

Consultation response

Response to the VAT in the Digital Age Consultation



AmCham EU speaks for American companies committed to Europe on trade, investment and competitiveness issues. It aims to ensure a growth-orientated business and investment climate in Europe. AmCham EU facilitates the resolution of transatlantic issues that impact business and plays a role in creating better understanding of EU and US positions on business matters. Aggregate US investment in Europe totalled more than €3 trillion in 2021, directly supports more than 4.8 million jobs in Europe, and generates billions of euros annually in income, trade and research and development.

The American Chamber of Commerce to the European Union (AmCham EU) welcomes the opportunity to comment on the “VAT in the Digital Age” project of the European Commission. Beyond the answers provided in the consultation survey, we have additional commentary to add, in particular on the Single EU VAT Registration and Import One Stop Shop (IOSS) development work streams. We have divided our comments into those on the current functioning of the Union One Stop Shop (UOSS) & IOSS and those on how both schemes can be improved in future.

Functioning of the UOSS and IOSS following go-live of the Ecommerce VAT Package

Feedback regarding all schemes

Whilst the introduction of one stop shops to reduce VAT registration and accounting complexity has generally been positive, our members have reported two areas where improvements could be made in future:

- *Complexity of operating multiple OSS registrations:* under the present functioning of the VAT rules following the go-live of the Ecommerce VAT Package, non-EU established entities may have three separate registrations for their EU VAT obligations: IOSS, UOSS and Non-Union OSS. This makes reporting complex for such businesses and we believe there is an opportunity to consolidate the schemes in future so that all supplies (imported goods, services and domestic sales) can be reported through one One Stop Shop.
- *Credits:* credit notes and adjustments on one stop shop returns are commonplace to correct invoicing errors, reflect product returns or post-invoicing discounts etc. However, some businesses are finding that reporting of credit notes/adjustments on the returns is very burdensome. This is due to a requirement to split adjustments by country and by period. This means that returns can run into many hundreds or even thousands of lines, which will keep growing as the number of closed reporting periods to which adjustments can be made grows. Businesses report that it can take longer to put through credit notes than it does to put together the main return reporting output tax due. Removing the obligation to split credits by period would alleviate this issue.

Feedback specific to IOSS

Our members’ experience of practical operation of IOSS has been mixed to date. Whilst the introduction of VAT calculation and remittance upon sale has gone smoothly, there are a number of issues which we have identified with the existing regime that need to be addressed prior to expanding the scope the IOSS. These are:

- *Double Taxation:* our members have experienced some structural double taxation issues. For example, customs authorities’ IT systems in several EU Member States are still not ready to recognise IOSS numbers in H1 customs declarations which has led to double VAT taxation for shipments declared under an H1 customs declaration, even though these shipments are IOSS-eligible. Our members greatly appreciate the EU’s progress to implement a mechanism to recover double tax. However, this is an interim solution only and comes with customer experience penalties and additional administrative burden for taxpayers. It is therefore crucial that the root causes of the double taxation are addressed. In particular, national customs need to enable their IT systems to handle IOSS numbers for all customs declaration types, including H1 customs declarations.
- *Potential for misuse of IOSS Numbers:* there is potential for misuse of IOSS numbers under the current system design. This is due to the optionality of the IOSS, the fact that IOSS numbers cannot be kept confidential and the lack of transparency of IOSS holders to customs authorities (customs authorities can only verify the validity of an IOSS number, but not the identity of the actual holder and that they have indeed paid VAT on a consignment). Whilst it has not been identified as a significant issue to date, businesses who make use of the IOSS are acutely aware that IOSS numbers can give rise to discrepancies e.g. misused intentionally (to avoid paying VAT at the customs border) or through innocent errors. As taxpayers’ IOSS accounting begins to be audited this could lead ultimately to a burden on the IOSS registrant to explain reconciling differences between IOSS returns and EU customs data and to evidence why he should not be held liable for IOSS misuse.
- *Misalignment between VAT and Customs Legislation:* issues remain resulting from a lack of alignment between EU VAT and customs legislation. For example, the scope of VAT and the new customs competent

office rule under Article 212(4) of the UCC/IA which has led to non-IOSS eligible shipments under EUR 150 (e.g. B2B and excisable products) requiring direct clearance in the final delivery country. This has led to capability issues with brokers and customs logistics partners.

