

VAT and E-Commerce in North Macedonia

1. Introduction

1. **The VAT system in North Macedonia is consistent with the approach to indirect taxation adopted by most countries and the EU before the advent of e-commerce.** In particular:

- While Article 1 of the Law on Value Added Tax (VAT) states that the VAT is a consumption tax, Article 2 makes it clear that the actual incidence of the tax is determined by reference to the place of supply;
- The tax applies to the import of goods but not of services; and
- There is an exemption in Article 27-b for low-value packages delivered from abroad, defined as packages worth not more than €22 (which is identical to the exemption that was operated by the EU until 2021).

2. **Historically, these design features of VAT regimes made sense.** In almost all cases the place of supply and the place of consumption would be the same and, from a practical point of view, it is the supplier who is responsible for collecting and paying over the VAT. Individual consumers were unlikely to procure services from suppliers based outside their home country. Having an exemption for low value packages helped align the operation of VAT at the border with customs and avoided administrative burdens that could not be justified by the amounts of revenue at stake.¹ However, the rapid rise in online consumption, which has been accelerated by the Covid-19 crisis, has called these assumptions into question.

3. **E-commerce has changed the way people consume and what they consume.** Things that used to be physical goods (books, CDs and DVDs for example) have evolved into digital goods (downloads) or ceased to be goods and become digital services (music and video streaming, software-as-a-service, cloud computing).² In the online marketplace consumers routinely use suppliers based in other countries to purchase both digital goods and services and physical goods. Consequently, it is no longer safe to assume that the place of supply and consumption will be in the same jurisdiction. Online consumption of services from foreign suppliers is now commonplace. The quantity of low value goods now flowing across borders has ballooned and so has the revenue impact of the VAT exemption.³

4. **Allowing foreign suppliers of goods and services to supply domestic consumers without charging VAT unfairly disadvantages domestic suppliers, who must charge VAT.** The tax saving more than outweighs the cost of delivery from abroad. Increasing numbers of countries are revisiting the design of their VAT system to respond to the impact of e-commerce, secure their VAT base, and ensure foreign and domestic suppliers are competing on a level

¹ The customs law (Article 196(16) and Article 84-a of the subordinate Decree) provides relief from import duties for packages worth less than €22 (€45 if the package is sent between natural persons – see <http://www.customs.gov.mk/index.php/en/patnici-2/mali-pratki>). The equivalent provision in the EU customs law defines low value goods as those with an intrinsic value that does not exceed €150 per consignment (Article 23 of CELX no. 32009R1186: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32009R1186&from=EN>)

² Recognizing the importance of E-commerce, North Macedonia introduced an E-commerce law to “regulate the information society services related to electronic commerce, the liabilities of the information society service providers, the commercial communication and the rules related to conclusion of contracts in an electronic format”. However, Article 2 of that law makes it clear that it does not apply to taxation.

³ Around 150 million low-value packages are imported into the EU annually (see <https://www.tradetaxport.com/news/the-impact-of-2021-vat-import-scheme-postal-express>)

playing field. Fortunately, there is an international consensus on how best to do this. Part 2 of this note summarizes the main features of the internationally agreed approach to the levying of VAT on international transactions. Part 3 describes how the approach to the cross-border provision of digital goods and services has been implemented in the EU and certain other countries. Part 4 discusses the approach to taxing physical goods purchased by consumers from foreign suppliers.

2. The OECD's International VAT/GST Guidelines

5. **In 2017, the OECD published the International VAT/GST Guidelines (“the Guidelines”).**⁴ These set out the internationally agreed approach to the VAT treatment of the most common international transactions. The Guidelines focus particularly on transactions involving services and intangibles, but they also provide a model for securing the VAT on physical goods purchased from foreign suppliers online. In both cases, the solution is to require the foreign supplier to account for the VAT due on the local consumption of the goods and services they are supplying. This reflects an underlying principle, which is that the tax is levied in the jurisdiction in which the final consumption takes place (the so-called “destination principle”). Application of the principle ensures that the VAT system is neutral, because the consumer pays the same amount of tax, whether the supplier is domestic, or foreign.

6. **The Guidelines have been supplemented by specific practical advice** on the collection of indirect taxes when the supplier of digital goods and services is not located in the territory in which consumption takes place.⁵ More than 50 countries have adopted the Guidelines' recommendations for imposing VAT on the direct supply to consumers of services and intangibles by foreign suppliers, including most OECD and G20 countries.⁶ The EU has levied VAT on nonresident suppliers of telecommunications, broadcasting, and electronic services, regardless of scale, since January 1, 2015.

