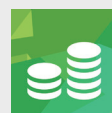


Special Report

## E-commerce: many of the challenges of collecting VAT and customs duties remain to be resolved

(pursuant to Article 287(4), second subparagraph, TFEU)



EUROPEAN  
COURT  
OF AUDITORS

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## Executive summary

**I** E-commerce is the sale or purchase of goods or services conducted via the internet or other online communication networks. The EU encourages e-commerce to ensure that businesses and consumers can buy and sell internationally on the internet as they do on their local markets. According to the latest available statistics, during 2017, one out of five enterprises in the EU-28 made electronic sales. Over the period 2008 to 2017, the percentage of enterprises that had e-sales increased by 7 percentage points and the enterprises' turnover realised from e-sales as a share of total turnover increased by 5 percentage points.

**II** When goods and services traded using e-commerce cross borders, Member States collect VAT and customs duties. Any shortfall in this collection affects the budgets of the Member States and the EU. The Commission carries out inspections of VAT and customs duties collected. It is also responsible for setting customs and taxation policies and for strategies and legislation in these areas. The European anti-fraud office is responsible for investigating fraud, corruption and other offences against the EU's financial interests.

**III** We carried out this audit because of the risk of irregularities occurring in the collection of VAT and customs duties in cross-border e-commerce. While there are no estimates available of how much VAT has not been collected on cross-border supplies of services, the Commission estimates losses on supplies of low value goods from non-EU countries to be as high as €5 billion per year.

**IV** We examined the system for the taxation of VAT and customs duties on cross-border supplies of goods traded over the internet set out in the VAT and customs legislation. We also looked at the new system for the taxation of VAT on cross-border supplies of e-commerce services that entered into force at the beginning of 2015. Finally, we reviewed the proposals made by the Commission and the legislation adopted by the Council under the 2017 'e-commerce package'.

**V** We examined whether the European Commission has established a sound regulatory and control framework on e-commerce with regard to the collection of VAT and customs duties, and whether Member States' control measures help ensure the complete collection of VAT and customs duties in respect of e-commerce.

**VI** We found that despite recent positive developments the EU is not addressing all the challenges in collecting the correct amounts of VAT and customs duties for goods and services traded over the internet.

**VII** We found that:

- (a) the regulatory framework follows international best practice promoted by the OECD and the WCO in most respects;
- (b) the new provisions that will enter into force in 2021 aim to resolve some of the weaknesses in the current framework but undervaluation remains to be addressed;
- (c) administrative cooperation arrangements between EU Member States and with non-EU countries are not being fully exploited;
- (d) the controls carried out by national tax authorities are weak and those of the Commission are insufficient;
- (e) there are weaknesses in the current customs clearance systems and that there is a risk that the EU cannot prevent abuse by the intermediaries involved; and
- (f) enforcement of collection of VAT and customs duties is not effective.

**VIII** To strengthen the use of the administrative cooperation agreements, increase the effectiveness of controls, and improve the enforcement of collection and the effectiveness of the regulatory framework, we address a number of recommendations to the Commission and to Member States. Notably, the Commission should:

- (a) monitor to what extent non-EU countries meet the requests sent by Member States pursuant to the mutual administrative assistance agreements concluded with them in both customs and tax matters and make use of structures and frameworks set up in the context of these agreements to address specific challenges resulting from trade in goods through e-commerce;
- (b) carry out inspections on Member States' controls of the low value consignment relief;
- (c) monitor the functioning of the intra-EU distance sales of goods and of Mini One Stop Shop (MOSS);
- (d) assist Member States to develop a methodology to be able to produce periodic estimates of the compliance VAT gap on e-commerce; and

- (e) explore the use of suitable “technology-based” collection systems, including the use of digital currencies, to tackle VAT fraud on e-commerce.

Member States should:

- (a) provide timely feedback to the fraud signals received from other Member States in Eurofisc;
- (b) increase their audit activity on MOSS traders and distance sellers; and
- (c) carefully monitor traders’ compliance with the new threshold of €10 000 for intra-EU supplies of services.

# Introduction

**01** E-commerce is the sale or purchase of goods or services, whether between businesses, households, individuals or private organizations, through electronic transactions conducted via the internet or other computer-mediated (online communication) networks<sup>1</sup>.

**02** E-commerce is growing steadily. According to the latest available statistics, during 2017, one out of five enterprises in the EU-28 made electronic sales. Over the period 2008 to 2017, the percentage of enterprises that had e-sales increased by 7 percentage points and the enterprises' turnover realised from e-sales as a share of total turnover increased by 5 percentage points<sup>2</sup>.

**03** Member States are responsible for the collection of VAT and customs duties due on e-commerce cross-border transactions. Any shortfall in the collection of VAT and customs duties affects the budgets of the Member States and the EU.

**04** The Directorate General for Taxation and the Customs Union (DG TAXUD) is responsible at a strategic and legislative level for customs and taxation policy, including in relation to e-commerce. Its remit includes developing and managing the Customs Union, and developing tax policy across the EU. It prepares legislative and strategic initiatives and coordinates cooperation and information sharing between Member States.

**05** DG TAXUD also chairs the Customs Policy Group (CPG), which supports the implementation of the Customs Union and is composed of the Directors-General of the 28 national customs authorities.

**06** The Directorate General Budget (DG BUDG) is responsible for conducting inspections in relation to “own resources”, a form of revenue made available to the EU budget by the Member States, which includes a resource based on VAT collected and customs duties on imports from outside the EU.

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<sup>1</sup> Eurostat and the OECD's common definition.

<sup>2</sup> Data extracted in December 2018. See at [https://ec.europa.eu/eurostat/statistics-explained/index.php?title=E-commerce\\_statistics](https://ec.europa.eu/eurostat/statistics-explained/index.php?title=E-commerce_statistics).

**07** The European anti-fraud office, OLAF, is responsible for investigating fraud, corruption and other offences against the EU's financial interests.

## Collection of VAT and customs duties in e-commerce: the EU's current arrangements

**08** In general terms, EU customs law is laid down in the Union Customs Code<sup>3</sup> (UCC), while VAT is governed by the VAT Directive<sup>4</sup>. The EU's current arrangements for collecting VAT due on e-commerce differ between goods and services.

### Supplies of goods

**09** For **EU-registered traders** supplying goods from one Member State to a consumer in another, the "**distance-selling scheme**" applies. This means that, up to a certain sales threshold (usually €35 000, but €100 000 in certain Member States), the trader applies the VAT rate of the Member State where it is registered<sup>5</sup>. Above this threshold, the trader must register for VAT in, and apply the VAT rate of, the destination Member State (thereby incurring all the reporting and compliance obligations).

**10** In the case of **non-EU traders** selling to EU consumers, goods are imported into the EU and are subject to customs clearance. There is a low-value customs relief for goods worth €150 or less (small value consignments), meaning that no customs duties are due on import<sup>6</sup>. There is also a VAT relief for goods of negligible value – those not

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<sup>3</sup> Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (recast) (OJ L 269 of 10.10.2013, p. 1).

<sup>4</sup> Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ L 347 of 11.12.2006, p. 1).

<sup>5</sup> Pursuant to Article 34 of the VAT Directive.

<sup>6</sup> Pursuant to Article 23 of Council Regulation (EC) No 1186/2009 of 16 November 2009 setting up a Community system of reliefs from customs duty (codified version) (OJ L 324, 10.12.2009, p. 23).



exceeding €22 in value (or €10 in certain Member States) are not subject to import VAT<sup>7</sup>.

## Supplies of services

**11** E-commerce services supplied<sup>8</sup> by a business to private consumers (“B2C supply”) are subject to the “destination principle”, meaning they are subject to VAT at the rate applicable in the consumer’s country of residence. The destination principle has applied to B2C supplies of digital services from a non-EU country to EU consumers since 2003. Since the beginning of 2015, the same principle applies to all e-commerce services provided by an EU supplier to a consumer in another Member State. Previously, such services had been subject to the VAT rate of the supplier’s country of residence.

**12** From the beginning of 2015, the EU legislator has introduced the “Mini One Stop Shop” (MOSS) system for the taxation of telecommunications, broadcasting and electronically supplied services. Under the MOSS, traders supplying e-commerce services to private consumers charge VAT at the rates applied in the Member States where the consumers are established (the “Member State of consumption”). However, they can register to pay VAT in any Member State of their choice<sup>9</sup> (the “Member State of identification” or MSIDE) and submit a single VAT return there, listing all services supplied to each Member State of consumption and paying the relevant VAT on these. The MSIDE then transfers the VAT owed to each Member State of consumption. The MOSS applies to both EU-registered and non-EU traders<sup>10</sup>.

**13** *Figure 1* shows how B2C supplies of digital services made by traders registered in the MOSS are taxed in the different Member States of consumption (MSCON).

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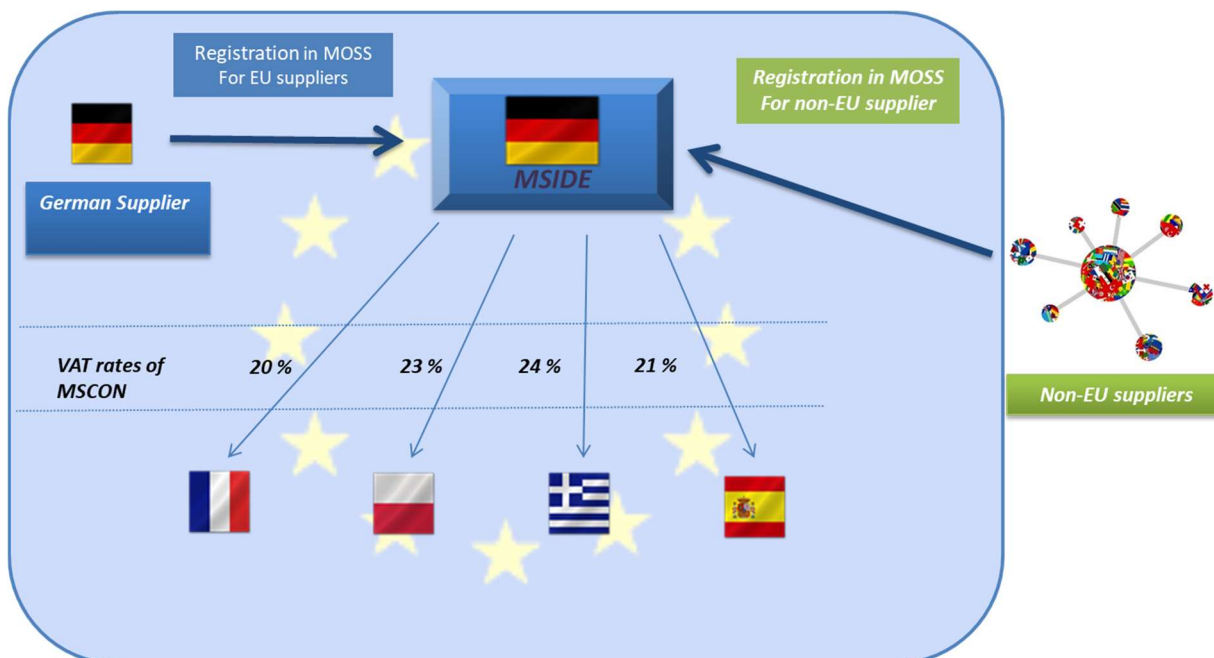
<sup>7</sup> Pursuant to Article 23 of Council Directive 2009/132/EC, determining the scope of Article 143(b) and (c) of Directive 2006/112/EC as regards exemption from value added tax on the final importation of certain goods (codified version) (OJ L 292, 10.11.2009, p. 5).

<sup>8</sup> Article 24 of the VAT Directive defines “Supply of services” as “any transaction which does not constitute a supply of goods”.

<sup>9</sup> Unless the trader has established his business in the EU.

<sup>10</sup> See Sections 2 and 3, Chapter 6 of Title XII of the VAT Directive.

**Figure 1 – B2C supply of e-commerce services for traders registered in MOSS to customers in different Member States**



Source: ECA based on "Your pocket guide to VAT on digital e-commerce", Bellheim, Brown, Erneholm, Jundt, et al.

## Risks of the current arrangements for collecting VAT and customs duties on e-commerce

**14** There are no estimates available of VAT losses at EU level on cross-border supplies of services, but the Commission estimates losses on supplies of low value goods from non-EU countries to be as high as €5 billion per year. Other estimates are shown in paragraphs [101](#) to [107](#).

**15** While the single market abolished border controls for intra-EU trade, all non-EU goods entering Member States are subject to customs controls. Services provided digitally from outside the EU represent a particular risk: such services do not physically cross any border and are not subject to the same controls as goods entering the EU. Intra-EU trade in services is liable to VAT and Member States need to be aware of the existence of such transactions in order to be able to tax properly.

## Reliance on traders cooperating voluntarily

**16** One general risk – for goods and services supplied by both EU and non-EU traders – is that the existing set-up essentially relies on traders’ willingness to register and pay the VAT due. Member States have no enforcement powers outside their own jurisdiction, especially in relation to non-EU traders. This makes it difficult for them to ensure the completeness of the collection of VAT in the Member State where the goods and services are ultimately consumed.

## Risks in legal framework and cooperation arrangements

**17** There is the risk that tax and customs authorities in the Member State of consumption will not use the administrative cooperation arrangements to request information from the country or countries where the supplier is registered or identified. Without such information exchanges, it is difficult for the tax/customs authorities in the Member State of consumption to detect the untaxed transactions. Moreover, B2C transactions are not covered by the VAT information exchange system, an electronic network for transmitting VAT information both on valid VAT identification numbers of companies registered in the Member States, and on tax-exempt intra-EU supplies.

