

21 December 2017

Definitive VAT-system for Cross-Border Trade

KEY MESSAGES



- 1** We welcome the European Commission's commitment to the creation of a single VAT-area based on maximum simplicity, clarity and robustness against fraud. We support in particular the Commission's efforts to further improve and broaden the One-Stop-Shop. However, charging VAT on cross-border trade between businesses, will significantly increase compliance costs as businesses will have to be continuously informed about the wide range of different VAT-rates in the different Member States. We are also concerned that the proposed model will significantly impact cash-flow and may not reduce overall VAT-fraud.
- 2** We are concerned that the Commission's proposed application of the destination principle, whereby suppliers will have to deal with the tax administration of the country where the goods are transported to, rather than the administration where the customers are established, will bring an unnecessary increase in the overall administrative burden.
- 3** We strongly oppose the Commission's overall two-step approach, whereby the full technical provisions of the definitive system will be presented at a later stage, as it might lead to irreversible decisions being made on the principles of the legal framework of the future system without a full assessment of the Commission's proposals being possible.

KEY FACTS AND FIGURES

- Over €1 trillion in VAT was collected in 2015 (Source: European Commission).

WHAT DOES BUSINESSEUROPE AIM FOR?



- We support the European Commission's efforts to modernise the EU's VAT-system, reduce administrative burden and to close the VAT-gap. The current VAT-system is highly fragmented, complex and subsequently reduces and distorts trade and investment by creating unnecessary extensive administrative burden and trade barriers to businesses. Further VAT-reforms should however also take into account the fast-changing (digitalised) economy, which blurs the line between goods and services and upcoming technologies which may be helpful in closing the VAT-gap and simplifying VAT-reporting.
- We welcome and support the proposed quick-fixes, which can mean a significant relief in administrative burden, but we fail to understand why these are only limited to businesses with a Certified Taxable Person (CTP)-status. The important administrative improvements should be open to all businesses, not just those with a privileged status.
- We call on Member States to improve current cooperation between the different national tax administrations to establish greater levels of trust and efficiency. We cannot improve the VAT-system without trust between Member States and cooperation between tax administrations and businesses.



Introduction

In October 2017, the European Commission presented its initiatives to replace the current VAT transitional arrangements for the taxation of trade between Member States by definitive arrangements in 2022. The Commission has opted for taxation rules according to which, for intra-EU cross-border supplies of goods, the supplier would charge VAT to his customer at the rate of the Member State of arrival of the goods. The VAT would be declared and paid in the Member State where the supplier is established via a One-Stop-Shop mechanism. Within the framework of the definitive arrangements, the Commission also presented 'quick fixes', i.e. proposals for several simplifications the Council asked for in its conclusions of 7 October 2016 regarding the improvement of the current EU VAT-rules.

We welcome the initiative taken by the EU Commission for a definitive system based on the destination principle. The current system, which was installed twenty-five years ago, has become highly fragmented, complex and open to fraud. The initiative to reform the VAT-system is a unique opportunity for businesses and Member States to ensure that the new system is simpler, more efficient, less prone to fraud, and promotes cross-border trade and economic growth across the EU.

However, it is essential that any change to the current system must lead to an unambiguous improvement of the current state of play for European businesses and other stakeholders. In this light, we fail to see why the Commission proposes a two-step approach to overhaul the system, whereby a more detailed proposal with all specific provisions will only follow at a later stage. This is very concerning and we strongly oppose this procedure as it is important that Member States understand that irreversible decision-making on the principles of the future legal framework of the future system without knowing the full impact of the crucial comprehensive proposal, can lead to unwelcome consequences and unnecessary risks for both businesses and tax authorities. Furthermore, while we strongly welcome the quick-fixes, and encourage the Commission to take further measures to simplify administrative burden, we fail to understand why they are limited to businesses with a CTP-status only.

The definitive system for the taxation of trade between Member States

We support the proposed destination principle, as agreed by the European Council in 2012, however, we are not convinced that the proposed model of taxation of intra-EU cross-border supplies of goods, following the physical flow of the goods, will guarantee a decrease in VAT-compliance costs for businesses

- Following the flow of goods has caused difficulties in the past both for businesses and tax administrations and has led to different treatment of goods and services. To ensure a facilitation of chain transactions and substantial reduction in administrative costs, we prefer a system where goods are treated in the same way as services (i.e. place of taxation for intra-EU supplies of goods where the customer is established).

For example, under the proposed model, business now will have to prove to, possibly 28 Member States, that the goods have been shipped and arrived in a



specific Member State. As a consequence, the proof of arrival will create more administrative burden for businesses, more uncertainty and could carry the risk of double taxation.

