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Escola de Economia e Gestão

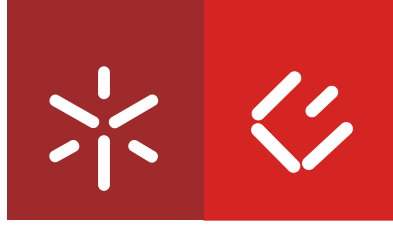
Dóra Krinis

**VAT Challenges of the Digital Economy  
- An EU Perspective**

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- An EU Perspective**

Dissertação de Mestrado  
Mestrado em Contabilidade

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**Professor Doutor Mário Marques**

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É AUTORIZADA A REPRODUÇÃO PARCIAL DESTA DISSERTAÇÃO, APENAS PARA EFEITOS DE INVESTIGAÇÃO, MEDIANTE AUTORIZAÇÃO ESCRITA DO INTERESSADO QUE A TAL SE COMPROMETE.

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# VAT Challenges of the Digital Economy- An EU Perspective

## Abstract

The steadily growing digital economy poses challenges to the European Union (EU) Member States (MSs), businesses, tax administrations and consumers alike. From 1 January 2015 the new place of supply (PoS) rules for all business-to-consumer (B2C) cross-border supplies of telecommunications, broadcasting and electronic services shifted from the MS where the supplier is based to the MS where the customer is established. In parallel, an EU-wide scheme, known as the Mini One-Stop Shop (MOSS) was introduced and this is a significant milestone in the history of EU Value Added Tax (VAT) because, for the first time one MS is collecting VAT on behalf of another MS.

This study aims to evaluate the implementation of the 2015 PoS rules and the MOSS scheme by making an ex-ante and ex-post impact assessment on the different stakeholders affected. In a broad sense, it intends to provide a brief overview of the past, present and future of the EU VAT system in the context of the growing importance of the digital economy.

This study is based on a qualitative research approach which best fits to reveal the opinions of the different stakeholders and to highlight the advantages/disadvantages of the EU VAT system.

The current EU VAT system has been unable to keep pace with the challenges of today's global, digital and mobile economy. Despite all harmonization initiatives over the last decades, the EU VAT system is still identified by businesses as being one of the top three barriers to cross-border e-commerce.

The findings from the impact assessment demonstrate that the current EU VAT system for cross-border e-commerce is still complex and costly, there is a lack of certainty for business, it is not neutral and there are compliance risks and losses for the MSs that needs to be tackled by MS tax administrations in the future. The EU VAT rules need to be modernised and rebooted, not just to make the definitive VAT system simpler, more robust and fraud-proof but also to enable businesses in all EU-28 to reap all the benefits of the Digital Single Market (DSM). As part of the DSM strategy, the Commission will publish a legislative proposal by the end of 2016 to address the shortcomings of the EU VAT system.

**Keywords:** EU, VAT, digital economy, cross-border, B2C supplies, e-commerce, telecommunications, broadcasting and electronic services, Mini One-Stop Shop.



# Os Desafios da Economia Digital para o IVA- A Perspectiva da UE

## Resumo

O constante crescimento da economia digital coloca desafios aos Estados Membros (EM) da União Europeia (UE), empresas, Autoridade Tributária (AT) e dos consumidores. Desde 1 de janeiro de 2015 a regra de localização das prestações de serviços de telecomunicações, serviços de radiodifusão ou televisão e serviços por via eletrónica, efetuadas a pessoas que não sejam sujeitos passivos do Imposto sobre o Valor Acrescentado (IVA), passa baseia-se no critério do lugar de estabelecimento ou domicílio do adquirente. Em paralelo, foi introduzido o sistema simplificado, designado por Mini Balcão Único (MBU) tendo sido o mais significativo na história do IVA da UE porque pela primeira vez um EM arrecada IVA em nome de outro EM. Este estudo tem como objetivo avaliar a implementação das novas regras da localização e do MBU aferindo o antes e depois para os diferentes *stakeholders* afetados. Num sentido amplo, pretende-se apresentar um breve panorama do passado, presente e futuro do sistema do IVA comunitário no contexto da crescente importância da economia digital. Este estudo baseia-se numa abordagem de pesquisa qualitativa que é a que melhor se adequa para revelar as opiniões dos diferentes *stakeholders* e para destacar as vantagens e desvantagens do sistema do IVA. O actual sistema do IVA na UE tem sido incapaz de manter o ritmo dos actuais desafios da economia global, digital e móvel. Apesar de todas as iniciativas de harmonização das últimas décadas, o sistema do IVA na UE ainda é identificado pelas empresas como uma das três principais barreiras para o comércio electrónico transfronteiriço. Os resultados da avaliação do impacto demonstraram que o actual sistema do IVA do comércio electrónico transfronteiriço ainda é complexo e caro. Há uma falta de certeza jurídica para os negócios, não é neutro e implica riscos de cumprimento e perdas para os EM que têm de ser resolvidos pelas AT dos EM no futuro. As regras do IVA na UE precisam de ser modernizadas e melhoradas, não apenas para tornar o sistema definitivo de IVA mais simples, sólido e resistente a fraudes, mas também para que as empresas de todos os UE-28 possam colher todos os benefícios do mercado único digital. Como parte da estratégia de mercado único digital, a Comissão irá apresentar, até ao final de 2016 uma proposta legislativa para abordar as deficiências do sistema do IVA.

**Palavras chaves:** UE, IVA, economia digital, prestações de serviços transfronteiras, B2C, comércio electrónico, telecomunicações, serviços de radiodifusão ou televisão e serviços por via eletrónica, Mini Balcão Único.





## Table of Contents

<b>ACKNOWLEDGEMENTS</b> .....	<b>III</b>
<b>ABSTRACT</b> .....	<b>V</b>
<b>RESUMO</b> .....	<b>VII</b>
<b>LIST OF FIGURES</b> .....	<b>XIII</b>
<b>LIST OF TABLES</b> .....	<b>XV</b>
<b>LIST OF ANNEXES</b> .....	<b>XVII</b>
<b>LIST OF ABBREVIATIONS</b> .....	<b>XIX</b>
<b>CHAPTER 1. INTRODUCTION</b> .....	<b>3</b>
1.1. The subject matter .....	3
1.2. Motivation .....	7
1.3. Aim and scope .....	7
1.4. Outline .....	9
<b>CHAPTER 2. LITERATURE REVIEW</b> .....	<b>11</b>
2.1. Digital Economy: facts, trends and developments .....	11
2.1.1. The Fourth Industrial Revolution .....	11
2.1.2. Impacts of the digital economy .....	13
2.1.3. Europe 4.0 – Will Europe take a leading role? .....	17
2.1.4. Basic characteristics of the digital economy .....	18
2.1.4.1. Definition of the digital economy .....	18
2.1.4.2. Key features and business models of the digital economy.....	19
2.1.4.3. Trends in the digital economy .....	22
2.2. Progress to date in taxation of the digital economy .....	26
2.2.1. Prior work on taxation of the digital economy .....	26
2.2.2. Recent work on taxation of the digital economy.....	31
<b>CHAPTER 3. METHODOLOGY</b> .....	<b>35</b>
3.1. Qualitative research methodology.....	35
3.1.1. Research methods.....	36
3.2. Data collection.....	41
3.2.1. Primary data collection.....	41
3.2.2. Secondary data collection.....	44

<b>CHAPTER 4. MAKING THE DIGITAL SINGLE MARKET A REALITY .....</b>	<b>45</b>
4.1. Upgrading the Single Market .....	45
4.2. Why do we need a Digital Single Market? Facts and figures .....	46
4.3. Removing the obstacles to cross-border e-commerce.....	53
4.3.1. VAT obstacles to cross-border e-commerce .....	55
<b>CHAPTER 5. MODERNISING VAT FOR CROSS-BORDER E-COMMERCE .....</b>	<b>61</b>
5.1. Overview of the 2015 place of supply changes and the MOSS .....	61
5.1.1. 2015 place of supply rules.....	61
5.1.2. Mini One Stop Shop.....	62
5.1.3. Impact of the 2015 changes and the MOSS-Early results.....	64
5.1.4. Main issues raised in respect of the 2015 changes and the MOSS .....	66
5.1.5. Evaluation of the 2015 place of supply rules and the MOSS.....	68
5.1.5.1. Evaluation of the 2015 place of supply rules- Stakeholders’ feedback .....	68
5.1.5.1.1. Complexities created by the 2015 place of supply rules .....	68
5.1.5.1.2. Revenues generated for the Member States .....	72
5.1.5.1.3. VAT rates on e-books - levelling the playing field .....	73
5.1.5.2. Evaluation of the MOSS- Stakeholders’ feedback.....	76
5.1.5.2.1. Impact on small and medium-sized enterprises and microbusinesses .....	76
5.1.5.2.2. Impact on large businesses .....	81
5.1.5.2.3. MOSS Audits .....	85
5.1.5.3. Communication of the 2015 changes and the MOSS .....	88
5.2. Future perspectives for VAT.....	91
5.2.1. Identifying the need for future reforms .....	91
5.2.2. Digital Single Market Strategy –VAT Measure .....	92
5.2.3. Update on EU Commission’s work on VAT .....	94
5.2.4. Pathway to the 2016 legislative proposal.....	95
5.3. VAT priorities for 2016 and beyond .....	99
<b>CHAPTER 6. FINAL CONCLUSIONS.....</b>	<b>101</b>
6.1. Conclusions .....	101
6.2. Contributions.....	108
6.3. Limitations .....	108
6.4. Future investigations .....	108
<b>REFERENCES .....</b>	<b>111</b>

**ANNEXES..... 127**



## List of Figures

FIGURE 1. STATE OF CONNECTIVITY- PEOPLE CONNECTED IN 2015.....	16
FIGURE 2. PEOPLE FIRST: THE PRIMACY OF PEOPLE IN THE DIGITAL AGE.....	23
FIGURE 3. DIGITAL MARKET SHARE .....	47
FIGURE 4. DESI 2016.....	48
FIGURE 5. DESI 2015-2016 .....	51
FIGURE 6. DESI 2016 SCORE VERSUS SPEED .....	52
FIGURE 7. A DIGITAL DIVIDE IN EUROPE? NETWORK READINESS INDEX /SELECTED COUNTRIES .....	53
FIGURE 8. PATHWAY TO THE 2016 LEGISLATIVE PROPOSAL .....	95
FIGURE 9. STEPS OF IMPACT ASSESSMENT .....	97



## List of Tables

TABLE 1. NAVIGATING THE NEXT INDUSTRIAL REVOLUTION .....	11
TABLE 2. UNION SCHEME.....	63
TABLE 3. UNION SCHEME - RESULTS FROM 2015 .....	65
TABLE 4. NON-UNION SCHEME - RESULTS FROM 2015 .....	65
TABLE 5. CONCLUSIONS OF THE DUBLIN FISCALIS SEMINAR 2015.....	67
TABLE 6. VAT MEASURE OF THE DSM STRATEGY .....	93
TABLE 7. ACTION PLAN ON VAT .....	95
TABLE 8. OVERVIEW OF THE POLICY OPTIONS .....	98
TABLE 9. SEMI-STRUCTURED INTERVIEW .....	127
TABLE 10. PRIMARY DATA COLLECTION.....	130
TABLE 11. SECONDARY DATA COLLECTION .....	131





## **List of Annexes**

ANNEX 1. SEMI STRUCTURED INTERVIEW WITH THE PORTUGUESE TAX & CUSTOMS ADMINISTRATION .....	127
ANNEX 2. PRIMARY DATA COLLECTION .....	130
ANNEX 3. SECONDARY DATA COLLECTION .....	131
ANNEX 4. SURVEY QUESTIONNAIRE – ERNST & YOUNG .....	132
ANNEX 5. SURVEY QUESTIONNAIRE – KPMG .....	135
ANNEX 6. SURVEY QUESTIONNAIRE – PWC .....	139



## **List of Abbreviations**

ACCA-Association of Chartered Certified Accountants  
AI-Artificial Intelligence  
B2B- Business-to-Business  
B2C-Business-to-Consumer  
BEPS-Base Erosion and Profit Shifting  
C2C-Consumer-to-Consumer  
CJEU-Court of Justice of the European Union  
DESI-Digital Economy and Society Index  
DG TAXUD-Directorate General for Taxation and Customs Union  
DSM-Digital Single Market  
EC-European Commission  
ECOFIN-Economic and Financial Affairs Council  
EDI-Electronic Data Interchange  
EM-Estado Membro  
EU-European Union  
FE-Fixed Establishment  
FEE-Federation of European Accountants  
EY-Ernst & Young  
GDP-Gross Domestic Products  
GST-Goods and Services Tax  
HQ-Headquarters  
IBFD-International Bureau of Fiscal Documentation  
ICT- Information and Communication Technology  
I-DESI-International Digital Economy and Society Index  
IMF-International Monetary Fund  
IoT-Internet of Things  
IVA-Imposto sobre o Valor Acrescentado  
JRC-Joint Research Center  
KPMG-Klynveld Peat Marwick Goerdeler  
LVCR-Low Value Consignment Relief  
MBU-Mini Balcão Único  
MNE-Multinational enterprises

MOSS-Mini One-Stop Shop  
MOU-Memorandum of Understanding  
MS(s)- Member State(s)  
MSC- Member State of Consumption  
MSI-Member State of Identification  
OECD-Organisation for Economic Cooperation and Development  
OSS-One Stop Shop  
P2P-Peer-to-Peer  
PoS-Place of Supply  
PwC-PricewaterhouseCoopers  
R&D-Research & Development  
REFIT- Regulatory Fitness and Performance Programme  
SCAC- Standing Committee on Administrative Cooperation  
SME-Small and medium-sized enterprises  
TBE- Telecommunications, broadcasting and electronic services  
TFDE-Task Force on the Digital Economy  
UE-União Europeia  
UN-United Nations  
VAT-Value Added Tax  
VOES- VAT on Electronic Services  
VoIP-Voice over Internet Protocol  
WEF- World Economic Forum  
WTO-World Trade Organization

List of Member States/third countries referenced:

BE-Belgium; DE-Germany; ES-Spain; FR-France; IE-Ireland; PT- Portugal; UK-United Kingdom, USA- United States of America, US-United States.

## **VAT Challenges of the Digital Economy - An EU Perspective**



# Chapter 1. Introduction

## 1.1. The subject matter

The Fourth Industrial Revolution is a term coined by Professor Klaus Schwab, Founder and Executive Chairman of the World Economic Forum (WEF), to describe the new generation of technological advances.<sup>1</sup> Sensors, intelligent robots, self-driving cars, 3D printing, genetics and biotechnology are just a few examples of a radical change that is all upon us and it is happening at an exponential speed. "Previous industrial revolutions liberated humankind from animal power, made mass production possible and brought digital capabilities to billions of people. It is characterized by a range of new technologies that are fusing the physical, digital and biological worlds."<sup>2</sup> The new digital technologies have fundamentally altered the way we live, work, spend our spare time, communicate with others, conduct business or produce goods and services.<sup>3</sup> The digital revolution has a profound impact on all governments, businesses, people and society. "These, often rapid, developments hold a lot of promise for the future, in terms of wealth generation, technological advances and improvement in the quality of life. At the same time, they also bring challenges associated with a shortage of skills, emerging new markets, consumer protection, industrial reorganization, trust, security, data protection and privacy."<sup>4</sup> The challenge is to turn the digital revolution into our advantage, to reap the opportunities it brings and to direct it toward a future that reflects our common objectives and values.

"The digital economy is the result of a transformative process brought by information and communication technology (ICT), which has made technologies cheaper, more powerful and widely standardized, improving business processes and bolstering innovation across all sectors of the economy."<sup>5</sup> Examples are visible in retail, transport, financial services, manufacturing, education, healthcare, broadcasting and media industry.

"Given the rapid pace of technological evolution, a clear definition of the digital economy is difficult to provide and as a result, increasingly difficult to legislate for. This is

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<sup>1</sup> Raj, D. and Buytaert, D. (2016). *Could the Fourth Industrial Revolution help us reach the Global Goals?* World Economic Forum. Available at: <https://www.weforum.org/agenda/2016/02/davos-2016-and-the-fourth-industrial-revolution/> (accessed: 10/02/2016).

<sup>2</sup> Schwab, K. (2016). *The Fourth Industrial Revolution*. World Economic Forum. Available at: <https://www.weforum.org/about/the-fourth-industrial-revolution-by-klaus-schwab/> (accessed: 10/02/2016).

<sup>3</sup> European Commission (2015a). *Monitoring the Digital Economy & Society 2016-2021. Executive Summary*.

<sup>4</sup> Id.

<sup>5</sup> OECD (2015a). *Addressing the Tax Challenges of the Digital Economy, Action 1 - 2015 Final Report*. OECD/G20 Base Erosion and Profit Shifting Project. Paris: OECD Publishing, p. 11.



why communication between legislators and potentially affected stakeholders is vital from an early stage.”<sup>6</sup>

The digital economy is no longer a market segment as it has become the entire industry. The digital economy and its business models demonstrate some key features (e.g. mobility, network effects and use of data) which are relevant from a taxation point of view. The type of business models include several varieties of e-commerce, app stores, online advertising, cloud computing, online payment services and participative networked platforms.<sup>7</sup>

The consumer is getting more and more digital but taxation regulations have not kept pace with changing business models and technology advances, therefore regulators need to recognize the advantages of introducing new regulations tailored to the new digital economy.<sup>8</sup> “Those benefits, however, will be lost in the ether of confusion and misinformation, if there is no well defined communication plan designed to inform all stakeholders of the impending regulatory changes.”<sup>9</sup>

The digital economy is in a constant state of evolution, therefore developments need to be monitored to assess their tax implications.<sup>10</sup> These developments include virtual currencies, cloud computing, sharing economies and crowdfunding and are posing new challenges to which the EU VAT system needs to adapt.

The European Commission (EC) has continuously followed digital technology developments and in recognizing their potential to boost jobs, growth, investment and competitiveness, brought digital policies to the forefront of its agenda. Their importance is also mirrored in the priorities of the new Juncker Commission, which in May 2015 adopted the DSM strategy as one of its top ten priorities.<sup>11</sup> The EC has stated that the DSM, if adopted, has the potential to assist Europe’s sluggish economic recovery by allowing new start-ups (micro-multinationals) and existing companies to grow by profiting from the scale of a market of over 500 million consumers, and to transform traditional industries. Nonetheless, as outlined in the new Single Market strategy<sup>12</sup> of October 2015, the Single Market still needs to be upgraded in line with today’s economic realities of increased digitalisation, new business

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<sup>6</sup> Taxamo (2015a). *White Paper: Taxing Digital Services. A Practical Approach to Communicating Digital Tax Rules with Global Digital Service Merchants*, p. 3.

<sup>7</sup> OECD (2015a). *Addressing the Tax Challenges of the Digital Economy, Action 1 - 2015 Final Report*. OECD/G20 Base Erosion and Profit Shifting Project. Paris: OECD Publishing.

<sup>8</sup> Taxamo (2015a). *White Paper: Taxing Digital Services. A Practical Approach to Communicating Digital Tax Rules with Global Digital Service Merchants*.

<sup>9</sup> Id., at p. 21.

<sup>10</sup> OECD (2015a). *Addressing the Tax Challenges of the Digital Economy, Action 1 - 2015 Final Report*. OECD/G20 Base Erosion and Profit Shifting Project. Paris: OECD Publishing.

<sup>11</sup> COM (2015) 192 final, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, A Digital Single Market Strategy for Europe, Brussels, 06.05.2015.

<sup>12</sup> COM (2015) 550 final, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Upgrading the Single Market: more opportunities for people and business, Brussels, 28.10.2015.

models and global value chains in order to achieve a deeper and fairer EU Single Market. “The creation of a real and efficient Single Market in the digital economy is of major importance for both businesses as well as Europe’s competitiveness in the global market.”<sup>13</sup>

E-commerce plays an increasingly important role in the EU economy. “The share of e-commerce in the EU gross domestic products (GDP) was 2.45% in 2014 and is set to nearly double by 2016 and to nearly triple by 2020. EU e-commerce turnover has reached €477 billion in 2015 and is expected to reach €540 billion in 2016 and €609 in 2017. The annual growth of e-commerce in the EU is between 17-18%. Around 20% of retail sales are expected to be conducted through e-commerce by 2018.”<sup>14</sup>

The full potential of the EU e-commerce market has not been reached yet. Too many restrictions still hamper cross-border online sales. The EC is ready to remove the barriers for the benefit of both businesses and consumers. According to the results of the Ecommerce Europe survey “Barriers to Growth”<sup>15</sup> launched in early 2015, the top three barriers faced daily by online shops when doing business abroad were issues related to legal frameworks, logistics and taxation/VAT.

With the advent of modern technology and the internet, it has become necessary to amend the rules for taxing the B2C supply of telecommunications, broadcasting and electronically supplied services (altogether: TBE services). From 1 January, 2015 the PoS of such services changed from the country where the supplier is based to the country where the customer is established (from an origin system to a destination system). In parallel, as a simplification measure, the MOSS has been implemented, which is intended to reduce the costs and administrative burdens for businesses concerned. Instead of having to register for VAT in every MS where TBE services supplies are made, businesses are allowed to make a single VAT declaration and payment in their own MS.

The existing EU VAT environment, which was designed for the domestic trade of businesses may not be fit for purpose anymore. Therefore the system can potentially cause distortions in the Single Market and create barriers to access of international markets. The most recent evidence of such unintentional impact was the implementation of PoS changes from January 2015, which unintentionally caused considerable increase in business burdens on small businesses providing cross-border electronic services. It is therefore important to review the current VAT environment for small and medium-sized enterprises (SMEs),

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<sup>13</sup> Günther Oettinger (2015). The Digital Economy in Europe. *The Bruxelles Times Magazine*, p. 9.

<sup>14</sup> Ecommerce Europe (2015a). *European B2C E-Commerce Report 2015. Light Version*, pp. 15-47.

<sup>15</sup> Ecommerce Europe (2015b). *Analysis of the survey "Barriers to Growth"*, p. 12.

especially the special schemes. According to the VAT Action Plan,<sup>16</sup> released on 7 April 2016, the EC expects that its proposal on SMEs will be presented by the end of 2017.

The 2015 PoS changes and the accompanying MOSS are a significant milestone towards a fair and smoothly functioning Single Market for e-commerce, however a consensus has emerged that this is not sufficient and that the One Stop Shop (OSS) should be extended to cross-border B2C supplies of goods and other services (including distance sales and imports). The broad issue was considered by the Commission Expert Group on Taxation of the Digital Economy (hereinafter: "the Group"), which in its report<sup>17</sup> of May 2014 made a number of recommendations in respect of modernising VAT for cross-border e-commerce. According to the VAT Action Plan the EC expects to present a legislative proposal by the end of 2016 to modernise and simplify VAT for cross-border e-commerce. Before further improving the VAT system, the implementation and application of the 2015 changes and the MOSS have to be properly assessed. This analysis will take place as part of the impact assessment<sup>18</sup> work on the VAT initiatives included in the DSM strategy. The final report will be completed by mid 2016 and should enable the EC to come up with the legislative proposals due late 2016.

Currently, VAT/Goods and Services Tax (GST) is implemented in 160 countries globally and constitutes one of the most important sources of revenue for governments. VAT accounts for 20% of the total tax take globally, a 70% greater share than in the 1980s.<sup>19</sup> A number of countries outside the EU, such as Norway, Albania, South Africa, Switzerland, South Korea and Japan are well advanced in terms of developing their own PoS rules for cross-border supply of digital services. Other tax jurisdictions, such as China, New Zealand, Australia, Russia, India and Singapore have formulated plans to tax the burgeoning digital economy in the short term.

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<sup>16</sup> COM (2016) 148 final, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on an action plan on VAT, Brussels, 07.04.2016.

<sup>17</sup> European Commission (2014a). *Report of the Commission Expert Group on Taxation of the Digital Economy*, pp. 37-39.

<sup>18</sup> European Commission. *Inception Impact Assessment*, p. 3.

Available at: [http://ec.europa.eu/smartregulation/roadmaps/docs/2016\\_taxud\\_002\\_ii\\_a\\_vat\\_en.pdf](http://ec.europa.eu/smartregulation/roadmaps/docs/2016_taxud_002_ii_a_vat_en.pdf) (accessed: 06/03/2016).

<sup>19</sup> TMF Group (2015). *A TMF Group Briefing. VAT Reforms in Europe: past, present and future*, p. 6.

## 1.2. Motivation

As the digital economy continues to grow, so does the body of literature dealing with its impact on tax policy. There are numerous articles, books and doctoral theses on how to tax e-commerce and the digital economy from an indirect tax perspective, e.g. Raponi (1998)<sup>20</sup>, Kogels (1999)<sup>21</sup>, Hinnekens (2002)<sup>22</sup>, Rendal (2009)<sup>23</sup> and Bal (2014).<sup>24</sup> Furthermore, there are several articles, books and doctoral theses directly or indirectly related to the new EU VAT rules on the PoS of B2C e-services, e.g. Lamensch (2012)<sup>25</sup> and De la Féria (2014).<sup>26</sup> At the same time, there are less academic theses, which focus on the ex-ante and ex-post analysis of the 2015 PoS changes and the MOSS system from a practical implementation point of view, sometimes due to lack of information or confidential data limitations. The present study seeks to balance the existing information gap in the academic literature by providing first hand information, statistics and an inside view on the 2015 PoS rules regarding B2C supplies of TBE services and the supporting MOSS system. The data gathering phase is mainly based on a short-term traineeship experience in Directorate General for Taxation and Customs Union (DG TAXUD)/Unit C1-VAT, in the EC.

## 1.3. Aim and scope

The general purpose of this thesis is to provide a brief overview of the past, present and future of the EU VAT system in the context of the growing importance of the digital economy. The more specific aims are: 1.) to make an ex-ante and ex-post impact assessment of the 2015 PoS rules for B2C supplies of TBE services and the MOSS on the different stakeholders, 2.) to identify the advantages and shortcomings of the current system 3.) and to make recommendations for the potential improvements to be taken into account in any future reform.

The assessment criteria include three stakeholder groups affected by the new rules: Member States, EU businesses (including SMEs and multinational enterprises (MNEs)) and Tax Administrations.

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<sup>20</sup> Raponi, D. (1998). Electronic commerce and VAT. *EC Tax Review*, 1998/3, p. 213.

<sup>21</sup> Kogels, H.A. (1999). VAT@e-commerce. *EC Tax Review*, 1999/2., pp. 117-122.

<sup>22</sup> Hinnekens, L. (2002). An updated overview of the European VAT rules concerning electronic commerce. *EC Tax Review*, 2002-2, pp. 65-71.

<sup>23</sup> Rendahl, P. (2009). *Cross-Border Consumption Taxation of Digital Supplies*. Vol. 18. Doctoral Series, IBFD Academic Council.

<sup>24</sup> Bal, A. (2014). *Taxation of virtual currency*. Leiden University Repository.

<sup>25</sup> Lamensch, M. (2012). Unsuitable EU VAT Place of Supply Rules for Electronic Services- Proposal for an Alternative Approach. *World Tax Journal*, pp. 77-91.

<sup>26</sup> De la Féria, R. (2014). Sections 103-106: VAT-Mini-One-Stop-Shop (MOSS), *British Tax Review* 5, pp. 428-433.

The decision to focus primarily on B2C TBE services supplies (or digital supplies) has been taken partly, because it is an area evolving rapidly, creating uncertainties on how different transactions are taxed and posing new challenges for the existing EU VAT regime. It is held to be a difficult area to control and tax efficiently by the MS Tax Authorities. All together, these different reasons imply that more research is needed in the field of VAT applicable on cross-border B2C e-commerce. B2C supplies of goods are only mentioned with regard to future VAT perspectives (see *Section 4.3.1*).

The following research questions are to be investigated within the specific aims:

*Past related question(s)*

1. What led the EC to change the VAT legislation and introduce the 2015 PoS rules for cross-border B2C TBE services supplies and the supporting MOSS initiative as from 1 January 2015?
2. How ready were the businesses prior to 1 January 2015?

*Present related question(s)*

3. What is the initial experience of the different stakeholders in applying the 2015 PoS rules and the MOSS? What are the main challenges for the stakeholders? What are the advantages/disadvantages of the 2015 PoS rules and the MOSS?

*Future related question*

4. What concerns have been raised by the different stakeholders for future policy improvements?

The first research question requires a review of the existing VAT legislation, and a further desk research on the available tax literature, e.g. tax journal articles, previous doctoral theses, VAT Committee working documents, and various internet sources to capture the latest developments. The second research question builds on a survey questionnaire. The third research question is based on an extensive primary data collection, e.g. traineeship experience in the EC, semi-structured interview, survey questionnaires and field notes feed into this process. The fourth question uses a semi-structured interview, survey questionnaires and a telephone interview.

## 1.4. Outline

The thesis is organised as follows: *Chapter 2* sets the context in which the digital economy takes place. In parallel, it explains the evolution of the VAT rules in the light of the digital economy. *Chapter 3* is concerned with the methodological design of the thesis. *Chapter 4* is focused on the Digital Single Market strategy, cross-border e-commerce market, and VAT as an obstacle to the cross-border e-commerce. *Chapter 5* is dedicated to the modernisation of the EU VAT system for cross-border e-commerce. It highlights the 2015 PoS rules and the MOSS. It provides an ex-ante and ex-post impact assessment of the 2015 changes and the MOSS by reflecting on the opinion of the different stakeholders. The future of the EU VAT system is also outlined. The communication level of the 2015 changes and the MOSS is evaluated as well. *Chapter 6* draws the final conclusions. Limitations and suggestions for future investigations are further described.







# Chapter 2. Literature Review

## 2.1. Digital Economy: facts, trends and developments

### 2.1.1. The Fourth Industrial Revolution

“Technological developments have had and will always have a substantial impact on our society”<sup>27</sup> and economy. From the first mechanical weaving loom, dating from 1784, exactly 232 years ago, we can distinguish four stages in the ongoing process, called the Industrial Revolution.<sup>28</sup> Industry 1.0<sup>29</sup> used water and steam power to mechanize production. Industry 2.0 used electric power to create mass production. Industry 3.0 used electronics and information technology to automate production.<sup>30</sup> At present, we find ourselves in the midst of the fourth stage - digital industrial revolution - which is characterized by so-called cyber-physical production systems, which is blurring the lines between physical, digital and biological spheres of life.<sup>31</sup>

**Table 1. Navigating the next industrial revolution**

Navigating the next industrial revolution		
Revolution	Year	Information
	1784	Steam, water, mechanical production equipment
	1870	Division of labour, electricity, mass production
	1969	Electronics, IT, automated production
	?	Cyber-physical systems

Source: World Economic Forum (2016)

<sup>27</sup> Kogels, H.A. (1999). VAT@e-commerce. *EC Tax Review*, 1999/2., p. 117.  
<sup>28</sup> Sogeti (2014). *VINT Research Report 3 of 4. The Fourth Industrial Revolution*, p. 11.  
<sup>29</sup> Commentators use the term Industry 1.0, 2.0, 3.0, and 4.0 to refer to the four steps of the industrial revolution.  
<sup>30</sup> Schwab, K. (2016). *The Fourth Industrial Revolution: what it means, how to respond*. World Economic Forum. Available at: <https://www.weforum.org/agenda/2016/01/the-fourth-industrial-revolution-what-it-means-and-how-to-respond> (accessed: 14/02/2016).  
<sup>31</sup> European Commission. *Digital Single Market. The Fourth Industrial Revolution*. Available at: <https://ec.europa.eu/digital-agenda/en/fourth-industrial-revolution> (accessed: 14/02/2016).



“Compared to previous industrial revolutions, the fourth one is evolving at an exponential rather than at a linear pace.”<sup>32</sup> We can not predict at this point how it will unfold but one thing is clear: we must develop a coherent and comprehensive response to it, involving all stakeholders of the global polity, from the public and private sectors to academia and civil society.

Digital is now prevailing every sector of the economy. The global digital economy totaled up to 22% of the world’s economy in 2015. And it is rapidly growing, as Accenture forecasts those numbers to increase to 25% by 2020 up from 15% in 2005.<sup>33</sup>

Exponentially growing technology breakthroughs<sup>34</sup> in artificial intelligence (AI), robotics, drones, autonomous vehicles, 3D printing, sensor technology, bio- and nanotechnology, to name just a few, will disrupt the current status quo and radically change many industrial processes. “And now that these technologies are more affordable and their size more manageable, Industry 4.0 is up and running.”<sup>35</sup>

Disruptive changes to industry sectors in every country are already re-configuring business models and skill sets and will do so at a swift pace in the next five years.<sup>36</sup> “As entire industries adjust, most occupations are undergoing a fundamental transformation (...). To prevent a worst-case scenario - technological change accompanied by talent shortages, mass unemployment and growing inequality - reskilling and upskilling of today’s workers will be critical.”<sup>37</sup> It is crucial that businesses take an active role in building a workforce with futureproof skills and that governments create the enabling environment to assist these efforts.<sup>38</sup> The pace of change and disruption to business and society are so swift these days, that we must be much faster in understanding the changes underway and aware of our collective responsibility to lead our businesses and communities through this transformative moment.<sup>39</sup>

“New technological capabilities such as Big Data analytics, cloud computing, Internet of Things (IoT), are transforming our daily lives in ways that could not have been imagined even by the best sci-fi writers just a decade ago.”<sup>40</sup>

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<sup>32</sup> Id.

<sup>33</sup> Accenture (2016a). *Technology Vision 2016. Executive Summary*. Accenture Technology R&D, p. 4.

<sup>34</sup> Deloitte (2015). *Industry 4.0. Challenges and solutions for the digital transformation and use of exponential technologies*, Zurich: The Creative Studio at Deloitte, p. 5.

<sup>35</sup> Coleman, G. (2016). *The Fourth Industrial Revolution is already here*. World Economic Forum. Available at: [www.weforum.org/agenda/2016/01/the-fourth-industrial-revolution-is-already-here/](http://www.weforum.org/agenda/2016/01/the-fourth-industrial-revolution-is-already-here/) (accessed: 03/03/2016).

<sup>36</sup> World Economic Forum (2016a). *Global Challenge Insight Report. The Future of Jobs*, ch. 1, p. 3. Available at: [http://www3.weforum.org/docs/WEF\\_Future\\_of\\_Jobs.pdf](http://www3.weforum.org/docs/WEF_Future_of_Jobs.pdf) (accessed: 03/03/2016).

<sup>37</sup> Ibid., at Preface by Schwab, K. and Samans, R.

<sup>38</sup> Id.

<sup>39</sup> Ibid.

<sup>40</sup> Sefcovic, M. (2016). *Will Europe lead the Fourth Industrial Revolution?* World Economic Forum.

Available at: <https://www.weforum.org/agenda/2016/01/will-europe-lead-the-fourth-industrial-revolution/> (accessed: 08/03/2016).

Big Data has become a hot topic within the industry in recent years. Data is the raw material of the 21st century, a catalyst for economic growth, innovation and digitisation.<sup>41</sup> Businesses of all sizes are investing in Big Data in their pursuit of increased efficiency, reduced waste and, of course, profits. However, data collection, storage and analysis” brings legal and regulatory obligations”<sup>42</sup> as there is also a potential to misuse that data.

If companies want to increase their storage, they can simply move their data to the cloud. This is often a more cost effective solution than buying and maintaining their own data storage facilities. Cloud computing help power businesses by enabling other digital technologies, such as social media, mobility, Big Data and advanced analytics.<sup>43</sup>

The IoT refers to devices or objects (e.g. smartwatch, Fitbit) that collect and transmit data via the internet, contributing to our Big Data world.<sup>44</sup> In 2015 there were 4.9 billion connected things<sup>45</sup> and Cisco predicts that by 2020 the number of internet-connected things will exceed 50 billion and perhaps 500 billion by 2030,<sup>46</sup> so that is a massive network effect, indeed many more devices than people. IoT brings tremendous potential and limitless opportunities for business and society.

### 2.1.2. Impacts of the digital economy

The transformational changes, delivered by digital technologies, have also given rise to new patterns of consumption, production and employment requiring proactive adaptation by corporations, governments, societies and individuals.<sup>47</sup> There are three main sets of impacts that should be taken into consideration relating to the current technological revolution.

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<sup>41</sup> Delage, V. (2015). Creating growth through a data economy. *Commission en direct*, Luxembourg: Publication Office of the European Union, p. 43.

<sup>42</sup>“The use of Big Data by the top 100 EU manufacturers could lead to €425 billion in savings, and studies estimate that, by 2020, Big Data analytics could boost EU economic growth by an additional 1.9%. Equally, cloud computing could contribute up to €450 billion to EU GDP over 2015-2020 and create 1 million jobs and 300,000 companies in the EU.”

<sup>43</sup> Marr, B. (2016). Big Data: How A Big Business Asset Turns Into A Huge Liability, *Forbes*. Available at: <http://www.forbes.com/sites/bernardmarr/2016/03/09/big-data-how-a-big-business-asset-turns-into-a-huge-liability/#4d7c8ec924e0> (accessed: 27/04/2016).

<sup>44</sup>“In Europe the new data protection regulation means firms can face heavy fines (up to €20m or 4% of annual worldwide turnover) for misusing or inadequately protecting personal information.”

<sup>45</sup> Accenture. *Put the cloud to work with Accenture*. Available at: <https://www.accenture.com/us-en/service-technology-cloud-computing-overview.aspx> (accessed: 10/04/2016).

<sup>46</sup>Marr, B. (2015). 17 “Internet of Things” Facts Everyone Should Read. *Forbes*. Available at: <http://www.forbes.com/sites/bernardmarr/2015/10/27/17-mind-blowing-internet-of-things-facts-everyone-should-read/#68fef7821a7a> (accessed: 27/04/2016).

<sup>47</sup>Gartner. *Press Release. Gartner says 4.9 billion connected “things” will be in use in 2015*. Available at: <http://www.gartner.com/newsroom/id/2905717> (accessed: 10/04/2016).

<sup>48</sup> Robbins, C. (2016). *A New Platform for the Digital Economy*. World Economic Forum, Annual Meeting 2016, Davos. See video at: <https://youtu.be/-pFRllgEdl0?t=31m16s> (accessed: 10/04/2016).

<sup>49</sup> World Economic Forum (2016a). *Global Challenge Insight Report. The Future of Jobs*, at Preface by Schwab, K. and Samans, R.