**18** Another risk is that the tax authorities of the country of registration (or the MSIDE) have little incentive to carry out proper checks on suppliers because any VAT discovered belongs to the Member State of consumption.

## Risk of non-compliance

**19** This reliance on traders’ cooperation leaves the system open to various forms of non-compliance. In the case of the distance-selling scheme, one risk is that suppliers might not register in the destination Member State if their sales there are above the relevant threshold. Another risk, given that differences in VAT rates between Member States potentially make fraud on distance sales more advantageous, is of suppliers underreporting sales VAT in order to remain under the threshold and avoid charging the higher VAT applicable in the destination Member State. This would allow suppliers based in Member States with lower VAT rates to unfairly undercut those in Member States with higher VAT and lead to lost revenue for the national budgets.

**20** Because enforcing the registration in MOSS is difficult, the risk exists of non-EU suppliers not registering for VAT in any Member State in order to avoid charging and

paying VAT on the services they provide. Even if they do register in a MSIDE, there is still a risk of them under-declaring VAT or not declaring it at all. This reduces national budget revenue and allows non-EU suppliers to undercut EU-registered suppliers.

**21** The VAT and customs exemptions for low-value consignments potentially encourage another form of non-compliance: the systematic undervaluation of goods on import declarations for the purposes of evasion.

**22** The EU's "e-commerce package", proposed by the European Commission on 1 December 2016 and adopted by the Council at the end of 2017, intended to address these issues. It was drawn up within the framework of the Strategy for the EU Digital Single Market. The first reforms in respect of VAT came into effect on 1 January 2019. Other measures will come into effect in 2021.

## Audit scope and approach

**23** The audit assessed whether the Commission and the Member States are addressing effectively the challenges faced by Member States in collecting the correct amounts of VAT and customs duties due on goods and services traded over the internet. In particular, we examined whether:

- (a) the Commission has established a sound regulatory and control framework on e-commerce with regard to the collection of VAT and customs duties; and
- (b) the Member States' control measures help ensure the complete collection of VAT and customs duties in respect of e-commerce.

**24** We visited the tax and customs authorities of five Member States: Germany, Ireland, the Netherlands, Austria and Sweden. We selected them according to the following risk criteria: (i) the estimated amount of VAT foregone related to exemptions granted by the legislation for low value consignments<sup>11</sup>; (ii) the number of registered traders in the MOSS system per Member State<sup>12</sup>; and (iii) the volume of e-sales made by traders registered in one Member State to customers in other Member States<sup>13</sup>.

**25** We carried out this audit because the collection of VAT and customs duties in cross-border e-commerce has been prone to irregularities. In particular, e-commerce is open to abuse by non-EU suppliers, putting EU traders at a disadvantage. Such irregularities directly affect the Member States' budgets and the European Union's, by reducing the Member States' collection of customs duties. It also indirectly affects their VAT-based contributions. They also distort the level playing field in the internal market.

**26** To that end, we audited the MOSS, which entered into force at the beginning of 2015. We also audited the taxation of VAT and customs duties on cross-border supplies of goods set up in the VAT and customs legislation. Finally, we reviewed the

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<sup>11</sup> Based on data from "Assessment of the application and impact of the VAT exemption for importation of small consignments" – Final report EY May 2015, p. 43.

<sup>12</sup> Based on data provided by TAXUD, showing the number of registered traders as of 31.10.2017.

<sup>13</sup> Based on Eurostat data: [http://ec.europa.eu/eurostat/statistics-explained/index.php/E-commerce\\_statistics](http://ec.europa.eu/eurostat/statistics-explained/index.php/E-commerce_statistics).

new proposals made by the Commission and the legislation adopted by the Council following the “e-commerce package”, on 5 December 2017.

**27** Our audit covered the period from the beginning of 2015 until the end of 2018. We also considered the likely impact of the legislative changes of the VAT e-commerce package that will enter into force after the end of our audit.

**28** We carried out the audit in two stages:

(a) first stage:

- preliminary work at the Commission, visits and discussions with academia, the chair of the Eurofisc Working Field specialised in e-commerce , and the World Customs Organisation, as well as with Core Group 2 of the VAT Working Group of the Supreme Audit Institutions (SAIs) of the EU, in order to collect information and data for the audit fieldwork in the Member States and to benchmark EU legislation against international best practices; and
- survey: Core Group 2 identified e-commerce as being susceptible to fraud in the field of VAT. In order to get a comprehensive overview of the situation in the EU, Core Group 2 decided to carry out a survey of all the tax authorities of the EU. We, as part of Core Group 2, sent this survey to the latter in November 2016. The reference year for the survey was 2015. It covered both the EU and non-EU schemes of the MOSS and the intra- and extra-EU distance sales of goods. 20 Member States replied to this survey;

(b) second stage, audit fieldwork:

- at the Commission: We assessed the specific regulatory and control framework set up by the Commission to ensure that it follows international best practices in the field of VAT and customs duties collection and previous recommendations of the ECA related to e-commerce. We also reviewed the legislative proposals submitted by the Commission under the “e-commerce package”; and
- in the selected Member States, we assessed whether: (i) tax and customs authorities use the administrative cooperation arrangements to ensure the transmission of the appropriate information concerning VAT and customs duties; (ii) the controls carried out by them are effective; and (iii) the enforcement of collection of VAT and customs duties is effective. We based our analysis on the replies of Member States to the survey on e-commerce, on interviews with experts from the Member States’ tax and customs authorities, and on several samples of e-commerce-related transactions.

**29** Further details about the audit approach in the Commission and in the Member States can be found in [Annex I](#) and in [Annex II](#).

## Observations

**30** Under e-commerce, goods and services are supplied from remote locations and Member States should make up for their lack of jurisdiction in the countries where the suppliers are established by exchanging information on these supplies. They should also perform effective controls on the basis of all the available information and enforce collection of VAT and customs duties to ensure its completeness.

**31** The Commission should inspect Member States' customs and tax authorities and carry out investigations to protect the financial interests of the EU. The Commission should also develop a sound legislative framework and controls system allowing Member States to meet the above needs while being consistent with the international best practices on e-commerce.

### Administrative cooperation arrangements are not fully exploited

#### Member States do not use the mutual administrative assistance arrangements to exchange information with non-EU countries

**32** Tax and customs authorities need to exchange information with other countries on international trade to ensure compliance with tax and customs provisions and the completeness of revenue collection. This administrative cooperation is known as mutual administrative assistance (MAA). Any EU international agreement is subject to prior authorisation of the Council, pursuant to Article 218 TFEU.

#### Mutual administrative assistance in tax matters

**33** In a previous Special Report we addressed the following recommendation<sup>14</sup> to Member States: "To strengthen cooperation with non- EU countries and enforce VAT collection on e-commerce B2C services and intangibles supplied from them, Member States should:

- (a) authorise the Commission to negotiate mutual assistance arrangements with the countries where most of the digital service providers are established and sign these arrangements; and

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<sup>14</sup> See recommendation 11 of Special Report No 24/2015, "Tackling intra-Community VAT fraud: More action needed".



- (b) for those Member States which belong to the OECD, sign and implement the OECD's Convention on Mutual Administrative Assistance in Tax Matters in order to exchange information on digital services providers with third countries".

**34** In this audit, we have followed-up the above recommendation. We found that there has been so far only one EU international agreement in the field of VAT cooperation, the Agreement between the European Union and the Kingdom of Norway on administrative cooperation, combating fraud and recovery of claims in the field of VAT<sup>15</sup>. This Agreement entered into force on 1 September 2018.

**35** All EU Member States have now signed the OECD's Convention on Mutual Administrative Assistance (MAA) in tax matters. However, none of the 20 Member States that replied to the survey has used it for e-commerce. Likewise, the five Member States we visited in 2018 in the context of this audit have never used the OECD's Convention on Mutual Administrative Assistance in tax matters for e-commerce.

#### **Mutual administrative assistance in customs matters**

**36** In customs matters, the EU has no agreement in force on cooperation and mutual administrative assistance with third countries providing for specific administrative cooperation in the field of e-commerce. This does not prevent Member States from using agreements on MAA in customs matters, which do not explicitly refer to e-commerce but which broadly deal with preventing, detecting and combating breaches of customs legislation.

**37** However, the five visited Member States did not provide us with any examples or evidence of the use of MAA requests in customs matters with third countries in the field of e-commerce. They are reluctant to use these information exchanges with China in the field of e-commerce due to the low chances of getting a reply<sup>16</sup>. Without such information exchanges, customs authorities in the Member State of consumption cannot be aware of the unreported transactions.

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<sup>15</sup> See OJ L 195 of 1.8.2018, p. 3. See also OJ L 195 of 1.8.2018, p. 1.

<sup>16</sup> See paragraph 59 of Special Report No 19/2017 "Import procedures: shortcomings in the legal framework and an ineffective implementation impact the financial interests of the EU".

## Intra-EU administrative cooperation arrangements are not fully exploited

**38** Member States depend on information received from other Member States concerning intra-EU trade to be able to collect VAT in their territory. Member States exchange this information using the administrative cooperation arrangements provided for in EU legislation<sup>17</sup>. This legislation lays down the following administrative cooperation tools relevant for e-commerce:

- (a) the MOSS, which stores information about registered traders and their reported supplies of services to the Member State of consumption;
- (b) exchanges of information on request and exchanges of information without prior request using standard electronic forms;
- (c) controls conducted simultaneously in two or more Member States (multilateral controls – MLCs) and the presence of tax officials in other Member States allowing them to obtain access to documentation held there or to attend ongoing enquiries; and
- (d) a decentralised network called Eurofisc for the swift exchange, processing and analysis of targeted information between Member States on cross-border fraud. Its purpose is to promote and facilitate multilateral cooperation in the fight against VAT fraud. The network functions as a cooperation framework without legal personality.

### The Mini One Stop Shop (MOSS)

**39** MOSS is a trade facilitation measure for traders supplying e-commerce services within and to the EU. Thus, registration for MOSS is voluntary. EU traders can register for the EU scheme of MOSS in the Member State where they have established their business or, when this is not the case, have a fixed establishment<sup>18</sup>. Non-EU traders can register for the non-EU scheme in any Member State of their choice. If traders do not register for MOSS, they should register for VAT in each Member State where the consumer of the services is established.

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<sup>17</sup> Council Regulation (EU) No 904/2010 of 7 October 2010 on administrative cooperation and combating fraud in the field of value added tax (recast) (OJ L 268 of 12.10.2010, p. 1).

<sup>18</sup> When they have fixed establishments in several Member States, they can register in any Member State where they have one of these establishments, unless they have established their business in one Member State. In this case, registration should be in the latter.

## The MOSS IT architecture is robust

**40** When Member States' tax authorities experience issues with the operation of MOSS by other Member States, they can request help from the call centre provided by the IT service management (ITSM) of DG TAXUD. Any issue reported is allocated a coded ticket on a database named Synergia. The ITSM has set up a MOSS dashboard as monitoring tool of the MOSS operations at EU level.

**41** When a Member States sends an erroneous message the recipient replies with a technical error message (TEM). The TEM can refer either to the invalidity or wrong format of the message or to the fact that the respective VAT return or VAT ID No. is unknown.

**42** In order to test the performance of the MOSS IT architecture, we:

- (a) analysed the replies of Member States to our survey;
- (b) interviewed the MOSS IT specialists of the Member States' tax authorities;
- (c) examined all 29 tickets allocated to issues reported published in the MOSS dashboard of 20.11.2017 in which the visited Member State was either the deficient or the affected one; and
- (d) reviewed a sample of 10 TEM sent and another of 10 TEM received by each visited Member State.

### Box 1

#### Example of findings in our samples

We found that 25 of the 29 tickets reported by the visited Member States were either still open or were closed after long delays. We also found that TEM received do not give rise to any reaction on the part of the recipient until the issue escalates to become a ticket. Thus, Member States are not pro-active in dealing with issues or TEMs (see detail of samples results in [Annex III](#)).

**43** Nineteen Member States replied in the survey that the IT infrastructure provided by the European Commission is reliable enough to ensure the functioning of the MOSS and 16 replied that the support given during the preparation phase by the Commission was sufficient. The tax authorities of the five visited Member States agreed with these statements during the audit. However, four Member States considered that the

guidance was insufficient. One of them pointed to the differences of interpretation of “functional and technical specifications”, which was confirmed by another Member State during our visit.

**44** The Dutch tax authorities consider that there are too many MOSS participants and technical specifications, which prevents them from being pro-active in handling exceptions and signals from Member States or traders. According to the Austrian tax authorities, the system has been working better since 2017 and the cooperation between the IT services of Member States is smooth. However, they consider that Member States will not be ready for the deployment of the new One Stop Shop by 2021.

#### **The MOSS stores information about registered traders and their reported supplies of services to the Member State of consumption**

**45** EU legislation on administrative cooperation provides for the storage and exchange of information concerning the start, changes and the end of activities of any trader registered for MOSS, and about its supplies of services reported in a VAT return from its MSIDE to the MCON<sup>19</sup>.

**46** In order to verify how Member States ensure that the right information concerning MOSS is conveyed to the Member State of consumption at the right time, we: (i) examined the replies of Member States to our survey; (ii) interviewed the MOSS experts in the visited Member States; and (iii) checked five samples of MOSS-related transactions.

**47** Thirteen Member States replied that traders have no trouble in determining the correct rate to be applied; five reported some difficulties and two Member States did not reply to this question. Of the visited Member States, the Netherlands, as MSIDE, sends an error message to the trader if the VAT amounts declared in the returns are not calculated correctly. In Sweden, the VAT return provides traders with the VAT rates for all Member States and there are consistency checks between the amounts declared and the VAT rates applied.