Moreover, as the proposal envisages that alignment between goods and services will eventually take place at a later stage, this will require substantial investments (once again) from both businesses and tax administrations. We anticipate also that as the digitalization of the economy blurs the line between goods and services, having a system with identical VAT-treatment, would make the system more conducive to growth and robust against fraud. We would support the Commission undertaking a thorough analysis of the pros and cons when it comes to applying the same place of taxation rules for goods as for services and we are very happy to support the Commission in this initiative.

- Applying the VAT rates of 28 Member States can also bring higher compliance costs for businesses as in the current system all cross border trade is zero rated in the Member State of dispatch. As a consequence of the proposed model for the taxation of intra-EU cross border supplies, the supplier will have to reliably ascertain whether a standard, a reduced or a zero VAT-rate shall apply. This will result in higher compliance costs as businesses will have to be continuously informed about changes in the VAT-rates of all Member States, as well as other VAT-rules regarding rebates, credit notes and conditions to apply for a zero rating. The anticipated proposal to set free the VAT-rates might also imply an additional layer of complexity in this matter.
- As a consequence of the taxation of intra-EU cross-border supplies, risks of non-payments of VAT will occur. Will traders in case of non-payment be confronted with (in future) 28 different bad debts schemes? It is also unclear whether bad debt will also be covered by the OSS. It is important that rules on bad debt are further harmonised in the future.
- We are also deeply concerned by the potentially huge impact the proposed definitive system may have on the cash-flow of business. It is important that the working capital of businesses does not come under pressure.
- Furthermore, we are also concerned about potential new fraud practices arising from the proposed model. The model has the incentive to fake exports to low VAT-countries while in fact selling at local markets. Together with the anticipated proposal to set free the VAT-rates, this may in fact generate new opportunities for fraud. In addition, the current fraud is based on the margin between the standard rate and the zero rate. The proposed definitive system may cause this margin to decrease, but due to different VAT-rates in Member States, this margin will never be zero. This underlines again the need for close cooperation between Member States and a strong focus on ensuring and aligning the practical implementation of the proposals.

One-Stop-Shop (OSS)

We believe that a well-functioning One-Stop-Shop is a vital concept. We have welcomed



the Commission's initiatives, such as the proposed extension of the Mini-One-Stop-Shop to all B2C services as well as to B2C sales of goods, both intra-Community and from outside the Community. Without a fully functioning OSS, based on home-country audits, scalable simplifications and the ability to offset incurred input-VAT from all Member States the proposed destination-based system will dramatically increase the administrative burden, especially for SMEs.

However, while we fully support the OSS-concept, the proposed OSS is not clear regarding:

- the number of VAT returns in case of both intra-EU and domestic supplies (one OSS-return or both a OSS return and a domestic return?)
- The consequences of an import in and/or a stock point of goods in another Member State. Another domestic foreign return and another foreign OSS return?
- Fictitious supplies: To be reported in the OSS and the other foreign VAT return in the country of destination?
- The requirement regarding input VAT. Are Member States allowed to implement additional requirements?

Certified Taxable Person (CTP)

While we support in principle the concept of a Certified Taxable Person (CTP), as it may have the potential to be a relief for businesses, we believe this will depend on the final implementation rules. The CTP can only reach its full potential when the criteria for attaining this status are harmonized between Member States and the criteria are clearly defined and at an appropriate level to ensure the widest possible access to businesses, in particular SMEs. The CTP will be costly for both businesses and tax administrations as they will have to cope with two parallel administrative systems (CTP and non-CTP). If the CTP is set up as a temporary system, the costs will be even higher. We also find the description of the criteria to be very vague, which complicates decisive evaluation.

- The need for a CTP is also highly dependent on the One-Stop-Shop. If the One-Stop-Shop can cater for all the VAT obligations and offsetting of input-VAT works efficiently, then the need for a CTP-status could be reduced.
- The application process should be made as easy and smooth as possible to avoid a distorted level-playing field which may put SMEs (who may be impacted by high compliance and administrative costs) and start-ups (who cannot provide a track record) at a competitive disadvantage. Additionally, it is important that the criteria for attaining CTP-status will be defined as precisely as possible to avoid different implementations across Member States. Any CTP-system should not incur any excessive administrative burden and external costs (e.g. external audits or external guaranties). Setting criteria similar to the Authorised Economic Operator (AEO) from customs will be much too restrictive.
- The success of this CTP-status will also depend on post-implementation monitoring by the European Commission to ensure that the criteria are applied in a consistent way across the Member States throughout the years. The different implementations of the Standard Audit File for Tax (SAF-T) across Member States serves as a healthy reminder of how divergent implementations can



quickly arise. Once CTP-status is attained, it is important that this status is easily visible and verifiable to all businesses that take part in the transaction.

