

28<sup>th</sup> March 2017

## Modernising VAT for Cross-Border E-Commerce

### KEY MESSAGES

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- 1** BusinessEurope welcomes the proposal for a directive regarding modernising VAT for cross-border B2C e-commerce. The proposed measures have the potential to support the digital economy when it comes to VAT compliance. BusinessEurope subscribes to the view of the European Commission that VAT rules need to be updated in order to encourage online businesses to expand cross-border and thus foster economic growth and job creation. We support in particular the broadening of the Mini-One-Stop-Shop (MOSS) to all B2C distance sales of goods and services, which can relieve administrative burden for businesses significantly. We encourage the Commission to take note of the fast-moving developments in the digital services when considering further VAT-reform proposals.
- 2** BusinessEurope also supports the introduction of a uniform threshold for these sales and services for intra-EU trade, but we would recommend a higher threshold level to further meet the needs of start-ups and other small businesses. For businesses – and SMEs in particular – the following aspects are also key: the reliance of the Member State of identification on audits (home country audits), the application of the invoicing rules of the Member State of identification, an easier error correction process, applying the record keeping rules of the Member State of identification. While we welcome, the soft landing for identification of customer location, we would like to see this measure broadened to all businesses. Additionally, businesses would also significantly profit from a One-Stop-Shop (OSS) that covers both input and output VAT.
- 3** We support the efforts to achieve a level playing field with the removal (or significant reduction) of the VAT exemption for the import of small consignments, but we request for close and prior cooperation with all relevant parties in the shipping chain, especially the postal sector and couriers, in order to achieve an adequate solution of resulting major concerns (liabilities for the VAT, recovery of additional import administrative costs).

### KEY FACTS AND FIGURES

Online cross-border sales in the EU are worth €96 billion a year. (Source: European Commission)

Some €5 billion of VAT is lost each year in the EU due to non-compliance on cross-border online sales. (Source: European Commission)

## WHAT DOES BUSINESSEUROPE AIM FOR?

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- *BusinessEurope hopes for a fast decision-making and implementation process, so that businesses can prepare for the new rules in good time.*
- *Broadening the One-Stop-Shop to B2B commerce where relevant (e.g. for local registrations), should remain a firm goal for the Commission.*
- *It is of the utmost importance that adequate solutions are found with all parties involved for small consignments.*
- *Further VAT reforms by the European Commission should take account of the fast-changing economy – which blurs the line between goods and services - and the role of SMEs in it.*



### **BusinessEurope position paper on the proposal for a directive regarding modernizing VAT for cross-border B2C e-commerce (COM (2016) 757 final)**

As the online sales of goods and services is becoming ever more important in the European economy, the European VAT rules, which were drafted long before the boom of the internet, were in dire need of an update. BusinessEurope supports a VAT system that is conducive to economic growth and job creation. Thus, we welcome the E-Commerce proposal which has the potential to reduce administrative barriers substantially. An improved business environment in e-commerce can contribute to heightened job creation and increased economic growth. We also welcome the extension to businesses not established in the EU as we believe this will increase the overall compliance.

For businesses – and SMEs in particular – the following aspects are key:

- reliance of the Member State of identification on audits (home country audits)
- application of the invoicing rules of the Member State of identification
- easier error correction process
- the introduction of a threshold for the One-Stop-Shop
- A One-Stop-Shop that covers both input and output VAT
- applying the record keeping rules of the Member State of identification
- the soft landing for identification of customer location

However, some aspects of the Commission's proposal need to be re-examined in order to generate broader support by businesses. This applies to the required One Stop Shop threshold for small enterprises, the scope of the One Stop Shop concept and the position of the courier/postal sector in the special scheme for distance sales of goods imported from third countries of an intrinsic value up to EUR 150.

In view of the fight against fraud, BusinessEurope has for a number of years encouraged administrative cooperation between Member States. We are looking forward to the proposals for a Transaction Network Analysis (TNA) as agreed upon in the ECOFIN Council on 25<sup>th</sup> May 2016. BusinessEurope strongly supports this IT-fraud analysis instrument, which creates the possibility to use information on transactions available in the Member States in a more effective way. By using the tool, international fraud networks can be identified faster and more complete. BusinessEurope supports the goal-oriented approach of the TNA. An EU-wide implementation of this IT-tool could reduce the increasing number of different national anti-fraud measures, which often cause needless substantial extra costs for legitimate businesses.