**48** Austria reported that if the trader introduces a wrong VAT rate or a wrong VAT amount the trader receives a notice from the Austrian MOSS system but it can still send the return with the wrong rate or amount. The system does not block the

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<sup>19</sup> Pursuant to Articles 17 and 43 to 47 of Council Regulation (EU) No 904/2010.

payment if the rate is wrong, it just sends a reminder for correction. Austria considers that the system should not allow traders to enter the wrong VAT rate.

**49** To determine the place where the consumer of the services is located, the EU legislation lays down several presumptions. When these presumptions do not apply, the supplier must keep two pieces<sup>20</sup> of non-contradictory evidence, *e.g.* billing or internet protocol (IP) addresses, bank details to provide evidence of the consumer's location.

**50** According to the replies to the survey, thirteen Member States experience no difficulties to determine the place in which the consumer is located and they have no reports of difficulties from their MOSS traders. Three Member States reported some problems. Another Member State declared that it is currently using just a single piece of evidence to determine this place. One Member State reported significant problems and the remaining two did not reply to this question.

**51** Out of the five visited Member States, only Austria reported that it is not always possible to verify if the consumers' location is the real or the correct one and that they can only rely on the IP address.

**52** In each visited Member State, we checked for both the EU and the non-EU schemes a sample of 10 MOSS registrations, returns, corrections to returns, deregistrations and exclusions. The full sample results are shown in [Annex III](#).

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<sup>20</sup> Since 1 January 2019, the EU legislation requires the suppliers to keep only one piece of evidence if the amount of their annual intra-EU B2C supplies of services does not exceed €100 000.

## Box 2

### Example of findings in our samples

Tax authorities did not always document controls on registrations of traders. These controls were more exhaustive in relation to EU rather than on non-EU traders, and did not prevent cases of registration in two Member States at the same time. This distorts the level playing field in the internal market.

If the trader has not submitted a return within 30 days of the end of the return period (quarter), the MSIDE shall issue a reminder by electronic means of the trader's obligation to submit a return and payment. Any further reminders will be issued by the MSCON. We found that the MSCON did not remind the trader to submit a VAT return in five out of the 50 sampled cases. If the trader does not fulfil its obligation to submit a VAT return during three consecutive calendar quarters the tax authorities should exclude it from the MOSS.

## The use of exchanges of information between Member States is insufficient

**53** There are two types of exchanges of information provided for in the EU legislation concerning administrative cooperation: exchanges of information on request or without prior request. The latter can be either automatic, *e.g.* the automatic exchanges of information concerning MOSS referred to in the previous section, or spontaneous<sup>21</sup>.

**54** *Table 1* shows the exchanges of information under administrative cooperation (AC) related to e-commerce we found in the visited Member States from 2015 up to the most recent data available.

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<sup>21</sup> Spontaneous means a non-systematic communication of non-requested information sent at any time.

**Table 1 – Exchanges of information in the visited Member States related to e-commerce**

Total exchanges of info under administrative cooperation (AC) for e-commerce						
Member State	Ireland	Sweden	Netherlands	Austria	Germany	Total
Period	1.1.2015 to 31.3.2018	1.1.2015 to 31.3.2018	1.1.2015 to 31.3.2018	1.1.2015 to 31.5.2018	1.1.2015 to 30.9.2018	
Requests info sent	3	8	NK	146	25	182
Requests info received	11	1	3	0	28	43
Spontaneous info sent	NK	NK	26	NK	31	57
Spontaneous info received	NK	14	NK	8	2	24
Total exchanges of info	14	23	29	154	86	306
Legend:						
NK = Not known						

Source: ECA.

**55** We found that there was a risk that this data is not complete because:

- (a) the e-forms used for spontaneous exchanges of information do not have a box to tick and categorise the information exchanged as relating to the distance-selling scheme;
- (b) Member States do not keep separate records of e-forms related to e-commerce; and
- (c) Member States' administrative cooperation central liaison offices do not have a separate coordination function for MOSS and/or for distance sales.

**56** *Table 2* shows the exchanges of information under AC in the visited Member States in 2016, regardless of whether they are related to e-commerce or not.

**Table 2 – Total exchanges of information under AC in the visited Member States in 2016**

Member State	Requests for information		Requests for information sent		Spontaneous information		Spontaneous information sent	
		%		%		%		%
Austria	1 315	8 %	659	7 %	112	6 %	84	3 %
Germany	10 373	66 %	6 100	66 %	1 061	54 %	2 330	83 %
Ireland	343	2 %	338	4 %	88	4 %	40	1 %
Netherlands	3 261	21 %	1 421	15 %	619	31 %	154	6 %
Sweden	350	2 %	683	7 %	101	5 %	183	7 %
	<b>15 642</b>	<b>100 %</b>	<b>9 201</b>	<b>100 %</b>	<b>1 981</b>	<b>100 %</b>	<b>2 791</b>	<b>100 %</b>

Source: Standing Committee on Administrative Cooperation-Expert Group.

**57** These tables show that the use of exchanges of information on either request or spontaneous on e-commerce is still limited.

**58** The exchanges of information on request should take place no later than three months following the receipt of the request, unless the requested authority is already in possession of the information. In this case, the time limit is reduced to one month<sup>22</sup>.

**59** To verify the efficiency of these exchanges of information, we examined the exchanges of information shown in [Table 1](#). When the population of the exchanges of information, either on request or spontaneous, sent or received exceeded 10 items, we made a random selection of 10 items. Otherwise, we examined the whole population. We found that:

- (a) out of 56 sample items checked, there were 25 delays in the exchanges of information on request. In 16 out of these 25 belated exchanges of information, Member States did not advise their counterparts of the impossibility to meet the deadline to reply pursuant to Article 12 of Regulation No 904/2010;
- (b) Member States use more frequently exchanges of information either on request or spontaneous on intra-EU distance sales of goods than on MOSS.

#### **Multilateral controls are not effective**

**60** Two or more Member States can agree to conduct coordinated controls of the tax liability of one or more related traders if they consider such controls to be more effective than controls carried out by only one Member State<sup>23</sup>.

**61** According to the Commission, since 2014, 284 multilateral controls (MLCs) have been carried out, of which six can be considered as more specifically related to e-commerce, involving VAT and direct taxes.

**62** We examined these MLCs during our audit visits to Member States and measured their effectiveness in terms of additional VAT assessments carried out. We found that three of them are ongoing, and one has been very successful in terms of additional VAT assessments. However, we also found that in two cases, the MSIDE refused to participate in the MLC. One of the visited Member States stated that it is almost impossible to determine the correct tax base when the MSIDE is not involved.

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<sup>22</sup> Pursuant to Article 10 of Regulation No 904/2010.

<sup>23</sup> See Article 29 of Regulation No 904/2010.



**63** Likewise, the visited Member States have never used joint audits under the umbrella of the OECD's Convention on Mutual Administrative Assistance (MAA) in tax matters<sup>24</sup>.

**64** On 2 October 2018, the Council adopted an amendment<sup>25</sup> to Regulation No 904/2010, which provides<sup>26</sup> for the possibility for Member States' tax authorities to carry out joint audits. Under the new provisions, if at least two Member States submit a common reasoned request to the MSIDE containing indications or evidence of risks of VAT evasion, the requested authority cannot refuse (subject to certain exceptions) to participate in the audit.

### **Member States do not find the exchanges of information through Eurofisc useful**

**65** Eurofisc is a decentralised network of officials from the Member States' tax and customs administrations, who swiftly exchange and jointly process and analyse targeted information about possible fraudulent companies and transactions.

**66** The Eurofisc plenary meeting of April 2016 approved the creation of the new working field 5 (WF5) of Eurofisc. Currently, there are 24 participants and three observers in this working field.

**67** One of the goals of WF5 for 2017 was to start exchanging operational data. Member States have agreed two levels of feedback. A first level feedback must be sent, if possible, within a month. A second level feedback is expected to be provided upon conclusion of the investigation in order to allow the sender of the information to be aware of the usefulness of the information supplied.

**68** We found that when the system became operational in December 2017 four Member States shared a list of 480 fraud signals with their counterparts. However, Member States provided feedback only in respect of one of these 480 cases. Member

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<sup>24</sup> See paragraphs 21 to 28 of the "Joint Audit Report", OECD, Forum on Tax Administration (FTA) September 2010.

<sup>25</sup> Council Regulation (EU) 2018/1541 of 2 October 2018 amending Regulations (EU) No 904/2010 and (EU) 2017/2454 as regards measures to strengthen administrative cooperation in the field of value added tax (OJ L 259 of 16.10.2018, p. 1).

<sup>26</sup> In the new paragraph (4a) of Article 7 and paragraph (2a) of Article 28 of Council Regulation No 904/2010.

States consider that the signals exchanged through Eurofisc WF5 in this risk database are either not well targeted, not useful or not successful.

**69** Member States also share information and issue early warning messages about fraud trends and concrete fraud schemes. We found that Member States have exchanged this information three times and one of them was very useful to the tax authorities of the Member State receiving the information, which provided feedback within a month.

### **Lack of effective controls on cross-border e-commerce**

**70** Member States are primarily responsible for implementing the control system to ensure the registration of EU and non-EU traders in the MOSS system. In addition, each Member State is responsible for putting in place its own risk management framework for controls on distance-selling. Since there is no common framework at EU level, different approaches in the various Member States may lead to distortions in the internal market.

#### **The control activity of tax authorities on MOSS is weak**

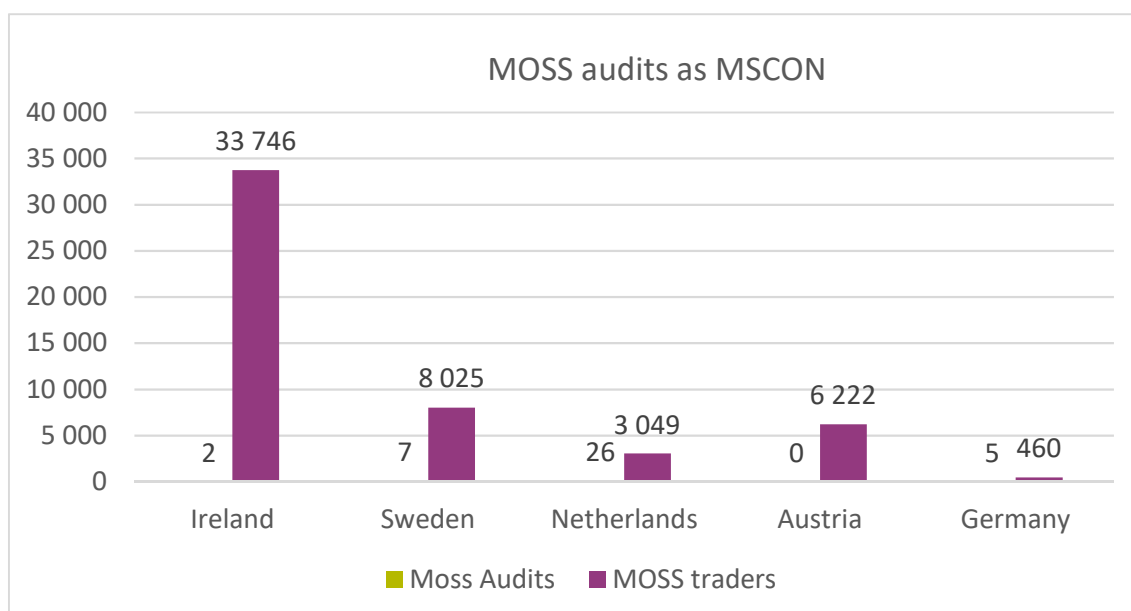
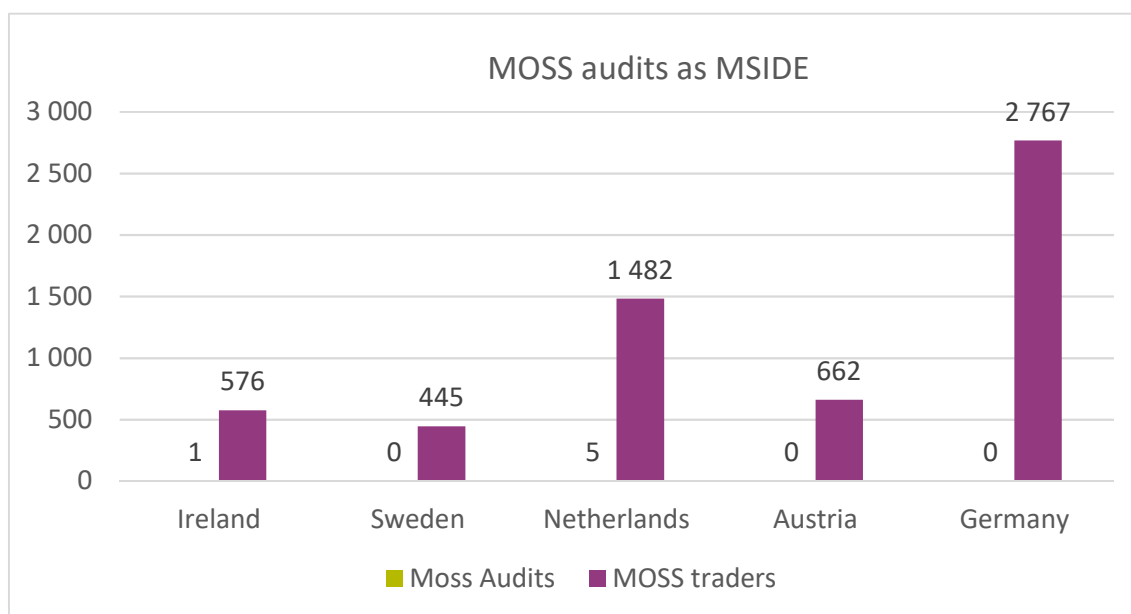
**71** We found that tax authorities did not always document controls on registrations of traders. These controls were more exhaustive in relation to EU rather than on non-EU traders. We found weaknesses in the control of registrations for the non-EU scheme in nearly 80 % of the cases reviewed and, during the examination of the samples of deregistrations and exclusions, we identified two cases of double registration for the non-EU scheme. Thus, the level playing field is not ensured for EU traders.