## 1) Impact on businesses

“Digital is now firmly embedded in every business so the organization, its people and its culture must now become digital too.”<sup>48</sup> “The new normal is change. Change must be built into an organization’s DNA. Some companies are finding the accelerated pace of technology change overwhelming, leading them into a state of digital culture shock. The winners not only embrace change, they thrive on it.”<sup>49</sup> “Succeeding in today’s digital world is a challenge that can not be solved simply by consuming more and more technology or, as some fear, replacing humans with technology.”<sup>50</sup> “Instead, companies that embrace digital must empower their people – consumers, employees and ecosystem partners – to continuously learn new skills to do more with technology and thus generate bigger and better business results. That demands a digital corporate culture enabling people to create fresh ideas, develop cutting-edge products and services and disrupt the status quo. In an age where technology is in the spotlight, the success mantra for digital businesses: Place People First.”<sup>51</sup>

## 2) Impact on governments

ICT increasingly underlie all government activities, e.g. education, healthcare, transport and public services. “Governments use ICTs to achieve public sector transformation and to shift from a citizen-centred to a citizen-driven approach. This trend is reflected notably by their use of social media to consult and engage with”<sup>52</sup> the community, including a plethora of blogs, Twitter, Facebook and YouTube. At present, 28 out of 34 Organisation for Economic Co-operation and Development (OECD) countries have a twitter account for the head of government or government as a whole and 21 have a Facebook account.<sup>53</sup>

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<sup>48</sup> Accenture (2016b). *Technology Vision 2016. People First: The Primacy of People in a Digital Age*. Full Report. Accenture Technology R&D, p. 6. Available at:

[https://www.accenture.com/t20160314T114937\\_w\\_us-en\\_acnmedia/Accenture/Omobono/TechnologyVision/pdf/Technology-Trends-Technology-Vision-2016.PDF](https://www.accenture.com/t20160314T114937_w_us-en_acnmedia/Accenture/Omobono/TechnologyVision/pdf/Technology-Trends-Technology-Vision-2016.PDF) (accessed: 04/03/2016).

<sup>49</sup> Accenture. *Technology Vision 2016. Executive Summary. People First: The Remedy to Digital Culture Shock*.

<https://www.accenture.com/us-en/insight-it-tech-trends-summary> (accessed: 04/03/2016).

<sup>50</sup> Accenture (2016b). *Technology Vision 2016. People First: The Primacy of People in a Digital Age*. Full Report. Accenture Technology R&D, p. 5. Available at:

[https://www.accenture.com/t20160314T114937\\_w\\_us-en\\_acnmedia/Accenture/Omobono/TechnologyVision/pdf/Technology-Trends-Technology-Vision-2016.PDF](https://www.accenture.com/t20160314T114937_w_us-en_acnmedia/Accenture/Omobono/TechnologyVision/pdf/Technology-Trends-Technology-Vision-2016.PDF) (accessed: 04/03/2016).

<sup>51</sup> Accenture. *Technology Vision 2016. Executive Summary. People First: The Remedy to Digital Culture Shock*. Available at: <https://www.accenture.com/us-en/insight-it-tech-trends-summary> (accessed: 04/03/2016).

<sup>52</sup> OECD (2015b). *Digital Economy Outlook 2015*. Paris: OECD Publishing, p. 19.

<sup>53</sup> Id.

“E-government services are used on average by 35% of individuals and by more than 80% of businesses in the OECD countries.”<sup>54</sup> Online interactions for both individuals and businesses may include: obtaining information by browsing government websites, downloading official forms and sending filled in forms. Problems faced in using government website include: technical issues, lack of clear and updated information, lack of support (on and offline).

Furthermore, “governments will acquire new technological powers to increase their control over populations, based on surveillance systems and the ability to control digital infrastructure.”<sup>55</sup>

With the constantly dynamic nature of the digital economy, policymakers must be extremely cautious when fine-tuning the digital regulatory framework in not hindering its potential for contributing to our wellbeing. They need to ensure that the interest of consumers and the public at large are appropriately considered while sustaining support for innovation and technology development. ”By embracing “agile” governance (...), regulators must continuously adapt to a new, fast-changing environment, reinventing themselves, so they can truly understand what it is they are regulating. To do so, governments and regulatory agencies will need to collaborate closely with business and civil society.”<sup>56</sup>

Internet fragmentation, the benefits of and risks to an open internet are currently high on governments’ agenda.<sup>57</sup>

### **3) Impact on people**

Digital economy is transforming society as a whole. “ICTs are integral to professional and personal life. Individuals, businesses and governments are increasingly inter-connected via a host of devices at home and at work, in public spaces and on the move (...). Despite the universal availability of ICTs, their use continues to differ across firms, individuals and countries. Difference in age and education significantly affect how people use the Internet.”<sup>58</sup>

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<sup>54</sup> OECD (2014a). *Measuring the Digital Economy: A New Perspective*. Paris: OECD Publishing, p. 94.

<sup>55</sup> Schwab, K. (2016). *The Fourth Industrial Revolution: what it means, how to respond*. World Economic Forum. Available at: <https://www.weforum.org/agenda/2016/01/the-fourth-industrial-revolution-what-it-means-and-how-to-respond> (accessed: 14/02/2016).

<sup>56</sup> Id.

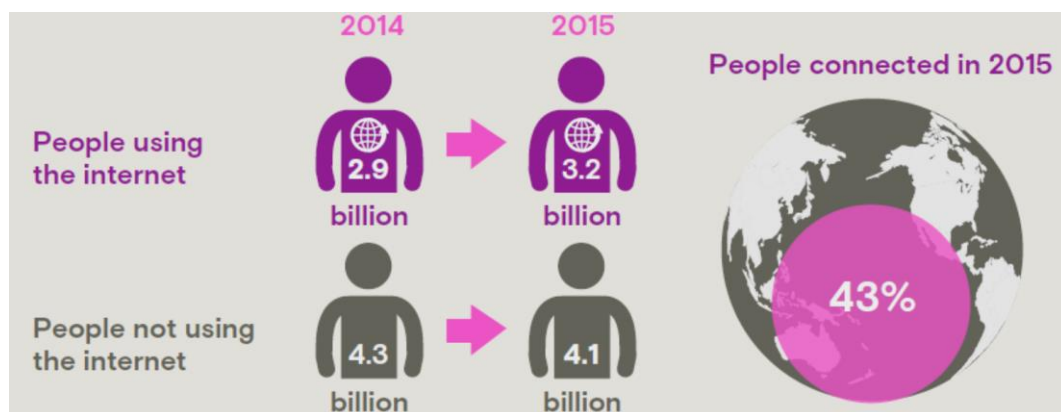
<sup>57</sup> Drake, W.J., Cerf, V.G and Kleinwächter, W. (2016). *Future of the Internet Initiative White Paper. Internet Fragmentation: An Overview*. World Economic Forum.

<sup>58</sup> OECD (2015b). *Digital Economy Outlook 2015*. Paris: OECD Publishing, pp. 16-131.

According to a recent report published by Facebook, an estimated 3.2 billion people are now online representing 43% of the global population up from 2.9 billion in 2014 but this means that a further 4.1 billion people, over half of the world's population, are still offline.<sup>59</sup>

Mobile internet is a fresh revolution. Internet connectivity via smartphones and tablets is leading to an increasingly mobile reality. Mobile subscriptions have reached almost 7.1 billion globally, with over 95% of the world's population have some access to a 2G network.<sup>60</sup>

**Figure 1. State of connectivity- People connected in 2015**



Source: Facebook (2016)

“Trust is critical to economic and social interactions, and especially to virtual relationships conducted in a globally interconnected environment.”<sup>61</sup> With the worldwide spread of internet usage, especially via mobile devices, the two most common concerns are the misuse of personal data and the security of online payments. In both areas the level of concern has grown since 2013, with fear of personal data misuse increasing from 37% to 43% and security concerns rising from 35% to 42%.<sup>62</sup>

When we think about the digital revolution, we tend to focus on technological developments although the truth is that the most fundamental change is not technological but cultural. It will affect our social interactions and personal relationships, work and leisure time, privacy, consumption patterns. More than 30% of the global population<sup>63</sup> now uses social

<sup>59</sup> Facebook (2016). *A Report on Global Internet Access. State of Connectivity 2015*. Available at:

<https://fbnewsroomus.files.wordpress.com/2016/02/state-of-connectivity-2015-2016-02-21-final.pdf> (accessed: 03/03/2016).

<sup>60</sup> International Telecommunication Union. *Press Release: ITU releases annual global ICT data and ICT Development Index country rankings*. Available at: [http://www.itu.int/net/pressoffice/press\\_releases/2015/57.aspx#.VyVxKXoYGyc](http://www.itu.int/net/pressoffice/press_releases/2015/57.aspx#.VyVxKXoYGyc) (accessed: 14/02/2016).

<sup>71</sup> Latest data showed that growth in the Internet use has slowed down, however, posting 6.9% global growth in 2015, after 7.4% growth in 2014. Nonetheless, the number of Internet users in developing countries has almost doubled during the period of 2010-2015, with 2/3 of all people online now living in the developing world.”

<sup>61</sup> OECD (2015b). *Digital Economy Outlook 2015*. Paris: OECD Publishing, p. 19.

<sup>62</sup> European Commission (2015b). *Special Eurobarometer 423: Cyber Security Report*, p. 23.

<sup>63</sup> We Are Social UK. *Special Reports: Digital in 2016*. Available at: <http://wearesocial.com/uk/special-reports/digital-in-2016> (accessed: 26/02/2016).

media platforms to connect, learn and share information. At the same time, constant connection with our devices may deprive us of quality human interactions. Nowadays, people have no time for relationships even dating is online and divorces are through WhatsApp.

“We need to ensure that the new emerging culture of communications can be a power for good in the world (...). All of us are aware of cases where social media have been abused, where people had their privacy violated. There is a role for governments and international organisations to play in regulating this environment but there is an equally important moral or ethical obligation on all of us as individual agents to ensure that the digital world is safe, humanly enriching”<sup>64</sup> and ”a network not of wires but of people.”<sup>65</sup>

### 2.1.3. Europe 4.0 – Will Europe take a leading role?

“Europe played a leading role in the second Industrial Revolution (Industry 2.0) with the mass production of goods and still competes in industries such as automotive, manufacturing, pharmaceuticals and chemicals.”<sup>66</sup> The third Industrial Revolution (Industry 3.0), the computer revolution, sees Europe lagging behind Asia and the United States of America (USA).<sup>67</sup>

The fourth Industrial Revolution (Industry 4.0) comes at a timely moment for Europe, presenting new opportunities in challenging times. From the eurozone crisis to the migrant and terrorism crisis exacerbated by Brexit, tensions in the EU today have the potential to tear the bloc apart or pull it closer together. “The key weakness for Europe, inter alia, is the lack of a pan-European DSM.”<sup>68</sup> The broader question is whether Europe is ready to fully seize the accelerating technological change or just micromanages ”by focusing on data privacy and protecting national industries and ICT champions.”<sup>69</sup> “The DSM strategy was an important first step forward”<sup>70</sup> and creating a fully fledged DSM could add €415 billion to the EU economy per year.<sup>71</sup> In addition, “the industry is a key pillar of the EU economy with 2

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<sup>64</sup> European Digital Forum (2014). *Digital Minds for a New Europe*. Brussels: The Lisbon Council, p. 19.

<sup>65</sup> Vatican (2014). *Message of Pope Francis for the 48th World Communications Day*. Libreria Editrice Vaticana. Available at: [https://w2.vatican.va/content/francesco/en/messages/communications/documents/papa-francesco\\_20140124\\_messaggio-comunicazioni-sociali.html](https://w2.vatican.va/content/francesco/en/messages/communications/documents/papa-francesco_20140124_messaggio-comunicazioni-sociali.html) (accessed: 26/02/2016).

<sup>66</sup> Altendorf, M. (2016). *Two threats to the future of Europe*. World Economic Forum, Davos. Available at: <http://www.weforum.org/agenda/2016/02/two-threats-europe-future> (accessed: 16/02/2016).

<sup>67</sup> Ibid.

<sup>68</sup> European Policy Center. Digital Single Market Newsletter. Available at: <http://www.epc.eu/dsm/1/> (accessed: 16/02/2016).

<sup>69</sup> World Economic Forum (2016b). *Europe: what to watch out for in 2016-2017, White Paper*, p. 8.

<sup>70</sup> Ibid., at p. 7.

<sup>71</sup> The European Commission’s various initiatives in 2014-2015 (e.g. DSM Strategy, Juncker Investment Plan /€315 billion/, Capital Markets Union, Energy Union, the Circular Economy, etc.) to remove remaining obstacles to pan-European business and investment, could improve European growth prospects in the medium term.”

<sup>71</sup> European Commission. *Priorities. Digital Single Market*. Available at: [http://ec.europa.eu/priorities/digital-single-market\\_en](http://ec.europa.eu/priorities/digital-single-market_en) (accessed: 26/02/2016).

million companies and 33 million jobs (...). The overriding political and economic challenge is to see that all industrial sectors make the most of digital innovation in products, processes and business models.”<sup>72</sup> “There are also two key issues which threaten the future economic competitiveness and wealth of the continent: a lack of long-term funding for disruptive technology and investment in comprehensive entrepreneurship education.”<sup>73</sup>

The EU is rightly moving to extend the Single Market into the world of bits and bytes and the creation of a true DSM would allow Europe to regain leadership in the global digital arena.

## 2.1.4. Basic characteristics of the digital economy

### 2.1.4.1. Definition of the digital economy

“The digital economy transcends the ICT sector.”<sup>74</sup> The Internet, broadband networks, mobile applications, IT services and hardware constitute the foundations of the digital economy.<sup>75</sup> “The digital economy now permeates countless aspects of the world economy, impacting sectors as varied as banking, retail, energy, transportation, education, publishing, media or health.”<sup>76</sup>

“Defining what constitutes the digital economy has proven problematic, because of the ever-changing technologies of the ICT sector and because of the widespread diffusion of the digital economy within the whole economy, it can no longer be described as a separate part, or subset, of the mainstream economy.”<sup>77</sup> “Attempting to isolate the digital economy as a separate sector would inevitably require arbitrary lines to be drawn between what is digital and what is not.”<sup>78</sup> However, it is possible to characterize the digital economy through a set of key features detailed below.<sup>79</sup>

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<sup>72</sup> European Commission. *Digital Single Market Newsroom. Commissioner Oettinger's Speech at Hannover Messe: "Europe's future is digital."* Hannover, 24/04/2015. Available at: [http://ec.europa.eu/newsroom/itemdetail.cfm?item\\_id=22761&newsletter=126](http://ec.europa.eu/newsroom/itemdetail.cfm?item_id=22761&newsletter=126) and see also at: [https://ec.europa.eu/commission/2014-2019/oettinger/announcements/speech-hannover-messe-europes-future-digital\\_en](https://ec.europa.eu/commission/2014-2019/oettinger/announcements/speech-hannover-messe-europes-future-digital_en) (accessed: 25/02/2016).

<sup>73</sup> Altendorf, M. (2016). *Two threats to the future of Europe*. World Economic Forum. Available at: <http://www.weforum.org/agenda/2016/02/two-threats-europe-future> (accessed: 16/02/2016).

“The European society and its cultural values clearly lack an all-round understanding of why entrepreneurs are essential for their economic future. New online training classes widen the opportunity to access the information but this will be not enough to change the European society to foster entrepreneurship.”

<sup>74</sup> OECD (2015b). *Digital Economy Outlook 2015*. Paris: OECD Publishing, ch. 3, p. 131.

<sup>75</sup> Id.

<sup>76</sup> Ibid., at p. 11.

<sup>77</sup> European Commission (2014b). Expert Group on Taxation of the Digital Economy. *Working Paper: Digital Economy - Facts & Figures. Digit/008/2014*, Brussels, p.3.

<sup>78</sup> OECD (2015a). *Addressing the Tax Challenges of the Digital Economy, Action 1 - 2015 Final Report*. OECD/G20 Base Erosion and Profit Shifting Project. Paris: OECD Publishing, p. 142.

<sup>79</sup> See also Westberg, B. (2014). Taxation of the Digital Economy- An EU Perspective. *European Taxation*. IBFD, p. 541.

#### 2.1.4.2. Key features and business models of the digital economy

“There are a number of features that are increasingly prominent in the digital economy and which are potentially relevant from a tax perspective.”<sup>80</sup> These features include:

- *Mobility*: including mobility of *intangibles* on which the digital economy strongly relies, mobility of *users* and mobility of *business functions* resulting from a decreased need for local personnel to perform functions as well as flexibility to choose the location of servers or other resources;
- *Reliance on data*: collection, analysis and storage of data (data is the lifeblood of the digital economy, big data in particular);
- *Network effects*: understood with reference to where user participation, integration and synergies are important;
- *Use of multi-sided business models*: a business model in which the two sides of the market may be in different jurisdictions and interact through an intermediary or platform, increasing flexibility and reach;
- *Tendency toward monopoly and oligopoly*: in certain business models (network effects are magnified);
- *Volatility*: resulting from relatively low barriers to entry and rapidly evolving technology, as well as the speed with which customers can choose to adopt new products and services at the expense of older ones.

The OECD 2015 Final Report identifies a diverse new business models<sup>81</sup> that are viewed as contributing to the tax challenges of the digital economy. Several digital trends (e.g. mobile internet penetration, variety of mobile applications and big data) are driving the emergence of new business models and the transformation of established markets. The landscape is still moving rapidly, therefore making it a challenge to anticipate all potential issues. The following items are noted as examples of new business models resulting from the evolution of ICT. The business models discussed below, however, are by no means exhaustive.

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<sup>80</sup> OECD (2015a). *Addressing the Tax Challenges of the Digital Economy, Action 1 - 2015 Final Report*. OECD/G20 Base Erosion and Profit Shifting Project. Paris: OECD Publishing, pp. 64-73.

<sup>81</sup> *Ibid.*, at pp. 54-64.



- *E-commerce*: has become the backbone of the digital economy. Various definitions<sup>82</sup> of e-commerce exist. For example, the OECD 2011 definition<sup>83</sup> refers to:

The sale or purchase of goods or services conducted over computer networks by methods specifically designed for the purpose of receiving or placing orders. The goods or services are ordered by those methods, but the payment and the ultimate delivery of goods or services do not have to be conducted online. An e-commerce transaction can be between enterprises, households, individuals, governments and other public or private organisations.

This definition is now used in data collection in most EU MSs. “E-commerce usually means that orders are placed over the internet.”<sup>84</sup> “The type of e-commerce transaction is defined by the method of making the order.”<sup>85</sup> Orders made through the internet or other electronic networks, such as electronic data interchange (EDI),<sup>86</sup> intranet or extranet are included in the definition and orders made by telephone, facsimile or manually typed emails are excluded.<sup>87</sup>

E-commerce covers a broad array of businesses, the most common are: *business-to-business* (B2B), *business-to-consumer* (B2C), and *consumer-to-consumer* (C2C) business models.

The B2B model requires both the seller and the buyer to be business entities. B2B consists of a broad range of intercompany transactions, e.g. online versions of traditional transactions in which a wholesaler purchases consignments of goods online, then sells to consumers from retail outlets. “It can also include the provision of goods or services to support other businesses, such as: logistics services, outsourcing of support functions for e-commerce (e.g. web-hosting, security and customer care solutions), content management services and auction solutions services for the operation of real-time auctions via the internet.”<sup>88</sup>

In the B2C model, business website is a place where all transactions take place between a business organization and consumer (persons, or households) directly. Key features of the B2C model are: high advertising required to attract large number of customers; high investment in terms of hardware/software; good customer care service. “The goods or services sold by a B2C business can be tangible or

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<sup>82</sup> e-Commerce definition by Eurostat, available at: <http://ec.europa.eu/eurostat/statistics-explained/mobile/index.php#Page?title=Glossary:E-commerce&lg=en> (accessed: 19/02/2016).

<sup>83</sup> OECD (2011). *OECD Guide to Measuring the Information Society 2011*. Paris: OECD Publishing, pp. 71-72.

<sup>84</sup> United Nations Economic Commission for Europe (2011). *The Impact of Globalization on National Accounts*. New York and Geneva: United Nations (UN), ch. 13, p. 250.

<sup>85</sup> OECD (2011). *OECD Guide to Measuring the Information Society 2011*. Paris: OECD Publishing, p. 73.

<sup>86</sup> Electronic Data Interchange (EDI), is an e-business tool that allows direct communication of standardized trading messages between computer systems.

<sup>87</sup> OECD (2011). *OECD Guide to Measuring the Information Society 2011*. Paris: OECD Publishing, p. 72.

<sup>88</sup> OECD (2015a). *Addressing the Tax Challenges of the Digital Economy, Action 1 - 2015 Final Report*. OECD/G20 Base Erosion and Profit Shifting Project. Paris: OECD Publishing, p. 55.

intangible.”<sup>89</sup> In the B2C website, the manufacturer can sell products directly to consumers. This process of removal of business layers, responsible for intermediary functions, is called disintermediation.<sup>90</sup>

“The third category of C2C commerce relates to the selling of goods (both new and used ones) and services among consumers. In this market, specialized e-commerce firms (e.g. e-Bay, Amazon) act as intermediaries permitting households to transact in goods and services.”<sup>91</sup> Typically, buyers can shop for free, but sellers sometimes have to pay a fee to list their products. “Advertising revenues, including charges to have a link appear on a web page, represent an important source of revenue.”<sup>92</sup>

“It is widely accepted that e-commerce improves efficiency through four essential factors: cost reductions, more competition, a better organization of production processes, and greater access to different varieties of products.”<sup>93</sup>

Further relevant business models in the digital economy are as follows:

- *App stores*: an online marketplace, where users can download purchased or free applications (apps) to their devices, include both apps developed by the business operating the app store or by a third party developer. App stores are available across a broad range of platforms, including mobile and desktop app stores (e.g. Apple, Google, Windows), social media sites (e.g. Facebook), and government-specific portals (e.g. Apps.gov);<sup>94</sup>
- *Online advertising*: is a form of promotion that uses the internet for the purpose of delivering marketing messages to attract customers. A main revenue source in several digital content markets. Google currently dominates the market for online advertising.<sup>95</sup> Display ads, banner ads, search engine ads are prominent forms of online ads;
- *Cloud computing*: “is a paradigm for enabling network access to a scalable and elastic pool of shareable physical or virtual resources (including servers, operating systems, networks, software, apps and storage equipment) with self-service provisioning and

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<sup>89</sup> Id.

<sup>90</sup> Ibid.

<sup>91</sup> United Nations Economic Commission for Europe (2011). *The Impact of Globalization on National Accounts*. New York and Geneva: United Nations (UN), ch. 13, p. 250.

<sup>92</sup> Id.

<sup>93</sup> Ibid., at ch. 13, p. 251.

<sup>94</sup> OECD (2013a). *The App Economy*. OECD Digital Economy Papers No. 230. Paris: OECD Publishing.

<sup>95</sup> OECD (2015b). *Digital Economy Outlook 2015*. Paris: OECD Publishing, p. 152.

administration on-demand. Cloud service options are: infrastructure-as-a-service, platform-as-a-service, software-as-a-service, content-as-a-service, and data-as-a-service”<sup>96</sup>;

- *Payment services*: a number of alternative online payment options are in use, e.g. e-wallets or cyber-wallets, mobile payment solutions;
- *High-speed trading*;
- *Participative networked platforms*: social networking apps, distribution platforms (including text-based collaboration formats, such as blogs, wikis and podcasting).

Finally, new sharing economy business models, that bring to consumers a high variety of services at lower prices, have also emerged rapidly in the urban mobility and home exchanges or short-term rentals market (e.g. Airbnb, Uber, BlaBlaCar).<sup>97</sup> “Many sharing economy business models currently rely on self-regulation, notably via ratings and reviews (...). While the sharing economy concerns *collective consumption*, crowdsourcing and crowdfunding provide two interesting examples of *collaborative production*.”<sup>98</sup>

“Crowdfunding platforms now provide entrepreneurs with capital through peer-to-peer (P2P) lending or offer P2P currency exchange models. All these initiatives challenge existing regulations and laws, established at a time when the underlying technology was unavailable and call for balanced policy responses that foster innovation while protecting the public interest.”<sup>99</sup>

### 2.1.4.3. Trends in the digital economy

The Accenture Technology Vision 2016<sup>100</sup> identifies five emerging technology trends (intelligent automation, liquid workforces, platform economy, predictable disruption and digital trust), fuelled by a ”People First” principle, that are essential to business success in the digital economy.

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<sup>96</sup> International Telecommunication Union (2014). *Information Technology – Cloud Computing – Overview and Vocabulary*. Rec. ITU-T Y.3500 (08/2014), Genova, p. 4.

<sup>97</sup> OECD (2015b). *Digital Economy Outlook 2015*. Paris: OECD Publishing.

<sup>98</sup> *Ibid.*, at pp. 156-157.

<sup>99</sup> OECD (2015b). *Digital Economy Outlook 2015*. Paris: OECD Publishing, p. 18.

<sup>100</sup> Accenture (2016b). *Accenture Technology Vision 2016. People First: The Primacy of People in a Digital Age*. Full Report. Accenture Technology R&D. Available at: <https://www.accenture.com/us-en/insight-business-technology-trends-report> (accessed: 19/02/2016).

**Figure 2. People First: The Primacy of People in the Digital Age**



Source: Technology Vision, Accenture (2016)

Future technological trends and potential impact on the digital economy are detailed below.

**Intelligent automation** – the combination of AI and automation- “is being used across multiple industries to create new value for businesses and society alike (...). It is not just in IT systems that automation is driving real change. It is happening out in the physical world too.”<sup>101</sup> “Advanced heavy machines and robots have taken the roles of the workmen in the banking, healthcare and hospitality sector. Many banks have started employing robots as receptionists. There are robots carrying out the duties of nurses and surgeons.”<sup>102</sup>

In the e-commerce sector, e.g. 30,000 Kiva robots helping Amazon to meet rising customer demand and get closer to same-day delivery.<sup>103</sup>

“Machines and AI will be the newest recruits to the workforce, bringing complementary skills that will make them trusted co-workers.”<sup>104</sup> So, “this is not the dehumanized future of science fiction, but rather a love story between people and machines.”<sup>105</sup>

“The ongoing debate on these transformations has been sharply polarized between those who foresee limitless opportunities in newly emerging job categories and prospects that improve workers’ productivity and liberate them from routine work, and those that foresee massive labour substitution and dislocation of jobs. Academics, chief executives and labour leaders hold strong and diverse views on the debate, as do policymakers.”<sup>106</sup>

Current trends could lead to a total loss of 7.1 million jobs (two thirds of which are concentrated in the Office and Administrative job family) in the world’s largest economies

<sup>101</sup> Id.

<sup>102</sup> Mohiuddin, A. (2016). Will Fourth Industrial Revolution upset Apple cart of our lives? *The Moroccan Times*. Available at: <http://moroccantimes.com/2016/01/17998/will-fourth-industrial-revolution-upset-apple-cart-of-our-lives> (accessed: 19/02/2016).

<sup>103</sup> Accenture. *Technology Vision 2016. Intelligent Automation*. Available at: [https://www.accenture.com/t20160125T111718\\_w\\_us-en/\\_acnmedia/Accenture/Omobono/TechnologyVision/pdf/Intelligent-Automation-Technology-Vision-2016.pdf#zoom=50](https://www.accenture.com/t20160125T111718_w_us-en/_acnmedia/Accenture/Omobono/TechnologyVision/pdf/Intelligent-Automation-Technology-Vision-2016.pdf#zoom=50) (accessed: 14/02/2016).

<sup>104</sup> Accenture (2016b). *Technology Vision 2016. People First: The Primacy of People in a Digital Age*. Full Report. Accenture Technology R&D. Available at: <https://www.accenture.com/us-en/insight-business-technology-trends-report> (accessed: 19/02/2016).

<sup>105</sup> Accenture. *Technology Vision 2016. Intelligent Automation: Do things differently, do different things and create new jobs, products and services*. See video transcript at: <https://www.accenture.com/us-en/insight-intelligent-automation-technology> (accessed: 14/02/2016.)

<sup>106</sup> World Economic Forum (2016a). *Global Challenge Insight Report. The Future of Jobs*, p. 10.

due to disruptive labour market changes (e.g. technological advances in robotics) over the period 2015-2020, though this will partially be offset by the creation of roles in areas, such as computing, maths, architecture and engineering with a total gain of 2 million jobs.<sup>107</sup>

In fact, the reality is likely to be highly specific to the industry, region and occupation in question and the ability of various stakeholders to successfully manage change.<sup>108</sup>

“Overall, the current technological revolution need not become a race between humans and machines but rather an opportunity for work through which people recognize their full potential.”<sup>109</sup>

**Liquid Workforce** – Businesses are experiencing a “skills-gap” as they pursue advantage from the latest technologies.<sup>110</sup> “Their investments are outpacing the labour market’s ability to provide the digital skills that will drive new strategies. What is more, automation radically alters the in-demand skillsets, as machines begin to handle many routine tasks previously done by people. Beyond technology-driven disruption, the employee pool itself is changing dramatically. For example, in the USA 43% of the workforce is expected to be freelance by 2020.”<sup>111</sup>

“A changing labour market is disrupting how business leaders need to approach their workforces (...). Businesses will create highly adaptable and change-ready enterprise environments that are able to meet today’s dynamic digital demands (...). Liquid workforce leaders develop the skills they need by making continuous training a core competency (...). Once organizations start to harness the power of a liquid workforce, they will find they can grow smarter and faster than they ever imagined. In the digital age, that is not just desirable. It is mission-critical.”<sup>112</sup>

**Platform Economy** – We are on the verge of a major macroeconomic shift since the industrial revolution. “The next wave of disruptive innovation will arise from the technology-enabled, platform-driven ecosystems now taking shape across industries.”<sup>113</sup> “The Top 15 Public Platform Companies already represent \$2.6 trillion in market capitalization worldwide through the value-creating power of their platform ecosystems and digital assets.”<sup>114</sup> While tech companies and digital-born organizations, like Google, Uber, Apple, Amazon, Alibaba

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<sup>107</sup> World Economic Forum (2016c). *The Future of Jobs, Executive Summary*, p. 1.

Available at: [http://www3.weforum.org/docs/WEF\\_FOJ\\_Executive\\_Summary\\_Jobs.pdf](http://www3.weforum.org/docs/WEF_FOJ_Executive_Summary_Jobs.pdf) (accessed: 19/02/2016).

<sup>108</sup> World Economic Forum (2016a). *Global Challenge Insight Report. The Future of Jobs*. Preface by Schwab, K. and Samans, R.

<sup>109</sup> Id.

<sup>110</sup> Accenture. *Technology Vision 2016. Liquid Workforce*. Available at: <https://www.accenture.com/us-en/insight-liquid-workforce-planning> (accessed: 14/02/2016).

<sup>111</sup> Id.

<sup>112</sup> Ibid.

<sup>113</sup> Accenture (2016b). *Technology Vision 2016. People First: The Primacy of People in a Digital Age*. Full Report. Accenture Technology R&D, pp. 39-44. Available at: <https://www.accenture.com/us-en/insight-business-technology-trends-report> (accessed: 19/02/2016).

<sup>114</sup> Ibid, at p. 38.

have been dominating the digital economy with platform business models, non-tech digital leaders across all industries are developing platform strategies now.<sup>115</sup> “Whether a company owns a platform ecosystem or is plugging into another’s, what matters is having a platform strategy and the business know-how to exploit it.”<sup>116</sup>

According to Accenture Technology Vision 2016 on the platform economy, “80% of executives surveyed say, that platform-based business models will be core to their growth strategy within three years, 75% confirmed that industry boundaries will be blurred, only 30%, but already, are building platforms. There is now a very clear typology of different platforms - platform within a company, an industry or a cross-industry - enabled by the IoT and digital technologies, which are going to change dramatically the way the businesses are operating.”<sup>117</sup>

**Predictable Disruption** – “As more companies build or partner in industry platforms, new digital ecosystems are growing round them. These will become the foundation for the next major stage of technology and economic disruption.”<sup>118</sup> Digital disruption is no longer a surprise. Fast-emerging digital ecosystems - precision agriculture, the industrial internet or smart cities are just a few examples - are already blurring industry boundaries in a foreseeable way, meaning the knock-on effects of innovation can be predicted and overcome.<sup>119</sup> “Using the power of their industry knowledge, companies can map out ecosystem scenarios and unveil the disruptive opportunities and threats.”<sup>120</sup> “As these ecosystems produce powerful and predictable disruption, whole industries and economic segments will be utterly redefined and reinvented.”<sup>121</sup>

**Digital Trust** – “As every digital advancement creates a new vector for risk, trust becomes the cornerstone of the digital economy. Without trust, digital businesses cannot use and share the data that underpins their operations (...). In today’s digital business environment, trust is built on two important components: digital ethics and cybersecurity (...). Digital ethics goes further than just privacy (...). It represents a company’s moral governance

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<sup>115</sup> Accenture. *Technology Vision 2016. Platform Economy*. Available at: <https://www.accenture.com/us-en/insight-digital-platform-economy> (accessed: 14/02/2016).

<sup>116</sup> Id.

<sup>117</sup> Nanterme, P. (2016) *Session on "A New Platform for the Digital Economy"*, World Economic Forum, Annual Meeting 2016 in Davos. Available at: <https://youtu.be/-pFRllgEdl0?t=33m32s> (accessed: 16/02/2016).

<sup>118</sup> Accenture. *Technology Vision 2016. Predictable Disruption*. Available at: <https://www.accenture.com/us-en/insight-digital-ecosystem-disruption> (accessed: 16/02/2016).

<sup>119</sup> Id.

<sup>120</sup> Accenture (2016c). *Technology Vision 2016. Trend 4 Report. Predictable Disruption: Looking to digital ecosystems for the new waves of change*. Accenture Technology R&D, p.4. Available at: [https://www.accenture.com/t20160411T055938\\_w\\_us-en\\_acnmedia/Accenture/Omobono/TechnologyVision/pdf/Predictable-Disruption-Technology-Vision-2016.pdf#zoom=50](https://www.accenture.com/t20160411T055938_w_us-en_acnmedia/Accenture/Omobono/TechnologyVision/pdf/Predictable-Disruption-Technology-Vision-2016.pdf#zoom=50) (accessed: 16/02/2016).

<sup>121</sup> Accenture (2016b). *Technology Vision 2016. People First: The Primacy of People in a Digital Age*. Full Report. Accenture Technology R&D, p. 50-54. Available at: <https://www.accenture.com/us-en/insight-business-technology-trends-report> (accessed: 19/02/2016).

of actions taken as a result of insights derived from the analysis of the information.”<sup>122</sup> “Whereas cybersecurity is about creating a stronghold, through advanced techniques, such as cryptography and authentication.”<sup>123</sup> “Web-based attacks in the EU and around the world increased by 38% during 2015.”<sup>124</sup> The issue of cybersecurity<sup>125</sup> now features prominently on national policy agendas. Today, all EU-28 have a national cybersecurity strategy in place.<sup>126</sup> “Nowadays, digital and data ethics are also becoming boardroom conversations”.<sup>127</sup>

Overall, as these IT trends demonstrate, leveraging the power of a digital business is no longer simply about incorporating technology into the organization. It is about reinventing the organization and the culture within it, to drive innovation, to drive change, to drive the business into the next generation. The “Place People First” approach needs to be adopted in shaping the future that works for all.

## **2.2. Progress to date in taxation of the digital economy**

To keep focus on the indirect taxation field, issues related to direct taxation aspects may well merit an independent study, therefore, left outside the scope of this study.

### **2.2.1. Prior work on taxation of the digital economy**

The fast development of electronic commerce (e-commerce) and its effects on society and business came to governments’ attention in the 1990s.<sup>128</sup> The advent of e-commerce had important implications for taxation and required a re-examination of tax policies that were designed for a pre-digital world. At the same time, “the digital revolution is not the first such revolution to affect the flow of commerce and thus the actual and potential tax base.”<sup>129</sup> As a result, governments were forced to make hard fiscal adjustments as the growing phenomenon

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<sup>122</sup> Accenture. *Technology Vision 2016. Digital Trust*. Available at: <https://www.accenture.com/us-en/insight-digital-data-security> (accessed: 14/02/2016).

<sup>123</sup> Accenture. *Technology Vision 2016. Digital Trust*. Video Transcript. Available at: <https://www.accenture.com/us-en/insight-digital-data-security> (accessed: 14/02/2016).

<sup>124</sup> European Commission. *Cybersecurity and privacy*. Available at: <https://ec.europa.eu/digital-agenda/en/trust-and-security> (accessed: 14/02/2016).

<sup>125</sup> Cybersecurity Ventures (2015). *Cybersecurity Market Report Q4 2015*. Available at: <http://cybersecurityventures.com/cybersecurity-market-report/> (accessed: 23/02/2016).

<sup>126</sup> “The worldwide cybersecurity market is defined by market sizing estimates that range from \$75 billion in 2015 to \$170 billion by 2020. According to Micro Market Monitor, the European Cybersecurity Market is expected to grow to \$35.53 billion by 2019. This market contributes 26.95% of the global market and will slightly fall down to 22.81% by 2019.”

<sup>127</sup> European Union Agency for Network and Information Security. *National Cybersecurity Strategies*. Available at: [www.enisa.europa.eu/activities/Resilience-and-CIIP/national-cyber-security-strategies-ncss/national-cyber-security-strategies-in-the-world](http://www.enisa.europa.eu/activities/Resilience-and-CIIP/national-cyber-security-strategies-ncss/national-cyber-security-strategies-in-the-world) (accessed: 18/02/2016).

<sup>128</sup> Accenture. *Technology Vision 2016. Digital Trust*. Available at: <https://www.accenture.com/us-en/insight-digital-data-security> (accessed: 14/02/2016).

<sup>129</sup> Rendahl, P. (2009). *Cross-Border Consumption Taxation of Digital Supplies*. Doctoral Series, IBFD Academic Council.

<sup>130</sup> Bird, R.M. (2005). Taxing Electronic Commerce: The End of the Beginning? *Bulletin 2005 IBFD*, pp. 131-132.

of e-commerce were eroding their fiscal base. “Both forms of taxation (direct and indirect taxes) were, in different ways, potentially vulnerable to *e-pressure*.”<sup>130</sup> However, it took some time before a discussion on the fiscal implications of e-commerce gained momentum.<sup>131</sup>

It was the US Department of the Treasury that by the end of 1996 first raised the issue in its report titled “*Selected Tax Policy Implications of Global Electronic Commerce*”.<sup>132</sup>

The OECD work can be traced back to November 1997 when a joint government and business conference “*Dismantling the Barriers to Global Electronic Commerce*” was organized in Turku, Finland.<sup>133</sup> Following the Turku Conference, the OECD Ministerial Conference, held in Ottawa in October 1998, resulted in an international common approach on how to deal with the challenges to taxing e-commerce. “Electronic commerce has the potential to be one of the great economic developments of the 21st century” – the opening lines of an OECD Report titled “*Electronic Commerce: Taxation Framework Conditions*”<sup>134</sup> that was presented to the Ministerial Conference in Ottawa.

At OECD, World Trade Organization (WTO) and EC level there was a common feeling that e-commerce” should get the opportunity to develop further without being hindered by discriminatory taxation.”<sup>135</sup>

One main conclusion from the Ottawa Conference was that the taxation principles guiding governments in traditional commerce should also apply to e-commerce. The basic tax principles of neutrality, efficiency, certainty and simplicity, effectiveness and fairness and flexibility and sustainability on the taxation of e-commerce were laid out in 1998, in the *Ottawa Taxation Framework Conditions*<sup>136</sup> and provided that when applied, consumption taxes (like VAT) should result in taxation where consumption takes place. This policy orientation was confirmed in the recent OECD Report of the Task Force on the Digital Economy (TFDE).<sup>137</sup>

Since 1998, the Ottawa principles have gained wide acceptance internationally and remained relevant and valid, although since then the digital economy has rapidly evolved.<sup>138</sup> It has been recognized that the principles presented in the Framework Conditions may conflict due to

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<sup>130</sup> Ibid., at p.133.