### **Place of supply / goods or services – A call for clear definitions**

We would also like to draw the attention on the fact that for many SMEs active in the digital economy, the potential positive outcomes of the Commission VAT/B2C e-commerce proposal will only materialize if two issues are properly taken care of inside and outside the proposal. In order for the One-Stop-Shop to function properly, businesses need easy accessible and clear information about the place of taxation, which is inherently linked to the definitions of goods and services. The different treatment creates distortions and challenges in daily business operations. A number of digital-based SMEs offer products that can look like a service sold on the internet or as a



product, if the main function of that service is included in a card with a log-in printed on it, giving access to a service (the card being sold in a store). Are we sure that we will have a uniform and clear definition of the difference between a product and a service or should the treatment simply be identical instead? Can a service also be defined as content and can a product partly contain content? BusinessEurope believe that we have only seen the beginning of innovation in the blend of goods and services, and therefore we encourage Member States to ensure that the proposal also cater for future developments.

These are general issues not only linked to the digital economy, but the fixed, administrative cost of identifying this per product puts SMEs at a disadvantage. Therefore, business in general and SMEs in particular, need clarity. This call is even more important in view of the full transition to the destination based system. Therefore, it is important that the new VAT system, which will be introduced by 2018 for B2C products and the new VAT system which will be introduced by 2021 for B2C services, meets the needs of businesses, including SMEs, active not only in the fast-moving digital services area, but generally in the market. Additionally, we believe that an EU VAT information portal could also play a significant role in this area and would significantly reduce the fixed, administrative costs for SMEs.

## **VAT Thresholds**

- BusinessEurope supports the proposal to introduce a uniform optional threshold below which the place of supply of services remains in the Member State of the supplier. This proposal addresses the problems of start-ups and other small businesses who have to apply the place of supply rules of the Member State of the customer. The compliance costs are, apart from other disadvantages, already contrary to the requirement of proportionality. Therefore, we encourage the implementation of a threshold. For BusinessEurope, the proposed level of EUR 10.000 per year is a minimum. With a view to proportionality, it would be welcomed if a less modest level would be taken into consideration.
- BusinessEurope agrees with the removal of the current different (from EUR 35.000 to EUR 100.000) thresholds for distance sales in view of the proposed extension of the MOSS in 2021 to all B2C distance sales. Also in this context, BusinessEurope requests to take an increase of the proposed threshold of EUR 10.000 into consideration as it is a significant reduction from the current individual thresholds.

## **The Mini-One-Stop-Shop (MOSS)**

- In our reaction to the Green Paper on the future of VAT (2011), BusinessEurope has taken the position that a well-functioning One-Stop-Shop is a vital and essential element in a destination based system. Therefore, BusinessEurope is very satisfied that the current Mini-One-Stop-Shop for electronic services will be extended to other services as well as to distance sales of goods, both intra-Community and from outside the Community. The proposed extension means a significant step forward towards a comprehensive application of the OSS-concept (both B2C and B2B where relevant). However, regarding the scope of the



concept, BusinessEurope calls again for a OSS that covers both input and output VAT.

- BusinessEurope welcomes the two proposed additional improvements of the MOSS scheme. Firstly, the extension of the deadline to submit the VAT return from 20 to 30 days following the end of the tax period. Secondly, the provision that corrections to previous VAT returns can be made in a subsequent return instead of in the returns of the tax periods to which the corrections relate. This would decrease the compliance costs for businesses.
- When it comes to VAT compliance in the Mini-One-Stop-Shop regime, the proposal to apply the invoicing rules of the Member State of identification means a substantial relief of administrative burden for the businesses concerned. They would no longer need to apply the invoicing rules of every Member State to which supplies are made, which would provide a significant decrease in compliance costs. The same goes for the proposal to apply the period of record keeping defined by the Member State of identification instead of the current period of 10 years.
- BusinessEurope supports the proposed definition of 'Member State of consumption' to Article 369a of the VAT Directive (point 20(b)). According to the definition, this is the Member State in which the supply of services is deemed to take place according to Chapter 3 of Title V of the VAT Directive or, in the case of distance sales, the Member State where the dispatch or the transport of the goods to the customer ends. BusinessEurope would like to highlight the importance of the last part of the definition. The definition allows businesses to ensure that they are not marketing products in Member States where they would potentially violate marketing legislation due to for instance technical requirements, specific warnings or similar issues. These rules should also be seen in conjunction with the other initiatives like the geo-blocking proposal.
- BusinessEurope also welcomes and supports the proposed audit regime in COM2016(755) amending article 47i and 47j of the council regulation (EU) No 904/2010 on administrative cooperation and combating fraud in the field of value added tax. This single audit conducted by the Member State of identification is a key element in achieving not only the reduction in the administrative burdens, but also in enhancing compliance. BusinessEurope believes the safeguards put in place to ensure that audits requested by Member States of consumption will in fact take place and the fee of 5 percentage that we today see in the customs will be effective and will foster a good audit regime. As noted in the introduction of the Council Regulation, businesses could potentially face a scenario of receiving 28 separate audit requests, which is clearly not efficient and will lead to uncertainty for businesses and may cause businesses to abstain from trading with Member States, where they expect smaller volumes.