7. **Foreign suppliers selling directly to customers are responsible for accounting for the VAT due on those transactions.** They register through a simplified process online and account for tax payable on sales to consumers. VAT is not payable in respect of sales to business customers who are registered for VAT. Alternatively, in the more common situation where sales are made through an online marketplace, the marketplace will collect the VAT, unless the vendor can prove that they are registered for VAT in their own right. The marketplace accounts for the VAT to the tax administration and provides data about sellers who have asserted that they are registered for and paying VAT on their sales directly.

8. **The destination principle is supported internationally but needs to be reflected in a domestic law.** The following are some of the key elements that need to be legislated:

- Domestic law must impose an obligation on suppliers of digital goods and services based outside a jurisdiction that supply those goods and services for consumption in that jurisdiction to account for VAT on those sales.

⁴ https://www.oecd-ilibrary.org/taxation/international-vat-gst-guidelines_9789264271401-en

⁵ Mechanisms for the Effective Collection of VAT/GST, OECD 2017:

<http://www.oecd.org/ctp/consumption/mechanisms-for-the-effective-collection-of-vat-gst.htm>

⁶ OECD, *Tax Challenges Arising from Digitalisation, Interim Report*, 2018, p. 103, <http://www.oecd.org/ctp/tax-challenges-arising-from-digitalisation-interim-report-9789264293083-en.htm>.

- The law must define which digital goods and services are covered. The EU definition, which includes telecommunications and broadcasting services as well as the electronic services discussed here, is summarized in Annex 1.⁷
- If supply is made to a business customer in a jurisdiction, the supplier must secure confirmation that the purchaser is registered to pay VAT there and the registration details. VAT need not be accounted for on these sales, but details of the transactions must be reported in the VAT return made by the supplier. The purchaser will account for the VAT by way of a reverse charge in their normal VAT return.
- Foreign suppliers making supply to a jurisdiction must be obliged to register with the tax authority, to file regular returns of the sales made to consumers in that jurisdiction and to pay over the VAT due in respect of those sales. The legislation, or supporting regulations, should stipulate the process for doing so via an online portal. As these suppliers have no physical presence in the jurisdiction, the process must be online.
- The law will also need to state how the supplier determines when it is making a supply to a customer in a particular jurisdiction. Generally speaking, this is determined by reference to the location (in the case of a business) or usual residence (in the case of an individual consumer). This needs to be determined in accordance with rules that can be applied mechanically to what will often be high-volume and automated transactions. Foreign suppliers should be provided with clear guidance on this aspect of the system. As far as possible, they should be able to rely on information they routinely collect during the course of their business. Indicators that can be used for this purpose include the location of a landline used to access services, in the case of mobile services, the country code of the SIM in the customer's phone, the billing address and the customer's bank details. In the case of services not provided through a dedicated device (such as a landline or a decoder) the supplier may be required to have two non-contradictory pieces of evidence of the customer's place of residence. The International VAT/GST Guidelines provide more detailed guidance on this issue and recognize that this is an evolving area, with new techniques of business analytics emerging that can help improve the accuracy of the process.
- The law also needs to cater for the provision of goods and services through an online marketplace or portal. For example, Australia makes a distinction between the case where a merchant makes a direct sale to an online consumer and one where the consumer makes the purchase via an electronic distribution platform (EDP) or online marketplace, such as an app store. In the latter case, the obligation to account for GST (Australia's version of VAT) falls on the EDP or online marketplace.

3. Practical Implementation in the EU and Elsewhere

9. **To secure compliance from foreign suppliers the process of registration and compliance must be simple.** The International VAT/GST guidelines set out some design principles for the process:

- Simplified registration procedure, with required information kept to a minimum and the availability of online registration at the tax administration's website;
- No input tax recovery, but suppliers may register under the normal collection regime and recover input tax according to normal rules if they so choose;

⁷ https://ec.europa.eu/taxation_customs/business/vat/telecommunications-broadcasting-electronic-services/content/eu-legislation_en

- Simplified returns, with the option to file electronically (in practice it is very unlikely that foreign suppliers will want to file paper returns);
- Electronic payment methods;
- Simplified and electronic record keeping requirements;
- Elimination of invoicing requirements, or issuing invoices in accordance with the rules of the supplier's jurisdiction;
- Online availability of all information necessary to register and comply with the simplified regime;
- Use of third-party service providers to assist in tax compliance; and
- Compliance burdens should be proportional to the revenues involved and should also maintain neutrality between domestic and foreign suppliers.

10. In the EU these principles are reflected in the design of its online portal: the Mini One Stop Shop (MOSS). However, the MOSS has to cater for the added complication that rates of VAT vary between member states. This is a complication that does not arise when designing a portal for a single state.