<sup>131</sup> Kogels, H. (2015). Making VAT fit for the Digital World. *International VAT Monitor*, Vol.26, No. 6.

<sup>132</sup> US Department of the Treasury (1996). *Office of Tax Policy Report: Selected Tax Policy Implications of Global Electronic Commerce*, pp. 7-43.

<sup>133</sup> The Turku Conference initiated work on developing taxation framework conditions for e-commerce.

<sup>134</sup> OECD (1998). *Electronic Commerce: Taxation Framework Conditions. A Report by the Committee on Fiscal Affairs as presented to Ministers at the OECD Ministerial Conference, “A Borderless World: Realizing the Potential of Electronic Commerce” on 8 October 1998*. Available at: <http://www.oecd.org/tax/consumption/1923256.pdf> (accessed: 24/02/2016).

<sup>135</sup> Kogels, H.A. (1999). VAT@e-commerce. *EC Tax Review*, 1999/2., p. 117.

<sup>136</sup> OECD (2001). *Taxation and Electronic Commerce, Implementing the Ottawa Taxation Framework Conditions*. Paris: OECD Publishing, p.10.

<sup>137</sup> OECD (2014b). *Addressing the Tax Challenges of the Digital Economy*. OECD/G20 Base Erosion and Profit Shifting Project. Paris: OECD Publishing, p. 149.

<sup>138</sup> Ibid, at p. 11.



governments and businesses different views of their applications in particular contexts. Nonetheless, the principles provide an important reference point against which to measure and progress taxation proposals.<sup>139</sup> For purposes of evaluating existing taxation rules and the ongoing work in the field of taxation of e-commerce, the principles were deemed an appropriate tool.<sup>140</sup>

Not surprisingly, the EC participated in the global debate on taxation of digital e-commerce from the very beginning. At its meeting on 6 July, 1998 the Economic and Financial Affairs Council (ECOFIN) endorsed three main principles,<sup>141</sup> based on the Ottawa taxation principles that can be summarized as follows:

The *first principle* was that the internet should not lead to new taxes<sup>142</sup> or additional taxes but the existing VAT system should be adapted to meet the future requirements of e-commerce.

The *second principle* was that, for consumption taxes, electronic deliveries should not be considered as goods, but they should be treated for EU VAT purposes as supplies of services.

The *third principle* was that services, whether supplied via e-commerce or otherwise, consumed in the EU, should be taxed in Europe, whatever their origin (taxation at consumption place). Such services supplied by EU operators for consumption outside the EU should be free of VAT.

The EC's overall objective was to ensure that any scheme of taxation to be introduced was compatible with the new e-commerce environment and did not inhibit its growth potential. In particular, the goal was to create "an EU VAT system that provided for legal certainty, simplicity and neutrality, necessary for the full development of e-commerce within the EU."<sup>143</sup> These were all essential criteria to create a level playing field for EU and non-EU operators.

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<sup>139</sup> Id.

<sup>140</sup> Rendahl, P. (2009). *Cross-Border Consumption Taxation of Digital Supplies*. Vol. 18 Doctoral Series, IBFD Academic Council, p. 69.

<sup>141</sup> Raponi, D. (2000). EC Developments. VAT treatment of electronically delivered services, *EC Tax Review* 2000/3, p. 188.

See also: COM (2000) 349 final, proposal for a Council Directive amending Directive 77/388/EEC as regards the value added tax arrangements applicable to certain services supplied by electronic mean, p. 4.

These principles were previously presented in the Commission's Communication. See also: COM (1998) 374 final. *Electronic commerce and Indirect Taxation. Communication from the Commission to the Council, the European Parliament and the Economic and Social Committee*.

<sup>142</sup> Like "bit taxes" levied on the number of bits transferred over the Internet.

<sup>143</sup> Raponi, D. (1998). Electronic commerce and VAT. *EC Tax Review*, 1998/3, p. 213.

See also: COM (1998) 374 final, Communication from the Commission to the Council, the European Parliament and the Economic and Social Committee - Electronic commerce and indirect taxation, p. 4.

*Legal certainty* was meant to ensure that tax obligations were clear, transparent and predictable. *Simplicity* was necessary to keep the compliance burdens to a minimum. In that respect the Commission was committed to a future VAT system based on taxation at origin, together with a single country of registration, where an operator could both account for and deduct tax in respect of all his EU VAT transactions. *Neutrality* meant that taxation should be the same for transactions in goods and services, regardless of the mode of e-commerce used or whether delivery was effected online or offline or whether they were purchased from within or outside the EU.

On 1 July, 2003 the so called e-commerce VAT Directive (Council Directive 2002/38/EC)<sup>144</sup> came into force with the primary aim of eliminating an undesired and unintended effect of the 6th VAT Directive,<sup>145</sup> whereby EU businesses found themselves charging and collecting VAT in circumstances, which placed them at a competitive disadvantage vis-à-vis third country based operators.

The 2003 measures meant that the EU became the first jurisdiction to tax electronic services in line with the OECD 1998 Ottawa principles.<sup>146</sup>

Non-EU to EU B2C supplies of e-services became taxable in the EU MS of Consumption (MSC).<sup>147</sup> However, the origin principle was maintained for supplies made by an EU taxable person to an EU end consumer (B2C intra-EU). On one hand, the e-commerce VAT Directive introduced innovative measures,<sup>148</sup> but on the other hand created new opportunities for intra-EU VAT competition. "Due to the rapid increase in the volume of cross-border services, it was recognized that the origin-based approach distorted competition"<sup>149</sup> in favor of business activity in low-tax countries.<sup>150</sup>

"The rules resulted in legal uncertainty and in an unacceptable compliance burden for suppliers engaging in online supplies with a major consequence not only for e-suppliers but also for the e-market place as a whole."<sup>151</sup>

"To increase the application of the destination principle, which is regarded as the conceptually ideal approach to taxing consumption, the EC introduced the most significant

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<sup>144</sup> Council Directive 2002/38/EC of 7 May 2002 amending and amending temporarily Directive 77/388/EEC as regards the value added tax arrangements applicable to radio and television broadcasting services and certain electronically supplied services, OJ L128, 15/05/2002,41, (hereinafter: "Electronic Services Directive" or "e-Commerce VAT Directive"). Originally the "Electronic Services Directive" was intended to apply for a period of three years, starting from 1 July 2003. This period was extended many times and, finally, in 2008, the arrangements became permanent.

<sup>145</sup> Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes- Common system of VAT: uniform basis of assessment, OJ L 145, 13.6.1977.

<sup>146</sup> Consumption taxes, like VAT should be taxed according to "taxation at destination". In the Commission's opinion, if "taxation at destination" was not applied, base erosion and profit shifting (BEPS) issues were tend to arise and this later on led to competitive distortions in the EU between 2003-2015.

<sup>147</sup> 2003 Tax mechanisms: electronic services supplied by non-EU taxable persons to EU customers (B2C inbound), followed the destination principle. So did services supplied by an EU taxable person to another EU taxable person (B2B intra-EU) or to a non-EU private person (B2C outbound). However, the origin principle was maintained for supplies made by an EU taxable person to an EU private person (B2C intra-EU).

<sup>148</sup> The 2003 changes modernised the existing VAT place of supply (PoS) rules for services by including the e-commerce sector. The e-VAT Directive included the simplification of VAT obligations to make compliance for non-EU operators as simple and easy as possible, allowing them to register and submit their VAT returns by electronic means (supported by the VAT on E-Services Scheme,"VOES") in only one Member State, and that Member State transferred the revenues to other Member States (the first One Stop Shop scheme).

*The 2003 measures* positively affected EU businesses that no longer had any incentive to move their operations outside the country to protect their competitive position with the adoption of the e-VAT Directive.

<sup>149</sup> Bal, A. (2014). *Taxation of virtual currency*. Leiden University Repository, ch. 8, p. 230.

<sup>150</sup> Pastukhov, O. (2007). The e-VAT Directive: Mitigating Tax Competition or Spurring it? *Journal of International commercial Law and Technology*, Vol. 2., Issue 2., p. 54.

It was no surprise that EU MSs with lowest VAT rates were proved to be attractive to new non-EU vendors that established an EU subsidiary or branch and thus put themselves in a position to be treated like EU Sellers. With its standard rate of 15% Luxembourg was an obvious choice at that time. The autonomous region of Madeira (VAT Capital) in Portugal, with the lowest VAT rate in the EU (13%), actively promoted itself as a hub for e-commerce and invested significantly in the infrastructure (Madeira E-Commerce). This is no longer possible once the new rules became applicable as of 1 January 2015.

See also Heredia, J. and Fernandes, J.A. (2003). B2C in Europe through Madeira: Planning for the near future, *Tax Notes International*, Vol. 30, p. 475.

<sup>151</sup> Lamensch, M. (2012). Unsuitable EU VAT Place of Supply Rules for Electronic Services- Proposal for an Alternative Approach. *World Tax Journal*, p. 77.

amendments to the PoS<sup>152</sup> in 2008,<sup>153</sup> the so-called VAT package,<sup>154</sup> whose latest elements have only entered into force on 1 January, 2015.<sup>155</sup>

Between 2003 and the end of 2014 these cross-border digital services were taxed based on where the supplier was located. Since January 1, 2015, these digital services are taxed based on the end consumer's location.

Article 402 of the VAT Directive states clearly that the current arrangements for the taxation of trade between MSs are only transitional and will ultimately be replaced by a definitive regime under which goods and services will be taxed in the MS of origin. However, thinking has changed significantly in the meantime and the new directives laying down the PoS rules for certain transactions have clearly moved away from the origin principle by allocating the place of taxation as the place where consumption occurs or where the customer is established. PoS rules in the VAT Directive had "remained almost unaltered until the introduction of the transitional VAT system in 1992"<sup>156</sup> and the last two decades have witnessed an almost complete revamp of these rules. "The first wave of amendments dealt with specific types of services, such as telecommunication services,<sup>157</sup> radio, television broadcasting and electronically supplied services<sup>158</sup> with the most significant amendments"<sup>159</sup> coming in February 2008, when the so-called VAT-package was agreed. As part of that 2008 agreement, the supply of TBE services to EU final customers has, from 1 January 2015, become taxable where the customer has established his business, has his permanent address or usually resides.

"Taxation at destination is now the default rule for B2B supplies."<sup>160</sup> The EC issued their "*Communication on the future of VAT*"<sup>161</sup> in 2011 and this supported a move to a

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<sup>152</sup> Bal, A. (2014). *Taxation of virtual currency*. Leiden University Repository, ch. 8, p.230.

Furthermore, it is to be noted that, VAT is a consumption tax, and as such, taxation is meant to take place when and where consumption occurs. EU VAT rules are based on the concept of territoriality: only transactions taking place within the territory of the Member States are subject to VAT. The VAT Directive contains a number of rules that determine where transactions are deemed to occur (known as "Place of Supply" (PoS) rules). The PoS rules are rules which, for VAT purposes, govern where a particular supply takes place and therefore determine which MS is entitled to collect the tax due on the supply.

<sup>153</sup> Council Directive 2008/8/EC of 12 February 2008 amending Directive 2006/112/EC as regards the place of supply of services, OJ L44, 20/02/2008.

<sup>154</sup> The VAT Package was phased in changes to the rules on the place of taxation of services between 2010 and 2015. Since 2010, the general rule for B2B services was that they took place where the customer established his business (or had a fixed establishment of that establishment was the recipient of the services), while B2C supplies still followed the origin principle (Arts. 44 and 45 of the VAT Directive).

For details see: Doesum et.al. (2008). The new rules on the place of supply of services in European VAT. *EC Tax Review*, 2008-2., pp.78-89.

<sup>155</sup> Whereas (until 1 January 2015) an EU taxable person had to collect and remit VAT in the country where he was established (regardless of where the customer was resident), a non-EU business had to charge VAT at the rate of the customer's country (although such VAT could be remitted to the only one tax authority). To remove this disparity between EU and non-EU suppliers, new rules had to be implemented by the Member States by 1 January 2015. According to those rules, all providers of electronic services charge VAT at the rate of the customer's country and apply the MOSS regime.

<sup>156</sup> De la F eria, R. (2016). Permanent Establishments in IBFD (ed.), 2016., p. 2.

<sup>157</sup> Council Directive 1999/59/EC of 17 May 1999, OJ L162, 26/06/1999, 63.

See also: Paardt, R. (2002). Telecommunication and VAT. *EC Tax Review*, 2002/1, p. 10-13.

<sup>158</sup> Council Directive 2002/38/EC of 7 May 2002, OJ L128, 15/05/2002, 41.

<sup>159</sup> De la F eria, R. (2016). Permanent Establishments in IBFD (ed.), 2016., p. 2.

<sup>160</sup> Bal, A. (2014). *Taxation of virtual currency*. Leiden University Repository, ch. 9, p. 269.

destination-based VAT system. This approach was also endorsed by the Expert Group on Taxation of the Digital Economy in their 2014 report when they advocated the destination principle for all supplies of goods and services.

The current aim of all PoS rules is to rely on legal proxies to ensure that VAT is charged at the place of consumption of the goods or services. These proxies were introduced to provide certainty for the supplier but they have also, by necessity, created an element of complexity. This complexity arises because of the need to legislate for the countless business models that operate in the digital economy where businesses can operate from anywhere in the world and can service markets without the need for a physical presence.

In addition, all legislative change must be agreed in Council and requires full unanimity. Therefore, the nature of the legislative process can lead to the introduction of new legislation that is, by nature, a compromise and which is often purposively vague. In the last few years, the EC has been favouring soft law such as guidance notes and VAT Committee papers as an instrument of change, but whilst useful, soft law has many limitations, not least the risk it presents to legal certainty.

Another factor which adds to the complexity of the PoS rules is the role of Fixed Establishments<sup>162</sup> (FE) in the EU VAT system. The Court of Justice of the European Union (CJEU) has taken the lead on clarifying the concept and role of these FEs but judgements of the Court over the last 10 years shows that the Court has also struggled to adapt a system designed around a national, physical economy to a globalized digital one.

### **2.2.2. Recent work on taxation of the digital economy**

In an increasingly interconnected world, existing international tax standards have not always kept pace with the changing global business environment and the developments in the digital economy allowing MNEs to exploit loopholes in the current legal framework.

At G20's request, the OECD released in July 2013 an Action Plan on Base Erosion and Profit Shifting (BEPS Action Plan)<sup>163</sup> which outlined 15 priority actions for reform of the international tax system to tackle tax avoidance.

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<sup>161</sup> COM (2011) 851 final, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee on the future of VAT: Towards a simpler, more robust and efficient VAT system tailored to the Single Market, Brussels, 06.12.2011.

<sup>162</sup> Jovanovic, N. and Merckx, M. (2015). Welmorey: A Recipe for VAT Avoidance. *EC Tax Review*, 2015-4., pp. 202-209.

The Welmorey case (CJEU 16 Oct 2014, C-605/12, ECLI:EU:C:2014:2298) attracts particular attention. This is due to the fact that the CJEU had to apply the concept of FE, which originated from the context of traditional economy, for the first time to the digital economy. The main question of this article is whether the CJEU with its judgement in the Welmorey case proves to be able to deal with the VAT challenges of the digital economy or whether it is a recipe for VAT avoidance.

<sup>163</sup> OECD (2013b). *Action Plan on Base Erosion and Profit Shifting*, Paris: OECD Publishing.

Action 1 of the BEPS Action Plan called for work to address the tax challenges of the digital economy considering both direct and indirect taxation.

This prominent international taxation report added that the evolution of the digital economy has "dramatically increased the capability of private consumers to shop online and the capability of businesses to sell to consumers around the world without the need to be physically present or otherwise in the consumer's country."<sup>164</sup> "This lack of a requirement for physical presence is the heart of the current taxation issue and it produces numerous obstacles for digital legislators."<sup>165</sup> The challenge is to implement a taxation registration, collection and remittance system that simplifies the taxation process for digital service suppliers and at the same time does not affect the consumer's online transaction flow.

The tax challenges raised by the digital economy have also been addressed by the EC. The EC was fully engaged and contributed to the work of the OECD during the BEPS Project. In October 2013, the EC adopted a decision to establish a High Level Expert Group on Taxation of the Digital Economy.<sup>166</sup> After five months the Group presented its Final Report,<sup>167</sup> which is an influential paper on the future of the EU taxation policy.

### ***Key report findings, concerning VAT***

- VAT plays a key role in ensuring tax revenues from digital business operations.
- Neutrality principle should be at the forefront of VAT policies in the digital economy. Neutrality should apply to all distance sales of goods and services within the EU and from third countries. To achieve neutrality the destination principle should be applied to all supplies of goods and services. A full destination based VAT system should be rolled out across the EU, and across all B2C supply of goods and services, whether online or not, underpinned by a broader OSS which requires trust between MSs.
- As from 1 January 2015, the introduction of the new PoS rules for B2C digital services, together with the MOSS, was welcomed by the Group (see *Chapter 5*).
- The existing thresholds in relation to distance sales should be removed. Removal of the VAT exemption for the importation of small consignments including low value

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<sup>164</sup> OECD (2014b). *Addressing the Tax Challenges of the Digital Economy*. OECD/G20 Base Erosion and Profit Shifting Project. Paris: OECD Publishing, p. 133.

<sup>165</sup> Taxamo (2015b). White Paper: Standardizing Digital Tax Compliance, p. 4.

<sup>166</sup> The Group was chaired by Vitor Gaspar, former Finance Minister of Portugal, which brought together six experts from across Europe with different backgrounds and expertise relevant to the subject. The task of the Group was to examine key issues related to taxing the digital economy in the EU and to present their ideas on the best approach to various challenges and opportunities in this field.

<sup>167</sup> European Commission (2014a). *Report of the Commission Expert Group on Taxation of the Digital Economy*, p. 5.

The report covered both the direct and indirect taxation issues linked to the digital economy, as well as broader issues on how tax policy can help maximize the opportunities that the digital economy offers.

goods from non-EU countries, supported by a OSS and a fast track customs procedure in order to ensure neutrality and provide a level playing field for EU businesses.

- OECD destination principle should be applied at global level concerning cross-border B2C supplies of goods and services. Therefore the extension of tax treaty provisions to include consumption taxes would be necessary.
- Similar goods and services should be subject to the same VAT rate, at the standard rate -as already provided in the EU VAT law- and the progress in technology should be taken into account.<sup>168</sup>
- In general, tax rules applicable to the digital economy should be simple, stable and neutral.
- Overall, the views of the Group were consistent with those expressed in the OECD BEPS reports.

On 5 October, 2015 the OECD/G20 released its Final Report on the tax challenges of the digital economy (Action 1) under its Final BEPS package.<sup>169</sup>

The Final Report continued to acknowledge that special rules designed exclusively for the digital economy would prove unworkable, broadly stating that the digital economy can not be ring-fenced, because it “is increasingly becoming the economy itself.”<sup>170</sup> The Final Report noted, however, that certain business models and key features of the digital economy may exacerbate BEPS risks. The Final Report repeated the OECD’s quest to “level the playing field” between domestic digital service suppliers and overseas suppliers. This is a key theme that has been running through OECD guidelines since the challenge of taxing the digital economy was prioritised as Action 1 in the BEPS plan.

The Final Report confirmed OECD’s approach to the taxation of the digital economy by suggesting that digital services be taxed based on the location of the consumer.

In the context of indirect taxation, the Final Report identified as main policy concerns, the ability of private consumers to acquire goods, services and intangibles from remote suppliers, and the use of exemptions for imports of low value goods.

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<sup>168</sup> *The Communication on the Future of VAT- Towards a simpler, more robust and efficient VAT system tailored to the Single Market* (December 2011), has already reviewed the issues related to VAT rate structures and provided guidance therein. However some MSs (e.g. Italy, France, Luxembourg) arbitrary started using reduced rates in case of digital products, for example, e-books and online newspapers.

<sup>169</sup> OECD (2015a). *Addressing the Tax Challenges of the Digital Economy, Action 1 - 2015 Final Report*. OECD/G20 Base Erosion and Profit Shifting Project. Paris: OECD Publishing.

The Action 1 Final Report was released in a package that included final reports on all 15 BEPS Actions. The Final Report largely follows the initial Action 1 deliverable on the digital economy, released by the OECD/G20 on 16 September 2014 (BEPS 2014 Deliverables).

The Final Report was seen “as the most dramatic rewriting of the international tax code since the League of Nations proposed the first bilateral tax treaty in 1928” - according to KPMG in the United Kingdom (UK).

<sup>170</sup> *Ibid.* at p. 142.

The collection of VAT on cross-border B2C transactions is an important issue. The OECD recommended that tax jurisdictions and regions worldwide apply the principles of the International VAT/GST Guidelines and consider the introduction of the collection mechanisms included in those guidelines. The Final Report stated that:

Rules have been devised to ensure that VAT is collected in the country where the consumer is located. This issue is particularly acute in the online B2C market, and greatly affects the level playing field between domestic and cross-border suppliers. The experience of countries that have already introduced simplified registration systems has been extremely positive and has had a strong impact on VAT collection.

As a result of the endorsement of the OECD Guidelines, issues arising from the concept of FE used for VAT/GST purposes have the potential of creating tension with existing EU rules and would need an in-depth examination and a coordinated view between MSs.

The Final Report concluded that the digital economy is in a continuous state of evolution and developments need to be monitored to evaluate their impact on tax systems.

### ***International dimensions***

“The common thread in international digital tax trends is the move from a supplier-based taxation to one based on the consumer’s location, or destination-based taxation.”<sup>171</sup> “By the end of 2015, 36 countries had introduced new PoS tax rules on digital service sales or digital downloads.”<sup>172</sup> Tax jurisdictions, such as Norway, Switzerland, South Africa, South Korea and Japan have already implemented new rules on taxation of digital services, akin to the new EU VAT rules introduced at the start of 2015. Other jurisdictions including Australia, New Zealand, Russia, China and Singapore have outlined their plans to introduce VAT or GST on digital services in the short term.

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<sup>171</sup> Taxamo. Digital Tax Trends: Ten International Plans to Tax the Digital Economy. Blog by McCarthy, JP., 12/04/2016. Available at: <https://www.taxamo.com/international-digital-tax-trends/> (accessed: 12/04/2016).

<sup>172</sup> Taxamo. *International Digital Tax Laws: Taxamo Solution Goes Global*. Available at: <https://www.taxamo.com/international-digital-tax-laws/> (accessed: 03/04/2016).

## Chapter 3. Methodology

Taxation has been with us for as long as civilization. “Taxation with its intrigues and intricacies is an important part of everyday life (...) and it attracts great interest from policymakers, academics, businesses and the wider community from all over the world (...). Its shape and form is a reflection of the shared values, goals and aspirations of society and a means by which its members are bound together (...). Taxation is not a discipline in its own right, but a social phenomenon that can be studied through various disciplinary lenses.<sup>173</sup> Generally, the taxation field draws the attention of researchers from the disciplines, including law, accounting, economics, political science, psychology and philosophy. ”There are various philosophical research paradigms and strategies of inquiry, the theory and fundamental principles of which a good researcher in taxation (from whatever discipline) needs to understand in order to be able to apply them with confidence. This in turn should allow the researcher to make informed decisions and to apply them with rigour. Every researcher is trying to make a meaningful contribution to the body of knowledge and this is best done by producing research of the highest quality.”<sup>174</sup>

In this chapter the selected research methodology, the applied research methods and the data collection process are discussed.

### 3.1. Qualitative research methodology

Qualitative research began in the 1900s and is more commonly used in the social and behavioral sciences (e.g. anthropology, ethnography, psychology or ethics). It is a complex and still evolving paradigm.<sup>175</sup> Qualitative research is designed to reveal a target audience’s perceptions, opinions, motivations, beliefs, behaviour and attitude towards a concept, idea, designated topic, issue, service and product. “Qualitative research is typically about seeking answers to questions (and sub questions) and not about proving or disproving hypothesis. The strategies of inquiry generally seen in qualitative tax research are in-depth interviews or focus group discussions and their purpose is to collect what is often described as ‘thick’ data. It is the rich information that the researcher is looking for that does not fit into Likert scales, the data that will help the researcher explore the complexity of the research problem and build an

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<sup>173</sup> Mc Kerchar, M. (2008). Philosophical Paradigms, Inquiry Strategies and Knowledge Claims: Applying the Principles of Research Design and Conduct to Taxation. *eJournal of Tax Research*, Vol. 6, No. 1, p. 5.

<sup>174</sup> *Ibid.*, at p. 6.

<sup>175</sup> *Ibid.*, at p. 7.



understanding or an interpretation.<sup>176</sup> “Qualitative researchers face many other choices for techniques to generate data ranging from: ethnography, participant observations, state or government studies, public and official documents, field notes and other materials.”<sup>177</sup>The most common method used to generate data in qualitative research is an interview (structured, semi-structured or unstructured). Sessions may be conducted in person, by telephone, via videoconferencing and via the internet. The sample size is typically small and respondents are selected to fulfill a given quota.

### **3.1.1. Research methods**

To carry out the present study three different research methods were utilized: (1) archival analysis, (2) ethnography, and (3) stakeholders analysis method. The main characteristics of each research methods and their relevance for the study are explained below.

#### **1) Archival analysis**

Archival research is data collected by someone other than the researcher but serves as important complementary data that supports a study. This type of collection method is characterized by written and non-written data collection.<sup>178</sup> At the same time with the evolution of the internet a great diversity of digital data sources also appeared that can be applied to facilitate the investigation. “Archival research makes use of administrative records and documents as a principal source of data (...). All research that makes use of data contained in administrative records is inevitably secondary data analysis.”<sup>179</sup>

In order to answer the research questions the following archival data sources were consulted: an array of tax law documents (e.g. EUR-Lex web portal to get a direct access to VAT Directives, VAT Implementation Regulations; CJEU cases; VAT guidelines and explanatory notes, circulars issued by the Portuguese Tax and Customs Administration, draft legislation on VAT); various EC reports of working groups on e-commerce, on SMEs, on taxation of the digital economy; EC’s press releases on VAT and the DSM transcript of speeches on the DSM; statistical records by Eurostat; digital economy working papers by other external institutions; survey archives on e-commerce; websites of some of the EU tax administrations

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<sup>176</sup> Ibid., at p. 15.

<sup>177</sup> Qualitative research. Available at: [https://en.wikipedia.org/wiki/Qualitative\\_research](https://en.wikipedia.org/wiki/Qualitative_research) (accessed: 03/04/2016).

<sup>178</sup> Marconi, M. de A. and Lakatos, E. M. (2003). *Fundamentos de metodologia científica*. (5th ed.). São Paulo: Atlas, p.174.

<sup>179</sup> Saunders, M., Lewis, P. and Thornhill, A. (2009). *Research methods for business students*. (5th ed.). Pearson Education., p. 150.

(e.g. briefing paper on VAT and digital services issued by the HM Revenue and Customs); VAT and digital economy related reports issued by other international organisations (e.g. OECD, WEF, IMF); latest reports on VAT by Big4 firms; websites of big tech companies (e.g. Accenture, Cisco); International Bureau of Fiscal Documentation (IBFD) Tax Research Portal; tax journals; e-books; Commission en Direct online magazine; video recordings on EC's website, big tech companies' website and Big4s' website.

## 2) Ethnography

Ethnography is a qualitative research design. Although not a dominant research strategy in tax research, "ethnography may be very appropriate, if one wish to gain insights about a particular context and better understand and interpret it from the perspectives of those involved."<sup>180</sup> However, there are a number of issues that need to be considered. Prior to commencing the research using this strategy, the researcher will need to find a setting or group that will enable the researcher to answer the research questions and meet the research objectives and then negotiate full access to an appropriate source.<sup>181</sup> "Subsequently the researcher will need to build a high degree of trust with the research participants and, finally, develop strategies to cope with being both a full-time member of the social context in which the research project is set as well as undertaking the research project itself."<sup>182</sup>

Working "ethnographically" in organisations has much to offer. "Ethnography implies being intensely involved in the field over a period of time."<sup>183</sup> "It includes doing a fieldwork, in which one tries to "penetrate another form of life" and "grasp the native's point of view", involving a variety of methods, such as participant observation, interviews, attending meetings, document research, etc."<sup>184</sup> "The advantage of not only conducting interviews but also participant observation is evident, as Watson argued."<sup>185</sup> "Participant observation is a research practice in which the investigator joins the group, community or organization being studied, as either a full or partial member, and participates in and observes activities, asks questions, takes part in conversations, and reads relevant documents."<sup>186</sup> During my

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<sup>180</sup> Id.

<sup>181</sup> Ibid

<sup>182</sup> Ibid.

<sup>183</sup> Watson, T. (2011). Ethnography, Reality, and Truth: The vital need for studies of 'how thingswork' in organizations and management. *Journal of Management Studies* 48(1), pp. 206-207.

<sup>184</sup> Bate, S. P. (1997) "Whatever happened to organizational anthropology? A review of the field or organizational ethnography and anthropological studies." *Human Relations* 50(9), p. 1152.

<sup>185</sup> Watson, T. (2011). Ethnography, Reality, and Truth: The vital need for studies of 'how thingswork' in organizations and management. *Journal of Management Studies* 48(1), p. 211.

<sup>186</sup> Ibid.,at p. 206.

traineeship in DGTAXUD/Unit C1-VAT, I conducted a participant observation of EC's practices of implementing the 2015 PoS rules and the MOSS scheme. I chose ethnographic research because I see it as having an advantage over formal interviews with the EC officials/tax officials and content analysis of official documents, which we can find in much of the research conducted in political sciences. There is a substantial difference in quality between just meeting with EC officers once for an interview or participating and engaging with their everyday work and structures within which they are positioned over an extended period of time. Indeed, some of the most fascinating insights I collected during my traineeship in the EC stemmed from informal conversations and from observing the interaction of team members.

Just as outlined in various handbooks on the ethnographic method, I took part in several meetings (e.g. Council meetings, VAT Roundtable meeting, team-work meeting, VAT Committee meetings, meeting with Deloitte) in my role as a participant observer (or my stay could be framed as kind of a "research trainee"). Furthermore, I had full access to all the relevant documents in the EC's internal computer system and shared folders which I also analysed. This helped me to clarify the creation and development of tax legislation and to comprehend why the current legislation takes place precisely the form it does. Besides, I participated in team-work discussions which provided the space and time for more in-depth understanding of the VAT rule changes in the context of the digital economy. This insider position allowed me to immerse in the EC's organizational structure and provided me with a richness of insight into the EC's legislative procedures and into the VAT aspects of the digital economy, which otherwise would have been difficult to obtain as an outsider.

### **3) Stakeholder analysis**

"Public participation is becoming increasingly embedded in national and international taxation policy, as decision-makers recognise the need to understand who is affected by the decisions and actions they take and who has the power to influence their outcome, e.g. the stakeholders."<sup>187</sup> "Stakeholder analysis can be defined as the following process: (...) ii) identifies individuals, groups and organisations who are affected by or can affect those parts

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<sup>187</sup> Reed et al. (2009). Who's in and why? A typology of stakeholder analysis methods for natural resource management. *Journal of Environmental Management* (90), p. 1933.

of the phenomenon and iii) prioritises these individuals and groups for involvement in the decision-making process.”<sup>188</sup>

“Stakeholder analysis has become increasingly popular with a wide range of organisations in many different fields, and it is now used by policy-makers, regulators, governmental and non-governmental organisations, businesses and the media.”<sup>189</sup> “Within policy, stakeholder analysis was increasingly seen as an approach that could empower marginal stakeholders to influence decision-making processes.”<sup>190</sup> “In political science, stakeholder research is used to work more effectively with stakeholders, facilitate transparent implementation of decisions or objectives, understand the policy context, and assess the feasibility of future policy options.”<sup>191</sup>

There are different approaches to stakeholder analysis, e.g. normative approaches, instrumental approaches and descriptive analyses.<sup>192</sup> “Normative approaches have been advocated increasingly as stakeholder analysis has been adopted in policy circles, emphasising the legitimacy of stakeholder involvement and empowerment in decision-making processes.”<sup>193</sup> The normative basis suggests that stakeholders should be involved in decision-making processes and thus feel some level of ownership of these processes.<sup>194</sup> “The methods applied in both normative and instrumental approaches can be used for: i) identifying stakeholders; ii) differentiating between and categorising stakeholders; and iii) investigating relationships between stakeholders.”<sup>195</sup>

It is necessary to identify who holds a stake in the phenomenon under investigation but this in itself necessitates a clear understanding of the issue under investigation so that the boundaries of the phenomenon can be established.<sup>196</sup> “From this clarification, a number of methods can then be used to identify the relevant stakeholders. Identifying stakeholders is usually an iterative process, during which additional stakeholders are added as the analysis continues, e.g. using semi-structured interviews, expert opinion, focus groups and written records. If the boundaries of the phenomenon itself are clearly defined, then stakeholders can

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<sup>188</sup> Id.

<sup>189</sup> Friedman, A. and Miles, S. (2006). *Stakeholders: Theory and Practice*. Oxford University Press, Oxford, p.150.

<sup>190</sup> Reed et al. (2009). Who’s in and why? A typology of stakeholder analysis methods for natural resource management. *Journal of Environmental Management* (90), p.1934.

<sup>191</sup> Brugha, R. and Varvasovsky, Z. (2000). *Stakeholder analysis: a review*. *Health Policy and Planning* 15, pp. 239–246.

<sup>192</sup> Reed et al. (2009). Who’s in and why? A typology of stakeholder analysis methods for natural resource management. *Journal of Environmental Management* 90.

<sup>193</sup> Ibid., at p. 1934.

<sup>194</sup> Donaldson, T. and Preston, L. (1995). The stakeholder theory of the modern corporation: concepts, evidence and implications. *Academy of Management Review* 20, pp. 65–91.

<sup>195</sup> Reed et al. (2009). Who’s in and why? A typology of stakeholder analysis methods for natural resource management. *Journal of Environmental Management* (90), p.1936.

<sup>196</sup> Ibid., at p. 1937.

be relatively easily identified.”<sup>197</sup> “However, there is a risk that some stakeholders may be accidentally omitted and as a consequence not all relevant stakeholders of the phenomenon may be identified.”<sup>198</sup> “On the other hand, it is often not possible to include all stakeholders and a line must be drawn at some point, based on well-founded criteria, established by the research analyst.”<sup>199</sup> These may include for example, geographical or demographic criteria, depending on the focus of the analysis.<sup>200</sup>

“Who is included and who is omitted may depend on the method used for identifying stakeholders and the purpose of the stakeholder analysis. This is important, as it affects who and what really counts.”<sup>201</sup> “Lewis<sup>202</sup> on ethical grounds proposes that it is sensible to at least start with an inclusive perspective and at a practical level pluralism is also important, since the capacity for a policy, plan or a project to meet its objectives may depend on including all the appropriate stakeholders.”

The EC has recently been committed to an enhanced transparency and openness in its working methods and has started a collaborative framework with different stakeholders (e.g. businesses, consumers, national authorities, lawyers, VAT experts or academics) by giving them the opportunity to express their opinion throughout the policy cycle of any initiative. Stakeholders should always be consulted when preparing a Commission legislative or policy initiative or when performing an evaluation or a regulatory fitness check. Moreover, all VAT Committee documents are now published on the EC’s website.

Prior to the launch of the 2015 PoS rules and the MOSS, the EC’s extensive preparation process included specific consultations (e.g. seminars, workshops, meetings, a road-show across Europe) targeting all the relevant stakeholders to express their opinions (see *Section 5.1.5.3*).

As far as the identification of the affected stakeholders for the impact assessment of the 2015 PoS rules and the MOSS is concerned, the following stakeholder groups were identified: (1) MS; (2) businesses (SMEs and large businesses); and (3) tax administrations. However, mainly due to lack of data, further differentiation between the stakeholder groups were not taken into account, such as Member States of Identification (MSI) and MSC, EU-businesses

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<sup>197</sup> Id.

<sup>198</sup> Clarkson, M.B.E. (1995). A stakeholder framework for analyzing and evaluating corporate social performance. *Academy of Management Review* 20, pp. 65–91.

<sup>199</sup> Clarke, T. and Clegg, S. (1998). *Changing Paradigms: the Transformation of Management Knowledge for the 21st Century*. Harper Collins, London, pp. 295-364.

<sup>200</sup> Reed et al. (2009). Who’s in and why? A typology of stakeholder analysis methods for natural resource management. *Journal of Environmental Management* 90, p. 1937.

<sup>201</sup> Mitchell, R.K., Agle, B.R. and Wood, D.J. (1997). Toward a theory of stakeholder identification and salience: defining the principle of who and what really counts. *Academy of Management Review*, Vol. 22, pp. 853–886.

<sup>202</sup> Lewis, C.W. (1991). *The Ethics Challenge in Public Service: a Problem-Solving Guide*. Jossey-Bass, San Francisco.

and Non-EU businesses, as well as those businesses providing goods, services or a combination of both and finally, consumers were also left outside the scope of study.

### **3.2. Data collection**

This stage of the research is characterised by a systematic collection of information<sup>203</sup> and it constitutes a phase of extreme importance to any research.<sup>204</sup> To answer the research questions this qualitative study adopted a multi-method research design in order to gather relevant data from a variety of sources (primary or secondary data sources). ”The term multi-method refers to those combinations where more than one data collection technique is used with associated analysis techniques, but this is restricted within either a quantitative or qualitative world view.”<sup>205</sup>

Furthermore, in planning the research topic (based on B2C supplies of TBE services under EU VAT and in a broader sense it also includes B2C supplies of goods) a longitudinal time horizon was chosen to the research design which allowed to observe the evolution of the EU VAT system in the light of the digital economy during the period of 1998-2016.

The extensive data collection was undertaken with the involvement of five European countries: Belgium, Ireland, Portugal, the United Kingdom and one Nordic country (where the auditor stayed anonymous). In a broader sense the study reflects on the EU VAT system including information on all the 28 MSs.

The research was conducted with the following participants: Head of Unit C1-VAT/DGTAXUD and Head of VAT Sector1/DGTAXUD in Bruxelles, Head of VAT Policy and Legislation in the Irish Revenue Commissioners in Dublin, three Partners in charge of VAT at Big4 firms in Dublin, a tax officer in the Portuguese Tax & Customs Administrations in Lisbon, and CEO of Taxamo, a global digital tax solution provider registered in Dublin.

#### **3.2.1. Primary data collection**

The primary data collection phase included three main research tools: (1) semi-structured interview, (2) telephone interview and (3) survey questionnaires. Additional primary data sources were: participation in several meetings during the traineeship in the EC,

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<sup>203</sup> Freixo, M. J. V. (2012). *Metodologia científica: fundamentos, métodos e técnicas* (4ª ed.). Lisboa: Instituto Piaget.

<sup>204</sup> Marconi, M. de A. e Lakatos, E. M. (2003). *Fundamentos de metodologia científica*. (5ª ed.). São Paulo: Atlas.

<sup>205</sup> Tashakkori, A. and Teddlie, C. (eds.) (2003). *Handbook of Mixed Methods in Social and Behavioural Research*. Thousand Oaks, CA: Sage.

discussions with the Head of Unit C1/DGTAXUD and with other colleagues, reflective field notes, statistics and minutes provided by Ecommerce Europe, presentations of the Dublin Fiscalis 2020 Seminar (see *Annex 2*).

