



CONFEDERATION  
FISCALE  
EUROPEENNE

**Opinion Statement FC 14/2015**

## **on Modernising VAT for cross-border e-commerce**

**Prepared by the CFE Fiscal Committee**

**Submitted to the European Commission in December 2015**

*The CFE (Confédération Fiscale Européenne) is the umbrella organisation representing the tax profession in Europe. Our members are 27 professional organisations from 21 European countries with more than 200,000 individual members. Our functions are to safeguard the professional interests of tax advisers, to assure the quality of tax services provided by tax advisers, to exchange information about national tax laws and professional law and to contribute to the coordination of tax law in Europe.*

*The CFE is registered in the EU Transparency Register (no. 3543183647-05).*

## Introduction

On 6 May 2015, the European Commission set out its planned strategy on a Digital Single Market in Communication COM(2015)192<sup>1</sup>, containing a number of planned measures in VAT. On 25 September 2015, the Commission opened an electronic public consultation on this issue, titled “Public Consultation on Modernising VAT for cross-border e-commerce”<sup>2</sup>. Below you will find the CFE response to this consultation, in pdf version. CFE comments are in blue.

## Future Policy Options (Section 3 of the questionnaire)

25) Please indicate your level of agreement with the objective of the Commission to minimise burdens attached to cross-border e-commerce arising from different VAT regimes:

Strongly agree

26) Please indicate your level of agreement with the objective of the Commission to ensure that all business selling to consumers in a Member State should be charging the same VAT rate with no exemption applying to imports of small consignments.

Disagree

The CFE agrees that, as a general rule, supplies from third countries should, as far as possible, be subject to the same rules as supplies made within the member states, so as to create an even playing field. However, it can see a case for retaining an option for member states to exempt small consignments from tax. This is because of the difficulties that it may cause the recipient to pay the tax, if it requires them to visit a Post Office to collect the delivery, and the implications that this has for the postal authorities, if they cannot make deliveries that they would otherwise be able to make. If the customer has to make a special journey to pay the tax, the costs of doing this may well be greater than the tax. Because of the administrative difficulties that may arise, we consider that it should remain open to member states to exempt such supplies.

27) Do you agree on the need to improve the current Mini One Stop Shop and to set up a single electronic registration and payment mechanism for B2C supplies of tangible goods as well as services (Intra-EU and from 3rd countries)?

Agree

The CFE welcomes the proposal to extend the Mini One Stop Shop so that it potentially applies to all supplies of goods and digital services both intra-EU and from third countries. It is clearly desirable to reduce the need for businesses to register in countries where they are not established and to have simplified electronic procedures for the collection of the tax.

In so far as possible, it is also clearly desirable to harmonise the treatment of digital supplies and supplies of goods, with a view to minimising distortions in the treatment of different supplies, for

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<sup>1</sup> <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1447773803386&uri=CELEX:52015DC0192>

<sup>2</sup> pdf version: <https://ec.europa.eu/eusurvey/pdf/survey/29768?lang=EN&unique=9b30d85e-b7b3-4588-86f9-f1f80ca201c5>

example so as to secure greater neutrality in the rules governing supplies of e-books and physical books.

28) Do you agree that business using the future single electronic registration and payment system should apply home country VAT rules (i.e. a business uses the rules applicable in their own member states rather than the rules applicable in the member states of their customers e.g. invoicing rules)? Note that the VAT rates or exemptions of the member state of the consumer will still be applied.

Strongly agree

We agree with the suggestion that businesses should, in so far as possible, be able to use the rules of the country where they are registered, on compliance issues, such as invoicing.

29) Do you agree that business using the future single electronic registration and payment system should be subject to a single audit from the tax authority in their own Member State? Note that the existing administrative cooperation arrangements will continue to apply.

Agree

30) Do you agree that all supplies from non-EU countries should be subject to the same VAT treatment as intra-EU supplies?

Agree

31) Do you think that there should be a cross-border VAT threshold i.e. no VAT would be applied up to a certain amount of cross-border supplies?

Strongly agree

The CFE strongly supports the proposal for a VAT threshold that applies across the European Union. On this point it notes as follows:

- If the mini one stop shop is extended, it becomes more difficult to see that there can be any justification for having an exemption linked to sales in any one state, as applies under the current distance sales rules. Whether the threshold is exceeded should therefore be assessed by reference to all supplies made in the Union or possibly globally, so that account would also be taken of purely domestic supplies in the country of establishment. It would therefore differ from the distance sales rules which focus on sales in each particular member state, and which may allow large businesses with small sales in a particular state to make sales without accounting for VAT in that state.
- If the establishment exceeds domestic VAT thresholds or the business is voluntarily registered then the supplies made by it which are below the EU threshold, which will include distance sales, will be subject to VAT in the country where the business is established if not taxed elsewhere.

32) What is the appropriate level of such a threshold in terms of cross-border sales?

Greater than € 100,000

The CFE considers that the threshold should be € 125,000 if not higher.

As mentioned below in this Opinion Statement, the CFE considers that this threshold should be ideally extended to all supplies, and not just to digital services and distance sale of goods. This will help to ensure that relatively small businesses just have to concern themselves with one tax authority and set of VAT rules.