**72** In the survey, we asked Member States whether they had carried out controls on traders registered under the MOSS as MSIDE in 2015. Only seven Member States replied that they had performed such controls, and one of them stated it performed them upon registration. The other Member States replied that either they had not carried out controls (nine) or did not have statistics on this (four).

**73** Concerning controls as MSCON, eight Member States replied that they had carried out such controls; nine had not performed any controls; and three more lacked relevant statistics.

**74** Figure 2 shows the number of MOSS audits carried out in the visited Member States, for both the EU and non-EU schemes, from 2015 until the latest available data.

**Figure 2 – Number of MOSS audits in the five selected Member States compared to the population of traders at the end of 2017**



*Note:* The number of MOSS traders in Germany available at Federal level does not include EU suppliers.

*Source:* ECA.

**75** We examined the MOSS audits referred to in [Figure 2](#). We found that:

- (a) only the Netherlands uses the standard audit file for MOSS audits (SAF-MOSS) to request data from MOSS traders;
- (b) the audit was concluded with an effective VAT collection of the additional VAT assessment in only three of the examined files; and
- (c) the Commission has provided recommendations<sup>27</sup> on how to coordinate MOSS audits and Member States have agreed guidelines produced by the “Fiscalis Project Group No 86” on the audit and control on the MOSS. However, these are not legally binding and Member States can follow different approaches.

**76** We found that MOSS audit activity is very limited in the case of the EU scheme and nearly non-existent in the case of the non-EU scheme. This audit activity is not effective in terms of VAT collection. Moreover, the Dutch tax authorities declared that they have a huge backlog for audits on corrections of VAT returns as MSCON.

### **Tax authorities do not perform effective audits on the intra-EU distance sales of goods**

**77** Most of Member States use web-scraping tools or third party information to identify traders that should be registered in their jurisdiction because they have exceeded the threshold (see paragraph [09](#)). However, they do not use this information to identify traders that should be registered in another Member State.

**78** Two of the visited Member States also reported that checking suppliers from other Member States that should register in the former because they have exceeded the distance sales threshold is difficult.

**79** For example, suppliers from other Member States and marketplaces can ensure that private customers are obliged to contract with intermediary delivery-company suppliers in the supplier’s Member State, to undertake the delivery of the goods to the Member State of consumption. The supplier then artificially deems the supply to have been made to the domestic intermediary rather than a distance-sale to the Member State of consumption, thereby avoiding the need for registration in the latter.

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<sup>27</sup> [https://ec.europa.eu/taxation\\_customs/business/vat/telecommunications-broadcasting-electronic-services/sites/mossportal/files/one-stop\\_add\\_guidelines\\_en.pdf](https://ec.europa.eu/taxation_customs/business/vat/telecommunications-broadcasting-electronic-services/sites/mossportal/files/one-stop_add_guidelines_en.pdf).

**80** 53 out of the 62 samples of exchanges of information either on request or without prior request related to distance sales we examined were made within the context of an audit. We found 13 examples of effective results in terms of VAT collection.

### EU customs cannot prevent abuse of the low value consignment relief for goods imported from non-EU countries

**81** B2C supplies of goods purchased from non-EU countries have a low value consignment relief of VAT when their value does not exceed the threshold of €22<sup>28</sup>. In addition, when the intrinsic value<sup>29</sup> of goods is equal or less than €150 customs duties need not be levied. A gift sent from one private individual to another private individual (P2P) is exempt from customs duties and VAT when their value does not exceed €45 (see [Table 3](#)).

**Table 3 – Threshold for the low value consignment relief**

Low value consignment relief			
B2C	Euro 0 - 22	Euro 22 - 150	> Euro 150
	no VAT, no CD	VAT, no CD	VAT, CD
P2P	Euro 0 - 45	> Euro 45	
	no VAT, no CD	VAT, CD	

Source: ECA.

**82** These low value consignment reliefs (LVCR) can be abused via: (i) undervaluation of goods, which are declared below the thresholds for the VAT and/or customs exemptions; (ii) splitting consignments to be under the threshold limit; (iii) importing of either commercial consignments declared as gifts or of goods which are ineligible for the relief.

**83** The goods can be imported after the consumer has purchased them on the internet. In this case, they are imported using either a postal or a courier service. Customs authorities are ultimately responsible for ensuring traders' compliance with the LVCR. They are also responsible for putting in place their own risk management framework for controls of these imports.

<sup>28</sup> Member States can set this threshold at €10.

<sup>29</sup> Intrinsic value is defined as the item's value without freight and insurance charges.

## Weaknesses in the Member States' customs electronic clearance systems

**84** In order to verify whether the Member States' customs electronic clearance systems are able to prevent abuses of the LVCR, we carried out a test in the dummy environment of the customs electronic clearance system of four of the visited Member States. We also selected a targeted sample of 15 imports made by postal operators and another targeted sample of 15 imports made by courier operators in each of the five visited Member States.

**85** All the customs electronic clearance systems of the visited Member States accepted declarations that were not eligible for the LVCR. With the exception of Austria, the customs electronic clearance systems of the other four visited Member States accepted import declarations applying for the customs duty relief for B2C consignments, even though the declared intrinsic value was higher than €150<sup>30</sup>, or for gifts with a declared value higher than €45<sup>31</sup>. In Austria, the customs electronic clearance system accepted import declarations applying for the customs duty relief for B2C consignments, even though the declared product was an alcoholic product<sup>32</sup>.

**86** The sample results are shown in *Figure 3*.

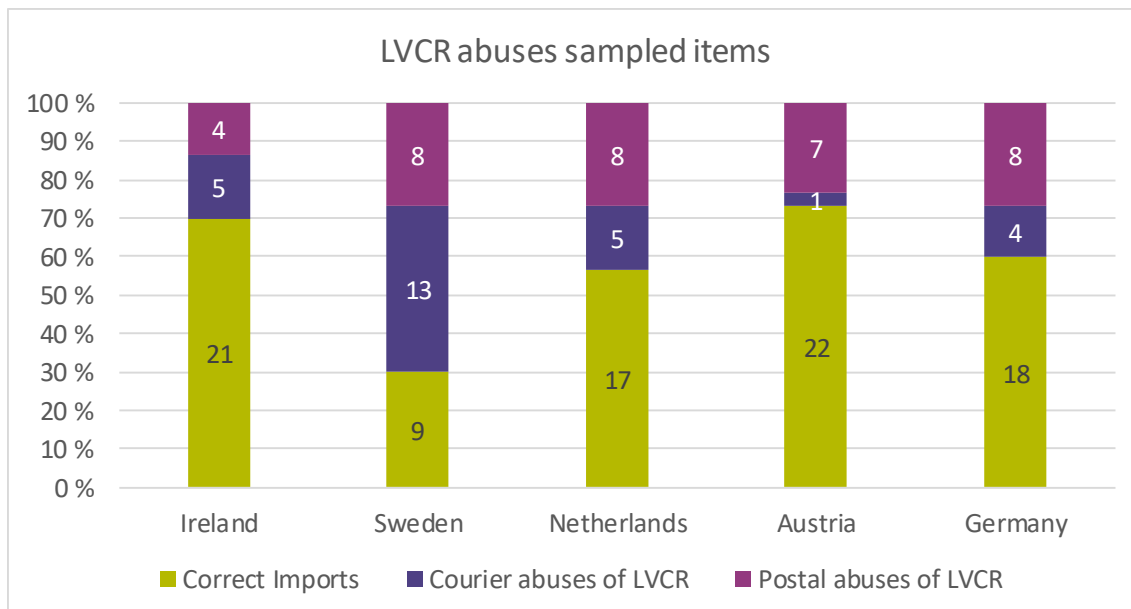
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<sup>30</sup> Contrary to Article 23 of Council Regulation (EC) 1186/2009 setting up a Community system of reliefs from customs duty.

<sup>31</sup> Contrary to Articles 25 and 26 of Council Regulation (EC) No 1186/2009 and to Article 1 of Council Directive 2006/79/EC of 5 October 2006 on the exemption from taxes of imports of small consignments of goods of a non-commercial character from third countries (codified version) (OJ L 286, 17.10.2006, p. 15).

<sup>32</sup> Contrary to Article 24 (a) of Council Regulation (EC) 1186/2009 setting up a Community system of reliefs from customs duty.

**Figure 3 – Sample results by Member States of postal and courier imports**



Source: ECA.

**87** In Special Report No 19/2017, we recommended Member States to immediately<sup>33</sup>:

“ ...

- (b) introduce checks in their customs electronic release systems to block the acceptance of import declarations applying for a duty relief for low-value consignments of goods with declared intrinsic value higher than €150 or for commercial consignments (B2C) declared as gifts (P2P);
- (c) verify ex-post traders' compliance with customs duty relief for low-value consignments, including authorised economic operators (AEOs);
- (d) set-up investigation plans to tackle abuse of these reliefs on e-commerce trade of goods with non-EU countries.”

**88** None of the visited Member States have addressed recommendations (b) and (d). Member States carry out ex-post controls to verify traders' compliance with the LVCR but they did not prevent the abuses we detected in the samples in [Figure 3](#). Therefore, the customs electronic clearance systems are not able to prevent the importation of

<sup>33</sup> See recommendation 9 of Special Report No 19/2017.

goods that are ineligible for the LVCR and this is not compensated for by ex-post controls and investigation plans.

### **A number of AEOs have abused the low value consignment relief**

**89** According to customs legislation<sup>34</sup>, an AEO must have internal controls capable of preventing and detecting illegal or irregular transactions. Furthermore, according to the AEO guidelines: “Every irregularity in the administration including customs infringements can be an indicator that the internal control system is not being effective. In this perspective every customs infringement has always to be scrutinised also with respect to this condition in order to take measures to improve the internal control system and therefore avoiding the repetition of the infringement...”<sup>35</sup>.

**90** We examined 75 import declarations submitted by postal services in our samples (15 per visited Member State). We found that 35 out of these 75 abused the LVCR. In eight of these 35, the declarant was a particular AEO. We also examined 75 import declarations submitted by express couriers. We found that 28 of these abused the LVCR. In 21 of these 28, either the declarant or the customs representative was an AEO.

**91** The AEO courier companies that submitted the unlawful import declarations found in the sample should have internal controls in place to avoid this happening. These AEOs have applied for a VAT/customs duty relief for non-eligible goods.

### **The Commission does not carry out sufficient control and monitoring activities**

**92** As we reported<sup>36</sup> in Special Report No 19/2017, “customs authorities are obliged to exchange risk information related not only to observed risks but also to threats that present a high risk elsewhere in the Union by using a risk information form (RIF)”.

**93** The Commission created a RIF to tackle irregularities related to undervaluation, misclassification, VAT, etc. The RIF has been included in the Customs Risk Management

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<sup>34</sup> Article 25 (1) (f) of the Union Customs Code Implementing Act.

<sup>35</sup> See page 38 of DG TAXUD “AEO Guidelines” of 11 March 2016.

<sup>36</sup> See paragraph 54 of Special Report No 19/2017.



System (CRMS) and made available to Member States who decided on relevant information to be integrated in their national risk management system.

**94** According to the Commission, a quick search in the CRMS system about RIFs issued in 2016 and 2017, which contain one word related to e-commerce, postal and courier freight has identified 530 RIFs issued by Member States.

**95** The Commission has created common risk criteria and standards for risks having an impact on the financial interests of the EU and its Member States (Financial Risk Criteria or FRC). Member States have to implement electronically these FRC by the end of May 2019. The FRC addresses, at least partially, previous recommendations of the ECA.

**96** Based on the replies of the Commission to our questionnaire, we have found that in the context of e-commerce challenges to VAT, the Commission does not carry out any inspections or monitoring visits in Member States other than the inspections on the calculations of Member States' harmonized VAT-bases for own resource purposes. The Commission is not monitoring the intra-EU distance sales and has not monitored the functioning of MOSS in the Member States since its implementation on 1.1.2015.

**97** However, the Commission has carried out information campaigns to improve non-EU traders' compliance with the VAT MOSS non-EU scheme.

**98** Since the beginning of 2015, the Commission has not carried out any traditional own resources<sup>37</sup> inspections on the compliance of express couriers and postal services.

**99** In our Special Report No 19/2017, we recommended the Commission to "... (c) investigate the abuse of the low-value consignment reliefs on e-commerce trade of goods with non-EU countries" (recommendation 8). OLAF started an investigation into the e-commerce import of low value garments in 2017. Investigations are ongoing in four Member States. In 2018 OLAF started an investigation into the suspected import via e-commerce transactions of potentially sensitive goods by air transport without payment of customs duties and the related VAT due.

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<sup>37</sup> Own resource based on the customs duties and sugar levies established by Member States.

## Enforcement of collection is not effective

**100** Tax authorities are responsible for ensuring that the right amount of VAT is paid to the right Member State at the right time and for taking the necessary corrective measures when this is not the case. Member States are also responsible for collecting the VAT paid by traders registered in the MOSS system and transferring the collected amounts to other Member States where they are due.