### 1) Semi structured interview

Semi-structured interviews are widely used in qualitative research. Regarding the implementation of interviews, the use of semi-structured interviews are appropriate when the main purpose is to allow the respondents to freely express their ideas but at the same time to conduct the interview with a certain degree of standardization.<sup>206</sup> In this type, questions are predominantly used for stimulating the interview person to present his point of view, express his opinion or justify his behavior.<sup>207</sup>

Participating in different meetings (e.g. Council meetings, VAT Roundtable meeting) gives the participant observer/”research trainee” a unique opportunity to take advantage of personal contacts, informal chats, socializing or networking with fiscal attachés, tax administration representatives from all EU-28. Having established a personal contact with the Portuguese delegation in one of the Council meetings, it helped me to get in contact with the Portuguese Tax & Customs Administration in Lisbon. As a result of communication by email and phone calls, the date and place of the semi-structured interview with the responsible tax officer was fixed for on 30 November 2015, in Lisbon. The Center for Fiscal and Customs Studies is responsible for assisting academic students with their research project. The interviewee, works as part of this center and is also a contact person for international relations in the field of VAT, including the MOSS communication. The two hour interview took place in an open, dynamic and interactive manner. Open questions were used to encourage the interviewee to provide an extensive answer and to obtain the relevant data about the 2015 PoS rules and the MOSS. Probing questions were asked to explore more details about the rule changes in Portugal or to seek further information when the interviewee’s explanation was not clear. Specific questions were raised, e.g. relating to the number of registrations made under the MOSS scheme in Portugal, however, the sensitive data could not be shared by the interviewee (see *Annex 1*).

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<sup>206</sup> Costa, D. (2012). A recolha de dados: técnicas utilizadas. In H. C. Silvestre e J. F. Araújo (Eds.), *Metodologia para a Investigação Social*. Lisboa: Escolar Editora.

<sup>207</sup> Ibid.

”Typically an interviewer listens actively and takes copious notes both of what the interviewee has said and also of the interviewer’s own observations about what was said”<sup>208</sup> Field notes were taken during the semi-structured interview to record the data collected, which also serves as an evidence for the research study. The semi-structured interview revealed facts and problems relating to the 2015 legislative changes and the MOSS system which were experienced by the most of the MSs.

## **2) Telephone interview**

The EC organized a Fiscalis 2020 Seminar on ”Modernising VAT for cross-border e-commerce”, on 7-9 September 2015, hosted by the Revenue Commissioners in Dublin Ireland. The main purpose of this event was to assess the implementation of the 2015 PoS changes and the MOSS system as well as to identify possible further improvements for the future of the EU VAT system. The Head of VAT Policy and Legislation in the Irish Revenue Commissioners was one of the organizers of this crucial event.

On 28 January 2016, a one-hour qualitative interview was conducted by telephone in order to gather primary data on the results of the above seminar. Open and specific interview questions were used to engage in exploratory discussions with the Head of VAT Policy and Legislation relating the 2015 PoS changes and the MOSS scheme. The trust established with the interviewee made it possible to make short follow-up telephone interviews during February 2016. Notes were taken about each telephone conversations which were then built into the present study.

## **3) Survey questionnaire**

As a result of previous phone calls made in December 2015, it was found that Big4 firms’ clients in Portugal did not choose the MOSS system or had already been registered under VAT, therefore it was not possible to gather relevant data in connection with the research topic in Portugal. Taking advantage of personal relationships, with the intermediation of the Head of VAT Policy and Legislation in Dublin, I contacted with Big4s in Dublin to discuss with them the possibility to contribute to the present study with first-hand information

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<sup>208</sup> McKerchar, M. (2008). Philosophical Paradigms, Inquiry Strategies and Knowledge Claims: Applying the Principles of Research Design and Conduct to Taxation. *eJournal of Tax Research*, Vol. 6, No. 1, p. 16.



on my research topic. The main reasons behind the choice of a survey strategy as a primary data collection method were: low cost, convenient data gathering (sent out by e-mail), elimination of long-distance problem between the interviewer and the respondents. The survey questionnaire intended to gather relevant information about large companies' prior and post experience relating to the 2015 PoS changes and the MOSS system with the intention to build the data into the impact assessment part of this study. To eliminate any negative factors (non-response) a careful planning preceded the preparation of the survey questionnaires.

Reports on business readiness check (prior to the 2015 changes) made by Big4s tax and business advisory teams were used as a template to assemble the survey questionnaires. Three out of the Big4s in Dublin replied the survey questionnaires during the period of January-April 2016 (see *Annexes 4-6*). After a thorough analysis, the high-quality feedback was incorporated into the impact assessment process.

### **3.2.2. Secondary data collection**

In order to complete the primary data gathered the present study builds on secondary data sources as well, such as: previous academic theses on VAT and the digital economy, paper books, e-books, tax journals, Commission en Direct online magazine, reports, summary minutes, briefings, working papers of the EC, statistics by Eurostat, Ecommerce Europe and Deloitte, press releases by the EC, transcript of speeches, website information of big tech companies (e.g. Accenture, Cisco), website information of the EU Tax Administrations, video recording of the VAT Roundtable meeting, etc. (see *Annex 3*).

Due to lack of information (no feedback was received for the survey) the website of some key and representative organisations (e.g. Business Europe, American Chamber of Commerce to the EU, Tax Executives Institute, Inc.) who had expressed their concerns over the 2015 PoS changes, was also consulted to gather additional information about their opinion published in the form of position papers.

## Chapter 4. Making the Digital Single Market a reality

### 4.1. Upgrading the Single Market

The Single Market - operating with 28 MSs - is the centerpiece of Europe's economic architecture, designed to allow people, services, goods and capital to move freely in the world's largest economy (by 2014 GDP in EU-28 had reached €13.9 trillion<sup>209</sup>). The Single Market has added more than 2.77 million jobs and €233 billion to EU GDP, has over 500 million potential customers and 21 million small businesses.<sup>210</sup>

“But these opportunities do not always materialise, because the Single Market rules are not known, not implemented or simply jeopardised by unjustified barriers.”<sup>211</sup> Moreover, the Single Market needs to be upgraded in line with today's economic realities of increased digitalization, new business models and the globalisation of the economy.<sup>212</sup>

The EC's first key initiatives such as the Investment Package for Europe, the Energy Union, the DSM,<sup>213</sup> the European Agenda on Migration and the Capital Markets Union have been accomplished. The EC has made considerable progress in delivering the results European citizens expect. However, Europe's leaders are currently in crisis-fighting mode (e.g. economic crisis, Greek crisis, migrant and terrorism crisis) and have no choice but to address these economic and social challenges from a very political perspective. Similarly, the global economy is struggling with major challenges as well (e.g. slowdown in global trade growth, emerging markets losing steam, risk of a 2008-style financial crisis compounded by the Panama massive tax evasion scandal).<sup>214</sup>

On 28 October, 2015 the EC launched an Action Plan to further strengthen and deepen the Single Market with a number of ambitious and yet pragmatic actions focused on three main areas: (1) creating additional opportunities for consumers, professionals and businesses,

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<sup>209</sup> Eurostat. *Statistics Explained. National accounts and GDP*. Available at: [http://ec.europa.eu/eurostat/statistics-explained/index.php/National\\_accounts\\_and\\_GDP](http://ec.europa.eu/eurostat/statistics-explained/index.php/National_accounts_and_GDP) (accessed: 01/03/2016).

<sup>210</sup> European Commission. *Press release. A deeper and a fairer Single Market: Commission boosts opportunities for citizens and business*. See video at: [http://europa.eu/rapid/press-release\\_IP-15-5909\\_en.htm](http://europa.eu/rapid/press-release_IP-15-5909_en.htm) (accessed: 03/03/2016).

<sup>211</sup> European Commission. *A deeper and a fairer Single Market: Commission boosts opportunities for citizens and business*, Available at: [http://europa.eu/rapid/press-release\\_IP-15-5909\\_en.htm](http://europa.eu/rapid/press-release_IP-15-5909_en.htm) (accessed: 03/03/2016).

<sup>212</sup> COM (2015) 550 final, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Upgrading the Single Market: more opportunities for people and business, Brussels, 28.10.2015.

<sup>213</sup> See more details about the Digital Single Market strategy in Section 5.2.2.

<sup>214</sup> OECD. *Going for Growth 2016: Executive Summary*. Available at: <http://www.oecd.org/eco/growth/going-for-growth-2016-executive-summary.htm> (accessed: 28/02/2016). See also IMF at: <http://www.imf.org/external/np/g20/022616.htm> (accessed: 28/02/2016).

(2) encouraging the modernisation and innovation that Europe needs and (3) ensuring practical delivery that benefits consumers and businesses in their daily lives.<sup>215</sup>

Europe needs to be a more attractive place to invest in and allow start-ups to expand and innovation to flourish. Reducing red tape is crucial as the current rules can prevent companies from offering their goods and services across the EU. In order to regain citizens' trust in the European project, new opportunities for consumers, professionals and businesses should be opened up.<sup>216</sup> The creation of a "deeper and fairer Single Market" with a strengthened industrial base is the cornerstone of the next phase of the Economic and Monetary Union. Getting it right, will create jobs and growth and provide people with more choice, more mobility and more freedom.<sup>217</sup>

#### 4.2. Why do we need a Digital Single Market? Facts and figures

"The DSM is about allowing the freedoms of Europe's Single Market to enter the digital age. Everything possible in the real world should be possible online. It is the basis of a new, dynamic economy and society."<sup>218</sup>

Every day, 315 million Europeans use the internet and a fully functional DSM could contribute €415 billion per year to the EU economy, boosting jobs, growth, competition, investment and innovation.<sup>219</sup> A completed DSM will also ensure that Europe maintains its position as a world leader in the digital economy, helping European companies to grow globally.

If Europe does not take advantage of the DSM "it will stay a political mantra rather than becoming a practical reality for citizens and businesses alike."<sup>220</sup> Making the DSM to become a reality is the EC's flagship initiative, however, the biggest obstacle is the fact that there are 500 million people in 28 splintered digital national markets rather than one DSM.<sup>221</sup>

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<sup>215</sup> COM (2015) 550 final, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Upgrading the Single Market: more opportunities for people and business, Brussels, 28.10.2015.

<sup>216</sup> European Commission. *Press release. A deeper and a fairer Single Market: Commission boosts opportunities for citizens and business.* See video at: [http://europa.eu/rapid/press-release\\_IP-15-5909\\_en.htm](http://europa.eu/rapid/press-release_IP-15-5909_en.htm) (accessed: 03/03/2016).

<sup>217</sup> Id.

<sup>218</sup> Scheerer, M. and Hester, Z. (2015). Digital Single Market. More Choice, More Growth, More Jobs. *Commission en direct*, Luxembourg: Publication Office of the European Union, p. 34.

<sup>219</sup> European Commission. *Factsheet. Why we need a Digital Single Market.* Available at: [https://ec.europa.eu/priorities/sites/beta-political/files/dsm-factsheet\\_en.pdf](https://ec.europa.eu/priorities/sites/beta-political/files/dsm-factsheet_en.pdf) (accessed: 02/03/2016).

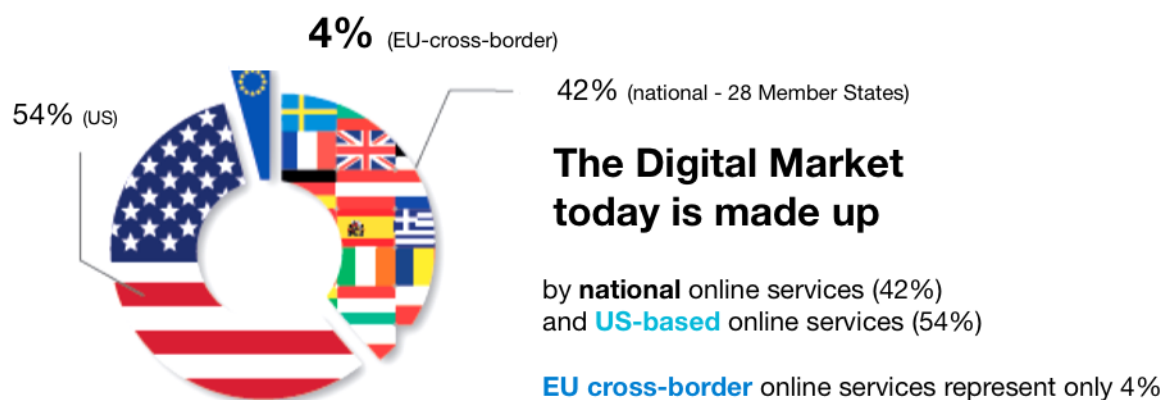
<sup>220</sup> European Policy Center (2015). Digital Single Market Newsletter. *The Value of a Digital Single Market is unquestionable.* By Malcolm Harbour. Available at: <http://www.epc.eu/dsm/1/> (accessed: 02/03/2016).

<sup>221</sup> See section 4.3., regarding the obstacles to cross-border e-Commerce.

## Europe's performance - Facts and figures

The DSM is a huge potential for Europe, but it is largely untapped at EU level, as shown in *Figure 3*.

**Figure 3. Digital Market Share**



Source: Factsheet on the Digital Single Market, European Commission (2015)<sup>222</sup>

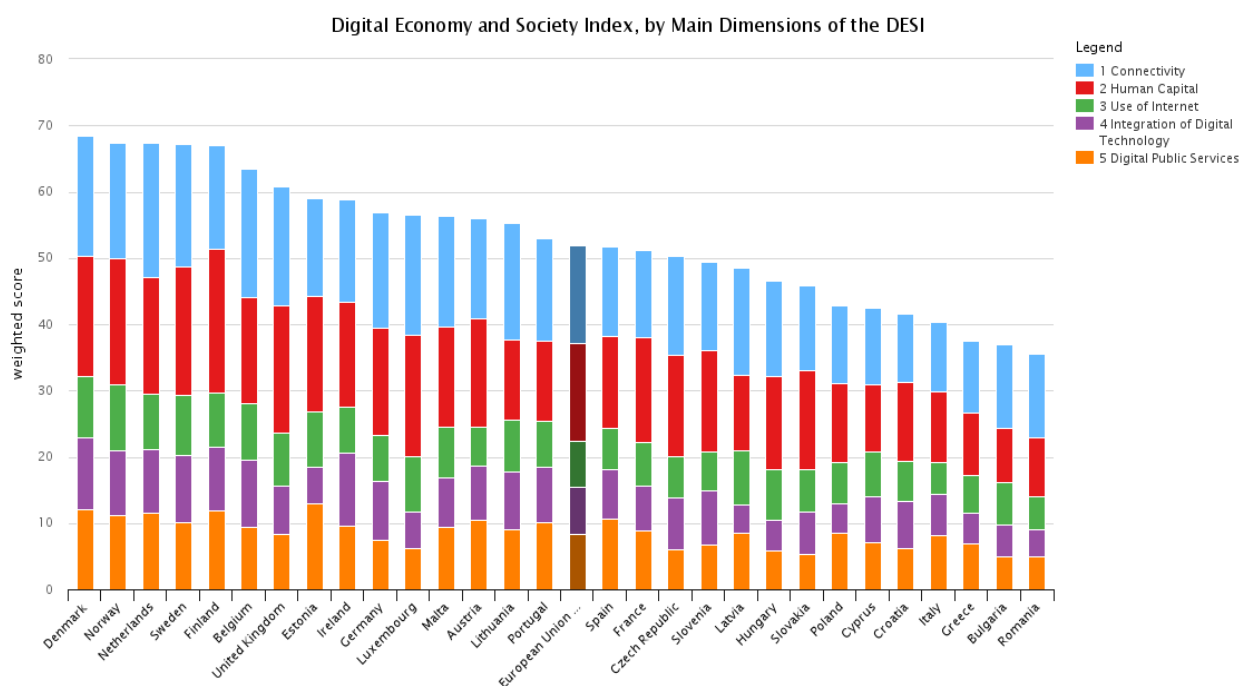
Europe's progress towards a digital economy and society depends on individual country progress. The Digital Economy and Society Index<sup>223</sup> (DESI) is a composite index that summarises a set of relevant indicators on Europe's digital performance and tracks the evolution of EU MSs in digital competitiveness.<sup>224</sup>

<sup>222</sup> European Commission. *Factsheet. Why we need a Digital Single Market*. Available at: [https://ec.europa.eu/priorities/sites/beta-political/files/dsm-factsheet\\_en.pdf](https://ec.europa.eu/priorities/sites/beta-political/files/dsm-factsheet_en.pdf) (accessed: 02/03/2016).

<sup>223</sup> Definition: DESI overall index, calculated as the weighted average of the five main DESI dimensions: 1. Connectivity (25%), 2. Human Capital (25%), 3. Use of Internet (15%), 4. Integration of Digital Technology (20%) and 5. Digital Public Services (15%). See European Commission. *DESI by components*. Available at: <http://digital-agenda-data.eu/charts/desi-components> (accessed: 01/03/2016).

<sup>224</sup> European Commission. *DESI 2016 Country Profiles*. Available at: <https://ec.europa.eu/digital-agenda/en/news/desi-2016-country-profiles> (accessed: 01/03/2016).

**Figure 4. DESI 2016**



European Commission, Digital Scoreboard

Source: Digital Scoreboard, European Commission (2016)

The DESI 2016 highlights that both the EU as a whole, as well as individual MSs are heading towards a digital economy and society. However, MSs are at different levels of development and are progressing at different speeds. Denmark, the Netherlands, Sweden and Finland continue to lead the DESI rankings.

Günther H. Oettinger, Commissioner for the Digital Economy and Society, stated in a recent press release that: *“The EU makes progress, but too slowly. If we want to catch up with Japan, the US and South Korea, action is needed - both at EU and national levels - to remove the obstacles which prevent EU MSs from fully benefitting from digital opportunities.”*<sup>225</sup>

Results of the International DESI (I-DESI) show that the top EU countries (e.g. Denmark Sweden and Finland) are also top worldwide performers in digital.<sup>226</sup>

Based on DESI 2016, the EC will come up in May 2016 with concrete recommendations for EU MSs to improve their national performances.

<sup>225</sup> European Commission. Press Release. *How digital is your country? New figures show action needed to unlock Europe's potential*. Available at: [http://europa.eu/rapid/press-release\\_IP-16-384\\_en.htm](http://europa.eu/rapid/press-release_IP-16-384_en.htm) (accessed: 01/03/2016).

<sup>226</sup> European Commission. *Factsheet. What is the Digital Economy and Society Index?* Available at: [http://europa.eu/rapid/press-release\\_MEMO-16-385\\_en.htm](http://europa.eu/rapid/press-release_MEMO-16-385_en.htm) (accessed: 01/03/2016).

The International DESI (I-DESI) compares the EU to other top world digital economies and societies. EU countries lead the way in the adoption of digital technologies by businesses, compared to Japan and South Korea, which are either below or around the EU average. Denmark, Finland and Norway are world leaders with regards to digital public services. South Korea is world leader in connectivity, followed by Japan, Denmark, Switzerland and the UK. On human capital, South Korea leads the way before Sweden and Finland.

Combining this with the creation of a fully DSM, it's sure that the EU as a whole and its MSs will do much better in the coming years.

### ***Main findings of the DESI regarding the five basic dimensions***

#### *1. Connectivity*

The EU is on the right track to be totally covered by 2020 (7% average growth rate since 2011).<sup>227</sup> Around 71% of European homes can access high-speed broadband (at least 30Mbps), compared to 62% in 2015 and mobile broadband is advancing fast as well, from 64 subscriptions per each 100 Europeans in 2014 to 75 today.<sup>228</sup> The EU needs to be ready to meet future demand and to provide the next generation of communication networks (5G). This is why the EC will present a review of EU telecoms rules to address technological and market challenges by the end of 2016.<sup>229</sup>

#### *2. Human capital/digital skills*

“Around 76% of Europeans go online regularly (once per week at least) but the progress was small when compared to 75% in 2015. In spite of this, 45% of Europeans still do not have basic digital skills.”<sup>230</sup> The EC will address digital skills and training as part of the upcoming EU Skills Agenda later this year.

“The digital economy needs a digitally-skilled workforce. Today, 90% of jobs require some digital skills, 3 out of 10 workers have low or no digital skills. The ICT skills gap in the EU has already reached 900,000 ICT professionals are needed in all sectors of the economy. Over 1 million ICT jobs were created in the last three years. Vacancies are hard to fill, 38% of companies had difficulties recruiting in ICT. There are 8 million ICT jobs in the EU, more than half outside the ICT sector. The ICT sector contributes greatly to the economy. It represents 4.3% of the EU's GDP but drives 17% of all business investment in research and developments (R&D). It employs 6.2 million people across Europe.”<sup>231</sup>

#### *3. Use of internet*

“The percentage of internet users that engage in various online activities, such as reading news online (68%), using the internet to perform video or audio calls (37%), or using online banking (57%), remained stable over the last year. However, there was a considerable

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<sup>227</sup> European Commission. *Factsheet. What is the Digital Economy and Society Index?* Available at: [http://europa.eu/rapid/press-release\\_MEMO-16-385\\_en.htm](http://europa.eu/rapid/press-release_MEMO-16-385_en.htm) (accessed: 01/03/2016).

<sup>228</sup> European Commission. Press Release. *How digital is your country? New figures show action needed to unlock Europe's potential*, Available at: [http://europa.eu/rapid/press-release\\_IP-16-384\\_en.htm](http://europa.eu/rapid/press-release_IP-16-384_en.htm) (accessed: 01/03/2016).

<sup>229</sup> Id.

<sup>230</sup> European Commission. *Factsheet. What is the Digital Economy and Society Index?* Available at: [http://europa.eu/rapid/press-release\\_MEMO-16-385\\_en.htm](http://europa.eu/rapid/press-release_MEMO-16-385_en.htm) (accessed: 01/03/2016).

<sup>231</sup> European Commission. *Digital Scoreboard 2016: Strengthening the European Digital Economy and Society*. See video at: <https://ec.europa.eu/digital-single-market/en/digital-scoreboard> (accessed: 01/03/2016).

increase in the number of European internet users that use social networks (from 58% to 63%) and that shop online (from 63% to 65%).”<sup>232</sup> “Online Europeans mostly spend on travel services, clothing, sports goods and consumer electronics. Europeans buy online mostly from their own countries, only 16% shop online from other EU countries. Cross-border concerns for online shoppers are: high delivery costs (27%), costs of returning goods (24%), long delivery times (23%). For 10% of Europeans who tried to buy online cross-border, the shop refused to deliver. There are security and privacy concerns that prevent people from doing online transactions. Around 26% of internet users were targeted with either fraudulent messages, fraudulent payments, personal data breaches and financial losses. Regarding trust, 50% of the internet users have little trust. Europeans are learning to protect themselves online: 29% refrain from providing personal information on social media, while 65% are aware that cookies can be used to trace online behaviour. Although only half of them take measures to protect themselves.”<sup>233</sup>

#### 4. *Integration of digital technology*

“The percentage of EU companies that sell online amounts to 17%, but only 8% of companies sell online cross-border. Around 7.5% of EU SMEs sell online cross-border (to other EU MSs), an increase from 6.5% two years ago. However, these are still less than half of the SMEs that sell online. Digital technology can greatly benefit companies. Companies invest in technologies that improve their performance most, e.g. manufacturers (45%) use Enterprise Resource Planning software to manage business processes, wholesale companies (46%) use Customer Relationship Management software to manage client relations and hotels (70%) use social media to engage with customers.”<sup>234</sup>

#### 5. *Digital public services*

Public administrations are providing a wider range of services online. The improvement in the supply of online public services is contrasted by stagnation in the percentage of internet users (32%) interacting with the public administrations.<sup>235</sup>

The EU as a whole attained a score of 0.52 in 2016, up from 0.50 in 2015 (a mere 0.02 progress). Improvement in the overall DESI score was mostly driven by the connectivity and integration of digital technology dimensions, as shown in *Figure 5*.

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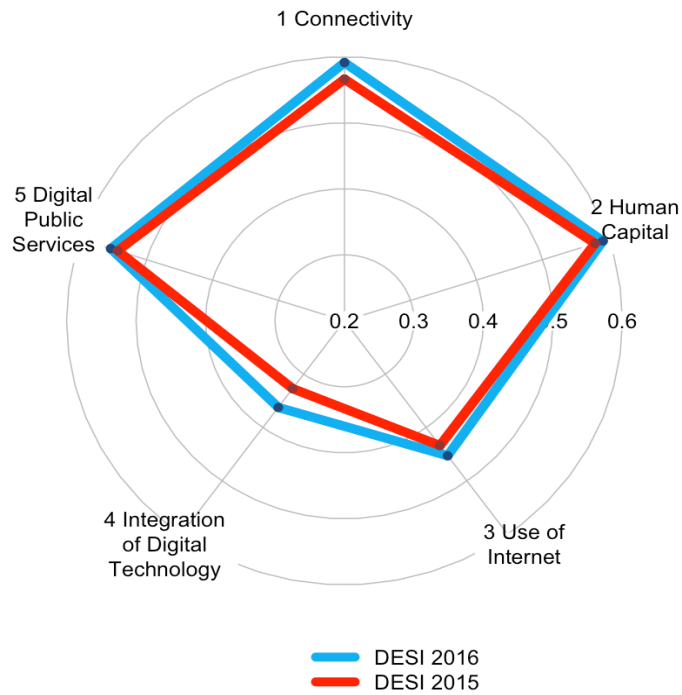
<sup>232</sup> European Commission. *Factsheet. What is the Digital Economy and Society Index?* Available at: [http://europa.eu/rapid/press-release\\_MEMO-16-385\\_en.htm](http://europa.eu/rapid/press-release_MEMO-16-385_en.htm) (accessed: 01/03/2016).

<sup>233</sup> European Commission. *Digital Scoreboard 2016: Strengthening the European Digital Economy and Society*. See video at: <https://ec.europa.eu/digital-single-market/en/digital-scoreboard> (accessed: 01/03/2016).

<sup>234</sup> *Id.*

<sup>235</sup> European Commission. Press Release. *How digital is your country? New figures show action needed to unlock Europe's potential*, Available at: [http://europa.eu/rapid/press-release\\_IP-16-384\\_en.htm](http://europa.eu/rapid/press-release_IP-16-384_en.htm) (accessed: 01/03/2016).

**Figure 5. DESI 2015-2016**

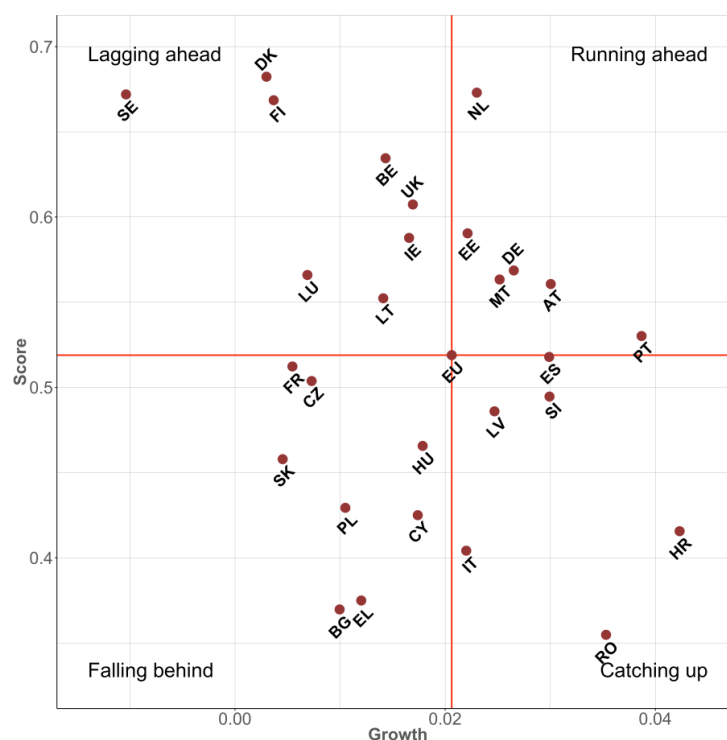


Source: DESI 2016, European Commission (2016)

Member States are at different stages of development and developing at different paces. MSs were grouped in clusters according to their score in DESI 2016 and to the growth they have registered between 2015 and 2016, as illustrated below in *Figure 6*.



**Figure 6. DESI 2016 score versus speed**



Source: DESI, European Commission (2016)

*Running ahead countries* are those that score above the EU average and whose score grew faster than that of the EU over the last year. Countries in this cluster: Austria, Germany, Estonia, Malta, the Netherlands and Portugal.

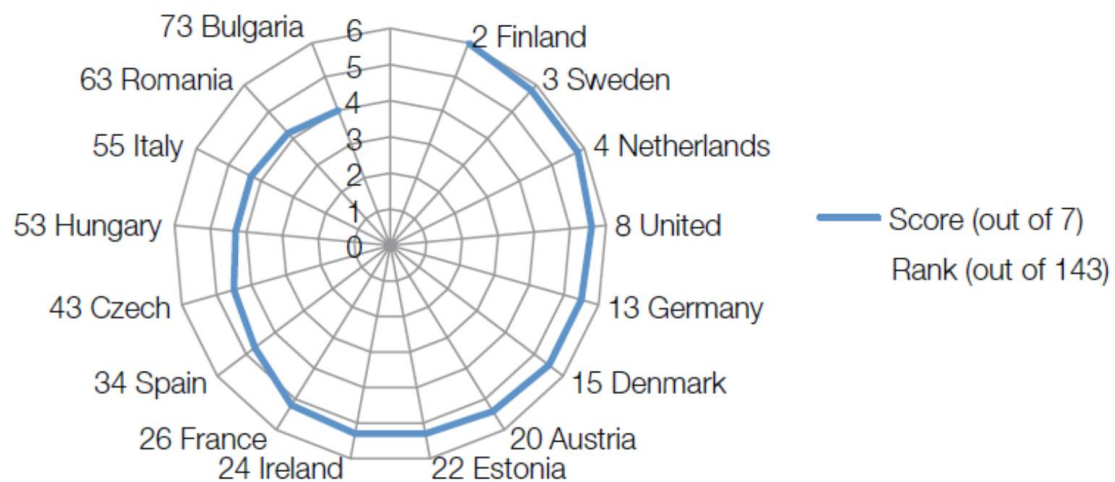
*Lagging ahead countries* are those that score above the EU average but whose score grew slower than that of the EU over the last year. Countries in this cluster: Belgium, Denmark, Finland, Ireland, Lithuania, Luxemburg, Sweden and the United Kingdom.

*Catching up countries* are those that score below the EU average but whose score grew faster than that of the EU over the last year. Countries in this cluster: Spain, Croatia, Italy, Latvia, Romania and Slovenia.

*Falling behind countries* are those that score below the EU average and whose development over the last year was slower than that of the EU as a whole. Countries in this cluster: Bulgaria, Cyprus, Czech Republic, Greece, France, Hungary, Poland and Slovakia.

Various EU MSs still differ greatly in terms of digital infrastructure, business environment and skill levels, as shown in *Figure 7*.

**Figure 7. A digital divide in Europe? Network Readiness Index /selected countries**



Source: World Economic Forum (2016)

### 4.3. Removing the obstacles to cross-border e-commerce

As shown in *Table 6*, the first pillar of the DSM strategy is to ensure better access for consumers and businesses to online goods and services across the EU by breaking down the barriers to cross-border online activity.

The e-commerce sector is growing rapidly in Europe,<sup>236</sup> but its full potential remains untapped both for European businesses and consumers. “Only 12% of EU retailers sell online to consumers in other EU countries, while three times as many (37%) do so within their own country. Similarly, only 15% of consumers purchase online from another EU country, while roughly three times as many (44%) do so domestically.”<sup>237</sup> “Only 16% of SMEs sell online and less than half of those sell online across borders (7%).”<sup>238</sup>

According to the results of the Ecommerce Europe survey “*Barriers to Growth*”, launched in early 2015,<sup>239</sup> the top three barriers faced daily by online merchants when selling cross-border are issues related to: (1) legal framework, (2) logistics and/or distribution, and (3) differences amongst taxation systems, VAT and/or customs. Other difficult barriers to

<sup>236</sup> Sheerer, M. (2015). Cross-Border E-Commerce. Removing the Barriers. *Commission en direct*, Luxembourg: Publication Office of the European Union, p. 38.

“In 2014 the share of e-commerce in the total retail sector in the EU was 7.2% (it’s expected to increase upto 20% by 2018), while in the USA it reached 11.6%. The average annual growth rate of e-commerce was 22%, surpassing €200 billion in 2014. The EU e-commerce sector holds an accumulated value of €365 billion.”

<sup>237</sup> European Commission. *Press release: Commission proposes modern digital contract rules to simplify and promote access to digital content and online sales across the EU*. Available at: [http://europa.eu/rapid/press-release\\_IP-15-6264\\_en.htm](http://europa.eu/rapid/press-release_IP-15-6264_en.htm) (accessed: 01/03/2016).

<sup>238</sup> European Commission. *Press Release. How digital is your country? New figures show action needed to unlock Europe’s potential*. Available at: [http://europa.eu/rapid/press-release\\_IP-16-384\\_en.htm](http://europa.eu/rapid/press-release_IP-16-384_en.htm) (accessed: 01/03/2016).

“Furthermore, among the top 100 online retailers, 52% sell only in their home country.”

<sup>239</sup> Ecommerce Europe (2015b). *Analysis of the survey “Barriers to Growth”*, ch.2., p. 12.

overcome when selling abroad were related to e-payments, competition issues (such as geo-blocking), language, client relationships and marketing.

*Nesta* surveyed some startups about existing barriers that they faced when operating across borders and the respondents mentioned besides VAT other similar recurrent themes, such as language, culture, availability of finance, availability of talent, general uncertainties surrounding company law in other jurisdictions, consumer law and e-commerce, differences in data protection and privacy rules, proposed taxes on cryptocurrency transactions, and digital signatures.<sup>240</sup>

A recent study by the Joint Research Center (JRC),<sup>241</sup> identified similar limitations on the e-commerce growth. These include, i.e. suppliers' restrictions to cross-border online sales, taxation rules, knowledge of the rules abroad and settling costs of cross-border disputes. In line with the offline trade literature, JRC's findings confirmed that the above reasons matter mostly for small firms, which found it harder to overcome the fixed trade costs associated with these barriers.

Today, 65% of European internet users shop online. EU consumers could save €11.7 billion each year, if they could choose from a full range of EU goods and services when shopping online. Only 38% of EU consumers feel confident about purchasing from another EU MS, whereas 61% feel confident doing so over the internet from a retailer located in their own MS.<sup>242</sup> "Consumers' perceptions of risk still hold them back from online transactions, which leaves some margin for policy makers to improve the regulatory and institutional setting."<sup>243</sup>

The overhaul of the rules governing cross-border e-commerce transactions is the cornerstone of the EC's DSM strategy. The existing laws are often unclear, complex and different from MS to MS. As a result, consumers shy away from cross-border e-commerce and companies hesitate to start trading outside their home country.

The EC is ready to remove the barriers to e-commerce for the benefit of both customers and businesses. "To facilitate further the growth of the e-commerce market, merchants and consumers need legal certainty through harmonisation of existing legal frameworks."<sup>244</sup>

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<sup>240</sup> European Commission (2015c). *Startups and the Digital Single Market. Final Report by NESTA, Tech.eu and The Lisbon Council*, p. 6. Available at: <https://ec.europa.eu/digital-single-market/news/startups-and-digital-single-market-workshop> (accessed: 02/03/2016).

<sup>241</sup> Joint Research Center (2015). *Working Paper on Firm barriers to cross-border e-commerce in the EU Digital Single Market*. Available at: <https://ideas.repec.org/p/ipt/decwpa/2015-07.html> (accessed: 27/04/2016).

<sup>242</sup> Sheerer, M. (2015). Cross-Border E-Commerce. Removing the Barriers. *Commission en direct*, Luxembourg: Publication Office of the European Union, p. 38.

<sup>243</sup> European Commission (2015d). JRC Technical Reports. Consumers' perceptions of (cross-border) e-Commerce in the EU Digital Single Market, p. 1.

<sup>244</sup> Ecommerce Europe (2015c). Priority Paper: Breaking down barriers to facilitate cross-border e-commerce in a fully fledged Digital Single Market, p. 3.

“If the same rules for e-commerce applied in all EU MSs, 57% of companies would either start or increase their online sales to other MSs.”<sup>245</sup>

Creating a DSM, EU regulators, MSs and all EU stakeholders in the e-commerce sector will need to work together to bring down barriers to unlock online opportunities.

The EC will come up with a legislative package in May 2016 that will include, inter alia, measures to address unjustified geo-blocking, to improve the transparency of cross-border parcel markets and to enforce EU consumer rules across borders better.<sup>246</sup>

“In order to compete on a global level Europe needs to create an innovation-friendly business environment which stimulates the entry of start-ups and SMEs to the market. This environment includes an open, fair and transparent internet, low administrative burdens and providing SMEs with knowledge about European and national laws. The e-commerce sector needs a European OSS containing information on rules for: VAT and taxation, data protection and privacy, parcel delivery, consumer rights and dispute resolution, online payments and e-logistics.”<sup>247</sup>

#### **4.3.1. VAT obstacles to cross-border e-commerce**

E-commerce is the fastest growing retail market in the EU (see Section 4.3), therefore ensuring taxation from e-commerce is of major concern for the EC in order to avoid base erosion at a time when economic recovery in Europe is progressing more slowly than policymakers had hoped.

The EU VAT system, despite all harmonisation initiatives over the last decades, is still identified by businesses as one of the top three barriers to cross-border e-commerce.<sup>248</sup> Compliance with 28 VAT regimes charging 75 different VAT rates between them, inevitably becomes more complicated and burdensome for businesses trying to trade cross-border both on and offline.<sup>249</sup> “These differences across the EU create a serious disturbance of the level playing field that is needed to foster cross-border trade and to complete the Internal Market.”<sup>250</sup>

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<sup>245</sup> Sheerer, M. (2015). Cross-Border E-Commerce. Removing the Barriers. *Commission en direct*, Luxembourg: Publication Office of the European Union, p. 38.

<sup>246</sup> *Ibid.*, at p. 39.

<sup>247</sup> Ecommerce Europe (2015c) *Priority Paper, Breaking down barriers to facilitate cross-border e-commerce in a fully-fledged Digital Single Market*, p. 3.

<sup>248</sup> Ecommerce Europe (2015b). *Analysis of the survey "Barriers to Growth"*, pp. 13-20.

<sup>249</sup> COM (2015) 192 final, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, A Digital Single Market Strategy for Europe, Brussels, 06.05.2015, p. 8.

<sup>250</sup> Ecommerce Europe (2015b). *Analysis of the survey "Barriers to Growth"*, p. 16.

At a recent workshop on the "Future of VAT Roundtable"<sup>251</sup> hosted by the Federation of European Accountants (hereinafter: "FEE"), Patrice Pillet – EC's Head of Sector in the VAT Unit of DGTAXUD - listed three main problems to be resolved related to the VAT aspects of e-commerce, more specifically in relation to intra-EU distance sales<sup>252</sup> and imports of goods:<sup>253</sup>

1. Compliance burden on businesses is high (especially on SMEs)
2. Distortion of competition between EU businesses and non-EU businesses
3. Non-compliance and VAT fraud issues

### ***Intra-EU distance sales***

In case of goods ordered online, a different VAT treatment can occur depending on whether the supply is made domestically, intra-EU or from a third country.