Further suggestions on how to improve the IOSS and UOSS based on these observations is provided in the below section.

Future expansion and improvement of the UOSS and IOSS

UOSS expansion to create a Single EU VAT Registration

The Union One Stop Shop (in place since 1 July 2021), is a great step forward in simplifying VAT for businesses. It provides a great base from which to build an EU single VAT registration. Key to this is to expand the Union One Stop Shop (UOSS) such that taxpayers can use it for use cases that were not included in the 1 July 2021 Ecommerce VAT Package reform. In particular, we would like to see the UOSS extended so that it can be used for (i) reporting intra-EU transfers of own inventory and (ii) reporting and paying VAT due on any onward B2C sale from the place of storage to the local customer, thus removing local registration responsibilities for businesses without a local establishment who conduct these transactions. We would like to see the UOSS opened to domestic B2B sales by non-established businesses too, unless a harmonised EU-wide domestic reverse charge mechanism is implemented whereby the customer self-accounts for the VAT due on its purchase. This solution to prevent registration obligations as a result of B2B sales is key as businesses will often make supplies to both kinds of customer and will not necessarily know the business status of the customer until the time of the sale. A reform covering only B2C supplies would not therefore eliminate many additional VAT registration responsibilities for EU businesses.

Centralizing and standardizing VAT registration and reporting requirements in this manner would allow the EC to unlock major benefits for governments, tax authorities, businesses, consumers and the environment:

- Tax authorities will benefit from increased compliance, facilitated reporting and auditing of cross-border goods movements and increased on-shoring of goods and services trade.
- National governments will benefit from a more competitive EU market and increased trade, leading to additional tax revenues.
- Businesses, particularly SMEs, will gain greater access to intra-EU trade, be more competitive and incur fewer tax compliance fees.
- Customers will be able to access more competitive prices, faster delivery and a greater choice of goods.
- The environmental impact of EU consumption will be reduced. For example, a regime covering pan-EU inventory storage in e-commerce would encourage bulk inventory placements close to customers, which cause considerably lower CO2 emissions than orders individually shipped for long distances.
- Customs authorities will have a reduced workload as bulk shipments from third countries for onward distribution within the EU will be encouraged. This will reduce the current influx of individual packet shipments from third countries.

We believe the extension of UOSS to all B2C & B2B sales (or an EU-wide domestic reverse charge for B2B supplies to locally VAT registered businesses) is a key and relatively straightforward extension given the 2021 e-commerce changes. However, a less obvious but equally important extension is to transfers of own goods, which were found to be the most crucial area to solve for in the VAT in the Digital Age study. This is an important use case for our members and a wide variety of industries. A well-designed system that includes cross-border transfers of own goods would benefit lessors of moveable property, customers of toll manufacturers, retailers & wholesalers using remote fulfilment, consignment stock sellers, e-mobility providers, agricultural producers, touring events companies, businesses engaged in sale-or-return contracts and many more.

Under today's rules, cross-border transfers trigger a VAT charge but no associated cost or cash-flow issue as the VAT is immediately recoverable by businesses through their local VAT registration in the country of arrival. Including the output side of transfers of own goods in UOSS is straightforward. However, the cash flow as it

relates to the input side may not be. There is currently no VAT recovery feature in the Union One Stop Shop for any VAT due on cross-border transfers of own goods by which the output VAT due on cross-border transfers could be reclaimed. We do not propose a full extension of the UOSS to include a VAT recovery feature, as we understand this would not currently garner support from Member States. However, we believe the following two policy options would be suitable to address this concern:

- Apply a VAT exemption with credit to the transfer of own goods in the country of arrival, creating an equivalent VAT cash-flow position to today; or
- Limit the VAT cash-flow disadvantage by improving VAT recovery mechanisms for non-established businesses. For example, by allowing taxable persons registered in the UOSS (EU and non-EU established) to recover the VAT on transfers of own goods via a Council Directive 2008/9/EC (“8th Directive”) reclaim and by making reclaim procedures simpler and faster.

