

ZPP's contribution to the Commission's consultation on the VAT in a digital age

The Union of Entrepreneurs and Employers (ZPP) is pleased to participate in the public consultation on the "VAT in the Digital Age" proposal announced by the European Commission. Beyond responses provided in the survey, we would like to comment particularly on Single EU VAT Registration and Import One Stop Shop (IOSS) development workstreams. Additionally, we would like to draw attention to the current functioning of the Union One Stop Shop (UOSS) & IOSS. We will focus on how these mechanisms can be modified to serve their purpose better.

IOSS & UOSS have experienced changes in their functioning following the e-commerce VAT package. The introduction of both processes has undoubtedly simplified VAT registration and accounting. Nevertheless, together with our members, we have identified certain issues that do not provide legal certainty for enterprises and can lead to loopholes in law application.

Firstly, we find the functioning of the multiple OSS registrations redundant. Non-EU entities might, under currently functioning VAT rules following the go-live of the e-commerce VAT package, establish three different registrations for fulfilling EU VAT obligations; these are Non-Union OSS, UOSS and IOSS. In our view, this creates unnecessary complexity for companies. For this reason, we state that it would be beneficial to integrate these different schemes so that all types of supplies can be declared through One Stop Shop, including imported goods, services and domestic sales.

Secondly, entrepreneurs find it troublesome to report credit notes and adjustments on product returns, invoicing errors and post-invoicing discounts. Current regulations require adjustment to be divided by country and period. This causes avoidable burdens for companies to fulfil their tax duties. In practice, this results in burdensome reporting obligations of the credit notes, which might take longer to process than to put together the return reporting tax due. We recommend easing the responsibility to split credit by period, thus making the One Stop Shop return efficient.

Import One Stop Shop (IOSS)

We welcome improvements brought with the implementation of the IOSS, such as the introduction of VAT calculation and remittance upon sale. Nevertheless, we would like to address issues that remain obstacles for companies under the current legal order.

First of all, we would like to draw attention to the double taxation issue. IT taxation systems in some of the EU Member States are not yet ready to implement the functioning of the IOSS. As a result, H1 customs declarations of the IOSS-eligible shipments do not recognise IOSS identification codes and might lead to the double taxation of the companies.

EU has done much to implement the mechanism to support double tax refunds. Nonetheless, this should only come as a temporary solution and shall be replaced with a widely functioning IOSS system across the EU. This is because double taxation causes administrative burdens for entities obliged to declare tax. Moreover, taxpayers might pose sanctions resulting from the lack of complementarity in functioning H1 customs declarations at the EU level. Therefore, IOSS numbers should become recognised by IT systems across all EU Member States to harmonise the execution of the regulations and ultimately simplify the functioning of the cross-border enterprises.

Another factor causing inconveniences for the operation of European entrepreneurs is the potential misuse of IOSS numbers. Under currently binding regulations, it might occur that the IOSS number will be intentionally used inappropriately as well as misused by mistake—currently, IOSS is an optional feature. Additionally, numbers are not kept confidential, and there is no transparency among IOSS holders. That is why customs authorities can't verify the actual holder of the number or payment of the VAT consignment but only whether the number is valid. The above factors contribute to the increased possibility of IOSS numbers misuse to avoid paying VAT at the customs border. For that reason, IOSS accounting is more frequently controlled, which might cause additional burdens for companies. IOSS registrant will have to explain reconciling differences between EU customs data and IOSS returns. This involves proving why they are not responsible for the IOSS misuse.

Finally, in the EU, there are existing disparities between customs legislation and EU VAT. It is evident in the example of non-IOSS eligible shipments under EUR 150, such as B2B and excisable products, requiring direct clearance in the final delivery country under the scope of VAT and the new customs competent office rule emphasised in Article 212(4) of the UCC/IA.