## **Soft Landing**

- Furthermore, BusinessEurope welcomes the proposed “soft-landing” in the requirements for determining the place of the consumer of a cross-border electronic service. According to article 24b(d) of the Council Implementing Regulation 1042/2013 the customer is presumed to be established at the place identified by the supplier on the basis of two items of non-contradictory evidence as listed in that regulation. BusinessEurope assumes that the relaxation on the need for two pieces of evidence for suppliers who have less than EUR 100.000 turnover means that below this amount one piece of evidence will be sufficient. BusinessEurope would welcome broadening this measure to all businesses, regardless of turnover.
- Regarding the proposed “soft-landing” in the requirements for determining the place of the consumer of a cross-border electronic service, BusinessEurope assumes that the Council Implementing Regulation 1042/2013 will be amended in such a way that the proposed turnover threshold of EUR 100.000 will also be applicable to other than electronic services and to distance sales with effect from 1 January 2021.
- However, the “soft landing” by itself is not enough. Identifying the place of the customer is a daily challenge, which is difficult to fully automate. Therefore, especially SMEs, highlight the need for clear and practical guidance – guidance that can be automated.
- Finally, we would like to encourage the Commission to develop an EU VAT Web Information Portal to address the difficulty of businesses needing to have the correct information on the VAT rules (including the correct rates) in the state of residence of the consumer.

## **Small Consignments**

- Since the existing VAT exemption for the import of small consignments from suppliers in third countries disadvantages EU-sellers, BusinessEurope supports the abolishment of the threshold provided that practical, easy and swift solutions are agreed. The abolishment should not endanger the efficient flow of traditional mail/documents. It is also important that samples and free-of-charge supplies (when there is no follow-up benefit) can be imported without VAT.
- We would like to stress that the consequences for at least the postal and courier sector require close attention. The European Commission proposes a special scheme for distance sales of goods imported from third countries of an intrinsic value up to EUR 150 (the import scheme) and special arrangements for declaration and payment of import VAT for these sales where the import scheme is not used. BusinessEurope is concerned that the advantages of the special scheme mainly focus on the taxable persons from third countries and their intermediaries. At least for the postal sector the new rules for small consignments up to EUR 150 will lead to an increase in administrative costs, because:



- The relevant packages need a distinguishing mark indicating that the VAT import scheme has been used.
- The postal sector has to sort the packages yes/no VAT import scheme manually (in addition to the current sorting based on indicated value). Automated sorting requires IT-investment and causes additional costs for the sector.
- The interaction with the customs authorities with respect to the “150 EURO” packages is unclear. E.g. it is not clear if the Uniform Customs Code will be amended at this point.
- It is unclear in what way currency exchange rate fluctuations will be taken into account when determining the 150 EUR threshold and therefore it should be ensured that the threshold is aligned with the customs code in translation to other currencies.

Moreover, the special arrangements in case the import scheme is not used, can only apply if the Member State of importation is the Member State of destination. This limitation does not contribute to the growth of e-commerce and does not take into account the demand for “speed of delivery”. BusinessEurope requests the European Commission to work closely together with all relevant parties in the shipping chain in order to achieve an adequate solution to the above-mentioned concerns. BusinessEurope would be more than happy to facilitate such a discussion in order to ensure a robust and workable regime in the interest of Europe.