

Exchange of data to combat VAT fraud in the e-commerce

Fields marked with * are mandatory.

Introduction

The e-commerce business has been growing exponentially. The share of e-commerce in the total turnover of EU businesses rose by over 50 per cent between 2007 and 2015. E-commerce sales in Europe have experienced a steady turnover growth over recent years at an annual growth rate of around 15 per cent and are likely to pass the €600 billion threshold in 2017.[1] Cross-border e-Commerce accounts for about 18% of this figure, or EUR 108 billion. 68 % of internet users in the EU shopped online in 2017. 33% out of them shopped from sellers in other EU countries while 23% shopped from sellers outside EU. The European customers buy on-line with an average of 57 times a year[2].

Whereas consumers and honest businesses benefit from the opportunities offered by the digital market, fraudulent businesses enter more easily in the market and gain advantages by not complying with VAT obligations. This affects government revenues: the Commission estimated that tax administrations in the EU countries are missing around EUR 5 billion of VAT revenue when consumers buy goods online from another country[3]. This situation also affects legitimate businesses, both in the digital and in the "traditional" markets.

Part of the VAT loss is due to businesses not understanding their tax obligations or finding them too burdensome. For this reason, the VAT Digital Single Market Package makes it simpler to fulfil VAT obligations for businesses selling abroad to final consumers (both from inside or outside the EU). However, there are also businesses that do not comply with VAT obligations to gain illicit market advantages and the tax administrations must be able to detect and control them. Therefore, while the VAT system has been modernised, the cooperation tools tax authorities need to combat VAT fraud in the e-commerce sector have not been addressed accordingly.

In particular, tax administrations have little sources of information to identify remote sellers (those situated in another EU country or in countries outside EU) that do not comply with the VAT rules when selling online to final consumers (i.e. no VAT registration, no VAT declaration, no VAT payment).

Market intermediaries, such as payment service providers, hold data that may be useful for tax administrations to detect these non-compliant remote sellers and correctly assess the VAT liabilities on e-commerce sales. In fact, these intermediaries are involved in almost all e-commerce sales. In 2014, 94% of online payments for cross-border purchases occurred via online payment intermediaries, credit or debit cards, or prepaid cards[4]. Depending on the national legislation, in some Member States the tax authorities collect data from payment intermediaries to fight against VAT fraud in the field of e-commerce, while this is not the case in other Member States.

[1] Copenhagen Economics, E-commerce imports into Europe: VAT and customs treatment, 2016

[2] Data from Ecommerce Europe – E-commerce in Europe 2016, PostNord – E-commerce in Europe 2016 and EUROSTAT - Internet purchases by individuals.

[3] Commission SWD(2016)379 final, point 3 page 13.

[4] International Post Corporation, e-Commerce logistic and delivery, eCom21 2016.

Objectives of the consultation

This consultation aims at collecting the stakeholders' opinions on:

- (i) the problem of VAT fraud in the field of e-commerce (Business-to-consumers, i.e. B2C cross-border sales of goods and service) and its EU dimension;
- (ii) whether the current EU legal framework to fight VAT fraud provides the EU Member States tax authorities with the proper tools to fight VAT fraud in the field of e-commerce;
- (iii) whether and how a EU harmonised approach could provide for better tools to EU Member States tax authorities to fight VAT fraud in the field of e-commerce and
- (iv) the possible impact of the different policy options in terms of regulatory costs, regulatory benefits and individual rights, including issues of privacy and protection of personal data.

In addition to the baseline situation the Commission considers to assess 3 alternative policy options:

- under the baseline situation the tax authorities of the EU Member States follow different approaches to fight against VAT fraud in the e-commerce and only some of them collect data from online intermediaries;
- a non-regulatory option where the European Commission helps tax authorities in investing more in administrative capacity to fight VAT fraud in the e-commerce and publishing guidelines in order to enhance the cooperation between tax authorities and payment intermediaries;
- a regulatory option amending the EU legal framework and allowing tax authorities to: (1) collect data from payment intermediaries defined in line with the Payment Service Directive (PSD2); (2) use these data to detect remote sellers not complying with VAT obligations and (3) exchange this data amongst Member States' tax authorities.