## No estimates of the compliance VAT gap in the supply of services and diverging estimates in the supply of goods

**101** The compliance VAT gap is the difference between what should be collected in accordance with the current legislative framework and what is actually collected by Member States' tax authorities. We looked at whether and how this is estimated for cross border e-commerce supplies of goods and services. Such an estimate would help the Commission or Member States to target resources where they are most needed.

**102** We found that Member States have not made any estimate of the compliance VAT gap for either the EU or the non-EU scheme of MOSS. In our survey, we requested Member States to provide estimates of lost revenue due to unregistered traders from outside the EU. Seventeen Member States replied that they do not have such estimates; two Member States did not answer this question; and one Member State provided an estimate about the amount of revenue lost in 2015 because of the use of illegal television broadcasting<sup>38</sup> by at least 100 000 households within its territory. This estimate amounts to €12 million.

**103** We confirmed the failure to carry out an estimate of the compliance VAT gap for MOSS in the Member States we visited.

**104** In our survey, we requested Member States to provide an estimate of the revenue lost due to fraudulent behaviour abusing the low value consignment relief (LVCR), *e.g.* by splitting, mis-declaring or under-invoicing shipments to stay below the threshold. None of the twenty surveyed Member States provided us with such an estimate.

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<sup>38</sup> See: [www.parlegalusaturu.lv](http://www.parlegalusaturu.lv).

**105** A Deloitte Study has made an estimate of the compliance VAT gap due to intra and extra-EU distance sales of goods<sup>39</sup>. The losses range from €2.6 and €3.8 billion annually in the EU. Austria has estimated the total VAT loss in its territory due to intra-EU distance sales in the period 2010-2015 to be €860 million. Out of the five visited Member States, only Austria has published this sort of estimate.

**106** For the EU as a whole, a 2016 study by a consultancy firm likewise points to gaps in the system<sup>40</sup>. According to the study, VAT is levied on only 35 % of postal imports, and these gaps translate directly into a loss of VAT revenue of approximately €1.05 billion. It estimates additional losses of €0.25 billion from gaps in the collection of import duties. The European Commission, meanwhile, estimates the overall VAT losses in cross-border e-commerce resulting from the exemption of low-value consignments to be as high as €5 billion per year<sup>41</sup>.

**107** HMRC in the UK has estimated the VAT losses due to extra-EU distance sales of goods (imports) to be between £1 to £1.5 billion every year in the UK. This ranges between 8 % and 12 % of the VAT gap<sup>42</sup>. It is worth noting in comparison that in the UK missing trader intra-Community (MTIC) fraud only amounts to 4 % of the VAT gap<sup>43</sup>.

## Problems with MOSS payments between Member States

**108** Under the MOSS the VAT paid by the trader in the MSIDE is then transferred to the Member State of consumption at the latest 10 days after the end of the month during which the payment was received. The amount transferred is net of a retained percentage of the collected VAT. EU legislation has gradually reduced this percentage

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<sup>39</sup> Deloitte study on VAT Aspects of cross-border e-commerce – Options for modernisation, Lot 1, p. 65.

<sup>40</sup> Copenhagen Economics, E-commerce imports into Europe: VAT and customs treatment, 2016.

<sup>41</sup> European Commission, “Proposal for a Council Directive amending Directive 2006/112/EC and Directive 2009/132/EC as regards certain value added tax obligations for supplies of services and distance sales of goods”, COM (2016) 757 final, 1.12.2016.

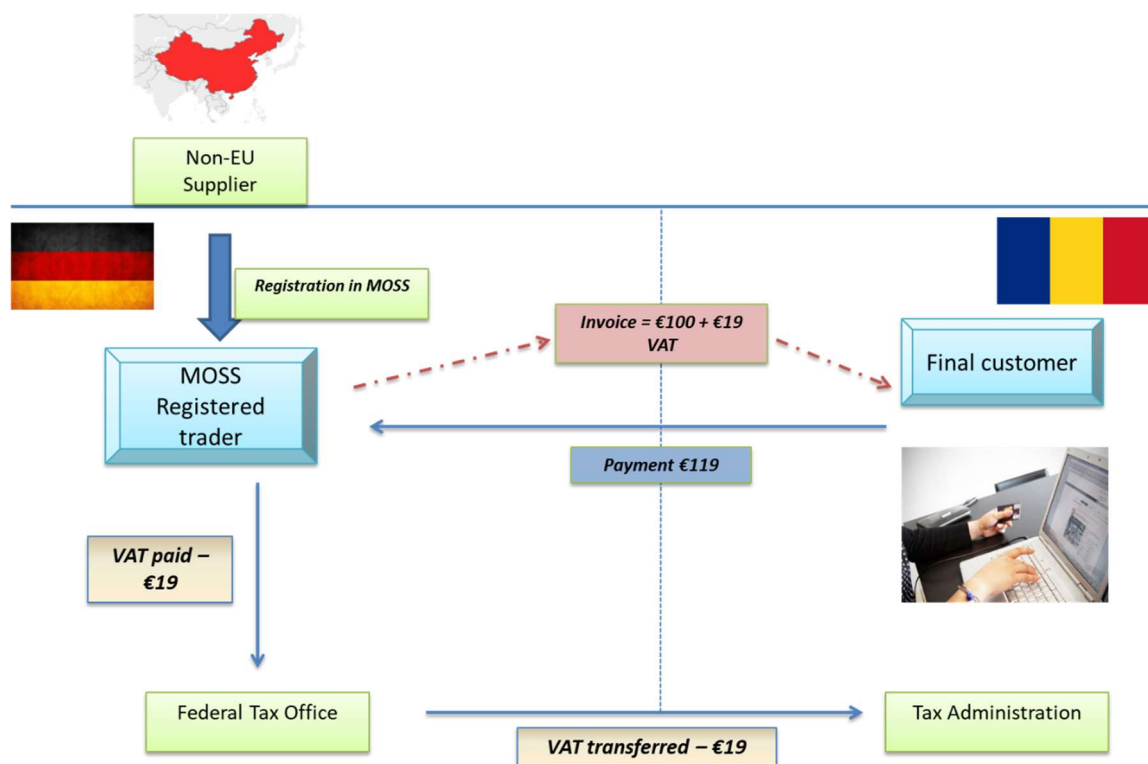
<sup>42</sup> <https://www.nao.org.uk/wp-content/uploads/2017/04/Investigation-into-overseas-sellers-failing-to-charge-VAT-on-online-sales.pdf>

<sup>43</sup>

<https://webarchive.nationalarchives.gov.uk/20190509073425/https://www.gov.uk/government/statistics/measuring-tax-gaps>

from 30 % in 2015-2016, to 15 % in 2017-2018 and 0 % from 2019. **Figure 4** shows the financial flows in a case of B2C supply of e-commerce services from a non-EU MOSS registered supplier.

**Figure 4 – B2C supply of e-commerce services from a non-EU MOSS registered supplier**



Source: ECA, based on "Your pocket guide to VAT on digital e-commerce", Bellheim, Brown, Erneholm, Jundt, *et al.*

**109** If the trader either fails to make a payment, or does not pay the full amount, the MSIDE shall send a reminder electronically on the 10th day following the day on which the payment was due. The MSCON is thenceforth responsible for sending any subsequent reminders and for the collection of the VAT<sup>44</sup>.

**110** We examined a sample of 10 VAT payments received as MSIDE per visited Member State. We found that, in two cases, the trader did not pay the full amount, but the Irish tax authorities did not send a reminder to the trader for the missing payment. In one of these two cases, they did not exclude the trader even though the trader eventually paid with a delay of more than two years.

<sup>44</sup> See "Guide to the VAT mini One Stop Shop", European Commission, 2013.

**111** In the Netherlands, we found three cases where the Dutch tax authorities allocated the payment to the VAT return manually, which is a burdensome and not fully reliable task. Moreover, the national IT system of the Netherlands does not provide for automatic checks between returns and payments. Traders can be excluded from MOSS when they have received a reminder to either submit or pay a VAT return for three immediately preceding calendar quarters. Therefore, the tax authorities do not know when a payment has not been made and there is no automatic notification that the trader has missed three payment deadlines. The sample results are shown in *Annex III*.

**112** The SAI of the Netherlands has reported<sup>45</sup> the following: “The Dutch MOSS system did not provide any support for checks of the timeliness and completeness of VAT payments between 2015 and 2017. It was not until the first quarter of 2018 that the Tax and Customs Administration was able to start matching VAT returns and VAT payments, in respect of the first quarter of 2015. Matching returns and payments is predominantly manual work. Owing to the backlog in matching MOSS returns and payments, the Administration’s Non- Resident Office has still not started working on the structured enforcement and monitoring of compliance with VAT obligations. To do so, it needs specific information on the status of payments”.

**113** We checked a sample of 10 payments as MSCON per visited Member State. We found two cases in which the tax authorities of the MSCON did not send a reminder even though the trader had not made the payment by that stage. In another case, the MSCON received the payment but did not find the VAT return. The Dutch tax authorities allocated manually all the items of the selected sample to the VAT return. See more details on the sample results in *Annex III*.

**114** To ensure the completeness of VAT payments, these are linked to the VAT returns using a unique VAT return reference number. The Austrian tax authorities reported that they do not receive all payments due, especially from the United Kingdom. Likewise, the SAI of the Czech Republic<sup>46</sup> reported problems with the allocation of payments received from the United Kingdom to VAT returns.

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<sup>45</sup> See p. 33 of <https://english.rekenkamer.nl/publications/reports/2018/11/28/vat-on-cross-border-digital-services>.

<sup>46</sup> See p. 23 of <https://www.nku.cz/scripts/rka-en/detail.asp?cisloakce=17/12&rok=0&sestava=0>.

**115** The Commission, as part its assurance work on the VAT-based own resource, carries out a reconciliation of the MOSS VAT payments between the 28 Member States. We examined this reconciliation and found that the Commission itself considers that there are big discrepancies concerning Belgium, Bulgaria, Denmark and Austria, whereas three Member States had not provided the data by the end of 2018 (Greece, Cyprus and the United Kingdom). The data of 2016 is not complete, as 11 Member States had not yet been inspected for that financial year.

### **The mutual assistance provisions for recovery of taxes are underused**

**116** Out of the five visited Member States, only the Austrian tax authorities have sent recovery claims as MSCON to other Member States related to amounts due by MOSS traders<sup>47</sup>. They sent five claims between 1.1.2015 and 31.5.2018.

### **Despite recent positive developments in the regulatory framework, important issues remain to be addressed**

**117** EU customs law is laid down in the Union Customs Code<sup>48</sup> (UCC), while VAT is governed by the EU VAT Directive<sup>49</sup>. Since 2015, the MOSS has applied to the cross-border supplies of e-commerce services. At the end of 2017, the EU adopted a new package of EU legal provisions governing VAT in e-commerce, the “VAT e-commerce package”. This package consists of three legal acts<sup>50</sup> and introduces the following changes.

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<sup>47</sup> Pursuant to Council Directive 2010/24/EU of 16 March 2010 concerning mutual assistance for the recovery of claims relating to taxes, duties and other measures (OJ L 84 of 31.3.2010, p. 1).

<sup>48</sup> Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (recast) (OJ L 269 of 10.10.2013, p. 1)

<sup>49</sup> Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ L 347 of 11.12.2006, p. 1).

<sup>50</sup> Council Directive (EU) 2017/2455 of 5 December 2017 amending Directive 2006/112/EC and Directive 2009/132/EC as regards certain value added tax obligations for supplies of services and distance sales of goods (OJ L 348 of 29.12.2017, p. 7); Council Implementing Regulation (EU) 2017/2459 of 5 December 2017 amending Implementing Regulation (EU) No 282/2011 laying down implementing measures for Directive 2006/112/EC on the common system of value added tax (OJ L 348 of 29.12.2017,

- (a) It allows micro-businesses and start-ups to tax their cross-border supplies of e-commerce services not exceeding the threshold of €10 000 according to the “origin principle”, *i.e.* at the rate of the Member State of origin, not the Member State of destination.
- (b) It allows e-sellers to apply the invoicing rules of their MSIDE instead of the rules in force in the Member State of destination.
- (c) It extends the MOSS system to all cross-border B2C supplies of services, which will become the one-stop-shop (OSS), and to online B2C sales of goods, whether from an EU or non-EU country.
- (d) It abolishes the VAT relief for items not exceeding a total value of €22 (or €10) purchased online and imported from a non-EU country.

**118** Changes described in subparagraphs a) and b) above came into effect in 2019 and those in subparagraphs c) and d) only in 2021. We reviewed the likely impact of the changes and identified issues, which, in our view, remain to be addressed.

### **The regulatory framework follows international best practice promoted by the OECD and the WCO in most respects**

**119** We assessed the regulatory framework described in paragraph [117](#) to ensure that it follows international best practice in the field of VAT and customs duties collection as defined by the OECD and the WCO.

#### **The OECD destination principle**

**120** Following the VAT Directive, the EU applies the destination principle to cross-border supplies of e-commerce services to a final consumer. The destination principle means that such supplies of services should be subject to VAT in the jurisdiction in which the recipient has its usual residence<sup>51</sup>. This is in accordance with international best practice.

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p. 32); Council Regulation (EU) 2017/2454 of 5 December 2017 amending Regulation (EU) No 904/2010 on administrative cooperation and combating fraud in the field of value added tax (OJ L 348 of 29.12.2017, p. 1).

