- Issues raised in respect of the 2015 Changes
- Ex-post evaluation and 2016 Proposal

Recap on the 2015 Changes

- **2003** - Non-EU B2C supplies of electronic services taxed in the EU Member State of consumption
- Supported by the VAT on E-Service Scheme (VOES) where a non-EU business could choose one Member State to account for VAT who would then transfer to the others – the 1st One Stop Shop.
- Supplies within the EU still taxed in the Member State of the supplier – substantial incentives for a non-EU company to locate within the EU in a Member State with low VAT rates or for companies to relocate within the EU – eroding the VAT base of many countries. Compounded by revolutionary changes in technology.
- Member States sought changes to the place of supply rules. Commission made a proposal in 2005 which was formally agreed as part of the so-called VAT Package in 2008. No agreement at Council on thresholds.
- **From 1 January 2015** all B2C supplies of telecommunications, broadcasting and electronically supplied services to be taxed in the Member State of the consumer.
- The **Mini One Stop Shop** was introduced to support these changes as a simplification measure and to alleviate the need for business to register and account for tax in all Member States to which it makes such supplies.

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Preparing for 2015 changes

- Highest priority for the Commission
- 3 Broad areas in terms of preparations

   1. Legislative measures
   2. Administrative and Communication Measures
   3. IT systems

Preparing for 2015 – Legislative Measures

- Essential to put in place a clear legal structure to fully support the changes
- 3 Implementing Regulations proposed and agreed by Member States
    1. Commission Regulation (815/2012) relating to standard forms and returns adopted in September 2012
    2. Council Implementing Regulation (967/2012) relating to the obligations under MOSS adopted by Council in October 2012
    3. Council Implementing Regulation (1042/2013) relating to measures assisting business in identifying the place of supply was adopted in October 2013 (agreed by Council in June)
- 2013 Regulation was critical as it provided greater certainty to Member States and business in applying the new rules.

Preparing for 2015 – Administrative and Communication Measures

The Commission has published extensive guidance for business on the DG TAXUD website including*:*

- Information for micro businesses
- A guide to the Mini-One Stop Shop prepared together with SCAC
- Extensive explanatory notes prepared together with business and Member States on the 2013 regulation
- Information on selected VAT rules relevant for MOSS in each member State
- National contact points

In terms of Communication, the Commission:

- Participated or organised 13 separate events across the EU, in the US and in Japan on the 2015 changes
- Issued regular press releases on progress and important milestones
- Translated the explanatory notes and the MOSS guide into all the EU languages as well as Japanese, Russian and Chinese.

Preparing for 2015 – Administrative and Communication Measures

According to a 2014 survey undertaken by the Commission, Member States undertook the following communication activities:

- All Member States in one or the other way have engaged in communicating the 2015 VAT changes.
- Most Member States have issued press releases, established dedicated web pages and placed advertisements in newspapers.
- Over 20 Member States presented on the changes to tax and accounting bodies.
- Many Member States had identified business likely to be affected and directly written advising them of the changes.
- A number of Member States have been very active advising non-EU business of their responsibilities.

This is work in progress. The Commission continues to encourage Member States to carry out communication activities to ensure that business are aware of the 2015 changes.

Preparing for 2015 – IT systems

- IT systems integral to the entire project.
- Project involved significant resources for the Commission, external consultants and Member States to design and build a new system.
- Regular meetings between the Commission and Member States to ensure that common specifications were agreed and applied.
- Commission undertook IT systems visits to all 28 Member States.
- Commission funded fall back IT systems to assist Member States who were not fully ready.
- Full testing periods integrated into the project plans.
- Commission, consultants and Member States will remain hands on to address any issues which arise.

Implementation of the 2015 Changes – Early Results

- Overall the result have been positive with some issues to resolve. Implementation is continuously evolving.
- All 28 Member State MOSS portals are up and running. Some interoperability issues between Member States have occurred but are being actively addressed.
- Over 11,000 businesses and growing are registered for MOSS. Note that many more smaller providers are covered by the Article 9a provisions.
- VAT receipts through MOSS expected to be in excess of EUR 3 Billion in 2015 representing approximately EUR 18 billion in sales.
- Preliminary results from the Deloitte Study indicate that this represents approx. 70% of total cross-border trade of TBE services.