11. A growing number of countries (over 50, as mentioned earlier) are adopting the approach recommended in the Guidelines. Some recent examples include:

- **Indonesia** imposed VAT on digital goods and services provided by foreign suppliers from July 2020, as one element of a package of fiscal measures introduced in response to the COVID-19 crisis;⁸
- **Malaysia** has applied its sales and services tax to imported digital services since January 2020, securing substantial new revenue;⁹
- **Moldova** has applied its 20 percent VAT rate to the cross-border supply of digital services since April 2020;¹⁰ and
- **Singapore** announced in its February 2018 budget that GST will be imposed on imported digital services, including the streaming of music and movies and downloaded applications.¹¹

4. Physical Goods - Revisiting the Low-Value Consignment Exemption from VAT

12. **Many jurisdictions have low-value consignment exemptions, but e-commerce is calling them into question.** This is because of the impact on countries' VAT base and the way in which domestic retailers are disadvantaged. Australia and the European Union have already decided to remove the exemption altogether. These examples offer a model that North Macedonia may wish to follow to help secure its VAT base and increase levels of tax compliance overall.

13. **Australia was a first mover and has applied its General Sales Tax¹² (GST) to sales of low value imported goods to Australian consumers since July 2018.** Prior to that, GST was not payable on imports if their value was no more than A\$1,000. Foreign online vendors now making sales to Australian consumers that in total exceed the GST threshold (currently A\$75,000) are required to register with the Australian Tax Office (ATO) and to account for GST on those sales. The Australian system provides a hierarchy of responsibility for accounting for GST on sales to Australian consumers. The rules for goods also cater for

⁸ <https://blog.taxamo.com/insights/indonesia-tax-digital-services>

⁹ <https://themalaysianreserve.com/2020/09/10/govt-to-collect-rm300m-of-digital-tax-this-year/>

¹⁰ <https://blog.taxamo.com/insights/moldova-tax-digital-sales>

¹¹ <https://blog.taxamo.com/insights/singapore-gst-registration-digital-services>

¹² Broadly equivalent to VAT.

purchases made via an “electronic distribution platform” (EDP) based outside Australia. When sales exceed the threshold, the operator of the EDP will be responsible for paying the GST. If sales are made directly by a foreign merchant, or via an EDP that is not registered for GST, the foreign merchant will account for the GST if its total sales exceed the threshold. If neither an EDP nor a merchant is accounting for GST on low-value imports, but the consumer is assisted in getting the goods to Australia by a re-deliverer, the re-deliverer will account for GST on sales exceeding the threshold.¹³

14. **To enable non-resident businesses to comply with the new regime, the ATO has created a simplified online registration system.** The system only requires limited information and the non-resident business is not entitled to claim any credit for GST paid, so no refunds arise.¹⁴ Once registered, the non-resident business must charge GST on sales to Australian consumers. Details of the amounts charged must be included in the receipt issued to the customer and in the customs documentation. The GST collected in this way is then accounted for and paid on a quarterly basis in Australian Dollars.

15. **Initial estimates were that abolition of the low-value exemption would increase GST yield by around A\$300 million** over three years but actual revenue to date has exceeded expectations.¹⁵ The process reduces pressure on the border control process because the merchant, or online platform operator, accounts for the tax as the sale is made and then reports and pays the tax directly to the ATO. That allows packages to be cleared rapidly at the border on the basis of the information included in the customs declaration, which will show that GST has been charged and will be accounted for. From the outset, some key online retailers agreed to comply with the new system (Alibaba and eBay) while Amazon has “geo-blocked” consumers in Australia from using their US site to make purchases. Consumers trying to get around this by setting up a virtual private network to disguise their location will find that goods ordered from the US site can only be delivered to a US address.

16. **The European Union (EU) will start charging VAT on the shipment of all consignments from July 2021.** This decision was announced by the European Commission in December 2017 and takes effect on 1 July 2021.¹⁶ The Commission’s fact sheet published at the time of the decision, spells out the reasons for the policy change:

“Not a level playing field: under current rules, imported goods bought online from non-EU countries are exempt from VAT if they cost below €22. Companies based outside the EU can fraudulently mark expensive goods such as mobile phones and tablets as costing not more than €22, meaning that no VAT is paid. This puts EU businesses at a clear disadvantage to non-EU businesses.”¹⁷

17. **There are similarities between the EU’s approach and the system in operation in Australia.** Merchants based outside the EU are able to register and account for VAT due on sales to customers based in the EU using a simplified online process. This is based on the

¹³ For a fuller description of the system visit: <https://www.ato.gov.au/Business/International-tax-for-business/GST-on-low-value-imported-goods/Who-charges-GST/> To see the legislation see: <https://www.legislation.gov.au/Details/C2017A00077>

¹⁴ That said, there is provision for offset of GST that has been paid in respect of a sale that is subsequently cancelled.