When the system of the CTP does not apply, it should be ensured that the reimbursement of accruing input-VAT by the Member States of establishment of the purchaser is made very quickly. It would therefore be important to foresee a clear delay-deadline for the refund and interests for late payment due by the authorities to ensure that the resulting impact on cash-flow remains limited. We encourage the Commission to set up a continuous evaluation and monitoring mechanism to ensure that businesses can trade both as and with CTPs with improved legal certainty.

- Excluding non-EU entities (e.g. businesses established in EFTA-countries) could lead to the introduction of new trade barriers. We therefore encourage a broadening of the scope of eligible CTP-applicants to include non-EU established businesses. As harmonized criteria need to be met throughout the EU anyhow, non-EU established entities may be allowed to process their CTP-application either directly or via a fiscal representative in a Member State where they are VAT-registered.
- While the VAT identification number can be an essential element in the direction of increasing solicitation of companies, its effectiveness will depend on the ability of Member States to make these VAT identification numbers more reliable

Exemptions for intra-community transactions – Quick Fixes

We welcome and support all the quick fixes, but fail to understand why they are limited to businesses with a CTP-status. The impact assessment estimates that approximately only 0.3% of businesses within the EU would potentially register for CTP-status. In particular, the proof of intra-community transactions is something every business should be able to benefit from, in particular SMEs as they face a very high compliance burden because of this.

- As it is not clear to what extent businesses will meet the requirements for the CTP-status, it is therefore also not clear whether businesses can apply the “quick fixes” (call-off stock, chain transactions and proof of intra-EU supply) as they can only be applied in the case of a CTP-status. In addition, the restriction of the call-off stock “quick fix” to CTPs would actually reduce the availability of this facility in those Member States that already apply for this treatment.
- It is not clear whether the proposed simplification for chain transactions is applicable to cases in which more than three traders are involved.

Administrative burdens and tackling fraud

The accompanying Commission Staff Working document/Impact assessment (SWD (2017) 325 final) memorises that, according to an evaluation of the EU VAT-system, most of the VAT-fraud is considered to be domestic, but that Missing Trader Intra-Community Fraud (MTIC) has increased following the abolition of the EU’s internal fiscal



frontiers. It may be expected that the abolition of the VAT-exemption on cross-border trade in the EU potentially contributes to a reduction of MTIC-fraud related to border crossing, but to us it is questionable whether the proposed system will reduce the risk of MTIC. In the one 'domestic' market of 28 Member States that will be created in the proposed system, missing trader fraud is still very possible. E.g. in case a trader in Member State A did not pay the VAT charged to a trader in Member State B to the tax authorities of Member State A, whereas the trader in Member State B deducted the VAT charged? Is there not a danger that MTIC-fraud will be transformed into a 'domestic' missing trader fraud?

We strongly support the fight against fraud but we need to ensure that the system becomes simple and that honest traders will face a reduction in the administrative burden. According to the Commission's impact assessment, cross-border trade in the EU amounts to more than 4,1 trillion EUR (exports) and 3,9 trillion EUR (imports). Even a fractional increase in the administrative burden per transaction will have a significant impact. Additionally, it is easier for fraudsters to hide within a complicated VAT-system.

The growing number of Member States introducing (differing concepts of) split payment and Standard Audit File for Tax (SAF-T) for VAT purposes represent an additional barrier to trade. E.g. a trader in Member State A selling goods to a trader in Member State B which applies a VAT split payment system, will be confronted with the following new administrative obligations: Taxation of the transaction according to the VAT rate of Member State B; The opening of a local bank account for each trader in Member State B, which is dedicated to VAT payments. The Trader in Member State A will receive a net amount in his home bank account, whereas the customer has to pay the VAT due to the special VAT bank account. This split in payment compels trader A to control two separate payment flows, which causes a radical extension of the business control system and thus a significant additional administrative burden.

The purpose of a destination based VAT-system is to create and ensure a level playing field between domestic and non-domestic suppliers. In an increasing number of countries, market operators are obliged to report additional information either in real-time or through SAF-T. It is unclear to us whether non-domestic operators, who operate in the same market under the same VAT-rules, will also have to comply with these additional reporting requirements.

A strong need remains for the harmonisation of administrative practices. Currently, many of the measures are taken locally but with an increasing amount of cross-border trade combined with a destination based principle, the need for harmonisation and common practices are even more necessary. The current fragmentation of administrative practices is increasing to the extent it is increasingly becoming a barrier of trade by itself.