Implementation of the 2015 Changes – Union Scheme – results from Q1 2015

Top 5 MSI	***Top 5 MSC***
Luxembourg	*UK*
Ireland	*Germany*
Netherlands	*France*
UK	*Italy*
Germany	*Netherlands*

- **The Top 5 MSI are collecting 90% of all VAT collected through the union scheme.**
- **The Top 5 MSC receive 65% of all tax collected through the union scheme.**

Implementation of the 2015 Changes – Non-Union Scheme – results from Q1 2015

Top 5 MSI	***Top 5 MSC***
Ireland	*UK*
UK	*Germany*
Netherlands	*France*
Denmark	*Italy*
Belgium	Spain

- **The Top 5 MSI are collecting over 95% of all VAT collected through the non-Union scheme**
- **The Top 5 MSC receive 77% of all tax collected through the non-union scheme**

Main Issues Raised in respect of the 2015 changes

1. Exemption for micro-enterprises
2. Lack of awareness of the changes
3. Difficulties in identifying customers
4. Record keeping/Different B2C invoicing requirements
5. Home country audits

These issues and others will be examined in the workshops

Issue 1 – Exemption for micro-enterprises

- Source of biggest number of complaints to the Commission on the 2015 changes. Mostly from one Member State.
- Commission and some Member States were in favour of an exemption threshold but unanimity was not possible as there were concerns it could a) increases complexity and b) lead to cross-border distortions.
- Commission is committed to introducing simplifications measures (exemption threshold) but it should not create distortions in the single market.
- Full evaluation at a pan EU level needed to justify a new proposal.
- Are there other means to assist such enterprises?

Issue 2 – Lack of awareness of the changes

- Difficult to assess the scale of this issue.
- Commission made substantial and unprecedented efforts to inform and involve business and stakeholders in advance of the changes including formally at 13 separate events.
- Most Member States (based on 2014 survey) were also very proactive in informing taxpayers.
- Commission and Member States will need to reflect on this aspect to ensure that communication for future changes can be improved, notably vis a vis the smallest businesses.
- Full involvement from all stakeholders (authorities, payment providers, market places, etc.) is required for good roll-out of major changes such as MOSS.

Issue 3 – Identifying customers

- Identification of the location of the customer is necessary for determining the place of taxation.
- 2013 Implementing Regulation provided that 2 pieces of non-contradictory evidence needs to be provided.
- The criteria of '*Other commercially relevant information*' gives some flexibility to business.
- Need to consider whether there are technological solutions which can assist business in identifying the place of their customers.
- Some Member States were in favour of 3 pieces of evidence so relaxation of this requirement will be difficult.

Issue 4 – Record Keeping/Invoicing etc.

- Record keeping: The 10 year rule is the outcome of upwards harmonisation
- Invoicing : different B2C invoicing rules are the result of the remaining options in the invoicing directive, where Council didn't follow the Commission (proposal for non-invoice in such a case).
- Scope to address these issues in the new proposal by amending / harmonising the rules or applying the rules of the Member States of Identification - except for rates and exemptions.

Issue 5 – Home country audits

- Cause of great uncertainty for both business and Member State audit managers.
- The Directive is not prescriptive on this, but most Member States have agreed audit guidelines to ensure a coordinated approach.
- Commission considers that we need clearer rules in the Directive in future with responsibility for audit on the MSI together with better use of the administrative cooperation arrangements.
- Compliance can be improved through consideration of revenue sharing – provides responsibility and incentive of audit yield, as well as greater administrative cooperation.

Conclusion

- The 2015 changes as well as this analysis are work in progress.
- The engagement with the business community has been very positive and it is again useful to have business represented at this seminar.
- There have been many positives for the EU VAT system. EUR 3 billion in VAT through the system in 2015 will be a good achievement.
- It is also clear that there is scope for improvement.
- This seminar offers a great opportunity for the Commission, Member States and business to help shape the 2016 proposal which will extend the One Stop Shop to goods and further reduce the complexities of the EU VAT system.

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Thank you very much for your attention