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GROUP ON THE FUTURE OF VAT

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Proposed solution to regularise double taxation in the IOSS VAT return

1. INTRODUCTION

On 1 July, the e-commerce package came into operation. The package introduced a number of amendments to the VAT rules governing the taxation of business-to-consumer (B2C) cross-border e-commerce activity in Europe. Overall, the implementation of the package went smoothly, without major operational problems. However, some issues were identified that require urgent attention, such as, for example, double taxation. In this regard, the Commission facilitated a meeting of experts from both tax and customs administrations to discuss, among other points, possible solutions to address the issue of double taxation.

2. SUBJECT MATTER

2.1. Problem

The charge to double taxation, arising in certain circumstances, is identified as a critical issue that requires the design and urgent application of a practical and workable solution.

Two primary causes of double taxation are identified as a result of:

1. the non-communication of the supplier's IOSS number because the postal operator is unable to transmit the IOSS number
2. some Member States not being in a position to validate the IOSS number in a full customs declaration (H1)

Despite the fact that IOSS goods are subject to VAT at point of sale, VAT on the importation of IOSS goods also arises where the trader's valid IOSS number is not provided on the import declaration[1]. The immediate need to address the reimbursement of this VAT that is charged twice is of utmost priority as this presents a financial risk to suppliers who, in the absence of an effective solution, may have to absorb the cost, although they have not done anything wrong.

Although the situation is different for the supplies in both cases, it is clear that double taxation is contrary to the principles of the VAT system. Therefore, in support of an effective resolution to this problem, the Commission is of the view that it is necessary to adopt and implement an efficient and harmonised EU-wide solution.

2.2. Solution proposed

The proposed common solution to the double taxation problem mentioned in section 2.1 above covers the correction/reimbursement of VAT in the IOSS VAT return in both cases where double taxation can arise, namely where the IOSS number is not communicated correctly because the postal operator is unable to do so, and where the IOSS number cannot be validated in a H1 declaration. It is proposed that this solution will apply equally to both cases as the trader actually supplies its IOSS number, however, it is either not transmitted by

[1] The exemption on importation is granted to IOSS goods on the condition that the IOSS number of the supplier/intermediary is provided to the competent customs office in the Member State of importation – Article 143(1)(ca) Council Directive 2006/112/EC refers

the origin postal operator because of technical problems on the side of the origin post, or cannot be validated in the H1 customs declaration due to technical issues in the Member State of importation. The solution suggested in this paper recognises and incorporates the feedback from participants who took part in a recent joint meeting of tax and customs experts.

Futhermore, the fact that some Member States cannot currently validate the IOSS number in a H1 import declaration is a very serious problem, which is not in line with EU VAT and customs legislation. The Commission urges those Member States to align their procedures with EU law and to find a speedy solution to this issue because the imposition of double tax represents:

- a financial risk for businesses that, in the absence of an effective solution, have to shoulder the burden of double tax or face difficulties in recovering the VAT,

- a reputational risk for the IOSS scheme itself and for the EU as a whole as the problem of double taxation seriously undermines the essence and spirit of the simplification,

- a commercial risk that trade will be affected, to the detriment of these Member States.

However, without prejudice to solving the core and fundamental causes of double taxation, it is critical to agree on a short-term solution to the immediate difficulties that double taxation presents.

The Commission supports the majority view of experts and, accordingly, proposes that the correction of VAT should take place in the IOSS VAT return for the following reasons:

- The VAT Directive already provides the legal basis for allowing the correction of VAT in the IOSS VAT return. An IOSS registered trader can amend the draft VAT return before it is officially submitted to the Member State of Identification. Once the IOSS VAT return has been submitted it cannot be amended afterwards, however, the VAT Directive provides that where amendments are required to an IOSS VAT return after its submission, any such amendment shall be included in the subsequent return, subject to a 3 year statute of limitations from the date that the original return was required to be submitted[2].

- This solution appears to be the most practical and viable option as the supplier/deemed supplier is best placed to regularise the situation. Other potential solutions involving the reimbursement of import VAT are complicated insofar as the supplier is typically not entitled to the refund of import VAT. Despite this, in practice, many suppliers are currently choosing to refund the VAT directly to the customer in order to preserve customer satisfaction and confidence. This practice reinforces the logic of correcting the VAT in the IOSS VAT return as it is not the supplier but, instead, the person designated or recognized as liable to pay import VAT, who is entitled to the refund of import VAT. This is usually the customer or his/her customs representative acting on the customer's behalf. In contrast, the supplier is perfectly positioned to regularise the issue via the IOSS VAT return, thereby recouping the cost of the VAT refunded to

[2] Article 396t(2) of Council Directive 2006/112/EC and Article 61 of Council Implementing Regulation 282/2011/EU refer.

customer. Before issuing a refund of VAT, the supplier should request proof of payment of import VAT from the customer. Where the supplier corrects the VAT in the IOSS VAT return, evidence of the associated refund made to the customer should be made available to the tax authorities to support the correction claimed in the IOSS VAT return.

- This solution appears to be the least administratively burdensome option from a customs perspective. Where the VAT on importation is upheld, the customs declaration does not need to be invalidated.

- From an audit perspective, this proposed solution also protects the integrity of the data in the Surveillance system. The monthly IOSS reports reflect the total value of imports of goods in the IOSS per IOSS identification number. If the correction occurs in the IOSS VAT return then the goods will no longer be classified as IOSS goods. The monthly IOSS reports, which are accessible to the competent authorities of all Member States, will therefore not cover the importation of goods on which VAT at importation was charged. Thus the cross check with the IOSS VAT return will be possible.

- Where the IOSS is used, the VAT of the Member State of destination is charged. At importation since IOSS could not be used, in accordance with Customs law, these low value goods can only be released for free circulation by the competent authorities in the Member State where the dispatch or transport of those goods ends in accordance with Article 221(4) UCC-IA, at which point the VAT rate applying to those goods in that Member State will apply. So, this solution still guarantees that the VAT ultimately to be paid by the customer is the one of the Member State of final destination of the goods.

- Customer satisfaction levels and the overall customer experience is less likely to suffer a negative impact if the customer has recourse to a speedy refund from the supplier.

2.3. Conclusive remarks

In summary, ideally upon proof of payment of import VAT, the supplier should refund the customer the VAT that was charged at the time of the supply using the IOSS. The refund of the VAT by the supplier to the customer could be done through a credit note. This credit note (or any other agreed practice), along with the proof that import VAT was paid, will evidence the supplier's entitlement to make the corresponding correction in its IOSS VAT return. The supplier should not reflect the supply in his or her IOSS VAT return if the supply and refund of VAT occur in the same IOSS VAT return period. If the refund of VAT occurs in a period following the original supply, the supplier should make the correction in the subsequent IOSS VAT return for the period in which the refund was made. As the correction is made in the IOSS VAT return, the VAT on importation will be upheld, therefore, there is no need to invalidate the import declaration. This will preserve the integrity of the surveillance data.

The solution proposed in this paper is solely focussed on the issue of double taxation and it reflects the majority view of the delegates who participated in the recent joint meeting of VAT and customs experts.

3. QUESTIONS TO THE DELEGATES

As indicated above, the Commission is of the view that it is necessary to adopt and implement an efficient and harmonised EU-wide solution. In this regard, the Commission services would like to have the views of the delegates on the proposed solution to the double taxation problem explained in section 2.2 above.

The delegates are invited to specify whether they agree with the said proposed solution.

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