In our opinion, the functioning of IOSS and UOSS should be strengthened in order to make taxpayers' obligations harmonised across the EU and thus ease the fulfilment of their obligations and remove the existing barriers to doing business.

Proposals to improve the functioning of UOSS and IOSS

The Union One Stop Shop has been enforced with the beginning of July 2021. It brought the simplification to the VAT settlement process for entrepreneurs. IOSS also forms a base for EU single VAT registration. Based on our expertise and experience shared by our members, we recommend UOSS extension to include usage in cases that were included in the e-commerce VAT package reform from July 1, 2021. We suggest covering with its scope reporting intra-EU transfers of own inventory as well as reporting and payment of VAT due on any onward B2C sale from the place of storage to the local customer. With this, we aim to remove local registration responsibilities for entities without a local establishment to conduct these transactions. We state that the UOSS serving domestic sales by non-established entities will have a positive impact unless a harmonised EU-wide domestic reverse charge mechanism is introduced whereby the customer self-accounts for the VAT due on its purchase. In our opinion, it would be beneficial to prevent registration obligations in the same way both B2B sales and B2C supplies. Often, enterprises will trade with their contractors, not knowing their actual business status at the time of the sale. For this reason, a reform introducing changes to B2C supplies would eradicate many additional VAT registration burdens for the EU industry and empower cross-border trade.

Harmonising VAT registration through its standardising would enable the lifting of administrative requirements. It would fully enrich European entrepreneurs' potential and minimise avoidable barriers for tax authorities, governments, and customs services. Hence, it will benefit both the administration and the private sector, which should be a primary aim of the regulation. For national governments, this means creating a more competitive EU market, which would lead to the intensification of trade, thus increasing tax revenues. At the same time, tax authorities will benefit from simplified and compliant reporting procedures and easier facilitation of cross-border goods movements. As a result, there will increase in the on-shore of goods and services on the internal market.

On the other hand, the influx of individual packet shipments from non-EU countries will be reduced due to onward incentive distribution within the block. This will reduce the workload of customs services as

they will receive more bulk shipments than individual ones. It means better access to the internal market and increased trade for the private sector. SMEs will benefit from lesser tax obligations; thus, they will be more competitive. Last but not least, customers will have a wider choice of products at more competitive prices, which will be delivered faster.

Extension of the UOSS to all B2B and B2C sales is beneficial and relatively easy to carry out in our stance. Alternatively, we envisage the possibility of implementing a domestic reverse charge for B2B supplies to locally VAT registered companies across the EU. Equally important is to reinforce the mechanism over the transfer of goods. We note that the efficient system for cross-border transfer of goods would benefit the lessors of consignment stock sellers, e-mobility providers, agricultural producers, touring events companies, moveable property, customers of toll manufacturers, retailers & wholesalers using remote fulfilment, as well as companies involved in sale-or-return contracts.

Current regulations make the VAT recoverable by entities through their local VAT registration in the country of arrival. This results from the fact that the cross-border transfer triggers a VAT charge but no cash flow or associated cost. On the other hand, the cash flow to the input side of transfers of own goods in UOSS might not be easy as is the case for the output side. Currently, there is no possibility of recovering VAT in the UOSS for the VAT due to cross-border transfers of own goods by which the output VAT due on cross-border transfers could be reclaimed. We acknowledge that the proposal of a full extension of UOSS on a VAT recovery feature would not gain the full support of Member States. However, we have formulated two possible policies that would be optimal to tackle the above concern.

Firstly, we believe that there should be applicable VAT exemption with credit to the transfer of own goods in the country of arrival, thus forming an equivalent VAT cash-flow position today. This solution has multiple benefits. Since no VAT reporting requirement and refund are required from the EU Member State of arrival, companies transferring of own goods would not face the cash-flow cost. Given that there is no net VAT revenue associated with movements of own goods in almost all cases, there is an evident similarity with the state of play as it is today. This applies to the outputs and inputs netting off in the same VAT return. On a technical note, it is worth mentioning that extending UOSS functionality would require a simple adaptation of the system. It could be implemented into the broader DRR initiative. Hence, we perceive this solution as the easiest to implement for both taxpayers and national tax authorities level.