An EU business wishing to make intra-EU distance sales of goods, faces a VAT compliance cost of at least €8,000<sup>254</sup> annually per each targeted MS, meaning €6 billion costs in total.<sup>255</sup> It effectively means that the Single Market is off-limits for many EU suppliers, especially for SMEs (92% of all EU companies are SMEs).

On the basis of the preliminary results of the ongoing Deloitte study (see *Section 5.2.4*), Patrice Pillet - EC's Head of VAT Sector/DGTAXUD - suggested the following factors to be taken into account:

- Businesses find it difficult to determine the exact PoS because of different turnover thresholds are fixed by the MSs, distribution chains are complex and different rules apply to B2B and B2C sales. The compliance burden is aggravated for those businesses that exceed the distance selling threshold<sup>256</sup> in a MS and are required to register and account for VAT in each of those MSs.

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<sup>251</sup> Federation of European Accountants (2015). *Future of VAT Roundtable. Destination: one stop shop?*, 21 October 2015, Brussels. Available at: <http://www.fee.be/library/list/51-tax-policy/1525-151021-future-of-vat-roundtable-place-of-supply.html> and see report at: [http://www.fee.be/images/publications/Tax\\_policy/151023\\_Summary\\_VAT\\_roundtable\\_final.pdf](http://www.fee.be/images/publications/Tax_policy/151023_Summary_VAT_roundtable_final.pdf) (accessed: 25/03/2016).

<sup>252</sup> Articles 33 and 34 of VAT Directive (2006/112/EC).

<sup>253</sup> Articles 85-89 of VAT Directive (2006/112/EC).

<sup>254</sup> One of the Big4 firms quoted a figure of €5,000 annual compliance costs per Member State of registration or a €3.6 billion in total.

<sup>255</sup> Raponi, D. (2015). "The challenges of applying VAT in the digital economy", OECD Third Meeting of the Global Forum on VAT, 5-6 November 2015, Paris. Available at: <http://www.oecd.org/tax/consumption/session-material-third-global-forum-vat.pdf> (accessed: 25/03/2016).

<sup>256</sup> Subject to a turnover threshold in each Member State (the threshold is being set at €35 000 or €100 000, at the discretion of each country).

This is an onerous burden<sup>257</sup> for these vendors and notably, the smaller amongst them, given the specific implementation of the VAT rules in each MS (e.g. different VAT rates, thresholds, filing systems, registration and reporting obligations) as well as the need to communicate - often in another language - with foreign tax administrations.

- There are distortions of competition between EU operators, caused by the current rules, which also creates opportunities for tax fraud and avoidance.
- High administrative burden and complexity of rules on intra-EU trade leads to significant level of non-compliance.
- Difficult for tax authorities to monitor cross-border B2C supplies.

### *Imports of goods*

With respect to the imports of goods,<sup>258</sup> Patrice Pillet, EC's Head of VAT Sector/DGTAXUD, identified the following main issues:

- The compliance burden on vendors in third countries is high, due to the complexity of the VAT and customs rules. The combined effect of the VAT exemption<sup>259</sup> for small consignments and the customs threshold<sup>260</sup> results in three different regimes: (1) no VAT or customs duties are due (goods with a value below the VAT threshold of €10 up to €22 and customs threshold of €150); or (2) only VAT is due but no customs duties (goods with a value above the VAT threshold of €10 up to €22, but below the customs threshold of €150, or (3) both VAT and customs duties are due (goods with a value above €150).
- In contrast to the intra-EU distance sales, goods ordered online from third country suppliers can benefit from the small consignment import exemption (usually up to €22) allowing shipment free of VAT to EU private customers. This gives them a competitive advantage over EU suppliers and market distortions have already been signalled in various MSs.<sup>261</sup>

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<sup>257</sup> European Commission (2014a). *Report of the Commission Expert Group on Taxation of the Digital Economy*, at sections 4.1.5.1. and 4.2.3.

The Group considers that the requirement to register and account for VAT in each and every MS where supplies are made is an unnecessary burden and is a barrier to the Single Market particularly in respect of SMEs. It recommends that the existing thresholds in respect of distance sales should be removed i.e. all remote supplies of goods should be taxed at the place of supply of the consumer, with a single return and payment to the MS of the supplier.

<sup>258</sup> *EU context*. 1.) 2011 Communication on the future of VAT: a level playing field for non-EU and EU suppliers also has to be ensured. The treatment of small consignments and other internet sales is to be tackled in this context. 2.) 28 May 2014 Report of the Commission Expert Group on Taxation of the Digital Economy: remove the VAT exemption for imports of small consignments, due to distortions for domestic and intra-EU trade. And enable suppliers to account for sales of goods in the EU (max. value €150, customs threshold) through a single VAT registration and payments system.

<sup>259</sup> See Article 23 of Council Directive 2009/132/EC of 19 October 2009 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.

<sup>260</sup> See Art. 23. Council Regulation (EC) No. 1186/2009 of 16 November 2009 setting up a Community system of reliefs from customs duty.

<sup>261</sup> Notably in respect of close territories such as the Aland Islands and the Channel Islands which are not in the EU VAT area.

- Since 1999, the number of small consignments, benefitting from the import exemption has increased from approximately 30 million parcels to 115 million in 2013, an increase of almost 300%. Such a high number of consignments are difficult to monitor, especially with limited resources available for tax authorities. If this trend were to continue in line with the growth in e-commerce, it is not inconceivable that it could reach 300 million parcels by 2020.
- The corresponding VAT foregone in the EU grew from €118 million in 1999 to €535 million in 2013, an increase of 355%.<sup>262</sup>

The purpose of the VAT exemption on the importation of low value consignments below the €10/22 threshold (the so-called low value consignment relief (LVCR)) was originally a trade facilitation measure, which has turned into an expensive tax subsidy in favour of imports to the disadvantage of domestic and intra-EU sales. It does not benefit small operators but big market players.

It should be noted however, that the economic conditions were significantly different, as the internet and the online sales did not exist and transport and logistics operations were less developed. Under the current economic conditions characterized by an ever-increasing international trade, globalization and sales carried out via electronic portals, there was a need to assess the viability of the existing small commercial consignment exemption and its impact on EU businesses, including SMEs.

“The substantial growth in volumes of small consignments sent from outside the EU, and the associated VAT foregone demonstrate that the LVCR have caused a competitive distortion in which trade from outside the EU is given a fiscal advantage. It further resulted in an economic incentive to businesses to relocate their operations or supply chains outside the EU to benefit from VAT savings at the detriment of businesses located or operating exclusively within the EU.”<sup>263</sup>

The problem was also recognized by the OECD in the BEPS project. The TFDE concluded that “the collection of VAT with respect to B2C transactions is a pressing issue that needs to be addressed urgently to protect tax revenue and to level the playing field between foreign suppliers and domestic suppliers.”<sup>264</sup>

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<sup>262</sup> European Commission (2015e). *Final Report. Assessment of the application and the impact of the VAT exemption for importation of small consignments*, p. 49.

<sup>263</sup> *Ibid.*, at p. 50.

<sup>264</sup> OECD (2014b). *Addressing the Tax Challenges of the Digital Economy*. OECD/G20 Base Erosion and Profit Shifting Project. Paris: OECD Publishing, p. 149.

As announced in May 2015 in the DSM strategy (see *Section 5.2.2*), the EC will present a legislative proposal by the end of 2016 to modernise and simplify VAT for cross-border e-commerce to include an extension of the OSS mechanism to EU and non-EU countries online sales of tangible goods to final consumers. VAT on imports of small consignments will then, to a large extent, be collected through the single web portal by sellers or intermediaries acting on their behalf.<sup>265</sup>

Overall, “the current VAT system is complex, it is costly, there is a lack of certainty for business, it is not neutral and there are compliance risks and losses for MSs.”<sup>266</sup> The ongoing Deloitte study estimates annual compliance losses (including non-taxation and incorrect place of taxation) between €2.6 billion and €3.8 billion due to the complexity of the current regimes.<sup>267</sup> The above findings suggest that the EC needs to review and simplify the VAT rules for distance sales of goods (both intra-EU and from third countries).<sup>268</sup>

The aim of removing the VAT exemption thresholds for imports of small consignments is to contribute to the overall goal of achieving a simpler, more robust and efficient VAT system, adapted to the Single Market and challenges of the modern economy.<sup>269</sup> The VAT Action Plan (see *Section 5.2.3*) also sets out plans, as earlier announced in the context of the DSM strategy (see *Section 5.2.2*), to remove the VAT exemption for the import of small consignments from suppliers in third countries.

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<sup>265</sup> European Commission. *Factsheet. Action Plan on VAT: Questions and Answers*. Available at: [http://europa.eu/rapid/press-release\\_MEMO-16-1024\\_en.htm](http://europa.eu/rapid/press-release_MEMO-16-1024_en.htm) (accessed: 11/04/2016).

<sup>266</sup> Raponi, D. (2015). Presentation on “*VAT and the Digital Economy*”. Fiscalis 2020 Seminar on “*Modernising VAT for cross-border e-commerce*”, 7-9. September 2015, Dublin. Available at: [http://ec.europa.eu/taxation\\_customs/resources/documents/taxation/vat/digital\\_single\\_market/commission\\_presentation.pdf](http://ec.europa.eu/taxation_customs/resources/documents/taxation/vat/digital_single_market/commission_presentation.pdf) (accessed: 29/02/2016).

<sup>267</sup> Raponi, D. (2015). Presentation on “*The challenges of applying VAT in the digital economy*”, p. 42. OECD Third Meeting of the Global Forum on VAT, 5-6. November 2015, Paris. Available at: <http://www.oecd.org/tax/consumption/session-material-third-global-forum-vat.pdf> (accessed: 25/03/2016).

<sup>268</sup> Raponi, D. (2015). Presentation on “*VAT and the Digital Economy*”. Fiscalis 2020 Seminar on “*Modernising VAT for cross-border e-commerce*”, 7-9. September 2015, Dublin. Available at: [http://ec.europa.eu/taxation\\_customs/resources/documents/taxation/vat/digital\\_single\\_market/commission\\_presentation.pdf](http://ec.europa.eu/taxation_customs/resources/documents/taxation/vat/digital_single_market/commission_presentation.pdf) (accessed: 29/02/2016).

<sup>269</sup> European Commission (2015e). *Final Report. Assessment of the application and the impact of the VAT exemption for importation of small consignments*.





## Chapter 5. Modernising VAT for cross-border e-commerce

### 5.1. Overview of the 2015 place of supply changes and the MOSS

#### 5.1.1. 2015 place of supply rules

From 1 January, 2015 the new PoS rules<sup>270</sup> for all B2C supplies of TBE services<sup>271</sup> shifted from the MS where the supplier is based to the MS where the customer is located. Businesses affected by the changes are obliged to charge and account for VAT at the rate applicable in the MSC. A US operator that sells apps or telecommunications services to EU-based customers will be treated in exactly the same manner (from a VAT perspective) as a Portuguese company, a Brazilian company or a Hungarian company. The main criterion that matters is the customer's location. Sales of B2B physical goods are not affected by the new VAT rules.

The 2015 VAT changes were part of the VAT package which was adopted by the Council in early 2008. Such a system, is not completely new to digital businesses, as it has been in place since 2003 for non-EU e-service providers selling to EU consumers.<sup>272</sup> The reason for the changes to the PoS rules was to iron out the competitive distortions in the EU, where larger businesses located in MSs with low VAT rates. This gave them a competitive tax advantage and reduced the tax base of other MS.<sup>273</sup> In addition, this rule fully reflects the internationally agreed policy line of taxing supplies in the country where the service is consumed.<sup>274</sup> It is also consistent with the recommendations of the independent Group<sup>275</sup> and with the ongoing OECD work on BEPS.

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<sup>270</sup> Introduced by Council Directive 2008/8/EC of 12 February 2008 amending Directive 2006/112/EC as regards the place of supply of services (OJ L44, 20.2.2008 p.11).

<sup>271</sup> Art. 6a and 6b VAT Implementing Regulation.

For TBE services definition see also: Claessens, S. and Lejeune, I. (2014). Taxation of B2C TBE Services under EU VAT from 2015. *International VAT Monitor*, January/February 2014, pp. 7-10.

<sup>272</sup> Resulting from Council Directive 2002/38/EC of 7 May 2002 amending temporarily Directive 77/388/EEC as regards the value added tax arrangements applicable to radio and television broadcasting services and certain electronically supplied services (OJ L 128, 15.5.2002 p. 41) See also: De la Féria, R. (2014). Sections 103-106: VAT-Mini-One-Stop-Shop (MOSS), *British Tax Review* 5, p. 431.

<sup>273</sup> "The basic rules mirror those already in place for supplies of e-services to non-taxable persons (B2C) by suppliers not established in the EU."

<sup>274</sup> For example, online retailer Amazon.com located its European HQ in Luxembourg, which had a special low rate for e-books.

<sup>275</sup> OECD principles on taxation of e-commerce, as agreed in 1998 in Ottawa.

See OECD (2001). *Taxation and Electronic Commerce. Implementing the Ottawa Taxation Framework Conditions*. Paris: OECD Publications.

<sup>275</sup> See European Commission. *Expert Group on Taxation of the Digital Economy*, Available at:

[http://ec.europa.eu/taxation\\_customs/taxation/gen\\_info/good\\_governance\\_matters/digital\\_economy/index\\_en.htm](http://ec.europa.eu/taxation_customs/taxation/gen_info/good_governance_matters/digital_economy/index_en.htm) (accessed: 20/03/2016).

### 5.1.2. Mini One Stop Shop

The main consequence of the 2015 PoS changes is that VAT is due in each of the MSs in which TBE services supplies are made. Suppliers therefore have a choice. In theory, they can register for VAT in each MS (up to 27 separate VAT registrations, which is an "administrative nightmare") or they can opt-in voluntarily and register under an EU-wide scheme, known as the MOSS.<sup>276</sup> Once registered for the VAT MOSS scheme, a business must submit, each calendar quarter, a single MOSS VAT return and a single VAT payment to the competent tax authority in which they are registered. That MS will then distribute VAT to other MSs for which a VAT liability has been declared and paid.

At a conference on "*The reform of VAT*", at the University of Lisbon, in December 2014, Donato Raponi, the EC's Head of VAT Unit/DGTAXUD, detailed the benefits of the MOSS system as "a revolution, because for the first time in the history of VAT, one MS is collecting VAT for another MS."

From 1 January 2015, there are two separate MOSS schemes available, one for non-EU based suppliers (known as the non-Union scheme)<sup>277</sup> and one for EU based suppliers (known as Union scheme). There is no de-minimis turnover threshold, so suppliers engaged in cross-border supplies of these services are required to register in each MS to which they make supplies or to avail of the MOSS simplification scheme. Where suppliers have a business establishment in a MS, they can not use the MOSS scheme to account for VAT on supplies in that state, they must account for VAT there, using a local VAT registration.

"Details of the operation of the MOSS are, unavoidably, complex, and thus susceptible to the creation of legal uncertainty."<sup>278</sup>

Therefore the EC prepared and published detailed explanatory notes,<sup>279</sup> well in advance of implementation relating to the new PoS rules along with guidelines<sup>280</sup> on the practical application of MOSS registration/deregistration, VAT returns, payments, auditing and record keeping. These notes were drafted following unprecedented discussion with businesses and MSs. The majority of MSs published their own guidance notes as well.

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<sup>276</sup> Council Regulation (EU) No 967/2012 of 9 October 2012 amending Implementing Regulation (EU) No 282/2011 as regards the special schemes for non-established taxable persons supplying telecommunications services, broadcasting services or electronic services to non-taxable persons (OJ L 290, 20/10/2012, p. 1-7).

<sup>277</sup> The non-Union scheme replaced the previous VAT on Electronic Services (VoES) scheme.

<sup>278</sup> De la F eria, R. (2014). Sections 103-106: VAT-Mini-One-Stop-Shop (MOSS), *British Tax Review* 5, p. 431.

<sup>279</sup> European Commission (2014c). *Explanatory notes on the EU VAT changes to the place of supply of telecommunications, broadcasting, and electronic services that enter into force in 2015*, pp. 68-73.

<sup>280</sup> European Commission (2013a) *Guide to the VAT mini One Stop Shop*, and European Commission (2014d) *Information for businesses signing up for the Mini One-Stop Shop (MOSS)—Additional Guidelines—auditing under the MOSS*.

For example, the Portuguese Tax and Customs Administration have published practical examples in the Administrative Guidelines N.º 30164 2014-12-11, N.º 30165 26-12-2014 and N.º 30166 30-12-2014 ("Oficio Circulado") with the aim of helping businesses (especially SMEs) to better understand the rule changes, as well as to decide whether or not to register under the MOSS (see *Table 2*)

**Table 2. Union Scheme**

<i>Example:</i> Telecom company is registered under the special regime in Portugal with headquarters in Portugal (HQ in PT), with a fixed establishment in Spain (FE in ES) and registered for VAT purposes in Germany (DE).			
Services supplied from	Services supplied to	MOSS	out of MOSS
HQ in PT	PT, ES, FR, BE, DE	FR, BE, DE (from the HQ) UK, BE (from FE in ES)	PT- Periodical VAT (Art.41º)
FE in ES	UK, PT, BE, ES	operations declared by the HQ	ES- Domestic VAT Return
Registered in DE	(1)	(1)	(1)

(1) Not applicable. The mere registration is not relevant for the application of the special regime

*Source:* Portuguese Tax and Customs Administration (2014)

Within the scope of telecom services the following business operations were made:

**Example 1.** Services provided to non-VAT taxable persons established or domiciled in: Portugal (PT), Spain (ES), France (FR), Belgium (BE) and Germany (DE).

As PT is the MS where the HQ is located (the MSI)<sup>281</sup> and ES is where the FE is situated, only services supplied to FR, BE and DE (the MSC) are covered by the Union VAT MOSS. Registering for VAT does not itself mean that it qualifies as a FE, so in this case DE is considered as the MSC. Services supplied to customers established or domiciled in PT are domestic transactions that must be declared on the PT VAT return according to Article 41º of the Portuguese VAT Code. Furthermore, services provided from the FE to customers established or domiciled in ES, must be declared on the ES VAT return. Finally, when services supplied by the PT business to customers established or domiciled in ES, VAT must be declared and the VAT return must be submitted according to the domestic rules of the FE.

**Example 2.** The FE in ES supplies services for customers established or domiciled in the United Kingdom (UK). These services are treated under the Union VAT MOSS and must be declared by the HQ, together with the services made in FR, BE and DE.

<sup>281</sup> The MSI keeps 30% of payments through the MOSS in 2015 and 2016 and 15% that will be kept in 2017 and 2018.

### 5.1.3. Impact of the 2015 changes and the MOSS-Early results

The information below reflects the preliminary results of the ongoing Deloitte study, as well as the main conclusions of the recent Dublin Fiscalis Seminar.<sup>282</sup> The headline results of the 2015 changes and the MOSS to date are as follows:

- There was in excess of €3 billion VAT paid through the MOSS in 2015, representing up to €18 billion in sales.<sup>283</sup>
- There are in excess of 13,000 businesses registered under the MOSS with almost 1,000 registered under the non-Union scheme.
- 20 or so MSs have no non-Union scheme registrations.

Preliminary results of the ongoing Deloitte study indicate that 70% of cross-border TBE services were declared through MOSS in 2015. With some of Europe's largest eService companies opting to maintain registrations in each MS, this paints a particularly successful picture.

Dermot Donegan, Head of VAT Policy and Legislation in the Irish Revenue Commissioners, expressed concerns as follows:

The problem is that tax administrations do not know who is compliant and who is not. This is the "compliance enigma." At some stage, we will need to discuss a Community-wide strategy to identify those who are making TBE services but who are either not registered or not paying VAT through a carrier, market place or other third party. This will be difficult, because carriers, market places and other third parties have taken on the role of principal in supply chains, so it is not obvious who is complying with the new POS regulation and who is not. As a market place will always pay VAT on behalf of the developers, aggregators, agents and intermediaries operating through their platforms. The other players in the supply chain don't need to register themselves. However, we all know that there are many different business models and that these same developers, aggregators, agents, intermediaries and even platforms may be selling direct or through other platforms where they should be paying VAT themselves. I do not believe, that it makes sense to have 28 MS carrying out similar investigation programmes. Can you imagine the reaction of business to repeat requests (in different languages) for information from 28 MS Tax Administrations? In the longer term we have to be able to provide assurance to domestic, compliant business that there is indeed a level playing pitch operating for local, Union and non-Union companies. If, we can't do this, compliance will suffer. This is particularly important, when we are seeking to extend MOSS to further B2C supplies in the future."

Luxembourg, Ireland, Netherlands, United Kingdom and Germany collect 90% of all VAT paid through the Union scheme with the United Kingdom, Germany and France being the major recipients of this VAT, as shown in *Table 3* below.

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<sup>282</sup> See section 5.2.4.

<sup>283</sup> Raponi, D. (2015). "The challenges of applying VAT in the digital economy", OECD Third Meeting of the Global Forum on VAT, 5-6 November 2015, Paris. Available at: <http://www.oecd.org/tax/consumption/session-material-third-global-forum-vat.pdf> (accessed: 25/03/2016).

As an illustration, the United Kingdom received five times more money from other MSs, than what they collected from UK businesses. Luxembourg is expected to collect more than €2.1 billion (out of the €3 billion) for other MSs from the Union scheme.

**Table 3. Union scheme - Results from 2015**

	TOP 5 MSI	TOP 5 MSC
1.	Luxembourg	United Kingdom
2.	Ireland	Germany
3.	Netherlands	France
4.	United Kingdom	Italy
5.	Germany	Netherlands
-The TOP 5 MSI are collecting 90% of all VAT collected through the Union scheme. -The TOP 5 MSC receive 65% of all tax collected through the Union scheme.		

Source: European Commission’s presentation, Fiscalis 2020 Seminar (2015)<sup>284</sup>

Ireland, United Kingdom, Netherlands, Denmark and Belgium collect 95% of all VAT paid through the non-Union scheme with the United Kingdom, Germany and France being the major beneficiaries of this VAT, as listed in *Table 4*.

**Table 4. Non-Union scheme - Results from 2015**

	TOP 5 MSI	TOP 5 MSC
1.	Ireland	United Kingdom
2.	United Kingdom	Germany
3.	Netherlands	France
4.	Denmark	Italy
5.	Belgium	Spain
-The TOP 5 MSI are collecting 95% of all VAT collected through the non-Union scheme. -The TOP 5 MSC receive 77% of all tax collected through the non-Union scheme.		

Source: European Commission’s presentation, Fiscalis 2020 Seminar (2015)

Tax revenues from non-EU countries,<sup>285</sup> previously covered by the 2003 VAT on e-Services scheme (VOES) have tripled – this is a direct result of the intense communication efforts<sup>286</sup> taken by the Commission and a small number of MSs in 2014 (for example,

<sup>284</sup> O’Sullivan, D. (2015). “2015 PoS Rules and the MOSS” at Fiscalis 2020 Seminar on “Modernising VAT for cross-border e-commerce”, 7-9 Sept 2015, Dublin. Available at: [http://ec.europa.eu/taxation\\_customs/resources/documents/taxation/vat/digital\\_single\\_market/commission\\_presentation.pdf](http://ec.europa.eu/taxation_customs/resources/documents/taxation/vat/digital_single_market/commission_presentation.pdf) (accessed: 21/03/2016).

<sup>285</sup> The EC is proactively working on enhancing administrative cooperation with some third country fiscal administrations, such as Norway to reduce the risk of non-compliance by non-EU businesses.

<sup>286</sup> European Commission. *Telecommunications, broadcasting and electronic-services*. See VAT 2015 London Seminar at: [http://ec.europa.eu/taxation\\_customs/taxation/vat/how\\_vat\\_works/telecom/index\\_en.htm#events](http://ec.europa.eu/taxation_customs/taxation/vat/how_vat_works/telecom/index_en.htm#events) (accessed: 26/03/2016).

conferences were held in California, USA where some of the largest technology companies in the world are located).

Deloitte estimates that the annual cost of accounting for VAT is €8,000 on average per each MS to which it supplies. For business supplying to all EU-28, the annual cost would therefore be in excess of €220,000 and would add €6 billion to compliance costs if the MOSS scheme had not been launched.<sup>287</sup>

As indicated above, the successful implementation of the 2015 changes and the MOSS have been widely recognized by stakeholders. Reaction of businesses has generally been very positive. However, there is scope for improvements and there are a number of risks and challenges which still needs to be addressed.

#### **5.1.4. Main issues raised in respect of the 2015 changes and the MOSS**

In 2015, the EC highlighted the following issues<sup>288</sup> that should be addressed in the future: (1) the lack of a threshold for micro-enterprises, (2) the lack of awareness of the changes in some MSs, (3) difficulties in identifying customers for some businesses (4) record keeping/B2C invoicing requirements, and (5) home country audits.

These issues were further discussed by the participants of the Dublin Fiscalis Seminar<sup>289</sup> in September 2015. The participants reached a common position on the operation of the 2015 PoS rules and the MOSS as well as on the future policy options for modernisation VAT for cross-border e-commerce, as shown in *Table 5*.

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<sup>287</sup> Raponi, D. (2015). Presentation on "VAT and the Digital Economy." Fiscalis 2020 Seminar on "Modernising VAT for cross-border e-commerce", 7-9. September 2015, Dublin. Available at: [http://ec.europa.eu/taxation\\_customs/resources/documents/taxation/vat/digital\\_single\\_market/commission\\_presentation.pdf](http://ec.europa.eu/taxation_customs/resources/documents/taxation/vat/digital_single_market/commission_presentation.pdf) (accessed: 29/02/2016).

<sup>288</sup> O'Sullivan, D. (2015). Presentation on "2015 PoS Rules and the MOSS." Fiscalis 2020 Seminar on "Modernising VAT for cross-border e-commerce", 7-9. September 2015, Dublin. Available at: [http://ec.europa.eu/taxation\\_customs/resources/documents/taxation/vat/digital\\_single\\_market/commission\\_presentation.pdf](http://ec.europa.eu/taxation_customs/resources/documents/taxation/vat/digital_single_market/commission_presentation.pdf) (accessed: 21/03/2016).

<sup>289</sup> See further details on the Dublin Fiscalis Seminar in section 5.2.4.

**Table 5. Conclusions of the Dublin Fiscalis Seminar 2015**

<b>Operation of the 2015 PoS Rules</b>	
<b>Positive impact</b>	<b>Negative impact</b>
<ul style="list-style-type: none"> <li>-Created a level playing field, better compliance and more equal treatment for businesses.</li> <li>-The new PoS rules were explained well in general.</li> <li>-Positive budget impact for most of the MSs.</li> <li>-Positive feedback from the vast majority of MSs.</li> </ul>	<ul style="list-style-type: none"> <li>-VAT enforcement remained a key issue, especially for third country suppliers.</li> <li>-SMEs faced difficulties in interpreting the new rules.</li> <li>-Led to high costs of implementation and compliance (difficulties in resourcing IT development and delivering robust solutions in required time frame).</li> <li>-Definition of the status and location of the customer remained difficult.</li> <li>-Disadvantages due to complexity, when all 28MSs are involved.</li> </ul>
<b>Operation of the MOSS</b>	
<b>Positive impact</b>	<b>Negative impact</b>
<ul style="list-style-type: none"> <li>-MOSS appears to be a useful instrument to facilitate cross-border compliance, and is generating comfortable revenues.</li> </ul>	<ul style="list-style-type: none"> <li>-Administrative burden for SMEs.</li> <li>-Microbusinesses were unaware of the new rules and lacked knowledge on how cross-border VAT would work in the EU, therefore they needed professional support by traders associations, accountants and financial advisors.</li> <li>-More flexibility is needed for the MOSS registration/deregistration.</li> <li>-Businesses needed more time to adapt their IT systems.</li> <li>-Further improvements are still needed for payment processes (problem of bank fees for payment).</li> <li>-Currency conversions caused difficulties to businesses.</li> </ul>
<b>Advantages/Disadvantages of MOSS</b>	
<b>Advantages</b>	<b>Disadvantages</b>
<ul style="list-style-type: none"> <li>-Simplification for companies, having one registration, one VAT return, one payment and all that in your own language. Without the MOSS it would be impossible to comply with the new rules. Hard to imagine the introduction of the new PoS rules without the MOSS.</li> </ul>	<ul style="list-style-type: none"> <li>-Administrative burden for SMEs.</li> <li>-Suppliers used online market places, third party platforms, instead of selling directly to final customers.</li> <li>-VAT grouping rule was unclear.</li> <li>-Fear of potential audits.</li> <li>-Lack of awareness of the 2015 changes.</li> <li>-Complicated definition for TBE-services.</li> </ul>
<b>Possible improvements for the MOSS</b>	
<ul style="list-style-type: none"> <li>-10-year record keeping requirement should be cut down.</li> <li>-Non-EU traders with registration should be allowed in the MOSS.</li> <li>-Deductions of input VAT should be allowed in the MOSS.</li> <li>-Credit notes should be recorded in the VAT return when issued;</li> <li>-Home country audits should be introduced;</li> <li>-Customer data protection: tax legislation is not in conformity with civil law (data protection rules);</li> <li>-No invoice or simplified invoicing rules should be considered;</li> <li>-For SMEs: one piece of evidence to verify the country of delivery should be sufficient.</li> </ul>	

*Source: Final Report on the Dublin Fiscalis Seminar, Ecommerce Europe (2015)*



## **5.1.5. Evaluation of the 2015 place of supply rules and the MOSS**

### **5.1.5.1. Evaluation of the 2015 place of supply rules- Stakeholders' feedback**

#### **5.1.5.1.1. Complexities created by the 2015 place of supply rules**

Inevitably, the 2015 changes have added an element of complexity. From a purely administrative point of view, the new VAT legislation presents a considerable challenge for telecoms operators, broadcasters and other e-services providers as they have to determine and prove where each customer is based (non-EU customers are not impacted by the 2015 VAT changes), because the customer's location determines the applicable VAT. They also need to cope with multiple VAT rates and to clarify the tax status of their customers (e.g. business customers or private individuals).

Most broadcasting and telecommunication services are not supplied cross border because of licencing and territorial agreements, so the major impact of the changes has been on electronically supplied services.

#### ***Scope of electronically supplied services***

Firstly, the most fundamental question is whether the rule changes apply to the products sold by the company. Only B2C TBE services are affected, which includes services ranging from distance learning products, web hosting, software, subscription services and apps (when delivered over a mobile device), are included in the new regulations.

According to Taxamo, a software company that provides a VAT compliance solution to digital service merchants, the top five services supplied to consumers from Q1 2015 were online services, software downloads, e-publications, distance learning and content provision (see Taxamo's statistics).<sup>290</sup>

An interview conducted with the Portuguese Tax and Customs Administration, in November 2015, revealed that:

Some SMEs in Portugal were confused about whether their supplies were electronically supplied services (ESS). They sought guidance from the Tax Administration on the correct definition of an ESS. More specifically, there were a lot of queries about online courses where the course content was transmitted electronically. Questions were raised from other professionals such as translators, simply because they were using the Internet to transmit the translated documents.<sup>291</sup>

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<sup>290</sup> Taxamo (2015a). *White Paper: Taxing Digital Services. A Practical Approach to Communicating Digital Tax Rules with Global Digital Service Merchants*, p. 6.

<sup>291</sup> See further results of the semi-structured interview with the Portuguese Tax Administration in Annex 1.

As regards the scope of an ESS, it is not a unique issue only in Portugal, but also across Europe.

Dermot Donegan, Head of VAT Policy and Legislation in the Irish Revenue Commissioners advised that: "We have also received a lot of queries about online teaching or education, betting and gaming, P2P platforms and travel agents. It is very important for these businesses to know whether they are covered by the new rules or not."

The main discussion is around any or all of the four elements of the definition of an ESS that must always be present: (1) delivery over the internet or electronic network, (2) essentially automated, (3) minimal human intervention, (4) impossible to ensure in the absence of information technology.

### ***Systems and Legislation - Knowing the Place of Supply***

Secondly, determining the PoS is not always easy. As explained above (see Section 5.1.1.) the PoS in respect of all supplies of TBE services is the place where the consumer is established, has a permanent address or usually resides. These services are automated and it can be difficult for the supplier to identify the PoS. There are some instances where it is almost impossible to identify the PoS, for example, where services are provided at a telephone box, a Wi-Fi-hotspot or on board transport travelling between different countries. To make it easier for suppliers to determine the PoS, legal presumptions<sup>292</sup> were provided in Council Implementing Regulation (EU) No 1042/2013. In this Implementing Regulation, all MS's unanimously agreed on the necessary level of requirements in order to identify the location of the customer.<sup>293</sup> These presumptions give legal certainty to the supplier without imposing a significant burden to identify the place of taxation.

However, if the specific presumptions cannot be applied, the supplier must determine the location of the customer, (and therefore apply the correct VAT rate), using two pieces of non-contradictory evidence.<sup>294</sup>

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<sup>292</sup> If the service is supplied: (a) at a telephone box, a telephone kiosk, a Wi-Fi hot spot, an internet café, a restaurant or a hotel lobby, the PoS is where the telephone box, telephone kiosk, a Wi-Fi hot spot, etc. is located. This rule applies to the initial service only (i.e. the connection to the telecom or internet service) and not to any "over the top services" delivered using the connection (e.g. downloading of games onto a laptop at a Wi-Fi hotspot); (b) on board transport travelling between different countries in the EU (for example, by boat or train), the PoS is the country of departure for the journey; (c) through an individual customer's telephone landline, the PoS is where the customer's landline is located; (d) through a mobile phone, the PoS will be identified by the country code of the SIM card; (e) through a decoder without use of a fixed land line, the PoS is where the decoder is located or the postal address where the viewing card is sent.

<sup>293</sup> See also Veltrop, M. (2014). Identification of Customers of E-Services under EU VAT. *International VAT Monitor*, September/October 2014, pp. 266-267.

<sup>294</sup> European Commission (2014c). *Explanatory notes on the EU VAT changes to the place of supply of telecommunications, broadcasting, and electronic services that enter into force in 2015*, pp.68-73. Available at: [http://ec.europa.eu/taxation\\_customs/resources/documents/taxation/vat/how\\_vat\\_works/telecom/explanatory\\_notes\\_2015\\_en.pdf](http://ec.europa.eu/taxation_customs/resources/documents/taxation/vat/how_vat_works/telecom/explanatory_notes_2015_en.pdf) (accessed: 03/04/2016).

Examples of evidence that can be used are:

- Customer's billing address
- IP address
- Bank details (location of bank)
- Country code of SIM card
- Location of fixed land line
- Any other commercially relevant information<sup>295</sup>

A supplier may use any two pieces of non-contradictory evidence to determine the place of taxation. "The System Logic or Tax Logic used to decide the PoS is a critical issue for the business." – emphasized Dermot Donegan, Head of VAT Policy and Legislation in the Irish Revenue Commissioners. Furthermore, Taxamo indicated that "as a result of this legislative requirement, digital service merchants needed to amend their payment processing systems to apply the correct VAT rate to the digital service price."<sup>296</sup>

The following example illustrates the difficulty that the evidence requirement poses for some businesses. An audit was carried out by the competent tax authority of one MS on a newspaper publishing company (which sells newspapers both in printed and in electronic version to Nordic people living in South-Europe) and the auditor reported the following facts:

*Firstly*, the audited company declared that they could not afford to hire a private investigator to collect two pieces of evidence to confirm the location of a single newspaper reader (often Nordic pensioners living in South Europe) when the annual subscription fee costs only €180. Having regard to the low volume of sales, the private investigator found it difficult, burdensome and too bureaucratic to gather the two pieces of evidence required by the new EU VAT PoS rules. *Secondly*, the audited company did not have anything else, but the address of the private customer, used when the order was placed. The question has arisen: How could a newspaper company know about the IP address of a device (e.g. tablet or computer) applied by the customer reading the e-newspaper? If the company had thousands of customers, they would not check this information at all.

*Thirdly*, the newspaper publisher did not know the exact location of their customer. They could have been reading their e-newspaper, e.g. in Spain, Portugal or Finland. *Fourthly*, payments today can be made either by internet banking. Even if the customer received their e-invoice directly onto their bank account in their country of origin, they could effectuate the payment online from abroad. *Finally*, companies so far have asked for the real address when they made sales, but now it is possible to have an e-newspaper with e-invoice address and e-mail only. So, real life differs quite a lot from the official principles. In case, the two pieces of evidence could not be collected, taxpayers were suggested by the competent tax authority to assume that: Finnish/Danish/Swedish e-newspaper is mostly read by Nordic speaking citizens, who live in the Nordic countries.

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<sup>295</sup> e.g. payment mechanisms, gift cards, or loyalty cards unique to specific MSs, information from third party payment service providers, etc.

<sup>296</sup> Taxamo (2015a). *White Paper: Taxing Digital Services. A Practical Approach to Communicating Digital Tax Rules with Global Digital Service Merchants*, p. 8.

### ***Who is liable to pay the VAT?***

This is a critical issue for business, because the person, making or presumed to be making the supply of TBE services to the final consumer, is liable for the VAT on that supply. For broadcasting and for most telecommunication services, it is normally a straightforward supply to the final customer. However, for e-services which are supplied through a telecommunications network, an interface or a portal and for telephone services provided through the internet (e.g. Voice over Internet Protocol (VoIP)), the supplier of the service is not always obvious. The number of parties involved in the distribution of these services can vary and, in some instances, the service may be supplied directly by the developer of the electronic content to the ultimate consumer. Other business models involve transactions between multiple intermediaries and/or content carriers (such as a content aggregator or a telecom operator) and supply chains which stretch across borders. They can involve above and below the line invoicing and contractual arrangements can differ and can sometimes be contradictory. It can, therefore, be difficult to know who is making the supply to the final customer and who is responsible for the VAT on that supply.

For e-services the EC had to define: who in the supply chain is the supplier of the service to the final consumer? Article 9a<sup>297</sup> of Council Implementing Regulation (EU) No. 1042/2013 provides the rules to determine who is making these supplies to the final customer. In the original proposal which was published by the EC in December 2012, Article 9a was based on Article 28 of the VAT Directive and treated everyone in the supply chain as a principal, unless they explicitly indicated someone else as the supplier of the service.

Dermot Donegan, Head of VAT Policy and Legislation in the Irish Revenue Commissioners, chaired the Council Working Party meetings at which the Implementing Regulation was finalised and shared his experience relating to Article 9a as follows:

The wording in the original proposal was ambiguous and there was a danger that we would end up creating opportunities for tax planning that would lead to non-taxation and, in some countries, double taxation would invariably result. This led to very intense discussions at Council Working Party meetings. We agreed to structure the Article 9a as follows:

*A./ The taxable person has to be taking part in the supply chain*

Not all taxable persons involved in transactions in the supply chain are taking part in the supply. There are, however, various indicators which may be indicative of an active participation, including:

- owning or managing the technical platform over which the services are delivered, being responsible for the actual delivery, being responsible for collecting payment unless the only involvement of the taxable person is the processing of payment or controlling / exerting influence over the pricing.