<sup>51</sup> Cf. Paragraphs 90 and 91 of Special Report No 24/2015 “Tackling intra-Community VAT fraud: More action needed”.

**121** However, the new provisions that enter into force on 1 January 2021 allow micro-businesses and start-ups to tax their supplies of e-commerce services not exceeding the threshold of €10 000 according to the “origin principle”, *i.e.* at the rate of the Member State of origin.

**122** It is our view that using the principle of origin increases the risk that suppliers underreport sales VAT in order to remain under the threshold and avoid charging the higher VAT applicable in the destination Member State. Moreover, the new provisions do not address the risk that Member States with lower rates compete with others to attract SMEs and start-ups to their territories<sup>52</sup>.

**123** Concerning the threshold of €10 000, we also agree with the assessment of the SAI of the Czech Republic that, “only the state of identification can ascertain exceeding this limit. The SAO draws attention to the fact that this Directive requires the EU Member States to take appropriate measures to verify the conditions for the use of this limit”<sup>53</sup>.

#### **The WCO risk indicators and immediate release guidelines**

**124** Under the existing EU regulatory framework, the Commission created common risk criteria and standards for risks having an impact on the financial interests of the EU and its Member States (Financial Risk Criteria or FRC). This framework does not include all the criteria set up by the WCO<sup>54</sup> but only those that can be implemented by Member States in their national risk management systems. We have found that the Commission has not provided Member States with additional explanation on the WCO indicators to clearly establish how to implement the FRC on the basis of common elements.

**125** The WCO issued the immediate release guidelines (IRG), “a set of procedural Guidelines based on existing practices to enable Customs to combine immediate

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<sup>52</sup> Lamensch, 2017, p. 140. See in [https://www.ibfd.org/sites/ibfd.org/files/content/pdf/ivm\\_2017\\_02\\_e2\\_1\\_SeptNewsletter.pdf](https://www.ibfd.org/sites/ibfd.org/files/content/pdf/ivm_2017_02_e2_1_SeptNewsletter.pdf).

<sup>53</sup> See p. 17 of Audit Conclusion No 17/12 in the field of e-commerce on <https://www.nku.cz/scripts/rka-en/detail.asp?cisloakce=17/12&rok=0&sestava=0>.

<sup>54</sup> In the “Postal/Express Consignments Risk Indicators and Manual” of Volume 2 of the WCO Customs Risk Management Compendium.



release with relevant and appropriate controls for these consignments”<sup>55</sup>. They are particularly relevant for postal and courier freight. We found that the EU legislation aligns with the main principles of the IRG.

**126** According to the IRG<sup>56</sup>, transport costs may be excluded for computing the value of correspondence and documents and low value consignments for which no duties or taxes are collected. All the Member States we visited and the Commission have interpreted the threshold of €150 for the relief of customs duties as referring only to the value of the goods alone, which does not include insurance and freight<sup>57</sup>.

**127** However, we found that Ireland and Germany interpret the threshold of €22 (or €10) for the VAT relief to mean that the total value referred to in the legislation<sup>58</sup>, may also include transport costs<sup>59</sup>. Austria considers that this value concerns only the cost of the goods, excluding transport costs. These different interpretations suggest that the Commission has not succeeded in ensuring the uniform implementation of customs provisions by Member States’ customs authorities.

### **New provisions in force from 2021 aim to resolve some weaknesses but undervaluation remains to be addressed**

**128** We have reviewed the new provisions that will enter into force in 2021 in the light of the replies of the Commission to a questionnaire we addressed to it. We also discussed the challenges posed by e-commerce with representatives of academia, and Core Group 2 of the VAT Working Group of the SAIs of the EU.

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<sup>55</sup> See paragraph 1.3 of WCO “Guidelines for the immediate release of consignments by customs”, WCO, 2014 in <http://www.wcoomd.org/-media/wco/public/global/pdf/topics/facilitation/instruments-andtools/tools/immediate-release-guidelines/immediate-release-guidelines.pdf?db=web>.

<sup>56</sup> See paragraph 11 of WCO “Guidelines for the immediate release of consignments by customs”, WCO, 2014 in <http://www.wcoomd.org/-media/wco/public/global/pdf/topics/facilitation/instruments-and-tools/tools/immediate-release-guidelines/immediate-release-guidelines.pdf?db=web>

<sup>57</sup> See the “Compendium on the implementation of Council Regulation (EC) No 1186/2009” (Customs Code Committee, 2016, p. 19).

<sup>58</sup> See Article 23 of Council Directive 2009/132/EC.

<sup>59</sup> See pp. 18 and 19 of the Compendium.

**129** In some cases, the non-EU supplier of goods may choose to import the goods before the consumer has purchased them on the internet. In our Special Report No 19/2017, we pointed out<sup>60</sup> that under the current legislation, suppliers may succeed in evading the payment of VAT on these imports by undervaluing them and/or abusing the customs procedure 42 (CP 42). CP 42 allows an importer to obtain a VAT exemption on goods imported for transport to another EU Member State. The VAT is then due in the Member State of destination<sup>61</sup>.

**130** We found that there was a risk that goods imported under CP 42 would be stored in a warehouse in the EU until purchased by and delivered to the consumer on behalf of the non-EU supplier without accounting for VAT for this delivery.

### **The Commission has addressed the gap in the liability of intermediaries**

**131** The VAT Directive does not include provisions covering the VAT liability of intermediaries in the supply of goods using distance sales to allow the collection of VAT in cases where the third country supplier uses a warehouse to supply the goods to final consumers and the importation takes place before the final consumer is known.

**132** To remedy this, under the new provisions that will enter into force on 1 January 2021, electronic interfaces (such as platforms, marketplaces and portals) will be liable for collecting VAT as they are deemed to receive and supply goods by themselves. In addition, an amendment to the VAT Directive<sup>62</sup> establishes, with effect from 1 January 2021, record-keeping obligations for intermediaries, and another proposal<sup>63</sup> allows the electronic interfaces to use the OSS to declare the VAT charged for the B2C domestic supplies. Under these new provisions, tax authorities can collect the VAT due on the B2C supply from the electronic platform to the consumer.

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<sup>60</sup> See paragraphs 99, 100 and 137 of Special Report No 19/2017 “Import procedures: shortcomings in the legal framework and an ineffective implementation impact the financial interests of the EU”.

<sup>61</sup> See Special Report No 13/2011 “Does the control of customs procedure 42 prevent and detect VAT evasion?”.

<sup>62</sup> The Council Directive (EU) 2017/2455 introduces, with effect from 1 January 2021, the new Article 242a of the Directive 2006/112/EC.

<sup>63</sup> See COM(2018) 819 final of 11.12.2018, “Proposal for a Council Directive amending Directive 2006/112/EC as regards provisions relating to distance sales of goods and certain domestic supplies of goods”.

## The gap concerning undervaluation remains to be addressed

**133** We reported on the risk of undervaluation of supplies of e-commerce goods from third countries in 2017 and 2018<sup>64</sup>. In January 2018, 25 Member States shared their experiences of their investigations on undervaluation fraud connected with e-commerce during an ad-hoc meeting arranged by OLAF. Most of them had come across undervaluation fraud on e-commerce. The UK SAI has also established the connection between e-commerce, undervaluation fraud and abuse of CP 42<sup>65</sup>.

**134** The Member States and the Commission are taking measures to combat and investigate the smuggling of goods ordered online. They targeted, inter alia, small consignments with a value under €22 and found that low value is a noticeable modus operandi and that is a particular problem for e-commerce. Moreover, OLAF started an investigation into the e-commerce import of low value garments in 2017. Investigations are ongoing in four Member States.

**135** A report of the European Parliament assesses the new arrangements that will enter into force on 1 January 2021, notably, the OSS for the B2C supplies of goods imported from a non-EU country. According to this report, the two problems identified by the Court of Auditors, *i.e.* undervaluation and import of goods non-eligible for the LVCR, will continue to exist, albeit to a lesser degree, under the future rules<sup>66</sup>.

**136** This is why other studies<sup>67</sup> suggest that “technology-based” third party or customer collection systems should be tested, including the use of digital currencies. See examples of the systems proposed by these studies in **Box 3**. In addition, according

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<sup>64</sup> See paragraphs 137 and 138 of Special Report No 19/2017 “Import procedures: shortcomings in the legal framework and an ineffective implementation impact the financial interests of the EU” and paragraph 4.16 of Annual report on the implementation of the budget of the financial year 2017.

<sup>65</sup> See paragraph 1.10 of NAO report on <https://www.nao.org.uk/wp-content/uploads/2017/04/Investigation-into-overseas-sellers-failing-to-charge-VAT-on-online-sales.pdf>

<sup>66</sup>

[http://www.europarl.europa.eu/RegData/etudes/STUD/2018/621854/EPRS\\_STU\(2018\)621854\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2018/621854/EPRS_STU(2018)621854_EN.pdf).

<sup>67</sup> See EP Report on “VAT fraud, economic impact, challenges and policy issues”, October 2018, and *Sénat, Rapport d’information n° 691 du 17 septembre 2015, fait au nom de la commission des finances sur le e-commerce: propositions pour une TVA payée à la source*.

to the WCO, alternative collection models should be considered (*e.g.* vendor model, intermediary or consumer/buyer collection model), to move away, from the current approach where duties and taxes are assessed and collected at the border<sup>68</sup>.

### Box 3

#### Examples of alternative collection systems

Estonia tested the customer collection system, under which the VAT part of the payment made by the customer to the supplier is sent directly to the tax authorities, in 2016 but abandoned it after the adoption of the ‘e-commerce package’. Norway is also testing the customer collection system and Argentina implemented a withholding system for e-commerce services via the payment service provider in June 2018. The French Senate proposed a customer collection system in 2015. Other studies suggest using digital currencies exclusively for the VAT payment from the customer to the tax authorities<sup>69</sup>.

These systems ensure the completeness of VAT collection through split payment, *i.e.* the customer withholds the VAT and transfers it directly to the tax authorities, while the system adopted by the Council continues to rely on the value of the goods declared by the supplier, which can be undervalued to reduce the VAT debt.

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<sup>68</sup> See p. 13 of “WCO Cross-border e-commerce. Framework of standards”. WCO. June 2018 in [http://www.wcoomd.org/-/media/wco/public/global/pdf/topics/facilitation/activities-and-programmes/ecommerce/wco-framework-of-standards-on-crossborder-ecommerce\\_en.pdf?la=en](http://www.wcoomd.org/-/media/wco/public/global/pdf/topics/facilitation/activities-and-programmes/ecommerce/wco-framework-of-standards-on-crossborder-ecommerce_en.pdf?la=en)

<sup>69</sup> R.T. Ainsworth, M. Alwohaibi, M. Cheetham, “VATCoin: Can a Crypto Tax Currency Prevent VAT Fraud?”, Tax Notes International, Vol. 84, 14 November 2016. See also proposal of KPMG on distributed ledger technology in <https://home.kpmg/lu/en/home/insights/2018/07/vat-dlt.html>.

**137** The Commission submitted a proposal<sup>70</sup> on 12 December 2018 that seeks to solve the problem of e-commerce VAT fraud by strengthening the cooperation between tax authorities and payment service providers. The proposal introduces new Articles in the VAT Directive<sup>71</sup>, which need to be transposed by Member States by 31 December 2021. We consider that this exchange of payment data would be very useful to tackle undervaluation fraud.

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<sup>70</sup> See COM(2018) 812 final of 12.12.2018, “Proposal for a Council Directive amending Directive 2006/112/EC as regards introducing certain requirements for payment service providers”.

<sup>71</sup> Articles 243a to 243d.

## Conclusions and recommendations

**138** We concluded that the EU is not addressing all the challenges in collecting correct amounts of VAT and customs duties for goods and services traded over the internet.

**139** We found that Member States do not fully exploit the administrative cooperation arrangements: Member States do not use mutual administrative assistance on either tax or customs matters to exchange information with non-EU countries on e-commerce (see paragraphs [32](#) to [37](#)). The MOSS IT architecture is robust and conveys information about registered traders and their reported supplies of services to the Member State of consumption (see paragraphs [39](#) to [52](#)). The use of exchanges of information between Member States is insufficient (see paragraphs [53](#) to [59](#)). The lack of participation of the MSIDE hinders the effectiveness of the multilateral controls (see paragraphs [60](#) to [64](#)). Member States do not find the information uploaded to date in the risk database of the working field of Eurofisc devoted to e-commerce useful and they are not providing the expected feedback to the network (see paragraphs [65](#) to [69](#)).

### Recommendation 1 – Strengthen the use of administrative cooperation agreements

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The Commission should:

- (a) monitor to what extent non-EU countries meet the requests sent by Member States pursuant to the mutual administrative assistance agreements concluded with them in both customs and tax matters and make use of structures and frameworks set up in the context of these agreements to address specific challenges resulting from trade in goods through e-commerce; and
- (b) propose changes to the electronic forms for the exchange of information under administrative cooperation, in order to include a special box for MOSS and distance sales-related requests;

Member States should:

- (a) provide timely feedback to the fraud signals received from other Member States in Eurofisc working field 5;

- (b) require their central liaison offices to have a separate MOSS and distance sales coordination function; and
- (c) ensure that traders can only introduce a valid VAT rate in the MOSS VAT returns.

**Timeframe: By the end of 2020.**

**140** Second, we found that there are limited controls carried out by Member States' tax authorities and by the Commission. Tax authorities made only limited checks on traders before they register for the MOSS and few checks on traders already registered (see paragraphs 70 to 80). EU customs cannot prevent abuse of the low value consignment relief (see paragraphs 81 to 91). Finally, the Commission does not carry out sufficient control and monitoring activities (see paragraphs 92 to 99).

