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Modernisation of VAT collection in Europe must lead to simplifications that support e-commerce and boost international trade

European Express Association (EEA) position on the European Commission's proposal for a Council Directive as regards certain value added tax obligations for supplies of services and distance sales of goods COM/2016/757

The European Express Association (EEA) welcomes the European Commission's recognition of the need to modernise value-added tax (VAT) rules in order to boost trade and accelerate the use of e-commerce. The EEA therefore supports the principles that aim to reduce administrative burden for distance sellers.

We have however serious concerns about the feasibility and unintended implications of the changes in requirements notably for the importation of low-value shipments. The proposal suggests the removal of the VAT exemption for low-value goods below EUR 22 and introduces an 'optional' import scheme for distance sales of goods imported from third countries of an intrinsic value up to EUR 150. These proposed changes would result in significant administrative burden, put an unreasonable responsibility with the express companies and could distort competition and thereby hinder the smooth functioning of the market.

The comments in this paper are based on the following key principles:

1. VAT rules should be simplified and should minimise administrative burden;
2. Import VAT accounting should be separated from customs processes of imported goods;
3. Requirements on VAT-related liability and control should be optimised;
4. 'Overcorrecting' perceived distortions should be avoided as they can create protectionist measures.

1. VAT rules should be simplified and should minimise administrative burden

In accordance with the current rules, Member States may grant an exemption on VAT for imported goods which have a value that is below EUR 22. The proposed removal of this possibility would mean that all consignments, no matter how low in value, will need to be subject to current standard customs and VAT collection processes, including business-to-business volume. This will result in significant administrative burden for importers and collection costs for national authorities which may ultimately reduce cross-border trade. The EEA considers it vital, for businesses, consumers and authorities in the EU, that the collection of VAT is simple, lean and cost-effective. The extent to which this may be true, ultimately depends on the amount of non-EU traders that register with the MOSS. It is therefore important to get clarification on how non-EU traders would be incentivised to do so. Before the VAT de minimis threshold is removed altogether, an alternative, strongly simplified VAT collection model must be set up. The proposed Directive should also ensure a smooth transition from the current process to the new one in order to avoid operational disruptions.

With regards to the fall back scheme, it is important that the MOSS brings down the costs for collecting small amounts of VAT. The establishment of simplified procedures is crucial for an efficient and modern VAT collection system that can facilitate the prospective growth in e-commerce, and maintain a level playing field for business. Without such procedures, customs administrations will incur costs disproportionate to the amount of collected VAT.

In accordance with the current rules, goods with a total intrinsic value equal to or less than EUR 150 are exempt from import duties in the EU. The European Commission's proposal introduces a special import scheme for distance sales of goods imported from third countries of an intrinsic value up to EUR 150 and a fall back scheme is proposed for sales where the import scheme is not used. The express industry is concerned that these new rules will result in additional administration and cost, as the carrier would need to implement new processes to check whether a MOSS VAT number is available and/or the seller wishes to opt for the special scheme and/or the consignee agrees to use the fall back scheme.

2. Import VAT accounting should be separated from customs processes of imported goods

In order to modernise VAT rules, import VAT accounting should be separated from customs processes of imported goods and it should be simplified by departing from a transactional basis approach towards periodic reporting and payment. In order for this to function efficiently, customs formalities at entry need to be as simple as possible. For shipments below 150 EUR, there should in particular not be any requirements for customs import declaration either in standard or simplified form but rather be based on clearance by other act, such as crossing the border or presentation, while the security and safety aspect is tackled through entry summary declarations. If not, any advantage in time and cost by moving tax collection 'upstream' would be lost. It is also extremely important to note that VAT collection and payment are primarily the responsibilities of the vendor (supplier of goods or services) and the buyer/receiver, not the customs declarant or carrier.

3. Requirements on VAT-related liability and control should be optimised

Such optimisation would balance the need for information and the need to facilitate movement of goods, recognising the established partnership of express operators and customs/tax administrations. The express industry is a proven reliable partner of customs and taxation authorities. It maintains control of shipments from shipper to consignee, uses automated IT systems, and uses the Authorised Economic Operators (AEOs) certification. As trusted partners of government authorities, the rules for liability and control should be optimised to balance the need for tax information and the need to facilitate expedited shipments, as enshrined in the Trade Facilitation Agreement recently ratified by the European Union, but also aligned to respect each one's responsibility throughout the import process.

While the express industry assists in VAT collection, the express carriers should under no circumstances be liable for paying VAT in case it is impossible to collect VAT from the end-user. It is therefore crucial that qualification requirements for proof of non-delivery and/or non-collection of VAT, such as a declaration of return shipment, are clarified in the proposal.

The EEA would further propose that, through Implementing Acts, the Commission visualises the process of return shipments under customs supervision. If the parcel cannot be delivered and remains on stock, VAT is not due, but the import tax is still to be paid by the customer. This is a cumbersome procedure for operators, and we believe that visualisation of this process will help to identify where possible improvements can be made.

Moreover, given that the carrier does not have a relationship with the consignee but with the platform and/or supplier, it is important that it is the latter, and not the former, that determines whether the

shipment is subject to either the fall back scheme or the vendor scheme. A database that includes all the rates for goods, including reduced rates, in the MOSS is therefore of crucial importance.

Express carriers furthermore have many agreements with suppliers to recharge the VAT and duty portion in the charged price to the final consignee. However, if the supplier does not use the MOSS, it will be charged again upon importation. Therefore, in relation to VAT collection under the fall back scheme, the definition of 'collection' should be broadened to read "final consignee and/or the supplier". This would then reflect that if the fall back scheme is used, the landed costs can still be collected from the supplier, not only from the final consignee.

4. 'Overcorrecting' perceived distortions should be avoided as they can create protectionist measures

We are of the opinion that a reduction or cancellation of the small consignments relief, without other facilitation, will lead to an incremental cost increase on low-value shipments destined to the EU. This would result in a higher price for the customer and would create a reverse distortion effect, leading to a negative impact on international trade. If the Directive fails to meet the above-mentioned principles of simple, lean and cost-effective VAT collection, the new rules may be considered as artificial trade barriers, which would be in full contradiction with the Trade Facilitation Agreement ratified by the European Union, thus leading to potential third-country retaliation. Open trade is essential to ensure strong, sustainable, balanced and inclusive growth.

Our request

The EEA calls upon EU Member States to carefully consider the implications of the removal of the VAT exemption for the importation of low-value consignments from suppliers in third countries and to ensure that genuine simplifications are in place to accompany such changes. It is equally important that the proposal clearly ring-fences the liability for VAT collection. In the EEA's view, operators cannot be held liable for collection in case it is impossible to collect VAT from the end-user. Clear rules on the required documentation for proving such cases is necessary and desirable, so as to create a single rulebook and reduce the scope for different interpretation in EU Member States.

The European Express Association (EEA) is the representative organisation for the express industry in Europe. The express industry provides a fully "integrated" service that accelerates the process of transporting goods across the globe. At the point where express shipments cross international borders, the express industry plays a unique and crucial role. Members of the European Express Association represent over 30% of customs clearances and some of the largest customs brokerage operations in the EU. Not only does the express operator handle the customs clearance of a given shipment, it also looks after the payment of duties and taxes as required by the relevant geographical jurisdiction. The express industry employs over 250,000 people across the EU and supports a further 175,000 indirect jobs.