

A true One Stop Shop for eCommerce

Key messages

- The proposal for a VAT One-Stop-Shop is overall a positive action against the current fragmentation
- A harmonized threshold for distance sales is essential and should be harmonized
- We strongly welcome the measures aimed at simplifying compliance, especially for imports
- The current exemptions for Low Value Consignments result in important market distortions and should be removed
- The future OSS mechanism should be truly functional and effective, addressing the legitimate concerns of the value chain stakeholders. It should not impose unnecessary burdens on the market players.
- The VAT OSS cannot be a complete solution as long as Member States implement various other fragmenting measures
- Policy makers must redouble efforts towards cooperation, enforcement and combating fraud at the EU and global level
- EMOTA considers that a modern and efficient enforcement strategy should be the real focus

Context

EMOTA welcomes and strongly supports the EU Commission's proposal for Directive on a Value-Added Tax One-Stop-Shop in eCommerce. Currently, the fragmented landscape creates complex compliance and competition challenges for online sellers, generating unnecessary additional costs and limiting the potential of the Digital Single Market.

EMOTA Members consider that the administrative challenges linked to VAT compliance are extremely complex, costly and call for a truly functional mechanism, as well as a level playing field.

General remarks on a OSS for eCommerce

EMOTA welcomes the EU Commission's approach to expand the 2015 Mini One Stop Shop for VAT for electronic transactions to goods sold cross-border and supports further harmonisation. The following general aspects should be driving the reform:

- Establishing a true one stop shop for intra-EU sales and movement of own goods (it should not ignore eCommerce specific aspects such as frequent and high level of returns)
- The OSS should be simple and easy to use and could also act as a platform to assist companies with important information and updates such as the correct VAT rates, legislation updates and more.
- Maintaining a threshold allowing purely domestic oriented and mostly offline sellers to avoid any obligations around the OSS – minimum 10K
- Addressing the diversity in the VAT rates and how these are applied (currently our members have to face hundreds of rates across the 28 Members States)
- Remove exemptions such as the gift or low value consignment relief
- ***It is very important to ensure that all procedural and documentation aspects should be addressed via the establishment/identification tax administration, acting as a One Stop Shop, including audits, enforcement measures and corrections. Ideally such aspects could be harmonized on the longer term, but EMOTA understands that the current debate in the Council has missed this target.***
- EMOTA welcomes the introduction of the so called "soft landing" measures, allowing companies more flexibility in the collection of evidence regarding the location of the customer. The soft-landing measures



should also be considered for the sale of goods in order to help smaller companies deal with the various administrative burdens.

- EMOTA calls on policy makers to also focus on ensuring a truly harmonized framework for VAT across the EU. Distance sellers experience many instances of fragmentation: split payment requirements, requirements for local bank accounts, various technical aspects (e.g. SII declaration in Spain).

Thresholds

- EMOTA welcomes the proposal by the EU Commission for a uniform, harmonized threshold of 10.000 Euro for the distance sale of goods. **Although a higher threshold would have been preferable for smaller volume businesses, EMOTA Members understand the potential market distortion effect a higher threshold would generate.**
- **Scope of threshold:** EMOTA would support that the threshold refers to cross-border sales in order to allow for a maximum buffer for those businesses that do not wish to use the OSS mechanism. Merging all sales, domestic and cross-border would drastically diminish the added value of having a threshold, despite the potential simplification benefits.

Ensuring fair competition: removing the LVCR exemptions

- Studies point to the anti-competitive and distortive effects generated by the abuse of the exemption for LVCR¹.
- At the same time, the EU Commission and Member States have to guarantee that the necessary mechanisms will be in place in order to avoid bottlenecks or a similar market distortion via a lack of enforcement.
- A dialogue with the entire value chain is necessary in order to ensure that unnecessary costs and delays are avoided and for the clarification of possible liabilities, such as the potential higher costs for the tax clearance of non-consolidated volumes.