The regulatory option would include harmonized reporting obligations for payment intermediaries only. No new reporting obligations are foreseen for businesses selling online. The regulatory option would also ensure the adequate protection of personal data.

Outline of the questionnaire

Your views will be sought on the following topics:

- VAT fraud on cross-border B2C online sales (hereafter referred to as online sales);
- The current EU legal framework to fight against the VAT fraud on online sales – particularly relevant for tax administrations and experts;
- The policy options to fight against VAT fraud on online sales and their impacts.

Important notices

Contributions received are intended for publication "as submitted" on the Commission's websites. Below, you have the possibility to indicate whether you agree to the publication of your individual responses under your name or anonymously. You can upload a document (e.g. a position paper) at the end of the questionnaire.

About you

*1 You are replying

- as an individual in your personal capacity
- in your professional capacity or on behalf of an organisation

*8 Respondent's first name

Paul

*9 Respondent's last name

Gisby

*10 Respondent's professional email address

paul@accountancyeurope.eu

*11 Name of the organisation

Accountancy Europe

*12 Postal address of the organisation

Avenue d'Auderghem 22-28, Brussels 1040

*13 Type of organisation

Please select the answer option that fits best.

- Private enterprise
- Professional consultancy, law firm, self-employed consultant
- Trade, business or professional association
- Non-governmental organisation, platform or network
- Research and academia
- Churches and religious communities
- Regional or local authority (public or mixed)
- International or national public authority
- Other

*16 Please specify the type of organisation.

- Chamber of commerce
- Business organisation
- Trade Union
- Representative of professions or crafts

Other

***22 Is your organisation included in the Transparency Register?**

If your organisation is not registered, we invite you to register [here](#), although it is not compulsory to be registered to reply to this consultation. [Why a transparency register?](#)

- Yes
- No
- Not applicable

***23 If so, please indicate your Register ID number.**

4713568401-1

***24 Country of organisation's headquarters**

- Austria
- Belgium
- Bulgaria
- Croatia
- Cyprus
- Czech Republic
- Denmark
- Estonia
- Finland
- France
- Germany
- Greece
- Hungary
- Ireland
- Italy
- Latvia
- Lithuania
- Luxembourg
- Malta
- Netherlands
- Poland
- Portugal
- Romania
- Slovak Republic
- Slovenia
- Spain
- Sweden
- United Kingdom
- Other

***25 If "other", please specify:**

We are a European Members Association representing 51 professional organisations in 37 countries, including all EU 28

*26 Your contribution,

Note that, whatever option chosen, your answers may be subject to a request for public access to documents under [Regulation \(EC\) N° 1049/2001](#)

- can be published with your organisation's information** (I consent the publication of all information in my contribution in whole or in part including the name of my organisation, and I declare that nothing within my response is unlawful or would infringe the rights of any third party in a manner that would prevent publication)
- can be published provided that your organisation remains anonymous** (I consent to the publication of any information in my contribution in whole or in part (which may include quotes or opinions I express) provided that it is done anonymously. I declare that nothing within my response is unlawful or would infringe the rights of any third party in a manner that would prevent the publication.

I. Your view on the VAT fraud on online sales

For the purpose of simplification of the questionnaire " VAT fraud on online sales" refers to:

- *Traders that should be registered for VAT purposes in the EU but are not;*
- *Traders that are registered in the EU but do not declare their supplies (goods or services) or declare and pay less VAT than actually due;*
- *Traders that are registered in the EU declare and pay VAT in a Member State where the VAT rate is lower, while the goods and services are sold in another Member State, with higher VAT rate;*

Equally, for the same simplification purpose, within this questionnaire, "traders" designate *those businesses selling on-line, to clients in another country than the one where they are established.*

*27 Are you buying goods or services online?