## **Recommendation 2 – Increase the effectiveness of controls**

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The Commission should:

- (a) carry out inspections on Member States' controls of the low value consignment relief;
- (b) monitor the functioning of the intra-EU distance sales of goods and of MOSS;
- (c) verify whether Member States have met Recommendations 9 (b), (c) and (d) of Special Report No 19/2017 to tackle abuses of the low value consignment relief; and
- (d) monitor whether Member States have checked traders' compliance with the low value consignment relief within the reassessment of authorised economic operators' authorisations and have given the latter appropriate recommendations to overcome any weaknesses in their internal controls;

Member States should:

- (a) perform the necessary checks, when receiving a registration request for the non-EU scheme of MOSS, in order to have the assurance that the requesting trader is not already registered for MOSS in another Member State; and
- (b) increase their audit activity on MOSS traders and distance sellers, using the administrative cooperation tools where appropriate.

**Timeframe: By the end of 2020**

**141** We also found that enforcement of the collection of VAT and customs duties is not effective. There are no estimates of the compliance VAT gap in the supply of services and diverging estimates of this gap in the supply of goods (see paragraphs 100 to 107). There are problems with MOSS payments between Member States (see paragraphs 108 to 115). Finally, the mutual assistance provisions for recovery of taxes are underused (see paragraph 116).

### Recommendation 3 – Improve enforcement of collection

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The Commission should:

- (a) assist Member States to develop a methodology to be able to produce periodic estimates of the compliance VAT gap on e-commerce;
- (b) address the pending and future payment mismatches between Member States, seek explanations for them, and request the pending data; and
- (c) encourage and promote the use by Member States of mutual assistance for the recovery of claims relating to taxes, duties and other measures for recovery of VAT of e-commerce transactions.

Member States should:

- (a) produce periodic estimates of the compliance VAT gap on e-commerce.

**Timeframe: By the end of 2021**

**142** We found positive developments in the regulatory framework set up by the Commission but important issues remain to be addressed. High-level political support and mechanisms to promote policy coherence are required to improve the effectiveness of the regulatory framework. This regulatory framework follows international best practice promoted by the OECD and the WCO in most aspects (see paragraphs 119 to 127). The new provisions that will enter into force in 2021 aim to resolve some weaknesses of the current framework but undervaluation remains to be addressed (see paragraphs 128 to 137).



## Recommendation 4 – Enhance the effectiveness of the regulatory framework

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The Commission should:

- (a) explore the use of suitable “technology-based” collection systems, including the use of digital currencies, to tackle VAT fraud on e-commerce;
- (b) ensure the WCO Postal/Express Consignments Risk Indicators are included in the guidance on the implementation of the FRC decision; and
- (c) give a clear definition of the terms “intrinsic value”, “value” and “total value” laid down in the legislation to ensure that Member States have harmonised controls for the import of low value consignments.

Member States should:

- (a) carefully monitor traders’ compliance with the new threshold of €10 000 for intra-EU supplies of services.

**Timeframe: By the end of 2020**

This Report was adopted by Chamber IV, headed by Mr Neven Mates, Member of the Court of Auditors, in Luxembourg at its meeting of 11 June 2019.

*For the Court of Auditors*

Klaus-Heiner Lehne  
*President*

# Annexes

## Annex I – ECA audit approach at the level of the Commission

We performed the audit at the Commission in two stages, a preparatory stage and the audit fieldwork.

In order to collect information and data that could be useful for the audit fieldwork in the Member States and to benchmark EU legislation against international best practices, during the preparatory stage we carried out preliminary visits to DG Taxation and Customs Union, DG Budget and OLAF. We also attended the Subgroups meeting of the WCO Working Group on e-commerce of 23-25 January 2018. Finally, we discussed the challenges posed by e-commerce with representatives of academia, the chair of Eurofisc Working Field 5, and Core Group 2 of the VAT Working Group of the Supreme Audit Institutions (SAIs) of the EU, and analysed all the available reports produced by SAIs.

We discussed the audit methodology with the Commission (audit questions, criteria and standards). DG Taxation and Customs Union granted us access to the following databases and portals relevant for VAT and e-commerce:

- (a) IT Service Management (ITSM), for access to the MOSS issues reported by Member States in the Synergia database;
- (b) the Standing Committee on Administrative cooperation (SCAC) and the SCAC-Expert Group (SCAC-EG), which allowed us to review, among other things, the guidelines and recommendations concerning the audit and control of the MOSS produced by the “Fiscalis Project Group No 86”;
- (c) the Anti-Tax Fraud Strategy (ATFS) Group, for checking the technical discussions on the conventional measures to fight VAT fraud, *e.g.* the use of spontaneous exchange of information in the context of a MOSS audit;
- (d) the e-customs, for verifying the development of the VAT e-commerce package, *e.g.* the reduced customs dataset for e-commerce, and the transmission of data between customs and tax administrations; and
- (e) the VAT-related projects, for checking the MOSS functional and technical specifications, and the MOSS statistics and dashboard.

We requested also and checked information and documents produced by the “Fiscalis Project Group No 38” on the control of e-commerce. Finally, we examined pertinent performance information, such as the Management plans and annual activity reports of DG Taxation and Customs Union, DG Budget and OLAF.

During the audit fieldwork we sent a general questionnaire to the Commission. This addressed the question of whether the Commission provides a sound regulatory and control framework on e-commerce with regard to VAT and customs duties, focussing on four key areas: (i) information exchanges; (ii) control; (ii) enforcement of collection; and (iv) regulation.

DG Budget, OLAF and DG Taxation and Customs Union replied to this questionnaire and attached the requested evidence. In addition, we sent them one supplementary questionnaire to clarify pending issues, and we organised videoconferences with each service to discuss the preliminary findings and the draft conclusions and recommendations.

## Annex II – ECA audit approach in Member States

We carried out the audit in two stages, a preparatory stage and the audit fieldwork.

1. During the preparatory stage, we selected five Member States: Germany, Ireland, the Netherlands, Austria and Sweden. The selection of Member States was based on the following risk criteria: (i) the estimation of VAT foregone related to exemptions granted by the legislation for low value consignments; (ii) the number of registered traders in the MOSS system per Member State; and (iii) the volume of e-sales made by traders registered in one Member State to customers in other Member States.

Core Group 2 of the VAT Working Group of the Supreme Audit Institutions (SAIs) of the EU identified e-commerce as being susceptible to fraud in the field of VAT. In order to get a comprehensive overview of the situation in the EU, Core Group 2 decided to carry out a survey on all tax authorities of the EU. We, as part of Core Group 2, sent a questionnaire to the latter in November 2016. The reference year in this survey was 2015. It covered both the EU and non-EU schemes of the MOSS and the intra and extra-EU distance sales of goods. Twenty Member States replied to this survey.

2. Second stage: audit fieldwork in the selected Member States, where we paid attention to the design and implementation of the registration and traders' control systems and the VAT and customs risk management frameworks.

We sent a questionnaire to the selected Member States. This addressed the question of whether the control measures deployed by Member States' ensure the completeness of the collection of VAT and customs duties in respect of e-commerce. On the spot, we discussed the replies given to the questionnaire with the experts from the tax and customs administrations in field of MOSS, administrative cooperation, audits and controls on MOSS and on the distance-selling scheme, and imports applying for the low value consignments relief (LVCR) submitted by either postal or courier operators.

We selected and verified:

- (i) all 29 MOSS issues for which the visited Member States were either the affected or the responsible one;
- (ii) a random sample of 10 technical error messages (TEMs) sent and of 10 TEMs received;
- (iii) a random sample 10 MOSS registrations;
- (iv) a random sample 10 MOSS VAT returns and of 10 corrections to VAT returns

- (v) a random sample of 10 MOSS payments received as MSIDE and of 10 payments received as MSCON;
- (vi) a random sample of 10 deregistrations and of 10 exclusions from MOSS;
- (vii) a random sample of 10 exchanges of information on request sent and of 10 received;
- (viii) a random sample of 10 spontaneous exchanges of information sent and of 10 received;
- (ix) a random sample of 5 audits as MSIDE and of 5 as MSCON;
- (x) the whole population of the multilateral controls carried out and the whole population of fraud signals exchanged through Eurofisc Working field 5 affecting the visited Member States; and
- (xi) a risk-based sample of 30 imports applying for the LVCR (15 submitted by postal operators and 15 by couriers);

With these populations and samples we checked whether Member States' tax and customs authorities: (i) use the administrative cooperation arrangements to make up for the lack of jurisdiction of the MSCON in the country/s where the supplier is registered or identified; (ii) collect and make use of information about potential underpayments; (iii) properly carry out checks on the supplier; and (iv) have effective controls to prevent and detect abuses of the LVCR of goods imported from non-EU countries. We analysed and discussed the outcome of the preselected samples based on a checklist.

We paid special attention to the systems and controls including a test in the dummy environment of the customs electronic clearance systems related to credibility checks on the LVCR and paid a visit to three post offices to observe customs controls in practice.

### Annex III – Results of samples of MOSS related transactions

In each visited Member State we examined all 22 MOSS issues for which the visited Member State was the responsible one; and all 7 MOSS issues for which the visited Member State was the affected one.

We also randomly selected and examined 90 MOSS related transactions per Member State:

- (a) a sample of 10 technical error messages (TEMs) sent;
- (b) a sample of 10 TEMs received;
- (c) a sample of 10 MOSS registrations, 5 for the non-EU and 5 for the EU scheme of MOSS;
- (d) a sample of 10 MOSS VAT returns, half for the non-EU scheme of MOSS, and half for the EU scheme;
- (e) a sample of 10 corrections to VAT returns, 5 for the non-EU and 5 for the EU scheme
- (f) a sample of 10 MOSS payments received as MSIDE;
- (g) a sample of 10 payments received as MSCON;
- (h) a sample of 10 deregistrations from MOSS, 5 from the non-EU scheme, and 5 from the EU scheme; and
- (i) a sample of 10 exclusions from MOSS, 5 from the non-EU and 5 from the EU scheme.

**Table 4** summarises the sample results in each visited Member State using RAG<sup>72</sup> analysis.

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<sup>72</sup> RAG stands for red, amber, and green.

**Table 4 – Overview of sample results per visited Member State**

Member State	Ireland		Sweden		Netherlands		Austria		Germany	
Sample on	Non-EU scheme	EU scheme	Non-EU scheme	EU scheme	Non-EU scheme	EU scheme	Non-EU scheme	EU scheme	Non-EU scheme	EU scheme
Dates	20.11.2017		20.11.2017		20.11.2017		20.11.2017		20.11.2017	
MOSS incidents as deficient MS	9/10		0		4/4		0		6/8	
MOSS incidents as affected MS	0		4/4		0		1/1		1/2	
Dates	1.4.17 to 31.3.18		1.4.17 to 31.3.18		1.4.17 to 31.3.18		1.1.17 to 30.6.18		1.1.17 to 30.6.18	
TEM sent	2/10		1/10		0		0		0	
TEM received	18/10		0		4/10		0		0	
Dates	1.1.15 to 31.3.18		31.3.18		1.1.15 to 31.3.18		31.5.18		30.6.2018	
Registrations	2/5	3/5	5/5	4/5	5/5	1/5	5/5	1/5	2/5	0
Dates	1.4.17 to 31.3.18		1.1.15 to 31.3.18		1.1.15 to 31.3.18		1.4.17 to 31.3.18		1.7.17 to 30.6.18	
Returns	1/5	3/5	0	1/5	0	0	0	0	1/5	0
Dates	1.1.15 to 31.3.18		1.1.15 to 31.3.18		1.1.15 to 31.3.18		1.1.15 to 31.3.18		1.1.15 to 30.6.18	
Corrections	0	0	0	0	0	0	0	0	0	0
Dates	1.4.17 to 31.3.18		1.4.17 to 31.3.18		1.4.17 to 31.3.18		1.4.17 to 31.3.18		1.4.17 to 30.6.18	
Payments MSIDE	2/10		0		3/10		0		0	
Payment MSCON	1/10		1/10		10/10		1/10		0	
Dates	1.1.15 to 31.3.18		1.1.15 to 31.3.18		1.1.15 to 31.3.18		1.1.15 to 31.5.18		1.1.15 to 30.6.18	
Deregistrations	0	1/5	0	1/5	1/5	0	0	0	0	0
Dates	1.1.15 to 31.3.18		1.1.15 to 31.3.18		1.1.15 to 31.3.18		1.1.15 to 31.5.18		1.1.15 to 30.6.18	
Exclusions	5/5	3/5	1/5	1/5	0	0	0	0	0	0

Legend		No deviations
		Up to 20 % of deviations
		More than 20 % of deviations

Source: ECA.