¹⁵ <https://www.zdnet.com/article/australian-taxation-office-says-low-value-gst-collection-doing-better-than-expected/>

¹⁶ [http://europa.eu/rapid/press-release MEMO-16-3746_en.htm](http://europa.eu/rapid/press-release_MEMO-16-3746_en.htm) The Commission subsequently published practical guidance on the customs formalities for low value consignments: https://ec.europa.eu/taxation_customs/sites/taxation/files/guidance_on_import_and_export_of_low_value_consignment_final.pdf

¹⁷ Idem

existing “one stop shop” which already collects VAT due on the electronic provision of e-services, as described in Part 3 of this note.¹⁸ The rate of VAT payable is that applying in the country where the consumer is located. However, the total VAT due from a non-EU merchant can be accounted for in a single process through the one stop shop. Where sales take place via an online marketplace, the marketplace is responsible for ensuring that VAT is paid in respect of goods supplied by non-EU businesses to EU consumers.

18. **The practical approach to collecting VAT from foreign suppliers of goods is essentially the same process as that described earlier for digital goods and services.** This makes it possible to use the same online portal and registration, filing and payment processes for both purposes.

19. **Currently the threshold for VAT and customs duties on imports in North Macedonia are the same.** However, that need not be the case. The EU will continue not to charge customs duty on goods worth less than €150 after 2021. This means that goods purchased from foreign online suppliers who have registered with the one stop shop will not be stopped at the border if they are below the customs threshold. Similarly, North Macedonia could retain a customs threshold even if it decides to abolish the low-value consignment exemption for VAT. The Australian example illustrates how a declaration that VAT has been paid can enable rapid clearance of goods at the border.

¹⁸ The reason the new regime does not come into effect until 2021 is to allow all member states to make the necessary changes to the IT systems that underpin the one stop shop process.

Annex 1: The EU legal provisions concerning the VAT treatment of Television, Broadcasting and Electronic services and the MOSS

These include:

- [Council Directive 2006/112/EC](#) on the common system of value added tax ('the VAT Directive')
 - Article 24(2) defines 'Telecommunications services'
 - Article 58 determines the place of supply of TBE services to a non-taxable person
 - Article 358 to 369k contain the provisions on the special schemes for non-established taxable persons supplying TBE services to non-taxable persons (the MOSS)

- [Council Implementing Regulation \(EU\) No 282/2011](#) ('VAT Implementing Regulation')
 - Article 6a specifies what the term 'Telecommunications services' shall cover
 - Article 6b and 7 specify what respectively the terms 'Broadcasting services' and 'Electronically supplied services' shall include
 - Article 9a contains provisions relating to electronically supplied services supplied through a telecommunications network, an interface or a portal
 - Article 24a to 24f lay down specific provisions concerning presumptions for determining the location of the customer
 - Article 57a to 63c lay down detailed provisions on the functioning of the MOSS

- [Council Regulation \(EU\) No 904/2010](#) on administrative cooperation on combating fraud in the field of value added tax
 - Article 43 to 47 lay down rules for the automated exchange of information between Member States for the functioning of the MOSS

- [Commission Implementing Regulation \(EU\) No 815/2012](#)
 - This Regulation lays down detailed standardized provisions concerning identification of taxable persons using the MOSS and the content of the MOSS VAT return

The EU definition of electronic services starts with a general definition and then provides a list of activities that fall within the definition and a list of activities that are excluded. Activities not appearing on either list will need to be considered in accordance with the general definition.

It is noteworthy that the EU definition excludes “accommodation, car-hire, restaurant services, passenger transport or similar services booked online”. The logic behind this is that the VAT treatment should be consistent with the treatment of the underlying transaction, including the determination of the place of supply. Where an online platform is facilitating the transaction, the service it is providing to the underlying service provider is a B2B transaction.¹⁹ The correct VAT treatment is fact-dependent as the ECJ finding that Uber is a transport undertaking

¹⁹ For a fuller discussion of the issue see: <https://circabc.europa.eu/sd/a/ea379e7b-5e2b-4217-b704-0b13a56de6dc/906>

illustrates.²⁰ Clearly the majority of payments made to platforms like Uber and Airbnb will be received by the underlying service providers and that has led some countries to focus more on the part platforms can play in increasing tax compliance by those service providers.

²⁰ <https://g8fip1kplyr33r3krz5b97d1-wpengine.netdna-ssl.com/wp-content/uploads/2017/12/European-Court-of-Justice-Uber-ruling-December-20-2017-POLITICO.pdf>