- YES, frequently (more than 10 times/year)
- YES, occasionally (more than 2-3 times a year and up to 10 times/year)
- YES, rarely (up to 3 times/year)
- NO

28 What is your opinion on the following statements:

	I strongly agree	I agree	I do not agree nor disagree	I disagree	I strongly disagree	I don't know
* a. VAT fraud on online sales is diminishing VAT revenues by a significant share	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
* b. VAT fraud on online sales is harming consumers interests on the long term, by reducing market competition	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

* c. VAT fraud on online sales is damaging the compliant businesses selling on-line	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
* d. It is easy to sell online in the EU from another country even without registering for VAT	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
* e. It is easy to declare and pay less VAT than required by law when selling online from another country than the country where the consumer is located	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
* f. When selling online, it is easy to get advantage by declaring and paying VAT in a EU Member State with a lower VAT rate, while the goods and services are sold in another Member State, with a higher VAT rate.	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
* g. All EU Member States are concerned by the VAT fraud on online sales	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

29 How and to what extent you think that VAT fraud on online sales affects tax administrations in EU countries, consumers, businesses and small enterprises?

(optional)

We believe that there is significant revenue loss to tax authorities arising from VAT fraud on online sales and have anecdotal evidence that the amount of online VAT fraud across the EU could significantly exceed the €5 billion quoted in this consultation.

Where such fraud occurs, we believe this has negative consequences on compliant businesses operating in the same market and such consequences would be most keenly felt by smaller enterprises. Indeed, some small business pressure groups (e.g. www.vatfraud.org) have been actively campaigning on this issue.

We believe that online VAT fraud has already affected consumer behaviour – allowing fraudulent traders to offer lower prices, which most consumers will gravitate towards. If left unchecked, this could lead to a long-term reduction of consumer choice (and significant impact on Member states' tax revenues) as compliant businesses are driven out of business.

30 Are you personally affected by VAT fraud on online sales? Could you provide any examples?

(optional)

It is very difficult to know this for certain without having access to more information about the supplier than most consumers would be prepared to search for or be able to obtain.

31 Please use this option if you would like to upload a document (personal investigation, study, other evidence and manifestation of the problem etc.)

The maximum file size is 1 MB

II. Your view on the current EU legal framework to fight against VAT fraud involving online sales

Part of the VAT loss is due to traders that do not understand their tax obligations or find them too burdensome. For this reason, the VAT Digital Single Market Package makes it simpler to fulfil VAT obligations for businesses selling abroad to final consumers (both inside and outside the EU). But there are also traders that do not comply with VAT obligations to gain illicit market advantages and the tax administrations must be able to detect and control them. In order to detect fraudsters and control them, tax authorities use the control tools provided by their own national legislation and the EU administrative cooperation tools.

In particular, Council Regulation (EU) 904/2010 on administrative cooperation and combating fraud in the field of VAT provides the European tax authorities with the legal framework to exchange data and work together, so that the VAT due is actually paid and this in the right Member State. In particular, under Regulation 904/2010 the competent tax authorities exchange information on specific cases of VAT fraud, using standard electronic forms. Where more than two Member States are affected by the same fraud, the competent authorities can even carry out simultaneous controls on the taxable persons involved and established in their countries. Furthermore, tax authorities can also have access to certain data on intra-EU transactions between businesses through an electronic system called VIES – VAT Information Exchange System. Finally, the Regulation 904/2010 sets up a network of anti-fraud experts called Eurofisc, where Member States share the result of their own national risk analysis on VAT fraud involving also other EU Member States.

* 32 Are you familiar with current EU legal framework to fight against VAT fraud involving online sales?

- YES
- Partially
- Not so familiar

33 What is your opinion on the following statements:

	I strongly agree	I agree	I do not agree nor disagree	I disagree	I strongly disagree	I don't know

a. Member States have adequate tools to fight against VAT fraud on online sales	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
*b. The current instruments for cooperation between Member States are sufficient to detect VAT fraud on online sales	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
c. The existing administrative cooperation tools allow Member States to fight against VAT fraud involving online sales at a higher level than what could be achieved by the EU Member States acting independently	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>

*34 In your view, the results of the fight against VAT fraud on online sales, compared to the level of resources invested by each Member State, are:

- Insufficient
- Proportional to the resources invested
- Optimal
- I don't know

35 Please shortly explain why you think that tax authorities in EU Member States have/do not have the tools to fight the VAT fraud on online sales?

