



Position Paper

Value Added Tax: One Stop Shop for Cross-Border eCommerce

EMOTA, the European eCommerce and Omni-Channel Trade Association strongly welcomes the EU Commission commitment for a pan-EU One Stop Shop Mechanism (OSS) for Value Added Tax (VAT) in cross-border eCommerce and makes the following recommendation.

Recommendations:

- Proposed regulation should come as soon as possible
- SMEs should be allowed not to register for the OSS, below a certain threshold
- VAT should respect the rules of fair competition and not create market distortions
- VAT compliance regime should be standardized and data driven
- Costs and complexity in establishing the OSS should be kept at a minimum
- Ensure VAT recovery procedures are fast and cost effective

VAT fragmentation: one of the most important barriers to cross-border sales

EMOTA strongly encourages the EU Commission to issue the necessary proposal(s) for a VAT OSS as early as possible. European online sellers (goods and services) are facing an unprecedented level of international competition while the markets are still fragmented because of VAT rules or consumer protection rules.

The EU Commission correctly identified that the burdens relating to the VAT obligations are among the most important when it comes to cross-border sales, constituting a barrier many SMEs cannot afford to overcome. Registration for VAT across the various EU Member States is cumbersome and often requires the physical presence of a representative and often the documents are required in paper form, in different formats across the countries (in addition, a local bank account is usually required, complicating further the procedure).

Where to draw the line: thresholds

Currently, each EU Member States has a threshold above which sellers are obliged to register for VAT in that specific EU Member State. A One Stop Shop approach should enable all companies, large and small to benefit from the use of a single online platform for paying and recovering VAT on all of their sales across the EU.

However, should a seller prefer not to be registered on the OSS platform, they should be able to keep this choice. Such an approach would ensure that those sellers that perhaps are less active online and cross-border are not overburdened by the new VAT rules.

Should a threshold approach be considered, such a threshold should not be set lower than 50.000 and should be set at a maximum of 100.000, beyond which the registration to the OSS should be seen as the default compliance mechanism. ***At the long term, all sellers (online/offline and third countries) should have access and be able to register to the VAT OSS. The system should allow them to submit electronically a common format file with the necessary information in order to fulfil their VAT obligations.***

Addressing competitive issues: VAT enforcement and exemptions

EMOTA identified two main issues linked to VAT enforcement and exemptions that generate competition issues:

Insufficient enforcement of VAT and tax obligations: policy makers should facilitate the task of tax authorities to collect VAT and tax when this is due. The current system of tax collection allows too many transactions to escape taxation because of the low value of the items and because of the extreme fragmentation of the items (very high number of third country sellers). An improvement in this area could be achieved by enabling more sellers to easily register and pay VAT and tax. The solutions should not be sought in trade barriers but should be based on fair competition.

Exemptions: EMOTA supports the political dialogue launched at the OECD and EU Commission regarding the taxation of the digital economy and the removal of non-competitive exemptions but is concerned about the limited few viable solutions that could increase compliance (registration facilitation, etc.). EMOTA calls on policy makers to redouble efforts in engaging with all stakeholders in order to find a functional mechanism that does not create trade barriers at the cost of a limited compliance effect. Such solutions could include the application of the exemptions to all sellers, EU and non EU.

Enabling technology driven tax compliance

Many companies need to be able to access tax data in machine readable formats. This is even more important when it comes to SMEs that in many cases will use for their online shops inexpensive “ready made” solutions which offer a very low level of customization. Sellers are forced in these cases to manually input the tax information which is a costly and time consuming procedure. In addition, it is sometimes unclear what tax regime will apply to a certain sale that contains several product or service categories.

It is for this reason that EMOTA would strongly encourage the EU Commission to make available in the new framework a machine readable format which could be easily inserted in the pricing data of a website, even if the website has limited functionalities and customization options. The data on the tax levels should be made available in a centralized form.

High rate or returns should not result in cash flow problems

In some cases the rate of returned products in eCommerce can reach 60%. It is essential to foresee that many businesses will have to recover large amounts of VAT due to the right to withdraw from distance contracts which at the EU level is a minimum of 14 calendar days (+ 14 calendar days for the shipping, and even longer).

