Digitalising VAT

Indirect Tax



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Abi Briggs and *Heidi Bonneywell* consider the role of VAT in achieving an EU digital single market

Key Points

What is the issue?

In its strategy for the digital single market, the European Commission specifically acknowledges the obstacles that the current VAT system presents to cross-border sales

What does it mean to me?

Under the strategy for the EU digital single market, the commission proposes to extend the single MOSS electronic registration and payment mechanism to include cross-border online sales of physical goods

What can I take away?

Although early, businesses should start considering how the proposed changes to a digital single market can benefit them

The completion of the digital single market is cited as one of 10 political priorities for the European Commission. Within its strategy to achieve this, announced on 6 May, three core strands have been identified:

1. better access for consumers and businesses to digital goods and services;
2. creating the right conditions, a level playing field and environment for digital networks and content services to flourish; and
3. maximising the growth potential of the digital economy.

The proposed changes seek to address these. Specifically, they aim to promote the growth of e-commerce in the EU to realise the benefits of increased digital connectivity.

When looking at the demands of a globalised and digitised economy, much of the recent tax focus has concentrated on managing direct tax issues. However, in its strategy for the digital single market, the European Commission specifically acknowledges the obstacles that the VAT system presents to cross-border sales. It is no surprise that it earmarks VAT as needing further attention and that changes are being proposed to it in order to help e-commerce to grow in the EU.

Proposed VAT changes

The proposed measures to assist cross-border sales of physical products and digital content through e-commerce and manage the VAT-related barriers to trade vary in complexity in application and scope.

For instance, the proposal to remove the low value consignment relief VAT exemption should be relatively quick and easy to implement from a policy perspective and will level the playing field for EU and non-EU suppliers. The intention is to promote trade within the EU by making costs more equal.

In contrast, other proposed measures, for example, extending the mini-one stop shop (MOSS) to goods, harmonising the VAT registration threshold across the EU and reviewing the VAT treatment of e-services such as e-books and online publications, will be more complex in their application and implementation. However, if and when introduced, they should facilitate improved cross border e-commerce.

Extending MOSS to goods

The introduction of MOSS for digital services was perhaps one of the most significant VAT compliance changes for years, given the level of cooperation required across all 28 member states. Under the strategy for the EU digital single market, the commission proposes to extend the single MOSS electronic registration and payment mechanism to include cross-border online sales of physical goods.

It is hoped that this measure will encourage trade by reducing the compliance burden and remove the compliance disparity between sales of goods and services to EU consumers. Recently, businesses could have as many as 28 EU VAT registrations if they are registered for distance sales in all member states. Bringing this VAT compliance within MOSS would mean:

- businesses having to deal with only one tax authority for payment and filing obligations across the EU;
- removing other compliance obligations, such as the need to file an EC sales list, would help; and
- in addition, having only the ‘home’ tax authority conduct a single audit should reduce time spent managing audits and associated negotiations with foreign tax authorities, something now seen as a deterrent to cross-border trade.

Such a significant shift will take time to analyse and implement. However, initial feasibility studies are in progress.

The MOSS for services has had some teething problems and these will need to be considered and addressed if the intra-EU supply of goods is to be brought within this. The commission recognises this and a review of the impact of the 2015 changes and MOSS is under way. Consequently, feedback is being obtained from businesses affected and some of the commission's proposals outlined under the single digital strategy are also being tested. The first reports from this review are expected in spring 2016, so it will be interesting to see how quickly any findings can be implemented in practice to address any perceived difficulties with MOSS.

Proposed review of the tax treatment of some e-services

The commission recognises the need to review the tax treatment of e-books and online publications. Most member states have lower VAT rates for printed matter (physical books), but, with the exception of Italy, exclude e-books. Variously, an e-book is regarded as being:

- the same as a physical book because its content is identical, so it should be taxed in the same way under the principle of fiscal neutrality; or
- an electronic service with additional functionality compared with to physical book, where the method of delivery changes the nature of the supply and so the VAT treatment will differ accordingly.

In July 2012, the commission began infraction proceedings against France and Luxembourg for charging the lower rate of VAT on e-books. The ECJ concluded in the case of *K Oy* [2014] All ER (D) 144 (Sep) (Case C-219/13) that member states can levy different rates of VAT on e-books from those on printed books without breaching the neutrality principle, placing reliance on services (which they regard e-books as being) being excluded from the reduced rating provisions regarding books. Two incidents indicate that the matter is far from over. First is Italy's reduced rate on e-books, which was introduced *after* the infraction proceedings. Second is the call by the culture ministers of France, Germany, Italy and Poland for the EU to charge the same VAT rate for printed books and e-books.

What the debate undoubtedly highlights is the inherent need for the current indirect tax system within the EU to be modernised to take into account the commercial and practical realities of the digital age, an irrelevance when the legislation was drafted and enacted in the 1970s. While obtaining agreement from all member states on the level of taxation may take time, there should be fewer barriers, at least from a VAT

perspective, to companies benefiting from cross-border e-commerce.

Broader challenges

New disruptive technologies are emerging to transform how customers interact and the way business is conducted. Accordingly, widespread adaptation is needed to reflect the changing technological and societal landscape. The digital single market strategy covers all aspects of cross-border trade that will need to be addressed throughout the EU, including legal, regulatory, administrative, logistical and taxation challenges. Some of the broader challenges to be addressed, and which could have VAT implications, include:

- Clear contractual rules for online sales. To whom does a customer have recourse if goods are delivered from a supplier in one country but ordered through a platform in another?
- Overhaul of geo-blocking and regulatory-based fragmentation. Will this increased consumer choice lead to increased compliance costs for some entities as well?
- Disparity in shipping costs. Are the delivery costs charged to customers in cross-border EU transactions versus domestic transactions inherently prohibitive and not linked simply to miles travelled?

Where next?

Although most businesses will welcome the simplification measures being considered by the commission, it is unlikely any meaningful changes will be implemented quickly. It took more than 10 years to end mobile phone roaming charges in the EU, although it is hoped that the single digital market strategy will not take that long. The initial signs are positive – the European Commission has outlined a clear strategy and the positive influence the proposed changes should have on local GDP and the competitiveness of member states should help to foster political agreement for a faster pace of change. Key milestones have been timetabled for 2015 and 2016. As such, businesses should start to consider what the changes outlined above could mean for them in order to be best positioned to realise the benefits of a digital single market.