Alternatively, we opt for limiting the VAT cash-flow disadvantage by strengthening the VAT recovery mechanisms for non-established entities. In our view, creating more straightforward claim procedures under the Council Directive 2008/9/EC (known as '8th Directive') for taxable persons registered in the UOSS – both EU and non-EU established. On a practical note, this would enable cash-flow cost without separate VAT registration for EU companies and entail output VAT reporting requirement, which would remain on the transfer of own goods. VAT refund requests would have to submit from the EU Member State of arrival due to the lack of VAT recovery feature built into the UOSS. This would require implementing specific changes to cross-border refund schemes currently in operation. The first change would need to extend the cross-border refund eligibility to VAT incurred on intra-EU transfer of own goods which VAT has been paid through the UOSS. It would apply to both EU and non-EU enterprises.

Additionally, a period specified in the 8th Directive for processing reclaims would need to be significantly reduced. It would mainly relate to VAT self-accounted on cross-border transfer of own goods. We suggest linking the UOSS with data in the 8th Directive claim system. Validation of VAT claimed on cross-border transfers on own goods shall be processed promptly matching claim and payment done through the UOSS. This will enable relevant Member States to refund the VAT immediately.

To sum up, ZPP recommends a single EU VAT registration model that includes B2C and B2B supplies and the transfer of own goods. Both options will reduce cash drag and total VAT cost on transfers of own goods. The ultimate goal of the legislator shall be to increase VAT compliance across the block while leveraging incentives for the companies by improving investments put into developing UOSS for both governments and taxpayers.

Proposals to improve the functioning of IOSS

We believe it should be of the legislator's highest concern to improve the security of the IOSS system. That is why we identified in our expertise specific proposals to make the IOSS more fraud-proof and improve its performance.

Firstly, we suggest making the IOSS obligatory for all business entities, which would be a complementary solution. In any proposal, we find covering all deemed suppliers, such as marketplaces, essential in the short term. The reason is to ensure a level playing field by countering unfair market practices (i.e. undervaluing goods or migration to the marketplace, which have not opted into IOSS, thus misuse of system's numbers).

Secondly, we state that the European Commission shall monitor the system in order to protect it from the misuse of IOSS numbers. This can be done by comparing deviances reported by the Member States on the number of parcels declared through customs under the corresponding IOSS number and on IOSS returns. This would apply to numbers whose deviances cannot be explained by other factors than misuse, ex. accounting error.

Thirdly, currently binding regulations create many possibilities for its legal interpretation and, consequently, strive the complexity for the customs clearance at the border. This might lead to certain inconsistencies, beginning with the supplier opting out to use the IOSS or parcels, including items excising duty regulations. Moreover, when the parcel is sold to a business or private customer. Avoidance of these frictions shall lead to higher satisfaction for customers and suppliers and reduce the workload for customs authorities, whose capacity shall be focused more on countering fraud.

We notice that high-value shipments (over 150 EUR) are subject to customs duties. Thus there are to be included in the taxable base for VAT purposes. That is why we suggest prioritising expanding the IOSS to higher value shipments. Companies might not necessarily know the customs duty due on products at the point of sale. For this reason, we recommend adjusting legal requirements over interaction with customs duties carefully.

On the other hand, there is common dependence on increasing the EU customs duty alongside increasing the IOSS threshold. For that reason, we believe it should be considered to raise the customs duty threshold. The European internal market has a lower threshold than other major markets globally. Less costly VAT collection would compensate higher trade-off; hence increased IOSS threshold would balance the lost duty. Duty rates in the EU are relatively low compared to VAT rates, so based on our expertise, we believe that the increased duty exemption would be overall beneficial to the system's functioning.