# Acronyms and abbreviations

**AC:** Administrative cooperation

**AEO:** Authorised economic operators

**BUDGET:** Directorate-general for budget

**B2B:** Business to business

**B2C:** Business to consumer

**CMRF:** Common risk management framework

**CP 42:** Customs procedure 42

**EP:** European Parliament

**EU:** European Union

**FRC:** Financial Risk Criteria

**GATT:** The General Agreement on Tariffs and Trade

**GNI:** Gross National Income

**HMRC:** Her Majesty's Revenue & Customs

**IP:** Internet protocol

**IRG:** Immediate release guidelines

**IT:** Information technology

**ITSM:** Information technology service management

**JCO:** Joint customs operation

**LVCR:** Low value consignment relief

**MAA:** Mutual administrative assistance

**MLCs:** Multilateral controls

**MOSS:** Mini one stop shop system

**MSCON:** Member State where the customer actually consumes the services



**MSIDE:** Member State where the traders of electronically supplied services are registered for VAT purposes

**MTIC:** Missing trader intra-Community fraud

**OECD:** Organization for Economic Cooperation and Development

**OLAF:** Anti-fraud Office of the EU

**OSS:** One stop shop

**P2P:** Private individual to private individual

**RIF:** Risk information form

**SAD:** Single administrative document

**SAF-MOSS:** Standard audit file for MOSS audits

**SAI:** Supreme audit institution

**SAO:** Supreme audit office

**SME:** Small and medium-sized enterprise

**TAXUD:** Directorate-general for taxation and the customs union

**TEM:** Technical error messages

**UCC:** Union Customs Code

**UK:** United Kingdom

**VAT:** Value added tax

**WCO:** World Customs Organization

**WF5:** Eurofisc working field 5

# Glossary

**Administrative cooperation:** Exchange of information between Member States whereby tax authorities assist each other and cooperate with the Commission pursuant to Council Regulation (EU) No 904/2010 of 7 October 2010 to ensure the proper application of VAT on supplies of goods and services, intra-EU acquisition of goods and importation of goods. Exchanges of information between Member States cover all information that may lead to a correct assessment of VAT, including on specific cases.

**Customs procedure 42:** The regime an importer uses in order to obtain a VAT exemption when the imported goods will be transported to another Member State pursuant to Article 143 (1) (d) of Directive 2006/112/EC. The VAT is due in the Member State of destination.

**Distance selling scheme:** Taxation system for B2C intra-EU supplies of goods. Under the scheme, for sales up to a certain threshold (usually €35 000, but €100 000 in some Member States), the trader applies the VAT rate of the Member State where it is registered. Above this threshold, the trader must register for VAT in, and apply the VAT rate of, the destination Member State.

**Eurofisc:** A decentralised network of officials from the Member States' tax and customs administrations, who swiftly exchange and jointly process and analyse targeted information about possible fraudulent companies and transactions.

**Fiscalis:** An EU action programme to finance initiatives from tax administrations to improve the operation of the taxation systems in the internal market through communication and information-exchange systems, multilateral controls, seminars and project groups, working visits, training activities and other similar activities required to achieve the objectives of the programme.

**Mini one stop shop (MOSS):** A voluntary trade facilitation system that allows taxable persons (both EU and non-EU businesses) supplying telecommunication, television and radio broadcasting services and electronically supplied services to non-taxable persons in Member States in which they do not have an establishment to account for the VAT due on those supplies and declare it via a web-portal in the Member State in which they are VAT registered.

**Missing trader:** A trader registered for VAT purposes who, potentially with a fraudulent interest, acquires or purports to acquire goods or services without paying VAT and supplies them with VAT, but does not remit the VAT collected to the national tax authority.

**Multilateral controls:** Coordinated controls carried out by two or more Member States on the tax liability of one or more related traders when they consider such controls to be more effective than controls carried out by only one Member State.

**Mutual administrative assistance:** Any action of a Customs administration on behalf of or in collaboration with another Customs administration for the proper application of Customs laws and for the prevention, investigation and repression of Customs offences.

**Risk management:** The systematic identification of risk, including through random checks, and the implementation of all measures necessary for limiting exposure to risk.

**VAT identification number (VAT ID No):** An individual number given to each taxable person intending to make supplies of goods or services, or to make acquisitions of goods for business purposes. Each number has a prefix of two letters by which the Member State of issue is identified.

**VIIES:** The VAT Information Exchange System is an electronic network for transmitting information both on valid VAT identification numbers of companies registered in the Member States, and on tax-exempt intra-Community supplies. National tax administrations are responsible for feeding both types of information into the network.

# REPLIES OF THE COMMISSION TO THE SPECIAL REPORT OF THE EUROPEAN COURT OF AUDITORS

## “E-COMMERCE: MANY OF THE CHALLENGES OF COLLECTING VAT AND CUSTOMS DUTIES REMAIN TO BE RESOLVED”

### EXECUTIVE SUMMARY

#### VII.

(c). The Commission would like to emphasize that the implementation of these arrangements belongs to the Member States.

(f). The Commission would like to stress that the enforcement of VAT collection is a national competence.

#### VIII.

As regards recommendations addressed to the Commission:

(a). The Commission **accepts** the recommendation to the extent that it is competent to do so.

(b). The Commission **accepts** the recommendation. The way Member States deal with low value consignments (including abuse of reliefs) will form part of the topics considered during the process of establishing the traditional own resources' inspection programme for 2020.

(c). The Commission **does not accept** the recommendation as the weaknesses of the distance sales regime have been addressed and the Commission does not have access to the MOSS information. See reply to paragraph 96.

(d). The Commission **accepts** the recommendation. The assistance will be provided upon request.

(e) The Commission **accepts** the recommendation. It is always prepared to investigate alternative and realistic collection methods presented and will analyse them as to their added value for fighting VAT fraud, taking due account of their feasibility.

As regards the other recommendations, the Commission notes that these three recommendations are addressed to Member States.

### INTRODUCTION

20. The Commission proposal COM(2018)812/2 and 812/3 will provide Member States with better tools to control e-commerce traders through the use of payment data.

21. As of 1 January 2021, the VAT exemption threshold will be abolished.

### OBSERVATIONS

31. The Commission has already proposed the e-commerce VAT package, measures to enhance the cooperation between tax administrations and payment service providers, as well as measures for strengthening administrative cooperation between, firstly, the tax administrations of the Member States, secondly, customs and tax authorities, and finally, Eurofisc, OLAF and Europol.

37. The Commission is reflecting on possible innovative approaches to enhance information exchanges with third countries, also in the area of e-commerce. For example, the EU-China Strategic Framework for Customs Cooperation envisages revising the 2004 EU-China Agreement on cooperation and mutual administrative assistance in customs matters. It should be explored whether this opportunity could be used to adapt the Agreement to the challenges of e-commerce.

89. Regular monitoring of their internal control systems and procedures to ensure that the AEO criteria and conditions are fulfilled is a primary responsibility of the AEO. The internal control systems is a key element for the efficient monitoring performed by the AEO.

Best recommended internal control practices (according to the EU AEO Guidelines) may involve appointing a responsible person in charge of the procedures and internal controls of the company including the supervision and control on the customs management/formalities.

In addition, according to Article 23(5) and 38 (1) of the UCC, the customs authorities are obliged to monitor the conditions and criteria to be fulfilled by the AEO. Monitoring by the customs authority must be done on a continuous basis, but is also performed following the information provided by the AEO. Where the AEO notifies the customs authorities that irregularities are discovered, the authority verifies and investigates this information, which can lead to reassessment, suspension and/or revocation of the authorisation.

90. Any operator with the AEO status must fulfil all the AEO criteria and conditions. This includes ensuring that all elements in the customs declarations are correct. Where the conditions and criteria are no longer fulfilled, customs authorities suspend or revoke the AEO status.

Competent customs authorities are requested to intensify their monitoring activities and to take appropriate action to address the irregularities, i.e. reassess, suspend and/or revoke.

91. Please see the Commission's reply to paragraphs 89 and 90 on monitoring and internal controls.

96. Some of the weaknesses of the MOSS have been addressed following the adoption of the MOSS simplifications that entered into force on 1 January 2019. The weaknesses of the distance sales regime are addressed in the newly adopted legislation on VAT for e-Commerce where these national thresholds will be abolished and replaced by a EU-wide threshold of only €10,000 from 2021.

98. TOR inspections on low value consignments (including abuse of reliefs) are a priority control area for the future. In view of the frauds identified on undervaluation of textiles and shoes, the Commission has prioritised this area in 2018 and 2019 in all Member States. In 2017, the prioritisation was on evasion of anti-dumping duties on solar panels. In 2015 and 2016, the priority was the reliability of TOR accounting.

122. This threshold ensures proportionality for microbusinesses, which are currently exempted from VAT in most Member States and that under the current rules will become liable for VAT as of the first download of their services by a consumer in another Member State. To remedy this disproportionality, while respecting to the largest extent possible the principle of taxation at destination, this EU cross-border threshold of EUR 10,000 was considered proportionate and balanced.

136. The enforcement of VAT collection is a national competence.

## **CONCLUSIONS AND RECOMMENDATIONS**

### **Recommendation 1 – Strengthen the use of administrative cooperation agreements**

As regards recommendations addressed to the Commission:

- a). The Commission **accepts** the recommendation to the extent that it is competent to do so.
- b). The Commission **accepts** the recommendation since it will start proposing changes to the electronic forms. The Commission notes that these three recommendations are addressed to Member States.

As regards the other recommendations, the Commission notes that these three recommendations are addressed to Member States.

### **Recommendation 2 – Increase the effectiveness of controls**

As regards recommendations addressed to the Commission:

- a). The Commission **accepts** the recommendation. The way Member States deal with low value consignments (including abuse of reliefs) will form part of the topics considered during the process of establishing the traditional own resources' inspection programme for 2020.
- b). The Commission **does not accept** the recommendation as the weaknesses of the distance sales regime have been addressed and the Commission does not have access to the MOSS information. See reply to paragraph 96.
- c). The Commission **accepts** the recommendation.
- d). The Commission **accepts** this recommendation and will include this in its monitoring activities.

All EU Authorised Economic Operator (AEO) authorisations granted before the entering into force of the Union Customs Code (UCC) should have been re-assessed by national customs authorities by 1 May 2019, because of the changes to the UCC (according to Article 15 (1) UCC DA). The compliance criterion is part of this re-assessment exercise.

The Commission has started preparing to check the AEO monitoring processes in Member States in accordance with Article 23(5) of the UCC. Monitoring of the AEO compliance criterion, including the compliance with the low value consignments relief, will be one of the aspects that will be checked in this context.

As regards the other recommendations, the Commission **notes that these two** recommendations are addressed to Member States.

### **Recommendation 3 – Improve enforcement of collection**

As regards recommendations addressed to the Commission:

- a). The Commission **accepts** the recommendation. The assistance will be provided upon request.
- b). The Commission accepts the recommendation. Addressing payment mismatches between Member States as well as the treatment of the retained VAT is an ongoing work for the Commission. It is currently checking years 2015–2018, as they become available in the VAT-based own resource context.

c). The Commission **accepts** the recommendation. It is organising activities with Member States in order to follow up on its report on Directive 2010/24/EU that was published in December 2017, for the recovery of all taxes.

As regards the other recommendation, the Commission notes that this recommendation is addressed to Member States.

#### **Recommendation 4 - Enhance the effectiveness of the regulatory framework**

As regards recommendations addressed to the Commission:

a). The Commission **accepts** the recommendation. It is always prepared to investigate alternative and realistic collection methods presented and will analyse them as to their added value for fighting VAT fraud, taking due account of their feasibility.

b). The Commission **accepts** the recommendation.

c). The Commission **accepts** the recommendation. As acknowledged and found by the ECA (please see paragraph 126), Member States apply uniformly the definition of "intrinsic value" as provided in *the Compendium on the implementation of Council Regulation 1186/2009 setting up a Community system of reliefs from customs duty*.

In addition, discussions between the Commission and Member States on a legally binding definition of the term "intrinsic value" are ongoing.

As regards the other recommendation, the Commission notes that this recommendation is addressed to Member States.

# Audit team

The ECA's special reports set out the results of its audits of EU policies and programmes, or of management-related topics from specific budgetary areas. The ECA selects and designs these audit tasks to be of maximum impact by considering the risks to performance or compliance, the level of income or spending involved, forthcoming developments and political and public interest.

This performance audit was carried out by Audit Chamber IV Regulation of markets and competitive economy, headed by ECA Member Neven Mates. The audit was led by ECA Member Ildikó Gáll-Pelcz, supported by Zoltán Lovas, Head of Private Office and Claudia Kinga Bara, Private Office Attaché; Paul Stafford, Principal Manager; Carlos Soler Ruiz, Head of Task; Maria Echanove, Josef Edelmann, Benny Fransen, Dan Danielescu, Christine Becker and Eni Kabashi, Auditors. Evy Fiers provided linguistic support.



*From left to right:* Benny Fransen, Dan Danielescu, Paul Stafford, Ildikó Gáll-Pelcz, Josef Edelmann, Carlos Soler Ruiz, Zoltán Lovas.



<b>Event</b>	<b>Date</b>
Adoption of Audit Planning Memorandum (APM) / Start of audit	20.3.2018
Official sending of draft report to Commission (or other auditee)	27.3.2019
Adoption of the final report after the adversarial procedure	11.6.2019
Commission's (or other auditee's) official replies received in all languages	3.7.2019

PDF ISBN 978-92-847-2248-8 doi:10.2865/212589 QJ-AB-19-009-EN-N

HTML ISBN 978-92-847-2226-6 doi:10.2865/0301 QJ-AB-19-009-EN-Q

The EU encourages e-commerce to ensure that businesses and consumers can buy and sell internationally on the internet as they do on their local markets. Member States are responsible for the collection of VAT and customs duties due on e-commerce cross-border transactions. We carried out this audit because any shortfall in the collection of VAT and customs duties affects the budgets of the Member States and the EU, as they must compensate for it in proportion to their GNI. Our auditors examined whether the European Commission has established a sound regulatory and control framework for e-commerce with regard to the collection of VAT and customs duties, and whether Member States' control measures help ensure the complete collection of VAT and customs duties on e-commerce. We found that despite recent positive developments the EU is not currently dealing adequately with these issues but have addressed some of the weaknesses identified with the "e-commerce package".

We make a number of recommendations as to how the European Commission and the Member States should better address the challenges identified and establish a sound regulatory and control framework.



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