Option 1 has multiple benefits. Primarily, businesses transferring own goods would not suffer a cash-flow cost (as there is no VAT reporting requirement and subsequently no VAT refund is required from the EU Member State of arrival). This is broadly the same as the present-day handling of transfers of own goods given there is no net VAT revenue associated with movements of own goods in 99%+ of cases today, with outputs and inputs netting off in the same VAT return. From a systems perspective, this reporting function would require a relatively simple addition to the UOSS functionality or could be included within the wider DRR initiative. Option 1 is overall simplest from an administrative point of view for both taxpayers and national tax authorities.

Option 2 is a suitable fall-back if option 1 is not feasible. In this case, there would be no separate VAT registration requirement for the business in the EU Member State of arrival but there would be a cash-flow cost. This is because an output VAT reporting requirement would remain on the transfer of own goods and, assuming that there is no VAT recovery feature built into the UOSS system, the business would need to request a VAT refund from the EU Member State of arrival. On this basis, option 2 would entail significant but feasible improvements to existing cross-border refund schemes. Primarily:

- Cross-border refund eligibility for both EU and non-EU businesses would need to be extended to VAT incurred on intra-EU transfers of own goods on which VAT has been paid through the UOSS.
- The timeframe for 8th Directive VAT reclaims needs significant reduction (from the current 4–8 month period), at least in relation to VAT self-accounted for on cross-border transfers of own goods. In this respect, we would recommend a data link between the 8th Directive claim system and the UOSS. Member States should be able to immediately validate that VAT claimed on cross-border transfers of own goods matches that reported and paid via the UOSS, allowing for an immediate refund of the VAT by the relevant Member State.

To conclude, the most successful model of single EU VAT registration will encompass both B2C and B2B supplies and transfers of own goods. It will also include one of the above options to solve for cash-flow or absolute VAT costs on transfers of own goods. A reform in line with these suggestions will help simplify VAT compliance for the maximum number of businesses trading in the EU and lead to maximum return on the investment put into developing UOSS for both governments and taxpayers.

IOSS improvements

We believe it should be a matter of priority to strengthen the functioning and performance of the IOSS system, including making it more fraud proof. In this respect, we have three suggestions:

- In the short term, we recommend that the IOSS regime should be made mandatory for all businesses (ideally) or at least all deemed suppliers (i.e. marketplaces). This would ensure a level playing field so that businesses cannot undervalue their goods or misuse IOSS numbers by migrating to marketplaces that have not opted in. Whilst we are aware of most marketplaces ‘opting-in’ to the IOSS regime, there remains the possibility for businesses to misuse the current system by migrating to a marketplace that has not opted-in or by making direct sales.

- Given the potential for IOSS misuse, we believe the EC should continuously monitor the system to ensure that this practice is not becoming widespread. This can be monitored by periodically consulting both Member States and IOSS registrants on the extent to which they find significant deviances between amounts accounted for on IOSS returns versus parcels declared through customs under corresponding IOSS numbers (where such deviances cannot be explained by a factor other than misuse – e.g. accounting errors).
- In the long term, the EU Commission should strive to reduce complexity caused by the high number of scenarios possible for customs clearance at the border, for example (1) whether the (deemed) supplier opted to use the IOSS; (2) Whether the parcel includes excise duty products; and (3) Whether the parcel is sold to a business or private customer. Reducing the number of scenarios should lead to less friction for suppliers & customers, and reduce workload for customs authorities, leaving them with more resources to fight fraud.

The above suggestions should be treated as a priority over expanding the IOSS to higher value shipments (above 150EUR). Nonetheless, if an extension of the IOSS to high value shipments (over EUR 150) is considered above or in parallel to improving the IOSS, we recommend careful consideration of the interaction with customs duties. High value shipments are subject to customs duties and these are to be included in the taxable base for VAT purposes, however businesses will not necessarily know the customs duty due on products at the point of sale.

To negate this issue, a raising of the customs duty threshold should be considered. Based on global precedent, there is scope to increase the EU customs duty threshold alongside any increase in IOSS threshold (e.g. raise both the IOSS threshold and the duty threshold to EUR 500). The EU has a threshold lower than many major markets around the world (US, Australia, Canada etc.). It would therefore make sense to quantify the trade-off between higher and less costly VAT collections stemming from an increased IOSS threshold versus the lost duty. Given the comparatively low duty rates in the EU compared to VAT rates, we suspect the findings of a study of an increased duty exemption threshold would be positive.