*B./ The taxable person is presumed to have received and supplied those services in his own name, if he is "taking part in a supply."*

So, if he is supplying:

- e-services, which are supplied through a telecommunications network, an interface or portal, or
- a telephone service provided through the internet (e.g. VoIP),

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<sup>297</sup> See Weidmann, M. (2015). The New EU VAT Rules on the Place of Supply of B2C E-Services. *EC Tax Review* 2015-2, p. 112-113.

he is liable to account for VAT on the supply.

*C./A taxable person cannot override this presumption in certain circumstances:*

If he is taking part in the supply and

- sets the pricing in respect of the supply,
- authorises the delivery of the supply to the customer, or
- sets the terms and conditions of the supply,

he has, or is presumed to have received and supplied that service in his own name and he cannot explicitly indicate another person in the chain as the supplier. He is accountable for the VAT on the supply to the customer.

*D./ The presumption in "B" above may be overridden where the actual service provider is explicitly indicated as the supplier and this is reflected in the contractual arrangements between the parties.*

In other words, the supplier can override the presumption as long as he does not carry out any of the actions listed at "C" above and both the service and the actual supplier of the service are explicitly indicated on each invoice issued in the supply chain and on the bill or receipt issued or made available to the final customer. This must also be reflected in the contracts between the parties. Where that is the case, he will not be regarded as a principal.

Finally, it is important to note that the economic reality of the transaction prevails and each transaction should be assessed individually to correctly identify the VAT treatment. Some MSs ignore the legislation, legal contracts and economic reality and insist that the Telecomms is always the person liable to pay the tax.

As a result, all the businesses in a supply chain have to agree who is the person liable to pay the VAT and invoicing as well as contractual and payment agreements have changed.

#### **5.1.5.1.2. Revenues generated for the Member States**

The changes in VAT rules in January 2015 moved taxing rights on cross-border sales of TBE services, such as e-books, apps and cloud storage services to the countries where private individuals and non-business customers, rather than EU suppliers, are based.

The reform removed the advantages of operating in a MS with lower VAT rates from big tech companies, such as Amazon, Apple and Microsoft so that suppliers would no longer be put at a disadvantage by competitors selling from Luxembourg (that had applied a VAT rate of 3% to the sale of e-books and some other digital products) or by offshore competitors who did not charge VAT.

"Any tax reform process necessarily results in losers and winners"<sup>298</sup> and the 2015 PoS changes were no exception. Those that had been so far benefitting from the existence of reduced rates/low VAT rates, naturally lost with the reform, therefore they had a strong incentive to lobby hard against the reform.

Despite the reactions from certain microbusinesses, the UK is very much in favour of the new VAT rules, because these measures ensure fairer distribution of tax revenues between MSs and create a more level playing field between multinational companies and smaller home

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<sup>298</sup> De la F eria, R. (2015). Blueprint for Reform of VAT Rates in Europe. *Intertax*. The Netherlands: Kluwer Law International BV, Vol. 43, Issue 2, p. 171.

country-based businesses. According to UK official sources, the 2015 PoS changes will yield a total amount in excess of £1.2 billion in the period 2015 to 2018.<sup>299</sup>

The UK and Germany can expect a boost of around €300 million plus in VAT receipts<sup>300</sup> per annum each as their consumers now pay local VAT, rather than the super-reduced 3% Luxembourg digital VAT.

Furthermore, Taxamo has estimated that Ireland - a much smaller market to the UK - will receive a VAT receipt boost of €600 million between 2015 and 2019. This is broken down as follows: €100 million in 2015 and 2016, a further €125 million in 2017 and 2018, and €150 million in 2019.<sup>301</sup>

Countries like France, which still charges a reduced 5.5% VAT on consumer digital supplies, has seen a limited benefit.

On the other hand, the change in the digital B2C PoS rules had a dramatic negative impact on the Luxembourg economy. Luxembourg was expected to lose between 1.5% and 2% of its GDP<sup>302</sup> with the changes (the principal reason for the VAT rate increase by two percentage points to 17% from the beginning of 2015)<sup>303</sup> but this will be mitigated by the revenue sharing arrangements, where 30% of payments through the MOSS are retained in 2015 and 2016, and 15% retained in 2017 and 2018.

### **5.1.5.1.3. VAT rates on e-books - levelling the playing field**

According to the UK Booksellers Association “the biggest impact would be felt in e-books which were overwhelmingly sold out of Luxembourg where VAT was previously levied at just 3%.”<sup>304</sup> The reform would level the playing field for UK sellers of e-books. Furthermore, if digital books become more expensive, sellers of ink-and-paper books, which is zero-rated in the UK, would become more competitive.

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<sup>299</sup> Taxamo. *International Digital Tax Laws: Taxamo Solution Goes Global*. Available at: <https://www.taxamo.com/international-digital-tax-laws/> (accessed: 03/04/2016).

<sup>300</sup> Shaheen, S. (2014). EU digital VAT rule change forces Luxembourg to raise rates. *International Tax Review*, March 2014, p. 7.

<sup>301</sup> Taxamo. *International Digital Tax Laws: Taxamo Solution Goes Global*. Available at: <https://www.taxamo.com/international-digital-tax-laws/> (accessed: 03/04/2016).

<sup>302</sup> Shaheen, S. (2014). EU digital VAT rule change forces Luxembourg to raise rates. *International Tax Review*, March 2014, p. 7.

<sup>303</sup> The reduced VAT rates of 12% and 6% also rose to 14% and 8%.

<sup>304</sup> Houlder, V. (2014, February) VAT reform to boost UK Treasury and hit offshore e-commerce, *Financial Times*. Available at: <https://next.ft.com/content/ef6bcd10-93e9-11e3-bf0c-00144feab7de> (accessed: 22/03/2016).

### ***Reduced VAT rates on e-publications***

”The EU-rules on the use of reduced VAT rates are contaminated with numerous derogations and special regimes for individual MSs.”<sup>305</sup> Several attempts by the Commission to get a more transparent harmonization in this field have not yet led to success.

The reduced rate on books, newspapers and periodicals (hereinafter: ”publications”) is an inescapable fact of history: the majority of MSs have always considered these items as having a major educational value which would justify treating them as basic necessities, thus subject to a reduced rate of VAT.<sup>306</sup>

When VAT rates<sup>307</sup> were last reviewed in 2008-2009, MSs unanimously decided that reduced rates<sup>308</sup> would not be extended to the digital, electronic or online versions of these publications (Article 98 (2) of Directive 2006/112/EC) primarily due to the fact that VAT revenues were an important source of funding for all MS and with the increasing digitalisation of the economy the VAT base would have been eroded. This has become even more relevant in recent years with revenues suffering from the ongoing economic stagnation in the EU region.

In the 2011 Communication on the future of VAT,<sup>309</sup> the EC stated that in order to increase the efficiency of the VAT system, it favoured restricted use of reduced VAT rates.<sup>310</sup>

The issue of the VAT rate on e-publications received the most attention because of the very active lobbying by publishers’ representatives that largely supported the extension of the reduced and even zero rates (currently applied to printed publications) to e-publications.

A review of the structure of VAT rates was launched in 2012 as announced in the 2011 Communication. One of the guiding principles of this review was that ”*similar goods and services should be subject to the same VAT rate.*”

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<sup>305</sup> Kogels, H. (2014). A Lot to do About Reduced VAT Rates. *EC Tax Review*, 2014-5, p. 244.

<sup>306</sup> European Commission. *Press Release on Reduced rates of VAT: FAQ*. Available at: [http://europa.eu/rapid/press-release\\_MEMO-03-149\\_en.htm?locale=en](http://europa.eu/rapid/press-release_MEMO-03-149_en.htm?locale=en) (accessed: 22/03/2016).

<sup>307</sup> Under the current VAT rules, MSs are obliged to apply a standard rate of at least 15% and may also apply one or two reduced rates, set no lower than 5%. The reduced rates shall apply only to an exhaustive list of supplies contained in Annexes III. to the VAT Directive.

<sup>308</sup> Annex III (6) to the VAT Directive allows MSs to apply a reduced rate to books, newspapers and periodicals on physical means of support. Article 98 (2) of the VAT Directive expressly excludes the application of reduced rates to electronically supplied services. VAT rates applied on publications (books, newspapers and periodicals) therefore depend on whether it is sales of goods (publication on physical means of support) or digital services (on-line publication) being supplied.

<sup>309</sup> COM (2011) 851 final, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee on the future of VAT: Towards a simpler, more robust and efficient VAT system tailored to the Single Market, Brussels, 06.12.2011.

<sup>310</sup> Raponi, D. (EC’s Head of VAT Unit/DG TAXUD) at a later conference on ”*The reform of VAT*” in December 2014, in Lisbon pointed out that: ”The reduced rates are not the most economic efficient way to address social policy targets. It would be better to apply standard rate and to give specific compensation to people in need.”

See also OECD (2010). *Consumption tax trends 2010: VAT/GST and Excise rates, Trends and Administrative Issues*. Paris: OECD Publishing. In this context, the OECD stated that: ”As regards the efficiency of the VAT system, research shows that it would be more efficient to broaden the VAT base at standard rate by removing most exemptions and by minimizing domestic zero and reduced rates.”

See also Aujan, M. (2012). Harmonization of VAT in the EU: Back to the Future. *EC Tax Review* 2012/3, p.140.

However, an e-book<sup>311</sup> is not the same as a printed book: there are legal (for VAT purposes e-publications are services and not goods like paper publications), formal and economic differences between the two.

The 2014 Report of the Group recommended that the standard VAT rate be the default solution for the digital economy (*"such similar products should be taxed at the standard rate, as already provided in EU VAT law, rather than a reduced rate"*)<sup>312</sup> to avoid further complexity in the VAT system and ensure tax revenues.

France and Luxembourg unilaterally introduced a reduced rate to e-books in 2012, with Italy following suit in 2015. Following infringement proceedings launched by the EC, the Court of Justice of the European Union (CJEU) found against France and Luxembourg. These cases provide a strong example of the conflict that exist between MSs using VAT to reinforce their own social and taxation policy and the EC's ongoing efforts to ensure a consistent application of the VAT Directive.

Luxembourg reverted to standard rated VAT in May 2015,<sup>313</sup> while the French government asked the EC for an amendment to the VAT Directive.

The EC announced in the DSM strategy (see *Section 5.2.2*) that all rules on VAT rates, including online publications and e-books, will be reviewed in the context of the general VAT reform in 2016. The EC has until now preferred to pursue a general solution rather than present a specific proposal on e-books or e-publications, meaning that all VAT rate issues would be dealt with in the context of the upcoming introduction of the definitive VAT regime.

The EC, in line with the consensus view of experts and international organisations (OECD, IMF), has always maintained a prudent stance on reduced rates.

The EC's VAT Action Plan, adopted on 7th April 2016, announced a review of VAT rates and stated that "current rules do not fully take into account technological and economic developments. This is for example the case for e-books and electronic newspapers, which can not benefit from reduced rates available to physical publications".

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<sup>311</sup> Lang et al. (Eds) CJEU- Recent Developments in Value Added Tax 2014 (2015), p. 118.

<sup>312</sup> "E-books essentially reproduce the content of books originally available in printed form, on physical supports such as CDs or USB keys, and may be loaded onto computers or appropriate reading devices. The e-book versions might differ in content and structure from the printed books (See CJEU, 11 September 2014, Case C-219/13, K-Oy, para.12)."

<sup>313</sup> European Commission (2014a). *Report of the Commission Expert Group on Taxation of the Digital Economy*, p. 40.

<sup>313</sup> International Publishers Association/Federation of European Publishers (2015). *Global Special Report. VAT/GST on Books and e-Books*, p. 7. Available at: <http://www.internationalpublishers.org/images/VAT2015.pdf> (accessed: 22/03/2016).



Two options will be considered:

- Current reduced rates, exemptions and parked rates would be maintained and made available to all MSs, or
- All MSs would be free to set their own rates.

In conclusion, the EC believes that the 2015 changes of the PoS rules are beneficial for businesses. Firstly, EU businesses have been placed on an equal footing with foreign businesses selling the same services. Secondly, they create a level playing field for businesses that can not simply relocate to lower-tax jurisdictions and who, up to now, may have lost out to more mobile competitors. Finally, they ensure fairer distribution of VAT revenues between MSs, as they will receive the tax on the services consumed by their own residents.

### **5.1.5.2. Evaluation of the MOSS- Stakeholders' feedback**

#### **5.1.5.2.1. Impact on small and medium-sized enterprises and microbusinesses**

Although the VAT MOSS is well meant and is a significant milestone for the pan-EU VAT system, it is not perfect yet. The digital MOSS affected many SMEs<sup>314</sup> and microbusinesses<sup>315</sup> negatively, to the detriment of the Single Market. The VAT MOSS system was created to stop big tech companies (such as Amazon, Apple, Google and Microsoft) reducing their VAT bills by establishing their EU headquarters in lower VAT regimes, such as Luxembourg, thus profiting unfairly from digital sales. But suddenly, hundreds of thousands of sole online traders selling digital products, such as e-books, online tuition, smartphone apps, software, downloads of games, music and video found themselves adversely impacted by the changes.

#### ***Lack of an EU de-minimis turnover threshold***

The source of biggest number of complaints to the EC relating to the 2015 changes arose due to the lack of an EU de-minimis turnover threshold in the VAT MOSS model under which businesses would not pay VAT. The vast majority of complaints (95%) came from the

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<sup>314</sup> Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium –sized enterprises, OJ L 124, 20.5.2003, p. 36.

Small enterprise: fewer than 50 employees and an annual turnover or balance sheet below €10 million. Medium-sized enterprise: fewer than 250 employees and annual turnover below €50 million or balance sheet below €43 million. Available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=URISERV%3An26026> (accessed: 04/04/2016).

<sup>315</sup> Micro enterprise: fewer than 10 employees and an annual turnover (the amount of money taken in a particular period) or balance sheet (a statement of a company's assets and liabilities) below €2 million.

UK,<sup>316</sup> primarily as a result of the fact that small businesses in the UK were previously exempted from any VAT obligation up to a very high threshold (£82,000/almost €100,000 of annual turnover) compared to other EU countries, where VAT registration thresholds<sup>317</sup> are as low as nil in Italy, Spain, Sweden and Malta. The new rules require them to be registered for VAT and to charge VAT across the EU.

Chas Roy-Chowdhury, Head of taxation at the Association of Chartered Certified Accountants (ACCA), at the Dublin Fiscalis Seminar considered that: "An unnecessary imposition where the sales value is minimal and the tax collected may only ever be a few pence. The MOSS is straightforward for small businesses, but to enter it you have to endure the complexities of the UK and the EU VAT system."<sup>318</sup>

Kristian Koktvedgaard, chairman of the VAT policy group at BusinessEurope, at a recent workshop<sup>319</sup> on the "Future of VAT Roundtable" hosted by the FEE noted that:

Some would argue maybe that the UK small businesses, operating below the domestic threshold, actually have a competitive advantage due to the fact that they do not have to register for VAT there, but the counterpart is the fact that all competitors will have to face some sort of VAT registration when they compete on of the markets, so it is a two-way street.

It is to be noted that small enterprises which opt for the MOSS can still enjoy the benefit of the special exemption scheme for their domestic supplies unless their MS has not opted for such a facility. As a result, they include VAT in the price of a supply charged to a customer established in another MS, but not to a domestic customer.

EU-wide minimum thresholds had already been proposed twice by the EC, and were considered by the Council in the framework of the adoption of the new VAT rules, but were ultimately rejected by MSs at that time for a number of reasons:

Many MSs were not in favour of a high cross-border threshold as it could lead to a loss of tax revenues and distortions where domestic thresholds were not harmonised. For example, a UK business makes a supply of electronic services VAT free to a customer in another MS, such as Sweden, where businesses face a nil registration threshold (no exemption threshold applies). Exemption thresholds create distortions against national market players and are a source of base erosion as they facilitate artificial splits of companies to avoid VAT.

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<sup>316</sup> The UK accounts for the largest share of digital services in Europe with the exception of the USA.

<sup>317</sup> Avalara VATLive. *EU VAT registration thresholds 2016*. Available at: <http://www.vatlive.com/eu-vat-rules/vat-registration-threshold/> (accessed: 24/03/2016).

<sup>318</sup> See Stanley-Smith, J. (2015a). DSM to be enhanced during destination principle expansion. *International Tax Review*.

See also Stanley-Smith, J. (2015b). Broad VAT debate at Fiscalis Conference. *International Tax Review*.

<sup>319</sup> Federation of European Accountants (2015). *Future of VAT Roundtable. Destination: one stop shop?* 21 October 2015, Brussels. Available at: <http://www.fee.be/library/list/51-tax-policy/1525-151021-future-of-vat-roundtable-place-of-supply.html> and see report at: [http://www.fee.be/images/publications/Tax\\_policy/151023\\_Summary\\_VAT\\_roundtable\\_final.pdf](http://www.fee.be/images/publications/Tax_policy/151023_Summary_VAT_roundtable_final.pdf) (accessed: 25/03/2016).

Nevertheless, the EC maintained its position that the introduction of a cross-border threshold is desirable and it announced in its VAT Action Plan, adopted on 7th April 2016 that this legislative proposal will be published in late 2016.

The EU VAT Action<sup>320</sup> has been campaigning for an EU-wide threshold since the MOSS changes came in. The campaigners believed that a minimum threshold of €20,000<sup>321</sup> on cross-border digital sales could provide a right balance between the needs of microbusinesses and varying positions of different MSs. One of the founders of EU VAT Action, Clare Josa, acknowledged that a threshold of €100,000 (their previous request) was unrealistic, as it would not be agreed by the MSs.

Furthermore, a recent survey of 2,000 micro-entities by the EU VAT Action,<sup>322</sup> suggested that:

20% of microbusinesses decided to stop trading with other EU countries apart from those within their own country. Others withdrew digital products from their product range. About 70% of them chose to sell their digital products and services via a third party platform who handles the VAT for them. A number of them put up prices to cover the extra VAT and administrative costs, which ultimately seriously hampers the development of the DSM on a microbusiness level. Around 10% of them have completely stopped providing cross-border digital services because of VAT compliance costs.

After months of campaigning, and even an intervention from David Cameron in March 2015, the EC made it clear that it supports proposals to introduce a threshold to exempt the smallest businesses from the rules.<sup>323</sup> Andrus Ansip, the EC Vice-President for the DSM, spoke out against the lack of a threshold as damaging to the EU's digital economy and considered it as a top three priority for the EC. Mr. Ansip envisaged the introduction of a €100,000 per annum threshold in 2016.<sup>324</sup>

Anneliese Dodds, UK Member of the European Parliament (MEP), at a recent workshop<sup>325</sup> on the "Future of VAT Roundtable", hosted by the FEE, concluded that:

Smaller businesses could claim just partial EU VAT victory, as they do not have a clear timescale for the reintroduction of that threshold. That is a massive problem, because business would like to know whether it has to comply or not with the new rules. Due to legal uncertainty, there is a huge number of businesses that are certainly not complying with the new regulations and that is not only a UK-specific issue but an issue across Europe. I strongly believe that a suspension is needed now, because that is the only way to get rid of the large scale non-compliance.

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<sup>320</sup> EUVATAction. *The New EU VAT Rules Are Coming Your Way*. Available at: <http://euvataction.org/> (accessed: 24/03/2016).

<sup>321</sup> The "soft landing" would be for the next € 100,000 of cross-border digital sales. Below these thresholds however businesses would keep working to their domestic VAT rules.

<sup>322</sup> EUVATAction has been campaigning for an EU-wide threshold since the MOSS changes came in. See the survey at: <http://euvataction.org/take-action-now/complete-the-survey/> (accessed: 24/03/2016).

<sup>323</sup> Burn-Callander, R. (2015, September). VAT MOSS saga continues- or is that VAT MESS? *The Telegraph*. Available at: <http://www.telegraph.co.uk/sponsored/business/sme-home/news/11880244/vat-mini-one-stop-shop.html> (accessed: 25/03/2016).

<sup>324</sup> AVALARA VATlive. *EU considers minor €5k VAT MOSS registration threshold*. Available at: <http://www.vatlive.com/european-news/eu-considers-e5k-vat-moss-registration-threshold/> (accessed: 25/03/2016).

<sup>325</sup> Federation of European Accountants (2015). *Future of VAT Roundtable. Destination: one stop shop?* 21 October 2015, Brussels. Available at: <http://www.fee.be/library/list/51-tax-policy/1525-151021-future-of-vat-roundtable-place-of-supply.html> and see report at: [http://www.fee.be/images/publications/Tax\\_policy/151023\\_Summary\\_VAT\\_roundtable\\_final.pdf](http://www.fee.be/images/publications/Tax_policy/151023_Summary_VAT_roundtable_final.pdf) (accessed: 25/03/2016).

The EC is constantly encouraging MSs to continue efforts to explain the new rules to businesses on a national level, but interim or emergency measures are neither possible nor desirable. In addition, neither the EC nor the UK can unilaterally suspend VAT law agreed through unanimity by all MSs. The EC notably stressed that the significant negative reactions is for the time being mostly coming from the UK<sup>326</sup> and that without a pan-EU impact assessment it would be impossible to convince MSs (where businesses are not experiencing major difficulties) to change the law.

### ***At which level should the threshold be set?***

Agreeing an appropriate cross-border threshold amount, which will not introduce more distortions but offer relief to small start-up business, will be difficult. A threshold would likely be set between €5,000 and €20,000, while the UK campaigners stand alone in demanding a £ 100,000 limit.

Donato Raponi, the EC's Head of VAT Unit/DGTAXUD, announced at an International VAT Association Conference<sup>327</sup> in October 2015, in Bruxelles, that he expected the agreed threshold to be not €100,000 but €5,000. This is low, but it would allow the EC some margin of manoeuvre in relation to requests to raise it (to maybe €10,000 or perhaps €20,000) which are likely to be made within the EC or during the Council discussions.<sup>328</sup> A small limit of €5,000-€10,000 might find support among MSs because it would keep the "hobby" businesses out of the system.

"There has been considerable resistance from Germany, Denmark, Italy, Belgium and others to the idea of a high threshold,"<sup>329</sup> which prompted the EC to consider the €5,000 threshold.

In Germany the VAT registration threshold is €17,500. Besides the threshold problem, Germany is opposed to the potential extension of the MOSS for distance sales (as listed in the DSM strategy), as they do not accept the right of other MSs to audit and collect VAT from companies operating in Germany, which is, indeed, a necessary feature of a broad OSS concept. As Germany plays a central role on matters of fiscal policy in the EU and because of

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<sup>326</sup> UAPME, which represents European SMEs, indicated that 95% of the problems came from the UK at the Fiscalis 2020 Seminar in September 2015, in Dublin, organized by the Commission and hosted by the Irish Revenue.

<sup>327</sup> International VAT Association. "Brussels Autumn 2015" Conference, 22-23 October 2015, Brussels. Available at: <http://www.vatassociation.org/conferences/all/24-brussels-2015> (accessed: 27/03/2016).

<sup>328</sup> Hallam, N. (2015). EU VAT MOSS issues could be worse than feared. *Financial Director*. Available at: <http://www.financialdirector.co.uk/financial-director/opinion/2433526/eu-vatmoss-issues-could-be-worse-than-first-feared> (accessed: 25/04/2016).

<sup>329</sup> Avalara VATlive. *EU considers minor €5k VAT MOSS registration threshold*. Available at: <http://www.vatlive.com/european-news/eu-considers-e5k-vat-moss-registration-threshold/> (accessed: 25/03/2016).

unanimity among MSs for a proposal to be approved, Germany may render the debate irrelevant.

In Italy, Spain, Sweden and Malta there is no VAT registration threshold at all. "There is a greater fear of fraud<sup>330</sup> in Europe, where there is a larger black market therefore authorities prefer to charge VAT on everything. It is a cultural issue."- as explained Richard Asquith, global tax expert at Avalara.<sup>331</sup>

In the context of EU-wide VAT changes, Denmark preferred to make compliance easier for businesses through other methods by amending its laws on invoicing, so that full invoices will not be required for MOSS sales. Denmark would like such simplification measures to be reflected in other MSs as well. Lone Lau-Jansen, consultant at the Danish Treasury, took the following view at the above mentioned Fiscalis meeting in Dublin: "I think it is more important to find simplifications, so that all businesses using MOSS can use it in a simple way. A threshold is an exemption. Exemptions, we do not really like. Thresholds distort competition."

The Belgian tax authority confirmed that they would oppose the introduction of any thresholds to the digital MOSS or an extended distance sales OSS.

In conclusion, no decision has been taken on the appropriate level of the threshold yet. The level of the new cross-border threshold (applying to goods and services, whereby sales to another MS will be exempt from VAT) for SMEs will be considered following a careful analysis of the impacts on businesses, MSs, consumers and national tax administrations.

### ***Further issues raised in respect of the MOSS***

In addition to the debate over the absence of an EU de-minimis threshold in the VAT MOSS system and its appropriate level, the participants of the recent Dublin Fiscalis Seminar identified further challenges in the context of the VAT MOSS system, for example: different B2C invoicing rules in the EU-28, absence of home country audits, claiming VAT refunds separately outside the MOSS, complexity of dealing with credit notes and other adjustments.<sup>332</sup>

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<sup>330</sup> The introduction of a threshold also opens up a kind of VAT fraud by artificially splitting business activities to avoid the VAT payment once the threshold is reached. It's difficult to spot and is a major reason why the EU has blocked the introduction of a threshold.

<sup>331</sup> Burn-Callander, R. (2015). VAT MOSS saga continues- or is that VAT MESS? *The Telegraph*. Available at: <http://www.telegraph.co.uk/sponsored/business/sme-home/news/11880244/vat-mini-one-stop-shop.html> (accessed: 25/03/2016).

<sup>332</sup> European Commission. *Practical Guide for the Work Groups*, Fiscalis 2020 Seminar on "Modernising VAT for cross-border e-commerce", 7-9. September 2015, Dublin, Ireland. Available at: [http://ec.europa.eu/taxation\\_customs/resources/documents/taxation/vat/digital\\_single\\_market/working\\_group\\_paper.pdf](http://ec.europa.eu/taxation_customs/resources/documents/taxation/vat/digital_single_market/working_group_paper.pdf) (accessed: 05/04/2016).

Taking into consideration the difficulties for microbusinesses, the EU VAT Group suggested further simplifications<sup>333</sup> on the new PoS rules and on the MOSS to the EC.

A significant amount of work and research (the ongoing Deloitte study and impact assessment, the Dublin Fiscalis Seminar, public consultation, etc.) is being carried out in order that the EC could present, in the framework of the DSM strategy, a proposal by the end of 2016, which among others would address the difficulties faced by microbusinesses.

Preparatory work has already started on a comprehensive simplification package for SMEs. It involves a review of the SME scheme for VAT, including looking at how to ease VAT obligations for SMEs. The EC will make legislative proposals by the end of 2017.<sup>334</sup>

#### **5.1.5.2.2. Impact on large businesses**

”Whereas larger companies generally prepared for the 2015 changes well in advance, a number of smaller and less well-resourced players faced difficulties.”<sup>335</sup> In the anticipation of the 2015 VAT changes, businesses needed to identify how the legislative changes affected their business activities as well as to evaluate, prepare and optimise the implementation of this new framework. The 2015 VAT changes came as no surprise to the TBE services sector and had a profound impact on e-service providers’ business model. Businesses had to re-examine their role in the supply chain. The new rules meant that the VAT rate in the country of supplier was no longer relevant. Businesses had to adapt their pricing structure as differing VAT rates are applicable in line with the customer’s location. Considering the longer term, many TBE services providers were forced to rethink their EU business strategies and revisit their choice of global or EU hub. Businesses had to make sure that their IT, accounting and billing systems were still fit for purpose. The 2015 VAT changes also had wider business implications. There were real financial, technical, commercial and practical implications. In their approach to the implementation of the new rules planning, careful consideration and pragmatic business decision were required.

Within the framework of the present study a retrospective mini-survey was conducted with the participation of the indirect tax advisory community (namely three respondents from the Big4 firms in Dublin, Ireland) in order to find out about their clients’<sup>336</sup> readiness prior to

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<sup>333</sup> EUVATAction. *HMRC Simplifications to the EU VAT Rules- A Help or Just Plain Confusing?* Available at: <http://euvataction.org/updates/> (accessed: 05/04/2016).

<sup>334</sup> European Commission. *Fact Sheet. Action Plan on VAT: Questions and Answers*, 7 April 2016, Brussels. Available at: [http://europa.eu/rapid/press-release\\_MEMO-16-1024\\_en.htm](http://europa.eu/rapid/press-release_MEMO-16-1024_en.htm) (accessed: 30/04/2016).

<sup>335</sup> TMF Group (2015). *A TMF Group Briefing. VAT Reforms in Europe: past, present and future*, p. 4.

<sup>336</sup> Clients were mainly from the ”Electronically Supplied Services” sector.

the 2015 PoS rule changes, their experience in using the MOSS for post-2015 compliance and their opinion regarding future policy options for modernising VAT aspects of cross-border e-commerce (see *Annexes 2-4*).

### ***Preparedness of affected businesses for the 2015 changes***

Prior to the 2015 changes the commercial, legal and practical implications had to be addressed by businesses to ensure that the required changes were implemented in time. The five key business decisions related to: (1) pricing, (2) systems functionality, (3) contracts with partners, third party vendors and intermediaries, (4) corporate structure and (5) compliance.

#### *(1) Pricing*

The new regulations had an impact on every e-services providers' business model. Businesses had to adapt their pricing strategies, so digital merchants had to decide on dynamic or universal pricing models. The VAT rate in force in the MSC was an obvious factor in the decision making process. For example, the UK VAT rate is 20% and all major countries in the EU have a similar VAT rate. If digital merchants sell to those countries predominantly, business might just consider adopting a universal pricing structure even if this yielded a lower margin on product. But a business selling predominantly to Eastern Europe (27% in Hungary) where VAT rates tend to be higher, might prefer to adopt a dynamic pricing model. Differing VAT rates have an impact on the margins, unless an adequate pricing structure is developed in advance. Universal pricing can lead to the erosion of the profit margin and the application of dynamic pricing can increase the administrative costs.

PwC's clients retained their pricing and had a mix of universal and dynamic pricing structure.

KPMG's clients adopted a number of different pricing strategies based on a number of factors, such as the size of the company, IT capabilities, jurisdictions from which businesses operate and the price sensitivity of the services offered. Some of the pricing strategies KPMG has seen adopted include: (1) charging a different price in every jurisdiction, or (2) pricing based on the average of the VAT rates applicable in a few MSs, where the majority of their customers are based. Furthermore, larger businesses with a sophisticated e-commerce platform were in a position to introduce dynamic pricing with smaller businesses adding a blended rate/margin to address the VAT cost.

Some of EY's clients altered their systems to calculate the exact amount of VAT per country by inputting the appropriate VAT rate. Around 40% of the bigger companies trading across the EU applied a notional VAT rate of 20-22% on the price and charged only one price

to customers all over Europe. The companies took in say €100, which was treated as VAT inclusive.

*(2) Systems functionality*

Systems changes were designed, implemented and tested ahead of 2015 to ensure timely, accurate and efficient management of VAT across multiple countries. Systems must recognize the customer's country and apply the correct VAT rate. The System Logic or Tax Logic that allows the system to select the place of supply was critical.

Based on all three respondents' experience, their clients developed new systems in-house to deal with the 2015 changes. According to KPMG's opinion, "this may be a factor of the size of the companies concerned." Besides, KPMG is "aware of a number of software packages in the market, which can be added to or integrated into a supplier's system to assist with some facet of VAT accounting obligations arising from the 2015 changes."

*(3) Contracts with partners, third party vendors and intermediaries*

Existing contracts had to be reviewed or renegotiated to ensure that the VAT system accounting responsibilities of each party were clearly defined.

According to EY's experience there was not a significant amount of re-organisation in the context of agent/principles.

In PwC's opinion "it was not necessary to enter into the renegotiation or restructuring of supply chains. The legislation was applied to supply chains already in place." In terms of invoicing issues PwC mentioned that it was necessary for companies to consider B2C invoicing obligations in MSs in which customers were located. Moreover, an approach was taken by some companies to issue template invoices, which met conditions in each MSs.

KPMG was aware of instances where Article 9a of the Council Implementing Regulation (EU) no 1042/2013 has resulted in a renegotiation and/or restructuring of supply chains with a resulting impact on VAT accounting and other considerations, such as invoicing obligations, statistical returns. In addition, KPMG indicated that "a number of factors were relevant in assessing the impact of Article 9a on a client's business (e.g. the entity interfacing with the customer, regulatory considerations, etc.) and these varied on a case by case."

*(4) Corporate structure*

It was necessary for business to consider whether their corporate structure was appropriate for 2015 from a commercial and tax perspective and review the potential to relocate to countries that are "open for business".

EY noticed that a lot of companies relocated from Luxembourg to Ireland. "A number of businesses reorganised from using a US entity to an EU entity for electronic services."



KPMG has also seen instances where "clients have restructured their business in advance of 2015, in consideration of the impact of Article 9a.

*(5) Compliance*

VAT registrations are required in each MSs where even one customer resides or a central EU registration is needed.

In most of the cases PwC's clients registered for the MOSS, "given that it was a single registration and as such reduced compliance requirements. Where clients already had VAT registrations in the MSs, it made sense, in some cases, not to register for the MOSS".

KPMG's clients adopted both approaches, varied on a case by case basis depending on the size of the company, its business structures or language considerations.

All EY's clients registered centrally in Ireland.

***Ex-post evaluation of the MOSS***

According to PwC's clients, the MOSS system has been a welcomed practical means of reducing the costs and administrative burden of compliance. The shortcomings regarding the operation of the MOSS that could potentially undermine its initial success and its longer term objective, such as the requirement to resubmit MOSS returns for adjustments to supplies in previous periods and the interaction with local rules, such as voluntary disclosure, interest, penalties etc. Overall, PwC and their clients had a very positive experience in their dealings with Irish Revenue, in particular, the collaborative approach taken.

The most common problems identified by KPMG' clients included confusion around currency conversion issues, the need to resubmit historic returns for credit notes issued and practical issues with retroactive registration / filing process. Also, the data elements which clients need to access and retain in order to determine the place of taxation, taxable amount, etc., are not necessarily available from a single system (e.g. nature of supply may be on e-commerce platform and billing information may be residing with the PSP/payment platform).

The experience of EY's clients in the first year has generally been positive. Businesses are generally supportive of the MOSS, although they would like to see some administrative simplifications. Some teething problems were related to software and in determining, if a supply qualified as an electronic service. In Breen Cassidy's opinion, Partner for Indirect Tax Services at EY Dublin, "the real test of the MOSS will be when MSs commence audits."

### ***Where next? Possible future improvements***

In relation to future policy objectives, the mini-survey requested the Big4 firms's opinion about the EC's proposal on: (1) broadening the OSS to all B2C supplies of tangible goods and services (both intra-EU and third countries), (2) introducing a common EU-wide VAT threshold and (3) allowing for home country audits of cross-border businesses for VAT purposes in the MSI.

The main issues identified were as follows:

1. A pre-requisite of the expansion of the MOSS system should be a greater degree of harmonisation of some fundamental aspects of the broader VAT regime.
2. A threshold would be a useful feature to reduce the administrative burden on both small businesses who have low values of cross-border trade, as well as larger organisations with relatively few customers.
3. The implications of applying a business's home country rules requires further consideration.
4. Some clients expressing an interest in broadening the OSS to include goods, e.g. those engaged in distance selling. The extension of the OSS would be valuable if (1) current practical issues are overcome (e.g. FX, adjustments, etc.) and (2) the extension is meaningful (e.g. includes all local EU input VAT as well as output VAT transactions thus removing the obligation to file other returns/claims and (3) it is subject to a harmonised single audit approach in the country of registration.
5. A great deal of data needs to be retained from a MOSS audit trail perspective and clients have expressed concerns with regards to data privacy and the retention of records related to private consumers.
6. With a need to register credit notes against original VAT MOSS returns, a business may have multiple returns to compile, reconcile and file on an ongoing basis, therefore adding to the cost of compliance.

#### **5.1.5.2.3. MOSS Audits**

One important issue which is not yet fully resolved is the audit of the businesses under the MOSS. EU legislation on the MOSS still foresees that controls and audits are to be carried out by the MSC, although several tools are available to MS to enhance coordination of audits. For both EU and non-EU companies, this may involve up to 28 different tax administrations auditing the same companies without any coordination and leading to information requests in

multiple languages. Not only could this create disproportionate administrative burdens on business but it could also put at stake the efficiency of the audits themselves as well as the level of voluntary compliance (which is particularly sensitive where non-EU companies are involved).<sup>337</sup>

Audit guidelines<sup>338</sup> have been developed in order to promote the principle of coordination of audits, with the aim of reducing burdens on business, promote voluntary compliance and raise the efficiency of audits. These guidelines are published, as well as the names of participating MSs. Unfortunately, not all MSs have agreed to implement them.

Appropriate new tools, such as joint audits to enhance the efficiency of audits in this sector may be useful, provided MSs can agree on the legal basis. Delivering a successful MOSS as a precursor to the broader OSS requires full trust and cooperation by each MS that taxes will be collected and that the necessary auditing will take place.

### ***Audit and record keeping requirements for the MOSS***

Article 63c of Council Implementing Regulation No. 967/2012 specifies the record keeping requirements for the MOSS. The records must contain the following information:

- Member State of consumption to which the service is supplied;
- Type of service supplied;
- Date of the supply;
- Taxable amount indicating the currency used;
- Any subsequent increase or reduction of the taxable amount;
- VAT rate applied;
- Amount of VAT payable indicating the currency used;
- Date and amount of payments received;
- Payments on account received before the supply of the service;
- Where an invoice is issued, the information contained on the invoice;
- Name of the customer, where known to the taxable person;
- Information used to determine the place where the customer is established, has his permanent address or usually resides.

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<sup>337</sup> COM (2014) 380 final, Report from the Commission to the Council on Article 6 of Council Directive 2008/8/EC, Brussels, 26.06.2014., pp. 7-8.

<sup>338</sup> European Commission (2013a) *Guide to the VAT mini One-Stop Shop*, and European Commission (2014d) *Information for businesses signing up for the Mini One-Stop Shop (MOSS)—Additional Guidelines—auditing under the MOSS*.

Records relating to MOSS returns must be retained for a period of ten years from the end of the year in which the supply was made. This has been highly criticised and been introduced at the insistence of one MS to reflect its own national requirements.

### ***Requests for MOSS records and MOSS Audits***

Articles 369 and 369k of the VAT Directive provides that:

- the tax authorities of the MSI may request the taxable person's MOSS records.
- the tax authorities of the MSC may request the taxable person's MOSS records relating to supplies made in that particular MS.