The EU Commission should take these aspects into consideration when drafting the new rules so that the future system is more efficient and avoids imposing new programming requirements and therefore high costs for sellers and consumers. Sellers should not be faced with overly lengthy periods of waiting for the Member States to process and return VAT where this is due and costs should be kept at a minimum.

Not being able to recover tax from cancelled orders:

When taxes are paid for international transactions in advance, and these transactions are cancelled, the seller often cannot longer get a refund. The seller has to reimburse the consumer the entire cost paid, leaving the seller with a loss. Often when the goods are returned to the country of origin, the duties will have to be paid again for the same product.

In some markets sellers are requested to create a banking guarantee for the VAT and import tax.

This is indeed an important practical problem for items purchased online by EU consumers from third country (or the other way around). While there are some complex ways to technically avoid this risk the current processes are unhelpful to the growth of cross border ecommerce.

ANNEX 1

EU Commission Consultation Questionnaire:

5) Do you agree with the publication of your contribution on the Commission's website?

Yes, the EMOTA contribution may be published under the name of EMOTA.

12) (BO) For supplies not reported under the current Mini One Stop Shop, please rate the difficulties in accounting for VAT in other Member States

The fragmentation in VAT rules and the burdensome reporting and payment procedures are a very important difficulty in trading cross-border.

13) (BO) For supplies not reported under the current Mini One Stop Shop, please indicate the burdens that you face in accounting for VAT in other Member States (multiple answers possible)

All aspects mentioned are burdensome: Registering for VAT; Declaring VAT; Understanding the rules in other Member States e.g. invoicing rules; Dealing with different languages; Controls and audits; Other: paying and recovering VAT;

Section 3 – Future Policy Options

25) Please indicate your level of agreement with the objective of the Commission to minimise burdens attached to cross-border e-commerce arising from different VAT regimes: Strongly agree

26) Please indicate your level of agreement with the objective of the Commission to ensure that all business selling to consumers in a Member State should be charging the same VAT rate with no exemption applying to imports of small consignments: We agree with the overall purpose to remove competition distortions but we believe this questions is oversimplifying the issue at hand. A dialogue should be launched with all stakeholders to best identify solutions that do not create any trade barriers either but facilitate compliance and competition.

27) Do you agree on the need to improve the current Mini One Stop Shop and to set up a single electronic registration and payment mechanism for B2C supplies of tangible goods as well as services (Intra-EU and from 3rd countries)? Strongly agree

28) Do you agree that business using the future single electronic registration and payment system should apply home country VAT rules (i.e. a business uses the rules applicable in their own Member States rather than the rules applicable in the Member States of their customers e.g. invoicing rules)? Note that the VAT rates or exemptions of the Member State of the consumer will still be applied: Strongly agree

29) Do you agree that business using the future single electronic registration and payment system should be subject to a single audit from the tax authority in their own Member State? Note that the existing administrative cooperation arrangements will continue to apply. Strongly agree

30) Do you agree that all supplies from non-EU countries should be subject to the same VAT treatment as intra-EU supplies? We agree with the overall purpose to remove competition distortions but we believe this questions is oversimplifying the issue at hand. A dialogue should be launched with all stakeholders to best identify solutions that do not create any trade barriers either but facilitate compliance and competition.

31) Do you think that there should be a cross-border VAT threshold i.e. no VAT would be applied up to a certain amount of cross-border supplies? The question is not entirely clear in the sense that it could refer both to the registration threshold or to a threshold such as the Low Value Consignment Relief. EMOTA would support a threshold for the registration of VAT in the case of cross-border and third country sales. This would help prevent capturing the very small companies in the scope. Concerning a threshold for the sale of certain goods/services, as stated above, EMOTA calls policy makers to launch a dialogue between the different stakeholders that are interested in this issue in order to identify a solution which facilitates compliance and fair competition, while not creating barriers for trade.

32) What is the appropriate level of such a threshold in terms of cross-border sales? Between EUR 50,000 and EUR 100,000

33) What are the benefits of cross-border thresholds? (multiple answers possible)

Eases access to the single market for business + Easier management for tax administrations

34) Are there any risks with having cross-border thresholds? (multiple answers possible)

Uncertainty on whether a business will exceed the annual threshold + Creates distortions particularly where there are high VAT rates

35) Do you agree that any threshold needs to be harmonised across the EU and should apply to both goods and services? Agree