The CFE recommends a high threshold for two reasons:

- (i) to avoid the need for businesses in countries, such as the UK, that have a high domestic thresholds having to account for VAT on making cross-border supplies when they do not have to register if they make purely domestic supplies;
- (ii) as a simplification measure so that businesses with relatively small turnovers do not have to concern themselves with the different rates in different member states and the different rules that different member states have for classifying supplies. One of the most contentious areas in VAT has been the classification of supplies and whether supplies should be regarded as single or multiple supplies. It is undesirable that relatively small businesses should have to take account of different national practices on such issues. It is also particularly unsatisfactory for such businesses to find themselves in a situation where they may have to dispute the position with a tax authority in another member state using the dispute resolution systems of that other member state.

While the CFE considers that it would ideally be preferable if a high threshold could be set, it would in any event welcome a lower threshold in the short time, if this helps to address concerns that tax administrations may have about being able to effectively monitor transactions relating to e-commerce. We have suggested that the high threshold should be set by reference to all the supplies of the business. However, we can see that a different approach of just looking at cross-border supplies may be more appropriate if a low threshold were set. As a second stage, when the tax administrations have become more comfortable with the operation of the system, the threshold could be increased if the evidence suggests that the rules are not giving rise to problems for the tax administrations. Even a low threshold would assist a lot of SMEs who would not normally make a large number of cross border supplies.

For the operation of the threshold, please see our answer to question 34.

There may be some attempts to exploit the threshold by disaggregating businesses. This could be overcome by suitable anti-abuse rules (see also our answer to question 35). The existence of national small business exemptions has not in practice caused undue problems.

33) What are the benefits of cross-border thresholds? (multiple answers possible)

- Eases access to the single market for business
- Easier management for tax administrations
- Other

34) Are there any risks with having cross-border thresholds? (multiple answers possible)

- No risks
- Uncertainty on whether a business will exceed the annual threshold
- Creates distortions particularly where there are high VAT rates
- Other

The CFE would suggest that the threshold should operate on the basis that a business ceases to qualify at any time when looking over a 12 month period prior to any particular supply (but including any supplies made on that date exceeding € 500), its total supplies exceed the threshold. Once the threshold is exceeded the business will cease to qualify unless there is a period of 12 months in which its supplies are below the threshold. Because it just relies on historic data and sales on the particular date, the adoption of such an approach will avoid retrospective liabilities arising.

35) Do you agree that any threshold needs to be harmonised across the EU and should apply to both goods and services?

Agree

To prevent abuse the CFE can see that there may be a need to have rules that require account to be taken of all supplies by entities under the control of one person. The CFE considers that it would be desirable to have harmonised rules which apply to both goods and e-services, so as to minimise differences in the treatment in similar supplies, for example between physical books and e-books. The fact that the threshold is clearly directed at relatively small businesses should help to ensure that it does not cause major distortions in competition.

36) Are there any other issues that you wish to address which have not been covered in Sections 1 to 3?

The CFE welcomes the European Commission's decision to review the rules governing cross-border supplies and its Public consultation on modernising VAT for cross-border E-Commerce.

#### **Extension of the MOSS to goods and services beyond distance selling**

The CFE considers that these rules should ideally not just be limited to distance sales of goods and digital services but should ideally apply more generally, so as to limit the extent to which small businesses have to consider the rules in other states.

#### **Right of non-registered traders to recover input VAT**

In so far as sales are subject to VAT in any member state there should be a right to recover input tax incurred in the Union that is directly attributed to those supplies even if the trader is not registered in the country where he is established or where the supply is treated as being made.

#### **Non-established taxpayers (*Schmelz case*)**

Even if a threshold of € 125,000 applying to all supplies, not just digital services and distance sales of goods, is not found acceptable, a related issue is whether there should be some other threshold below which non-established taxpayers should not be required to register. Currently, as the case C-

97/09 *Schmelz v. Finanzamt Waldviertel*<sup>3</sup> illustrates, non-established taxpayers are required to account for tax even though they make minimal supplies and would not need be required to account for tax for that reason if they were an established taxable person.

Subject to one qualification related to the proposed € 125,000 Euro threshold noted above, the CFE considers that non-established businesses should not be required to register if its supplies in any particular member state are below the threshold that applies to businesses established in that member state.

As a further limitation, the CFE can see that it may be appropriate that non-established businesses should only be eligible for exemption if their total supplies within the European Union or globally are below the suggested € 125,000 threshold suggested above, so it is only when a non-established person makes relatively modest supplies throughout the Union or globally that the exemption is extended to non-established businesses.

### **Cross-border dispute resolution mechanism**

The CFE also considers that it would be desirable to have procedures to resolve cross-border disputes so as to ensure that supplies are not subject to double taxation. The CFE welcomes the willingness of some member states to agree to cross-border rulings as a step to securing this.

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<sup>3</sup> <http://curia.europa.eu/juris/liste.jsf?td=ALL&language=en&jur=C,T,F&num=C-97/09>