To facilitate compliance and simplify business operations for traders opting for the MOSS, on 13 June 2014 the EC published "additional guidelines"<sup>339</sup> on the audit and control under the MOSS system. Although the large majority of MS strongly supported this work in the Standing Committee on Administrative Cooperation (SCAC), not all MS (e.g. France, Italy) have agreed to implement the recommendations.<sup>340</sup> These guidelines deal mainly with what is required of the tax authorities (e.g. contacting taxable persons or request information from traders) in EU MS after a digital service merchant has registered under the MOSS scheme in the relevant MSI. The guidelines are recommendations only and are not legally binding on EU MS. They do not interfere with domestic rules on auditing or with the legal provision in the VAT Directive or the Regulation on administrative cooperation. However, all MS tax administrations should take a pragmatic approach and act reasonably to ensure appropriate taxation while avoiding any possible risks of double taxation and potential fraud, to enhance voluntary compliance from all traders which could have a positive impact on auditing yield within the MS.

Dermot Donegan, Head of VAT Policy and Legislation in the Irish Revenue Commissioners, explained how this might work in practice:

"We expect that the majority of approaches will be in the form of requests for information that will be relatively straightforward. Those requests should, in line with the guidelines, be routed through Revenue (where Ireland is the MSI). We will, in turn, request the records from the business and will provide a secure methodology for transferring the data to the other tax administration(s). The MSC may require further information and may deal directly with business. However, if that tax administration is still not

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<sup>339</sup> European Commission (2014d). *Information for businesses signing up for the Mini One-Stop Shop (MOSS). Additional guidelines-auditing under the MOSS.*

<sup>340</sup> PwC. *EU 2015 VAT on digital supplies- EU Commission published additional guidelines on the audit & control under MOSS.* Available at: <http://ebiz.pwc.com/2014/06/eu-2015-vat-on-digital-supplies-eu-commission-published-additional-guidelines-on-the-audit-control-under-moss/> (accessed: 10/04/2016).

satisfied with the information provided, it can request Revenue to carry out an audit of the taxable person's records. They will outline to Revenue the reasons why an audit might be appropriate and, if Revenue agrees, it will be required to notify the other MSs of this. Each of these MSs will have an opportunity to ask for records relating to supplies in its jurisdiction to be examined during the course of the audit. Authorised Officers from Revenue will conduct the audit and officials of other tax administrations may be present although they may not actively participate. This is allowed under Article 28 of Council Regulation EU 904/2010.

The main issues in an audit are likely to be around the "system logic" used to determine the location of the customer, the correct application of VAT rates, the role of the business in the supply chain and the taxable status of customers. At this stage, it is impossible to guess what other MSs might look for but Revenue will ensure that the administrative burden for business is proportionate unless there are indicators of significant tax loss.

In conclusion, from a business perspective, we have constantly stressed that businesses examine their supply chain contracts to ensure there they have the proper legal, accounting, pricing and compliance structures in place."<sup>341</sup>

### 5.1.5.3. Communication of the 2015 changes and the MOSS

The successful delivery of the new PoS rules for B2C supplies of TBE services and the accompanying MOSS has been a high priority for the EC. The extensive preparation covered three main areas: (1) legislative framework, (2) administrative and communication measures, (3) MOSS IT implementation.

Firstly, the EC proposed three Implementing Regulations<sup>342</sup> which were adopted well in advance (in 2012 and 2013) of the entry into force of the 2015 changes. Prior to that, all stakeholders were consulted. Informative seminars and workshops were organised in order to discuss with MSs and with business to identify the issues that should be included in the envisaged implementing measures.

Secondly, the EC prepared explanatory notes on the PoS rules and guidelines on the practical application of the MOSS. These documents were prepared in close cooperation with MSs and businesses through meetings and workshops and were translated into all EU languages as well as Japanese, Russian and Chinese, so they are easily accessible for SMEs as well. In terms of communication, in 2014 the EC undertook an extensive communication campaign across Europe, the USA and Japan to inform businesses about the upcoming

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<sup>341</sup> Donegan, D. (2014). VAT and 2015. New Rules and New Risks. *Irish Tax Review*, Issue 2, p. 101. Available at: [http://storage.irishtaxationinstitute.ie/Publications/ITR/ITR2014/Issue3\\_2014/ITR\\_Issue3\\_2014\\_FlipBook/files/assets/seo/page101.html](http://storage.irishtaxationinstitute.ie/Publications/ITR/ITR2014/Issue3_2014/ITR_Issue3_2014_FlipBook/files/assets/seo/page101.html) (accessed: 14/03/2016).

<sup>342</sup> Council Regulation (EU) No 967/2012 of 9 October 2012 amending Implementing Regulation (EU) 282/2011 as regards the special schemes for non-established taxable persons supplying telecommunications services, broadcasting services or electronic services to non-taxable persons (OJ L 290, 20/10/2012, p. 1–7).

Commission Implementing Regulation (EU) No 815/2012 of 13 September 2012 laying down detailed rules for the application of Council Regulation 904/2010, as regards special schemes for non-established taxable persons supplying telecommunications, broadcasting or electronic services to non-taxable persons (OJ L 249, 14/09/2012, p. 3–10).

Council Implementing Regulation (EU) No 1042/2013 of 7 October 2013 amending Implementing Regulation (EU) No 282/2011 as regards the place of supply of services (OJ L 284, 26.10.2013, p. 1).

The 2013 Regulation was critical as it provided greater certainty to MS and business in applying the new rules.

See also: Lamensch, M. (2011). New Implementing Regulation 282/2011 for the 2006 VAT Directive, *EC Tax Review*, 2011/4, pp.162-171.

changes, e.g. the London Conference, held in June 2014, was also web-streamed.<sup>343</sup> In addition, the EC put up a dedicated web portal<sup>344</sup> with all the relevant information on the 2015 changes and the MOSS. With the aim of helping businesses to better operate all over the EU, in October 2014, DGTAXUD published on its website a detailed document on a number of VAT selected rules that might be applied differently within MSs (relevant for the MOSS). ”The availability of accurate, reliable and timely information on the details of the VAT regimes currently in place in MS is a key factor for stakeholders.”<sup>345</sup> At the same time the EC is still constantly encouraging MSs to further explain these changes to businesses on a national level.

Lastly, the success of the MOSS is dependent on IT systems<sup>346</sup> and development. The EC undertook IT systems visits to all 28 MSs to ensure that web portals were fully functional for registration in October 2014 and for live operation in January 2015. Bilateral follow-up is ongoing with each MS. Overall, the EC’s feedback received from businesses so far is very positive.

The implementation of the 2015 PoS rules and the MOSS has brought about positive and negative reactions in terms of effective communication.

According to Taxamo’s recent white paper on ”*Taxing Digital Services*:”<sup>347</sup>

The implementation of the 2015 EU VAT rules were not communicated clearly to all affected merchants and has resulted in a series of complaints from SME online merchants. This included an online petition with over 16,000 signatures calling for the immediate suspension of the new VAT rules, while merchants learned more about the new rules and prepared their e-Commerce systems as necessary. Avoiding poor communication is a key consideration in the implementation of any new rules relating to the taxation of the digital economy. The key here is for all communication to be specific and targeted towards affected digital service stakeholders.

One barrier to awareness of the 2015 EU VAT rules was communication. The EU communication plan of the new taxation rules was implemented via points of contact in the EU-28. In other words, it was left to the individual tax authorities to engage with merchants ahead of the rule change. For various reasons it was difficult to effectively execute this plan. due to time constraints and resource issues. As a result, many merchants were left exposed due to a resultant lack of awareness.

Ms. Dodds, UK MEP, took the same negative view at the ”*Future of VAT Roundtable*” organized by FEE in October 2015, in Bruxelles:

The system for implementing the new rules fell very far short of what we would have anticipated. In many cases my office acted as a go between HMRC. I do not believe that they have been resourced the level that was required for the 2015 changes, as a result, they really struggled to deal with the case load

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<sup>343</sup> HM Revenue and Customs. *Post seminar videos. VAT Place of Supply of services/ Mini-One Stop Shop Seminar (MOSS)*. Available at: <http://www.online-web-presentations.com/HMRC/> (accessed: 26/03/2016).

<sup>344</sup> The EC has been calling on the EU-28 for a long time to provide them with more specific information on VAT than the general information, but MSs are resistant and not willing to invest time and money on developing the web portal. However it does not mean that the EC has completely abandoned this idea.

<sup>345</sup> Lang, M. (2014). *Improving VAT/GST: Designing a Simple and Fraud-proof Tax System*, IBFD, ch. 16, p. 13.

<sup>346</sup> Veltrop, M. (2014). Identification of Customers of E-Services under EU VAT, *International VAT Monitor*, September/October 2014, IBFD, p. 270.

<sup>347</sup> Taxamo (2015a). *White Paper: Taxing Digital Services. A Practical Approach to Communicating Digital Tax Rules with Global Digital Service Merchants*, p. 3.

and there was a lack of information made available to people before the new system came in by the UK Tax Authorities.

On the contrary, Kristian Koktvedgaard, chairman of the VAT policy group at Business Europe, shared his positive experience related to MOSS at the above roundtable meeting as follows:

I need to congratulate on the MOSS for the MSs and the Commission for the work that has gone into this. It was absolutely a success, if we measure it compared to the refund portals,<sup>348</sup> a huge improvement. We do not need to change the model, but maybe we need to refine the model.

The highest priority for digital cross-border merchants is actually trying to understand and get information about the VAT rules applicable in other MSs. For instance, if I look at the MOSS, on the invoicing rules or VAT rates, actually there is now information available on the EC's web portal.<sup>349</sup> I think, that is the right way to go. We need more of these initiatives that is beneficial for both SMEs and MNEs.

Joachim Agrell, Head of Deloitte's Swedish Indirect Tax Practice, as one of the speakers at the above referenced roundtable meeting, highlighted the role of accountants as follows:

The role of accountants will evolve as complex VAT systems are subject to simplification, harmonisation and digitalization. In particular, the role of accountants have the benefit of interacting with businesses, tax authorities and policy makers, consequently they work as intermediaries especially when it comes to the implementation of the new legislations, thus helping to ensure that the right systems are in place.

Dermot Donegan, Head of VAT Policy and Legislation in the Irish Revenue Commissioners, at the above roundtable meeting, underlined the importance of tax authorities in conducting a professional communication with taxpayers with regard to the 2015 PoS changes.

Key lessons learnt from the successful implementation of the 2015 changes and the launch of the MOSS scheme can be summarised as follows:

1. The development of this legislation involved a high degree of consultation between the EC, businesses and MS.
2. The need to provide businesses and national tax administrations with sufficient information on the scope and impact of the changes was identified early and was a critical success factor.
3. A clear understanding of the scope of the digital economy was vital and the Implementing Regulation (1042/2013) provided guidance to businesses and MSs in this regard.

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<sup>348</sup> Veltrop, M. (2014). Identification of Customers of E-Services under EU VAT, *International VAT Monitor*, September/October 2014, IBFD, p. 270.

<sup>349</sup> "Six years ago, there were considerable problems with processing refund applications made through the web portal in the applicant's Member State. The IT problems had the consequence that the application period for refunds of VAT over 2009 had to be extended by half a year, i.e. from 30 September 2010 to 31 March 2011."

<sup>349</sup> European Commission. *Taxation Information Communication*. Available at: [http://ec.europa.eu/taxation\\_customs/tic/public/index.html](http://ec.europa.eu/taxation_customs/tic/public/index.html) (accessed: 07/04/2016).

4. The digital economy is no longer a market segment, it is an entire industry, and one that is rapidly expanding. Tax regulations must kept pace with the changes.
5. For countries to see the maximum return from digital tax rules, tax authorities need to design regulations with which merchants can technically comply.
6. Businesses need certainty and, if legislation or the administration of that legislation is inconsistent or uncoordinated, that creates issues for international/european digital service merchants who must try to conform with a myriad of differing, and sometimes contradictory, rules.

## **5.2. Future perspectives for VAT**

While the 2015 PoS changes and the MOSS are a significant milestone for the EU VAT system, many business organisations, MSs and indeed the OECD<sup>350</sup> in its BEPS project considered that this is not sufficient, and that a OSS should also be considered for goods ordered online, including those imported from third countries.

### **5.2.1. Identifying the need for future reforms**

In its 2011 Communication on the future of VAT<sup>351</sup> the EC aimed to create a simpler, more robust and efficient VAT system fit for the single market.<sup>352</sup> The 2011 Communication envisaged the broadening of the OSS scheme over time to cover also B2C supplies of goods not just TBE services. In terms of neutrality, the 2011 Communication considered that a level playing field for non-EU and EU suppliers also had to be ensured. The treatment of small consignments and other internet sales (current distance selling rules) was mentioned to be tackled in this context as well.

It is also relevant that the recent Report of the Group<sup>353</sup> made a general proposal that the EU should pursue the destination principle for all supplies of goods and services and also

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<sup>350</sup> The OECD also recognises the role that a One-Stop-Shop can play in ensuring taxation at the place of destination, as a means to collect tax, while at the same time minimising the burden on SMEs.

<sup>351</sup> “[...] the most effective and efficient approach to ensure an appropriate VAT collection on such cross-border B2C supplies of services and intangibles is to require the non-resident supplier to register and account for the VAT on these supplies in the jurisdiction of the consumer. While such a vendor collection mechanism was first recommended under the OECD’s 2003 E-commerce Guidelines, experience since then, notably within the EU, which has been the first to implement it, has shown that it still remains the most viable option today.”

<sup>352</sup> See Lejeune, I., Daou, J., and Maeijer, S. (2012), The European Commission’s Communication on the Future of VAT: A Recipe for Growth? *International VAT Monitor*, March/April 2012, IBFD, pp. 99-106.

<sup>353</sup> COM (2011) 851 final, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee on the future of VAT: Towards a simpler, more robust and efficient VAT system tailored to the Single Market, Brussels, 06.12.2011.

<sup>354</sup> European Commission (2014a). *Report of the Commission Expert Group on Taxation of the Digital Economy*, pp. 36-39.



came up with recommendations, which is in line with the 2011 Communication. In terms of actions, which should be taken as a priority, the Group has recommended to:<sup>354</sup>

A) – Expand the OSS as a priority for B2C distance sales of goods and services.

Under this recommendation, the Group also recommended the removal of registration thresholds, the introduction of home country auditing and consideration of revenue sharing.

B) – Remove the exemption for small consignments in respect of B2C supplies of goods from third countries.

Under this recommendation was proposed that the removal of the exemption could be supported by a OSS and a fast track customs procedure. It has been also proposed to cover consignments below the customs threshold (currently €150).

The EC considered that these recommendations have the potential to be a win-win for both businesses and MSs. For businesses, there will be a level playing field and reduced compliance costs, particularly for SMEs. For MSs, there will be a simpler legislative framework which may assist in ensuring that taxes are paid where due. It is also necessary to examine revenue sharing between MSs within the OSS, which will ensure that there is both an incentive and a responsibility to ensure that a business in one MS is properly accounts for the tax due in another MS. This would require trust and cooperation between the MSs.

### **5.2.2. Digital Single Market Strategy –VAT Measure**

On 16 December, 2014 the Juncker Commission adopted its 2015 Work Programme,<sup>355</sup> in line with the ten priorities of President Juncker’s Political Guidelines<sup>356</sup> for a new start and committed to make a real difference for jobs, growth and investment and bring concrete benefits for citizens.

President Juncker identified the completion of the DSM as one of the top ten priorities of his mandate as head of the EC.<sup>357</sup> The DSM strategy,<sup>358</sup> adopted on 6th May 2015, includes

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<sup>354</sup> Ibid., at pp. 37-39.

<sup>355</sup> European Commission. *Work programme of the Commission-Key documents*. Available at: [http://ec.europa.eu/atwork/key-documents/index\\_en.htm](http://ec.europa.eu/atwork/key-documents/index_en.htm) (accessed: 01/03/2016).

<sup>356</sup> European Commission. President Juncker’s Political Guidelines. Available at: [http://ec.europa.eu/priorities/docs/pg\\_en.pdf](http://ec.europa.eu/priorities/docs/pg_en.pdf) (accessed: 01/03/2016).

<sup>357</sup> European Commission. *10 Priorities*. Available at: [https://ec.europa.eu/priorities/index\\_en](https://ec.europa.eu/priorities/index_en) (accessed: 29/02/2016).

The Juncker Commission’s aim is to create a DSM, where the free movement of goods, persons, services and capital is ensured — and where citizens and businesses can seamlessly and fairly access online goods and services: whatever their nationality, and wherever they live.

<sup>358</sup> COM (2015) 192 final, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, A Digital Single Market Strategy for Europe, Brussels, 06.05.2015.

a set of 16 targeted key actions which will help make the Single Market fit for the digital age. It is built on three pillars,<sup>359</sup> as shown in *Table 6*.

**Table 6. VAT measure of the DSM strategy**

Three policy pillars
<p><b>Pillar I- Better access for consumers and businesses to digital goods and services across Europe.</b> Making sure the Internal Market is ready for the digital age with rapid actions and helping to ensure a single digital market by removing the barriers that hold back cross-border e-commerce.</p> <ul style="list-style-type: none"> <li>▪ <b>Action 8 – VAT Measure</b> Legislative proposals to reduce the administrative burden on businesses arising from different VAT regimes (to be delivered by Q4 2016).</li> </ul>
<p><b>Pillar II- Creating the right conditions and a level playing field for digital networks and innovative services to flourish.</b> Designing rules which match the pace of technology and support infrastructure development.</p>
<p><b>Pillar III- Maximising the growth potential of the digital economy.</b> Ensuring that Europe’s economy, industry and employment take full advantage of what digitalisation offers.</p>

*Source: SWD (2015) 100 final*

In the context of the DSM, the EC is working to reduce the administrative burden on businesses (engaged in cross-border e-commerce) arising from different VAT regimes.

It wants to provide a level playing field for EU companies and ensure that VAT revenues accrue to the MS where the consumption takes place.<sup>360</sup>

The EC made a commitment in the DSM strategy,<sup>361</sup> indicating that it will make a legislative proposal at the end of 2016 to minimise the administrative burden on businesses, especially on SMEs, arising from different VAT regimes. The proposal will aim to:

- I. Extend the current single electronic registration and payment mechanism to intra-EU and third country online sales of tangible goods;
- II. Introduce a common EU-wide simplification measure (VAT threshold) to help small start-up e-commerce businesses;
- III. Allow for home country controls including a single audit of cross-border businesses for VAT purposes;
- IV. Remove the VAT exemption for the importation of small consignments from suppliers in third countries.

<sup>359</sup> European Commission. *Press release, A Digital Single Market for Europe: Commission sets out 16 initiatives to make it happen*, Available at: [http://europa.eu/rapid/press-release\\_IP-15-4919\\_en.htm](http://europa.eu/rapid/press-release_IP-15-4919_en.htm) (accessed: 28/02/2016).

<sup>360</sup> European Commission. *Press release: Modernising VAT for cross-border e-commerce: Commission launches public consultation*, Available at: [http://europa.eu/rapid/press-release\\_IP-15-5719\\_en.htm](http://europa.eu/rapid/press-release_IP-15-5719_en.htm) (accessed: 29/02/2016).

<sup>361</sup> COM (2015) 192 final, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, A Digital Single Market Strategy for Europe, Brussels, 06.05.2015, p. 9.

The initiative is also part of the Regulatory Fitness and Performance Programme<sup>362</sup> (REFIT), aimed to make EU law simpler and reduce regulatory costs, thereby contributing to a clear, stable and predictable regulatory framework to support growth and jobs.

Undoubtedly, the years 2016-2017 will determine whether Europe creates a digital roadmap to support competitiveness and growth or slips into digital mediocrity.<sup>363</sup> By creating a connected DSM, an additional growth of €250 billion can be generated in Europe in the course of the mandate of the Juncker Commission.<sup>364</sup>

### 5.2.3. Update on EU Commission's work on VAT

On 27 October, 2015 the Juncker Commission adopted its second Work Programme for 2016,<sup>365</sup> which indicates the Commission's plans for VAT initiatives over the coming period. The VAT featured in two of their priority areas.

The first of these, priority 2. "A *Connected Digital Single Market*", proposed modernising VAT rules for e-commerce. The second, priority 4. "A *Deeper and Fairer Internal Market with a Strengthened Industrial Base*", included an Action Plan on VAT,<sup>366</sup> which was presented by the EC on 7 April, 2016. The Action Plan sets out four key actions, as shown in *Table 7*.

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<sup>362</sup> COM (2014) 910 final, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Commission Work Programme 2015, Brussels, 16.12.2014, Annex 3. The assessment of the implementation of the Mini One Stop Shop (2008/8/EC) is part of the REFIT actions as listed in the Annex 3 to the 2015 Commission Work Programme. In the 2016 Commission Work Programme there're 40 REFIT actions, including in key areas such as VAT or the Digital Single Market.

<sup>363</sup> World Economic Forum (2016b). White Paper. *Europe: what to watch out for in 2016-2017*, p. 8.

<sup>364</sup> COM (2015) 610 final, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Commission Work Programme 2016, Strasbourg, 27.10.2015.

<sup>365</sup> *Id.*

<sup>366</sup> European Commission. *Action Plan on VAT*. Available at: [http://ec.europa.eu/taxation\\_customs/taxation/vat/action\\_plan/index\\_en.htm](http://ec.europa.eu/taxation_customs/taxation/vat/action_plan/index_en.htm) (accessed: 09/04/2016).

**Table 7. Action plan on VAT**

Action Plan on VAT			
Recent and ongoing policy initiatives	Urgent measures to tackle the VAT gap	Towards a robust single European VAT area	Towards a modernised VAT rates policy
Removing VAT obstacles to e-commerce in the Single Market + SMEs VAT package	Improving cooperation within the EU and with non-EU countries  Towards more efficient tax administrations  Improving voluntary compliance  Tax collection	Definitive VAT regime for cross-border trade	More freedom for Member States on rates policies.

Source: European Commission (2016)

Forthcoming measures in 2016 include proposals to adapt the VAT system to the digital economy, removing VAT obstacles to cross-border e-commerce and specific measures for e-publications (for further details see Section 5.3).

#### 5.2.4. Pathway to the 2016 legislative proposal

The necessary preparatory work for bringing forward concrete legislative proposals for the VAT measures aligned with the DSM strategy is currently ongoing. The vast majority of MSs are broadly in favour of the proposal in the DSM, as are business representatives. *Figure 8.* below highlights the EC's approach to extensive data collection necessary to underpin the impact assessment with the expectations that the results will feed into the preparations for the future legislative proposal.<sup>367</sup>

**Figure 8. Pathway to the 2016 legislative proposal**



Source: Inception Impact Assessment, European Commission (2015)

<sup>367</sup> Raponi, D. (2015). Presentation on "VAT and the Digital Economy".

Fiscalis 2020 Seminar on "Modernising VAT for cross-border e-commerce" 7-9. September 2015, Dublin. Available at: [http://ec.europa.eu/taxation\\_customs/resources/documents/taxation/vat/digital\\_single\\_market/commission\\_presentation.pdf](http://ec.europa.eu/taxation_customs/resources/documents/taxation/vat/digital_single_market/commission_presentation.pdf) (accessed: 29/02/2016).

The legislative proposals expected towards the end of 2016 should bring the following benefits for businesses:<sup>368</sup>

***Simplicity*** – Business only has to deal with one tax administration, which in itself a significant simplification. Engaging in cross-border B2C trade should be made as easy as possible, particularly in the start-up phase for SMEs operating cross-border in the digital sector. A simplified VAT legislation brings certainty for business and tax authorities. Simplification of the VAT rules will reduce administrative burden on business.

***A level playing field*** – There should not be difference in VAT treatment between goods ordered from websites in third countries, other MSs or domestically. The same rules should apply to goods and services.

***Legal certainty*** – There should be clear legislation and supporting measures to provide certainty for business and allow business to confidently plan for engaging in cross-border e-commerce.

### ***Deloitte Study***

Given the commitment in the 2011 Communication and the complementary recommendations of the Expert Group, the EC considered that it was time to carry out an in-depth study on (i) the widening of the MOSS to all supplies of intra-EU B2C goods and services, with particular emphasis on e-commerce transactions, (ii) the elimination of the VAT exemption for the importation of small consignments and (iii) the elimination of the current registration thresholds for intra-EU B2C supplies of goods. The overall objective is to reduce the administrative burden on trade and remove distortion of competition.

In December 2014, the EC appointed Deloitte to carry out a comprehensive study on the "VAT aspects of cross-border e-commerce - Options for modernisation". The final report will be completed by mid 2016 and should enable the EC to come up with a legislative proposal by late 2016. The ongoing study consists of three parts:

***Part 1*** – Undertake an in-depth economic analysis on VAT aspects of e-commerce.

***Part 2*** – Prepare an analysis of costs, benefits, opportunities and risks in respect of the policy options for the modernisation of the VAT aspects of cross-border e-commerce, which leads to the application of an impact assessment methodology, duly adopted to the specific needs of the topic.

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<sup>368</sup> European Commission. *Inception Impact Assessment*, p. 4.

Available at: [http://ec.europa.eu/smartregulation/roadmaps/docs/2016\\_taxud\\_002\\_ia\\_vat\\_en.pdf](http://ec.europa.eu/smartregulation/roadmaps/docs/2016_taxud_002_ia_vat_en.pdf) (accessed: 06/03/2016).

The first task consists of the problem analysis for the current VAT application rules on goods and services supplied via e-commerce across the EU and the implications of the policy options elaborated.

The second task focuses on assessing the expected impacts of the selected policy options across the main policy dimensions (financial, economic, social, geographical, legal, environmental and extra-EU) as well as potential trade-offs and synergies. Furthermore, it aims at addressing the problems and barriers identified as well as new problems that may emerge.

The Deloitte team carries out an impact assessment analysis<sup>369</sup> in order to facilitate the EC’s work (DGTAXUD-Unit C1, in particular) in preparing the future policy on VAT aspects of cross-border e-commerce. The *Figure 9.* below presents six steps that compose any Impact Assessment and is in line with Deloitte’s approach to assessing the impacts of the policy options.

**Figure 9. Steps of Impact Assessment**



Source: Impact Assessment Guidelines, European Commission (2015)

Six policy options -one status quo and five proposed changes<sup>370</sup>- were formulated for the analysis, after a design process that took into consideration inputs from a number of sources, including stakeholder’s views and concerns, EC’s internal debate and other policy initiatives at EU level, such as the DSM strategy. *Table 8.* below summarises the six policy options. In principle, the identification of impacts of the five policy options is done in comparison with the status quo.

<sup>369</sup> Deloitte carried out the study based on the EC’s Impact Assessment Guidelines. European Commission. *Better Regulation, Impact Assessment.* Available at: [http://ec.europa.eu/smart-regulation/impact/index\\_en.htm](http://ec.europa.eu/smart-regulation/impact/index_en.htm) (accessed:29/02/2016). European Commission. *Better Regulation, Tool 16: Identification/Screening of Impacts.* See also [http://ec.europa.eu/smart-regulation/guidelines/tool\\_16\\_en.htm](http://ec.europa.eu/smart-regulation/guidelines/tool_16_en.htm) (accessed: 29/02/2016).

<sup>370</sup> These five changes departed from a common starting point of removing the small consignment exemption for imports up to a maximum intrinsic value between €10 and €22 and balanced the increasing complexity of e-commerce transactions with mitigating measures, such as a fast track customs procedure or simplified customs procedure and a Single Electronic Mechanism applying to all imports of goods (B2C) under the customs threshold of €150.

**Table 8. Overview of the policy options**

Status Quo
<b>Option 1:</b> Status Quo- 2015 PoS rules, MOSS, current distance sales thresholds for goods, no threshold for intra-EU supplies of services, VAT exemption for the importation of small consignments into the EU (€10-22 with option to exclude mail order/e-commerce supplies), no simplification for B2C imports of goods above the small consignments exemption and below the customs exemption of €150 (does not introduce any change with respect to the current framework).
Policy changes
<b>Option 2:</b> Removal of the distance sales thresholds and the small consignment exemption (no simplification).
<b>Option 3:</b> Option 2 but with the introduction of a common cross-border VAT exemption threshold for EU sales of both goods and services (€5,000 or €10,000 <sup>371</sup> ) – which would come in addition to the existing domestic thresholds (up to € 114 000).
<b>Option 4:</b> Option 3 plus Single Electronic Mechanism applying to intra-EU supplies of goods and services and to the import of all goods under the customs threshold of €150 <sup>372</sup> .
<b>Option 5:</b> Option 4 plus amendments to the Single Electronic Mechanism (home country legislation and home country control, subject to applying rate/exemptions of the Member State of Consumption).
<b>Option 6:</b> Option 4 plus fully harmonised EU rules for Single Electronic Mechanism, subject to applying the rates/exemption of the Member State of Consumption.

*Source:* Inception Impact Assessment- Option Mapping, European Commission (2015)

The final output will be a thorough analysis and assessment of the impacts of the policy options identified, as well as their strengths and weaknesses.

**Part 3** – Make an ex-post assessment of the implementation of the 2015 PoS rules and the MOSS, and identify best practices and room for possible improvements.

The preliminary results of the ongoing Deloitte study and other recent research underlines the business case for the proposal in 2016, as the current system is: complex and costly; there is a lack of certainty for business; it is not neutral; and there are compliance risks and losses for MSs.

### ***Fiscalis 2020 Seminar***

In preparing for the future legislative proposal due late 2016, the EC organised a seminar on *”Modernising VAT for cross-border e-commerce”* on 7- 9th September 2015 in Dublin hosted by the Irish Revenue Commissioners.<sup>373</sup> The three-day event brought together senior tax officials from MSs and some non-EU countries, business representatives from

<sup>371</sup> This threshold cannot be sector specific but the main beneficiaries will be small e-commerce start-ups.

<sup>372</sup> With three options offered to business on import: supplier registration, intermediary registration or simplified customs declaration.

<sup>373</sup> Irish Revenue Commissioners. *Agenda of the Fiscalis 2020 Seminar on Modernising VAT for cross-border e-commerce*. Available at [http://ec.europa.eu/taxation\\_customs/resources/documents/taxation/vat/digital\\_single\\_market/agenda.pdf](http://ec.europa.eu/taxation_customs/resources/documents/taxation/vat/digital_single_market/agenda.pdf) (accessed: 29/02/2016).

major e-Commerce companies, tax advisors from the Big4 firms, the OECD, industry bodies<sup>374</sup> and campaigners<sup>375</sup> to review the implementation of the 2015 changes to the PoS rules, the accompanying MOSS as well as the future policy orientation of the EC as outlined in the DSM strategy. The results of the seminar feeds into the ongoing Deloitte study.

### ***Public Consultation***

On 25th September 2015 the EC launched a public consultation on “*Modernising VAT for cross-border e-commerce*” to collect a wide range of views from business owners and other interested parties in the following matters:

1. Current VAT rules for B2C cross-border supplies of goods and services;
2. Implementation of the 2015 changes to VAT PoS rules for B2C supplies of TBE-services and the associated MOSS;
3. The EC’s commitment, as part of “A DSM strategy for Europe”

The consultation ended on 18 December 2015 and the results are already published on the EC’s website. The results will be supporting the preparations for the 2016 legislative proposal, as part of the DSM strategy.

### ***Impact Assessment and legislative proposal***

Impact Assessments and ex-post evaluations are required under the Better Regulation Agenda. The ongoing Deloitte study, the output of the Fiscalis 2020 Seminar and the results of the Public Consultation will feed into this process. The legislative proposal will be made in late 2016 and remains a high priority for the EC.

## **5.3. VAT priorities for 2016 and beyond**

At the “*Future of VAT Roundtable*” meeting, organised by FEE in February 2016,<sup>376</sup> Donato Raponi, EC’s Head of VAT Unit/DGTAXUD outlined the EC’s plans for VAT initiatives under the envisaged VAT Action Plan.<sup>377</sup>

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<sup>374</sup> Such as, Business Europe, the American Chamber of Commerce to the EU (AmCham EU), European Association of Craft, Small and Medium-sized Enterprises (UAPME), Tax Executives Institute in Europe (TEI Europe).

<sup>375</sup> Such as Clare Josa on behalf of EU VAT Action.

<sup>376</sup> Federation of European Accountants (2016). *Future of VAT Roundtable. Time for Action!*, 18 February, 2016, Brussels. Available at: <http://www.fee.be/library/list/51-tax-policy/1547-160218-future-vat-roundtable.html> and see report at: [http://www.fee.be/images/publications/Tax\\_policy/160218\\_Summary\\_VAT\\_RT.pdf](http://www.fee.be/images/publications/Tax_policy/160218_Summary_VAT_RT.pdf) (accessed: 29/03/2016).

<sup>377</sup> See Table 7. above.



The EC will seek to establish the direction of the definitive VAT regime<sup>378</sup> in late 2016 with a view to publish a proposal in 2017. A recently commissioned Ernst & Young study on *”Implementing the destination principle to intra-EU B2B supplies of goods”* analysed five policy options,<sup>379</sup> and ultimately narrowed the options down to two. The first option is to tax B2B supplies within the EU in the same way as domestic supplies with tax revenues being paid and distributed through an extended OSS structure. The second option is to apply a general reverse charge mechanism for all B2B supplies. The EC also wants to review the legislation governing VAT rates to provide greater flexibility to MSs as we move to a destination system of taxation and remove the unfair competitive advantage that low rates can provide. In regard to the digital economy, the EC will publish a proposal by the end of 2016 to extend the OSS mechanism to all B2C supplies of goods and possibly services, to introduce EU-wide simplification measures such as a VAT threshold for micro start-up businesses, to allow for home-country audits by MSs and remove the VAT and customs exemption for imports of small consignments from non-EU suppliers. They will also assess possible action with regard to new business models in the sharing economy which poses particular challenges from a VAT perspective.<sup>380</sup> Preparatory work has already commenced to evaluate the VAT regime in the EU for SME’s with a EC proposal to be published in 2017. Finally, the EC will put forward a proposal concerning public bodies in 2017 and will publish proposals to improve administrative cooperation and to strengthen the capacity of tax administrations to fight fraud.

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<sup>378</sup> Raponi, D. (2015). Presentation on *”VAT and the Digital Economy”*. Fiscalis 2020 Seminar on *”Modernising VAT for cross-border e-commerce”*, 7-9. September 2015, Dublin. Available at: [http://ec.europa.eu/taxation\\_customs/resources/documents/taxation/vat/digital\\_single\\_market/commission\\_presentation.pdf](http://ec.europa.eu/taxation_customs/resources/documents/taxation/vat/digital_single_market/commission_presentation.pdf) (accessed: 29/02/2016).

<sup>379</sup> The EY study analyses five policy options (*Option 1*: Limited improvement of the current rules, *Option 2*: Taxation following the flow of the goods, *Option 3*: Reverse charge following the flow of the goods, *Option 4*: Reverse charge where customer is established, *Option 5*: Taxation following the contractual flow).

<sup>380</sup> European Commission (2015f) Value Added Tax Committee. *VAT treatment of sharing economy*, Working Paper No. 878.

## **Chapter 6. Final Conclusions**

### **6.1. Conclusions**

The general purpose of this thesis was to provide a brief overview of the past, present and future of the EU VAT system in the context of the growing importance of the digital economy. The more specific aims were: 1.) to make an ex-ante and ex-post impact assessment of the 2015 PoS rules for B2C supplies of TBE services and the MOSS on the different stakeholders, 2.) to identify the advantages and shortcomings of the current system and 3.) to make recommendations for the potential improvements to be taken into account in any future reform.

This thesis evaluated the success or otherwise of the new PoS rules by using four different but interconnected research questions as follows: (1) what was the EC's motivation for amending the VAT rules for B2C cross-border supplies of TBE services and the accompanying MOSS scheme from 1 January 2015?; (2) had businesses prepared sufficiently to implement these new rules?; (3) what is the reaction of the various stakeholders to the 2015 PoS rules and MOSS implementation and what are the advantages and disadvantages they have identified?; (4) what policy and administrative amendments have stakeholders identified that should influence future policy and legislative proposals?

The research project was based on a qualitative research methodology in order to enrich our understanding of the implications of the 2015 PoS rule changes and to give us an inside view into the possible impacts of these rules on the MSs, businesses and Member State tax administrations. The research questions were evaluated by applying three types of qualitative research methods: archival analysis, ethnography (participant observation), and stakeholder analysis. The collection of comprehensive data necessary to underpin the impact assessment proved to be the most challenging part of this study. In order to support the impact assessment process, a multi-method approach was adopted to gather robust data. The primary data collection was built on a targeted consultation of stakeholders, which included: traineeship experience, semi-structured interview, survey questionnaire, telephone interview, VAT roundtable meeting, etc. Secondary data sources were utilized to assist with the impact assessment and further refine the main findings.

Relating to the EC's motivation behind the 2015 PoS rule changes with the supporting MOSS system the following facts were revealed:

The obligations for non-EU traders supplying TBE services into the EU had already existed since 2003. That was based on OECD e-commerce guidelines which also date back to 2003. This illustrates the cooperation that the OECD has had with the EC. The 2015 PoS changes just made the third country aspects - non-EU aspects - more prominent because of the level playing field now within the EU. Businesses within the EU need to comply with these regulations but an issue for Tax Administrations is how to make these third country businesses compliant. A broader picture was taken in the next section which also describes the evolution of the PoS rules concerning B2C supplies of digital services during the period of 1998-2015.

With regard to the readiness of businesses prior to the 2015 PoS rule changes, the ex-ante impact assessment highlighted the following issues:

While larger businesses generally prepared for the 2015 changes well in advance, a number of smaller and less well-resourced businesses faced difficulties with the introduction of the new rules. To analyse the readiness of larger businesses for the rule changes prior to 1 January 2015, an ex-ante qualitative research was carried out using a survey questionnaire sent out to the Big4s in Dublin. The feedback given by the Big4 firms' clients (who are some of the world's largest suppliers of electronically supplied services) confirmed the fact that larger businesses examined their supply chain contracts to ensure that they had the proper legal, accounting, pricing and compliance structures in place.

The main findings of the ex-post impact assessment undertaken are summarised below:

### ***Assessment of the 2015 place of supply rules***

Since 1 January 2015, with the coming into effect of the new PoS rules, VAT on all TBE services is taxed where the customer is based rather than where the supplier is located. The ex-post qualitative assessment of the impact of the 2015 PoS rule changes on the MSs, businesses and tax administrations aimed to evaluate the effectiveness of the implementation and application of the new rules and to identify best practices, issues and room for improvement.

### ***Member States' perspective***

The findings from the impact assessment on MSs were mainly related to the implementation of necessary legislative changes as well as the supporting guidance and communication of the changes to taxpayers. The key findings were as follows:

The legislative implementation of the PoS changes was timely and generally successful and in most cases the legislation was accompanied with administrative guidance. The MSs have started to identify mismatches in the national interpretation or in the application of the rules. EU level discussions or further guidance may help to reduce such mismatches or find a way to address the consequences. There was high appreciation for the EC's active role in providing further guidance on the interpretation of the new rules. The MSs used a wide range of communication channels to promote the new rules. However, there may be some scope for improvements regarding tailoring the communication for specific groups of businesses (especially micro-businesses).

