

EMOTA Position on LVC, VAT fraud and platform liability

Overarching principles to which EMOTA members adhere:

- We welcome the efforts to facilitate trade, protect revenues and guarantee security and support the work at OECD level to create a global VAT regime to ensure a level playing field for cross-border sales worldwide.
- The vendor should be liable for the collection of VAT.
- Customs duties should be separated from VAT collection if needed and if it will make the process more efficient.
- European authorities need to ensure that there is no deliberate trade diversion with the sole aim of shipping products through other member states to avoid VAT compliance.
- There is a need for a level playing field not only concerning VAT paid on sales, but also concerning the enforceability of the applicable rules.
- Custom authorities and economic operators should develop best practices to reduce the amount of consignments shipped as gifts.
- The implementation of the proposals relies on the readiness of IT systems, not only on the side of member states, but also on the side of the individual players who need time to adapt to the newly set up systems for their part.

Background

We welcome the extension of the One-Stop Shop (OSS) included in the eCommerce VAT package, which was adopted in December 2017. It will facilitate cross-border trade and bolster eCommerce in the single market. We understand that the European Commission is currently working on implementing acts to enforce provisions concerning low value consignments, VAT fraud and platform liability. We welcome the objective of these proposals aiming at fighting against VAT evasion. However, to guarantee a level playing field in the eCommerce sector, the following overarching principles should be respected.

Efforts at global level

Globally, more and more states take measures to fight VAT evasion. Australia for example will require overseas businesses with an annual turnover of \$ 75.000 or more to register with the Australian Tax Office and collect 10% VAT (GST) on all goods sold, including those under the current low-value threshold of \$ 1.000. These measures will result in a decline of cross-border sales as shown by one marketplace who has already announced to stop shipments from Europe and the US and to redirect consumers to its Australian website as they consider the calculation of VAT due on sales to Australia as too onerous. Cutting down cross-border eCommerce trade is not in the interest of anyone. Thus, it is essential that the same conditions for VAT are applicable worldwide. To ensure a level playing field globally, we welcome the efforts of the OECD to create a global regime for VAT liability.

The vendor is liable for the collection of VAT

The world is becoming more and more omni-channel. Therefore, in eCommerce, the vendor (the legal entity collecting the money from the consumer) should be responsible and liable for the collection of VAT, as it is the case in the offline world. This principle needs to apply to European and to non-European vendors in the same way to avoid an unlevel playing field. This is also in the interest of non-EU webshops who don't want postal operators /express couriers to charge additional handling fees to their customers when VAT had not been previously paid, which might deter users from further purchases on the site.

Custom duties should be separated from VAT

The increasing volume of eCommerce consignments is economically important for postal operators and express couriers. Charging handling fees for the collection of VAT to consumers at delivery could lead to a decrease of cross-border orders especially in the area of low value consignments. Moreover, the OSS allows third countries to register for VAT centrally, whereas customs are still collected nationally. The VAT collection through the OSS should not be undermined by the differences in national custom systems. Thus, customs duties and VAT liability should be separated from one another, if this is needed and if it will lead to greater efficiency.

Fight trade diversion on grounds of VAT processing

European authorities need to take measures ensuring that there is a level playing field between member states and cooperation between member states' customs and tax authorities (i.e. working together to combat fraud or VAT evasion). This requires a uniform application and enforcement across all member states.

Deliberate trade diversion with the sole aim of shipping products through other member states to circumvent national measures already taken to fight VAT fraud should be avoided. We understand that this is currently the case in Sweden where the abolition of the VAT exemption for low value consignments led to a diversion of trade flows through other member states such as the Netherlands or Estonia.

A level playing field for selling, but also for enforcement

We welcome the creation of a level playing field for selling products on the European Single Market concerning VAT. However, there also needs to be a level playing field concerning the enforcement of the rules. The enforceability of the rules is only guaranteed for legal entities established in Europe and therefore targeting mainly those who already comply with the rules. Non-EU players can however evade European rules quite easily, as European legal means are rather limited in targeting them. This level playing field for enforcement can only be ensured by authorities and not by online marketplaces, postal operators or delivery operators as they aren't equipped with the same enforcement means or have the necessary competences. Thus, making online marketplaces, postal operators or delivery operators liable would place a disproportionate economic burden on them.

Need for best practices to reduce the amount of consignments shipped as gifts

A major distortion of competition comes from rogue traders shipping their consignments as gifts in order to evade VAT obligations. Therefore, customs authorities and economic operators should develop best practices in order to reduce these practices and make them eventually disappear.

Readiness of IT systems

To be able to implement the measures proposed by the European Commission, member states, customs, postal operators / express couriers, market places and webshops rely on the readiness of their IT systems by 2021. However, there are concerns that the IT systems might not be ready in time. Even if the IT systems of the member states will be in place by 2021, the systems of postal operators/ express couriers and finally the ones of the webshops also need to be adapted to them. Therefore, the early involvement of economic operators in the standardisation and implementation process is necessary and a transition period within the defined time frame should be introduced.

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