We believe that Member States' Tax Authorities have sufficient national regulatory tools to fight VAT online fraud but frequently lack the resources to use these regulatory tools effectively and also to share the tools which Member States are separately developing – both in terms of manpower and resources to develop useful tools such as data analytics.

We do not have information about the budgets dedicated by each Member State to the fight against online VAT fraud or about the success of measures taken – hence the answer of 'I don't know' to question 34 above.

We believe that the deficiency in resources affects both the customs control over goods coming into the EU from third countries and in VAT investigation/enforcement departments for transactions within a Member State or between Member States.

III. Your opinion on possible options and their impacts

The following questions aim at collecting the stakeholders' opinion on three alternative policy options:

- the baseline situation where the tax authorities of the EU Member States follow different approaches to fight against VAT fraud in the e-commerce and only some of them collect data from online intermediaries;
- a non-regulatory option where the European Commission helps tax authorities in investing more in administrative capacity to fight VAT fraud in the e-commerce and publishing guidelines in order to enhance the cooperation between tax authorities and payment intermediaries;
- a regulatory option amending the EU legal framework and allowing tax authorities to:

1. collect data from payment intermediaries,
2. use these data to detect remote sellers not complying with VAT obligations,
3. exchange or share these data amongst Member States' tax authorities.

Under the regulatory option 3, alternative technical solutions could be envisaged to make tax authorities exchange or share the relevant payment data:

- Automatic exchange of data between tax authorities (with standard forms): under this solution the Member States tax authorities will collect payment data at national level and will periodically transmit each other (e.g. every month) the relevant information using standard forms;
- Tax administrations' access (through an electronic interface) to each other's electronic databases: the Member States tax authorities will collect payment data at national level and store it in a national electronic database. Every tax authority will make available the relevant payment data to the other Member States' tax authorities through an electronic interface;
- Storage of payment data in an EU central database: under this option every Member State's tax authority will upload the relevant payment data in a EU central database. The data in this EU central database will be accessible only to anti-fraud experts of the EU Member States' tax administrations.

Only cross-border payment data relevant for fighting VAT fraud on online sales will be collected under this third option. In particular the data will refer to:

- Identification of the payee : e. g. the name, address, VAT number or other tax number;
- Unique identifier for the payment;
- Total amount of the payment;
- Date of the payment;
- Country of origin of the payment;
- Description of the supply underlining the payment (goods or services).

The implementation of the envisaged measures under this option would trigger the automatic processing of personal data at EU level. It will have to meet the requirements at EU and national level on the protection of personal data.

* 36 At which level do you think VAT fraud on online sales can be effectively addressed?

- at Member States level
- at EU level
- at both levels
- I don't know.

37 What is your opinion on the following statements?

	I strongly agree	I agree	I do not agree nor disagree	I disagree	I strongly disagree	I don't know
* a. The Member States should develop their own administrative						

capacity to better fight against VAT fraud on online sales	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
* b. EU wide guidelines for cooperating with payment intermediaries will help to better fight against VAT fraud on online sales	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
* c. Payment data can help tax authorities to fight against VAT fraud on online sales	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
* d. Exchange of payment data must not reveal the identity of the customer (buyer)	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
* e. The best way for Member States' tax authorities to exchange payment data is through automatic exchange	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
* f. The best way for Member States' tax authorities to exchange payment data is through access to each other database	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
* g. The best way for Member States' tax authorities to exchange payment data is through setting up a central EU database	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Fraudsters take advantage of the fact that they have no physical presence in the Member States where they should register, declare and pay VAT. This also implies that tax administrations have very little sources of information to detect these fraudsters. On the other hand, payment intermediaries involved in the online sales hold the information necessary to tax authorities to potentially detect the fraudsters. The option 3 described above aimed at empowering the Member States tax authorities to collect data from payment intermediaries and exchange these data amongst them.