### ***Businesses' perspective***

The assessment showed that the impact of the 2015 PoS rules on businesses depended on the size, business model and the nature of supplies. The general conclusion was that SMEs, especially micro-businesses, were affected by the new rules more significantly than larger companies and were struggling with the application of the new rules. Therefore, to make life easier for SMEs and micro-businesses, further simplification measures on VAT rules (e.g. evidence requirements, appropriate threshold) should be considered. The 2015 PoS rules were widely accepted as the principle of taxation in the country of consumption and were seen as fair in helping to create a level playing field for businesses. However, the current system is regarded as being fragmented because of differing interpretations of the VAT Directive and differing administrative practices across the 28 MS. This can discourage businesses, especially smaller businesses, from expanding their operations across borders. Regarding the implementation of the 2015 PoS rules, the majority of businesses had to adapt their cross-border sales and related processes. Despite some negative reactions in the UK, businesses found the EC's and MS's communication strategies sufficient both at national and EU level. The EC's explanatory notes were considered helpful, but quite technical (especially for small businesses). Other main findings of the assessment were as follows:

Regarding the customer status (B2B or B2C), the business systems rely mostly on assumptions (e.g. checking the VAT registration number or assuming a B2C supply due to the nature of the supply) and correcting the transaction post sales when challenged by a business

customer. In terms of determining the customer location, the majority of suppliers relied on the two pieces of non-contradictory evidence, which posed difficulties for some businesses. The presumption that the tax obligation lies with the intermediary (unless rebutted) when trading through a platform or marketplace (Article 9a of the Implementing Regulation (EU) No. 1042/2013) was considered a critical issue for businesses. Intermediaries (app stores and marketplaces) have mixed reactions to the presumption, depending on their business model. Although for most companies the qualification of their services as an electronically supplied service was fairly straightforward, some businesses were struggling with it, especially those supplying services which may be either taxed under new rules or exempt (e-learning, gaming) and where national rules tend to differ.

### ***Tax administrations' perspective***

Member State tax administrations adopted a proactive approach to make it easier for businesses to meet their tax obligations, which was regarded as being critical. Communication and education of taxpayers was critical in Revenue's awareness campaign and this eased some of the concerns of businesses. Obviously, there are broader issues and problems which will have to be tackled on a pan-European basis that no MS can address in isolation. If tax authorities develop strategies to make it easy for businesses to comply with digital regulations, they should see a corresponding return in increased revenue and a reduction in negative feedback. Inconsistent and uncoordinated implementations by MSs might lead to legal uncertainty for taxpayers, the possibility of double taxation and potential controversy.

### ***Assessment of the Mini One Stop Shop***

The MOSS scheme was implemented as an administrative simplification for the 2015 PoS changes allowing the supplier to report its cross-border B2C supplies of TBE services through an electronic portal in the MS where it is established (or in case of a non-EU supplier, in a MS of its choice). The ex-post qualitative impact assessment of the implementation and the application of the MOSS relating to the MSs, businesses and tax administrations are detailed below.

### ***Member States' perspective***

The impact assessment on MSs in general concluded that the launch of the MOSS has been successful and that the MOSS system functions well. There was some evidence of "teething" problems, such as the issues around registrations and related communications.

However, these concerns did not seem significant and could be easily addressed in the short term. The support of the EC during the implementation process was very much appreciated by the MSs. Other key findings of the assessment were as follows:

The number of registrations for the MOSS (13,000) did not reflect the reality of the uptake of the MOSS as many businesses supplying cross-border e-services were complying through intermediaries/platforms. The main problems identified in relation to the MOSS were in fact linked to its design, scope or limitations, such as the application to TBE services only, lack of a threshold, the exclusion of input VAT deductions or the revenue sharing mechanism which received mixed reaction from the MSs. The assessment identified a list of mostly operational issues which may be addressed in the medium term, such as the MOSS return correction procedure, a review of the currency exchange principles, a de minimis for transfers of funds between MSs or other simplifications on payments and reimbursement processes.

### ***Businesses' perspective***

Similarly, from a business perspective it can be established that the launch of the MOSS has been successful. As a reporting tool, the MOSS does run smoothly and eases the administrative burden for businesses supplying B2C TBE services. However, for SMEs and micro-businesses even this lower administrative burden seemed difficult to overcome. The businesses' reaction relating to the MOSS registrations were very positive, although MSs indicated that there was a learning curve.

The issues identified relating to the MOSS registrations were as follows:

Businesses were somewhat uncertain whether supplies fell into the scope of the MOSS, which was mostly a problem for smaller and micro companies. The lack of the ability to register retroactively was considered to be a disproportionate burden. The fact that non-EU suppliers can not use the MOSS if they already have a local registration is likely to cause problems with compliance.

Regarding the MOSS system itself, it was generally considered easy and convenient to use, as only one single VAT return and one single payment is required to be made. The system is, however, not without its flaws and there are operational elements which could be simplified, such as the treatment of credit notes and currency conversions, the possibility of providing notifications and balance statements by the portal and the storage period for the MOSS documentation. The EC's forthcoming proposal to extend the OSS to cross-border supplies of goods should provide an opportunity to address these issues.

### *Tax administrations' perspective*

While the MOSS clearly reduces the compliance burden, its operation is not free from flaws. Compliance costs for taxpayers and administrative costs for tax authorities should be minimized as far as possible to increase its appeal and effectiveness. Limitations of existing information exchange/mutual administrative assistance, particularly where the identity or location of online traders or account holders is hidden, anonymised, or only partly known, is problematic. Lack of appropriate Memorandum of Understanding (MOU) with key third country jurisdictions (particularly China) needs to be addressed as quickly as possible. Enforcing the OSS regime is difficult in a digital context where multiple transactions are carried out anonymously. Tax authorities have limited possibilities to sanction third-country suppliers who fail to register and report their supplies to EU customers. It is questionable whether the fact that VAT collection in third-country scenarios is reliant on voluntary compliance by non-EU suppliers is acceptable for EU suppliers and MS's budgets from a neutrality and competition perspective in the long run. Without effective supervision and enforcement, there is a risk of non-taxation that threatens to distort competition. For the time being, compliance depends on the willingness of suppliers in third countries to assume their legal obligations as part of a good corporate governance. The final report of the Commission's Expert Group on Taxation of the Digital Economy suggested that tax treaty provisions should be extended to include consumption taxes and that the OECD Model should be amended accordingly. From an EU perspective, the most effective solution would be an agreement between the EU and a third country that would solve the problems of non-taxation or double taxation of transactions. The Group also considered that consumption taxes should be included in exchange of information clauses in tax treaties. However, to be able to exchange information or request assistance, tax authorities must first be in possession of relevant information. Tax authorities have limited or no possibilities to obtain information from foreign companies if their efforts are not supported by the foreign tax administration. Without administrative assistance in tax matters, the destination principle can not be effectively applied.

In summary, the common VAT system plays an important role in Europe's Single Market. VAT is a major and growing source of tax revenue for the EU Member States, raising almost €1 trillion in 2014, corresponding to 7% of EU GDP. Yet, almost €170 billion in VAT revenue was lost in 2013 according to the EC's VAT gap study across all 28 MSs. On 7 April, 2016 the EC adopted the Action Plan on VAT, which sets out immediate and urgent measures to tackle the VAT gap and adapt the system to the digital economy and the needs of SMEs.

The current VAT system has been unable to keep pace with the challenges of today's global, digital and mobile economy. It is also struggling to address technological and economic developments as well as innovative business models. For example, different VAT rates apply to e-books and electronic newspapers because they can not benefit from the reduced rates available for physical publications. This issue will be addressed in the context of the DSM strategy.

The current VAT system for cross-border e-commerce is complex, fragmented and costly. More generally, SMEs bear proportionally higher VAT compliance costs than large businesses due to the complexity and fragmentation of the EU VAT system. There is a lack of certainty for businesses, it is not neutral and there are compliance risks and losses for MSs. Moreover, EU businesses are at a competitive disadvantage as certain non-EU traders can supply VAT-free goods to EU consumers under the low-value consignments relief. The complexity of the system also makes it difficult for MS tax administrations to ensure compliance with costs estimated around €3billion annually. The EC will come forward by the end of 2016 with a legislative proposal to modernise and simplify VAT for cross-border e-commerce as part of the DSM strategy. The EC is also preparing a comprehensive simplification package for SMEs that will seek to create an environment that is conducive to their growth and is more favourable to cross-border trade.

The Action Plan on VAT also provides clear longer-term focus on the definitive VAT system and a proposal will be published in Q4 2016 for discussion at Council

The current VAT rules for cross-border trade between businesses in the EU Member States date back to 1993. At that time, they were intended to be transitional with the aim of arriving at a definitive VAT system based on the origin principle. Since then, VAT has increasingly developed into a system based on the destination principle. At international level, the destination principle is applied for taxing cross-border transactions which is the preferred policy option for achieving neutrality in international trade.

Overall, VAT rules need to be modernised and rebooted, not just to make the VAT system simpler, more robust and fraud-proof, but to ensure that businesses in all EU-28 can reap all benefits of the Single Market. The current system has proved difficult to reform and the requirement for unanimity between all MSs to change anything presents a serious challenge. Above all, political leadership is needed to overcome the deep-rooted obstacles that have blocked progress in the past and finally adopt the reforms needed to combat fraud, remove administrative barriers and reduce regulatory costs to simplify life for Europe's businesses. The European economy is at a pivotal moment and the EU regulatory system



needs to be fit for the twenty-first century that sets the right foundation for a prosperous and competitive European Digital Economy.

## **6.2. Contributions**

The traineeship experience in DGTAXUD/Unit C1-VAT, in the EC played a central role in the extensive qualitative research undertaken. As the academic researchers have recently been less inspired by the 2015 PoS rules and the MOSS, this thesis intends to share all the relevant first-hand information, statistics, inside views gathered about the research topic with the academia, tax researcher and tax practitioner community.

## **6.3. Limitations**

The collection of primary data necessary to underpin the impact assessment was the most challenging part of this thesis. The list of selected countries (BE, IE, PT, UK, and one Nordic country) for the qualitative data gathering (semi-structured interview, survey questionnaire, telephone interview, participation as a "research trainee" in several meetings during the short-term traineeship in the EC) was very limited and it was mainly based on personal contacts, which on the one hand helped to overcome the potential limitations of a qualitative research but on the other hand was restricted to only four MSs. Furthermore, Big4 firms in Portugal could not provide any information relating to the implementation and application of the MOSS system, simply because their clients have already been registered for VAT or have not been affected by the new VAT rules. Due to confidentiality, gathering data, statistics or inside views from any European tax administrations in general is a difficult task. This fact was confirmed when one auditor in a Nordic country indicated that his contribution regarding the 2015 PoS rules should be published anonymously.

## **6.4. Future investigations**

As the digital economy grows we need more data and analysis to build the best policies. Sound measurement is crucial for policy making. It helps policy makers to evaluate the efficiency of their actions and to reinforce the accountability of public interventions. During the data collection phase it was, however, established that the academic literature has recently been less inspired by the measurement of the digital economy, moreover it is poorly

measured. In the light of the above, further investigations could be performed in this area. With the emergence of the digital economy, relatively new but rapidly growing phenomena such as crowdfunding and the sharing economy have appeared and their VAT impact needs careful study to complement the published EC position papers (VAT Committee Working Papers No. 836 and 878).



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## Annexes

### Annex 1. Semi structured interview with the Portuguese Tax & Customs Administration

Table 9. Semi-structured interview

<b>Organization/Department</b>	<b>Portuguese Tax &amp; Customs Administration/Center for Fiscal and Customs Studies.</b>
<b>Interview person</b>	Cidália Lança (International Relations)
<b>Topic</b>	Implementation of the 2015 EU VAT changes to the Place of Supply (PoS) rules and the Mini-One-Stop-Shop (MOSS).
<b>Contact</b>	Tel.: + 351 21 885 43 65. Fax: + 351 21 886 76 57. E-mail: <i>cef@at.gov.pt</i>
<b>Date</b>	30th November 2015
<b>Place</b>	1100-016 Lisbon, Rua da Alfândega 5-1º

**Question 1.** *What was the experience of the Portuguese Tax Administration with the implementation of the 2015 EU VAT changes to the PoS rules?*

**Reply 1.** In general, we had a positive experience. The implementation of the 2015 changes took place smoothly. In December 2014, by the Decree-Law n° 158/2014 of 24 October we transposed into our national legal system the provisions of art.5.º of the Council Directive 2008/8/EC of 12 February 2008 amending Directive 2006/112/EC of 28 November 2006 (VAT Directive) on the common system of value added tax, as regards the place of supply of services. The transposition of the provisions of art.5.º of Council Directive 2008/8/EC implies a new wording in art. 6.º of the Portuguese VAT Code, changing the B2C telecommunications, broadcasting and electronic services.

**Question 2.** *Was the implementation of the MOSS efficient and effective? If not, what problems did you experience?*

**Reply 2.** At the early stage of the launch of the MOSS, we had some technical IT issues relating to registration, submission of VAT returns, acceptance and processing of payments. We set up a steering and implementation group to manage the IT aspects of the MOSS system. We appointed two group members from each of our IT, Taxpayers Registration, Audit and Tax Collection Departments to support the system. Later on, we had MOSS IT related problems when exchanging information with other Member States. From a taxpayer perspective, some found the Commission's Web MOSS Portal confusing as it appeared to contain conflicting information. See MOSS Web Portal here:

[http://ec.europa.eu/taxation\\_customs/taxation/vat/how\\_vat\\_works/telecom/index\\_en.htm#new\\_rules](http://ec.europa.eu/taxation_customs/taxation/vat/how_vat_works/telecom/index_en.htm#new_rules)

**Question 3.** *What were the main challenges for businesses affected by the 2015 changes and the MOSS?*

**Reply 3.** Some small and medium-sized businesses were confused about whether their supplies were electronically supplied services (ESS). They sought guidance from the Tax Administration on the correct definition of an ESS. Other Businesses were unsure whether they had an economic activity within the meaning of the Directive before applying for MOSS registrations.

**Question 4.** *Could you please specify what type of ESS taxpayers mentioned?*

**Reply 4.** There were a lot of queries about online courses where the course content was transmitted electronically and whether this satisfied the definition of an ESS. We also had questions from other professionals such as translators simply because they were using the Internet to transmit the translated documents.

**Question 5.** *What other issues Portuguese taxpayers faced?*

**Reply 5.** Businesses asked us how to apply Article 9A of Council Regulation no. 1042/2013. They were curious about how they could over-ride the presumptions.

**Question 6.** *What seemed to be the most difficult problem for taxpayers to overcome?*

**Reply 6.** The “use and enjoyment” VAT rules (VAT Directive 2006/112/EC- Article 59a/ Point d) §12.º of Article 6 of the Portuguese VAT Code) proved to be quite complex to understand. In Portugal, TBE services provided by a supplier established in Portugal to a non-VAT taxable person established or domiciled outside of the EU are subject to Portuguese VAT when these are used and enjoyed in Portugal. The Portuguese Tax Authorities stated that TBE services supplied by taxable persons not established in the EU are liable at the standard VAT rate of 23% regardless of whether the customer is situated on the mainland or on the islands. However, this interpretation is in conflict with article 1 (3) of Decree-Law nr. 347/85 (dated 23 August 2015) which states that the VAT rate should be the one in force in these autonomous regions.

**Question 7.** *How the “use and enjoyment” VAT rule applies in practice? Please specify!*

**Reply 7.** There are many expatriates living in Portugal that own property and they often have a fixed line in their house. They have a contract with one of the TBE service providers and the issue is that the place of supply presumption under the 1042/2013 Implementing Regulation can conflict with local VAT place of supply legislation. A similar issue arises in relation to foreign SIM cards used in Portugal where the the place of supply is presumed to be in that other foreign country. We had many questions from TBE service providers about how the place of supply was determined and the rate of VAT that should be applied.

**Question 8.** *What was the experience with the MOSS audits?*

**Reply 8.** As we didn't carry out too many MOSS audits, it is too early to make any evaluation at this stage.

**Question 9.** *How many businesses were registered under the Union and non-Union MOSS schemes? Are there any preliminary data?*

**Reply 9.** Under the Union scheme we had around 40-50 registrations.

**Question 10.** *How does the MOSS registration work in practice (Union, non-Union schemes)?*

**Reply 10.** The registration for both schemes can be carried out electronically via the following website: <https://m1ss.portaldasfinancas.gov.pt/home.action>. For the Union scheme, in order to register, the taxable person must use its password and tax identification number. In the case of the non-Union scheme, the Portuguese Tax Administration will assign a password and a tax identification number to the taxable person. In Portugal, a VAT Agent can be appointed. However, in case of the non-Union scheme, taxable persons can allow an agent to act on their behalf only after the taxable person has registered for the MOSS and the agent can then use the username and password of the taxable person.

**Question 11.** *Invoice obligations in relation to TBE-services, how does it work in Portugal?*

**Reply 11.** In Portugal, the taxable person is required to issue an invoice with respect to TBE-services provided to non-VAT taxable persons /See VAT Directive 2006/112/EC-Articles 217-249, and in the Portuguese VAT Code please see in Article 29 (1) (b)/ However, this has been relaxed for taxable persons not established in Portugal, they are not required to issue an invoice for those supplies.

## Annex 2. Primary data collection

**Table 10. Primary data collection**

Activity	Date	Description
<b>Short-term traineeship in DGTAXUD/Unit C1-VAT, European Commission</b> <a href="http://ec.europa.eu/taxation_customs/index_en.htm">http://ec.europa.eu/taxation_customs/index_en.htm</a>	01/09/2015 - 31/10/2015	-Main purpose: collection of primary data on the research topic. -Provided first-hand information on: (1) VAT challenges of the Digital Economy; (2) Modernising VAT for cross-border e-commerce.
Unit C1 Meeting with Deloitte	08/09/2015	-VAT aspects of cross-border e-commerce/Options for modernisation. Final corrections on the Interim Report.
<b>Training by IBFD</b>	18/09/2015	-European VAT/Selected issues
Public Consultation on "Modernising VAT for cross-border e-commerce"	23/09/2015	-Provided assistance with the final version of the survey before its official release.
Electronic Invoicing-Semantic Data Model of the Core Elements of an Electronic Invoice (CEN)	24/09/2015	-So-called "proof reading"
<b>Ecommerce Europe</b> <a href="http://www.ecommerce-europe.eu/home">http://www.ecommerce-europe.eu/home</a>	25/09/2015	-Visit made to the Brussels Office. Data collection phase: statistics on cross-border e-commerce and minutes made by Ecommerce Europe on the Dublin Fiscalis 2020 Seminar.
Council Meeting- High Level Working Party (Taxation)	20/10/2015	-Base Erosion and Profit Shifting (BEPS) -Transfer Pricing, etc.
<b>Federation of European Accountants Future of VAT Roundtable</b> <a href="http://www.fee.be">www.fee.be</a>	21/10/2015	-Discussion about "The potential impact of changing the VAT place of supply rules." -Participants: European Commission, Irish Revenue Commissioners, UK MEP, Business Europe, Taxamo, Deloitte, Ernst & Young, Malta Chamber of SMEs, ACCA UK, etc.
105th meeting of the VAT Committee	26/10/2015	-VAT treatment of the sharing economy -Article 9a of the VAT Implementing Regulation -CJEU Case C-7/13 Skandia America -VAT grouping, etc.
<b>IBFD Training</b>	21/10/2015	-European VAT/Selected issues
4th Meeting of the SCAC-Expert Group on Administrative Cooperation in the field of VAT	26/10/2015	-Feedback from the Dublin Fiscalis 2020 Seminar. -Mini One Stop Shop: State of Play, 2015 web pages, future evolutions. -Recent ECJ cases: in relation to administrative cooperation and fight against fraud, etc.
<b>Semi-structured interview</b> with the Portuguese Tax & Customs Administration in Lisbon	30/11/2015	-Implementation of the 2015 place of supply rules and the MOSS. First experiences.
<b>Survey Questionnaires</b> sent out to Ernst & Young, KPMG and PwC in Dublin.	01/01/2016  07/04/2016	-Sending out the survey questionnaires  -Last reply received.
<b>Telephone interview</b> with the Irish Revenue Commissioners in Dublin (VAT Policy and Legislation Unit)	15/02/2016 20/04/2016	-Provided data on the Dublin Fiscalis 2020 Seminar. -Shared experience about the new 2015 place of supply rules and the MOSS, especially from a legislative aspect.

### Annex 3. Secondary data collection

**Table 11. Secondary data collection**

Activity	Date	Description
DGTAXUD's web portal <a href="http://ec.europa.eu/taxation_customs/taxation/vat/index_en.htm">http://ec.europa.eu/taxation_customs/taxation/vat/index_en.htm</a>	09/2015-04/2016	-Get an overall picture about the VAT field. -Update on the VAT legislation. -Press Releases on recent VAT actions.
CIRCABC <a href="https://circabc.europa.eu">https://circabc.europa.eu</a>	09/2015	-Overview of the VAT Committee's working documents, Minutes, Agendas.
Commission's Library <a href="http://ec.europa.eu/libraries/index_en.htm">http://ec.europa.eu/libraries/index_en.htm</a>	09/2015	-Scientific articles, paper books and e-books on VAT and the Digital Economy.
Commission's web portal for Telecoms, broadcasting and electronic services <a href="http://ec.europa.eu/taxation_customs/taxation/vat/how_vat_works/telecom/index_en.htm#new_rules">http://ec.europa.eu/taxation_customs/taxation/vat/how_vat_works/telecom/index_en.htm#new_rules</a>	09/2015-04/2016	-Keep updated about the Commission's activity in this field.
Eurostat, Eurobarometers	01/2016	-Statistics on cross-border e-commerce.
International Organisations' website e.g. OECD, IMF, WEF	10/2015-04/2016	-Keep updated about the international VAT aspects, digital economy trends and statistics.
IBFD Tax Research Platform <a href="http://online.ibfd.org/kbase/">http://online.ibfd.org/kbase/</a>	09/2015-04/2016	-Following the latest articles related to VAT and the Digital Economy.
CJEU- Recent Developments in VAT 2014	09/2015	-CJEU cases on e-books.
European Taxation Journal, International VAT Monitor, World Tax Journal	10/2015	-Latest articles on VAT.
Pernilla Rendahl (2009). <i>Cross-Border Consumption Taxation of Digital Supplies</i> , Vol.18, Doctoral Series, IBFD-Academic Council Bal, A. (2014). <i>Taxation of virtual currency</i> . Leiden University Repository.	10/2015	-Previous academic works/theses on VAT and the Digital Economy.
Business Europe, <a href="http://www.businesseurope.eu">www.businesseurope.eu</a> American Chamber of Commerce to the EU <a href="http://www.amchameu.eu">www.amchameu.eu</a> Tax Executives Institute, Inc./TEI EMEA Chapter, <a href="http://www.tei.org">www.tei.org</a>	01/2016	-Publications/Position papers. -Position on the Tax Challenges of the Digital Economy. -Website information.
Website of European Tax Administrations (HMRC, Hungarian, Portuguese, Irish Tax Administrations) <a href="https://www.gov.uk/topic/business-tax/vat">https://www.gov.uk/topic/business-tax/vat</a> <a href="http://www.nav.gov.hu">www.nav.gov.hu</a> <a href="http://www.portaldasfinancas.pt">www.portaldasfinancas.pt</a> <a href="http://www.revenue.ie">www.revenue.ie</a>		-Website information on the 2015 PoS rule changes and the MOSS communication.



**SURVEY QUESTIONNAIRE**  
on the 2015 place of supply changes & MOSS  
Reply given by **Ernst & Young (Dublin, Ireland)**  
Contact person: **Breen Cassidy, Partner Indirect Tax Services**  
Date of reply: 07-04-2016

**QUESTIONS: How ready were businesses prior to 1 January 2015?**

**Five checklist items:**

- ❖ **Pricing:** universal vs. dynamic pricing? Key driver here is to protect revenues and profit margins.

**How did EY's clients decide? Did they retain or change their pricing strategies?**

*The answer to this question and the next are connected. Some businesses altered their systems to calculate the exact amount of VAT per country by inputting the appropriate VAT rate.*

*Quite a few of the bigger companies trading all over Europe applied a notional VAT rate on the price and charged one price to customers all over Europe. . A number used a notional rate of 20/22%. The companies then took in say €100 which was treated as VAT inclusive. The correct amount of VAT is calculated and paid over to the Member State.*

**Can you estimate how many % of businesses changed/didn't change their pricing structures?**

*It is hard to estimate but as volume sales I would say 40% used a notional VAT rate.*

- ❖ **Systems functionality:** systems changes were required to be designed, implemented and tested ahead of 2015 to ensure timely, accurate and efficient management of VAT across multiple countries. Systems must recognize the customer's country and apply the correct rate of VAT. The system Logic or Tax Logic that allows the system to select the place of supply is critical.

**Did clients develop new systems in-house or was this service bought in?**

*In my experience most clients developed new systems in-house.*

- ❖ **Contracts:** existing contracts needed to be reviewed or renegotiated to ensure that the VAT accounting responsibilities of each party were clearly defined.

**Did the 2015 Article 9a (Council Implementing Regulation (EU) No.1042/2013) changes lead to the renegotiation and restructuring of supply chains? Invoicing issues (above and below the line), commissionaires and agents becoming principles?**

*In my experience there was not a significant amount of re-organisations in the context of agent/principals etc.*

- ❖ **Corporate structure:** it was necessary for business to consider whether their corporate structure was appropriate for 2015 from a commercial and tax perspective and review the potential to relocate to countries that are "open for business".

**Did clients restructure internally or physically in advance of 2015? What were the main reasons for doing so?**

*I certainly noted that a lot of companies relocated from Luxembourg to Ireland. A number reorganised from using a US entity to an EU entity for electronic services.*

- ❖ **Compliance:** VAT registrations are required in each country where even one customer resides or a central EU registration is needed.

**Did clients register for MOSS or separately in each MS? What were the reasons for registering locally vs. MOSS registration?**

*All of my clients registered centrally in Ireland.*

**QUESTIONS: Ex-post evaluation of the implementation of the 2015 VAT changes & MOSS.**

- ❖ **MOSS advantages/disadvantages**

**What is the experience of EY's clients in applying the MOSS?**

*The experience of EY clients in the first year has generally been positive. Businesses are generally supportive of MOSS although they would like to see some administrative simplifications. I think the real test of MOSS will be when Member States commence audits.*

**Have businesses faced any difficulties with the current functioning of the MOSS? If yes, what are the main problems businesses have experienced?**

*To the extent that there have been teething problems it has been related to software and in determining if a supply qualifies as an electronic service.*

- ❖ **Where next? – Possible EU policy options for modernising VAT aspects of cross-border e-commerce**

**What is the opinion of EY and its clients about the Commission's proposal on broadening the One Stop Shop to all B2C supplies of tangible goods as well as services (intra-EU and 3rd countries)?**

*I believe from my dealings with EY clients that they would support such a proposal.*

**Do you agree that the cross-border VAT threshold should be harmonised across the EU and apply to both goods and services?**

*I agree a harmonised cross border threshold for goods and services should be set.*

**What is an appropriate cross-border threshold amount which will not introduce more distortions but at the same time offer relief to small start-up business?**

*It is difficult to set a threshold. However if it is intended to offer relief to small start-up business I think realistically the threshold has to be around 100K per annum.*

**Do you agree that business using the future single electronic registration and payment system should be subject to a single audit from the tax authority in their own MS? Issues related to compliance management?**

*I agree that there should be a single audit in the business Member State. This would be very attractive to business and administratively very efficient.*

**Issues related to compliance management?**

*If as far as possible the Member State of registration is the compliance controller and empowered to make decisions binding all Member States then this will be a huge improvement. I agree that the VAT rates and exemptions of Member States would continue to apply.*

**Do you agree with the removal of the VAT exemption for the importation of small consignments in respect of B2C supplies of goods from 3rd countries?**

*In principle I agree with the removal of the VAT exemption so as to create a level playing field. It would be important to plan its introduction carefully and ensure that the appropriate systems are put in place.*

**Thank you for your time & input!**



**SURVEY QUESTIONNAIRE**  
on the 2015 place of supply changes & MOSS  
Reply given by **KPMG (Dublin, Ireland)**  
Contact person: **Joanne Gallagher, VAT Director at KPMG**  
Date of reply: 08-02-2016

**QUESTIONS: How ready were businesses prior to 1 January 2015?**

**Five checklist items:**

- ❖ **Pricing:** universal vs. dynamic pricing? Key driver here is to protect revenues and profit margins.

**How did KPMG's clients decide? Did they retain or change their pricing strategies?**

*We understand that clients have adopted a number of different pricing strategies and this has been based on a number of factors, such as the size of the company, their IT capabilities, the jurisdictions from which they derive their business and the price sensitivity of the services offered. Some of the pricing strategies we've seen adopted include:*

- *Charging a different price in every jurisdiction.*
- *Pricing based on the average of the VAT rates applicable in a few Member States where the majority of their customers are based.*

**Can you estimate how many % of businesses changed/didn't change their pricing structures?**

*Allocating a % is difficult to estimate. Larger businesses with a sophisticated ecommerce platform were in a position to introduce dynamic pricing with smaller businesses adding a blended rate / margin to address the VAT cost.*

- ❖ **Systems functionality:** systems changes were required to be designed, implemented and tested ahead of 2015 to ensure timely, accurate and efficient management of VAT across multiple countries. Systems must recognize the customer's country and apply the correct rate of VAT. The system Logic or Tax Logic that allows the system to select the place of supply is critical.

**Did clients develop new systems in-house or was this service bought in?**

*Our experience in the main part is that clients developed their own systems internally to deal with the 2015 changes. However this may be a factor of the size of the companies concerned. We are also aware of a number of software packages in the market which can be added to or integrated into a supplier's system to assist with some facet of VAT accounting obligations arising from the 2015 changes.*

- ❖ **Contracts:** existing contracts needed to be reviewed or renegotiated to ensure that the VAT accounting responsibilities of each party were clearly defined.

**Did the 2015 Article 9a (Council Implementing Regulation (EU) No.1042/2013) changes lead to the renegotiation and restructuring of supply chains? Invoicing issues (above and below the line), commissionaires and agents becoming principals, etc.?**

*Yes, we are aware of instances where Article 9a has resulted in a renegotiation and/or restructuring of supply chains with a resulting impact on VAT accounting obligations and other considerations such as invoicing obligations, statistical returns, etc.*

**How did clients decide who the principal would be?**

*A number of factors were relevant in assessing the impact of Article 9a on a client's business (e.g. the entity interfacing with the customer, regulatory considerations, etc.) and these varied on a case by case.*

- ❖ **Corporate structure:** it was necessary for business to consider whether their corporate structure was appropriate for 2015 from a commercial and tax perspective and review the potential to relocate to countries that are "open for business".

**Did clients restructure internally or physically in advance of 2015? What were the main reasons for doing so?**

*We have seen instances where clients have restructured their business in advance of 2015 (e.g. in consideration of the impact of Article 9a).*

- ❖ **Compliance:** VAT registrations are required in each country where even one customer resides or a central EU registration is needed.

**Did clients register for MOSS or separately in each MS? What were the reasons for registering locally vs. MOSS registration?**

*We understand that clients have adopted both approaches. The reason for adopting either approach varied on a case by case basis depending on the size of the company, its business structures, language considerations, etc.*

**QUESTIONS: Ex post evaluation of the implementation of the 2015 VAT changes & MOSS**

- ❖ **MOSS advantages/disadvantages**

**What is the experience of KPMG's clients in applying the MOSS?**

*In our experience the most common problems identified by clients include confusion around FX issues and the need to resubmit historic returns for credit notes issued.*

**Have businesses faced any difficulties with the current functioning of the MOSS? If yes, what are the main problems businesses have experienced?**

*We are aware that clients that wish to retroactively register have experienced practical issues with the registration / filing process. Separately the data elements which clients need to access and retain in order to determine place of taxation, taxable amount, etc (such as those suggested by Tax Authorities / The Commission) are not necessarily available from a single system (e.g. nature of supply may be on ecommerce platform and billing information may be residing with the PSP/payment platform).*

**❖ Where next? – Possible EU policy options for modernising VAT aspects of cross-border e-commerce**

**What is the opinion of KPMG and its clients about the Commission's proposal on broadening the One Stop Shop to all B2C supplies of tangible goods as well as services (intra-EU and 3rd countries)?**

*We are aware of some clients expressing an interest in the broadening of the One Stop Shop to include goods – e.g. those engaged in operations such as distance selling.*

*We have not canvassed the views of other KPMG offices in responding to this questionnaire. However, it appears that the extension of the One Stop Shop would be valuable if (1) current practical issues are overcome (e.g. FX, adjustments etc.) and (2) the extension is meaningful (i.e. includes all local EU input VAT as well as output VAT transactions thus removing the obligation to file other returns/claims and (3) it is subject to a harmonised single audit approach in the country of registration.*

**Do you agree that the cross-border VAT threshold should be harmonised across the EU and apply to both goods and services?**

*The opinions of all our offices were not obtained. However, in our view that is difficult to assess. While harmonised thresholds would be easier for suppliers to monitor it wouldn't necessarily result in easing the overall administrative burden on taxpayers.*

*Additionally, it is not possible to say whether a harmonised threshold would remove distortions of competition without first giving full consideration to a range of variables (such as the relative mobility of differing industries, geographical bias and other issues).*

**What is an appropriate cross-border threshold amount which will not introduce more distortions but at the same time offer relief to small start-up business?**

*The opinions of all our offices were not obtained. However, in our view it is difficult to determine whether it is possible to achieve these objections with a single threshold amount.*

**Do you agree that business using the future single electronic registration and payment system should be subject to a single audit from the tax authority in their own MS?**

*The opinions of all our offices were not obtained. However, it is our view that a single audit in the country of registration would be valuable provided there was a harmonised and consistent approach to the audit process regardless of which country the taxpayer was registered in.*

**Issues related to compliance management?**

*A great deal of data needs to be retained from a MOSS audit trail perspective and clients have expressed concerns with regards to data privacy and the retention of records related to private consumers. With a need to register credit notes against original VAT MOSS returns, conceptually a business may have multiple returns to compile, reconcile & file on an ongoing basis therefore adding to the cost of compliance for MOSS.*

**Do you agree with the removal of the VAT exemption for the importation of small consignments in respect of B2C supplies of goods from 3rd countries?**

*The opinions of all our offices were not obtained. However, it is likely that removal of the VAT exemption for the importation of small consignments would be beneficial in terms of achieving fiscal neutrality and removing distortions of competition between EU and non-EU suppliers. However, the practicalities of achieving this would be difficult and costly to administer.*

Please note that the opinion of the entire KPMG VAT network was not obtained. The answers cited in this questionnaire are our opinions based on our experiences in Ireland.

**Thank you for your time & input!**

**SURVEY QUESTIONNAIRE**  
on the 2015 place of supply changes & MOSS  
Replies given by PricewaterhouseCoopers (Dublin, Ireland)  
Contact person: **Tim Corbett, Partner in charge of VAT at PwC**  
Date of reply: 12-01-2016

**QUESTIONS: How ready were businesses prior to 1 January 2015?**

**Five checklist items:**

- ❖ **Pricing:** universal vs. dynamic pricing? Key driver here is to protect revenues and profit margins.

*In general, our clients retained their pricing. Clients have a mix of universal and dynamic pricing.*

- ❖ **Systems functionality:** systems changes were required to be designed, implemented and tested ahead of 2015 to ensure timely, accurate and efficient management of VAT across multiple countries. Systems must recognize the customer's country and apply the correct rate of VAT. The System Logic or Tax Logic that allows the system to select the PoS is critical.

*Given the scale of our clients in-house systems were developed.*

- ❖ **Contracts:** existing contracts needed to be reviewed or renegotiated to ensure that the VAT accounting responsibilities of each party were clearly defined.

**Did the 2015 Article 9a (Council Implementing Regulation (EU) No. 1042/2013) changes lead to the renegotiation and restructuring of supply chains?**

*In the main it was not necessary to enter into the renegotiation or restructuring of supply chains. The legislation was applied to supply chains already in place.*

**Invoicing issues (above and below the line), commissionaires and agents becoming principles, etc.?**

*It was necessary for companies to consider B2C invoicing obligations in Member States in which consumers were located. Approach was taken by some companies to issue template invoices, which met conditions in each Member State.*

**How did clients decide who the principal would be?** *Issues considered included the strict application of Article 9a, consideration of customers needs (e.g. platform providers wanted to make life easier for smaller content providers given the obligations which the legislation created in terms of setting up systems, accounting for VAT, issuing invoices, etc.).*

- ❖ **Corporate structure:** it was necessary for business to consider whether their corporate structure was appropriate for 2015 from a commercial and tax perspective and review the potential to relocate to countries that are "open for business".



**Did clients restructure internally or physically in advance of 2015? What were the main reasons for doing so?**

*Not that we are aware of.*

- ❖ **Compliance:** VAT registrations are required in each country where even one customer resides or a central EU registration is needed.

**Did clients register for MOSS or separately in each MS? What were the reasons for registering locally vs. MOSS registration?**

*In the main clients registered for MOSS given that it was a single registration and as such, reduced compliance requirements. Where companies already had VAT registrations in the EU Member States it made sense, in some instances, not to register for MOSS.*

#### **QUESTIONS: Ex-post evaluation of the implementation of the 2015 VAT changes & MOSS**

- ❖ **MOSS advantages/disadvantages**

**What is the experience of PwC's clients in applying the MOSS?**

*The MOSS system has been a welcomed practical means of reducing the costs and administrative burden of compliance for affected companies. Our experience, together with our clients, has been a very positive experience in our dealings with Irish Revenue in particular the collaborative approach taken.*

**Have businesses faced any difficulties with the current functioning of the MOSS? If yes, what are the main problems businesses have experienced?**

*The main practical issues regarding the operation of the MOSS that could potentially serve to undermine its initial success and its longer term objective is for example the requirement to resubmit MOSS returns for adjustments to supplies in previous periods and the interaction with local rules regarding voluntary disclosure, interest, penalties etc.*

- ❖ **Where next? – Possible EU policy options for modernising VAT aspects of cross-border e-commerce**

**What is the opinion of PwC and its clients about the Commission's proposal on broadening the One Stop Shop to all B2C supplies of tangible goods as well as services (intra-EU and 3rd countries)?**

*A pre-requisite of the expansion of the MOSS system should be a greater degree of harmonisation of some fundamental aspects of the broader VAT regime.*

**Do you agree that the cross-border VAT threshold should be harmonised across the EU and apply to both goods and services? What is an appropriate cross-border threshold amount which will not introduce more distortions but at the same time offer relief to small start-up business?**

*Considerations regarding a threshold below which such cross-border place of supply rules would not apply, i.e. no VAT would be applied up to a certain value of cross-border supplies, would, in our view, be a useful feature to reduce administrative burden on both small businesses who have low values of cross-border trade, as well as larger organisations with relatively few customers in particular Member States. The introduction of a threshold would likely be a measure that would facilitate small businesses accessing initial growth opportunities in the Digital Single Market.*

**Do you agree that business using the future single electronic registration and payment system should be subject to a single audit from the tax authority in their own MS?**

*The implications of applying a business's home country rules requires further consideration. Whilst in principle the simplification that this may bring could be seen as attractive, we note that there is a risk that home country's VAT rules may then become a competitive differentiator to encourage businesses to locate in particular territories. This would potentially undermine the objective of a level playing field for all businesses trading across the EU, wherever they are trading from.*

**Thank you for your time & input!**