Third country compliance

- EMOTA welcomes the EU Commission's initiative to help facilitate compliance for third country sellers.
- The burden and cost for the compliance mechanism should be carefully calibrated in order to ensure that unnecessary costs are avoided (additional costs and liabilities for operators and the value chain).

Clarity and certainty

- The OSS system has to be balanced and ensure a level playing field between EU and non-EU based sellers. We fear that simply over-regulating the EU based marketplaces will result immediately in a consumer shift towards to non-compliant marketplaces, who in theory would offer a lower price as a result of the illegitimate gains secured via non-compliance.
- A liability regime for the marketplaces does not guarantee a level playing field among sellers and increases compliance costs (it is very unlikely that sellers or marketplaces can accurately determine the correct tax categories in 100% of the cases). We have seen in the past that governments found it easier to charge marketplaces for the estimated tax gap while tax non-compliant sellers just switched selling channels and continued their activities.
- Many eCommerce companies are becoming platforms. There are more than 300 platforms across the EU, mostly small and some only starting up. The new VAT rules should not disadvantage these players, including by discouraging investors due to legal risks such as liability for VAT.

¹<https://www.copenhageneconomics.com/publications/publication/e-commerce-imports-into-europe-vat-and-customs-treatment>



- To help ensure a level playing field it is critical to include a single, broad and comprehensive definition of intermediary. This will help ensure European merchants and intermediaries allowing these businesses to thrive and grow and ensuring VAT revenue grows. The wrong model will see non-compliant merchants circumventing the rules and VAT revenues shrinking.
- VAT receipts can be maximised, and the burden for tax authorities and companies minimised, if intermediaries collect and remit VAT (under a withholding / split payment model) to the tax authority based on the default VAT rate in the country of consumption; a correction mechanism should be introduced as a second step in case products benefit from a lower or higher VAT rate.
- The amount and accuracy of VAT to be withheld would be determined by an intermediary based on due diligence carried out at the time of listing of the goods. In particular, obtaining product information provided by the seller with respect to the nature of the goods and verified by the intermediary (if an intermediary takes physical possession, it can carry out a degree of verification of the information provided by the seller at listing). This should ensure a high (though not complete) degree of accuracy
- Wide enforceability is essential and critical for any regime otherwise it has the possibility of being ineffective especially if sellers can simply sidestep the rules by selling through non-EU intermediaries. Lack of enforceability would risk not only a failure to achieve increased VAT revenues and seller compliance, but also leave EU established intermediaries at a competitive disadvantage, undermining a key aim of the Single Market.
- Furthermore, EMOTA notes that there are a number of number of leading intermediaries that have significant sales into the EU but no presence in the EU. Sales through such intermediaries would require extraterritorial effect in order to be effective. This gives rise to a clear competitive disadvantage for EU based operators

Direct consignments

- **Proposed threshold for direct consignments can lead to inconsistencies (excluding direct consignments over 150 EUR, B2B and EU seller sales, pre-sale infra-EU movements).**

Clarifications and further actions

- Clarity is needed regarding the place of performance of the contract, especially for cross-border sales.
- Policy makers should ensure full clarity around the voluntary nature of the OSS and clarify its application: what happens to sellers established in more than one country?
- Definitions of goods and services could be updated – the distinction between goods and services is fading quickly (embedded services, access cards, etc.)
- What about the threshold for the place of supply, will the proposals have any impact?
- Input and output VAT should be covered?
- The OSS mechanism should also generate detailed market data, considering its unique perspective.
- The exemptions for gifts are not addressed in the EU Commission proposal while they constitute a regularly used tool for fraud.
- Include option for EU / B2B sales to be covered to enable consistency and simplicity.
- Reverse charge on deemed sale.
- Simplified Intrastat in OSS returns to declare infra-EU movements.
- Agree limitation of legal and regulatory exposure.

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