

Ensuring modernised EU VAT rules for e-commerce *EEA Position Paper*

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European Express Association (EEA) position paper on implementation of new EU rules on VAT for e-commerce and the need to consider an alternative VAT collection framework.

Main challenges to the VAT reform and its implementation

On 5 December 2017, the Council of the European Union introduced a new VAT Directive¹ which aims to modernise and simplify the existing European VAT system. The Directive abolished the “de minimis” for VAT on importation of goods into the EU with a value below €22 per shipment – goods which currently benefit from no VAT charges and are not subject to a formal customs declaration. While the express industry is now actively preparing for the implementation of this measure, our analysis on “de minimis” thresholds has not varied: setting a meaningful “de minimis” level generates economic benefits by refocusing public revenue collection on more efficient revenue sources and by creating opportunities for increased e-commerce.

Along with the abolition of the “de minimis” for VAT on low value shipments, the commitment was made that collection of VAT on low-value consignments would be done in a simplified manner and away from the border so that trade would not be hampered.

In December 2018, the European Commission proposed new implementing legislation for the smooth transition to these new VAT rules for e-commerce to come into effect on 1 January 2021.

The new rules, collectively known as the VAT e-commerce package, fundamentally change the cross-border VAT collection process for so called “low-value consignments” (goods below €150) in the EU. They include a possibility for on-line platforms to switch from collection of VAT at the border to a vendor-based collection model. Other options are collection by an intermediary or a fall-back scheme with a simplified customs declaration in case the vendor-based model or intermediary model is not used.

The disruption caused by removal of “de minimis” was to be mitigated through the creation of a more efficient VAT collection process away from the border via the vendor-based collection model or the Import One Stop Shop (IOSS). However, during the development of the implementing provisions it has become clear that the new process will only add more requirements, including a separate customs declaration for IOSS consignments, albeit with a reduced-data set for shipments containing goods under €150. This will lead to further disruption through additional submissions, processing and costs for traders and ultimately increased prices for end consumers.

¹ Council Directive EU 2017/2455, OJ L 348/7 amending directive 2006/112/EC and Directive 2009/132/EC

There are also other major concerns, such as which data elements will be contained in the reduced-data set and the amount of additional investment in resources that will be required for economic operators and customs authorities to handle the vast increase of declarations each year. This is in sharp contrast with the initial plans of moving the collection of VAT away from the border and keeping the border processes simplified. Furthermore, registration in IOSS has been made highly complex and burdensome in particular for SMEs as third country sellers must appoint either a fiscal representative (to guarantee VAT liabilities) or have a place of business in the EU.

The VAT reform has moved away from VAT collection from the border and a simple registration process, to significantly increased detail and bureaucracy. This has led to non-tariff barriers for sellers outside the EU who are at a disadvantage compared to EU based sellers when paying VAT:

EU-based company <i>Selling 1000 items in a quarter domestically (intra EU)</i>	Third country trader <i>Selling 1000 items in a quarter</i>
Requirements under VAT process:	Requirements under VAT process:
1000 till receipts (domestically), or 1000 invoices (intra EU) in EU format	1000 invoices to buyers
1 quarterly VAT return– including VAT rates applicable in each country (possibly 130+ different rates);	Monthly VAT returns, whether or not distance sales of goods imported from 3rd countries have been carried out –including VAT rates applicable in each country (possibly 130+ different rates)
1 payment of VAT	1 payment of VAT
This results in 1 VAT return and 1 payment as per regulatory requirements.	This results in 1000 customs declarations, 1 payment and 1 VAT return.
Who can fulfill these requirements?	Who can fulfill these requirements?
EU company can file themselves or use a tax advisor.	Third country seller required to appoint a fiscal representative or have an EU presence, which comes at a cost.

Finally, there are a number of elements necessary for the successful implementation of the VAT for e-commerce package which are not currently ready and will not be ready in time for the 2021 deadline. These include clear and comprehensive legislation to define the processes, various stakeholders’ liabilities, and consequently IT systems supporting these.

Timeline of implementation

The EEA supports the need to modernise VAT rules in order to boost trade and accelerate use of e-commerce in the EU. However, a smooth and proper application of the new measures will be prevented unless there is an equally smooth implementation of a framework of changes to the relevant VAT and Customs legislation, government IT systems, and economic operators’ IT systems and processes.

The EEA is very concerned that both customs authorities and business will not be ready for proper implementation by 2021 but there appears to be no willingness to postpone implementation of the new rules. The EEA believes that the Commission must consider using ICS2, which will be rolled out by 1 March 2023 for both express and postal as the deadline for implementing the VAT Directive as this can provide a greater degree of efficiency and predictability of process for all stakeholders. It is important that the introduction of both the ICS2 and the substantive measures

of Directive 2017/2455 take place simultaneously as much as possible which will allow for re-use of data and more efficient processes for both customs authorities and economic operators.

Given the delays faced by Member States already at this stage, the EEA argues that there is an acute need for an assessment of whether Article 2 of Directive 2017/2455 can be implemented by 1 January 2021. In our view, this assessment cannot wait until the end of 2019 as the necessary legislative changes are not yet finalised and a substantial number of EU Member States have indicated that their systems will not be ready.

Adopting a global framework: the Australian model

The introduction of a realistic timeline should be used for the EU to adapt its VAT collection system to an acceptable standard which meets the requirements of today's globalized world. This means a simplified and mandatory vendor collect model. Border processes should be kept to a minimum to as to avoid non-tariff trade barriers.

In this sense, Australia offers a model which has recently shifted from collection of Goods and Services Tax (GST) at the border to a mandatory vendor collect model of low-value consignments which is proving highly effective. Some characteristics include:

- Goods with a customs value below AUD \$1,000 per shipment subject to GST from 1 July 2017 collected through suppliers, electronic distribution platforms or goods forwarders under the existing registration system or under a simplified system;
- New streamlined GST registration system for vendors, electronic distribution platforms and goods forwarders;
- Better transparency of online purchases, i.e. consumers can see the total cost payable at the time of sale (and can accept or abort the transaction at Check-Out);
- Minimises collection costs for transporters, compliance and enforcement costs for government and delivery delays to consumers; and
- If properly implemented to apply to postal operators in the same manner as private carriers, the model should capture the vast majority of postal shipments.

The Australian model was described in 2017 by the Conference of Asia-Pacific Express Carriers (CAPEC) as *“the most efficient and equitable approach to global e-commerce”*. In particular, it praised the Australian model for including Point of Sale GST at origin, equitable vendor registration reporting requirements, less red tape and greater certainty for consumers, an air “express” pathway for all Australian consumers and a collaborative approach with the Australian Tax Office and Treasury to streamline reporting processes and maximise compliance levels.

Conclusion

In order to ensure a smooth implementation of new rules on VAT for e-commerce with a minimal impact on the supply chain, the EEA makes the following recommendations:

- Immediately start the assessment of whether Article 2 of Directive 2017/2455 can be implemented by 1 January 2021;
- Further explore linking the deployment date of ICS2 Release 2 with the deadline to implement the VAT Directive in order to minimise the operational impact; and
- Remove VAT collection from the border by introducing a mandatory vendor collection scheme as introduced in the Australian model.