Special Committee on Financial Crimes, Tax Evasion and Tax Avoidance (TAX3)

Study presentation

VAT FRAUD
ECONOMIC IMPACT, CHALLENGES AND POLICY ISSUES

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10 October 2018

THE REPORT

✓ Main types of VAT fraud explained

✓ Current EU regulatory framework

✓ Proposals to reform the EU VAT system

✓ Assessment

✓ Recommendations

THIS PRESENTATION

Focus on:

1. The 'e-commerce package's provisions concerning imports

2. The 'definitive regime' proposal and the objective to remove MTIC fraud

3. Selected recommendations

1. THE E-COMMERCE PACKAGE

✓ Adopted 5 December 2017

✓ Focuses on B2C e-commerce

- Main point of concern: the new procedure for imports

E-commerce imports - What were the main problems to solve?

- ✓ Undervaluation
- ✓ Administrative costs

Does the e-commerce package address these problems?

New procedure for imports

✓ Small consignment exemption removed

✓ 3 scenarios for collection (goods not exceeding EUR 150):

1. Non-EU **suppliers invited to register to the OSS** (and appoint tax rep)
   - Imports exempt under the assumption that VAT will be declared and paid periodically via the OSS.
   - Monthly listings of imports (including value declaration) to compare with OSS declarations.

2. If a **platform 'facilitates'** the supply, it becomes liable for the VAT (irrespective of whether it is established in the EU and whether it is registered to the OSS).

3. If the supplier/platform does not register to the OSS, the **transporter is liable for the collection and payment of the VAT.**

Scenario 1: VAT remitted by supplier via OSS

Monthly OSS returns – How do we verify correctness of declarations (since we know that many suppliers currently make false declaration at import)?

- Tax representative? How to audit?

Value declared in the import declaration: Will it be checked? (otherwise, comparison with OSS declaration is useless)

- OSS registered suppliers – are they not entitled to a 'fast lane'?

- If random controls, how does this reduce the administrative burden as compared to the current situation?

- In any case: verification of validity of OSS number will come at a cost.

Scenario 2: A platform 'facilitates' the supply and is liable to pay

1. Purchase on a platform that is OSS registered: platform liable to pay the VAT on a monthly basis – data to receive/take from suppliers (Quality of the data + are all platforms trustworthy?)

2. The seller indicates Ebay OSS number to obtain exemption at import (valid number = exemption).

What if this seller (or any other seller) also uses the same OSS number for supplies not facilitated by Ebay?

→ Major risk of abuse of OSS number

Scenario 3: transporter liable to pay VAT

➢ Transporter collecting the VAT on the basis of data obtained from supplier

▪ **How do we check the data? Suppliers fraud now – why would it be different in 2021?**

▪ Random controls? **How does it reduce administrative burden** as compared to current situation?

▪ **Postal companies less equipped** to assess risks ⟶ more likely to be used by fraudsters.

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Conclusion:

We have a broken door (undervaluation + administrative costs for customs)

and instead of fixing the door we have replaced the windows (new obligations for non-EU suppliers, platforms, customs and the Member States and new risk for platforms without addressing main problems).

2. THE 'DEFINITIVE SYSTEM' PROPOSAL

✓ Published 4 October 2017 (detailed technical amendments proposed May 2018)

✓ Focuses on intra-EU B2B supplies of goods

Main point of concern? MTIC fraud will remain (under a different form) and might increase because of the design of the OSS system + Severe risks of tension between the Member States

A new type of MTIC fraud (where the supplier and not the customer will be the missing trader) will arise:

1. Customer X in MS A pays 10 VAT to supplier Y in MS B and is immediately entitled to deduction/refund of 10 VAT in MS A.

2. Supplier Y in MS B fails to declare and pay 10 VAT via the OSS in MS B (goes missing).

➢ How long before MS A realises that 10 has not been « paid back »?

➢ What will MS B do to help MS A?

➢ Is this new type of fraud going to arise in 'all directions'? No! Only with VAT paid from high VAT rate MS!

Is this 'as bad as' carousel fraud?

No because the 'circular feature' of the carousel fraud, with amounts growing at every round will be thwarted.

Yes because the gains will depend on the margin and frequency of the transactions – fraudsters helped by the longer reaction time on the side of the Member State of consumption.

Conclusion:

the 'definitive system' will put an end to carousel fraud as we know it but will open opportunities for new types of MTIC fraud AND will create tensions between the Member States

! RISK OF TENSIONS BETWEEN THE MS !

- The issue of 'trust' is poisoning the OSS system (also to be taken into account for the CTP mechanism).

- The OSS is a decentralised model of VAT collection (VAT collection is 'outsourced').

- The risks related to cross-border payments of VAT is the crux of the problem (VAT of MS A being paid to a taxable person in MS B in the hope that it will be 'paid back').

- Building mechanisms of trust between the MS is positive - 'More EU' is a positive approach but not without precaution.

3. SELECTED RECOMMENDATIONS

In intra-EU situations: how to improve the OSS?

Two avenues of reflexion:

1. Structural reform of the OSS: from a MS-based towards an EU-based OSS

- Allocation of taxing rights remains untouched

- More transparency and control for the Member States

- Fraud patterns/problematic taxable persons more quickly identified (Eurofisc)

2. Investigating new technologies to solve the issue of trust arising from cross-border movements of VAT.

- Example: Ainsworth, Alwohaibi, Cheetham and Tirand (2018), for example, have proposed to place cross-border transactional data on a blockchain and to use secured digital currencies that can only be used for VAT payments (single purposes) instead of using fiat currency

In inbound situations, is the OSS a sustainable option?

Sending our VAT to China, India, the US etc… and hoping the suppliers will 'pay back' via the OSS?

International cooperation will not be enough

Looking for other options:

- Blockchain (Ainsworth et *al.*, 2018)

- 'Technology enabled' third party or customer collection model (M. Lamensch, 2015 and M. Lamensch et *al.* 2017)

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IN THE MEANTIME…

Continuous efforts to thwart carousel fraud

✓ Active participation of all the Member States to Eurofisc and the TNA (data mining, use of an algorithm to reveal networks between different operators).

✓ An ambitious mandate for the EPPO.

✓ Criminalisation directive to be considered as a minimum standard.

Carousel fraud should become « a risky business »

A solution for protecting platforms from abuse of their OSS numbers (to be found before 2021)

Avenue for reflexion:

A valid OSS number should not be a 'green light' to enter the EU with a VAT exemption

A 'double check' system can be put into place

Pre-arrival data from the platform to be matched with data from the supplier at the moment of import

THANK YOU

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