* 38 The problem of VAT fraud on online sales across all the EU Member States:

- Justifies the collection and exchange VAT-relevant payment data
- Does not justify collection and exchange VAT-relevant payment data
- I do not know

39 Wich one of the three options you would consider as:

	Baseline situation	Non-regulatory option	Regulatory option	I don't know
The easiest to implement	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>

The most effective to fight VAT fraud on online sales	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
The most consistent with the other EU initiatives, notably the VAT Digital Single Market Package	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>

40 The collection and exchange of the following payment data will help tax administrations in fighting VAT fraud on online sales:

In relation to the option implying the collection and exchange of VAT-relevant payment data, we ask for your opinion about the need of tax administrations to collect and use certain categories of data for fraud detection purposes. If you disagree with the use of such categories of data, you will be asked for the reasons of your choice.

	I agree	I disagree	I don't know
* Identification of the payee (business receiving the money)	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
* Total amount of the payment	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
* Date of the payment	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
* Country of origin for the payment	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
* Description of the supply underlining the payment	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>

44 In your opinion, which are the most important difficulties related to the collection of payment data from payment intermediaries?

- The payment intermediaries will have to bear high costs for transmitting this data to tax authorities
- The costs of the payment intermediaries will be transferred to the consumers
- The payment data are not accurate enough to fight against VAT fraud on online sales
- Other
- I don't know

45 If other, please, explain:

In principle, we believe that all the information listed in question 40 above could be helpful for tax administrations in fighting VAT fraud.

Depending on how the reporting is structured, automatic exchange could result in billions of transactions being exchanged, which tax administrations must analyse to find a relatively small percentage of fraudulent traders. We fear that many tax administrations will simply be overwhelmed by the sheer volume of data without huge increases in resources, at least until they have had sufficient time (and resources) to develop systems to cope with the data.

In respect of the description of the supply, we doubt that all payment intermediaries will currently have this information available, albeit this information is increasingly being transferred between suppliers (and commerce platforms) and the payment intermediaries.

In respect of question 44, The data may not be sufficiently granular, for example the payment may be for:

1. A non-taxable supply (eg purchase of a multi-purpose voucher, or a financial transaction)
2. A supply at a reduced rate

3. May include many other goods/services on which VAT is not due
4. Insufficient detail of the goods being acquired in the payment details;

46 If possible, please, explain how these difficulties could be reduced.

As mentioned in above. In many cases the data currently supplied from the suppliers and sales platforms to payment intermediaries does not contain a sufficient level of detail to be useful to tax administrations. It will have to be enriched with a detailed description of the goods/services supplied, the VAT due, by VAT rate.

47 What is your opinion with reference to the risks related to privacy and data protection in case of the collection of payment data from payment intermediaries

	I strongly agree	I agree	I do not agree nor disagree	I disagree	I strongly disagree	I don't know
* a. The collection and exchange of payment data by tax authorities is disproportionate with respect to the purpose of fighting VAT fraud	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
* b. The collection and exchange of payment data by tax authorities is not necessary with respect to the purpose of fighting VAT fraud	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
* c. The data may be used for other purposes than VAT fraud detection	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
* d. The data may be used for identifying the customer	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

48 How would a new legal obligation for collecting and exchanging VAT-relevant payment data impact you?

Not applicable

49 Would you like to propose any alternative solution to better fight VAT fraud on online sales?

- Better control of borders for goods coming into the EU
- More resources allocated to national tax administrations to fight fraud
- National tax administrations should make more investment into data analytic tools to identify cases of potential VAT fraud or non-compliance
- Exchange of best practice, information and effective tools and between Member State's tax administrations.
- Full and complete application of Regulation 904/2010.
- Consideration should be given to existing technological and systems-based solutions that are being proposed by the private sector and academia. For example, DAGTVA, details of which can be found at <http://www.dagtva.com/>

IV. Document upload and final comments

50 If you wish to add further information — within the scope of this questionnaire — please feel free to do so here.

1000 character(s) maximum

51 Please feel free to upload a concise document, such as a position paper. The maximum file size is 1MB.

Please note that the uploaded document will be published alongside your response to the questionnaire which is the essential input to this public consultation. The document is optional and serves as additional background reading to better understand your position.

569dd6c8-e307-4823-9e26-49defe6ee222/2018-04-25_Cover_Letter_for_PC_on_AE_of_payment_data.pdf

Contact

TAXUD-UNIT-C4@ec.europa.eu
